

Freight Rail & Right of Way Access

Key Takeaway: As Congress considers legislation that would provide third parties access to railroad right-of-way, safety must be the top priority.

Rail safety is paramount for the nation's railroads, reflected by the fact that recent years have been among the safest on record. Companies seeking access to railroad infrastructure must adhere to the same safety commitment. Policymakers should consider the following principles to ensure safe and reasonable access to railroad right-of-way:

- **Railroads are dedicated to keeping their employees and the public safe near tracks:** When companies access railroads' property without proper notice and authorization, avoidable tragedies can and have occurred. Preparing for construction on or near rights-of-way requires careful planning and adherence to rigorous safety protocols.
- **Safety requires that railroads have sufficient time and information to process applications:** Applications to work near or under railroad tracks are complex and require a professional engineering plan. Railroads need time to review and process each application to ensure it has all critical elements and that the proposed work does not interfere with other work or previous installations. Without railroad approval, construction within active rail corridors creates safety risks to railroad employees, the persons performing the construction activities, and communities near the track.
- **Cost recoupment and adequate compensation must be provided:** Railroads spend billions of dollars annually to maintain their infrastructure and pay millions of dollars in taxes on their land assets. Engineering reviews, generally conducted by experts certified in railroad procedures, that are required to proceed with projects are expensive. Broadband providers are sophisticated, financially strong private entities capable of negotiating fair terms for disrupting and using railroad property. There is no basis to limit railroads' ability to cover their costs and fees and receive fair compensation for using their property.

Oppose legislation that threatens public safety.

Lawmakers should oppose proposals that threaten safety by unreasonably enabling broadband or other companies to encroach on railroad operating corridors unlawfully. For decades, railroads and entities seeking permanent access to railroad property to install equipment under, over or parallel to railroad tracks have negotiated reasonable contracts to address the terms of such access.

Railroads support current national policies to expand broadband access and are prepared to work with broadband providers to facilitate that expansion quickly and safely. Railroads and broadband providers are sophisticated private entities capable of negotiating fair terms for that effort, and Congress should not unduly intervene – especially where proposed laws imperil safe railroad operations. Railroads oppose laws that would circumvent safety reviews, intervene in private party contracts, and give the broadband a “super” taking authority that denies the railroads due process and just compensation. Safe access is not as simple as handing over the key to a house.

The fact is that only 30% of submitted applications for access to railroad right-of-way contain all of the information needed for a railroad to proceed with an installation safely; most require substantial railroad follow-up with the applicant. Once a completed application is in hand, railroads ensure that projects comply with the Federal Railroad Administration's (FRA's) track safety standards (49 CFR Part 213) by conducting an engineering and design review with qualified on-site employees. Railroads are experts at construction along their rights-of-way and have been conducting such projects safely for decades through careful and thorough engineering reviews and planning.

In addition, during the construction, FRA requires the presence of a flagman and watchmen/lookouts to protect workers near the tracks and communicate directly with train crews and dispatchers. FRA regulations (49 CFR Part 214) require these workers to protect railroad employee safety, railroad infrastructure, and those performing work near the tracks by directing the movement of trains and providing alerts to workers along the right-of-way when a train is approaching the work zone. Obviously, arranging for compliance with all regulations and ensuring well-engineered projects are safely executed is — and should be — non-negotiable.

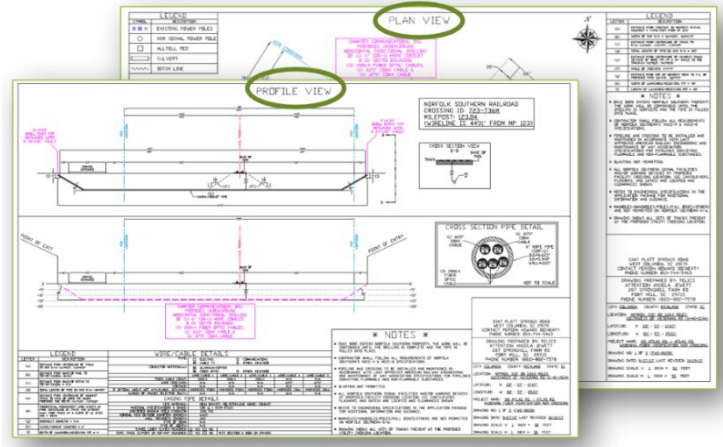
Reasonable precaution is necessary and appropriate, given the nature of the risks of rail operations.

Without appropriate engineering review and construction oversight, installations within active rail corridors can create risks to railroad employees, workers performing construction tasks, nearby communities and the general public who interacts with the railroad at grade crossings. Improperly or hastily arranged installations can also hinder rail service by interfering with rail signals and communications — or even cause derailments. Railroads have invested billions in technology-based safety solutions.

This includes [Positive Train Control \(PTC\)](#) — a wireless-based system to stop certain accidents caused by human error — train control signals, and active grade crossing warning systems that safeguard employees and the general public. Any construction activity not coordinated with railroads could jeopardize these systems that play a significant role in railroad safety.

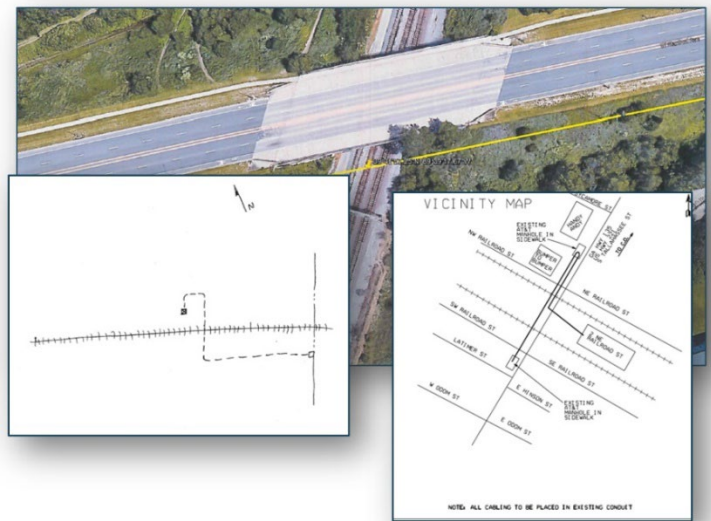
What Railroads Ask For

- State, county, city or town name
- Closest street name/grade crossing
- Geographical coordinates
- Railway and public road ROW width
- Adjacent structures' locations
- Track, railway structures, facilities layout
- Horizontal and vertical clearances



What Railroads Usually Get

- ✗ No geographical location
- ✗ No engineering details
- ✗ No railway and roadway ROW
- ✗ No facility dimensions
- ✗ No bridge clearances



What Can Happen

Unauthorized utility access can cause a sinking or carving of the track substructure (known as subsidence)

