



RIGHT-OF-WAY OPERATIONS MANUAL

Chapter Forty-Five Railroad Operations

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45-1 OVERVIEW OF RAILROAD FUNCTIONS

45-1.1 General

The Utilities Section administers the policies and procedures governing negotiations and agreements with railroads for adjustments to railroad facilities required because of highway construction and operation.

Negotiations with railroad companies are required when highway construction projects affect crossings, cause relocation of railroad facilities, encroach on railroad facilities or require acquisition of land from railroads. The Utilities Section is the Department's liaison with all Montana State departments, governmental agencies, and railroads pertaining to these adjustments and relocations.

45-1.2 Regulatory Requirements and Federal-aid Participation

Provisions of the **Code of Federal Regulations (CFR)** control every project using Federal aid. Applicable Federal regulations governing the Utilities Section's responsibilities and procedures are found in 23 **CFR**, Parts 1, 140, 172 and 646; 48 **CFR** Part 31; and 49 **CFR** Part 18. Those regulations, as amended, are hereby incorporated in and made a part of the **Right-of-Way Utilities and Railroads Manual** by reference. The Federal regulations covering railroads do not require reciprocal State laws.

The **CFR** provisions not only prescribe procedures, but also establish controls and general requirements about eligibility, agreement preparation and handling, plans and estimates preparation, costs development and records retention, betterment, salvage values, reimbursement, billing, and other items. State reimbursement is limited to the amount eligible for Federal participation under these regulations.

The Federal Highway Administration must issue an authorization, known as a PR 2 Form, covering prescribed phases of railroad work. The Utilities Section must have received the PR 2 Form before authorizing the railroad to acquire materials or sending the approved agreement to the District Administrator. Unless this is done, eligible items may be declared ineligible for Federal participation.

45-1.3 Preliminary Negotiations (Project-Related)

The activities of the Utilities Section are subject to all procedures outlined in the **Right-of-Way Operations Manual**. The Utilities Section procedures call for early contacts and conflict resolution activities to facilitate reaching a final agreement with railroads affected by project construction. The Utilities Section informs the railroad of the State's intention

to encroach on the railroad's operating right-of-way. The Utilities Section supplies the railroad with one set of preliminary plans, including cross-sections, and a proposed scope of work. The railroad reviews the project information and provides comments to the Department on compatibility and conflict with railroad operations. This review procedure occurs as a part of the Department's Road Design Section process for the approval of alignment and grade. Either the railroad or the Utilities Section may request a field review of the proposed project. The field review should include the Department's project designer to facilitate resolution of design questions.

When the plans, and any relocation work required by the railroad, are acceptable to all concerned, the railroad prepares a complete formal estimate of costs. This estimate is submitted to the Utilities Section, along with detailed plans describing the method and manner of adjustments.

A discussion of the preparation, review and execution of agreements is found in Chapter 46 of the ***Right-of-Way Utilities and Railroads Manual***.

45-1.4 Payments to Railroads

The Department makes three types of payments to railroads:

- reimbursement for work to adjust rail facilities,
- compensation for property rights acquired by the Department to accommodate its project, or
- fees for temporary construction permits.

45-1.4.1 Cost Sharing for Railroad Work

When a railroad company has an established prior right, the State generally will pay 100% of the cost of construction or adjustment to the affected railroad facilities. Where there is no prior or valid property right, upon notification, a railroad is required to remove or adjust its facilities to accommodate the proposed highway construction at no cost to the State.

45-1.4.2 Compensation for Easements

Generally, the Department acquires operating railroad right-of-way property by easement only. The State offers just compensation for all easements required for its project.

The Department has established a policy of appraising operating railroad right-of-way based on adjacent land values. The property is appraised as if the property is vacant and available for development to its highest and best use. As with any easement that encumbers a property to such an extent that other uses are precluded, the value of the right-of-way easement required by the Department may be nearly fee value of the land; see Section 3-3.11 of the *Right-of-Way Operations Manual*.

The Department constructs new or reconstructed grade separation, underpass, or overpass structures at Department expense to eliminate conflicts between highway and railroad traffic. In these cases, the railroad has nearly the same property rights in the after situation as it had in the before situation. The State pays just compensation for the rights associated with the acquisition of a location for overpass or underpass structures at not more than 70% of current fair market value based on comparable vacant land values, unless another value is supported by different market information. Note that 70% is an upper limit and the Department does not pay 70% in every instance. Section 3-3.11 of the *Right-of-Way Operations Manual* provides details on valuation of easements.

45-1.4.3 Compensation for Temporary Construction Permits

The State offers just compensation for all temporary construction permits required for its project. The State pays for permits on railroad property for a single year only at 10% of fee value unless the Appraisal Section establishes a longer period. When the total compensation for any temporary right to use property during highway construction is less than \$300, the minimum payment is \$300. Additional information on valuation is available in Section 3-2.14 of the *Right-of-Way Operations Manual*.

45-2 ORGANIZATION AND STRUCTURE

Activities relating to railroads and railroad agreements are divided between two teams within the Utilities Section. One team, the Railroad Unit, is responsible for cost estimates, highway/railroad agreements and easements over railroad rights-of-way. The second team is responsible for reviewing and tracking agreements and program information, including railroad payments. Each team is staffed by engineering officers, utility agents and support staff as needed to perform the work. Their responsibilities include:

1. Engineering Manager. The Section is under the supervision of the Engineering Manager, who is directly responsible to the Right-of-Way Bureau Chief for the fulfillment of the responsibilities of the Section. The Engineering Manager develops policy and procedures; prepares, monitors and revises the railroad/utility budget; supervises work schedules; provides oversight of field utility/railroad relocation activities; and evaluates railroad crossing data.
2. Engineering Officer. The Railroad Engineering Officer is responsible for handling matters relating to cost estimates and agreements with railroad companies and secures the necessary easements over railway rights-of-way. The position is under the direct supervision of the Engineering Manager.
3. Utility Agents. The Utilities Section staff includes agents who are responsible for providing field liaison, coordination, guidance, and expertise to the Department in its activities with railroad companies. Utility agents obtain cost estimates and secure the necessary agreements with railroads. The utility agents are under the direct supervision of the Engineering Manager.
4. Administrative Support. Administrative support for the Utilities Section is provided as needed.

45-3 REFERENCES

1. ***Code of Federal Regulations***, 23 **CFR** Part 1, *General*.
2. ***Code of Federal Regulations***, 23 **CFR** Part 140, *Reimbursement*.
3. ***Code of Federal Regulations***, 23 **CFR** Part 172, *Administration of Engineering and Design-Related Contracts*.
4. ***Code of Federal Regulations***, 23 **CFR** Part 646, *Railroads*.
5. ***Code of Federal Regulations***, 48 **CFR** Part 31, *Federal Acquisition Regulation, Contract Cost Principles and Procedures*.
6. ***Code of Federal Regulations***, 49 **CFR** Part 18, *Uniform Administration Requirements for Grants and Cooperative Agreements to State and Local Governments*.