

Federal-Aid Policy Guide

July 6, 2005, [Transmittal 34](#)

NS 23 CFR 646B

Non-Regulatory Supplement

OPI: HSA-10

1. **DEFINITIONS (23 CFR 646.204).** The diagnostic team will generally include a representative from the railroad(s) operating the tracks at the crossing(s), the Federal Highway Administration (FHWA), the State highway agency, and any other State agency or political sub-division exercising jurisdiction over the crossing(s) involved.
2. **TYPES OF PROJECTS (23 CFR 646.206)**
 - a. Grade crossing elimination projects include:
 1. (1) new grade separations,
 2. (2) relocation of highways,
 3. (3) adjustment of railroads, and
 4. (4) crossing closure without other construction.
 - b. Grade crossing improvement projects include:
 1. (1) installation of standard signs and pavement markings,
 2. (2) installation or replacement of active warning devices,
 3. (3) upgrading of active warning devices, including track circuit improvements and interconnection with highway traffic signals,
 4. (4) crossing illumination,
 5. (5) crossing surface improvements, and
 6. (6) general site improvements.
 - c. **Protective devices.** Title 23 U.S.C. 130 requires that at least one-half the categorical rail-highway crossing funds authorized for and expended under this section should be available for the installation of protective devices. Grade crossing improvement projects, as shown in paragraph 2b of this supplement, meet this criteria.

- d. **Auxiliary Devices at Rail-Highway Crossings.** Some railroads provide auxiliary devices (predictors, motion sensors, wrap-around circuits) as stand-by units to provide continuous operation of electronic control equipment for train-activated warning devices, should the original units fail. Federal funds are eligible to participate in the cost of these auxiliary devices or circuits when they are incorporated as a part of the initially installed electronic control system so that the auxiliary unit will automatically take over and regulate the warning devices should the original unit fail. If manual activation of the auxiliary system is necessary, it is not eligible for Federal participation.
3. **FUNDING (23 CFR 646.208) - Use of Highway Bridge Replacement and Rehabilitation Program (HBRRP) funds to reconstruct an existing structure carrying highway traffic over a railroad.** Federal-aid funds, including HBRRP funds, can be used to replace or rehabilitate any existing bridge carrying highway traffic under or over a railroad regardless of who owns or maintains the bridge provided that:
 - a. The bridge is located on a public road.
 - b. The State secures jurisdictional interest to be adequate for the construction, operation, and maintenance of the Federal-aid project as required by 23 CFR 1.23.
 - c. The State and railroad enter into the agreement required by 23 CFR 646.216(d).
 - d. The State executes a project agreement agreeing to maintain, or cause to be maintained, the facility constructed with Federal-aid highway funds.
 - e. The bridge meets the eligibility criteria of 23 U.S.C. 144 (HBRRP projects only).
4. **FEDERAL SHARE (23 CFR 646.212) - Use of Federal Funds for Local Match**
 - a. Title 23 U.S.C. Section 130 sets the Federal share for the categorical rail-highway crossing program at up to 100 percent. Title 23 U.S.C. 130(h), however, allows the use of Section 130 funds to provide a local government with funds to be used on a matching basis when State funds are available which may only be spent when the local government produces matching funds.
 - b. Many States are prohibited by law from spending State funds on local roads. As a result, because many local governments have been unable to provide the necessary 10 percent matching funds in the Section 130 program, many needed projects are not being done on the local system.
 - c. If a State has a law to allow State funds to be used for a certain percentage of the 10 percent match, the entire local government share could come from Federal funds in accordance with the language in Section 130(h). Federal funds may provide the local government share regardless of its percentage of the 10 percent on match.
5. **DESIGN (23 CFR 646.214).** When initiating a project to eliminate a grade crossing of a highway and a low traffic volume railroad line, the State highway agency should determine if abandonment of the railroad line is probable within a reasonable time.

6. GENERAL PROCEDURES (23 CFR 646.216)

- a. **Preliminary Engineering and Engineering Services.** It is expected that the State and railroad will, as practicable, follow the procedures in 23 CFR 172 regarding the use of consultants.
- b. **Rights-of-Way**
 1. (1) Replacement right-of-way to be acquired by or on behalf of a railroad may be programmed and authorized either as an expense incidental to the cost of construction, or as a part of the right-of-way acquisition phase of either the highway project as a whole or a separate railroad project. The evaluation of replacement right-of-way acquisition by a railroad may consist of appraisals by qualified railroad employees or independent appraisers. Sound valuation and acquisition practices are to be followed and the railroad should, by its records, be in a position to justify amounts paid for such right-of-way. When a project is charged for the railroad's existing right-of-way being transferred to the State highway agency, Federal participation should reflect offsetting benefits to the railroad such as reduced maintenance and operating costs.
 2. (2) Federal funds are eligible to participate in costs incurred by a railroad incident to the acquisition of right-of-way. These expenses may include items such as: railroad salaries and expenses, negotiation for such right-of-way, amounts paid independent appraisers for appraisals of such right-of-way, and recording normally paid incident to land acquisition.
- c. **State-Railroad Agreements**
 1. (1) No special form of written agreement is prescribed for State-railroad agreements. Such agreement usually consists of a formal document signed by officers who are authorized to bind the parties thereto, but in appropriate cases, it may consist of an exchange of correspondence which fully sets forth all the essential terms and conditions and bears the endorsements of both parties.
 2. (2) See Attachments [1](#) and [2](#), as appropriate, for examples of an itemized estimate of the cost of the work to be performed by the railroad.
 3. (3) See [Attachment 3](#) for guidance on the use of fixed amount (lump sum) payments to railroads.
- d. **Construction**
 1. (1) The railroad should notify the State in writing when construction will commence and when construction is completed.
 2. (2) The costs of staged or extended construction should generally be limited to the first 24-month period of operation of the company's revenue trains on the relocated tracks and to those costs in excess of the cost of normal maintenance which would have been incurred had the old permanent track remained in service.

3. (3) Participation in costs of grade corrections and slope stabilization should not exceed the amount for the items in the estimate portion of the State/railroad agreement without approval by FHWA.
4. (4) The following requirements are not applicable to railroad-let contracts for construction or engineering services, pursuant to 23 CFR 646.216(f), Applicability of Wage Rate, Equal Employment Opportunity (EEO), Clean Air, Minority Business (MBE), and Other Contract Provisions to Railroad Let Contracts:
 1. (a) Wage rate (23 U.S.C.113),
 2. (b) EEO (23 CFR 230),
 3. (c) MBE (49 CFR 23) for reimbursable railroad work on Federal-aid projects,
 4. (d) Required contract provisions (23 CFR 633), and
 5. (e) Other Federal laws applying to recipients of Federal assistance. (A railroad and its contractor are not relieved from complying with any aspects of such requirements that would apply regardless of whether or not Federal assistance is involved.)
7. **SIMPLIFIED PROCEDURE FOR ACCELERATING GRADE CROSSING IMPROVEMENTS (23 CFR 646.218)**. See [Attachment 4](#) for an example of a description of improvement and estimate of cost for each crossing location.
8. **ALTERNATE FEDERAL-STATE PROCEDURE (23 CFR 646.220)**
 - a. The State's application, and changes thereto, will be reviewed and, if satisfactory, approved by the Division Administrator.
 - b. A copy of the approved alternate procedures and related actions should be provided to the Division Administrator.

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