

John R. Ashcroft

Secretary of State
Administrative Rules
RULE TRANSMITTAL

Administrative Rules Stamp

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SEP 03 2020

SECRETARY OF STATE
ADMINISTRATIVE RULES

Rule Number 7 CSR 10-3.010

Use a "SEPARATE" rule transmittal sheet for EACH individual rulemaking.

Name of person to call with questions about this rule:

Content Scott Sergent Phone (573) 526-8795 FAX (573) 526-3651

Email address Scott.Sergent@modot.mo.gov

Data Entry Amy Glover Phone (573) 526-4143 FAX (573) 526-3651

Email address Amy.Glover@modot.mo.gov

Interagency mailing address 105 W. Capitol Avenue, PO Box 270, Jefferson City, MO 65102

TYPE OF RULEMAKING ACTION TO BE TAKEN

Emergency Rulemaking __ Rule __ Amendment __ Rescission __ Termination
Effective Date for the Emergency _____

Proposed Rulemaking __ Rule X Amendment __ Rescission

Rule Action Notice In Addition Rule Under Consideration

Request for Non-Substantive Change

Statement of Actual Cost

Order of Rulemaking __ Withdrawal __ Adopt __ Amendment __ Rescission

Effective Date for the Order _____

Statutory 30 days OR Specific date _____

Does the Order of Rulemaking contain changes to the rule text? NO

YES—LIST THE SECTIONS WITH CHANGES, including any deleted rule text:

Small Business Regulatory
Fairness Board (DED) Stamp

JCAR Stamp

RECEIVED

By Joint Committee on Administrative Rules at 1:00 pm, Sep 03, 2020

STATE CAPITOL
201 W. CAPITOL AVENUE, ROOM 216
JEFFERSON CITY, MISSOURI 65101



(573) 751-3222
WWW.GOVERNOR.MO.GOV

Michael L. Pearson

GOVERNOR
STATE OF MISSOURI

July 28, 2020

John Cauwenbergh,
Chief Counsel
Missouri Department of Transportation
105 W. Capitol Avenue
Jefferson City, Missouri 65102

Dear John:

This office has received your Proposed Rulemaking for the following regulations:

- 7 CSR 10-3.010 Location and Relocation of Utility Facilities on State Highways
- 7 CSR 10-3.020 Utility Relocation Hearings and Variance Request Informal Hearings

Executive Order 17-03 requires this office's approval before state agencies release proposed regulations for notice and comment, amend existing regulations, or adopt new regulations. After our review of these regulations, we approve the submission and regulatory impact report (if required) to JCAR and the Secretary of State.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Conway".

Ryan P. Conway
Special Counsel

PATRICK K. MCKENNA
Director

PAMELA J. HARLAN
Secretary to Commission

RICH TIEMEYER
Chief Counsel



Chief Counsel's Office
105 West Capitol Avenue
P.O. Box 270
Jefferson City, MO 65102
(573) 751-7454
Fax (573) 526-4408

MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION

September 3, 2020

John R. Ashcroft
Secretary of State
Administrative Rules
600 West Main Street
Jefferson City, Missouri 65101

Re: 7 CSR 10-3.010, Location and Relocation of Utility Facilities on State Highways

Dear Secretary Ashcroft,

CERTIFICATION OF ADMINISTRATIVE RULE

I do hereby certify that the attached is an accurate and complete copy of the proposed amended rulemaking lawfully submitted by the Missouri Department of Transportation as promulgated and adopted by the Missouri Highways and Transportation Commission at its meeting on September 2, 2020.

The Missouri Department of Transportation has determined, and the Missouri Highways and Transportation Commission hereby certifies that it has conducted an analysis of whether or not there has been a taking of real property pursuant to section 536.017, RSMo 2000, that the proposed amended rulemaking does not constitute a taking of real property under relevant state and federal law.

The Missouri Department of Transportation has determined and hereby also certifies that if the proposed amended rulemaking does affect small business pursuant to sections 536.300 to 536.310, RSMo, a small business impact statement has been filed as required by those sections. If no small business impact statement has been filed the proposed amended rulemaking either does not affect small business or the small business requirements do not apply pursuant to section 536.300.4, RSMo.

Statutory Authority: sections 226.020 and 227.240, RSMo



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www.modot.org

John Ashcroft
September 2, 2020
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If there are any questions regarding the content of this proposed amended rulemaking, please contact Scott Sergent, Assistant Counsel, 105 W. Capitol Avenue, P.O. Box 270, Jefferson City, Missouri 65102, (573) 526-8795, Scott.Sergent@modot.mo.gov.



Pamela J. Harlan
Secretary to the Commission

(Commission Seal)

Attachment: Proposed Amended Rulemaking, 7 CSR 10-3.010, Location and Relocation of Utility Facilities on State Highways

Copy: Joint Committee of Administrative Rules

PATRICK K. MCKENNA
Director

PAMELA J. HARLAN
Secretary to Commission

RICH TIEMEYER
Chief Counsel



Chief Counsel's Office
105 West Capitol Avenue
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MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION

September 3, 2020

Ms. Waylene Hiles, Director
Joint Committee on Administrative Rules
Capitol Building
Room B8
Jefferson City, MO 65101

RE: Notice of Proposed Amended Rulemaking, 7 CSR 10-3.010, Location and Relocation of Utility Facilities on State Highways

Dear Ms. Hiles:

Enclosed please find a letter certifying the Missouri Highways and Transportation Commission's approval, at its meeting held on September 2, 2020, to file notice of proposed amended rulemaking for rule 7 CSR 10-3.010, Location and Relocation of Utility Facilities on State Highways. Also enclosed is the text of the rulemaking.

We are filing the enclosed simultaneously with the Secretary of State's Office for publication in the *Missouri Register*.

Thank you for your attention to this matter. Should you have any questions or concerns, please contact me at (573) 526-4143.

Sincerely,

A handwritten signature in cursive script, appearing to read "Amy Glover".

Amy Glover
Senior Paralegal

Enclosures



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**DECLARATION
OF PUBLIC COST**

I, Brenda Morris, Chief Financial Officer of the Missouri Department of Transportation, do declare that it is my opinion that the cost of proposed amended rule 7 CSR 10-3.010, is less than five hundred dollars in the aggregate to this agency, any other agency of state government or any political subdivision thereof.

Brenda Morris

Brenda Morris
Chief Financial Officer
Missouri Department of Transportation

Dana L Kaiser



Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation Commission
Chapter 3—Utility and Private Line Location and Relocation

PROPOSED AMENDMENT

7 CSR 10-3.010 Location and Relocation of Utility Facilities on State Highways. The Missouri Highways and Transportation Commission is amending sections (7) and (8) and subsections (1)(A), (1)(B), (3)(H), (3)(J), (3)(K) and adding a new subsection (3)(L) and sections (9) through (10).

PURPOSE: This amendment promulgates rule provisions that establish a standardized statewide system to request and issue variances to locate/relocate utility facilities in the utility corridor. It also establishes rule provisions for the Department to expand, in its sole discretion, the utility corridor to twelve feet wide when the corridor is fully utilized and where space is reasonably available.

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) Application.

(A) The following rule is established for the location or relocation of utility facilities on the right-of-way of highways in the state highway system. Any location or relocation of utility facilities contrary to this *[policy]* **rule and without a permit or an approved variance** is declared to be an interference with the construction, maintenance, or operation of state highways and their right-of-way and is prohibited.

(B) Except as *[described]* **expressly exempted** in this rule, all work to be performed on right-of-way of the state highway system in connection with the location, relocation, or maintenance of utilities, and where the roadway, shoulders, or right-of-way will be affected by the work, must be done only under a permit or agreement to be issued prior to the commencement of said work by authority of the Missouri Highways and Transportation Commission and that specifies the nature of the work to be performed. Application for these permits *[may]* **shall** be made on forms provided for that purpose, **which is incorporated by reference and made a part of this rule, as published by the Missouri Department of Transportation, 105 W. Capitol Ave., PO Box 270, Jefferson City, MO 65102, on July 1, 2020. This rule does not incorporate any subsequent amendments or additions to the Application.** Applications for permits may be obtained at any of the seven (7) district highway offices of the commission, Missouri Department of Transportation's website located at: <http://modot.mo.gov/design/UtilityResources/Permits.htm>, or by requesting the applications from the office of the Missouri Highways and Transportation Commission at the Missouri Department of Transportation Building, PO Box 270, Jefferson City, MO 65102, or by calling (573) 751-2551.

(C) When emergency operations work is necessary, the damaged facility may be accessed immediately and without a permit by leaving the through roadways at such points as may be

necessary to effect emergency repairs, provided immediate notice is given to the Missouri State Highway Patrol and the commission's district engineer or his/her designee for the district wherein the work will be performed, and a permit for emergency operations is requested immediately upon discovery of the need for emergency operations. A permit for emergency operations work is to be obtained as soon as practical, but in no event later than two (2) working days after the emergency operations work has commenced. For the purposes of this subsection (1)(C), emergency operations include, but are not limited to, unplanned work in response to utility lines or facilities being so damaged as to constitute an emergency situation directly affecting or endangering traffic on the highway or public health or safety.

(D) This rule does not apply to utility lines for services to facilities required for operating the highway on the state highway system.

(3) Definitions and General Information.

(A) Ditch line. A break line where the roadway ditch meets the back slope. It is located at the lowest point of a V-bottom ditch or furthest point from the roadway of a flat bottom ditch where the roadway slopes back to the existing ground line.

(B) Duct. An enclosed tubular casing, or raceway, for protecting wires, lines, or cables which is often flexible or semirigid (one to three percent (1–3%) diametric deflection). The casing, or raceway, is separate from the cable or conductor which passes through it.

(C) Encasement. Encasement as used in this policy means the placing of an installation around and outside of an underground facility consisting of a larger conduit which will permit the removal and replacement of the facility. An alternate to the conduit type encasement would be reinforced concrete poured around the facility. Acceptable materials are described in section (5).

(D) Limits of interchanges. For the uniform handling of utility installations only, the limits of interchanges are the outside ramp curve points.

(E) Minimum cover for new underground utilities is: forty-two inches (42") for all water lines (parallel and crossings); forty-two inches (42") for fiber optic cable (crossings, encased in rigid conduit); seventy-two inches (72") for fiber optic cable (crossings encased in polyethylene (PE) pipe); thirty inches (30") for direct burial and in-trench fiber optic cable (parallel); twenty-four inches (24") for all other direct burial cable (parallel); seventy-two inches (72") for uncased polyethylene (PE) gas pipe crossings under ditches and roadways but thirty inches (30") elsewhere and thirty inches (30") for all other (such as, but not limited to, gravity sewers, force sewers, and electric) underground utilities (parallel and crossings).

(F) Normal right-of-way line. An imaginary line that connects sudden breaks in the major right-of-way points for roadways. Sight distance right-of-way points (triangles) at roadway intersections are not to be considered as sudden breaks for determining normal right-of-way.

(G) Pull box width. Maximum pull box width, perpendicular to the right-of-way line within the utility corridor, is thirty inches (30").

(H) Scenic enhancement areas. Scenic enhancement areas include areas acquired or so designated as scenic strips, overlooks, rest areas, and all rights-of-way of highways adjacent thereto and the rights-of-way of highways which pass through public parks, recreation areas, wildlife or waterfowl refuges, and historic sites as described under Title 23 United States Code (U.S.C.), section 138, which is incorporated by reference and made a part of this rule, as published by the United States Superintendent of Documents, 732 N Capitol Street NW, Washington D.C. 20402-0001, website: <http://bookstore.gpo.gov>, on ~~July 1, 2016~~ **November 13, 2019**. This rule

does not incorporate any subsequent amendments or additions.

(I) Utility. Privately, publicly, or cooperatively owned line, facility, or system for producing, transmitting, or distributing communications, cable television, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water not connected with highway drainage, or any other similar commodity, including any fire or police signal system or street lighting system which directly or indirectly serves the public and does not include privately-owned facilities devoted exclusively to private use. The term utility also means the utility company inclusive or any wholly owned or controlled subsidiary. The term utility includes those facilities used solely by the utility which are a part of its operating plant. The term also includes those utility type facilities owned or leased by a government agency for its own use or otherwise dedicated solely to governmental use.

(J) Utility corridor. An area established for the placement of utility facilities parallel to and within six feet (6') of the normal right-of-way. **The utility corridor may be expanded from six feet (6') to up to twelve feet (12') where space is reasonably available, and only as determined by the department pursuant to section (10) of this rule.**

(K) Variance. **A one-time deviation from the requirements for location or relocation of utility facilities on the right-of-way of highways in the state highway system as established in Title 7 Code of State Regulations 10-3, requested by the utility and approved by a MoDOT district utilities engineer. The process for requesting and approving a variance is described in section (9) of this rule.**

(L) Vertical clearance for overhead crossings. The vertical clearance of new or existing overhead installations is not less than the current minimum requirements of the *National Electric Safety Code*, but in no case less than eighteen feet (18'). The *National Electric Safety Code* is incorporated by reference and made a part of this rule as published by the Institute of Electrical and Electronics Engineers-Standards Association, 501 Hoes Lane, 3rd Floor, Piscataway, New Jersey 08855, website: <http://standards.ieee.org>, on August 1, 2016. This rule does not incorporate any subsequent amendments or additions to these standards.

(7) Cutting Pavement. In the event that permission is granted to cut an existing P.C.C. or A.C. pavement, all cuts, if possible, shall be made with a saw to a minimum depth of two and one-half inches (2 1/2"). The width of cut shall be determined by the width of required trench plus twelve inches (12") on each side of the trench. In the event that the distance to any adjacent longitudinal or transverse joint or crack is less than four feet (4'), the pavement shall be removed to that joint or crack. All pavement repair shall be made in compliance with the 20[17]20 *Missouri Standard Specification for Highway Construction*, which is incorporated by reference and made a part of this rule, as published by the Missouri Department of Transportation, 105 W. Capitol Ave., PO Box 270, Jefferson City, MO 65102, website: http://www.modot.org/business/standards_and_specs/highwayspecs.htm, on [June 8, 2017] **July 1, 2020**. This rule does not incorporate any subsequent amendments or additions to the *Standard Specifications*.

(8) Special Conditions. Special conditions at specific locations, which make adherence to this rule impractical, **will be subject to approval by the district utilities engineer** [may be submitted to the chief engineer] for consideration of an acceptable alternate.

(9) Variance Process. Any utility authorized under section 227.240, RSMo, may apply for a variance. The process for requesting a variance is as follows:

(A) Utilities may submit to the district utilities engineer a written request for approval of

a plan that does not conform to the requirements of this rule. The utility must clearly show the following:

1. The provision(s) or guideline(s) in this rule for which the variance is being requested;
2. The condition(s) which the utility believes warrants the granting of a variance;
3. A thorough explanation of the reason(s) for the requested variance, including safety, aesthetic, economical, or other data which apply to the request; and
4. Sufficient and appropriate documentation of the barriers to installing the utility facility in accordance with this rule, how installing according to this rule would be adverse to the function, access or maintenance of the utility and not in the best interest of the public.

(B) The utility bears the full responsibility of demonstrating to the department's satisfaction that the variance is the most appropriate way to serve the public interest. The department may present, and the utility must consider, reasonable alternatives to the variance requested by the utility.

(C) The department must obtain Federal Highway Administration (FHWA) concurrence to the variance request when the variance is on the interstate system.

(D) In determining whether to grant a variance, the department will consider all relevant factors, including, but not limited to, whether:

1. The requested variance is reasonably necessary for the convenience, safety and/or welfare of the public; or
2. There is exceptional or undue financial burden or other hardship on the specific applicant, or a physical impracticability that would result from the applicant's compliance with the location/relocation provisions in this rule, that would be lessened by department approval of the requested variance; or
3. The requested variance will impair the safe construction, maintenance, or operations of the highway, or otherwise conflict with the purposes of the rule; or
4. The requested variance will be detrimental to the public health, welfare, and/or public travel, traffic, or safety on the highway.

(10) Utility Corridor Dimension. When considering if the current utility corridor is available to expand from six feet (6') to as much as twelve feet (12'), the commission delegates to the department the sole authority to determine if expansion is warranted. In making its determination, the department will consider the existing utilization of the original six feet (6') corridor. Poles must remain within two feet (2') of the normal right-of-way line. The utility corridor will only be expanded beyond six feet (6') if the original six feet (6') corridor is fully utilized and additional space would be required to accommodate additional utility facilities. Nothing in this rule requires the commission to acquire additional right-of-way. When considering a new underground utility facility within the expanded corridor, the available space shall be limited such that the distance from the ditch line to the proposed utility facility location shall be equal to or greater than the intended depth of the new utility facility installation, as described in the Definitions and General Information section of this rule.

*AUTHORITY: sections 226.020 and 227.240, RSMo [2016]. * Original rule filed Jan. 21, 1965, effective Jan. 31, 1965. Amended: Filed May 8, 1965, effective May 18, 1965. Amended: Filed Aug. 5, 1966, effective Aug. 10, 1966. Amended: Filed Aug. 15, 1967, effective Aug. 25, 1967. Amended: Filed Dec. 3, 1968, effective Dec. 13, 1968. Amended: Filed Jan. 20, 1970, effective*

Jan. 30, 1970. Amended: Filed April 8, 1971, effective April 18, 1971. Amended: Filed Nov. 22, 1972, effective Dec. 2, 1972. Amended: Filed Aug. 9, 1974, effective Aug. 19, 1974. Refiled: March 17, 1976, effective March 17, 1976. Rescinded and readopted: Filed May 12, 1978, effective Aug. 11, 1978. Amended: Filed Feb. 21, 1984, effective Aug. 15, 1984. Amended: Filed June 10, 1988, effective Nov. 11, 1988. Amended: Filed Aug. 8, 1997, effective Feb. 28, 1998. Amended: Filed Oct. 7, 2002, effective May 30, 2003. Amended: Filed Nov. 14, 2017, effective June 30, 2018. Amended: Filed September 3, 2020.

**Original authority: 226.020, RSMo 1939 and 227.240, RSMo 1939, amended 2005, 2006, and 2018.*

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.*