

SECTION 258 Railroad Agreement

258.1 General

When a highway project crosses or otherwise affects railroad property and facilities, a force account agreement covering compensable work to be performed by railroad forces or a contractor hired by the railroad may have been negotiated between the railroad and the WisDOT, or between a local unit of government and the railroad. Refer to [FDM Chapter 17](#) for discussion of railroad coordination.

On projects financed wholly or in part with state or state and federal funds, the Bureau of Transit, Local Roads, Railroads & Harbors (BTLRRH), Railroads & Harbors Section (RHS) negotiates for necessary occupancy rights from the railroads for parallel highway encroachment and highway-railroad crossings as needed. Where necessary, an agreement is also negotiated for relocation of railroad pole line facilities, track changes, crossing modifications, crossing warning devices, and highway underpass or overpass structures.

On off-state trunk system projects not funded with federal or state dollars, local units of government are responsible for making arrangements with railroad companies for grade crossing changes and encroachments. For off-system railroad crossing improvements and grade separation structures involving federal or state funds, the department is a party of interest, and RHS will negotiate the necessary agreements. The contracts manager in the Bureau of State Highway Programs (BSHP) approves these agreements.

Agreements negotiated for grade crossings specify location of the crossing and indicate what work the railroad will perform with its forces or its contractor, type and length of crossing to be installed, allocation of cost for the work, responsibility for crossing maintenance, and other requirements. At new crossing locations approved by the Commissioner of Railroads, the agreement provides necessary rights to construct, operate, and maintain a public highway across railroad lands at the described location. RHS usually negotiates for a highway easement to provide any additional right of way required on the state trunk system. For local road crossings this is done by the local government if federal or state funds are not used.

Stipulations are used for highway underpass or overpass structures and cover the location of the structure, construction requirements, insurance and flagging, assessment of benefits or cost-sharing, audit procedures, maintenance responsibility, and right of way or easements.

When a highway project is contained within a public street or highway right of way and no track grade adjustment is needed, and where no agreement covering compensable work has been executed, the region must notify the engineer in charge for the railroad during the plan development stage about the proposed highway improvement. At that time, the region must request the railroad to furnish information regarding any work planned by the railroad at or near the crossing.

The railroad's obligation under Section 86.13 of the Wisconsin Statutes will also be evaluated at that time. Where a change to a crossing is required, the region must determine with the railroad what is needed and RHS will negotiate an agreement. Construction funds will be used for the public portion of the crossing cost. See [FDM 17-30-1](#) for more details on funding.

Wherever railroad facilities are affected by highway improvements or modifications, and where coordination of the contractor and railroad's activities is desirable, a railroad representative should be invited to attend the preconstruction conference and subsequent project meetings as needed.

The engineer should have copies of all railroad agreements connected with the project. Questions concerning the agreements should be directed to the Regional Railroad Coordinator (RRC) or RHS.

on Project Tracking.

258.2 Railroad Checklist

The "Railroad Checklist" below is intended to be a guide for the region person to discuss and coordinate the railroad work with the railroad supervisor or representative and railroad contractor.

FIGURE 258-3 Railroad Checklist

Contract Documents	Plans and special provisions
Train Traffic	Number /day, speed, schedule, construction window (s) - specific day of the week better than others?
Agreements & Stipulations	Identify roles, responsibilities, and work to be done. Get copies.
Status	Railroad work before construction is completed and on schedule?
Insurance	Is it needed, and documents required?

	Completed? Yes or No? If no, when will it be completed? Expiration date for the policy _____
WisDOT Standard Specs	Standard spec 107.17
COORDINATE	
Contractor and railroad anticipated work operations, staging, and schedule.	
Excavation near track - footings, foundations, piling, sheeting.	
If a temporary crossing is needed to build the project, arrangements are made in advance by RHS. If a temporary crossing is desired for the convenience of the contractor, the contractor is responsible for making arrangements with the railroad.	
Signals when will they be needed? Staging? Temporary needs?	
Signal supervisor or contact: Name _____ Phone _____	
Crossing work, when will it be done? Staging? Track supervisor or contact: Name _____ Phone _____	
Flagging required when within 25 feet of track centerline or as noted in contract special provisions.	
Lead time needed when requesting a flagger _____	
What should be done in emergency situations? 24-hour contact. Name _____ Phone _____	
Will there be any railroad maintenance operations anticipated through the life of the highway construction project? Impact on the project?	
Is the railroad a member of Diggers Hotline? Yes or No? If not, contact for locates Name _____ Phone _____	
Utilities other than railroad located on railroad property _____	
Open trench across rails - agreement required - timing to remove/replace rails for sewer crossing, etc.	
Salvaged material? - If so, where will it be stored _____	
Other coordination items:	
UNDERSTAND	
If construction progress meetings are held, review checklist for action items.	
Project engineer provides railroad updates when schedule changes. Name _____ Phone _____ FAX _____	
Contractor will provide _____ lead-time to railroad for scheduling their work.	
Who should be contacted if flagger doesn't show up when scheduled? Name _____ Phone _____	
Procedure if flagger has to leave site - railroad flagger contacts the project engineer or inspector at the field office Phone _____	
Railroad contact project engineer if work is being done within track clearance zone without a flagger and advise region railroad coordinator.	
Contractor/project engineer document who they talk with at the railroad when requesting a flagger Name _____	
Railroad will be responsible for traffic control/ flagging of highway traffic during crossing construction, if needed.	
Injuries/incidents on railroad R/W must be reported to the railroad. Name _____ Phone _____	

258.2.1 Third-Party Railroad Protective Insurance

A special provision, either "Railroad Insurance and Coordination," or "Railroad Requirements and Coordination" may be included in the contract requiring the contractor to furnish third-party protective

insurance. Do not allow the contractor to start work on the railroad right-of-way until evidence of the required insurance is furnished to the region and the railroad, and the provisions of [standard spec 107.17.3](#) have been fulfilled.

For more information on third-party railroad protective insurance see [FDM 17-50-5](#) and [FDM 19-15-35](#).

258.2.2 Work on Railroad Right-of-Way Requiring a Railroad Flagger

[Standard spec 107.17](#) provides that work or operations within the right of way of the railroad company must be conducted in a manner that will not interfere with the safe and uninterrupted operation of railroad traffic, and that no equipment can be operated, or materials stored within specified limits, except under the protection of railroad flaggers, unless other arrangements have been made with the railroad and are covered in the special provisions.

The engineer should make sure the contractor does not operate within 25 feet of a railroad track without a railroad flagger present. Any violation of the contract in this respect might be cause to halt operations on or adjacent to the railroad track area.

The "Railroad Requirements and Coordination" special provision providing flagging requirements and costs involved will be included in agreements involving extended occupancy of railroad right of way for railroad grade separation and other projects. In some situations, the railroad provides flagging at no cost to the contractor.

Flagging has often been a sensitive and sometimes costly item and is often a disputed item between the contractor and the railroad. As an incentive to minimize the risks on projects with extended occupancies of railroad right of way, when provided in the special provisions, WisDOT will share these costs 50-50 with the contractor. Since this is not a bid item, these costs must be treated as overhead in the contractors bid. WisDOT pays its share of the cost through a change order after the contractor pays the railroad all flagging costs and bills WisDOT 50%.

258.2.3 Non-Compensable Work

The railroad is responsible for the maintenance of at-grade crossing surfaces on public streets or highways and associated warning devices. They generally receive no compensation for this work. Exceptions are grade crossings on state trunk highways, for which the railroad may be reimbursed up to 85% of reconstruction costs by the state. Maintenance costs for warning devices are partially reimbursed annually by lump sum based on the proportionate share of warning devices that the railroad maintains. Separation structure maintenance may also be required of the railroad at its expense, dependent upon terms of the agreement or stipulation in force.

The region office or local highway authority sends written notice to the railroad under Section 86.12 or Section 86.13, Wisconsin Statutes, advising of the proposed highway project that may affect a railroad highway crossing. The written notice is the means of notifying the railroad of an impending highway improvement that does not require an agreement with the railroad. On state trunk highway crossings, the department may have an obligation regarding the improvement or repairs to the crossing. Refer to [FDM 17-5-5](#) for further discussion.

Railroad representatives should be invited to attend the preconstruction conference when railroad crossings are within the project limits. During construction, the railroad should be kept informed as to when work near the crossing will be done and when the highway will be opened to traffic.

In some situations, RHS arranges with the railroad to pave within the four-foot zone of railroad responsibility in exchange for the railroad providing flagging (usually up to three days), at railroad expense.

258.2.4 Compensable Work

Contract administration is a region function, and duties and responsibilities within each region vary. The region has the responsibility of prosecuting and overseeing railroad contracts to completion, inspecting the work for compliance with the plans and special provisions, preparing the contract completion certificate (when needed), and obtaining and submitting final invoices for payment.

258.2.4.1 Agreement Execution

RHS provides the region with a copy of the fully executed agreement including exhibits and railroad estimates. The RRC will provide the project engineer a copy for information and use. For more information on agreement types and contents see [FDM 17-20-10](#) and [FDM 17-20-15](#).

258.2.4.2 Preconstruction

If work is part of an improvement project, a preconstruction conference is held with the contractor and others. Railroad representatives are to be invited to attend. This conference should cover the contractor's

schedule of operations, the railroad's schedule and plans for its work, coordination between the contractor and the railroad, plans for handling traffic, and any special problems or conflicts.

258.2.4.3 Start Notice

Authorization to proceed with acquisition of materials is often given to the railroad at the time the agreement is sent to them for signature by RHS. The need for lead-time by the railroad should also be considered by the region in notifying the railroad to proceed with construction. A "start notice" is issued by the RRC to authorize the railroad to proceed with the work.

258.2.4.4 Project Schedule

A project schedule may or may not be included in an agreement. Generally, ordered work by the Office of the Commissioner of Railroads has a completion date associated with it. A Grade Crossing Repair project has a schedule driven by the railroad and subject to working out road closures and detours. Projects let to contract are included in construction project special provisions and schedules.

For more project scheduling information see [FDM 17-20-5](#).

258.2.4.5 Inspection

The region must determine whether construction staff or the RRC will be responsible for compliance with the railroad agreement. The RRC is familiar with railroad construction and with the railroad agreement. The RRC is also the link to the RHS for additional technical expertise or assistance.

The engineer or RRC should maintain liaison with the railroad person in charge of the fieldwork in order to monitor the project and concur on the work completed, the workdays, and the type of equipment and machinery used on the project. The railroad is required to notify the region when it will begin work and when the work was completed or suspended. The RRC and engineer should arrange with railroad personnel for final inspection and acceptance of the project. Regardless of who will be responsible for inspection, notify the RRC when the railroad begins work on the project.

Work accomplished by railroad forces under a railroad agreement will be inspected and administered according to the following guidelines:

1. If railroad forces begin work before receiving authorization to proceed from the region, they should be informed the work may be at the railroad's expense. The project engineer is to notify the RRC when railroad work starts.
2. When the railroad company concurrently performs non-compensable work, the supervision and administration of the agreement by the department's forces extends only to the compensable work and only to the extent described in the contract, but sufficient records must be kept so that only compensable work is paid for when the railroad submits invoices.
3. Field notes for larger railroad agreements should be kept in the same fashion and in detail sufficient to review partial and final billings, to support change orders, additional work, and to clarify unusual problems. Field notes should include the following:
 - 3.1 Information relating to equipment used such as type, number, hours, and rates.
 - 3.2 Information relating to use of labor, such as class, number, hours, and wage rates. These labor costs should be reviewed weekly with the railroad work supervisor.
 - 3.3 Materials installed, removed, or recovered.
 - 3.4 Sufficient information for preparation of change orders if needed.
4. Field notes for lump sum railroad agreements should be adequate to document that the work was accomplished in accordance with the terms of the agreement including the furnishing of new or used material. Also, sufficient information should be recorded to enable preparation of a change order if needed.

If it appears that railroad force work may not start in a timely manner, or if the railroad force work is not being carried out in accordance with the railroad agreement, notify RHS in sufficient time for RHS to deal with higher authority on the railroad.

258.2.4.6 Recovered Materials

Salvage values of materials recovered by the railroad should be credited to the project. The RRC or engineer should review with RHS to establish material values. A copy of this record should be available for review at audit.

258.2.4.7 Final Bill

The RRC has the responsibility of monitoring the timeliness of final bills. The railroad accounting section will accumulate costs and submit their final invoice to the region. This invoice is to be marked "FINAL." The final bill is to be submitted within one year of the state's acceptance of the company's work in accordance with 23 CFR 140.922. If the final bill is not received by that date, the last detailed progressive bill will be considered to be the final bill.

258.2.4.8 Completion and Acceptance

The region monitors construction progress to completion. The region may keep a record of railroad work including labor, equipment, and materials used. The railroad should notify the region in advance, in writing, if they expect to suspend the work, later when they resume the work, and finally when work is completed.

The railroad is to notify the region, or in the case of ordered projects, the region and Office of the Commissioner of Railroads, in writing, advising that the project work is completed. If the railroad has not indicated that the railroad force work has been completed, the region should contact the railroad for information on the status of railroad work. The region and railroad should agree on the project completion date.

The RCH makes a final field inspection and notifies the railroad of acceptance by letter, with a copy to RHS and BBS.

258.2.4.9 Contract Modifications

Any significant modification to the extent or scope of the work under the Agreement, including associated work exceeding 25% of the original estimate for force work labor or the total cost of the work, must be covered by a written change order to document concurrence of the state. Any work done by the company under the agreement before authorization by the state must be excluded from payment under the terms of the agreement. For further discussion of change orders refer to [CMM 242](#).

258.2.4.10 Claims

If a railroad company has a claim under a force work agreement and resolution is not reached at the regional level, RHS and ACAS should become involved. Information for processing let work claims can be found in [CMM 254](#) and may offer general guidance on the claims process that may be of use with a railroad. It would be unusual for a railroad claim to progress to the level of DOT Secretary, or to the State Claims Board for resolution however.