

Canadian
Transportation
Agency



Office
des transports
du Canada

Guidelines on Apportionment of Costs of Grade Separations



**Rail Infrastructure Directorate
Rail and Marine Branch**



INTRODUCTION

On July 1, 1996 the *Canada Transportation Act* (CTA) created the Canadian Transportation Agency (the Agency). This quasi-judicial body replaced the National Transportation Agency. The CTA also included several rail transportation provisions that had been part of the now repealed *Railway Act*.

Under the CTA, the Agency maintains the responsibility to make cost apportionment decisions concerning the construction and reconstruction of grade separations (structures that allow railway and road traffic to cross each other at different elevations), when the parties involved in the project are unable to reach an agreement. The Agency uses these guidelines in its deliberations for any such decision it is requested to make. The publication of these guidelines is designed to assist parties in their negotiations or in the preparation of their submissions to the Agency.

These guidelines consider, among other things, the benefits accruing to each party from the construction and reconstruction of grade separations as well as the responsibility that each party has, as an essential part of Canada's transportation system, to co-exist at crossings.

Consistent with section 101 of the CTA, the Agency expects the parties involved in a grade separation project to attempt to come to an agreement on all issues relative to the project, including apportionment of costs. Once an agreement has been reached, either party can file that agreement with the Agency. The filed agreement becomes an order of the Agency authorizing the parties to construct and/or maintain the grade separation and apportion the costs, as set out in the agreement.

If the parties cannot agree, the Agency will rule on any issues outstanding. This ruling is based on submissions to the Agency from the parties. A submission can address any of the items outlined in these guidelines as well as any other relevant matter.

Every case is assessed on its own merits to determine whether the guidelines apply. It should be emphasized that the Agency retains complete discretion, in the case of a dispute, to apportion costs for grade separations. Agency decisions may vary from the guidelines for a particular grade separation project, if appropriate in the circumstances.

DEFINITIONS

- a) A *road* means any way or course, whether public or not, available for vehicular or pedestrian use.
- b) A *road crossing* means the part of a road that passes across, over or under a railway line, and includes a structure supporting or protecting that part of the road or facilitating the crossing.
- c) An *established road crossing* is normally one that has been in existence for public use for at least three years.
- d) A *grade separation* is a structure, including its approaches, that allows road and railway traffic to cross each other at different elevations.
- e) A *basic grade separation* is that portion of the work that is required to provide adequate facilities for present-day needs at the time of construction or reconstruction of the grade separation.
- f) An *overhead bridge* is a grade separation that carries a road across and over a railway.
- g) A *subway* is a grade separation that carries a railway across and over a road.
- h) A *road authority* is any authority having jurisdiction to construct and maintain a road.
- i) A *railway company* means a railway company subject to the jurisdiction of the Agency.

APPORTIONMENT OF COSTS

1. The costs of construction and maintenance of a basic grade separation on a new route are normally paid in full by the party deciding to construct the new route.

2. If an existing grade separation is to be reconstructed for the purposes of the party having exclusive responsibility for that grade separation, the costs of reconstruction and maintenance of the basic grade separation are normally paid in full by that party.

3. For a basic grade separation that is required:

- ◆ to eliminate an established road crossing at grade or to divert substantially all highway traffic from that crossing; or
- ◆ to reconstruct an existing grade separation in situations where both parties have responsibility or where the reconstruction is for the purposes of the party having no responsibility.

a) If a grade separation is to be constructed or an existing grade separation is to be reconstructed, the construction costs are normally apportioned as follows:

- i) On projects due primarily to road development –
 - 85% road authority
 - 15% railway company
- ii) On projects where both road and railway development have contributed largely to the need for the project –
 - 50% road authority
 - 50% railway company
- iii) On projects due primarily to railway development –
 - 15% road authority
 - 85% railway company

b) If a grade separation is to be constructed, the maintenance costs are normally apportioned as follows:

- i) the road authority pays all maintenance costs of the substructure, superstructure and retaining walls of an overhead bridge;
- ii) the railway company pays all other maintenance costs of an overhead bridge, including the cost of maintaining the railway approaches, track structure, railway drainage and communication facilities;
- iii) the railway company pays all maintenance costs of the substructure and the superstructure of a subway; and
- iv) the road authority pays all other maintenance costs of a subway, including the cost of maintaining the road approaches, retaining walls, road surface, sidewalks, drainage and lighting.

c) If an existing grade separation is to be reconstructed, the established maintenance responsibilities for the existing grade separation are normally considered, in the apportionment of maintenance costs of the basic grade separation.

4. The costs of construction and maintenance of a basic grade separation are not to include the costs that would otherwise be incurred by the railway company or the road authority if the crossing did not exist.

5. The costs of construction and maintenance of additional facilities in excess of the costs of the basic grade separation are normally to be paid by the party requesting the additional facilities.

6. Clearances and pier protection in excess of the following are normally considered to be additional facilities:

- a) For overhead bridges
 - i) a vertical clearance of 7.16 metres above the base of rail for new or reconstructed basic grade separations;

- ii) a lateral clearance of 5.5 metres from the centerline of the nearest track to the nearest pier or abutment in the basic grade separation; and
 - iii) pier protection, as per the American Railway Engineering and Maintenance-of-Way Association specifications.
- b) For subways
- i) vertical and lateral clearances as per the design standards for grade separations for the province in which the grade separation is located.

APPLICATION

In the event of a dispute, any of the involved parties may ask the Agency to apportion the costs of the grade separation project. An application must be made in writing, signed by the applicant and sent to the Agency at the following address:

Secretary
Canadian Transportation Agency
Ottawa, Ontario K1A 0N9

If you wish to hand deliver or courier your application, please use the following address:

Secretary
Canadian Transportation Agency
15 Eddy Street
17th Floor, Mailroom
Gatineau, Quebec J8X 4B3

Fax: (819) 997-6727

In addition, a copy of the application should be sent to each of the other parties involved.

PROCESS

In accordance with its General Rules, after receiving an application the Agency ensures that each interested party has the opportunity to comment on the application and any disputed issues. In general, the Agency invites the other interested parties to comment within 30 days, and then allows the applicant 10 days to comment. The Agency reviews all material submitted, makes the final decision or determination, and issues the necessary decisions or orders.

The Agency must process all applications within 120 days of receiving the originating documents unless the parties to the application agree to an extension.

Parties are encouraged to continue any negotiations even though an application may be before the Agency.

DECISIONS AND APPEALS

Any Agency decision is subject to the following conditions:

- ◆ it is binding upon the parties and remains in effect until it is amended or rescinded;
- ◆ it may be reviewed by the Agency, if there are new facts or circumstances;
- ◆ it may be appealed to the Federal Court on a matter of law or jurisdiction, within 30 days of the order or decision; and
- ◆ it may be appealed to the Governor in Council at any time.

CONFIDENTIALITY

All documents filed with the Agency become part of the public record and may be made available for public viewing. However, in accordance with the Agency's General Rules, a claim for confidentiality can be made.

OTHER AVAILABLE DOCUMENTS

- ◆ Agency General Rules
- ◆ *Determining Net Salvage Value*
- ◆ *Environmental Assessment Procedures*
- ◆ *Guide to Certificates of Fitness*
- ◆ *Guide to Private (Farm) Crossings of Railways*
- ◆ *Guide to Railway Charges for the Maintenance and Construction of Road Crossings*
- ◆ *Guide to Railway Crossings of Other Railways*
- ◆ *Guide to Railway Line Construction*
- ◆ *Guide to Railway Operation Compensation*
- ◆ *Guide to Railway Works Cost Apportionment*
- ◆ *Guide to Relocation of Railway Lines in Urban Areas*
- ◆ *Guide to Road Crossings of Railways*
- ◆ *Guide to Utility Crossings of Railways*
- ◆ Railway Safety Management Systems Regulations
- ◆ Railway Third Party Liability Insurance Coverage Regulations
- ◆ *Resolving Disputes Through Mediation*
- ◆ *The Canada Transportation Act and the Rail and Marine Transportation Branch*
- ◆ *The Rail Infrastructure Directorate: A Guide*
- ◆ *Transfer and Discontinuance of Railway Line Operations and Railway Track Determinations*

The above are available in alternate formats.

FOR MORE INFORMATION

For more information or copies of the above documents, please contact one of the following staff members of the Rail Infrastructure Directorate:

Director
(819) 953-0327

Manager, Approvals and Determinations
(819) 953-0365

Manager, Engineering and Environmental Services
(819) 953-2117

Fax: (819) 953-8353

Toll Free: 1-888-222-2592

TTY: 1-800-669-5575 or (819) 953-9705



For more information on the *Canada Transportation Act*, the Agency and its responsibilities, or Agency decisions and orders, you can access the Agency's Web site at www.cta.gc.ca

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