

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

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**Title 7--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 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, shall be entitled to administrative review of the determination by filing a written request for hearing with the district engineer. 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. The applicant's written request for hearing should be filed on a form furnished by the district engineer, but any written request for hearing sufficient to identify the person requesting the hearing and to indicate the reason for the request for hearing shall be deemed a sufficient request for hearing. No other formalities shall be required in the request. No answer or response by the commission shall be required. 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 hearing examiner who shall acknowledge receipt of the request for hearing. Upon receipt of a timely request for administrative review, the hearing examiner shall notify the chief counsel in order that s/he may assign an assistant counsel to represent the commission.

(2) Untimely Request for Administrative Review. Untimely requests for hearing shall be deemed to be denied by the commission and the hearing examiner shall so notify the applicant or counsel for applicant in writing by certified mail, return receipt requested. This decision shall be subject to judicial review under section 536.150, RSMo.

(3) Bias. If the hearing examiner determines at any stage of the proceeding that s/he has prior knowledge of specific facts of a case that s/he deems would prevent him/her from

rendering an objective report and order, s/he immediately shall cease to act and the commission shall provide an alternate hearing examiner.

(4) Notice of Hearing. The hearing examiner shall give written notice of hearing to the applicant or counsel for applicant, the district engineer and the assistant counsel for the commission fixing a time and place determined by the hearing examiner for a hearing. Such notice shall be mailed by the hearing examiner not less than fifteen (15) days before the date of hearing. In instances where more than one (1) request for hearing is received from the same applicant, the hearing examiner may consolidate the cases. If either party requests a continuance, the hearing examiner shall hear and determine the reasonableness of the request. If the request is granted, the hearing examiner shall give written notice fixing a time and place for hearing.

(5) Discovery. Any party may have discovery under section 536.073, RSMo. The hearing examiner shall rule on all disputes between the parties concerning discovery.

(6) Subpoenas. Witnesses may be summoned to appear to give testimony or to give testimony and produce documents under section 536.077, RSMo. At the request of any party, the hearing examiner shall issue a subpoena; provided that subpoenas *duces tecum* shall be issued only by order of the commission or any member of the commission. The hearing examiner shall rule on all disputes between the parties concerning subpoenas.

(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 shall present evidence first at the hearing in support of the claim for relocation assistance benefits. Then the commission shall present its evidence in support of the denial of benefits. Any party shall have the right of cross-examination. Oral or written evidence must be received in the record to be considered by the appeal board in reaching its final decision. Any party shall be entitled to present oral argument at the hearing which, if presented, shall be preserved in the record. Any party may file a written brief and the hearing examiner may require 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. The hearing examiner may rule on all objections and motions to facilitate submission of the case for a decision by the appeal board.

(8) Record. At the conclusion of the hearing, the hearing examiner shall cause the entire record to be transcribed in sufficient quantities to satisfy the needs of the applicant and the appeal board. The original shall be retained as a permanent record of the commission. The applicant may obtain a copy of the transcript and exhibits at the applicant's expense.

(9) Report and Order. As soon as practical after receipt of the transcript and briefs, suggestions of the parties, if any, or both, the hearing examiner shall submit to the other members of the appeal board a copy of the record along with a suggested report and order.

(10) Final Decision of the Appeal Board. Final authority to determine relocation assistance claims shall be vested in the appeal board which shall consist of the chief engineer or a designated assistant, the chief of the right-of-way division or a designated assistant and the hearing examiner. Each member of the appeal board shall have one (1) vote. The board, after each member reads the record, shall render a final decision by a majority vote. If briefs or oral arguments are submitted, the members of the board, in lieu of reading the entire record, may consider those portions of the record cited or referred to in the arguments or briefs to arrive at a final decision. The appeal board shall render its final decision in writing which shall be based upon competent and substantial evidence upon the whole record. The appeal board's decision shall be the final decision of the agency as though entered by the commission and it shall be subject to judicial review under section 536.100, RSMo. The hearing examiner shall forward, as soon as practical after the board's decision, a copy of the decision to the applicant or his/her attorney by certified mail, return receipt requested.

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

AUTHORITY: sections 226.150 and 523.210, RSMo 1986; 42 U.S.C. 4630; 42 U.S.C. 4633; 23 CFR 740.8; and 23 CFR 740.37. 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.*



**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.

Logan v. Matthews 330 Mo. 1213, 52 SW2d 989 (Mo. banc 1932). Section 8106 (now section 226.150, RSMo (1969)) directs the State Highway Commission to comply with the rules and conditions made by the federal government, which can include authorizing a change of the location of a highway so as to deviate from the towns through which the statute says the road shall run.

Op. Atty. Gen. No. 218, Hyder (3-22-71). The State Highway Commission cannot include in contracts for highway construction involving federal aid a provision as to wage determination by the Missouri Department of Labor and Industrial Relations during the period of the suspension of the Davis-Bacon Act and related federal acts pursuant to the presidential proclamation of February 23, 1971.

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 com-

puting 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.

Editor's Note: The secretary of state has determined that the publication of this rule in its entirety would be unduly cumbersome or expensive. The entire text of the material referenced has been filed with the secretary of state. This material may be found at the Office of the Secretary of State or at the headquarters of the agency and is available to any interested person at a cost established by law.

(1) This rule consists of Chapter VIII, *Relocation Assistance Program Manual*, of the Missouri State Highway and Transportation Commission. Chapter VIII is divided into sixteen (16) sections as follows: general information, organization, relocation assistance advisory service, public information, preacquisition requirements, administrative records and reports, moving cost payments, in-lieu-of moving payments, replacement housing payments, incidental closing costs, increased interest payments, rental subsidy payments, down-payment assistance, last resort housing, possession policies and vacancy notices and appeals.

(2) For additional information contact the division chief of right-of-way or any of the district engineers (see 7 CSR 10-1.010 for addresses).

AUTHORITY: sections 226.150 and 523.210, RSMo 1986; 42 U.S.C. 4630; 42 U.S.C. 4633; and 49 CFR Part 25.* *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.*

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