

Volume 38, Number 2
Pages 167-238
January 15, 2013

SALUS POPULI SUPREMA LEX ESTO

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



JASON KANDER
SECRETARY OF STATE

MISSOURI
REGISTER

The *Missouri Register* is an official publication of the state of Missouri, under the authority granted to the secretary of state by sections 536.015, RSMo Supp. 2012 and 536.033, RSMo 2000. Reproduction of rules is allowed; however, no reproduction shall bear the name *Missouri Register* or "official" without the express permission of the secretary of state.

The *Missouri Register* is published semi-monthly by

SECRETARY OF STATE

JASON KANDER

Administrative Rules Division

James C. Kirkpatrick State Information Center
600 W. Main
Jefferson City, MO 65101
(573) 751-4015

DIRECTOR

WAYLENE W. HILES

•

EDITORS

CURTIS W. TREAT

SALLY L. REID

ASSOCIATE EDITOR

DELANE JACQUIN

•

PUBLICATION TECHNICIAN

JACQUELINE D. WHITE

•

SPECIALIST

MICHAEL C. RISBERG

•

ADMINISTRATIVE ASSISTANT

ALISHA DUDENHOEFFER

ISSN 0149-2942, USPS 320-630; periodical postage paid at Jefferson City, MO
Subscription fee: \$56.00 per year

POSTMASTER: Send change of address notices and undelivered copies to:

MISSOURI REGISTER

Office of the Secretary of State

Administrative Rules Division

PO Box 1767

Jefferson City, MO 65102

The *Missouri Register* and *Code of State Regulations* (CSR) are now available on the Internet. The Register address is <http://www.sos.mo.gov/adrules/moreg/moreg.asp> and the CSR is <http://www.sos.mo.gov/adrules/csr/csr.asp>. These websites contain rulemakings and regulations as they appear in the Registers and CSR. These websites do not contain the official copies of the Registers and CSR. The official copies remain the paper copies published by the Office of the Secretary of State pursuant to sections 536.015 and 536.031, RSMo Supp. 2012. While every attempt has been made to ensure accuracy and reliability, the Registers and CSR are presented, to the greatest extent practicable as they appear in the official publications. The Administrative Rules Division may be contacted by email at rules@sos.mo.gov.

The secretary of state's office makes every effort to provide program accessibility to all citizens without regard to disability. If you desire this publication in alternate form because of a disability, please contact the Division of Administrative Rules, PO Box 1767, Jefferson City, MO 65102, (573) 751-4015. Hearing impaired citizens should contact the director through Missouri relay, (800) 735-2966.



IN THIS ISSUE:

PROPOSED RULES

Department of Economic Development
 Division of Workforce Development171

Department of Higher Education
 Commissioner of Higher Education174

Department of Natural Resources
 Land Reclamation Commission177

ORDERS OF RULEMAKING

Department of Conservation
 Conservation Commission199

Department of Higher Education
 Commissioner of Higher Education201

Department of Labor and Industrial Relations
 Division of Labor Standards202

Department of Revenue
 State Tax Commission202

Retirement Systems
 Missouri Local Government Employees' Retirement
 System (LAGERS)202

**Department of Insurance, Financial Institutions and
 Professional Registration**
 State Board of Registration for the Healing Arts202
 State Committee for Social Workers205

Missouri Consolidated Health Care Plan
 Health Care Plan205

IN ADDITIONS

Department of Conservation
 Conservation Commission212

CONTRACTOR DEBARMENT LIST213

DISSOLUTIONS214

SOURCE GUIDES

RULE CHANGES SINCE UPDATE223
EMERGENCY RULES IN EFFECT228
EXECUTIVE ORDERS230
REGISTER INDEX231

Register Filing Deadlines	Register Publication Date	Code Publication Date	Code Effective Date
September 4, 2012 September 17, 2012	October 1, 2012 October 15, 2012	October 31, 2012 October 31, 2012	November 30, 2012 November 30, 2012
October 1, 2012 October 15, 2012	November 1, 2012 November 15, 2012	November 30, 2012 November 30, 2012	December 30, 2012 December 30, 2012
November 1, 2012 November 15, 2012	December 3, 2012 December 17, 2012	December 31, 2012 December 31, 2012	January 30, 2013 January 30, 2013
December 3, 2012 December 17, 2012	January 2, 2013 January 15, 2013	January 29, 2013 January 29, 2013	February 28, 2013 February 28, 2013
January 2, 2013 January 15, 2013	February 1, 2013 February 15, 2013	February 28, 2013 February 28, 2013	March 30, 2013 March 30, 2013
February 1, 2013 February 15, 2013	March 1, 2013 March 15, 2013	March 31, 2013 March 31, 2013	April 30, 2013 April 30, 2013
March 1, 2013 March 15, 2013	April 1, 2013 April 15, 2013	April 30, 2013 April 30, 2013	May 30, 2013 May 30, 2013
April 1, 2013 April 15, 2013	May 1, 2013 May 15, 2013	May 31, 2013 May 31, 2013	June 30, 2013 June 30, 2013
May 1, 2013 May 15, 2013	June 3, 2013 June 17, 2013	June 30, 2013 June 30, 2013	July 30, 2013 July 30, 2013
June 3, 2013 June 17, 2013	July 1, 2013 July 15, 2013	July 31, 2013 July 31, 2013	August 30, 2013 August 30, 2013

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>

Missouri Participating Libraries

The *Missouri Register* and the *Code of State Regulations*, as required by the Missouri Documents Law (section 181.100, RSMo Supp. 2012), are available in the listed participating libraries, as selected by the Missouri State Library:

Jefferson County Library PO Box 1486, 3021 High Ridge High Ridge, MO 63049-1486 (314) 677-8689	Learning Resources Center Mineral Area College PO Box 1000 Park Hills, MO 63601-1000 (573) 431-4593	Hearnes Learning Resources Ctr. Missouri Western State University 4525 Downs Drive St. Joseph, MO 64507-2294 (816) 271-5802	Library Missouri University of Science and Technology 1870 Miner Circle Rolla, MO 65409-0060 (573) 341-4007
Jefferson College Library 1000 Viking Drive Hillsboro, MO 63050-2441 (314) 789-3951 ext. 160	Cape Girardeau Public Library 711 N. Clark Cape Girardeau, MO 63701-4400 (573) 334-5279	Library North Central Missouri College PO Box 111, 1301 Main Street Trenton, MO 64683-0107 (660) 359-3948 ext. 325	Lebanon-Laclede County Library 915 S. Jefferson Ave. Lebanon, MO 65536-3017 (417) 532-2148
St. Louis Public Library 1301 Olive St. St. Louis, MO 63103-2389 (314) 539-0376	Kent Library Southeast Missouri State University One University Plaza Cape Girardeau, MO 63701-4799 (573) 651-2757	Spiva Library Missouri Southern State University 3950 East Newman Road Joplin, MO 64801-1595 (417) 625-9342	University Library Southwest Baptist University 1600 University Ave. Bolivar, MO 65613-2597 (417) 328-1631
St. Louis University Law Library 3700 Lindell Blvd. St. Louis, MO 63108-3478 (314) 977-2742	Riverside Regional Library PO Box 389, 1997 E. Jackson Blvd. Jackson, MO 63755-0389 (573) 243-8141	Missouri State Library 600 West Main, PO Box 387 Jefferson City, MO 65102-0387 (573) 751-3615	Barry-Lawrence Regional Library 213 6th St. Monett, MO 65708-2147 (417) 235-6646
Eden/Webster Library Eden Theological Seminary/ Webster University 475 East Lockwood Ave. St. Louis, MO 63119-3192 (314) 961-2660 ext. 7812	Rutland Library Three Rivers Community College 2080 Three Rivers Blvd. Poplar Bluff, MO 63901-2393 (573) 840-9656	Missouri State Archives 600 West Main, PO Box 778 Jefferson City, MO 65102-0778 (573) 526-6711	Lyons Memorial Library College of the Ozarks General Delivery Point Lookout, MO 65726-9999 (417) 334-6411 ext. 3551
Thomas Jefferson Library University of Missouri-St. Louis 8001 Natural Bridge Road St. Louis, MO 63121-4499 (314) 516-5084	James C. Kirkpatrick Library University of Central Missouri 142 Edwards Library Warrensburg, MO 64093-5020 (660) 543-4149	Elmer Ellis Library University of Missouri-Columbia 106 B Ellis Library Columbia, MO 65211-5149 (573) 882-0748	Garnett Library Missouri State University—West Plains 304 Cleveland West Plains, MO 65775-3414 (417) 255-7945
Washington University Law Library Washington University Campus Box 1171, Mudd Bldg., One Brookings Dr. St. Louis, MO 63130-4899 (314) 935-6443	Kansas City Public Library 14 West 10th Street Kansas City, MO 64105 (816) 701-3546	Library State Historical Society of Missouri 1020 Lowry St. Columbia, MO 65211-7298 (573) 882-9369	Springfield-Greene County Library 4653 S. Campbell Springfield, MO 65801-0760 (417) 874-8110
St. Louis County Library 1640 S. Lindbergh Blvd. St. Louis, MO 63131-3598 (314) 994-3300 ext. 247	Law Library University of Missouri-Kansas City 5100 Rockhill Road Kansas City, MO 64110-2499 (816) 235-2438	Daniel Boone Regional Library PO Box 1267, 100 West Broadway Columbia, MO 65205-1267 (573) 443-3161 ext. 359	Meyer Library Missouri State University PO Box 175, 901 S. National Springfield, MO 65804-0095 (417) 836-4533
Library Maryville University 13550 Conway Road St. Louis, MO 63141-7232 (314) 529-9494	Miller Nichols Library University of Missouri-Kansas City 5100 Rockhill Road Kansas City, MO 64110-2499 (816) 235-2438	School of Law University of Missouri-Columbia 224 Hulston Hall Columbia, MO 65211-0001 (573) 882-1125	
Pickler Memorial Library Truman State University 100 E. Normal Kirksville, MO 63501-4221 (660) 785-7416	B.D. Owens Library Northwest Missouri State University 800 University Drive Maryville, MO 64468-6001 (660) 562-1841	Smiley Memorial Library Central Methodist University 411 Central Methodist Square Fayette, MO 65248-1198 (660) 248-6279	
	St. Joseph Public Library 927 Felix Street St. Joseph, MO 64501-2799 (816) 232-8151		

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.

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 symbolology under the heading of 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 4—DEPARTMENT OF ECONOMIC DEVELOPMENT

Division 195—Division of Workforce Development Chapter 6—Show Me Heroes

PROPOSED RULE

4 CSR 195-6.010 Purpose; Definitions

PURPOSE: The Department of Economic Development, Division of Workforce Development is responsible for administering the Show Me Heroes program through existing programs. This rule identifies the existing programs that shall support Show Me Heroes and defines terms used in program administration.

(1) The Department of Economic Development, Division of Workforce Development shall use funds allocated to support On the Job Training, as such term is defined in the Workforce Investment

Act, section 101(31), to do the following:

(A) Assist the spouse of an active duty national guard or reserve component service member reservist and active duty United States military personnel to address immediate needs and employment in an attempt to keep the family from falling into poverty while the primary income earner is on active duty, and during the one- (1-) year period following discharge from deployment; and

(B) Assist returning national guard troops or reserve component service member reservists and recently separated United States military personnel with finding work in situations where an individual needs to rebuild business clientele or where an individual's job has been eliminated while such individual was deployed, or where the individual otherwise cannot return to his or her previous employment.

(2) "Recently separated United States military personnel" means a person who served in the active military, naval, or air service for a minimum of four (4) months and who was discharged or released therefrom under conditions other than dishonorable, during the one- (1-) year period beginning on the date of such person's discharge or release from active duty.

(3) "The division" means the Department of Economic Development, Division of Workforce Development.

(4) "Local Program" means the entity designated by the local workforce investment region's local plan to provide training services, as described in section 118 of the Workforce Investment Act.

(5) "Show Me Heroes Trainee" means a person who is eligible to receive on-the-job training through the Show Me Heroes program, as described in section 620.515, RSMo.

AUTHORITY: section 620.515, RSMo Supp. 2012. Original rule filed Dec. 4, 2012.

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 Department of Economic Development, Division of Workforce Development, 301 W. High Street, Jefferson City, MO 65101. 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 195—Division of Workforce Development Chapter 6—Show Me Heroes

PROPOSED RULE

4 CSR 195-6.020 Eligibility Requirements

PURPOSE: This rule describes the eligibility requirements for Show Me Heroes Trainees and employers to receive assistance from the division under the Show Me Heroes program.

(1) A person shall meet the following requirements to be eligible for assistance from the division as a Show Me Heroes Trainee:

(A) The person is a dislocated worker who meets the eligibility requirements set forth in 20 CFR 663.310;

(B) The person is either—

1. The spouse of an active duty national guard or reserve component service member reservist or active duty United States military personnel; or

2. The person is a returning national guard troop or reserve component service member reservist or recently separated United States military personnel; and

(C) The person is from a family that is experiencing the following:

1. The primary income earner was called to active duty in defense of the United States for a period of more than four (4) months;

2. The family's primary income is no longer available;

3. The family is experiencing significant hardship due to financial burdens; and

4. The family has no outside resources available to assist with such hardships.

(2) Employers shall meet the following requirements to be eligible to provide occupational training to a Show Me Heroes Trainee:

(A) Any and all eligibility requirements set forth in 20 CFR 663.700, 663.260, and 663.268;

(B) If applicable, the employer shall have—

1. Recalled or attempted to recall all employees who entered active layoff from the employer within the past three hundred sixty-five (365) days; and

2. Not given notice of layoff to any employees in the position for which the employer requests trainees or any substantially equivalent position;

(C) The employer shall have in place regulations that address employee safety and health;

(D) The employer shall be in compliance with section 285.530.1, RSMo; and

(E) The employer shall be financially stable.

(3) Eligible employers may employ Show Me Heroes Trainees for positions that meet the following requirements:

(A) Low turnover rate;

(B) Non-seasonal employment;

(C) No history of layoff;

(D) Earns wages and benefits that are the same or substantially similar to the wages and benefits of trainees or employees who are employed in similar positions by the same employer and possess similar training, experience, and skills. Such wages and benefits shall be in accordance with applicable law and shall, in no event, fall below the minimum wage required by 29 USC 206(a)(1) and section 290.502, RSMo;

(E) A full-time position, defined as a position for which the employee is scheduled to work thirty-two (32) or more hours each week;

(F) Not temporary or intermittent employment or employment in an occupation for a fee; and

(G) Does not require the trainee to participate in sectarian instruction or religious worship.

(4) A Show Me Heroes Trainee is not eligible to receive training from his or her former employer unless such arrangement is approved in advance by the division. If such approval is granted, the following conditions apply:

(A) The training position must represent a promotion from the position that the Show Me Heroes Trainee previously held with the employer; and

(B) The Show Me Heroes Trainee may not receive training for the position that he or she previously held with the employer.

AUTHORITY: section 620.515, RSMo Supp. 2012. Original rule filed Dec. 4, 2012.

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 Department of Economic Development, Division of Workforce Development, 301 W. High Street, Jefferson City, MO 65101. 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 195—Division of Workforce Development
Chapter 6—Show Me Heroes**

PROPOSED RULE

4 CSR 195-6.030 Training Agreements

PURPOSE: This rule sets forth the requirements for training agreements entered into under the Show Me Heroes program.

(1) Employers that provide training services to a Show Me Heroes Trainee shall enter into an agreement with a Local Program and the trainee that provides occupational training in exchange for the reimbursement of up to fifty percent (50%) of the trainee's wage rate to compensate for the employer's extraordinary costs.

(2) Any agreement made under 4 CSR 195-6.030(1) shall conform to the requirements set forth in 20 CFR 663.700 and 663.705, be approved by the division, and include the following:

(A) The occupation(s) for which training is to be provided and each occupation's respective O*NET code;

(B) The amount of time required by a typical worker to learn the techniques and skills needed for average performance in the position for which training is to be provided. This information may be expressed in terms of the level of Specific Vocational Preparation (SVP) level required;

(C) The length of training shall not exceed twenty-six (26) weeks and shall correspond to the SVP level for the position for which training is required;

(D) The wage rate to be paid to the trainee;

(E) The percentage of reimbursement of trainee wages that the employer shall receive, which shall not exceed fifty percent (50%);

(F) A training outline that reflects the skills required for the position and addresses the gap in the trainee's skills that the training opportunity will bridge;

(G) The employer's agreement to maintain and make available to the Local Program time and attendance records, payroll, and other records to support any wages for which the employer seeks reimbursement under the training agreement;

(H) The employer's assurance that it will provide equal opportunity in all services, without regard to race, sex, color, religion, national origin, disability, citizenship, or participation in program activities, in full compliance with section 188 of the Workforce Investment Act and with the equal opportunity and nondiscrimination regulations found in 29 CFR Part 37;

(I) The employer's assurance that its drug testing policies are in full compliance with section 181(f) of the Workforce Investment Act; and

(J) The employer's assurance that it is in full compliance with the requirements set forth in section 285.530, RSMo, and that, in accordance with that section, it will by sworn affidavit and provision of

documentation, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the training agreement.

(3) Prior to an employer's entering into an agreement under 4 CSR 195-6.030(1), the Local Program shall provide an orientation to the employer that includes discussion of—

(A) Training provisions, general assurances, training plans, including the attainment of skills, program monitoring, and invoicing procedures; and

(B) The local program's policies regarding employer disputes, nepotism, and contract modification requests.

AUTHORITY: section 620.515, RSMo Supp. 2012. Original rule filed Dec. 4, 2012.

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 Department of Economic Development, Division of Workforce Development, 301 W. High Street, Jefferson City, MO 65101. 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 195—Division of Workforce Development
Chapter 6—Show Me Heroes

PROPOSED RULE

4 CSR 195-6.040 Training Plans

PURPOSE: This rule sets forth the requirements for training plans developed under section 620.515, RSMo.

(1) Prior to commencement of training under the Show Me Heroes program, the employer shall develop a training plan that shall provide the Show Me Heroes Trainee with an orderly combination of instruction in work maturity skills, general employment competencies, and occupationally specific skills that will enable the trainee to work toward self-sufficiency.

(2) Any training plan developed pursuant to 4 CSR 195-6.040(1) shall be signed by the employer and the Show Me Heroes Trainee and shall include:

(A) The name and Toolbox applicant identification number or last four digits of the Social Security number of the Show Me Heroes Trainee;

(B) The occupation and corresponding O*NET code for the position the Show Me Heroes Trainee will hold;

(C) The starting and ending dates of training;

(D) The number of hours per week the Show Me Heroes Trainee is scheduled to work;

(E) The Show Me Heroes Trainee's initial wage rate and any scheduled increases, if applicable;

(F) The percentage of the Show Me Heroes Trainee's wages for which the division shall reimburse the employer;

(G) The maximum amount of wage reimbursements the employer may receive from the division for the Show Me Heroes Trainee;

(H) The name, job title, and contact information of the person

responsible for supervising the Show Me Heroes Trainee;

(I) A job description and training outline that clearly describes what the Show Me Heroes Trainee will learn during the training; and

(J) A list of specific skills or tasks the employer agrees to provide to the Show Me Heroes Trainee.

AUTHORITY: section 620.515, RSMo Supp. 2012. Original rule filed Dec. 4, 2012.

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 Department of Economic Development, Division of Workforce Development, 301 W. High Street, Jefferson City, MO 65101. 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 195—Division of Workforce Development
Chapter 6—Show Me Heroes

PROPOSED RULE

4 CSR 195-6.050 Invoicing, Monitoring, and Reporting

PURPOSE: This rule sets forth the requirements for invoicing, monitoring, and reporting under the Show Me Heroes program.

(1) Employers may be reimbursed for the extraordinary costs associated with training Show Me Heroes Trainees and in compensation for the costs associated with the lower productivity of those trainees. Employers are not required to document those costs, but must submit invoices documenting the number of hours that the Show Me Heroes Trainee worked each day and the rate of pay for the hours worked. Invoices must be signed by the employer and the Show Me Heroes Trainee, or only by the employer if accompanying documentation is signed by the trainee and accurately reconciled to the invoice. The employer must establish record-keeping and record retention procedures to assure that employer records support the submitted invoices.

(2) The Local Program shall monitor the employer's training, invoice, and reimbursement systems and verify and document that the employer and Show Me Heroes Trainee are following the training plan established pursuant to 4 CSR 195-6.040.

(3) An employer may become ineligible to train subsequent Show Me Heroes Trainees if it does not perform successfully. The Local Program shall monitor employer performance based upon the following criteria:

(A) Whether the employer has demonstrated a pattern of failing to retain Show Me Heroes Trainees upon completion of training;

(B) Whether the training received was adequate and complete;

(C) Whether the Show Me Heroes Trainee's wages increased or decreased after training; and

(D) Whether any Show Me Heroes Trainee filed a grievance against the employer regarding an event that occurred during the training period.

(4) The employer and the Local Program shall retain all records

related to participation in the Show Me Heroes program, including, but not limited to, the Show Me Heroes Trainee's wage and attendance records, for a minimum of five (5) years from the date of the employer's most recent Show Me Heroes reimbursement. The employer and the Local Program shall make such records available to the division for examination at any reasonable time.

AUTHORITY: section 620.515, RSMo Supp. 2012. Original rule filed Dec. 4, 2012.

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 Department of Economic Development, Division of Workforce Development, 301 W. High Street, Jefferson City, MO 65101. 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 6—DEPARTMENT OF HIGHER EDUCATION Division 10—Commissioner of Higher Education Chapter 2—Student Financial Assistance Program

PROPOSED AMENDMENT

6 CSR 10-2.190 A+ Scholarship Program. The commissioner of higher education is amending sections (1) through (4).

PURPOSE: This amendment clarifies and updates several program components and requirements in order to provide better direction to program coordinators and eligible students. These changes include revising the definition of full-time student and renewal recipient; updating the satisfactory academic progress requirements; clarifying the Algebra I end-of-course exam requirement; revising the end-of-course exam alternative; updating the forty-eight- (48-) month eligibility limit; updating deferment requirements; revising requirements for calculation of the one hundred five percent (105%) eligibility limit; updating the requirements for reimbursable coursework; and clarifying the treatment of federal aid in the reimbursement calculation.

(1) Definitions.

(H) Full-time student shall mean a student who, regardless of the course delivery method, is enrolled in at least twelve (12) semester hours, eight (8) quarter hours, **twenty-four (24) clock hours per week**, or the equivalent in another measurement system, *but for the fall and spring terms or at least six (6) semester hours, twenty-four (24) clock hours per week, or the equivalent in another measurement system for the summer term.* A student may not be enrolled in less than the respective number sufficient to secure the certificate or degree toward which the student is working in no more than the number of semesters or their equivalent normally required by the institution for the program in which the student is enrolled. Provided, however, that an otherwise eligible student having a disability as defined by Title II of the Americans with Disabilities Act (42 U.S.C. 12101–12213) who, because of his or her disability, is unable to satisfy the statutory minimum requirements for full-time status under federal student financial aid programs included in Title IV of the Higher Education Act of 1965 shall be considered to be making satisfactory academic progress, *as defined in subsection (1)(P) of this rule,* while carrying a minimum of six (6) credit hours or their equivalent at the approved institution.

(N) Renewal recipient shall mean a student who received A+

tuition reimbursement, **or whose A+ award was reduced to zero upon application of federal sources of funding**, in a prior award year, qualifies under subsection 7. of section 160.545, RSMo, and who has made a good faith effort to secure all federal sources of funding that could be applied to tuition reimbursement.

[(P) Satisfactory academic progress shall be a cumulative grade point average (CGPA) of at least two and one-half (2.5) on a four-point (4.0) scale, or the equivalent on another scale, and, with the exception of grade point average, as otherwise determined by the participating institution's policies as applied to other students at the participating institution receiving assistance under federal Title IV student financial aid programs. The calculation of CGPA shall be based on the participating institution's policies as applied to other students in similar circumstances.]

[(Q)](P) Tuition and fees shall mean any charges to students classified as tuition and any institutional fees charged to all students, excluding program-specific fees.

[(R)](Q) USDE shall mean the United States Department of Education.

(2) Responsibilities of Participating Institutions.

(B) Participating institutions shall meet the following requirements:

1. Before requesting reimbursement for an initial recipient, verify the following:

A. The student has met the eligibility requirements listed in section (3) of this rule through collection of a high school transcript bearing the official A+ seal;

B. The student has met the institution's definition of satisfactory academic progress, including any grade point average (GPA) requirement included as part of that definition;

[B.]C. The *[eligible]* student is enrolled as a full-time student, except as provided in subsection (1)(H) of this rule; and

[C.]D. The student has made a good-faith effort to secure all federal sources of funding that could be applied to tuition reimbursement, except as provided in subsection (1)(I) of this rule;

2. Before requesting reimbursement for a renewal recipient, verify the following:

A. The *[eligible]* student is enrolled as a full-time student, except as provided in subsection (1)(H) of this rule;

B. The student has met the cumulative grade point average (CGPA) and satisfactory academic progress requirements referenced in paragraph (3)(B)2. of this rule; and

[B.]C. The student has made a good-faith effort to secure all federal sources of funding that could be applied to tuition, except as provided in subsection (1)(I) of this rule; *and*

[C.] The student is maintaining satisfactory academic progress;]

3. Comply with the institutional responsibilities required in section 6 CSR 10-2.140(5), with the exception of **paragraph 6 CSR 10-2.140(5)(A)5.**; and

4. Verify federal sources of funding are applied correctly to tuition, general fees, and up to fifty percent (50%) of book costs as specified in subsection (4)*[(K)](N)* of this rule.

(3) Eligibility Policy.

(A) To qualify for A+ tuition reimbursement, an initial recipient must meet the following criteria:

1. Meet the requirements set forth in subsection 7. of section 160.545, RSMo;

2. Be a U.S. citizen, permanent resident, or otherwise lawfully present in the United States, in accordance with section 208.009, RSMo;

3. Enter into a written agreement with the A+ designated high school prior to high school graduation;

4. Graduate from an A+ designated high school with an overall grade point average of at least two and one-half (2.5) on a four-point (4.0) scale, or the equivalent on another scale;

5. Have at least a ninety-five percent (95%) attendance record overall for grades nine through twelve (9–12);

6. Have performed fifty (50) hours of unpaid tutoring or mentoring, of which up to twenty-five percent (25%) may include job shadowing;

7. Beginning with the high school senior class of 2015, *[have achieved a score of proficient or advanced on the official Algebra I end-of-course exam or complete the first semester at a postsecondary institution with a minimum of twelve (12) hours or the equivalent and a two and one-half (2.5) grade point average prior to receiving A+ tuition reimbursement;]* meet one (1) of the following, unless the A+ school district has met all of the Department of Elementary and Secondary Education's requirements for waiver of the Algebra I end-of-course exam for the recipient:

A. Have achieved a score of proficient or advanced on the official Algebra I end-of-course exam, or a higher level DESE approved end-of-course exam in the field of mathematics; or

B. Have achieved a qualifying score, as established annually by the CBHE, on the COMPASS exam published by ACT, Inc. or the mathematics component of the ACT test as a high school or postsecondary student. Institutions must collect official documentation of the qualifying score from ACT, Inc. from postsecondary students;

8. Have maintained a record of good citizenship and avoidance of the unlawful use of drugs and/or alcohol;

9. Be admitted as a regular student and enroll in and attend on a full-time basis a participating institution, except that students in the following circumstances may be enrolled less than full time:

A. The student is enrolled in all of the available hours applicable to his program of study in a given term;

B. The student is participating in a required internship; or

C. The student is enrolled in prerequisite courses that do not require full-time enrollment;

10. Not be enrolled or intend to use the award to enroll in a course of study leading to a degree in theology or divinity; *[and/*

11. Not have a criminal record preventing receipt of federal Title IV student financial aid $\dot{.}$; **and**

12. Meet the institution's definition of satisfactory academic progress, including any GPA requirement included as part of that definition.

(B) To qualify for tuition reimbursement under the A+ Scholarship program, a renewal recipient must meet the following criteria:

1. Be admitted as a regular student and enroll in and attend on a full-time basis a participating institution, except that students in the following circumstances may be enrolled less than full time:

A. The student is enrolled in all of the available hours applicable to his program of study in a given term;

B. The student is participating in a required internship; or

C. The student is enrolled in prerequisite courses that do not require full-time enrollment;

2. Maintain *[satisfactory academic progress]* a cumulative grade point average (CGPA) of at least two and one-half (2.5) on a four-point (4.0) scale, or the equivalent on another scale, and, with the exception of grade point average, maintain satisfactory academic progress as determined by the participating institution's policies as applied to other students at the participating institution receiving assistance under federal Title IV student financial aid programs. The calculation of CGPA shall be based on the participating institution's policies as applied to other students in similar circumstances; and

3. Make a good-faith effort to secure all federal sources of funding that could be applied to tuition before the award is disbursed but no later than the deadline established by the CBHE.

(4) Award Policy.

(C) Student eligibility for the A+ Scholarship expires at the earliest of the following, except a student who is eligible at the begin-

ning of a term may receive A+ tuition reimbursement for the full term in which the expiration criterion is met:

1. Forty-eight (48) months after *[completion of high school coursework]* high school graduation as documented on the high school transcript;

2. Receipt of an associate's degree; or

3. Completion of one hundred five percent (105%) of the hours required for the program in which the student is currently enrolled.

A. For a student seeking a first certificate or degree, *[C]*calculation of the one hundred five percent (105%) shall include:

(I) All known hours completed at any participating A+ institution, including those earned as part of coursework designated as remedial or developmental; and

(II) All hours accepted in transfer by an A+ participating institution from an institution that is ineligible for A+ participation.

B. For a student seeking a first certificate or degree, *[C]*calculation of the one hundred five percent (105%) shall not include *[the following]*:

(I) Postsecondary hours earned for work performed before high school graduation. Such hours shall include, but not be limited to, those earned through dual credit, dual enrollment, technical education articulation, Advanced Placement, or international baccalaureate programs; and

(II) Hours earned at a postsecondary institution that is ineligible for A+ participation that are not accepted in transfer by an A+ participating institution.

C. For a student who has received a postsecondary certificate and enrolls in a program leading to a related, higher-level certificate or degree, calculation of the one hundred five percent (105%) shall include:

(I) All hours that are applied toward the related, higher-level program; and

(II) All known hours completed after receipt of the most recent certificate at any participating A+ institution, including those earned as part of coursework designated as remedial or developmental; and

(III) All hours completed after receipt of the most recent credential that are accepted in transfer from an institution that is ineligible for A+ participation.

D. For a student who has received a postsecondary certificate and enrolls in a program leading to a related, higher-level certificate or degree, calculation of the one hundred five percent (105%) shall not include:

(I) Postsecondary hours earned for work performed before high school graduation. Such hours shall include, but not be limited to, those earned through dual credit, dual enrollment, technical education articulation, Advanced Placement, or international baccalaureate programs; and

(II) All hours that are not applied toward the related, higher-level program; and

(III) All hours completed at an institution that is ineligible for A+ participation after receipt of the most recent certificate that are not accepted in transfer by an A+ participating institution.

(D) If an initial recipient is unable to enroll or a renewal recipient ceases attendance for the purpose of providing active duty service in any branch of the armed forces of the United States, the eligibility of the student under paragraph (4)(C)1. of this rule that remains will be *[extended]* deferred for the period of the service as documented on the student's DD214 form *[and all remaining eligibility will be retained if the]*. The student *[returns]* must return to full-time status, or qualify for an exception to the full-time status requirement, within twelve (12) months of the end of military service and *[provides]* provide verification to the department that the military service was satisfactorily completed to retain eligibility. Calculation of the twelve (12) months will begin on the first of the month following the student's discharge from service. The recipient's eligibility under paragraph (4)(C)1. of this rule that remains will be calculated from the first day of the month following the student's

return to full-time status or other qualifying enrollment.

(E) For a student concurrently seeking more than one (1) certificate or degree, reimbursement will be made to and the calculation of the one hundred five percent (105%) eligibility limit will be made by the institution providing the highest outcome, unless the student provides written notification specifying otherwise to all institutions in which he is enrolled.

[(E)](F) Reimbursement will be as specified for the following categories of coursework:

1. Completed coursework[, including remedial coursework,] for which a grade is assigned under the institution's standard grading policy, **including remedial coursework and coursework assigned a grade of Incomplete**, and that is required by the institution for the completion of a certificate or degree will be reimbursed[. *The amount of reimbursement paid for coursework for which a standard grade was not assigned, including coursework for which the student was placed in an incomplete or withdrawn status, will be deducted from subsequent reimbursement requests for the student*];

2. Coursework for which a standard grade was not assigned, including coursework from which the student officially or unofficially withdrew, or was terminated, is not eligible for reimbursement. Institutions can use any of the following options to adjust a student's award amount to meet this requirement:

A. Deduct the amount reimbursed for such coursework from subsequent reimbursement requests;

B. Omit such coursework from the current reimbursement request; or

C. Return the amount reimbursed for such coursework in accordance with subsection 6 CSR 10-2.140(5)(C);

[2.]3. Repeat coursework will not be reimbursed; and

[3.]4. Coursework that is part of a higher level certificate or a degree that is taken after receipt of a certificate will be reimbursed provided that the certificate or degree is in a field related to the original certificate received.

(G) For a student that fully establishes eligibility by achieving a qualifying score on the COMPASS exam published by ACT, Inc. or the mathematics component of the ACT test as a postsecondary student, reimbursement may be made for the term in which the student achieves the qualifying score provided the student has established such eligibility prior to the institution's submission of the reimbursement request to the department.

[(F)](H) The amount of the A+ tuition reimbursement must be calculated based on the remaining costs of actual tuition and fees after any federal sources of funding have been applied and any deductions have been made for reimbursement of coursework for which a standard grade was not assigned, including coursework [for which the student was placed in an incomplete or withdrawn status] from which the student officially or unofficially withdrew or was terminated.

(I) The amount of an A+ tuition reimbursement must be reduced by the amount of any federal sources of funding received by or on behalf of an initial or renewal recipient and, when applicable, any adjustments required in paragraph (4)(F)2. of this rule.

[(G)](J) The amount of the A+ tuition reimbursement is subject to legislative appropriation.

[(H)](K) If the appropriated funds exceed the amount necessary to fund tuition and fees, up to fifty percent (50%) of book costs may be reimbursed.

[(I)](L) If insufficient funds are available to pay all eligible students the full amount of tuition and fees calculated in subsection (4) [(F)](H) of this rule, the department may take any of the following measures to address the shortfall in order to ensure the A+ tuition reimbursement does not exceed the appropriation:

1. Reduce the number of hours eligible for reimbursement; or
2. If projections indicate that the measure cited above is inadequate to address the funding shortfall, the department shall, as soon

as may practicably be accomplished, make available for public comment a plan containing at least two (2) options to ensure that total A+ tuition reimbursements do not exceed the appropriation. Such plan shall be distributed to all participating institutions and the department shall accept public comments on the plan for no less than thirty (30) days before publication in a CBHE board book. No plan for accommodating the additional shortfall shall be approved before it has been on the agenda of a regularly scheduled CBHE meeting and an opportunity for public comment at the CBHE meeting has been provided.

[(J)](M) The hourly tuition rate used to calculate the A+ tuition reimbursement shall not exceed the published standard per credit hour tuition rate charged by Linn State Technical College.

1. Institutions with high need programs that have tuition charges above this limit may apply to the department for a waiver of this requirement on a program-by-program basis.

2. The federal credit hour to clock hour conversion calculation will be applied to institutions with clock hour programs.

[(K)](N) Financial aid must be applied to tuition and general fees in the following order:

1. First, all available federal sources of funding; and
2. Second, A+ tuition reimbursement.

[(L)](O) Award amounts may be increased or decreased at the department's discretion based on availability of funds for distribution during the award year.

[(M)](P) A student who has been denied A+ tuition reimbursement for lack of satisfactory academic progress may not receive another A+ tuition reimbursement until the enrollment period after the applicable standard has once again been met.

[(N)](Q) No A+ tuition reimbursement will be made retroactive to a previous award year. An A+ tuition reimbursement will be made retroactive to a previous semester or payment period only upon the sole discretion of the department.

[(O)](R) A+ tuition reimbursement will be made only after institutional certification of the student's eligibility and the amount of the A+ tuition reimbursement.

[(P)](S) An eligible student's failure to provide required information by the established deadlines may result in loss of the A+ Scholarship for the period covered by the deadline.

[(Q)](T) The CBHE has the discretion to withhold payments of any A+ tuition reimbursements after initiating an inquiry into the eligibility or continued eligibility of a student or into the participation status of an institution.

[(R)](U) An eligible student may transfer the A+ Scholarship from one (1) participating institution to another without losing eligibility for assistance, but the department shall make any necessary adjustments in the amount of the award.

AUTHORITY: section 160.545, RSMo Supp. [2010] 2012 and Executive Order 10-16, dated January 29, 2010. Original rule filed Feb. 17, 2011, effective Oct. 30, 2011. Amended: Filed Dec. 13, 2012.

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 Department of Higher Education, Financial Assistance, Outreach, and Proprietary School Certification, Kelli Reed, Student Assistance Associate, PO Box 1469, Jefferson City, MO 65102-1469. 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 3—Permanent Performance Requirements for
Surface Coal Mining and Related Activities**

PROPOSED AMENDMENT

10 CSR 40-3.040 Requirements for Protection of the Hydrologic Balance. The commission is amending sections (6) and (10).

PURPOSE: The amendment changes the word “pond” to “structure” in several places of section (6) and deletes meaningless language at the end of section (10).

(6) Siltation Structures.

(A) General Requirements. Siltation structures shall be used individually or in series and shall—

1. Be constructed before any disturbance of the undisturbed area to be drained into the *[pond] structure*;
2. Be located as near as possible to the disturbed area and out of perennial streams, unless approved in the permit and plan; and
3. Meet all the criteria of this section.

(R) Each *[pond] structure* shall be designed and inspected during construction under the supervision of, and certified after construction by, a registered professional engineer.

(U) Siltation structures shall not be removed until removal is authorized and until the disturbed area has been restored and the vegetation requirements of 10 CSR 40-3.120 are met and the drainage entering the *[pond] structure* has met the applicable state and federal water quality requirements for the receiving stream. In no case shall the structure be removed sooner than two (2) years after the last augmented seeding. When the siltation structure is removed, the affected land shall be regraded and revegetated in accordance with 10 CSR 40-3.110 and 10 CSR 40-3.120, unless the *[pond] structure* has been approved in the permit and plan for retention as being compatible with the approved postmining land use under 10 CSR 40-3.130. If approved in the permit and plan, the siltation structure shall meet all the requirements for permanent impoundments of sections (10) and (17).

(10) Permanent and Temporary Impoundment.

(B) Permanent impoundments are prohibited unless authorized in the permit and plan upon the basis of the following demonstration:

1. The quality of the impounded water shall be suitable on a permanent basis for its intended use and discharge of water from the impoundment shall not degrade the quality of receiving waters to less than the water quality standards established pursuant to applicable state and federal laws;
2. The level of water shall be sufficiently stable to support the intended use;
3. Adequate safety and access to the impounded water shall be provided for proposed water users;
4. Water impoundments shall not result in the diminution of the quality or quantity of water used by adjacent or surrounding landowners for agricultural, industrial, recreational or domestic uses;
5. The design, construction and maintenance of structures shall achieve the minimum design requirements applicable to structures constructed and maintained under the Watershed Protection and Flood Prevention Act, P. L. 83-566 (U.S.C. 1006). Requirements for impoundments that meet the size or other criteria of the MSHA, 30 CFR 77.216(a) are contained in United States Soil Conservation Service Technical Release No. 60, *Earth Dams and Reservoirs*, [June 1976] July 2005, incorporated by reference and published by the USDA, NRCS, Office of the Chief, 1400 Independence Ave., SW, Room 5105-A, Washington, DC 20250. This rule does not incorporate any later amendments or additions to this incorporated material. Requirements for impoundments that do not meet the size or other criteria contained in 30 CFR 77.216(a) are con-

tained in United States Natural Resources Conservation Service, Conservation Practice Standard, POND, No. CODE 378, [December, 1998] January 2004, incorporated by reference and published by the Missouri NRCS State Office, Parkdale Center, Suite 250, 601 Business Loop 70 West, Columbia, MO 65203-2546. This rule does not incorporate any later amendments or additions to this incorporated material; [The technical release and practice standard are incorporated by reference as they exist on the date of adoption of this chapter;]

6. The size of the impoundment is adequate for its intended purposes; and

7. The impoundment will be suitable for the approved postmining land use.

(O) Spillways. An impoundment shall have either a combination of principal and emergency spillways, a single spillway configured as specified in 10 CSR 40-3.040(10)(O)1. of this section, or no spillways as specified in 10 CSR 40-3.040(10)(O)3. of this section. The impoundment shall be designed and constructed to safely pass or contain the applicable design precipitation event specified in 10 CSR 40-3.040(10)(O)2. or 3. of this section.

1. A single open-channel spillway can be utilized if it is:/—

A. Of nonerodible construction and designed to carry sustained flows; or

B. Earth- or grass-lined and designed to carry short-term, infrequent flows at non-erosive velocities where sustained flows are not expected.

2. Except as specified in 10 CSR 40-3.040(10)(O)3. of this section, the required design precipitation event for an impoundment meeting the spillway requirements of 10 CSR 40-3.040(10)(O) of this section is:/—

A. For an impoundment meeting the Class B or C criteria for dams in TR-60, the emergency spillway hydrograph criteria in the “Minimum Emergency Spillway Hydrologic Criteria” table in TR-60;

B. For an impoundment meeting or exceeding the size or other criteria of 30 CFR 77.216(a), a one hundred- (100-)/- year twenty-four- (24-)/- hour event or greater as specified by the director or commission; or

C. For an impoundment not included in 10 CSR 40-3.040(10)(O)2.A. and B. of this section, as specified in Table 3 of the Natural Resources Conservation Service, Conservation Practice Standard, POND, No. CODE 378, December, 1998.

3. A temporary impoundment that relies solely on storage capacity to control the runoff from the design precipitation event may be utilized with no spillway when it is demonstrated by the operator and certified by a qualified registered professional engineer that the impoundment will safely contain the design precipitation event, and that the stored water will be safely removed in accordance with current, prudent, engineering practices. Such an impoundment must be located where failure would not be expected to cause loss of life or serious property damage.

A. Impoundments meeting the Natural Resources Conservation Service Class B or C criteria for dams in TR-60, or the size or other criteria of 30 CFR 77.216(a) shall be designed to safely contain the runoff of the probable maximum precipitation (PMP) of a six- (6-)/- hour event.

B. Impoundments not included in subparagraph 10 CSR 40-3.040(10)(O)3.A. of this section shall be designed to control the precipitation of the one hundred- (100-)/- year twenty-four- (24-)/- hour event.

[C. For an impoundment not included in 10 CSR 40-3.040(10)(O)2.A. and B. of this section, as specified in Table 3 of the Natural Resources Conservation Service, Conservation Practice Standard, POND, No. CODE 378, December, 1998.]

AUTHORITY: sections 444.530 and 444.810, RSMo [Supp. 1999] 2000. Original rule filed Oct. 12, 1979, effective Feb. 11, 1980. For

intervening history, please consult the Code of State Regulations. Amended: Filed Dec. 17, 2012.

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 3—Permanent Performance Requirements for
Surface Coal Mining and Related Activities**

PROPOSED AMENDMENT

10 CSR 40-3.060 Requirements for the Disposal of Excess Spoil.
The commission is amending section (1).

PURPOSE: This amendment clarifies who will inspect fills constructed of excess spoil and who will provide follow up reports on the fill.

(1) General Requirements.

(K) Fill Inspection.

1. A registered professional engineer or other qualified professional specialist **under the direction of a registered professional engineer**, approved in the permit and plan and experienced in the construction of earth and rockfill embankments, shall inspect the fill for stability at least quarterly throughout construction and during the following critical construction periods:

- A. Removal of all organic material and topsoil;
- B. Placement of underdrainage systems;
- C. Installation of surface drainage systems;
- D. Placement and compaction of fill materials; and
- E. Revegetation.

2. Within two (2) weeks after each inspection, the registered professional engineer *[or other qualified professional specialist]* shall provide the director with a certified report stating that the fill has been constructed as specified in the design approved in the permit and plan. The report shall include appearances of instability, structural weakness and other hazardous conditions.

3. Certified report.

A. The certified report on the drainage system and protective filters shall include color photographs taken during and after construction, but before underdrains are covered with excess spoil. If the underdrain system is constructed in phases, each phase shall be certified separately.

B. Where excess durable rock spoil is placed in single or multiple lifts so that the underdrain system is constructed simultaneously with excess spoil placement by the natural segregation of dumped materials, color photographs shall be taken of the underdrain as the underdrain system is being formed.

C. The photographs accompanying each certified report shall be taken in adequate size and number with enough terrain or other physical features of the site shown to provide a relative scale to the photographs and to specifically and clearly identify the site.

4. A copy of the report shall be retained at the minesite.

AUTHORITY: sections 444.530 and 444.810, RSMo [1994] 2000. Original rule filed Oct. 12, 1979, effective Feb. 11, 1980. For intervening history, please consult the Code of State Regulations. Amended: Filed Dec. 17, 2012.

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 3—Permanent Performance Requirements for
Surface Coal Mining and Related Activities**

PROPOSED AMENDMENT

10 CSR 40-3.170 Signs and Markers for Underground Operations.
The commission is amending section (6).

PURPOSE: This amendment will direct the reader to the proper parts of other rules mentioned with respect to buffer zones.

(6) Buffer Zone Markers. Buffer zones, as defined in **10 CSR 40-8.010(1)(A)13.**, required by 10 CSR 40-3.200((16))(17) shall be clearly marked to prevent disturbance by surface operations and facilities.

AUTHORITY: section 444.810, RSMo [1994] 2000. Original rule filed Aug. 8, 1980, effective Dec. 11, 1980. Amended: Filed Jan. 5, 1987, effective July 1, 1987. Amended: Filed July 3, 1990, effective Nov. 30, 1990. Amended: Filed Dec. 17, 2012.

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 3—Permanent Performance Requirements for
Surface Coal Mining and Related Activities**

PROPOSED AMENDMENT

10 CSR 40-3.180 Casing and Sealing of Exposed Underground Openings. The commission is amending sections (1) and (3).

PURPOSE: This amendment specifies compliance with other laws that address underground openings and wells. Also, the amendment directs the reader to the proper portions of another rule.

(1) General Requirements. Each exploration hole, other drillhole or borehole, shaft, well, or other exposed underground opening shall be cased, lined, or otherwise managed as approved in the permit and plan to prevent acid or other toxic drainage from entering ground and surface waters, to minimize disturbance to the prevailing hydrologic balance, and to ensure the safety of people, livestock, fish, and wildlife, and machinery in the mine plan and adjacent area. Each exploration hole, drillhole or borehole, or well that is uncovered or exposed by mining activities within the permit area shall be permanently closed, unless approved for water monitoring or otherwise managed in a manner approved in the permit and plan. Use of a drilled hole or monitoring well as a water well must meet the provisions of 10 CSR 40-3.200/(12)/(13) and those of the Wellhead Protection Section, Division of Geology and Land Survey at 10 CSR 23 Chapter 6. This section does not apply to holes drilled and used for blasting in the surface area affected by underground operations.

(3) Permanent Casing and Sealing of Underground Openings. When no longer needed for monitoring or other use approved in the permit and plan, upon a finding of no adverse environmental or health and safety effects, or unless approved for transfer as a water well under 10 CSR 40-3.200/(12)/(13) and those of the Wellhead Protection Section, Division of Geology and Land Survey at 10 CSR 23 Chapter 6, each shaft, drift, adit, tunnel, exploratory hole, entryway, or other opening to the surface from underground shall be capped, sealed, backfilled, or otherwise properly managed as required in the permit and plan under section (1) and 10 CSR 40-3.200/(10)/(11) and consistent with 30 CFR 75.1771. Permanent closure measures shall be designed to prevent access to the mine workings by people, livestock, fish and wildlife, machinery, and to keep acid or other toxic drainage from entering ground or surface waters.

AUTHORITY: section 444.810, RSMo [1994] 2000. Original rule filed Aug. 8, 1980, effective Dec. 11, 1980. Amended: Filed Dec. 17, 2012.

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 3—Permanent Performance Requirements for
Surface Coal Mining and Related Activities**

PROPOSED AMENDMENT

10 CSR 40-3.200 Requirements for Protection of the Hydrologic Balance for Underground Operations. The commission is amending sections (6), (10), (12), and (17).

PURPOSE: This amendment changes the word "pond" to "structure" in several places, changes the name of the "Soil Conservation Service" to the new name of "Natural Resources Conservation Service," and directs the reader to the proper parts of other rules.

(6) Siltation /s/Structures.

(A) General Requirements. Siltation structures shall be used individually or in series and shall—

1. Be constructed before any disturbance of the undisturbed area to be drained into the [pond] structure and prior to any discharge of water to surface waters from underground mine workings;

2. Be located as near as possible to the disturbed area and out of perennial streams, unless approved in the permit and plan; and

3. Meet all criteria of this section.

(R) Each [pond] structure shall be designed and inspected during construction under the supervision of and certified after construction by a registered professional engineer.

(T) Impoundments meeting the Class B or C criteria for dams in the U.S. Department of Agriculture, Soil Conservation Service (now renamed as the Natural Resource Conservation Service) Technical Release No. 60 (210-VI, TR-60, [Revised Oct. 1985] July 2005), entitled "Earth Dams and Reservoirs," hereafter in these rules referred to as TR-60, or the size or other criteria of 30 CFR 77.216 must be examined in accordance with 30 CFR 77.216-3. The technical release referred to as TR-60 is incorporated by reference and published by the USDA, NRCS, Office of the Chief, 1400 Independence Ave., SW, Room 5105-A, Washington, DC 20250. This rule does not incorporate any later amendments or additions to this incorporated material. Impoundments which do not meet the above criteria shall be examined at least quarterly by a qualified person designated by the operator for the appearance of structural weakness and other hazardous conditions.

(U) Siltation structure shall not be removed until removal is authorized and until the disturbed area has been restored and the vegetation requirements of 10 CSR 40-3.270 are met and the drainage entering the [pond] structure has met the applicable state and federal water quality requirements for the receiving stream. In no case shall the structure be removed sooner than two (2) years after the last augmented seeding. When the siltation structure/s/ is removed, the affected land shall be regraded and revegetated in accordance with 10 CSR 40-3.260 and 10 CSR 40-3.270, unless the [pond] structure has been approved in the permit and plan for retention as being compatible with the approved postmining land use under 10 CSR 40-3.300. If retention is approved in the permit and plan, the siltation structure/s/ shall meet all the requirements for permanent impoundments of sections (10) and (16) of this rule.

(10) Permanent and Temporary Impoundments.

(B) Permanent impoundments are prohibited, unless authorized in the permit and plan, upon the basis of the following demonstration:

1. The quality of the impounded water shall be suitable, on a permanent basis, for its intended use and discharge of water from the impoundment shall not degrade the quality of receiving waters to less than the water quality standards established pursuant to applicable state and federal laws;

2. The level of water shall be sufficiently stable to support the intended use;

3. Adequate safety and access to the impounded water shall be provided for proposed water users;

4. Water impoundments will not result in the diminution of the quality or quantity of water used by adjacent, or surrounding landowners for agricultural, industrial, recreational or domestic uses;

5. The design, construction and maintenance of structures shall achieve the minimum design requirements applicable to structures constructed and maintained under the Watershed Protection and Flood Prevention Act, P. L. 83-566 (16 U.S.C. 1006). Requirements for impoundments that meet the size or other criteria of the MSHA, 30 CFR 77.216(a) are contained in United States [Soil Conservation Service] Natural Resources Conservation Service Technical

Release No. 60, *Earth Dams and Reservoirs*, [June 1976] July 2005 as published by the USDA, NRCS, Office of the Chief, 1400 Independence Ave., SW, Room 5105-A, Washington, DC 20250. The TR 60 (July 2005) requirement does not include any later amendments or additions. Requirements for impoundments that do not meet the size or other criteria contained in 30 CFR 77.216(a) are contained in United States Natural Resources Conservation Service, Conservation Practice Standards, POND, No. CODE 378, [December, 1998] January 2004 published by Missouri NRCS State Office, Parkade Center, Suite 250, 601 Business Loop 70 West, Columbia, MO 65203-2546. The practice standards do not include any later amendments or additions. The technical release and practice standards are incorporated by reference [as they exist on the date of adoption of this chapter];

6. The size of the impoundment is adequate for its intended purposes; and

7. The impoundment will be suitable for the approved postmining land use.

(O) Spillways. An impoundment shall have either a combination of principal and emergency spillways, a single spillway configured as specified in 10 CSR 40-3.200(10)(O)1. of this section, or no spillways as specified in 10 CSR 40-3.200(10)(O)3. of this section. The impoundment shall be designed and constructed to safely pass or contain the applicable design precipitation event specified in 10 CSR 40-3.200(10)(O)2. or 3. of this section.

1. A single open-channel spillway can be utilized if it is:—

A. Of nonerodible construction and designed to carry sustained flows; or

B. Earth- or grass-lined and designed to carry short-term, infrequent flows at nonerosive velocities where sustained flows are not expected.

2. Except as specified in 10 CSR 40-3.200(10)(O)3. of this section, the required design precipitation event for an impoundment meeting the spillway requirements of 10 CSR 40-3.200(10)(O) of this section is:—

A. For an impoundment meeting the Class B or C criteria for dams in TR-60, the emergency spillway hydrograph criteria in the “Minimum Emergency Spillway Hydrologic Criteria” table in TR-60/;

B. For an impoundment meeting or exceeding the size or other criteria of 30 CFR 77.216(a), a one hundred- (100-)/-/ year twenty-four- (24-)/-/ hour event./; or

C. For an impoundment not included in 10 CSR 40-3.200(10)(O)2. A. and B. of this section, as specified in Table 3 of the United States Natural Resources Conservation Service, Conservation Practice Standard, POND, No. CODE 378, December, 1998.

3. A temporary impoundment that relies solely on storage capacity to control the runoff from the design precipitation event may be utilized with no spillway when it is demonstrated by the operator and certified by a qualified registered professional engineer that the impoundment will safely contain the design precipitation event, and that the stored water will be safely removed in accordance with current, prudent, engineering practices. Such an impoundment must be located where failure would not be expected to cause loss of life or serious property damage.

A. Impoundments meeting the Class B or C criteria for dams in TR-60, or the size or other criteria of 30 CFR 77.216(a) shall be designed to safely contain the runoff of the probable maximum precipitation (PMP) of a six- (6-)/-/ hour event.

B. Impoundments not included in subparagraph 10 CSR 40-3.200(10)(O)3.A. of this section shall be designed to control the precipitation of the one hundred- (100-)/-/ year twenty-four- (24-)/-/ hour event.

[C. For an impoundment not included in 10 CSR 40-3.200(10)(O)2. A. and B. of this section, as specified in Table 3 of the United States Natural Resources Conservation Service, Conservation Practice Standard, POND, No. CODE

378, December, 1998.]

(12) Surface Water and Groundwater Monitoring.

(A) Groundwater.

1. Groundwater levels, infiltration rates, subsurface flow and storage characteristics and the quality of groundwater shall be monitored in a manner approved in the permit and plan to determine the effects of underground mining activities on the recharge capacity of reclaimed lands and on the quantity and quality of water in groundwater systems in the mine plan and adjacent areas.

A. Groundwater monitoring data shall be submitted every three (3) months to the director or more frequently as prescribed by the director. Monitoring reports shall include analytical results from each sample taken during the reporting period. When the analysis of any groundwater sample indicates noncompliance with the permit conditions, the operator shall promptly notify the director and take remedial measures provided for in [10 CSR 40-6.050(9) and] 10 CSR 40-6.070(14) and 10 CSR 40-6.120(5).

B. Groundwater monitoring shall proceed through mining and continue during reclamation until bond release. Consistent with the procedures of 10 CSR 40-6.090, the director may modify the monitoring requirements, including the parameters covered and the sampling frequency, if the operator demonstrates, using the monitoring data obtained under this paragraph, that:

(I) The operation has minimized disturbance to the hydrologic balance in the permit and adjacent areas and prevented material damage to the hydrologic balance outside the permit area; water quantity and quality are suitable to support approved postmining land uses; and the water rights of other users have been protected or replaced; or

(II) Monitoring is no longer necessary to achieve the purposes set forth in the monitoring plan approved under 10 CSR 40-6.120(5)(C).

2. When underground mining activities may affect groundwater systems which serve as aquifers which significantly ensure the hydrologic balance of water use either on or off the mine plan area, ground levels and groundwater quality shall be periodically monitored. Monitoring shall include measurements from a sufficient number of wells and mineralogical and chemical analyses of aquifer, overburden, and spoil that are adequate to reflect changes in groundwater quantity and quality resulting from those activities. Monitoring shall be adequate to plan for modification of the underground mining activities if necessary to minimize disturbance of the prevailing hydrologic balance.

3. As specified in the permit and plan, the person who conducts the underground mining activities shall conduct additional hydrologic tests, including drilling, infiltration tests and aquifer tests and the results shall be submitted to the director to demonstrate compliance with sections (11) and (12) of this rule.

(17) Stream Buffer Zones.

(B) The area not to be disturbed shall be designated as a buffer zone, and the operator shall mark it as specified in 10 CSR 40-[3.070(5)]3.170(6).

AUTHORITY: section 444.810, RSMo [Supp. 1999] 2000. Original rule filed Aug. 8, 1980, effective Dec. 11, 1980. For intervening history, please consult the Code of State Regulations. Amended: Filed Dec. 17, 2012.

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 3—Permanent Performance Requirements for
Surface Coal Mining and Related Activities**

PROPOSED AMENDMENT

10 CSR 40-3.210 Requirements for the Use of Explosives for Underground Operations. The commission is amending sections (1) and (2).

PURPOSE: This amendment clarifies what structures are protected from the effects of blasting in underground coal mining operations, sets forth the requirements for the use of explosives pursuant to 444.855, RSMo, and directs the reader to the proper portion of another section of this rule.

(1) General Requirements.

(D) Blast Design.

1. An anticipated blast design shall be submitted if blasting operations will be conducted within—

A. One thousand feet (1000') of any building used as a dwelling, public building, school, church, *or* community or institutional building, **or dam**, including those listed in [10 CSR 40-3.050(5)(D)1.] **paragraph (5)(D)1. of this rule;** or

B. Five hundred feet (500') of active or abandoned underground mines.

2. The blast design may be presented either as part of a permit application or thirty (30) days before the initiation of blasting, approved by the director or commission.

3. The blast design shall contain sketches of the drill patterns, delay periods and decking and shall indicate the type and amount of explosives to be used, critical dimensions and the location and general description of structures to be protected, as well as a discussion of design factors to be used, which protect the public and meet the applicable airblast, flyrock and ground vibration standards in section (5) of this rule.

4. The blast design shall be prepared and signed by a certified blaster.

5. The director or commission may require changes to the design submitted.

(2) Use of Explosives: Preblasting Survey.

(A) At least forty (40) days before initiation of blasting, the operator shall ensure that all residents or owners of public buildings, schools, churches, community or institutional buildings, dwellings, or other structures, including those listed in [10 CSR 40-3.050(5)(D)1.] **paragraph (5)(D)1. of this rule,** located within one-half (1/2) mile of the permit area are notified by certified letter how to request a preblast survey.

AUTHORITY: section 444.810, RSMo [1994] 2000. Original rule filed Aug. 8, 1980, effective Dec. 11, 1980. For intervening history, please consult the *Code of State Regulations*. Amended: Filed Dec. 17, 2012.

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 3—Permanent Performance Requirements for
Surface Coal Mining and Related Activities**

PROPOSED AMENDMENT

10 CSR 40-3.220 Disposal of Underground Development Waste and Excess Spoil. The commission is amending section (1).

PURPOSE: This amendment clarifies who will inspect fills constructed of excess spoil and who will provide follow up reports on the fill.

(1) General Requirements.

(K) The fill shall be inspected for stability by a registered engineer or other qualified professional specialist **under the direction of a professional engineer** experienced in the construction of earth and rockfill embankments at least quarterly throughout construction and during the following critical construction periods:

1. Removal of all organic material and topsoil;
2. Placement of underdrainage systems;
3. Installation of surface drainage systems;
4. Placement and compaction of fill materials; and
5. Revegetation.

(L) Certified report. The registered engineer *or other qualified professional specialist* shall provide to the director a certified report within two (2) weeks after each inspection that the fill has been constructed as specified in the design approved in the permit and plan. The report shall include appearances of instability, structural weakness and other hazardous conditions.

1. The certified report on the drainage system and protective filters shall include color photographs taken during and after construction, but before underdrains are covered with excess spoil. If the underdrain system is constructed in phases, each phase shall be certified separately.

2. Where excess durable rock spoil is placed in single or multiple lifts so that the underdrain system is constructed simultaneously with excess spoil placement by the natural segregation of dumped materials, color photographs shall be taken of the underdrain as the underdrain system is being formed.

3. The photographs accompanying each certified report shall be taken in adequate size and number with enough terrain or other physical features of the site shown to provide a relative scale to the photographs and to specifically and clearly identify the site.

4. A copy of the report shall be retained at the mine site.

AUTHORITY: section 444.810, RSMo [1994] 2000. Original rule filed Aug. 8, 1980, effective Dec. 11, 1980. Amended: Filed Sept. 15, 1988, effective Jan. 15, 1989. Amended: Filed July 3, 1990, effective Nov. 30, 1990. Amended: Filed Dec. 17, 2012.

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 3—Permanent Performance Requirements for
Surface Coal Mining and Related Activities**

PROPOSED AMENDMENT

10 CSR 40-3.230 Requirements for the Disposal of Coal Processing Waste for Underground Operations. The commission is amending sections (1), (3), and (4).

PURPOSE: This amendment clarifies where coal processing waste from underground mining operations is to be disposed of and directs the reader to the correct part in another rule.

(1) General Requirements.

(A) All coal processing waste **disposed of in an area other than the mine workings or excavations** shall be hauled or conveyed and placed for **final placement** in new *[and]* or existing disposal areas approved in the permit and plan for this purpose. These areas shall be within a permit area. The disposal area shall be designed, constructed and maintained—

1. In accordance with 10 CSR 40-3.220(1) and (2), this section, and sections (2)–(7) of this rule; and
2. To prevent combustion.

(3) Water Control Measures.

(D) Discharges of all water from a coal processing waste bank shall comply with 10 CSR 40-3.200(1), (2), (5), (6), (11), and *[(14)] (15)*.

(4) Construction Requirements.

(D) Compaction requirements during construction or modification of all coal processing waste banks shall meet the requirements of this subsection, instead of those specified in 10 CSR 40-3.220(2)(C). The coal processing waste shall be—

1. Spread in layers no more than twenty-four inches (24") in thickness; and
2. Compacted to attain ninety percent (90%) of the maximum dry density in order to prevent spontaneous combustion and to provide the strength required for stability of the coal processing waste bank. Dry densities shall be determined in accordance with the *American Association of State Highway and Transportation Officials (AASHTO) Specification [T99-74 (Twelfth Edition) (July, 1978)] T99-10 30th Edition, January 2010* or an equivalent method as published by the *American Association of State Highway & Transportation Officials (AASHTO), 444 North Capitol Street NW, Suite 249, Washington, DC 20001*. The AASHTO requirement does not include any later amendments or additions. AASHTO *[T99-74] T99-10* is incorporated by reference *[as it exists on the date of adoption of this rule]*.

AUTHORITY: section 444.810, RSMo [1994] 2000. Original rule filed Aug. 8, 1980, effective Dec. 11, 1980. For intervening history, please consult the *Code of State Regulations*. Amended: Filed Dec. 17, 2012.

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 enti-

ties 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 3—Permanent Performance Requirements for
Surface Coal Mining and Related Activities**

PROPOSED AMENDMENT

10 CSR 40-3.240 Air Resource Protection. The commission is amending section (1).

PURPOSE: This amendment clarifies language in section (1) for underground coal mining.

(1) All exposed surface areas shall be protected **and stabilized to effectively control erosion and air pollution** attendant to erosion according to 10 CSR 40-3.200(5)(A).

AUTHORITY: section 444.810, RSMo [Supp. 1999] 2000. Original rule filed Aug. 8, 1980, effective Dec. 11, 1980. Amended: Filed Dec. 10, 1980, effective April 11, 1981. Amended: Filed March 21, 2000, effective Oct. 30, 2000. Amended: Filed Dec. 17, 2012.

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 3—Permanent Performance Requirements for
Surface Coal Mining and Related Activities**

PROPOSED AMENDMENT

10 CSR 40-3.260 Requirements for Backfilling and Grading for Underground Operations. The commission is amending section (4).

PURPOSE: This amendment removes existing language and adds clarifying language to section (4) that addresses the stabilization of rills and gullies associated with underground coal mining operations.

(4) Regrading or Stabilizing Rills and Gullies. *[When rills or gullies deeper than nine inches (9") form in areas that have been regraded and topsoiled, the rills and gullies shall be filled, graded or otherwise stabilized and the area reseeded or replanted according to 10 CSR 40-3.270. The permit and plan shall specify that rills or gullies of lesser size be stabilized and*

the area reseeded or replanted if the rills or gullies are disruptive to the approved postmining land use or may result in additional erosion and sedimentation.]

(A) When rills or gullies deeper than nine inches (9") form in areas that have been regraded and topsoiled, the rills and gullies shall be stabilized as soon as weather and soil conditions permit by use of temporary or permanent measures. Rills and gullies deeper than nine inches (9") which have formed prior to August 1 of any year and which either 1) disrupt the approved postmining land use or the reestablishment of the vegetative cover, or 2) cause or contribute to a violation of water quality standards for receiving streams shall be filled, graded and topsoiled by September 1 of each year and reseeded or replanted according to 10 CSR 40-3.270(1)-(7) as soon as weather and soil conditions permit, but no later than September 30 of each year. Rills and gullies of lesser depth which have formed prior to August 1 of any year must be permanently or temporarily stabilized as soon as weather and soil conditions permit and permanently repaired and topsoiled, if in a topsoiled area, by September 30 of each year if the rills and gullies disrupt the approved land use or the reestablishment of a vegetative cover or cause or contribute to a violation of water quality standards for receiving stream.

(B) On areas that have been previously mined, the requirements for regrading or stabilizing rills and gullies pursuant to subsection (4)(A) apply after final grading and placement of topsoil or the best available topsoil substitute.

AUTHORITY: sections 444.530 and 444.810, RSMo [1994] 2000. Original rule filed Aug. 8, 1980, effective Dec. 11, 1980. Amended: Filed Dec. 10, 1980, effective April 11, 1981. Amended: Filed July 3, 1990, effective Nov. 30, 1990. Amended: Filed May 15, 1992, effective Jan. 15, 1993. Amended: Filed Dec. 17, 2012.

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 3—Permanent Performance Requirements for
Surface Coal Mining and Related Activities**

PROPOSED AMENDMENT

10 CSR 40-3.300 Postmining Land Use Requirements for Underground Operations. The commission is amending section (3).

PURPOSE: This amendment corrects a rule citation for the reader.

(3) Prior to the release of lands from the permit area in accordance with 10 CSR [40-8.030/40-7.021(2)(C)], the permit area shall be restored, in a timely manner, either to conditions capable of supporting the uses they were capable of supporting before any mining or to conditions capable of supporting approved alternative land uses. Alternative land uses may be approved in the permit and plan after consultation with the landowner or the land management agency having jurisdiction over the lands, if the following criteria are met:

AUTHORITY: section 444.810, RSMo [1994] 2000. Original rule filed Aug. 8, 1980, effective Dec 11, 1980. Amended: Filed Dec. 10, 1980, effective April 11, 1981. Amended: Filed July 3, 1990, effective Nov. 30, 1990. Amended: Filed Dec. 17, 2012.

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 6—Permitting Requirements for Surface and
Underground Coal Mining and Reclamation Operations
and Coal Exploration**

PROPOSED AMENDMENT

10 CSR 40-6.020 General Requirements for Coal Exploration, Permits. The commission is amending section (3).

PURPOSE: This amendment addresses coal exploration activities upon lands designated as unsuitable for surface coal mining and requires a demonstration that exploration activities will be conducted to minimize disturbance to those lands.

(3) Permit requirements for exploration removing more than two hundred fifty (250) tons of coal or where exploration will substantially disturb the natural land surface.

(B) Application Information. Each application for an exploration permit shall contain, at a minimum, the following information:

1. The name, address, and telephone number of the applicant;
2. The name, address, and telephone number of the applicant's representative who will be present at, and responsible for, conducting the exploration activities;
3. A narrative describing the proposed exploration area;
4. A narrative description of the methods and equipment to be used to conduct the exploration and reclamation;
5. An estimated timetable for conducting and completing each phase of the exploration and reclamation;
6. The estimated amount of coal to be removed and a description of the methods to be used to determine the amount;
7. A statement of why extraction of more than two hundred fifty (250) tons of coal is necessary for exploration;
8. A description of—
 - A. The cultural or historical resources listed on the National Register of Historic Places;
 - B. The cultural or historical resources known to be eligible for listing on the National Register of Historic Places;
 - C. Known archaeological resources located within the proposed exploration area; and
 - D. Any other information that the director may require regarding known or unknown historic or archaeological resources;
9. A description of any endangered or threatened species listed pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531-1543) identified within the proposed exploration area;
10. A description of the measures to be used to comply with the applicable requirements of 10 CSR 40-4.010(3);
11. The name and address of the owner of record of the surface

land and of the subsurface mineral estate of the area to be explored;

12. A map(s) at a scale of 1:24,000 or larger showing the areas of land to be disturbed by the proposed exploration and reclamation. The map shall specifically show existing roads, occupied dwellings, topographic and drainage features, bodies of surface water, and pipelines; proposed locations of trenches, roads, and other access routes and structures to be constructed; the location of proposed land excavations; the location of exploration holes or other drill holes or underground openings; the location of excavated earth or waste material disposal areas; and the location of critical habitats of any endangered or threatened species listed pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531–1543); *and*

13. If the surface is owned by a person other than the applicant, a description of the basis upon which the applicant claims the right to enter that land for the purpose of conducting exploration and reclamation*./.*; *and*

14. For any lands listed in 10 CSR 40-5.010(2), a demonstration that, to the extent technologically and economically feasible, the proposed exploration activities have been designed to minimize interference with the values for which those lands were designated as unsuitable for surface coal mining operations. The application must include documentation of consultation with the owner of the feature causing the land to come under the protection of 10 CSR 40-5.010(2), and, when applicable, with the agency with primary jurisdiction over the feature with respect to the values that caused the land to come under the protection of 10 CSR 40-5.010(2).

(D) Decisions on Applications for Exploration Removing More Than Two Hundred Fifty (250) Tons of Coal.

1. The commission shall act upon an administratively complete application for a coal exploration permit and any written comments within a reasonable period of time. The approval of a coal exploration permit may be based only on a complete and accurate application.

2. The commission shall approve a complete and accurate application for a coal exploration permit filed in accordance with this rule if it finds, in writing, that the applicant has demonstrated that the exploration and reclamation described in the application will—

A. Be conducted in accordance with this rule, 10 CSR 40-4.010, and the applicable provisions of the director or commission;

B. Not jeopardize the continued existence of an endangered or threatened species listed pursuant to Section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533) or result in the destruction or adverse modification of critical habitat of those species; *and*

C. Not adversely affect any cultural or historical resources listed on the National Register of Historic Places, pursuant to the National Historic Preservation Act, (16 U.S.C. Section 470, 1976, Supp. V), unless the proposed exploration has been approved by both the director or commission and the agency with jurisdiction over those matters*./.*; *and*

D. With respect to exploration activities on any lands protected under 10 CSR 40-5.010(2), minimize interference, to the extent technologically and economically feasible, with the values for which those lands were designated as unsuitable for surface coal mining operations. Before making this finding, the commission or director shall provide reasonable opportunity to the owner of the feature causing the land to come under the protection of 10 CSR 40-5.010(2), and, when applicable, to the agency with primary jurisdiction over the feature with respect to the values that caused the land to come under the protection of 10 CSR 40-5.010(2), to comment on whether the finding is appropriate.

3. Terms of approval issued by the commission shall contain conditions necessary to ensure that the exploration and reclamation will be conducted in compliance with this rule, 10 CSR 40-4.010, and any other requirement of the director or commission.

AUTHORITY: section 444.530, RSMo [Supp. 1999] 2000. Original rule filed Oct. 12, 1979, effective Feb. 11, 1980. For intervening history, please consult the Code of State Regulations. Amended: Filed Dec. 17, 2012.

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 6—Permitting Requirements for Surface and
Underground Coal Mining and Reclamation Operations
and Coal Exploration**

PROPOSED AMENDMENT

10 CSR 40-6.030 Surface Mining Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information. The commission is amending section (4).

PURPOSE: This amendment defines requirements for mining within one hundred feet (100') of a public road as stated in another rule and directs the reader to the proper part of that rule.

(4) Relationship to Areas Designated Unsuitable for Mining.

(C) If an applicant proposes to conduct surface mining activities within **one hundred feet (100')** of the outside right-of-way of a public road or within three hundred feet (300') of an occupied dwelling, the application shall *contain the waiver of the owner of the dwelling as required in 10 CSR 40-5.010(3)(E)* meet the requirements of 10 CSR 40-5.010(5) or (6), respectively.

AUTHORITY: section 444.530, RSMo [Supp. 1999] 2000. Original rule filed Oct. 12, 1979, effective Feb. 11, 1980. For intervening history, please consult the Code of State Regulations. Amended: Filed Dec. 17, 2012.

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 6—Permitting Requirements for Surface and
Underground Coal Mining and Reclamation Operations
and Coal Exploration**

PROPOSED AMENDMENT

10 CSR 40-6.040 Surface Mining Permit Applications—Minimum Requirements for Information on Environmental Resources. The commission is amending section (16).

PURPOSE: This amendment changes the name of the "Soil Conservation Service" to the correct name of the "Natural Resources Conservation Service."

(16) Prime Farmland Investigation.

(A) Land shall not be considered prime farmland when the applicant can demonstrate one (1) of the following:

1. The land has not been historically used as cropland;
2. The slope of the land is ten percent (10%) or greater;
3. The land is not irrigated or naturally subirrigated, has no developed water supply that is dependable or of adequate quality, and the average annual precipitation is fourteen inches (14") or less;
4. Other factors exist, such as a very rocky surface or the land is frequently flooded during the growing season, more often than once in two (2) years, and the flooding has reduced crop yields; or
5. On the basis of a soil survey of lands within the mine plan area, there are no soil map units that have been designated prime farmland by the United States [Soil Conservation Service] **Natural Resources Conservation Service.**

AUTHORITY: section 444.530, RSMo [Supp. 1999] 2000. Original rule filed Oct. 12, 1979, effective Feb. 11, 1980. For intervening history, please consult the Code of State Regulations. Amended: Filed Dec. 17, 2012.

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 6—Permitting Requirements for Surface and
Underground Coal Mining and Reclamation Operations
and Coal Exploration**

PROPOSED AMENDMENT

10 CSR 40-6.050 Surface Mining Permit Application—Minimum Requirements for Reclamation and Operations Plan. The commission is amending sections (9), (14), and (15).

PURPOSE: This amendment directs the reader to the correct citations of another rule.

(9) Reclamation Plan—Protection of Hydrologic Balance.

(A) Sampling and Analysis. All water quality analyses performed to meet the requirements of this section shall be conducted according to the methodology in the [fifteenth edition of] Standard Methods for the Examination of Water and Wastewater **22nd Edition 2012, published by American Public Health Association, 800 I Street, NW, Washington, DC 2001**, which is incorporated by reference, or the methodology in 40 CFR Parts 136 and 434. **This subsection does not incorporate any later amendments or additions.** Water quality sampling performed to meet the requirements of this section shall be conducted according to either methodology listed previously when feasible.

(14) Protection of Public Parks and Historic Places.

(B) For any public parks or any places listed on the National Register of Historic Places that may be adversely affected by the proposed operation, each plan shall describe the measure to be used to prevent impacts, or if valid existing rights exist, **as determined under 10 CSR 40-5.010(7)**, or joint agency approval is to be obtained under 10 CSR 40-5.010[(3)(F)](8)(D), to minimize adverse impacts.

(15) Relocation or Use of Public Roads. Each application shall describe, with appropriate maps and cross-sections, the measures to be used to ensure that the interests of the public and affected landowners are protected if, under 10 CSR 40-5.010[(3)(D)](5)(B), the applicant seeks to have the commission or director approve—

AUTHORITY: section 444.530, RSMo [Supp. 1999] 2000. Original rule filed Oct. 12, 1979, effective Feb. 11, 1980. For intervening history, please consult the Code of State Regulations. Amended: Filed Dec. 17, 2012.

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 6—Permitting Requirements for Surface and
Underground Coal Mining and Reclamation Operations
and Coal Exploration**

PROPOSED AMENDMENT

10 CSR 40-6.060 Requirements for Permits for Special Categories of Surface Coal Mining and Reclamation Operations. The commission is amending sections (1) and (4).

PURPOSE: This amendment changes the name of the "Soil Conservation Service" to "Natural Resources Conservation Service" and the street address of the Land Reclamation Program and also directs the reader to the proper reference of a subsection of this rule.

(1) Experimental Practices Mining.

(J) Variances from the special environmental protection performance standards applicable to prime farmlands shall be approved only after consultation with the United States Department of Agriculture [Soil Conservation Service] **Natural Resources Conservation Service.**

(4) Prime Farmlands.

(C) Application Contents—Prime Farmland. All permit applications for areas in which prime farmland has been identified within the proposed permit area shall include the following:

1. A soil survey of the permit area according to the standards of the National Cooperative Soil Survey and in accordance with the procedures set forth in the United States Department of Agriculture Handbooks 436 *Soil Taxonomy* (United States Soil Conservation Service, 1975), as amended on March 22, 1982, and October 5, 1982, and 18 *Soil Survey Manual* (United States Soil Conservation

Service, 1951), as amended on December 18, 1979, May 7, 1980, May 9, 1980, September 11, 1980, June 9, 1981, June 29, 1981, and November 16, 1982. The United States Natural Resources Conservation Service (NRCS) establishes the standards of the National Cooperative Soil Survey and maintains a *National Soils Handbook* which gives current acceptable procedures for conducting soil surveys. This *National Soils Handbook* is available for review at area and state NRCS offices.

A. United States Department of Agriculture Handbooks 436 and 18 are incorporated by reference as they exist on November 23, 1987. Notices of changes made to these publications will be periodically published in the *Federal Register*. The handbooks are on file and available for inspection at the Land Reclamation Program, [205 Jefferson Street, P.O. Box 176] 1101 Riverside Drive, Jefferson City, MO 65102/1. Copies of these documents are also available from the superintendent of documents, United States Government Printing Office, Washington, D.C. 20402, Stock Nos. 001-000-02597-0 and 001-000-00688-6, respectively. In addition, these documents are available for inspection at the national, state, and area offices of the NRCS, United States Department of Agriculture and through the Federal Register Library, 1100 L Street, NW, Washington, D.C. Incorporation by reference provisions were approved by the director of the *Federal Register* on June 29, 1981.

B. The soil survey shall include a description of soil mapping units and a representative soil profile as determined by the United States NRCS, including, but not limited to, soil horizon depths, pH and the range of soil densities for each prime farmland soil unit within the permit area. Other representative soil profile descriptions from the locality, prepared according to the standards of the National Cooperative Soil Survey, may be used if their use is approved by the state conservationist, United States NRCS. The director may request the operator to provide information on other physical and chemical soil properties as needed to make a determination that the operator has the technological capability to restore the prime farmland within the permit area to the soil reconstruction standards of 10 CSR 40-4.030;

2. A plan for soil reconstruction, replacement and stabilization for the purpose of establishing the technological capability of the mine operator to comply with the requirements of 10 CSR 40-4.030;

3. Scientific data, such as agricultural school studies, for areas with comparable soils, climate and management that demonstrate that the proposed method of reclamation, including the use of soil mixtures or substitutes, if any, will achieve, within a reasonable time, levels of yield equivalent to, or higher than, those of nonmined prime farmland in the surrounding area;

4. The productivity prior to mining, including the average yield of food, fiber, forage, or wood products obtained under a high level of management; and

5. United States NRCS forms MO-LTP-1 and MO-LTP-2 shall be submitted as part of the application.

(E) Issuance of Permit. A permit for the mining and reclamation of prime farmland may be granted by the director if s/he first finds, in writing, upon the basis of a complete application, that—

1. The approved proposed postmining land use of these prime farmlands will be cropland;

2. The permit incorporates as specific conditions the contents of the plan submitted under [subsection (1)(B)] paragraph (4)(C)2. of this rule, after consideration of any revisions to that plan suggested by the state conservationist under paragraph [(1)(C)4.] (4)(D)4. of this rule;

3. The applicant has the technological capability to restore the prime farmland, within a reasonable time, to equivalent or higher levels of yield as nonmined prime farmland in the surrounding area under equivalent levels of management;

4. The proposed operations will be conducted in compliance with the requirements of 10 CSR 40-4.030 and other environmental protection performance and reclamation standards for mining and reclamation of prime farmland of the Land Reclamation Program; and

5. The aggregate total prime farmland acreage has not

decreased from that which existed prior to mining. Water bodies, if any, to be constructed during mining and reclamation operations must be located within the post-reclamation nonprime farmland portions of the permit area. The creation of any such water bodies must be approved by the regulatory authority and the consent of all affected property owners within the permit area must be obtained.

AUTHORITY: section 444.810, RSMo [Supp. 1999] 2000. Original rule filed Oct. 12, 1979, effective Feb. 11, 1980. For intervening history, please consult the Code of State Regulations. Amended: Filed Dec. 17, 2012.

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 6—Permitting Requirements for Surface and
Underground Coal Mining and Reclamation Operations
and Coal Exploration

PROPOSED AMENDMENT

10 CSR 40-6.070 Review, Public Participation and Approval of Permit Applications and Permit Terms and Conditions. The commission is amending sections (2) and (8).

PURPOSE: This amendment clarifies the information necessary to approve mine related activities within one hundred feet (100') of the outside right-of-way of a public road or to relocate the road and directs the reader to the correct subsections in another rule.

(2) Public Notices of Filing of Permit Applications.

(A) An applicant for a permit shall place an advertisement in a local newspaper of general circulation in the locality of the proposed surface coal mining and reclamation operations at least once a week for four (4) consecutive weeks. The applicant shall place the advertisement in the newspaper at the same time the complete permit application is filed with the director. The advertisement shall contain, at a minimum, the following information:

1. The name and business address of the applicant;
2. A map or description which shall—

A. Clearly show or describe towns, rivers, streams or other bodies of water, local landmarks and any other information, including routes, streets or roads and accurate distance measurements, necessary to allow local residents to readily identify the proposed permit area;

B. Clearly show or describe the exact location and boundaries of the proposed permit area;

C. State the name of the United States Geological Survey 7.5-minute quadrangle map(s) which contains the area shown or described; and

D. If a map is used, indicate the north point;

3. The location where a copy of the application is available for public inspection under subsection (2)(D) of this rule;

4. The name and address of the director to which written comments, objections, or requests for informal conferences on the application may be submitted under sections (3)–(5) of this rule; and

5. If an applicant seeks a permit to mine within one hundred feet (100') of the outside right-of-way of a public road or to relocate a public road, a concise statement describing the **mine-related activities to be conducted within one hundred feet (100') of the outside right-of-way or, in the case of a relocation of a public road, the particular part to be relocated, where the relocation is to occur and the duration of the relocation.**

(8) Criteria for Permit Approval or Denial. No permit or revision application shall be approved, unless the application affirmatively demonstrates, and the director finds, in writing, on the basis of information set forth in the application or from information otherwise available, which is documented in the approval and made available to the applicant, that—

(D) The proposed permit area is not—

1. Included within an area designated unsuitable for surface coal mining operations under 10 CSR 40-5.020;
2. Within an area under study for designation as unsuitable for surface coal mining operations in an administrative proceeding begun under 10 CSR 40-5.020, unless the applicant demonstrates that, before January 4, 1977, s/he has made substantial legal and financial commitments in relation to the operation for which s/he is applying for a permit;
3. On any lands subject to the prohibitions or limitations of 10 CSR 40-5.010(2)(A), (F) or (G);
4. Within one hundred feet (100') of the outside right-of-way line of any public road, except as provided for in 10 CSR 40-5.010(3)(D)(5)(B); or
5. Within three hundred feet (300') from any occupied dwelling, except as provided for in 10 CSR 40-5.010(2)(E) and (3)(E)(6)(B);

AUTHORITY: sections 444.530 and 444.810, RSMo [Supp. 1999] 2000. Original rule filed Oct. 12, 1979, effective Feb. 11, 1980. For intervening history, please consult the Code of State Regulations. Amended: Filed Dec. 17, 2012.

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 6—Permitting Requirements for Surface and
Underground Coal Mining and Reclamation Operations
and Coal Exploration**

PROPOSED AMENDMENT

10 CSR 40-6.100 Underground Mining Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information. The commission is amending section (1).

PURPOSE: This amendment adds language in section (1) to be consistent with other sections of the rule.

(1) Identification of Interests.

(C) For each person who owns or controls the applicant under the definition of owned or controlled and owns or controls in 10 CSR 40-

6.010(2)(E), as applicable **each application shall contain—**

1. The person's name, address, Social Security number and employer identification number;
2. The person's ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure;
3. The title of the person's position, date position was assumed and, when submitted under 10 CSR 40-6.070(12)(E), date of departure from the position;
4. Each additional name and identifying number, including employer identification number, federal or state permit number and the Mine Safety and Health Administration (MSHA) number with date of issuance, under which the person owns or controls, or previously owned or controlled, a surface coal mining and reclamation operation in the United States within the five (5) years preceding the date of the application; and
5. The application number or other identifier of, and the regulatory authority for, any other pending surface coal mining operation permit application filed by the person in any state in the United States.

(D) For any surface coal mining operation owned or controlled by either the applicant or by any person who owns or controls the applicant under the definition of owned or controlled and owns or controls in 10 CSR 40-6.010(2)(E), *[the operation's]* **each application shall contain—**

1. Name, address, identifying numbers, including employer identification number, federal or state permit number and the MSHA number, the date of issuance of the MSHA number and the regulatory authority; and
2. Ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure.

AUTHORITY: section 444.810, RSMo [Supp. 1999] 2000. Original rule filed Aug. 1, 1980, effective Dec. 11, 1980. For intervening history, please consult the Code of State Regulations. Amended: Filed Dec. 17, 2012.

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 6—Permitting Requirements for Surface and
Underground Coal Mining and Reclamation Operations
and Coal Exploration**

PROPOSED AMENDMENT

10 CSR 40-6.110 Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources. The commission is amending section (16).

PURPOSE: This amendment changes "Soil Conservation Service" to "Natural Resources Conservation Service" and directs the reader to the correct subsection of another rule.

(16) Prime Farmland Investigation.

(A) The applicant shall conduct a preapplication investigation of the area proposed to be affected by surface operations or facilities to determine whether lands within the area may be prime farmland. All permit applications, whether or not prime farmland is present, shall include the results of a reconnaissance inspection of the proposed permit area to indicate whether prime farmland exists. The regulatory authority in consultation with the United States [Soil Conservation Service (SCS)] Natural Resources Conservation Service (NRCS) shall determine the nature and extent of the required reconnaissance inspection.

(B) Land shall not be considered prime farmland where the applicant can demonstrate one (1) or more of the following:

1. The land has not been historically used as cropland;
2. The slope of the land is ten percent (10%) or greater;
3. The land is not irrigated or naturally subirrigated, has no developed water supply that is dependable and of adequate quality and the average annual precipitation is fourteen inches (14") or less;
4. Other factors exist, such as a very rocky surface, or the land is frequently flooded during the growing season more often than once in two (2) years and the flooding has reduced crop yields; and
5. On the basis of a soil survey of the lands within the mine plan area, there are no soil map units that have been designated prime farmland by the United States [SCS] NRCS.

(D) If the investigation indicates that lands within the proposed area to be affected by surface operations and facilities may be prime farmlands, the applicant shall contact the United States [SCS] NRCS to determine if a soil survey exists for these lands and whether the applicable soil map units have been designated prime farmlands. If no soil survey has been made for these lands, the applicant shall cause a survey to be made—

1. When a soil survey for lands within this proposed mine plan area contains soil map units which have been designated as prime farmlands, the applicant shall submit an application in accordance with 10 CSR 40-6.060[(14)](4) for this designated land; or
2. When a soil survey for lands within the proposed mine plan area contains soil map units which have not been designated as prime farmland after review by the United States [SCS] NRCS, the applicant shall submit a statement that no prime farmland is present. The statement shall identify the basis upon which this conclusion was reached.

AUTHORITY: section 444.810, RSMo [1994] 2000. Original rule filed Aug. 1, 1980, effective Dec. 11, 1980. For intervening history, please consult the Code of State Regulations. Amended: Filed Dec. 17, 2012.

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 6—Permitting Requirements for Surface and
Underground Coal Mining and Reclamation Operations
and Coal Exploration**

PROPOSED AMENDMENT

10 CSR 40-6.120 Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation's Plan. The commission is amending sections (5), (7), (8), and (9).

PURPOSE: This amendment changes the word "description" to the words "supplemental information" and adds clarifying language in section (5), removes the reference to professional geologist in section (7), directs the reader to the correct subsection of a rule in section (8) and directs the reader to the correct subsection of a rule and changes the phrase "underground mining activities" to "surface coal mining operations" in section (9).

(5) Reclamation Plan—Protection of Hydrologic Balance.

(C) If the determination of the probable hydrologic consequences required by subsection (5)(D) of this rule indicates that adverse impacts on or off the proposed permit area may occur to the hydrologic balance, or that acid- or toxic-forming material is present that may result in the contamination of ground or surface water supplies, then information supplemental to that required under 10 CSR 40-6.110(6) and (7) shall be provided to evaluate the probable hydrologic consequences and to plan remedial and reclamation activities. This supplemental information may be based upon drilling, aquifer tests, hydrogeologic analysis of the water bearing strata, flood flows or analysis of other water quality or quantity characteristics. The [description] **supplemental information** shall include:

1. A plan for the control, in accordance with 10 CSR 40-3.170–10 CSR 40-3.310, of surface and ground water drainage into, through and out of the proposed mine plan area;
2. A plan for the treatment, where required under 10 CSR 40-3 and 10 CSR 40-4 and the regulatory program, of surface and ground water drainage from the area to be affected by the proposed activities and proposed quantitative limits on pollutants in discharges subject to 10 CSR 40-3.200(2), according to the more stringent of the following:
 - A. 10 CSR 40-3 and 10 CSR 40-4 and the regulatory program; or
 - B. Other applicable state and federal laws; or
3. A plan for the collection, recording and reporting of ground and surface water quality and quantity data according to 10 CSR 40-3.200(12).

(D) The description, **required by subsection (B) of this section**, shall include a determination of the probable hydrologic consequences (PHC) of the proposed underground mining activities, on the proposed mine plan area and adjacent area, with respect to the hydrologic regime and the quantity and quality of water in surface and ground water systems under all seasonal conditions, including the contents of dissolved and total suspended solids, total iron, pH, total manganese and other parameters required by the director.

1. The PHC determination shall be based on baseline hydrologic, geologic and other information collected for the permit application and may include data statistically representative of the site.
2. The PHC determination shall include findings on:
 - A. Whether adverse impacts may occur to the hydrologic balance;
 - B. Whether acid- or toxic-forming materials are present that could result in the contamination of surface or ground water supplies; and
 - C. What impact the proposed operation will have on—
 - (I) Sediment yield from the disturbed area;
 - (II) Acidity, total suspended and dissolved solids and other important water quality parameters of local impact;
 - (III) Flooding or stream flow alteration;
 - (IV) Ground and surface water availability; and
 - (V) Other characteristics as required by the director.

3. An application for a permit revision shall be reviewed by the regulatory authority to determine whether a new or updated PHC determination shall be required.

(7) Reclamation Plan—Ponds, Impoundments, Banks, Dams and Embankments.

(A) General. Each application shall include a general plan and a detailed plan for each proposed siltation structure, water impoundment and coal processing waste bank, dam or embankment within the proposed mine plan area.

1. Each general plan shall—

A. Be prepared by or under the direction of and certified by a qualified registered professional engineer *for by a professional geologist* with assistance from experts in related fields such as land surveying and landscape architecture;

B. Contain a description, map and cross-section of the structure and its location;

C. Contain preliminary hydrologic and geologic information required to assess the hydrologic impact of the structure;

D. Contain a survey describing the potential effect on the structure from subsidence of the subsurface strata resulting from past underground mining operations if underground mining has occurred; and

E. Contain a certification statement which includes a schedule setting forth the dates when any detailed design plans for structures that are not submitted with the general plan will be submitted to the director. The commission or director shall have approved, in writing, the detailed design plan for a structure before construction of the structure begins.

2. Impoundments meeting the Class B or C criteria for dams in TR-60, which is incorporated by reference, shall comply with the requirements of this section for structures that meet or exceed the size or other criteria of the Mine Safety and Health Administration (MSHA). Each detailed design plan for a structure that meets or exceeds the size or other criteria of the MSHA, 30 CFR 77.216(a) shall—

A. Be prepared by, or under the direction of, and certified by a qualified registered professional engineer with assistance from experts in related fields such as geology, land surveying and landscape architecture;

B. Include any geotechnical investigation, design and construction requirements for the structure;

C. Describe the operation and maintenance requirements for each structure; and

D. Describe the timetable and plans to remove each structure, if appropriate.

3. Each detailed design plan for a structure that does not meet the size or other criteria of 10 CSR 40-6.120(7)(A)2. shall—

A. Be prepared by or under the direction of and certified by a qualified registered professional engineer and all coal processing waste dams and embankments covered by 10 CSR 40-3.230(9)-(11) shall be certified by a qualified registered engineer;

B. Include any design and construction requirements for the structure, including any required geotechnical information;

C. Describe the operation and maintenance requirements for each structure; and

D. Describe the timetable and plans to remove each structure, if appropriate.

(8) Protection of Public Parks and Historic Places.

(B) For any public parks or any places listed on the National Register of Historic Places that may be adversely affected by the proposed operation, each plan shall describe the measure to be used to prevent impacts or, if valid existing rights exist, **as determined under 10 CSR 40-5.010(7)**, or joint agency approval is to be obtained under 10 CSR 40-5.010/(3)/(F)/(8)(D), to minimize adverse impacts.

(9) Relocation or Use of Public Roads. Each application shall describe, with appropriate maps and cross-sections, the measures to be used to ensure that the interests of the public and landowners affected are protected if, under 10 CSR 40-5.010/(3)/(D)/(5)(B), the

applicant seeks to have the commission or director approve—

(A) Conducting the proposed *[underground mining activities]* **surface coal mining operations** within one hundred feet (100') of the right-of-way line of any public road, except where mine access or haul roads join that right-of-way; or

AUTHORITY: section 444.810, RSMo [Supp. 1999] 2000. Original rule filed Aug. 1, 1980, effective Dec. 11, 1980. For intervening history, please consult the Code of State Regulations. Amended: Filed Dec. 17, 2012.

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 40-7.050 Requirements, Conditions and Terms of Liability Insurance. The commission is amending section (2).

PURPOSE: This amendment improves grammar and changes “commission” to “director.”

(2) Terms and Conditions for Liability Insurance.

(A) The applicant shall submit, at the time of permit application, a certificate certifying that the applicant has a public liability insurance policy in force for the surface coal mining and reclamation operation for which the permit is sought. The policy shall provide for personal injury and property damage protection in an amount adequate to compensate all persons injured or property damaged as a result of surface coal mining and reclamation operations, including the use of explosives and damage to water wells and *[entitled]* **any entitlement** to compensation under the applicable provisions of state law. Minimum insurance coverage for bodily injury shall be three hundred thousand dollars (\$300,000) for each occurrence and five hundred thousand dollars (\$500,000) aggregate; and minimum insurance coverage for property damage shall be three hundred thousand dollars (\$300,000) for each occurrence and five hundred thousand dollars (\$500,000) aggregate.

(C) The policy shall include a rider requiring that the insurer notify the *[commission]* **director** whenever substantive changes are made in the policy, including any termination or failure to renew.

AUTHORITY: section 444.810, RSMo [1994] 2000. Original rule filed Dec. 9, 1982, effective April 11, 1983. Amended: Filed Dec. 17, 2012.

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 8—Definitions and General Requirements**

PROPOSED AMENDMENT

10 CSR 40-8.010 Definitions. The commission is amending section (1).

PURPOSE: This amendment adds a definition of water supply replacement and also adds a definition for "E" Horizon soil. In addition, renumbering of existing definitions is being done for consistency because of the addition of the two (2) definitions noted above.

(1) Definitions.

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

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

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

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

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

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

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

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

ence as it exists on February 11, 1980;

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

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

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

11. Auger mining means a method of mining coal at a cliff or highwall by drilling holes into an exposed coal seam from the highwall and transporting the coal along an auger bit to the surface;

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

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

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

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

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

15. Coal exploration means the field gathering of—

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

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

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

17. Coal preparation area means that portion of the permitted area used for the beneficiation of raw coal and structures related to the beneficiation process, such as the washer, tipples, crusher, slurry pond(s), gob pile and all waste material directly connected with the cleaning, preparation and shipping of coal, but does not include subsurface coal waste disposal areas;

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

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

and water storage facilities; settling basins and impoundments; coal processing and other waste disposal areas; and roads, railroad and other transport facilities;

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

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

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

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

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

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

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

A. The proposed operation;

B. All existing operations;

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

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

27. Department means the Department of the Interior;

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

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

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

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

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

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

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

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

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

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

38. Federal program means a program established by the secretary pursuant to section 504 of the Act to regulate coal exploration and surface coal mining and reclamation operations on nonfederal and non-Indian lands within a state in accordance with the Act and 30 CFR 736;

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

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

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

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

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

44. Historically used for cropland means—

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

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

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

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

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

47. Imminent danger to the health and safety of the public means the existence of any condition or practice, or any violation of a permit or other requirements of the law in a surface coal mining and reclamation operation, which condition, practice or violation

could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice or violation can be abated. A reasonable expectation of death or serious injury before abatement exists, if a rational person subjected to the same condition or practice giving rise to the peril, would avoid exposure to the danger during the time necessary for abatement;

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

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

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

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

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

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

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

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

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

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

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

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

F. Industrial/commercial means land used for—

(I) Extraction or transformation of materials for fabrication of products, wholesaling of products or for long-term storage of products. This includes all heavy and light manufacturing facilities such as lumber and wood processing, chemical manufacturing, petroleum refining and fabricated metal products manufactured. Land used for facilities in support of these operations which is adjacent to or an integral part of that operation is also included. Support facilities include, but are not limited to, all railroad or other transportation facilities; and

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

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

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

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

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

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

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

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

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

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

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

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

58. Operator means any person engaged in coal mining;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

84. Renewable resource lands means aquifers and areas for the

recharge of aquifers and other underground waters, areas for agricultural or silvicultural production of food and fiber and grazing lands;

85. Replacement of water supply means, with respect to protected water supplies contaminated, diminished or interrupted by coal mining operations, provision of water supply on both a temporary and permanent basis equivalent to premining quality and quantity. Replacement includes provision of an equivalent water delivery system and payment of any excess operation and maintenance costs over what had been customary and reasonable delivery costs for premining water supplies.

A. Upon agreement by the permittee and the water supply owner, the obligation to pay such operation and maintenance costs may be satisfied by a one- (1-) time payment in an amount which covers the present worth of the increased annual operation and maintenance costs for a period agreed to by the permittee and the water supply owner.

B. If the affected water supply was not needed for the land use in existence at the time of loss, contamination or diminution, and if the supply is not needed to achieve the postmining land use, replacement requirements may be satisfied by demonstrating that a suitable alternative water source is available and could feasibly be developed. If the latter approach is selected, written concurrence must be obtained from the water supply owner.

/85./86. Road means a surface right-of-way for purposes of travel by land vehicles used in coal exploration or surface coal mining and reclamation operations. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side area, approaches, structures, ditches, and surface. The term includes access and haul roads constructed, used, reconstructed, improved or maintained for use in coal exploration or surface coal mining and reclamation operations, including use by coal-hauling vehicles to and from transfer, processing or storage areas. The term does not include ramps and routes of travel within the immediate mining area or within spoil or coal mine waste disposal areas.

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

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

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

/86./87. Safety factor means the ratio of the available shear strength to the developed shear stress, or the ratio of the sum of the resisting forces to the sum of the loading or driving forces, as determined by accepted engineering practices;

/87./88. Secretary of the office means the secretary of the interior or the secretary's representative;

/88./89. Significant, imminent environmental harm to land, air or water resources means an environmental harm is—

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

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

(I) Is causing harm; or

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

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

/89./90. Siltation structure means a sedimentation pond, a series of sedimentation ponds, or other treatment facility, it also means a primary sediment control structure designed, constructed and maintained in accordance with 10 CSR 40-3.040(6) and including, but not limited to, barrier, dam or excavated depression which slows down water runoff to allow sediment to settle out. A siltation structure shall not include secondary sedimentation control structures, such as straw dikes, riprap, check dams, mulches, dugouts and other measures that reduce overland flow velocity, reduce runoff volume or trap sediment, to the extent that those secondary sedimentation structures drain to the

siltation structure;

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

[91./92. Soil horizons means contrasting layers of soil parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The [three (3) major] four (4) master soil horizons are—

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

B. E horizon. The layer commonly near the surface below an A horizon and above a B horizon. An E horizon is most commonly differentiated from an overlying A horizon by lighter color and generally has measurably less organic matter than the A horizon. An E horizon is most commonly differentiated from an underlying B horizon in the same sequum by color of higher value or lower chroma, by coarser texture, or by a combination of these properties;

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

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

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

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

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

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

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

[97./98. Surface coal mining operations means—

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

B. Areas upon which the activities described in subparagraph

(1)(A)98.A. of this rule occur or where those activities disturb the natural land surface. These areas shall also include any adjacent land the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of those activities, and for haulage and excavation, working, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas and other areas upon which are sited structures, facilities or other property or material on the surface, resulting from or incident to those activities;

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

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

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

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

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

[103./104. Topsoil means the A and E soil horizon layers of the [three (3) major] four (4) master soil horizons;

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

[105./106. Toxic mine drainage means water that is discharged from active or abandoned mines or other areas affected by coal exploration or surface coal mining and reclamation operations, which contains a substance that through chemical action or physical effects is likely to kill, injure or impair biota commonly present in the area that might be exposed to it;

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

[107./108. Underground mining activities means a combination of—

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

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

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

[109./110. Water table means the upper surface of a zone of

saturation, where the body of groundwater is not confined by an overlying impermeable zone.

AUTHORITY: sections 444.530 and 444.810, RSMo [Supp. 1999] 2000. Original rule filed Oct. 12, 1979, effective Feb. 11, 1980. For intervening history, please consult the Code of State Regulations. Amended: Filed Dec. 17, 2012.

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 8—Definitions and General Requirements**

PROPOSED AMENDMENT

10 CSR 40-8.020 Exemption for Coal Extraction Incident to Government-Financed Highway or Other Construction. The commission is amending section (2).

PURPOSE: This amendment clarifies “government-financed construction.”

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

(C) Government-financed construction means construction funded fifty percent (50%) or more by funds appropriated from a government financing agency’s budget or obtained from general revenue bonds[, but shall not mean government financing agency guarantees, insurance, loans, funds obtained through industrial revenue bonds or their equivalent or in-kind payments]. **Funding at less than fifty percent (50%) may qualify if the construction is undertaken as an approved reclamation project under Title IV of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 et seq. Construction funded through government financing agency guarantees, insurance, loans, funds obtained through industrial revenue bonds, or their equivalent, or in-kind payments does not qualify as government-financed construction.**

AUTHORITY: sections 444.530 and 444.810, RSMo [1994] 2000. Original rule filed Oct. 12, 1979, effective Feb. 11, 1980. Amended: Filed Dec. 17, 2012.

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 8—Definitions and General Requirements**

PROPOSED AMENDMENT

10 CSR 40-8.070 Applicability and General Requirements. The commission is amending section (2).

PURPOSE: This amendment changes the date(s) for annual reporting purposes for coal mines operating under the sixteen and two-thirds percent (16 2/3%) exemption rule.

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

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

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

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

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

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

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

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

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

(b) Extraction of coal or other minerals commenced on or after [November] October 1, [1990] 1992, the last day of the calendar quarter during which coal extraction commenced and each anniversary of that day after commencement;

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

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

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

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

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

A. The collections of information contained in paragraphs (2)(C)3., 4., 5., 7. and 10. of this rule have been approved by the Land Reclamation Commission. The information will be used to

determine the initial and continuing applicability of the incidental mining exemption to a particular mining operation. Response is required to obtain and maintain the incidental mining exemption in accordance with section 444.815.6(3) of the Surface Coal Mining Law; and

B. Public reporting burden for this collection of information is estimated to average one (1) hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Director, Land Reclamation Program, P./O./ Box 176, Jefferson City, MO 65102.

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

A. New operations.

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

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

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

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

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

E. Exemption determination.

(I) No later than ninety (90) days after filing of an administratively complete application, the regulatory authority shall make a written determination whether, and under what conditions, the persons claiming the exemption are exempt under this part and shall notify the applicant and persons submitting comments on the application of the determination and the basis for the determination.

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

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

F. Administrative review.

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

(II) A petition for administrative review filed under Chapter 536, RSMo shall not suspend the effect of a determination

under subparagraph (2)(C)3.E. of this rule.

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

A. The name and address of the applicant;

B. A list of the minerals sought to be extracted;

C. Estimates of annual production of coal and the other minerals within each mining area over the anticipated life of the mining operation;

D. Estimated annual revenues to be derived from bona fide sales of coal and other minerals to be extracted within the mining area;

E. Where coal or the other minerals are to be used rather than sold, estimated annual fair market values at the time of projected use of the coal and other minerals to be extracted from the mining area;

F. The basis for all annual production, revenue and fair market value estimates;

G. A description, including county, township, if any, and boundaries of the land, of sufficient certainty that the mining areas may be located and distinguished from other mining areas;

H. An estimate to the nearest acre of the number of acres that will compose the mining area over the anticipated life of the mining operation;

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

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

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

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

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

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

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

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

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

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

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

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

A. Except as provided in subparagraph (2)(C)5.B. of this rule, all information submitted to the regulatory authority under subsection (2)(C) shall be made available immediately for public inspection and copying at the local offices of the regulatory authority having jurisdiction over the mining operations claiming exemption until at least three (3) years after expiration of the period during which the subject mining area is active;

B. The regulatory authority may keep information submitted to the regulatory authority under this part confidential if the person

submitting it requests in writing, at the time of submission, that it be kept confidential and the information concerns trade secrets or is privileged commercial or financial information of the persons intending to conduct operations under this rule; and

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

6. Requirements for exemption.

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

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

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

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

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

(I) Each other mineral upon which an exemption under this rule is based must be a commercially valuable mineral for which a market exists or which is mined in bona fide anticipation that a market will exist for the mineral in the reasonably foreseeable future, not to exceed twelve (12) months from the end of the current period for which cumulative production is calculated. A legally binding agreement for the future sale of other minerals is sufficient to demonstrate this standard; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. Other minerals.

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

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

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

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

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

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

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

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

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

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

operator and intervenors;

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

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

F. Direct enforcement.

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

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

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

11. Reporting requirements.

A. Following approval by the commission of an exemption for a mining area, the person receiving the exemption, for each mining area, shall file a written report annually with the commission containing the information specified in subparagraph (2)(C)11.B. of this rule.

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

(II) The information in the report shall cover—

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

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

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

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

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

(III) The number of tons of coal stockpiled;

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

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

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

AUTHORITY: section 444.810, RSMo [Supp. 1999] 2000. Original rule filed Oct. 12, 1979, effective Feb. 11, 1980. For intervening history, please consult the Code of State Regulations. Amended: Filed Dec. 17, 2012.

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 enti-

ties 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.

This section will contain the final text of the rules proposed by agencies. The order of rulemaking is required to contain a citation to the legal authority upon which the order of rulemaking is based; reference to the date and page or pages where the notice of proposed rulemaking was published in the *Missouri Register*; an explanation of any change between the text of the rule as contained in the notice of proposed rulemaking and the text of the rule as finally adopted, together with the reason for any such change; and the full text of any section or subsection of the rule as adopted which has been changed from that contained in the notice of proposed rulemaking. The effective date of the rule shall be not less than thirty (30) days after the date of publication of the revision to the *Code of State Regulations*.

The agency is also required to make a brief summary of the general nature and extent of comments submitted in support of or opposition to the proposed rule and a concise summary of the testimony presented at the hearing, if any, held in connection with the rulemaking, together with a concise summary of the agency's findings with respect to the merits of any such testimony or comments which are opposed in whole or in part to the proposed rule. The ninety-(90-) day period during which an agency shall file its Order of Rulemaking for publication in the *Missouri Register* begins either: 1) after the hearing on the Proposed Rulemaking is held; or 2) at the end of the time for submission of comments to the agency. During this period, the agency shall file with the secretary of state the order of rulemaking, either putting the proposed rule into effect, with or without further changes, or withdrawing the proposed rule.

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

ORDER OF RULEMAKING

By the authority vested in the Conservation Commission under sections 40 and 45 of Art. IV, Mo. Const., the commission amends a rule as follows:

3 CSR 10-4.117 Prohibited Species is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on November 1, 2012 (37 MoReg 1562). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective **March 1, 2013**.

SUMMARY OF COMMENTS: No comments were received.

**Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 5—Wildlife Code: Permits**

ORDER OF RULEMAKING

By the authority vested in the Conservation Commission under sections 40 and 45 of Art. IV, Mo. Const., the commission amends a rule as follows:

3 CSR 10-5.205 Permits Required: Exceptions is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on November 1, 2012 (37 MoReg 1562-1563). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective **March 1, 2013**.

SUMMARY OF COMMENTS: No comments were received.

**Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 6—Wildlife Code: Sport Fishing: Seasons,
Methods, Limits**

ORDER OF RULEMAKING

By the authority vested in the Conservation Commission under sections 40 and 45 of Art. IV, Mo. Const., the commission amends a rule as follows:

3 CSR 10-6.415 Restricted Zones is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on November 1, 2012 (37 MoReg 1563). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective **March 1, 2013**.

SUMMARY OF COMMENTS: No comments were received.

**Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 6—Wildlife Code: Sport Fishing: Seasons,
Methods, Limits**

ORDER OF RULEMAKING

By the authority vested in the Conservation Commission under sections 40 and 45 of Art. IV, Mo. Const., the commission amends a rule as follows:

**3 CSR 10-6.545 White Bass, Yellow Bass, Striped Bass
is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on November 1, 2012 (37 MoReg 1563). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective **March 1, 2013**.

SUMMARY OF COMMENTS: No comments were received.

**Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 9—Wildlife Code: Confined Wildlife: Privileges,
Permits, Standards**

ORDER OF RULEMAKING

By the authority vested in the Conservation Commission under sections 40 and 45 of Art. IV, Mo. Const., the commission amends a rule as follows:

3 CSR 10-9.110 General Prohibition; Applications is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on November 1, 2012 (37 MoReg 1563–1564). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective **March 1, 2013**.

SUMMARY OF COMMENTS: No comments were received.

**Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 11—Wildlife Code: Special Regulations for
Department Areas**

ORDER OF RULEMAKING

By the authority vested in the Conservation Commission under sections 40 and 45 of Art. IV, Mo. Const., the commission amends a rule as follows:

3 CSR 10-11.180 Hunting, General Provisions and Seasons
is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on November 1, 2012 (37 MoReg 1564–1565). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective **March 1, 2013**.

SUMMARY OF COMMENTS: No comments were received.

**Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 11—Wildlife Code: Special Regulations for
Department Areas**

ORDER OF RULEMAKING

By the authority vested in the Conservation Commission under sections 40 and 45 of Art. IV, Mo. Const., the commission amends a rule as follows:

3 CSR 10-11.200 Fishing, General Provisions and Seasons
is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on November 1, 2012 (37 MoReg 1565–1566). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective **March 1, 2013**.

SUMMARY OF COMMENTS: No comments were received.

**Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 11—Wildlife Code: Special Regulations for
Department Areas**

ORDER OF RULEMAKING

By the authority vested in the Conservation Commission under sections 40 and 45 of Art. IV, Mo. Const., the commission amends a rule as follows:

3 CSR 10-11.205 Fishing, Methods and Hours **is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on November 1, 2012 (37 MoReg 1566). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective **March 1, 2013**.

SUMMARY OF COMMENTS: No comments were received.

**Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 11—Wildlife Code: Special Regulations for
Department Areas**

ORDER OF RULEMAKING

By the authority vested in the Conservation Commission under sections 40 and 45 of Art. IV, Mo. Const., the commission amends a rule as follows:

3 CSR 10-11.210 Fishing, Daily and Possession Limits
is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on November 1, 2012 (37 MoReg 1566–1567). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective **March 1, 2013**.

SUMMARY OF COMMENTS: No comments were received.

**Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 11—Wildlife Code: Special Regulations for
Department Areas**

ORDER OF RULEMAKING

By the authority vested in the Conservation Commission under sections 40 and 45 of Art. IV, Mo. Const., the commission amends a rule as follows:

3 CSR 10-11.215 Fishing, Length Limits **is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on November 1, 2012 (37 MoReg 1567). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective **March 1, 2013**.

SUMMARY OF COMMENTS: No comments were received.

**Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 12—Wildlife Code: Special Regulations for
Areas Owned by Other Entities**

ORDER OF RULEMAKING

By the authority vested in the Conservation Commission under sections 40 and 45 of Art. IV, Mo. Const., the commission amends a rule as follows:

3 CSR 10-12.110 Use of Boats and Motors **is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on November 1, 2012 (37 MoReg 1567–1568). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective **March 1, 2013**.

SUMMARY OF COMMENTS: No comments were received.

**Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 12—Wildlife Code: Special Regulations for
Areas Owned by Other Entities**

ORDER OF RULEMAKING

By the authority vested in the Conservation Commission under sections 40 and 45 of Art. IV, Mo. Const., the commission amends a rule as follows:

3 CSR 10-12.115 Bullfrogs and Green Frogs is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on November 1, 2012 (37 MoReg 1568). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective **March 1, 2013**.

SUMMARY OF COMMENTS: No comments were received.

**Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 12—Wildlife Code: Special Regulations for
Areas Owned by Other Entities**

ORDER OF RULEMAKING

By the authority vested in the Conservation Commission under sections 40 and 45 of Art. IV, Mo. Const., the commission amends a rule as follows:

3 CSR 10-12.125 Hunting and Trapping is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on November 1, 2012 (37 MoReg 1568–1569). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective **March 1, 2013**.

SUMMARY OF COMMENTS: No comments were received.

**Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 12—Wildlife Code: Special Regulations for
Areas Owned by Other Entities**

ORDER OF RULEMAKING

By the authority vested in the Conservation Commission under sections 40 and 45 of Art. IV, Mo. Const., the commission amends a rule as follows:

**3 CSR 10-12.140 Fishing, Daily and Possession Limits
is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on November 1, 2012 (37 MoReg 1569–1570). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective **March 1, 2013**.

SUMMARY OF COMMENTS: No comments were received.

**Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 12—Wildlife Code: Special Regulations for
Areas Owned by Other Entities**

ORDER OF RULEMAKING

By the authority vested in the Conservation Commission under sections 40 and 45 of Art. IV, Mo. Const., the commission amends a rule as follows:

3 CSR 10-12.145 Fishing, Length Limits is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on November 1, 2012 (37 MoReg 1570–1571). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective **March 1, 2013**.

SUMMARY OF COMMENTS: No comments were received.

**Title 6—DEPARTMENT OF HIGHER EDUCATION
Division 10—Commissioner of Higher Education
Chapter 5—Regulation of Proprietary Schools**

ORDER OF RULEMAKING

By the authority vested in the commissioner of Higher Education under sections 173.600–173.619, RSMo 2000 and Supp. 2012, the commissioner amends a rule as follows:

**6 CSR 10-5.010 Rules for Certification of Proprietary Schools
is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 15, 2012 (37 MoReg 1522–1532). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Missouri Department of Higher Education received one (1) comment on the proposed amendment.

COMMENT #1: Robin O'Connell, with Wellspring School of Allied Health, requested the department give consideration to lowering the maximum amount of the security deposit.

RESPONSE: The calculation of the security deposit is set by statute, and, therefore, beyond our control. The underlying legislation, which became effective August 28, 2012, increased the statutory maximum of the security deposit from twenty-five thousand dollars (\$25,000) per school to one hundred thousand dollars (\$100,000). No changes have been made to the proposed amendment as a result of this comment.

**Title 8—DEPARTMENT OF LABOR AND
INDUSTRIAL RELATIONS
Division 30—Division of Labor Standards
Chapter 3—Prevailing Wage Law Rules**

ORDER OF RULEMAKING

By the authority vested in the Division of Labor Standards under section 290.240.2., RSMo 2000, the division amends a rule as follows:

8 CSR 30-3.060 Occupational Titles of Work Descriptions
is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 17, 2012 (37 MoReg 1393-1395). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 12—DEPARTMENT OF REVENUE
Division 30—State Tax Commission
Chapter 2—Original Assessment**

ORDER OF RULEMAKING

By the authority vested in the State Tax Commission under section 138.430, RSMo Supp. 2012, the commission amends a rule as follows:

12 CSR 30-2.015 Utility Property to be Assessed Locally and by the State Tax Commission **is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 1, 2012 (37 MoReg 1473). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 12—DEPARTMENT OF REVENUE
Division 30—State Tax Commission
Chapter 3—Local Assessment of Property and Appeals
From Local Boards of Equalization**

ORDER OF RULEMAKING

By the authority vested in the State Tax Commission under section 138.430, RSMo Supp. 2012, the commission amends a rule as follows:

12 CSR 30-3.010 Appeals From the Local Board of Equalization
is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 1, 2012 (37 MoReg 1473). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 12—DEPARTMENT OF REVENUE
Division 30—State Tax Commission
Chapter 3—Local Assessment of Property and Appeals
From Local Boards of Equalization**

ORDER OF RULEMAKING

By the authority vested in the State Tax Commission under section 138.430, RSMo Supp. 2012, the commission withdraws a proposed amendment as follows:

12 CSR 30-3.065 Appraisal Evidence **is withdrawn.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 1, 2012 (37 MoReg 1473-1474). This proposed amendment is withdrawn.

SUMMARY OF COMMENTS: No comments were received.

**Title 16—RETIREMENT SYSTEMS
Division 20—Missouri Local Government Employees'
Retirement System (LAGERS)
Chapter 2—Administrative Rules**

ORDER OF RULEMAKING

By the authority vested in the Board of Trustees of the Missouri Local Government Employees' Retirement System under section 70.605.21, RSMo Supp. 2012, the board adopts a rule as follows:

16 CSR 20-2.048 Definitive Break in Service to Determine Eligibility for Benefits **is adopted.**

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on October 15, 2012 (37 MoReg 1533). No changes have been made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION
Division 2150—State Board of Registration for the
Healing Arts
Chapter 2—Licensing of Physicians and Surgeons**

ORDER OF RULEMAKING

By the authority vested in the Missouri State Board of Registration for the Healing Arts under section 334.125, RSMo 2000, and section 334.100.2.(4)(f), RSMo Supp. 2012, the board adopts a rule as follows:

20 CSR 2150-2.170 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on September 17, 2012 (37 MoReg 1401-1403). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The board received two (2) comments on the proposed rule.

COMMENT #1: Robert Scanlon, with the Missouri Association of Osteopathic Physicians and Surgeons, is in support of the board's position on the use of HCG and the informed consent. The association requests that the rule be more aligned with language in the Informed Consent and clearly state the board's concern with the use of HCG for weight loss and obesity treatment.

RESPONSE AND EXPLANATION OF CHANGE: The board agreed and has amended the proposed rule.

COMMENT #2: Thomas Holloway, with the Missouri State Medical Association, submitted a letter in support of the rule. The association suggested that the term "comprehensive" be inserted before "physical examination" in section (d) on the Informed Consent form.

RESPONSE AND EXPLANATION OF CHANGE: The board agreed to change the Informed Consent form.

20 CSR 2150-2.170 Human Chorionic Gonadotropin (HCG) of No Medical or Osteopathic Value in the Treatment of Obesity or Weight Loss

(1) Pursuant to authority granted to the board by section 334.100.2(4)(f), RSMo, the board declares the use of Human Chorionic Gonadotropin (HCG) on a patient is of no medical or osteopathic value in weight loss or the treatment of obesity.

(2) The board shall not seek disciplinary action against a licensee based solely on the use of HCG for weight loss and obesity treatment if the licensee has the patient sign the Informed Consent for HCG form, included herein, before beginning the non-approved use of HCG on a patient.

Informed Consent for Human Chorionic Gonadotropin (HCG)

Patient's Name: _____

Address: _____

Age: _____ Sex: ___Male ___Female

Name and Address of Treating Physician:

Malignancy, disease, illness or physical condition diagnosed for medical treatment with HCG:

My physician has explained to me and I fully understand:

- (a) that the FDA package insert for HCG states, "HCG has not been demonstrated to be effective adjunctive therapy in the treatment of obesity. There is no substantial evidence that it increases weight loss beyond that resulting from caloric restriction, that it causes a more attractive or 'normal' distribution of fat, or that it decreases the hunger and discomfort associated with calorie-restricted diets";
- (b) because of the potential for side effects, the FDA package insert suggests that HCG should be used with caution in patients with certain conditions, including cardiac diseases, renal disease, epilepsy, migraine and asthma;
- (c) that the American Society of Bariatric Physicians has issued a position statement that the use of HCG for weight loss is not recommended. Bariatric medicine is the field of medicine which specializes in the evaluation and treatment of overweight people through medical management;
- (d) prior to prescribing medication for weight loss a physician should obtain a complete medical history, perform a comprehensive physical examination of the patient and order appropriate tests to include, but not limited to, an EKG and tests of thyroid function, liver function, and kidney function to confirm that there are no medical conditions which are a contraindication to the use of HCG;
- (e) that there are no peer-reviewed studies supporting the use of HCG in weight loss;
- (f) that the federal government and most insurance companies do not pay for or reimburse for treatment with HCG;
- (g) that the Missouri State Board of Registration for the Healing Arts has monitored the development of the scientific literature on HCG and has concluded that HCG

has been authoritatively demonstrated to be ineffective in the treatment of obesity and weight loss;

- (h) that the Missouri State Board of Registration for the Healing Arts has determined that the use of HCG for obesity or weight loss by Missouri citizens may be harmful to their health;
- (i) as of December 6, 2011, the FDA has prohibited the sale of "homeopathic" and over the counter HCG diet products and declared them fraudulent and illegal;
- (j) that neither the American Medical Association, the American Osteopathic Association, nor any other recognized independent medical association recommend the use of HCG for the treatment of obesity or weight loss;
- (k) that the Missouri State Board of Registration for the Healing Arts strongly recommends that Missouri citizens not undergo HCG treatment for obesity or weight loss; and
- (l) that treatment with HCG may not begin until three business days have expired after the date of my execution of this informed consent.

Physician's Signature

Date

I have read and understand the above. Notwithstanding having read and understood the above, I hereby elect to undergo treatment with HCG.

Patient's Signature

Date

**Title 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION
Division 2263—State Committee for Social Workers
Chapter 1—General Rules**

ORDER OF RULEMAKING

By the authority vested in the State Committee for Social Workers under sections 173.1400.1.(2), 337.627.1.(8), and 337.647.2.(2) and .3, RSMo Supp. 2012, the board adopts a rule as follows:

20 CSR 2263-1.040 School Social Worker Examinations
Approved by the Committee **is adopted.**

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on November 1, 2012 (37 MoReg 1601-1604). No changes have been made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 22—MISSOURI CONSOLIDATED
HEALTH CARE PLAN
Division 10—Health Care Plan
Chapter 2—State Membership
ORDER OF RULEMAKING**

By the authority vested in the Missouri Consolidated Health Care Plan under section 103.059, RSMo 2000, the director amends a rule as follows:

22 CSR 10-2.094 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 1, 2012 (37 MoReg 1474-1476). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: Missouri Consolidated Health Care Plan (MCHCP) received one (1) comment on the proposed amendment.

COMMENT #1: MCHCP staff commented that, under section (2),

clarification is needed that a member enrolled in the TRICARE Supplement Plan is not eligible to participate in the tobacco-free incentive.

RESPONSE AND EXPLANATION OF CHANGE: Based on MCHCP staff's comment, clarification was made under section (2) that a member enrolled in the TRICARE Supplement Plan is not eligible to participate in the tobacco-free incentive.

22 CSR 10-2.094 Tobacco-Free Incentive Provisions and Limitations

(2) Limitations and exclusions—The following members are not eligible to participate in the tobacco-free incentive:

(C) Medicare or TRICARE Supplement Plan terminated vested subscriber;

(D) Medicare or TRICARE Supplement Plan long-term disability subscriber;

(E) Medicare or TRICARE Supplement Plan survivor subscriber;

(F) Medicare or TRICARE Supplement Plan COBRA subscriber;

(G) Medicare or TRICARE Supplement Plan retiree subscriber;

(H) Medicare or TRICARE Supplement Plan spouses covered by any other eligible subscriber; and

Title 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN Division 10—Health Care Plan Chapter 2—State Membership

ORDER OF RULEMAKING

By the authority vested in the Missouri Consolidated Health Care Plan under section 103.059, RSMo 2000, and 103.078, RSMo Supp. 2012, the director adopts a rule as follows:

22 CSR 10-2.110 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on October 1, 2012 (37 MoReg 1477-1483). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: Missouri Consolidated Health Care Plan (MCHCP) received fourteen (14) comments on the proposed rule.

COMMENT #1: MCHCP staff commented that, under part (2)(B)2.A.(IV), clarification is needed that a stepchild of a subscriber is eligible for coverage after the death of a child's natural parent.

RESPONSE AND EXPLANATION OF CHANGE: Based on MCHCP staff's comment, clarification was made under part (2)(B)2.A.(IV), regarding the circumstances under which a stepchild of a subscriber is eligible for coverage after the death of the stepchild's natural parent.

COMMENT #2: MCHCP staff commented that, under part (2)(B)2.A.(VIII), clarification is needed of when a newborn of the dependent is eligible for coverage.

RESPONSE AND EXPLANATION OF CHANGE: Based on MCHCP staff's comment, clarification was made under part (2)(B)2.A.(VIII), that a newborn of a dependent member is eligible so long as the newborn's parent continues to be covered as a dependent member of the subscriber.

COMMENT #3: MCHCP staff commented that, under paragraph (2)(B)3., clarification is needed of when coverage ends when a cov-

ered dependent loses his/her eligibility.

RESPONSE AND EXPLANATION OF CHANGE: Based on MCHCP staff's comment, clarification was made under paragraph (2)(B)3., that when a covered dependent loses his/her eligibility, the subscriber must notify MCHCP within thirty-one (31) days of the loss of eligibility.

COMMENT #4: MCHCP staff commented that, under subsection (3)(A) clarification is needed of when an eligible foster parent's thirty-one (31) days to enroll begins.

RESPONSE AND EXPLANATION OF CHANGE: Based on MCHCP staff's comment, subsection (3)(A) states that an eligible foster parent's thirty-one days to enroll begins thirty-one (31) days from the date MCHCP sends a letter notifying the foster parent of his/her eligibility to enroll.

COMMENT #5: MCHCP staff commented that, under subsection (3)(C), clarification is needed that a subscriber and his/her dependents are defaulted to a plan when they are currently enrolled and do not complete enrollment during the open enrollment period.

RESPONSE AND EXPLANATION OF CHANGE: Based on this comment, MCHCP has added paragraph (3)(C)5. to clarify that eligible foster parents who are currently enrolled and do not complete enrollment during the open enrollment period, will be enrolled by default at the same level of coverage in the PPO 600 Plan provided through the vendor the foster parent is currently enrolled in, effective the first day of the next calendar year.

COMMENT #6: MCHCP staff commented that, under subsection (3)(C), clarification is needed of the deadline to submit forms that are incomplete or contain errors.

RESPONSE AND EXPLANATION OF CHANGE: Based on this comment, MCHCP has added paragraph (3)(C)6. to clarify that the foster parent must submit a corrected form to MCHCP by the date enrollment was originally due to MCHCP or ten (10) business days from the date MCHCP notifies the foster parent, whichever is later.

COMMENT #7: MCHCP staff commented that, under section (5), clarification is needed of the proof of eligibility requirements.

RESPONSE AND EXPLANATION OF CHANGE: Section (5) has been changed to clarify that proof of eligibility is required for both subscribers and dependents.

COMMENT #8: MCHCP staff commented that, under paragraph (5)(A)2., clarification is needed that an additional ten (10) days from the initial due date to submit valid proof of eligibility will not be granted.

RESPONSE AND EXPLANATION OF CHANGE: Based on MCHCP staff's comment, clarification was made under paragraph (5)(A)2., that if valid proof of eligibility for a newborn is not received within ninety (90) days of birth, coverage for a newborn will terminate on day ninety-one (91).

COMMENT #9: MCHCP staff commented that, under subsection (5)(B), clarification is needed of the deadline to submit documentation of proof of loss of other coverage.

RESPONSE AND EXPLANATION OF CHANGE: Based on MCHCP staff's comment, clarification was made under subsection (5)(B), that proof of loss of employer-based group health coverage must be submitted within sixty (60) days of enrollment.

COMMENT #10: MCHCP staff commented that, under subsection (5)(D), clarification is needed of the documentation required to continue eligibility beyond age twenty-six (26) due to a permanent disability.

RESPONSE AND EXPLANATION OF CHANGE: Based on MCHCP staff's comment, clarification was made under subsection (5)(D), that documentation that the permanently disabled dependent

was entitled to and receiving disability benefits prior to turning age twenty-six (26) is required and that the documentation could be from the Social Security Administration, representation from the dependent's physician, or by sworn statement from the subscriber.

COMMENT #11: MCHCP staff commented that, under subparagraph (6)(A)3.A., clarification is needed of the circumstances in which a subscriber may cancel coverage.

RESPONSE AND EXPLANATION OF CHANGE: Based on MCHCP staff's comment, clarification was made under subparagraph (6)(A)3.A., that coverage ends on the last day of the month in which the divorce decree and completed form are received by MCHCP or MCHCP otherwise receives credible evidence of a final divorce that results in loss of eligibility under the plan.

COMMENT #12: MCHCP staff commented that, under subsection (7)(B), clarification is needed that a member may not retroactively cancel coverage on his/her spouse due to a divorce.

RESPONSE AND EXPLANATION OF CHANGE: To avoid the possibility of retroactive terminations, subsection (7)(B), stating a subscriber may retroactively cancel coverage on his/her spouse to be effective on the last day of the month in which a divorce was final, was deleted.

COMMENT #13: MCHCP staff commented that, under subsection (7)(C), clarification is needed of the circumstances in which a subscriber may cancel coverage.

RESPONSE: After consideration MCHCP has determined no changes are necessary.

COMMENT #14: MCHCP staff commended that, under paragraph (8)(C)1., clarification is needed of when a subscriber must notify MCHCP of a change in status.

RESPONSE AND EXPLANATION OF CHANGE: Based on MCHCP staff's comment, clarification was made under paragraph (8)(C)1., that the subscriber or applicable member must notify MCHCP within sixty (60) days of a change in status to be eligible for COBRA coverage.

22 CSR 10-2.110 General Foster Parent Membership Provisions

(2) Eligibility Requirements.

(B) Dependent Coverage. Eligible dependents include:

1. Spouse. If both spouses are eligible foster parents, each spouse must enroll separately;

2. Children.

A. Children may be covered through the end of the month in which they turn twenty-six (26) years old if they meet one (1) of the following criteria:

(I) Natural child of subscriber or spouse;

(II) Legally-adopted child of subscriber or spouse;

(III) Child legally placed for adoption of subscriber or spouse;

(IV) Stepchild of subscriber. Such child will continue to be considered a dependent after the stepchild relationship ends due to the death of the child's natural parent and subscriber's spouse;

(V) Foster child of subscriber or spouse. Such child will continue to be considered a dependent child after the foster child relationship ends by operation of law when the child ages out if the foster child relationship between the subscriber or spouse and the child was in effect the day before the child ages out;

(VI) Grandchild for whom the covered subscriber or covered spouse has legal guardianship or legal custody;

(VII) A child for whom the subscriber or spouse is the court-ordered legal guardian under a guardianship of a minor. Such child will continue to be considered a dependent child after the guardianship ends by operation of law when the child becomes eighteen (18) years old if the guardianship of a minor relationship

between the subscriber or spouse and the child was in effect the day before the child became eighteen (18) years old;

(VIII) Newborn of a dependent so long as the newborn's parent continues to be covered as a dependent of the subscriber; or

(IX) Child for whom the subscriber or covered spouse is required to provide coverage under a Qualified Medical Child Support Order (QMCSO).

B. A child who is twenty-six (26) years old or older and is permanently disabled in accordance with subsection (5)(C) may be covered only if such child was disabled the day before the child turned twenty-six (26) years old and has remained continuously disabled.

C. A child may only be covered by one (1) parent if his/her parents are married to each other and are both covered under an MCHCP medical plan.

D. A child may have dual coverage if the child's parents are divorced or have never married, and both have coverage under an MCHCP medical plan. MCHCP will only pay for a service once, regardless of whether the claim for the child's care is filed under multiple subscribers' coverage. If a child has coverage under two (2) subscribers, the child will have a separate deductible, copayment, and coinsurance under each subscriber. MCHCP will process the claim and apply applicable cost-sharing using the coverage of the subscriber who files the claim first. The second claim for the same services will not be covered. If a provider files a claim simultaneously under both subscribers' coverage, the claim will be processed under the subscriber whose birthday is first in the calendar year. If both subscribers have the same birthday, the claim will be processed under the subscriber whose coverage has been in effect for the longest period of time; or

3. Changes in dependent status. If a covered dependent loses his/her eligibility, the subscriber must notify MCHCP within thirty-one (31) days of the loss of eligibility. Coverage will end on the last day of the month that the completed form is received by MCHCP or the last day of the month MCHCP otherwise receives credible evidence of loss of eligibility under the plan.

(3) Enrollment Procedures.

(A) An eligible foster parent must enroll for coverage within thirty-one (31) days from the date of the letter notifying the foster parent of his/her eligibility to enroll. If enrolling dependents, proof of eligibility must be submitted as defined in section (5).

(C) An eligible foster parent may apply for coverage for himself/herself and/or for his/her dependents if one (1) of the following occurs:

1. Occurrence of a life event, which includes marriage, birth, adoption, and placement of children. A special enrollment period of thirty-one (31) days shall be available beginning with the date of the life event. It is the eligible foster parent's responsibility to notify MCHCP of the life event; or

2. Employer-sponsored group coverage loss. An eligible foster parent and his/her dependents may enroll within sixty (60) days if s/he involuntarily loses employer-sponsored coverage under one (1) of the following circumstances:

A. Employer-sponsored medical, dental, or vision plan terminates;

B. Eligibility for employer-sponsored coverage ends;

C. Employer contributions toward the premiums end; or

D. Consolidated Omnibus Budget Reconciliation Act (COBRA) coverage ends; or

3. If an eligible foster parent or his/her dependent loses MO HealthNet or Medicaid status, s/he may enroll in an MCHCP plan within sixty (60) days of the date of loss; or

4. If an eligible foster parent or eligible foster parent's spouse receives a court order stating s/he is responsible for coverage of dependent, the eligible foster parent may enroll the dependent in an MCHCP plan within sixty (60) days of the court order; or

5. If an eligible foster parent is currently enrolled and does not

complete enrollment during the open enrollment period, the foster parent and his/her dependents will be enrolled at the same level of coverage in the PPO 600 Plan provided through the vendor the foster parent is currently enrolled in, effective the first day of the next calendar year; or

6. If an eligible foster parent submits an Open Enrollment Worksheet or an Enroll/Change/Cancel form that is incomplete or contains errors, MCHCP will notify the foster parent of such by mail, phone, or secure message. The foster parent must submit a corrected form to MCHCP by the date enrollment was originally due to MCHCP or ten (10) business days from the date MCHCP notifies the foster parent, whichever is later.

(5) Proof of Eligibility. Proof of eligibility documentation is required for all dependents and subscribers, as necessary. Enrollment is not complete until proof of eligibility is received by MCHCP. A subscriber must include his/her MCHCPid or Social Security number on the documentation. If proof of eligibility is not received, MCHCP will send a letter requesting it from the subscriber. Except for open enrollment, documentation must be received within thirty-one (31) days of the letter date, or coverage will not take effect for those individuals whose proof of eligibility was not received. MCHCP reserves the right to request that such proof of eligibility be provided at any time upon request. If such proof is not received or is unacceptable as determined by MCHCP, coverage will terminate or never take effect. If enrolling during open enrollment, proof of eligibility must be received by November 20, or coverage will not take effect the following January 1 for those individuals whose proof of eligibility was not received.

(A) Addition of Dependents. Required documentation should accompany the enrollment for coverage, except when adding a newborn. Failure to provide acceptable documentation with the enrollment will result in the dependent not having coverage until such proof is received, subject to the following:

1. If proof of eligibility is not received with the enrollment, such proof will be requested by letter sent to the subscriber. The enrollment will not be processed until after proof of eligibility is received. Documentation shall be received no later than thirty-one (31) days from the date of the letter requesting such proof. If invalid proof of eligibility is received, the subscriber is allowed an additional ten (10) days from the initial due date to submit valid proof of eligibility. Failure to provide the required documentation within the above stated time frames will result in the dependent being ineligible for coverage until the next open enrollment period;

2. Coverage is provided for a newborn of a member from the moment of birth. The member must initially notify MCHCP of the birth verbally or in writing within thirty-one (31) days of the birth date. MCHCP will then send an enrollment form and letter notifying the member of the steps to continue coverage. The member is allowed an additional ten (10) days from the date of the plan notice to return the enrollment form. Coverage will not continue unless the enrollment form is received within thirty-one (31) days of the birth date or ten (10) days from the date of the notice, whichever is later. Newborn proof of eligibility must be submitted within ninety (90) days of the date of birth. If proof of eligibility is not received, coverage will terminate on day ninety-one (91) from the birth date;

3. If placement papers or filed petition for adoption were used as proof of eligibility, final adoption papers must be submitted to MCHCP within one hundred eighty (180) days from the enrollment date; and

4. Acceptable forms of proof of eligibility are included in the following chart:

Circumstance	Documentation
Birth of dependent(s)	Government-issued birth certificate or other government-issued or legally-certified proof of eligibility listing subscriber as parent and newborn's full name and birth date
Addition of step-child(ren)	Marriage license to biological or legal parent/guardian of child(ren); and government-issued birth certificate or other government-issued or legally-certified proof of eligibility for child(ren) that names the subscriber's spouse as a parent or guardian and child's full name and birth date
Addition of foster child(ren)	Placement papers in subscriber's care
Adoption of dependent(s)	Adoption papers; Placement papers; or Filed petition for adoption listing subscriber as adoptive parent
Legal guardianship or legal custody of dependent(s)	Court-documented guardianship or custody papers listing member as guardian or custodian (Power of Attorney is not acceptable)
Newborn of covered dependent	Government-issued birth certificate or legally-certified proof of eligibility for newborn listing covered dependent as parent with newborn's full name and birth date
Marriage	Marriage license or certificate recognized by Missouri law
Divorce	Final divorce decree; or Notarized letter from spouse stating s/he is agreeable to termination of coverage pending divorce or legal separation
Death	Government-issued death certificate
Loss of MO HealthNet or Medicaid	Letter from MO HealthNet or Medicaid stating who is covered and the date coverage terminates
MO HealthNet Premium Assistance	Letter from MO HealthNet or Medicaid stating member is eligible for the premium assistance program
Qualified Medical Child Support Order	Qualified Medical Child Support Order
Prior Group Coverage	Letter from previous insurance carrier or former employer stating date coverage terminated, length of coverage, reason for coverage termination, and list of dependents covered

(B) An eligible foster parent and his/her dependents enrolling due to a loss of employer-sponsored group coverage. The foster parent must submit documentation of proof of loss within sixty (60) days of enrollment. Failure to provide the required documentation within the above stated time frames will result in the foster parent and his/her dependents being ineligible for coverage until the next open enrollment period.

(C) The eligible foster parent is required to notify MCHCP on the appropriate form of the dependent's name, date of birth, eligibility date, and Social Security number.

(D) Disabled Dependent.

1. A newly eligible foster parent may enroll his/her permanently disabled dependent or a currently enrolled permanently disabled dependent turning age twenty-six (26) may continue coverage beyond age twenty-six (26), provided the following documentation is submitted to the plan prior to the dependent's twenty-sixth birthday for the currently enrolled permanently disabled dependent or within thirty-one (31) days of enrollment of a new foster parent and his/her permanently disabled dependent:

A. Evidence that the permanently disabled dependent was

entitled to and receiving disability benefits prior to turning age twenty-six (26). Evidence could be from the Social Security Administration (SSA), representation from the dependent's physician, or by sworn statement from the subscriber.

B. A letter from the dependent's physician describing the current disability and verifying that the disability predates the dependent's twenty-sixth birthday and the disability is permanent; and

C. A benefit verification letter dated within the last twelve (12) months from the SSA confirming the dependent is still considered disabled by SSA.

2. If a disabled child over the age of twenty-six (26) is determined to be no longer disabled by the SSA, coverage will terminate the last day of the month in which the disability ends.

3. Once the disabled dependent's coverage is cancelled or terminated, s/he will not be able to enroll at a later date.

(E) Members who are eligible for Medicare benefits under Part A, B, or D must notify MCHCP of their eligibility and provide a copy of the member's Medicare card within thirty-one (31) days of the Medicare eligibility date. Claims will not be processed until the required information is provided. If Medicare coverage begins before

turning age sixty-five (65), the member will receive a Medicare disability questionnaire. The member must submit the completed questionnaire to MCHCP for the Medicare eligibility to be submitted to the medical plan.

(6) Termination.

(A) Unless stated otherwise, termination of coverage shall occur on the last day of the calendar month coinciding with or after any of the following events, whichever occurs first:

1. Failure to make premium payment for the cost of coverage. If MCHCP has not received payment of premium at the end of the thirty-one- (31-) day grace period, the subscriber will be retroactively terminated to the date covered by his/her last paid premium. The subscriber will be responsible for the value of services rendered after the retroactive termination date, including, but not limited to, the grace period;

2. Loss of foster parent licensure as determined by the Department of Social Services;

3. With respect to dependents, upon divorce or legal separation from the subscriber or when a child reaches age twenty-six (26). A subscriber must terminate coverage for his/her spouse and stepchild(ren) at the time his/her divorce is final.

A. When a subscriber drops dependent coverage after a divorce, s/he must submit a completed form, a copy of the divorce decree, and current addresses of all affected dependents. Coverage ends on the last day of the month in which the divorce decree and completed form are received by MCHCP or MCHCP otherwise receives credible evidence of a final divorce that results in loss of member eligibility under the plan;

4. Death of dependent. The dependent's coverage ends on the date of death. The subscriber must submit a completed form and a copy of the death certificate within thirty-one (31) days of death;

5. A member's act, practice, or omission that constitutes fraud or intentional misrepresentation of material fact;

6. A member's threatening conduct or perpetrating violent acts against MCHCP or an employee of MCHCP; or

7. A subscriber has obtained access to other health insurance coverage through an employer or spouse's employer.

(7) Voluntary Cancellation of Coverage.

(B) If a member receives covered services after the voluntary cancellation of coverage, MCHCP may recover the contracted charges for such covered services from the subscriber or the provider, plus its cost to recover such charges, including attorneys' fees.

(C) A subscriber cannot cancel medical coverage on his/her spouse or children during divorce or legal separation proceedings unless s/he submits a notarized letter from his/her spouse stating s/he is agreeable to termination of coverage pending divorce.

(D) A subscriber may only cancel dental and/or vision coverage during the year for themselves or their dependents if they are no longer eligible for coverage.

(8) Federal Consolidated Omnibus Budget Reconciliation Act (COBRA).

(C) Required Notifications.

1. To be eligible for COBRA, the subscriber or applicable member must notify MCHCP of a divorce, legal separation, a child turning age twenty-six (26), or Medicare entitlement within sixty (60) days of the event date.

2. The Department of Social Services Children's Division will notify MCHCP when a foster parent is no longer eligible.

3. If a COBRA participant is disabled within the first sixty (60) days of COBRA coverage and the disability continues for the rest of the initial eighteen- (18-) month period of continuing coverage, the affected individual must notify MCHCP that s/he wants to continue coverage within sixty (60) days, starting from the latest of: 1) the date on which the SSA issues the disability determination; 2) the date on which the qualifying event occurs; or 3) the date on which the qual-

ified beneficiary receives the COBRA general notice. The affected individual must also notify MCHCP within thirty-one (31) days of any final determination that the individual is no longer disabled.

**Title 22—MISSOURI CONSOLIDATED
HEALTH CARE PLAN
Division 10—Health Care Plan
Chapter 2—State Membership**

ORDER OF RULEMAKING

By the authority vested in the Missouri Consolidated Health Care Plan under section 103.059, RSMo 2000, the director adopts a rule as follows:

22 CSR 10-2.120 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on October 1, 2012 (37 MoReg 1484-1485). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: Missouri Consolidated Health Care Plan (MCHCP) received four (4) comments on the proposed rule.

COMMENT #1: MCHCP staff commented that, under section (3), clarification is needed that a member enrolled in the TRICARE Supplement Plan is not eligible to participate in wellness program.

RESPONSE AND EXPLANATION OF CHANGE: Based on MCHCP staff's comment, clarification was made under section (3) that a member enrolled in the TRICARE Supplement Plan is not eligible to participate in the wellness program.

COMMENT #2: MCHCP staff commented that, under paragraph (4)(A)3., clarification is needed for who may complete and sign the health care provider form.

RESPONSE AND EXPLANATION OF CHANGE: Based on MCHCP staff's comment, clarification was made by adding subparagraph (4)(A)3.D., stating that the Health Care Provider form must be completed by the health care provider who conducted the annual wellness exam.

COMMENT #3: MCHCP staff commented that, under subsection (4)(B), clarification is needed for the deadline to complete the Partnership Agreement and Health Assessment for a new subscriber or a subscriber adding medical coverage due to a life event.

RESPONSE AND EXPLANATION OF CHANGE: Based on MCHCP staff's comment, clarification was made under subsection (4)(B), that the Partnership Agreement and Health Assessment must be completed within sixty (60) days of the effective date of coverage or May 31, 2013, whichever is earlier, and that the vendor must receive the Health Care Provider form no later than May 31, 2013, for a new subscriber or a subscriber adding medical coverage due to a life event.

COMMENT #4: MCHCP staff commented that, under section (4), clarification is needed for who is eligible for health coaching.

RESPONSE AND EXPLANATION OF CHANGE: Based on MCHCP staff's comment, clarification was made by adding subsection (4)(G), stating that subscribers failing to fulfill all requirements of the Partnership Agreement will lose the Partnership Incentive and will not be eligible for health coaching.

22 CSR 10-2.120 Wellness Program

(3) Limitations and exclusions—The following members are not eligible to participate in the wellness program:

(D) Medicare or TRICARE Supplement Plan terminated vested subscriber;

(E) Medicare or TRICARE Supplement Plan long-term disability subscriber;

(F) Medicare or TRICARE Supplement Plan survivor subscriber;

(G) Medicare or TRICARE Supplement Plan COBRA subscriber;

(H) Medicare or TRICARE Supplement Plan retiree subscriber; and

(4) Participation—

(A) Subscribers may earn an incentive by completing the following:

1. The online Partnership Agreement by November 30, 2012;

2. The online Health Assessment by November 30, 2012; and

3. Receive an annual wellness exam between June 1, 2012, and May 31, 2013, and submit the Health Care Provider Form that includes the subscriber's height, weight, blood pressure, date of exam, and health care provider name and signature to MCHCP's wellness vendor by May 31, 2013. The vendor must receive the form by May 31, 2013.

A. Health Care Provider form. The Health Care Provider form is unique for each subscriber and may only be obtained by the subscriber through myMCHCP. The form must be downloaded by each subscriber for his/her use only.

B. Health Care Provider form errors. Forms submitted with errors will not be accepted. Unacceptable errors include, but are not limited to:

(I) Form not unique to submitting subscriber;

(II) Provider printed name not legible;

(III) Provider name or signature missing;

(IV) Height missing or not legible;

(V) Weight missing or not legible;

(VI) Blood pressure missing or not legible;

(VII) Date of physical exam missing or not legible; and

(VIII) Handwritten changes made to the preprinted name and unique ID contained on the form.

C. Annual wellness exam. An annual wellness exam is an annual preventive exam for men or women; and

D. Qualified health care provider. The Health Care Provider form must be completed by the health care provider who conducted the annual wellness exam;

(B) A new employee or eligible subscriber adding medical coverage due to a life event from November 1, 2012, through May 31, 2013, must complete the Partnership Agreement and Health Assessment within sixty (60) days of the effective date of coverage to receive the partnership incentive. The incentive will start the beginning of the second month after the eligible subscriber completes the Health Assessment. To continue the incentive July through December 2013, the employee must receive an annual wellness exam between June 1, 2012, and May 31, 2013, and submit the Health Care Provider form that includes the subscriber's height, weight, blood pressure, date of exam, and health care provider name and signature to MCHCP's wellness vendor by May 31, 2013. The Partnership Agreement and Health Assessment must be completed within sixty (60) days of the effective date of coverage or May 31, 2013 whichever is earlier and the vendor must receive the Health Care Provider form no later than May 31, 2013.

1. Health Care Provider form. The Health Care Provider form is unique for each subscriber and may only be obtained by the subscriber through myMCHCP. The form must be downloaded by each subscriber for his/her use only.

2. Health Care Provider form errors. Forms submitted with errors will not be accepted. Unacceptable errors include, but are not limited to:

A. Form not unique to submitting subscriber;

B. Provider printed name not legible;

C. Provider name or signature missing;

D. Height missing or not legible;

E. Weight missing or not legible;

F. Blood pressure missing or not legible;

G. Date of physical exam missing or not legible; and

H. Handwritten changes made to the preprinted name and unique ID contained on the form.

3. Annual wellness exam. An annual wellness exam is an annual preventive exam for men or women;

(E) When Medicare becomes a retiree subscriber's primary insurance payer, the subscriber is no longer eligible to participate and will lose the partnership incentive the first day of the month in which Medicare becomes primary;

(F) Health Coaching. Subscriber data from the Health Assessment and Health Care Provider form will be used to identify health risks. Subscribers identified to be at moderate to high health risk for weight, eating, stress, exercise, tobacco use, back care, blood pressure, and cholesterol will be offered voluntary phone health coaching to reduce their risk. Health coaching is not required to receive the partnership incentive; and

(G) Subscribers failing to fulfill all requirements of the Partnership Agreement by said deadlines will lose the partnership incentive and will not be eligible for health coaching.