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SECRETARY OF STATE
ADMINISTRATIVE RULES

Title [4]7—DEPARTMENT OF [ECONOMIC DEVELOPMENT]TRANSPORTATION
Division 265—[Division of] Motor Carrier and Railroad Safety
Chapter 8—Railroads [and Street Railroads]

PROPOSED AMENDMENT

[4]7 CSR 265-8.071 **Grade Crossing Safety Account.** The Missouri Highways and Transportation Commission is moving the rule to Title 7, amending sections (2), (3), and (4), deleting sections (1), (5), (6) and subsection (3)(G), and renumbering sections (2) through (6).

PURPOSE: This amendment moves the rule from Title 4 to Title 7, updates the rule to reflect organizational, statute and procedure changes, incorporates the cost standards in 23 CFR Parts 140 and 646 and eliminates unnecessary restrictive language.

[(1) Use of the Grade Crossing Safety Account (account) to pay for installation, construction or reconstruction of automatic signals or other safety devices or other safety improvements at crossings of railroads and public roads, streets or highways may be initiated by a complaint of twenty-five (25) or more individuals filed with the Division of Transportation (division) within the Department of Economic Development, or by an application or complaint filed with the division by a governmental entity, railroad corporation, the division staff or any person who is a party to a proceeding under section 389.610, RSMo. Use of the account shall be limited as provided in section 1 of Senate Bill No. 765, 86th General Assembly, 2nd Regular Session (1992).]

*[(2]1) In [determining that portion] **the division's determination** of the costs [proportioned] to **be apportioned** to the state, county, municipality or other public authority in interest[,] for the installation, construction or reconstruction of automatic signals or other safety devices or other safety improvements at crossings of railroads and public roads, streets or highways, which the division orders to be paid out of the **grade crossing safety account** (account) pursuant to section 389.610, RSMo, the division [shall] **will** compute those costs in accordance with [the current Federal Highway Administration's policy for reimbursement for railroad work] **Title 23, Code of Federal Regulations (CFR), Part 140, Subpart I and 23 CFR Part 646, Subpart B, which is incorporated by reference and made a part of this rule as published October 1, 2016 by the Federal Highway Administration, United States Department of Transportation, 1200 New Jersey Avenue, SE Washington DC 20590. This rule does not incorporate any subsequent amendments or additions of this rule.***

*[(3]2) [In all proceedings where the use of] **When the division considers making payments from the account [has been requested by any party] for safety devices or other safety improvements at railroad and highway crossings, the division staff [shall, and any other party to the proceeding may present evidence on each of the following matters] may consider the following information:***

*(E) The approximate time for completion of the proposed installation, construction or reconstruction, the approximate date for a payout of the funds and the legal entity entitled to be reimbursed; **and***

(F) Whether or not interim payments should be made; and if so, the amount and conditions upon which those interim payments should be paid out; [and

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(G) Whether any part of the costs of the installation, construction or reconstruction can be paid from the Grade Crossing Account, until all funds in the Grade Crossing Account created under Chapter 152, RSMo have been encumbered or expended].

*[(4)3] The [division shall order the] party responsible for the installation, construction or reconstruction [to] **project shall** notify the division immediately upon **project** completion [of the ordered installation, construction or reconstruction] **and** [Within] eight (8) months after completion, [the party responsible for the installation, construction or reconstruction shall] furnish a written report to the division on the costs actually involved. [Railroad safety personnel of the d]Division staff [shall] **may** inspect the [installation, construction or reconstruction] **project** to determine if it has been completed in accordance with the division's order authorizing the work, [and in conjunction with the division's audit section shall] review the reported costs and [shall file with the division] **complete** a report on the results of their review. Promptly after that, the division [shall] **may** issue its final [order] **payment request** authorizing the state treasurer to pay out of the account, to the person or entity entitled, the amount determined by the division to be due and **payable**, [finally approved by the division, except that the division may order] **including** progress payments [if it deems it advisable].*

[(5) The division staff shall keep an accurate account of all grade crossing projects for which account funds have been obligated, encumbered and paid, and shall report an annual accounting of the use of the funds each year in order that the information may be included in the division's annual report.]

[(6) This rule shall govern all cases involving grade crossing safety improvements in which funds from the account are used, unless specifically ordered otherwise by the division.]

*AUTHORITY: section 622.027, RSMo 1986. * Original rule filed Nov. 4, 1992, effective July 8, 1993. Amended: Filed March 9, 2018.*

**Original authority: 622.027, RSMo 1985.*

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, Missouri 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.*