

761—821.3(327G) Procedures for the use of grade crossing surface repair funds.

821.3(1) *Use of funds.* A portion of the repair fund, not to exceed 50 percent in any fiscal year, shall be set aside to meet critical or atypical needs. In identifying priorities for the set-aside funds, criteria including, but not limited to, the following shall be considered:

- a. Condition of the crossing.
- b. Safety concerns.
- c. Utilization of the rail line.
- d. Train and motor vehicle traffic density at the site. Special consideration may be given to heavy truck traffic.
- e. Recent or planned development or construction in the vicinity of the crossing.

821.3(2) *Notification to department.* If a railroad and a jurisdiction agree to use the repair fund for grade crossing surface repair, written notification of the action signed by both parties shall be sent to the department.

a. The notification shall include the American Association of Railroads—Department of Transportation (AAR-DOT) crossing number, the total estimated cost of the repair, and a statement that the railroad and the jurisdiction each agree to pay 20 percent of the cost of the repair.

b. Notification shall be accepted by the department in order of receipt.

821.3(3) *Processing an agreement.*

a. The department shall determine if the agreed-upon work constitutes grade crossing surface repair and may consult with the jurisdiction or the railroad if further information is needed.

b. If the work constitutes grade crossing surface repair and when funds are available in the repair fund, the department shall request that the jurisdiction and railroad provide cost estimates for the work for which each party is responsible. Upon receipt of the estimates, the department will furnish an agreement for grade crossing surface repair to the railroad and jurisdiction.

c. The railroad and the jurisdiction shall sign the agreement and return it to the department.

d. The department shall:

(1) Approve the agreement and obligate from the repair fund an amount equal to 60 percent of the cost of the agreed-upon work.

(2) Sign the agreement, retain one copy of the fully executed agreement, transmit one copy to the jurisdiction, and transmit one copy to the railroad, authorizing work to proceed.

821.3(4) *Preaudit.* Prior to approval of the agreement, the department may perform a preaudit evaluation of the railroad.

The preaudit evaluation may include an examination of the railroad's accounting methods and procedures to determine the railroad's ability to segregate and accumulate costs to be charged against the surface repair project; an examination of the railroad's cost factors to ensure their propriety and allowability; and an examination of any other general information available which might be pertinent or necessary in determining the railroad's auditability.

821.3(5) *Review of completed project.* Upon completion of the agreed-upon work, the department, the railroad and the jurisdiction shall review the project to determine satisfactory completion.

821.3(6) *Project billing and payment.*

a. The railroad shall submit to the jurisdiction and the department a final detailed billing covering the actual and necessary costs incurred by the railroad for the agreed-upon work.

b. The jurisdiction and the department shall review the billing for reasonable conformance with the agreement. The department may audit the billing to determine the allowability and propriety of the billing costs in accordance with the agreement.

c. Once the department approves the billing, the department shall pay to the railroad from the repair fund an amount equal to 60 percent of the actual project cost of the agreed-upon work.

d. The jurisdiction shall pay to the railroad an amount equal to 20 percent of the actual cost of the agreed-upon work.