



U.S. Department
of Transportation
**Federal Highway
Administration**

Memorandum

Subject: **INFORMATION:** Railroad Coordination on
Federal-Aid Highway Projects

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From: Walter C. Waidelich, Jr.
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Infrastructure

In Reply
Refer to: HIPA-10

To: Division Administrators
Division Directors
Directors of Field Services
Director of Technical Services

We are issuing this guidance to help field offices facilitate coordination with railroads in advancing Federal-aid highway projects. The guidance also addresses a 2014 Compliance Assessment Program (CAP) Final Report that identified the requirement to include a railroad coordination statement as having the lowest level of compliance on Federal-aid highway projects of the ten requirements assessed. The report contains the following recommendations:

- The Office of Infrastructure should reiterate to FHWA divisions the requirement for a statement of coordination with railroads for all Federal-aid construction projects, even when no railroads are affected by the project.
- Divisions should work with the State departments of transportation (SDOT) to develop processes to assess the potential for a railroad facility to be impacted by a Federal-aid project at the earliest stages of project development.¹

While the focus of this guidance is on confirming proper coordination with railroads, the guidance also discusses utility and right-of-way (ROW) coordination when a regulatory provision applies to utilities and ROW coordination.

Although the CAP reviews were performed on Federal-aid highway projects, the Office of Federal Lands Highway also delivers projects on facilities owned by SDOTs and counties. Thus, the following guidance also applies to the Federal Lands Highway Divisions.

¹ See the attached excerpt from the “Compliance Assessment Program Results Performance Year 2014 CAP National Report.”

Why is proper and timely coordination between transportation agencies and railroads required on Federal-aid highway projects?

Each year SDOTs and subrecipients construct hundreds of highway projects that cross over, under, or parallel to railroad ROW. These projects can require extensive coordination between the transportation agencies and the organizations responsible for these facilities. Although most projects are advanced without major issues, inadequate railroad coordination can cause unnecessary costs and delay during project development and construction. The goal is to document that SDOTs and their subrecipients have considered potential railroad impacts from Federal-aid highway projects.

Which sections of Title 23, Code of Federal Regulations (CFR), address railroad matters?

The following regulations contain key provisions affecting projects involving railroads.

- 23 CFR 140, Subpart I, Reimbursement for Railroad Work
- 23 CFR 635, Subpart C, Physical Construction Authorization
- 23 CFR 646, Subpart A, Railroad-Highway Insurance Protection
- 23 CFR 646, Subpart B, Railroad-Highway Projects

What railroad coordination requirements apply to physical construction authorization under 23 CFR 635 Subpart C?

23 CFR 635.307, *Coordination*, requires railroad work to be coordinated with the physical construction to prevent unnecessary delay or cost for the physical construction.

23 CFR 635.309, *Authorization*, lists conditions for authorizing physical construction. In addition, 23 CFR 635.309(b) requires SDOTs to provide a statement that no railroads are affected by the project, that railroad work has been completed, or that arrangements have been made to complete the railroad work during highway construction.

These requirements also apply to ROW and utility clearance. The SDOTs may choose to combine these statements or to issue separate documents.

What conditions apply if railroad work must be completed during highway construction?

When an SDOT determines in accordance with CFR 635.309(b) that completing the railroad work before the start of highway construction is not feasible or practical, the bid proposal shall include appropriate notification of what railroad work will be done concurrent with the highway construction. This requirement also applies to utility

work that will be performed while highway construction is underway. Where ROW acquisition/relocation activities are not complete, a public interest finding as provided in 23 CFR 635.309(c)(3), is required before FHWA can authorize contract advertisement or force account work.

What if the project does not involve a railroad?

23 CFR 635.309(b) applies to all Federal-aid highway construction projects, regardless of whether railroad work is required by the project. The coordination statement is also required for ROW and utility coordination.

Are light rail transit facilities considered railroads?

Yes. 23 CFR 646.204 defines railroads to mean all rail carriers, publicly-owned, private, and common carriers, including line haul freight and passenger railroads, switching and terminal railroads, and passenger carrying railroads such as rapid transit, commuter, and street railroads.

What happens if proper coordination has not occurred and delay and/or additional costs are incurred due to claims caused by third parties to the contract?

The FHWA's longstanding policy has been to disallow participation in time extensions and delay claims associated with utility and railroad work or ROW clearances since SDOTs are required to provide a statement confirming proper coordination with these third parties before construction authorization.

Additional information can be found in the Contract Administration Core Curriculum manual, <http://www.fhwa.dot.gov/programadmin/contracts/coretoc.cfm>.

What are the requirements for installing adequate warning devices for railroad grade crossings on Federal-aid highway projects?

Two provisions, 23 U.S.C. 109(e) and 23 CFR 646.214, outline the requirements for improving railroad-highway grade crossings on Federal-aid highway projects for construction of a new highway or improvement of the existing roadway. They require that adequate warning devices be installed and functioning properly at railroad-highway grade crossings located within the limits of or near the terminus of a Federal-aid highway project. These devices must be installed and functioning properly before the crossing can be opened for unrestricted use by traffic or before the project can be accepted.

What does “near the terminus of a Federal-aid highway project” mean as contained in 23 CFR 646.214(b)(2)?

The FHWA has not defined “near the terminus” of a Federal-aid highway project. The SDOT should be consistent in its determination of what is “near the terminus” on all Federal-aid highway projects. These determinations should not be used to arbitrarily exclude a railroad-highway grade crossing.

When a railroad-highway grade crossing is physically located “near” a terminus but outside of the project limits, FHWA recommends that the SDOT evaluate and determine the adequacy of warning devices if one or both of the following conditions exist:

1. A Grade Crossing Advance Warning Sign for the crossing is located within the project limits in accordance with the Manual on Uniform Traffic Control Devices (MUTCD) Part 8, Section 8B.06; and/or
2. An intersection traffic signal within the project limits is or will be linked to the railroad crossing’s flashing light signal and gate.

Are a full diagnostic review and/or installation of active warning devices required at every grade crossing within or near the terminus of a Federal-aid highway project?

No, provided that the following conditions are met. While a review by a diagnostic team is a valuable tool in evaluating grade crossings, Federal-aid highway projects do not require a full diagnostic review or installation of active warning devices provided that:

1. The traffic control devices for the crossing are in compliance with the current edition of the Manual on Uniform Traffic Control Devices; and
2. The SDOT determines that the crossing does not require active warnings to be installed in accordance with the requirements of 23 CFR 646.214(b).

Are a full diagnostic review and/or installation of active warning devices for projects intending to replace passive warning devices required under the 23 U.S.C. 130 program?

No, provided that the following condition is met. As provided in former Federal Highway Administrator Mary E. Peters’ memorandum of December 26, 2002, on “Funding of Passive Improvements at Railway-Highway Crossings.”

http://safety.fhwa.dot.gov/hsip/policy_guide/memo122602.cfm, FHWA may fund passive warning devices without a full diagnostic review or installation of active warning devices provided that the SDOT determines in accordance with 23 CFR 646.214(b)(4) that active warnings are not required to be installed at the crossing or crossings in accordance with 23 CFR 646.214(b)(3).

Such installation does not affect the SDOT’s ongoing obligation to assess and improve crossings under 23 U.S.C. 130 and 23 CFR part 646.

What resources does FHWA have to assist SDOTs, subrecipients, and railroad companies to better coordinate?

The FHWA's Federal-Aid Essentials Web site contains a resource library of informational videos and related materials. Each video addresses a single topic and condenses regulations and requirements into easy to understand concepts and examples. The Railroad Coordination and Certification Requirements module addresses the requirements in this memorandum and can be accessed at: <http://www.fhwa.dot.gov/federal-aidessentials/catmod.cfm?id=10>.

The SHRP2 Railroad/DOT Mitigation Strategies (R16) Product and the Every Day Counts (EDC-3) Initiative provide a collection of model agreements, training materials, best practices, and streamlined coordination processes. The FHWA, in cooperation with AASHTO and TRB, offers technical and financial assistance to SDOTs to implement and deploy these products to improve communication and coordination between SDOTs and railroad agencies.

The emphasis of the SHRP2/EDC3 effort is to shorten the time of project delivery, minimize disruption to the traveling public, enhance roadway safety, and reduce the costs of projects. Numerous SDOTs and railroad companies have shown interest and willingness to champion the R16 Innovations and 14 SDOTs are receiving assistance from Implementation Assistance Program solicitations.

For additional information please visit the links below.

SHRP2 Web site:

http://www.fhwa.dot.gov/goshrp2/Solutions/Renewal/R16/RailroadDOT_Mitigation_Strategies

EDC-3 Web site:

<http://www.fhwa.dot.gov/everydaycounts/edc-3/coordination.cfm>.

Who can I contact for more information?

For questions concerning railroad coordination, please contact Joseph Taylor at 410-779-7146 or Peter Kleskovic at 202-366-4652. For questions concerning railroad-highway grade crossing improvements, please contact James Dahlem at 203-366-9265 or George Merritt at 404-562-3911.

Attachment

Excerpt from Compliance Assessment Program Results Performance Year 2014 CAP National Report, 12/11/2014

3. Did the State provide a statement regarding the status of all right-of-way, utility, and railroad work prior to the date of authorization in FMIS?

At least 85% of projects were in compliance with the requirement that right of way, utility, and railroad work status statements were made prior to the construction authorization date.

Nineteen States had 100% compliance. Divisions verified this by locating statements that all right-of-way clearance, utility, and railroad work has been completed or that all necessary arrangements have been made for it to be undertaken and completed as required for proper coordination with the physical construction schedules for each project. In some States, these statements are separate while in other States the statements are grouped.

Right of Way and Utility certifications were generally present. Almost the entire incidence of non-compliance was due to the missing statements certifying railroad coordination. Many States and Divisions did not fully understand that a statement regarding the status of railroad involvement is required on all Federal-aid highway projects, just like it is for right of way and utilities. Initially, some reviewers relied on construction plans to determine if railroads were impacted by projects, then assessed the area as “not applicable” if they found none.

Proper coordination with railroads can help avoid unnecessary delay or cost during construction, or avoid opening a road to traffic without the proper warnings or controls. Federal regulations require that “... the (RR) crossing shall not be opened for unrestricted use by traffic or the project accepted by FHWA until adequate warning devices for the crossing are installed and functioning properly.” FHWA’s role in determining the adequacy of RR safety devices is relevant to tort liability claims. As a result of these reviews, Division offices have worked with their States to ensure that positive statements regarding railroad status are made prior to authorization.

We found statements certifying railroad coordination was the weakest area of compliance identified during the PY2014 CAP reviews when compared to the other key requirements. The PMI Team has addressed this with Divisions as part of the quality assurance assessments, during site visits and during national webinars, including a 90- minute webinar specifically tailored to address third party coordination for the Program and Project Delivery (formerly Generalist) discipline.

Recommendation: FHWA Office of Infrastructure should communicate to Divisions reiterating the requirement for a statement of coordination with railroads for all Federal-aid construction projects, even when no railroads are affected by the project. When no railroads are affected, the statement attests to that. Further, FHWA Division offices should work with State DOTs to develop processes to assess the potential for a railroad facility to be impacted by a Federal-aid project at the earliest stages of project development. This will help minimize delays to project delivery, and ensure costs to complete railroad improvements as part of a Federal-aid project are incorporated into the STIP as appropriate.