

regulation on railroad/highway projects and reimbursement for railroad work on Federal-aid highway projects. The changes were made to conform these regulations to the changes brought about by the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (Pub. L. 102–240, 105 Stat. 1914). Additionally, the changes were to provide State transportation departments with clarification and more flexibility in implementing the current law. Other changes required railroads to submit final billings within one year following completion of the railroad work; remove the requirement of a State's certification that work is complete; remove the "G" Funds terminology; and increase the ceiling for lump sum agreements from \$25,000 to \$100,000. This interim final rule has been in effect since August 27, 1997. To date, the FHWA received five comments to the docket. The last comment was received in October 1997. Since the interim final rule has been in effect in 1997, the FHWA has determined that the regulation is working effectively and efficiently and without significant burden to the State transportation departments and railroad companies. Consequently, we are adopting the interim final rule as final without any changes.

Summary of Comments

The FHWA received five comments to the docket. The FHWA received comments from Ronald J. Ornee, representing the County of Los Angeles Department of Public Works; Stephanie D. Roth, representing the Railway Progress Institute (now known as the Railway Supply Institute, effective January 1, 2003); Dwight M. Bower, representing the State of Idaho Transportation Department; Michael J. Rush, representing the Association of American Railroads; and Tom Zeinz, representing the Illinois Central Railroad (which merged with the Canadian National Railway Company on July 1, 1999).

The County of Los Angeles Department of Public Works comments support the FHWA's revisions as stated in the interim final rule.

The Railway Progress Institute (RPI) submitted two recommendations. The RPI recommended that the lump sum payment arrangement for reimbursement for railroad adjustments as stated in § 646.216(d)(3)(ii) should be increased from \$100,000 to \$150,000. The RPI believes that this should be increased to "reflect the rise in the number of gated crossings, which are more costly to maintain." The RPI also recommended that the Appendix Subpart of Part 646 should be revised to

use foot-pound units instead of metric in order to eliminate the possibility of miscalculations, which could affect the safety of grade crossings.

The State of Idaho Transportation Department (IDDOT) submitted three recommendations. The IDDOT recommends changing § 646.216(d)(3) to eliminate the phrase "with its own forces," to clarify the flexibility of the railroads' use of subcontracted work performed on behalf of the railroads. The second recommendation is to change § 646.216(3)(d)(i) to include the phrase "and other eligible work," to allow other specialized services provided to be included in State-railroad agreements. The third recommendation was to eliminate § 646.216(d)(3)(ii), due to its concern that services provided may exceed \$100,000 (e.g., the average cost for installing warning devices and surfacing for a single-track at-grade crossing was \$140,000 and \$90,000, respectively, at the time of the docket comment submittal).

The Association of American Railroads (AAR) submitted several recommendations. The AAR recommended changing § 140.922(a) to include text regarding a time frame for payments received by the railroad company, based on the date the State transportation department received the progress billings.

The AAR recommended adding text at the end of § 140.922(b) that stipulates a time frame of the acceptance of billable work. The AAR recommended that this text include (1) a time frame for the State transportation department report project inspection results to the FHWA and railroad company; (2) when a project will be considered complete and accepted if no comments are received; and (3) a time frame when the railroad company shall receive payment from the State transportation agency.

The AAR's recommendation

Finally, the AAR recommended changes to § 140.922(c) to reduce the audit period from three years from the date final payment is received by the railroad, to one year after the date the final bill was received by the State transportation department. The AAR recommends that additional text is included stating after the one-year period, the final bill shall be accepted and approved, except as agreed to by the railroad and the State transportation department. The AAR provided these recommendations as a means to assist the FHWA with its efforts to assist State transportation departments in their efforts to obtain timely final billings from the railroads.

The Illinois Central Railroad (ICRR) submitted four recommendations that pertained to § 140.922(b). The ICRR recommended that the FHWA include text regarding inspections of the completed work by the State transportation department and the amount of time that should be allotted for the inspection. Second, the ICRR recommended is to include text that would require State transportation department's payment to the railroads to be made within 45 days, otherwise the railroad shall be entitled to receive interest at prevailing rates from the State transportation department on any outstanding amounts. Third, the ICRR recommended to include text that the State transportation departments shall have one year to conduct a final audit of the railroad's final billing before the said billing is considered accepted and final payment is made in full. Finally, the ICRR recommended including text that requires the State transportation department to conduct an audit and base FHWA's reimbursement to the State transportation department on the audited amount. The ICRR believes that these recommendations would facilitate State transportation departments to expedite its project closure and payment process.

Conclusion

This interim final rule has been in effect since August 27, 1997. The FHWA has not received any additional comments to this interim final rule since October 27, 1997. The transportation community has been conforming to the interim final rule for almost six years, and the FHWA believes that the commerce practices between State transportation departments and railroad companies has benefited from the this rule. The interim final rule was part of FHWA's effort to implement the President's Regulatory Invention Initiative and Executive Order 12866 (Regulatory Planning and Review; 58 FR 51735) by allowing administrative and fiscal flexibility for both the State and railroads as a means to implement current law. The interim final rule has provided the necessary flexibility to States and railroads since 1997.

For the reasons stated above the FHWA adopts as a final rule the interim final rule published on August 27, 1997, at 62 FR 45326.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory