



# Memorandum

Subject: **INFORMATION:** Utility Accommodation and  
Other Uses of Highway Right-of-Way

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In Reply Refer To:  
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To: Directors of Field Services  
Division Administrators  
Federal Lands Highway  
Division Engineers

The purpose of this memorandum is to provide a brief refresher on existing regulations that govern utility accommodation and uses of highway right-of-way (ROW). We received several inquiries from division offices regarding the increase in demand for the use of highway ROW for accommodation. The ever-increasing need for wireless infrastructure and the recent advancement of communication technology has challenged State departments of transportations (State DOT) and Local Public Agencies (LPA) as they try to balance highway safety, operations, and aesthetics with accommodating current and future innovations.

Section 645 of Title 23, Code of Federal Regulations (CFR), broadly defines a utility as a privately, publicly, or cooperatively owned line, facility, or system for producing, transmitting, or distributing communications, cable television, power, and more, while also recognizing that accommodations must be consistent with Federal, State, and local laws and regulations. Occupancy of the ROW pursuant to Part 645 may be precluded if the State law definition of "utility" is more restrictive and excludes the type of facility proposed by an applicant. If the applicant does not qualify as or is not considered a utility under the State law definition, the applicant may request to occupy the ROW under the ROW use agreement provisions in 23 CFR 710.405.

The FHWA has determined that the use of highway ROW to accommodate utilities is in the public interest. The manner in which utilities cross or occupy the ROW can materially affect the highway, its safe operation, aesthetic quality, and maintenance. For example, collisions with roadside trees and utility poles are the most harmful event in 14 percent of all fatal crashes.<sup>1</sup> For this reason, State Utility Accommodation Policies must have horizontal and vertical utility location requirements and clearances for the types of utilities to ensure compliance with the clear roadside policies for the particular highway involved.

To preserve the operational safety and functional aesthetic quality of the highway facility, State DOTs and LPAs must ensure that:

- The design, location, and manner in which utilities use and occupy the ROW conforms to the clear roadside policies for the highway involved and otherwise provides for a safe traveling environment;
- New above ground installations, where permitted, are located as far from the traveled way as possible, preferably along the ROW line;
- No new above ground installations are located within the established clear zone of the highway unless a determination has been made by the State DOT or LPA that placement underground is not feasible or is unreasonably costly and there are no feasible alternate locations;
- If above ground installations must be in the clear zone, appropriate counter measures to reduce hazards shall be used, such as breakaway features, the use of impact attenuation devices, or shielding.

State DOTs and other grantees of Federal funds are required to control the use of real property acquired for a project in which Federal-aid funds participated in any phase of the project. Any non-highway use of ROW requires a ROW use agreement and approval by FHWA. The FHWA must determine that such occupancy, use, or reservation is in the public interest; is consistent with the continued use, operation, maintenance, and safety of the facility; and does not impair the highway or interfere with the free and safe flow of traffic. Except for Interstate highways, FHWA may assign its determination and approval responsibilities to the State DOT in their Stewardship/Oversight Agreement.

The requirements listed in this memorandum are not all inclusive. Additional information can be found in Section 109(l)(1) of Title 23, United States Code (U.S.C.), 23 U.S.C. 111, 23 CFR 1.23(b)-(c), 23 CFR 645, 23 CFR 710 and at our Utilities Program Web site (<https://www.fhwa.dot.gov/utilities/>).

Any questions or requests for assistance for utility accommodations should be directed to Julie Johnston, Utility and Value Engineering Program Manager, 517-702-1826. Any questions or requests for assistance with use of the ROW and property management should be directed to Rosemary Jones, Office of Real Estate Services, 202-366-2042.