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SECRETARY OF STATE
ADMINISTRATIVE RULES

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

PROPOSED AMENDMENT

7 CSR 10-10.070 Procedure for Annual Rating of Contractors. The Missouri Highways and Transportation Commission is amending section (4). COPY

PURPOSE: This proposed amendment clarifies the actions available to a contractor upon receiving an unacceptable rating.

(4) Review Process. If the contractor disagrees with any performance measure finding on the contractor performance project evaluation and cannot resolve the dispute with the resident engineer, it may request in writing that the district engineer review the matter. Such request must be made to the district engineer within twenty-eight (28) days from the date of the mailing of the project evaluation to the contractor. However, the contractor's representative shall first have discussed the project evaluation response with the resident engineer in order to resolve the dispute. Upon receiving the contractor's written request to review the disputed performance measure finding on the project evaluation, the district engineer shall review the matter and provide the contractor with a written response regarding the particular area of dispute between the contractor and the resident engineer. All reports shall be submitted to the construction and materials division before, but no later than, February 15.

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

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

2. If the contractor has complied with the requirements of paragraph (4)(A)1. above, the contractor shall have ten (10) working days to request an informal hearing to review an unacceptable category or overall performance rating.

3. The contractor shall submit its request for an informal hearing to the following address: Missouri Department of Transportation, Construction and Materials Division, PO Box 270, Jefferson City, MO 65102.

(B) Procedure. If the contractor timely requests an informal hearing, the contractor performance review committee shall advise the contractor of the time, date and place. This is not a contested case under Chapter 536, RSMo. The rules of evidence shall not apply at the hearing.

(C) Review by the Contractor Performance Review Committee. The contractor performance review committee will review the contractor's request and make a recommendation to the chief engineer. The chief engineer's decision regarding the contractor's rating, review of which is held as provided by this section, shall be final and no further commission action is necessary.

AUTHORITY: sections 226.020, 226.130, 227.030 and 227.105, RSMo 2000. Original rule filed*

JOINT COMMITTEE ON

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ADMINISTRATIVE RULES

Dec. 31, 1990, effective July 8, 1991. Emergency rescission and rule filed Nov. 20, 1997, effective Jan. 1, 1998, expired June 29, 1998. Rescinded and readopted: Filed Nov. 20, 1997, effective May 30, 1998. Emergency amendment filed Nov. 9, 1999, effective Nov. 19, 1999, expired May 16, 2000. Amended: Filed Nov. 9, 1999, effective May 30, 2000. Emergency amendment filed Dec. 1, 2000, effective Jan. 1, 2001, expired June 29, 2001. Amended: Filed Dec. 1, 2000, effective May 30, 2001. Amended: Filed Nov. 20, 2002, effective June 30, 2003. Amended: Filed Dec. 5, 2006, effective July 30, 2007. Amended: Filed December 8, 2016.

Original authority: 226.020, RSMo 1939; 226.130, RSMo 1939, amended 1993, 1995; 227.030, RSMo 1939; and 227.105, RSMo 1996.

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 Transportation, Pamela Harlan, Secretary to the Commission, PO Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*