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Title 7--DEPARTMENT OF TRANSPORTATION
Division 10--Missouri Highways and Transportation Commission
Chapter 4--Uniform Relocation Assistance

SECRETARY OF STATE
ADMINISTRATIVE RULES

PROPOSED AMENDMENT

COPY

7 CSR 10-4.010 Administrative Review of Denial of Eligibility Or Amount of Relocation Assistance Benefits. The Missouri Highways and Transportation Commission is amending sections (1) through (11).

PURPOSE: This amendment provides a uniform system for administrative review of final 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]* 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. *[The]* To be sufficient to authorize administrative review, 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]* 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 *[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.]*

(C) Answer. No answer or response by the *[commission shall be required]* 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 *[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]*. 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 *[be deemed to be denied by the commission and the]*. As a result, the commission's hearing examiner shall issue an order that dismisses the applicant's request and *[so]* notify the applicant or counsel for applicant and department counsel in writing by certified mail, return receipt requested of the order. *[This decision shall be subject to judicial review under section 536.150, RSMo.]*

(3) *[Bias]* Hearing Officer. *[If the hearing examiner determines at any stage of the proceeding*

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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] **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[, *the district engineer*] and [*the assistant*]counsel for the [*commission*] **department** [*fixing a time and place determined by the hearing examiner for a hearing*], and **the hearing date will be not less than fifteen (15) days from the date of the notice.** [*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*]**Either party** [*requests*] **may request that the hearing examiner grant 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.*] **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 [*have*] **conduct any method of discovery** [*under section 536.073*] **authorized in chapter 536, 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 **from a subpoena or subpoena duces tecum issued by the hearing examiner as authorized** 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*] **presents** evidence first at the hearing in support of the **applicant's claim** for relocation assistance benefits. Then the [*commission shall present*] **department presents** 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.*] **The parties may make closing arguments before conclusion of the hearing.** Any party may file a written brief and the hearing examiner may [*require*]**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. [*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] Any party may obtain a copy of the transcript of the hearing at that party'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]The hearing examiner shall submit to the [other members of the] appeal board a copy of the record along with a [suggested]proposed report and order.

(10) Final Decision of the Appeal Board. [Final]The commission delegates to and vests its final authority to determine relocation assistance claims [shall be vested] in [the]an appeal board which [shall consist] consists of the chief engineer or a designated assistant, the [chief of the] assistant to the state design engineer - right-of-way [division] or a designated assistant and the chief counsel or a designated counsel that did not serve as the hearing examiner at the hearing. [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 with each board member having one (1) 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] Chapter 61; 23 CFR [740.8; and 23 CFR 740.37]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 November 14, 2017.

*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.]

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 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.*