



Rules of
Missouri Department of Transportation
Division 10—Missouri Highways and Transportation
Commission
Chapter 4—Uniform Relocation Assistance

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Title 7—MISSOURI DEPARTMENT OF TRANSPORTATION

Division 10—Missouri Highways and Transportation Commission Chapter 4—Uniform Relocation Assistance

7 CSR 10-4.010 Administrative Review of Denial of Eligibility Or Amount of Relocation Assistance Benefits

PURPOSE: This rule provides a uniform system for administrative review of department determinations as to the eligibility for relocation assistance payments, the amount of relocation assistance payments, or both.

(1) Request for Administrative Review. Any person aggrieved by a final district determination as to eligibility for, the amount of a relocation assistance payment, or both, is entitled to administrative review of the determination by filing a written request for hearing with the district engineer.

(A) Receipt Deadline. The request for hearing must be received by the district engineer within sixty (60) days after receipt by the applicant of the written notice of relocation claim rejection from the district engineer.

(B) Application. To be sufficient to authorize administrative review, the applicant's written request for hearing shall identify the person requesting the hearing, state that such person is eligible for a relocation assistance payment, and request that a relocation assistance payment in a specific amount be made to such person.

(C) Answer. No answer or response by the department is necessary. Upon receipt of a request for hearing, the district engineer immediately shall forward the request along with a copy of the district engineer's written notice of relocation claim rejection to the commission's chief counsel. The chief counsel shall acknowledge receipt of the request and assign counsel as the commission's hearing examiner and department counsel, respectively, to the hearing.

(2) Untimely Request for Administrative Review. Untimely requests for hearing shall result in the appeal board having no jurisdiction to hear the request. As a result, the commission's hearing examiner shall issue an order that dismisses the applicant's request and notify the applicant or counsel for applicant and department counsel in writing by certified mail, return receipt requested of the order.

(3) Hearing Officer. The hearing examiner

will conduct the hearing as provided in Chapter 536, RSMo and this rule, including, but not limited to, ruling on all discovery matters, objections, and motions, and having the hearing record transcribed.

(4) Notice of Hearing. The hearing examiner shall give written notice of the date of the hearing to the applicant or counsel for applicant and counsel for the department, and the hearing date will be not less than fifteen (15) days from the date of the notice. In instances where more than one (1) request for hearing is received from the same applicant, the hearing examiner may consolidate the cases. Either party may request that the hearing examiner grant a continuance. All hearings will be held at the Missouri Department of Transportation Building, 105 W. Capitol Avenue, Jefferson City, MO 65102.

(5) Discovery. Any party may conduct any method of discovery authorized in Chapter 536, RSMo.

(6) Subpoenas. Witnesses may be summoned to appear to give testimony or to give testimony and produce documents from a subpoena or *subpoena duces tecum* issued by the hearing examiner as authorized under section 536.077, RSMo.

(7) Hearing. There are only two (2) ultimate issues in a relocation assistance case—eligibility of the applicant for a relocation assistance payment and the amount of the payment. The applicant presents evidence first at the hearing in support of the applicant's claim for relocation assistance benefits. Then the department presents its evidence. The parties may make closing arguments before conclusion of the hearing. Any party may file a written brief and the hearing examiner may request any party to file a written brief, suggested findings of fact and conclusions of law, or both, within the time set by the hearing examiner.

(8) Record. Any party may obtain a copy of the transcript of the hearing at that party's expense.

(9) Report and Order. The hearing examiner shall submit to the appeal board a copy of the record along with a proposed report and order.

(10) Final Decision of the Appeal Board. The commission delegates to and vests its final authority to determine relocation assistance claims in an appeal board which consists of the chief engineer or a designated assistant,

the assistant to the state design engineer right-of-way, or a designated assistant and the chief counsel or a designated counsel that did not serve as the hearing examiner at the hearing. The board shall render a final decision by a majority vote with each board member having one (1) vote. The appeal board's decision shall be the final decision of the commission.

(11) Conflict With Other Administrative Rules. The provisions of this rule supersede any inconsistent provisions in 7 CSR 10-4.020.

AUTHORITY: sections 226.150 and 523.210, RSMo 2016; 42 U.S.C. Chapter 61; 23 CFR Part 710; and 49 CFR Part 24. * Original rule filed June 9, 1975, effective June 19, 1975. Amended: Filed Nov. 24, 1975, effective Dec. 4, 1975. Refiled March 17, 1976. Rescinded and readopted: Filed March 4, 1983, effective June 15, 1983. Amended: Filed May 17, 1993, effective Jan. 31, 1994. Amended: Filed Nov. 14, 2017, effective June 30, 2018.

*Original authority: 226.150, RSMo 1939, amended 1977 and 523.210, RSMo 1971.

Smith v. Missouri State Highway Commission, 488 SW2d 230 (Mo. App. 1972). Court of Appeals had jurisdiction to review an appeal of State Highway Commission's denial of assistance under the Federal Highway Relocation Assistance Act of 1968. Court held commission's rulings were quasijudicial and affected "private rights" of appellant, thus making judicial review possible by Article 5, Section 22, *Constitution of Missouri*, 1945. ("Contested case.")

Davis Construction Co. v. State Highway Commission, 141 SW2d 214 (Mo. App. 1940). By the terms of section 8106 (now section 226.150, RSMo (1969)) it was the duty of the State Highway Commission when federal funds were made available for use on the projects (road projects), in this case within the limits of the City of Sedalia, to comply with all rules and conditions, that is to say, requirements made by the Bureau of Public Roads, to obtain the payment to the state of Missouri of the allotment made by the federal government.

7 CSR 10-4.020 Relocation Assistance Program

PURPOSE: As a condition to receipt of federal-aid highway funds, the commission is required to comply with the Uniform Relocation Assistance and Real Property



*Acquisition Policies Act of 1970 at 42 U.S.C. 4601. It was held in **Tonnar v. Missouri State Highways and Transportation Commission**, 640 SW2d 527 (Mo. App. 1982) that the commission's practices and procedures for computing relocation assistance benefits provided under federal law must be duly filed under section 536.021, RSMo in order to be effective to govern the rights of the public in this area.*

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

(1) This rule adopts the department's Engineering Policy Guide, Category 236—Right of Way, Article 8, *Relocation Assistance Program*, which is incorporated herein by reference and made a part of this rule as published by the Missouri Highways and Transportation Commission, Design Division, 105 West Capitol Avenue, Jefferson City, MO 65102, September 25, 2018 Edition. This rule does not incorporate any subsequent amendments or additions.

(2) For additional information, contact any of the department's district engineers (see 7 CSR 10-1.010 for addresses).

AUTHORITY: sections 226.150, 227.120, and 523.210, RSMo 2016; 42 U.S.C. Chapter 61; 23 CFR Part 710; and 49 CFR Part 24. Original rule filed March 4, 1983, effective June 15, 1983. Rescinded and readopted: Filed Oct. 14, 1987, effective Jan. 14, 1988. Amended: Filed May 17, 1993, effective Jan. 31, 1994. Amended: March 14, 2007, effective Sept. 30, 2007. Amended: Filed Nov. 14, 2017, effective June 30, 2018. Amended: Filed Dec. 10, 2018, effective July 30, 2019.*

**Original authority: 226.150, RSMo 1939, amended 1977; 227.120, RSMo 1939, amended 2004; and 523.210, RSMo 1971.*