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Title [4]7—DEPARTMENT OF [ECONOMIC DEVELOPMENT]TRANSPORTATION

Division 265—[Division of] Motor Carrier and Railroad Safety

Chapter 8 [2]—Railroads [Practice and Procedure]

SECRETARY OF STATE
ADMINISTRATIVE RULES

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PROPOSED AMENDMENT

[4]7 CSR 265-[2]8.320 **Railroad-Highway Cross[-]ing Applications.** The Missouri Highways and Transportation Commission is moving the rule to Title 7, deleting the “Questionnaire for Grade Separation” and “Questionnaire for New Grade Crossing” forms, and subsections (1)(J) and (1)(L); amending sections (1), (2) and subsection (1)(H), adding new subsections (2)(A) and (2)(B); and renumbering the remaining sections (1)(K), (1)(M), (1)(N), and (1)(O).

PURPOSE: This amendment moves the rule from Title 4 to Title 7, amends the rule to reflect current procedures, removes two forms to give greater applicant flexibility to submit applicant information, deletes the now obsolete requirement that an application state the amount of funds from the grade crossing account for proposed safety improvements, deletes an obsolete reference to administrative law judges, authorizes the division director to decide a railroad safety matter raised under an application to the commission if a hearing is waived by all parties to the application or refer the case to the Administrative Hearing Commission, and eliminates unnecessary restrictive language.

(1) Persons **other than division staff** filing applications for a [division] **commission** order relating to the location, construction, installation, operation, maintenance, apportionment of expenses, use, warning devices, alteration, relocation, reconstruction, separation of grades, abolishment or closure of a railroad-highway crossing, at grade or otherwise, shall file in writing an original [plus four (4) copies of the] application with the director of the division[,] in accordance with this section[,] and [4 CSR 265-2.080, 4 CSR 265-8.070 and] [4]7 CSR 265-8.071[, whenever applicable. Every application and shall include] **that includes** at least the following information:

(C) The location and description of each highway at each crossing affected by the application, including, whenever applicable:

8. [Who] **The entity that** maintains the highway on each side of the railroad tracks;

(F) Statement of whether there is any agreement between the parties in interest with reference to the proposed construction, safety improvements or other relief, or with reference to the proposed allocation of costs[. If so, a] **with a copy of the executed agreement, if applicable [shall be] attached [to the application] as Exhibit 1;**

(G) Description of the proposed construction, safety improvements or other relief requested, and who should be ordered to perform the same[. Detailed] **with a copy of detailed** plans and specifications for the proposed construction, safety improvements or other relief requested [shall be] attached [to the application] as Exhibit 2;

(H) [Estimated] **Detailed estimated** costs of the proposed construction, safety improvements or other relief requested, [and who] **the party that** should be ordered to pay these costs, [and whether] **the federal, state, political subdivision and/or private funds [are] available** for the crossing **costs [under any federal or federal-aid act]**, and how the costs should be allocated between these payers. [The application shall state whether or not any portion of the costs are requested to be paid out of the grade crossing account under Chapter 152, RSMo, or the grade

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crossing safety account under section 389.612, RSMo Supp. 1997, and if so, in what amounts.]
[Detailed] These detailed cost estimates for the proposed construction, safety improvements or other relief shall be attached to the application as Exhibit 3;

[(J)] If the use of funds from the grade crossing account under Chapter 152, RSMo, is requested, the application shall state the amount of funds available to the county in which the crossing is located (or the City of St. Louis, if applicable) pursuant to the allocation of the tax under that chapter to that county (or city) based upon the total main line track mileage of railroads in that county (or city) and whether or not the estimated costs of the proposed construction, safety improvements or other relief requested will exceed that county's (or city's) limitation under that chapter and whether or not the crossing is highly dangerous to the public so as not to come within that limitation. The application also shall state the approximate amount of funds in the grade crossing account and whether the expected expenditure called for will exceed the funds in that account in the fiscal year in which the expenditure is to be made;]

[(K)] Detailed statement of the specific reasons why the proposed relief should be granted;

[(L)] If an applicant other than the division staff requests the construction of a new grade crossing, then a completed Questionnaire for a New Grade Crossing for each new crossing should be attached to the application as Exhibit 4. If the applicant requests the construction or reconstruction of a grade separation structure, then a completed Questionnaire for Grade Separation for each structure should be attached to the application as Exhibit 4. The questionnaire forms may be obtained from the division's main office in Jefferson City, Missouri or by telephoning (573) 751-7121;]

[(M)] Statement of whether the applicant waives a hearing, and will submit the case to the division for decision upon the verified pleadings and other evidence of record, if no other party requests a hearing;

[(N)] Date and signature of the applicant or the applicant's authorized representative, and the signature, name (typed or printed), address and telephone number of the applicant's attorney, if any; and

[(O)] Verification under oath or penalty of perjury.

(2) [It shall be in the discretion of the administrative law judge to convene a hearing regarding the application or to decide the case based on the application and other documents filed, except when a hearing is required by law.] **The application is to be decided under one of the following methods:**

(A) **The division director decides and issues an order on behalf of the commission based on the application and all other documents filed in those cases in which all parties to the application have waived a hearing in writing; or**

(B) **The division director refers the application to the Administration Hearing Commission per Chapter 621 RSMo if all parties have not waived a hearing in writing or a hearing on the application is required by law.**

AUTHORITY: section 622.027, RSMo Supp. 1997. Original rule filed Nov. 4, 1992, effective July 8, 1993. Emergency amendment filed Dec. 1, 1994, effective Dec. 11, 1994, expired Dec. 19, 1994. Emergency amendment filed Dec. 20, 1994, effective Jan. 1, 1995, expired April 30, 1995. Emergency amendment filed April 20, 1995, effective May 1, 1995, expired Aug. 28, 1995. Emergency amendment filed Aug. 18, 1995, effective Aug. 29, 1995, expired Feb. 24, 1996. Amended: Filed Aug. 3, 1995, effective Feb. 25, 1996. Amended: Filed June 22, 1998, effective Feb. 28, 1999. Amended: Filed March 9, 2018.*

**Original authority: 622.027, RSMo 1985, 1993, 1995.*

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 (\$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 Highways and Transportation Commission, Pamela J. Harlan, Secretary to the Commission, 105 W. Capitol Avenue, PO Box 270, Jefferson City, MO 65102 or Pamela.Harlan@modot.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*