

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 10-3.020

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 1:01 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. Parson

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 10-3.020, Utility Relocation Hearings and Variance Request Hearings

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: Section 227.240, RSMo

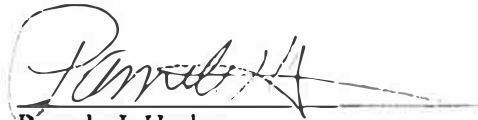


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www.modot.org

John Ashcroft
September 2, 2020
Page 2

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

A handwritten signature in black ink, appearing to read "Pamela J. Harlan", written over a horizontal line.

Pamela J. Harlan
Secretary to the Commission

(Commission Seal)

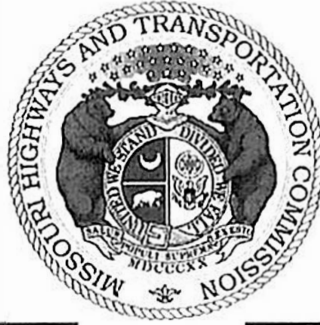
Attachment: Proposed Amended Rulemaking, 7 CSR 10-3.020, Utility Relocation Hearings and Variance Request Hearings

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
P.O. Box 270
Jefferson City, MO 65102
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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 10-3.020, Utility Relocation Hearings and Variance Request Hearings

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 10-3.020, Utility Relocation Hearings and Variance Request Hearings. 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 10-3.020, 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



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SECRETARY OF STATE
ADMINISTRATIVE RULES

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 10-3.020 Utility Relocation Hearings and Variance Request Hearings. The Missouri Highways and Transportation Commission is amending section (1) by adding new subsections (1)(A) and (1)(B) and section (2).

PURPOSE: This amendment promulgates rules for Variance Request Informal Hearings.

PURPOSE: This rule provides a uniform procedure for administrative hearings concerning variance requests and location and relocation of utility improvements and facilities within the rights-of-way of state highways.

(1) Hearing Authorized.

(A) Utility Relocation Hearings. The commission has authority to order the location and relocation of utility improvements and facilities within the right-of-way of any state highway to prevent interference with the construction, maintenance, and public use of state highways. Before exercising its authority to order the relocation of utility facilities within the right-of-way, the commission shall provide the opportunity for an administrative hearing under section 227.240, RSMo to any entity, person, or corporation authorized under section 227.240, RSMo to own or maintain utility lines, poles, wires, conduits, pipelines, and tramways (utility facility) within state highway right-of-way regarding the commission's proposed plan of utility facility location or relocation and other incidental matters. Such entity, person, or corporation may waive, at any time, the right to an administrative hearing under section 227.240, RSMo, which is to be provided to the district engineer or his/her designee or the hearing examiner.

(B) Variance Request Informal Hearings.

1. Request for Informal Hearing. If denied a utilities variance, the applicant will have thirty (30) calendar days to request an informal hearing for the purpose of appealing the denial. The applicant will submit its request for an informal hearing to the State Design Engineer, Missouri Department of Transportation, PO Box 270, Jefferson City, MO 65102.

2. Procedure. If the applicant requests an informal hearing, the department's authorized representative will advise the applicant of the time, date, and place of the hearing. This hearing is not a contested case under Chapter 536, RSMo. The rules of evidence will not apply at the hearing and the department's decision after conduct of the hearing is not subject to appeal.

(2) Notice of Hearing – Utility Relocations. Upon request by the district engineer, the commission's hearing examiner shall prepare a written notice of hearing that includes a plan or drawing indicating the locations within the right-of-way in which utilities may be located and maintained, state when the commission or its contractor is scheduled to begin work on the right-of-way, state the date by which work shall be completed on utilities within the right-of-way, fix the time and place of the administrative hearing, and advise that the purpose of the hearing is to consider the commission's proposed plan of utility location and other incidental matters. The notice of hearing may be served upon each entity, person, or corporation, authorized under section

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By Joint Committee on Administrative Rules at 1:02 pm, Sep 03, 2020

227.240, RSMo to own or maintain a utility facility within the right-of-way by certified mail, with return receipt requested, at least fifteen (15) days before the date of the hearing.

AUTHORITY: section 227.240, RSMo [2016]. Original rule filed May 12, 1978, effective Aug. 11, 1978. Amended: Filed Nov. 14, 2017, effective June 30, 2018. Amended: Filed September 3, 2020.*

**Original authority: 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.*