

Memorandum

Subject: **ACTION:** Railway-Highway Crossings
Program Questions & Answers Guidance
(Effective date: October 1, 2021)

Date: May 23, 2022

From: Cheryl J. Walker *Cheryl J. Walker*
Associate Administrator, Office of Safety

In Reply Refer To:
HSSP

To: Division Administrators

Purpose

This memorandum provides guidance to clarify Federal share and eligibility requirements for section 130 of title 23 of the United States Code (U.S.C.) for the Railway-Highway Crossings Program (23 U.S.C. 130) under the Infrastructure Investment and Jobs Act (IIJA) (Pub. L. 117-58, also known as the [“Bipartisan Infrastructure Law” \(BIL\)](#)), and Part 924 of title 23 of the Code of Federal Regulations (23 CFR Part 924), and for Federal share and eligibility requirements for new project obligations using carryover funds set aside under prior authorizations pursuant to 23 U.S.C. 130(e). This guidance also incorporates Federal Highway Administration (FHWA) priorities, consistent with the [Policy on Using Bipartisan Infrastructure Law Resources to Build a Better America](#), dated December 16, 2021. The Railway-Highway Crossings Program (hereafter referred to as “Section 130”) requirements within the BIL took effect on October 1, 2021 and apply to all related funding obligated on or after that date, whether carryover or new. This guidance replaces the Rail-Highway Crossings Program (Section 130) Questions & Answers published on August 10, 2017 and updated on August 16, 2018.

Except for the statutes and regulations cited, the contents of this document do not have the force and effect of law and are not meant to bind the States or the public in any way. This document is intended only to provide information regarding existing requirements under the law or agency policies.

Background

The Section 130 Program provides funds for the elimination of hazards at railway-highway crossings. The Section 130 Program is funded as a set-aside from the funds apportioned for the Highway Safety Improvement Program (HSIP).¹ The Section 130 Program has been correlated with a significant decrease in fatalities at railway-highway grade crossings. From 2000 to 2019, fatalities at public railway-highway crossings decreased from 369 to 250 (32% decrease).² The

¹ 23 U.S.C. 148.

² Source: Federal Railroad Administration.



Memorandum

overall reductions in fatalities come despite an increase in the vehicle miles traveled on roadways and an increase in the passenger and freight traffic on the railways.

Summary of Guidance

The guidance answers frequently asked questions from rail crossing safety stakeholders regarding Federal share and general eligibility activities.

Federal Share

1. ***Q: What is the Federal Share of rail-highway crossing projects?***

A: Under 23 U.S.C. 130(f)(3), the Federal Share of all rail-highway crossing projects authorized after October 1, 2021 using Section 130 set-aside funds is 100 percent. For new obligations entered into after October 1, 2021 using carryover funds set aside under prior authorizations pursuant to Section 130, the Federal share is 100 percent. Existing project authorizations must retain the Federal share requirement as authorized. Those projects cannot be modified to reflect a higher Federal share except shortly before or after contract award (23 CFR 630.106(f)). Rail-highway crossing projects funded with other Federal-aid funding sources, such as HSIP funds, may qualify for increased Federal Share up to 100 percent for projects under 23 U.S.C. 120(c)(1).

2. ***Q: Can the non-Federal share for a project using funding set aside under 23 U.S.C. 130 for rail-highway grade crossing projects be increased, resulting in a decrease in the Federal share, to below 100 percent?***

A: Yes. 23 U.S.C. 120(h) allows a State to contribute an amount in excess of the non-Federal share of a project under title 23, U.S.C. so as to decrease the Federal share payable on such project.

3. ***Q: How should existing projects already authorized using toll credits be reflected in FHWA's Financial Management Information System (FMIS)?***

A: Existing Section 130 set-aside projects already authorized using toll credits should be authorized showing the applicable Federal prorate share. The total Section 130 set-aside funds on such projects may effectively account for 100 percent of the project with the credits appropriately recorded, but the maximum allowable share should always be recorded to ensure any adjustments take into account this limitation and appropriate credits are also applied to the project. It has been noted some State financial systems cannot follow this recording method and must show 100 percent with the toll credits to facilitate proper billing. Existing project authorizations must retain the Federal share requirement as authorized. Those projects cannot be modified to reflect a higher Federal share except shortly before or after contract award (23 CFR 630.106(f)).



Memorandum

4. ***Q: Can Section 130 set-aside funds be used as the local match required under 23 U.S.C. 130(h)?***

A: Yes. Under 23 U.S.C. 130(h), if a State law allows State funds to be used for a railroad-highway crossing project where a local match is required, Section 130 set-aside funds may be used for the local match required by State law.

General Eligibility

5. ***Q: Are blocked crossings eligible for Section 130 funds?***

A: Yes. 23 U.S.C. 130(a) states that funds apportioned in accordance with 23 U.S.C. 104 may be used for "projects at grade crossings to eliminate hazards posed by blocked grade crossings due to idling trains".

6. ***Q: Can Section 130 funds be used to develop a State Highway-Rail Grade Crossing Action Plan?***

A: Yes. Section 11401(c) of the FAST Act, as amended by the BIL, allows for Section 130 funds to be made available "to provide States with funds to develop a State highway-rail grade crossing action plan... or to update a State action plan."

7. ***Q: Can Section 130 funds be used to reduce trespassing at grade crossings?***

A: Yes. 23 U.S.C. 130(e)(1)(B), as amended by the BIL, allows for States to use Section 130 funds "for projects to reduce pedestrian fatalities and injuries from trespassing at grade crossings." The project must be at a public rail-highway crossing or public rail crossing at a pedestrian pathway (23 CFR 924.9(a)(4)(ii)). For more information on trespassing, please visit the FRA website at [Highway-Rail Grade Crossing Safety and Trespass Prevention | FRA \(dot.gov\)](#).

8. ***Q: Does the 8 percent limit for compilation and analysis of data in support of Rail-Highway Crossings Program annual reports apply to the development of State Highway-Rail Grade Crossing Action Plans?***

A: No. Section 130 funds used to develop or update a State action plan are not restricted to the 8 percent of funds under 23 U.S.C. 130(k) for compilation and analysis of data in support of Rail-Highway Crossings Program Annual Reports.

9. ***Q: What are the requirements for State Action Plans?***

A: Section 11401 of the FAST Act required the Administrator of the Federal Railroad Administration (FRA) to develop requirements for State Highway-Rail Grade Crossing



U.S. Department
of Transportation

Federal Highway
Administration

Memorandum

Action Plans. Information about State Highway-Rail Grade Crossing Action Plans, including a link to FRA's final rule on State Highway-Rail Grade Crossing Action Plans, can be found at the following website: <https://railroads.dot.gov/sap>. The FHWA and FRA also developed a Highway-Railway Grade Crossing Action Plan and Project Prioritization Noteworthy Practices document that can be downloaded from the FHWA Office of Safety Rail-Highway Crossings Program web page at: <https://safety.fhwa.dot.gov/hsip/xings/>.

10. ***Q: Are crossing surface improvements eligible for Section 130 set-aside funds?***

A: Yes. Crossing surface improvements are an eligible activity for Federal-aid funds if they are identified as a project for the elimination of hazards of railway-highway crossings as part of the State's data-driven project selection and prioritization processes under 23 CFR 924.9(a)(4)(ii).

11. ***Q: How are Section 130 set-aside funds distributed to the States?***

A: Funds are apportioned by formula to States each year in accordance with 23 U.S.C. 130(f). Per 23 U.S.C. 130(e)(1), funds are set aside from the HSIP for the elimination of hazards, the installation of protective devices at railway-highway crossings, the replacement of functionally obsolete warning devices, and for projects to reduce pedestrian fatalities and injuries from trespassing at grade crossings.

12. ***Q: How are Section 130 funds used within a State?***

A: Section 130 is a Federally-funded, State-administered program. In accordance with 23 CFR 924.9(a)(4)(ii), States shall use State-specific, data-driven processes for managing their Rail-Highway Crossings Program that (A) consider the relative risk of public railway-highway grade crossings based on a hazard index formula, (B) include onsite inspection, and (C) emphasize standard signing and markings at all public crossings. States may utilize various processes to select and prioritize projects.

13. ***Q: Does FHWA award Section 130 set-aside funds under a competitive award process?***

A: No. Because Section 130 set-aside funds are distributed by formula pursuant to 23 U.S.C. 130(f), FHWA does not award Section 130 set-aside funds under a competitive award process.

14. ***Q: Does the BIL remove the requirement that at least half of the funds set aside for the Section 130 program must be for the installation of protective devices at railway-highway crossings?***



U.S. Department
of Transportation

**Federal Highway
Administration**

Memorandum

A: Yes. Section 11108(a)(2) of the BIL removes the requirement that at least half of the funds set aside for the Section 130 program must be for the installation of protective devices at railway-highway crossings. Protective devices at railway-highway crossings remain an eligible activity.

15. ***Q: Can Section 130 funds be used to replace functionally obsolete rail-highway crossing safety equipment?***

A: Yes. Section 11108(a)(2) of the BIL states the replacement of functionally obsolete warning devices is an eligible activity. Section 130 funds may be used to replace rail-highway crossing safety equipment under certain circumstances. Rail-highway crossing equipment purchased with Federal-aid funds is required to be used until no longer needed for the purposes for which the equipment was purchased (2 CFR 200.313(a)(1); 2 CFR 1201.313). Equipment that may be disposed of under State property management procedures (e.g., if State procedures permit disposal for no longer meeting current standards or having served its useful life) may be considered as no longer needed for the purposes for which the equipment was purchased. In these instances where a State or local agency then intends to replace that equipment, the use of Section 130 funds to purchase replacement equipment may be authorized where the State or local agency demonstrates that the disposition of the original equipment meets State disposal requirements under State law and procedures (2 CFR 200.313(b); 2 CFR 1201.313) and such replacement cost is considered as a necessary and reasonable cost according to Federal-aid Highway Program requirements consistent with 2 CFR 200.403-200.404.

Questions

If you have any questions or need additional information, please contact Kelly Morton (202-366-8090 or kelly.morton@dot.gov) or Esther Strawder (202-366-6836 or esther.strawder@dot.gov).

cc: Directors of Field Services
Safety Field
HCC
HCF
HPL