

§ 712.703 Procedures.

(a) When a State highway department has a project it wishes to finance from the revolving fund or additional funds are needed for an existing revolving fund project, a letter asking for allocation of funds shall be submitted to FHWA.

(b) If funds are available, FHWA will allocate them to a specific project and authorize obligation of such funds.

(c) After the State has been advised of fund allocation, the project shall be programed, and right-of-way work shall be authorized by FHWA under regular Federal-aid procedures. Each regular project prefix number shall be preceded by the letter Q. The FHWA letter of authorization to proceed shall constitute an obligation of the right-of-way revolving fund. Revolving fund projects are subject to environmental, location, and design requirements in the same manner as regular Federal-aid projects.

(d) All right-of-way work on revolving fund projects shall be accomplished in accordance with procedures and requirements applicable to regular Federal-aid projects.

(e) If situations should develop which prevent work from progressing on individual right-of-way revolving fund projects in a timely manner, the State shall notify FHWA so that the obligational authority may be withdrawn.

[39 FR 26421, July 19, 1974. Redesignated at 39 FR 28629, Aug. 9, 1974, and amended at 47 FR 10530, Mar. 11, 1982]

**PART 713—RIGHT-OF-WAY—THE
PROPERTY MANAGEMENT FUNCTION**

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AUTHORITY: 23 U.S.C. 101(a), 142(f), 156, and 315; 42 U.S.C. 4633 and 4651-4655; 23 CFR 1.32; 49 CFR 1.48 (b) and (cc), 18.31 and parts 21 and 24.

SOURCE: 39 FR 34651, Sept. 27, 1974, unless otherwise noted.

Subpart A—Property Management

§ 713.101 Purpose.

This subpart prescribes Federal Highway Administration (FHWA) policies and procedures for the management of real property acquired in connection with Federal-aid highway projects.

§ 713.102 Applicability.

The policies in § 713.103 are applicable to all State and political subdivisions thereof that manage real property acquired for any highway or highway related project in which Federal funds will participate in any part of the right-of-way costs of the project. States are encouraged to adopt these procedures for all projects in which Federal funds will participate in any part of the project.

[50 FR 34093, Aug. 23, 1985]

§ 713.103 Policies and procedures.

(a) The State highway department (SHD) shall establish property management policies and procedures that will assure control and administration of lands and improvements acquired for right-of-way purposes. These procedures shall establish:

- (1) Property records showing:
 - (i) An inventory of all improvements acquired as a part of the right-of-way;
 - (ii) An accounting of the property management expenses and the rental payments received; and
 - (iii) An accounting of the disposition of improvements and the recovery payments received.

(2) Methods for accomplishing the clearing of right-of-way when such clearance is performed separately from the contract for the physical construction of the project.

(3) The methods for managing the rodent control program.

(4) The methods for employing private firms or public agencies for the management of real property.

(5) The methods for accomplishing the disposition of improvements through resale, salvage, owner retention, or other means.

(b) [Reserved]

(c) Property management activities shall be handled in a manner consistent with the public interest and designed to reflect the maximum long-range public benefit.

(d) The acquiring agency is responsible for the preservation of the improvements and for reasonable safety measures when it has acquired ownership and possession of the property.

(e) Clearing acquired improvements under a clearing contract is considered:

(1) A right-of-way item when the clearing is performed separately from the contract for physical construction. The applicability of the provisions of volume 6, chapter 4, of the Federal-Aid Highway Program Manual¹ shall be determined in accordance with the criteria set forth for the requirement of wage determinations in the FHWA Labor Compliance Manual.²

(2) A construction item within the provisions of volume 6, chapter 4, of the Federal-Aid Highway Program Manual² when the clearing is performed as a part of the physical construction contract.

(f) Rodent control procedures shall assure that the acquiring agency:

(1) Determines and documents the need for extermination services through periodic field inspections.

(2) Coordinates with other interested agencies, such as State, county, and city health departments, and

(3) Completes required extermination measures prior to demolition or removal of improvements.

(g) Acquired rights-of-way shall be maintained in a manner which will prevent or correct problems such as illegal dumping or disposal of rubble, debris, and garbage on cleared Federal-aid highway right-of-way until needed for construction.

(h) Where the acquired right-of-way includes areas for future construction, in addition to that required for immediate construction, the SHD may permit or lease the temporary use of this area until it is needed for highway purposes. The SHD may allow this temporary use when:

(1) The SHD has approved temporary right-of-way limits within the overall right-of-way in accordance with SHD procedures approved by the FHWA;

(2) The integrity and safety of the highway facility constructed elsewhere on the right-of-way are assured; and

(3) There is no decrease in the extent of access control to the highway facility constructed elsewhere on the right-of-way.

[39 FR 34651, Sept. 27, 1974, as amended at 50 FR 34093, Aug. 23, 1985; 59 FR 25327, May 16, 1994]

Subpart B—Management of Airspace

§ 713.201 Purpose.

To prescribe Federal Highway Administration (FHWA) policies relating to the management of airspace on Federal-aid highway systems for non-highway purposes.

§ 713.202 Applicability.

(a) The provisions of this subpart apply to the use of airspace on the Federal-aid highway systems, except as provided in paragraph (b) of this section.

(b) This subpart does not apply to railroads and public utilities which cross or otherwise occupy Federal-aid highway rights-of-way, nor to relocations of railroads or utilities for which reimbursement is claimed under subparts H and E of part 140 of this chapter; joint development and multiple

¹The Federal-Aid Highway Program Manual may be examined at the Federal Highway Administration; 400 7th Street SW., Washington, DC 20590.

²The FHWA Labor Compliance Manual may be examined at the Federal Highway Administration; 400 7th Street SW., Washington, DC 20590.

use of highway rights-of-way as covered in volume 7, chapter 7, section 8 of the Federal-Aid Highway Program Manual;³ and bikeways and pedestrian walkways as covered in part 652 of this chapter.

§ 713.203 Definition.

Air space, as used in this subpart, is that space located above, at, or below the highway's established gradeline, lying within the approved right-of-way limits.

§ 713.204 Policies.

(a) Where a State highway department (SHD) has acquired sufficient legal right, title, and interest in the right-of-way of a highway on a Federal-aid system to permit the use of certain airspace for nonhighway purposes, and where such airspace is not required presently or in the foreseeable future for the safe and proper operation and maintenance of the highway facility, the right to temporary or permanent occupancy or use of such airspace may be granted by the SHD subject to prior FHWA approval.

(b) The airspace required to accommodate foreseeable future expansion of the highway facility may not be used for nonhighway purposes except under the provisions of subpart A of this part, relating to property management.

(c) In any case where sufficient land exists within the publicly acquired rights-of-way of any Federal-aid highway system to accommodate needed rail or nonhighway public mass transit facilities and where this can be accomplished without impairing automotive safety or future highway improvements, the FHWA may authorize a SHD to make such lands and rights-of-way available without charge to a publicly owned mass transit authority for such purposes whenever it may deem that the public interest will be served thereby.

(d) If found to be consistent with highway designs, any portion of right-of-way may be used for green strips, small parks, play areas, parking or

other highway related public use, or for any other public or quasi-public use which would assist in integrating the highway into the local environment and enhancing other publicly supported programs. Normally, the SHD should retain supervision and jurisdiction over such lands but could enter into agreements with local political subdivisions relative thereto.

(e) An individual, company, organization, or public agency desiring to use airspace as defined herein shall submit an application therefor to the SHD in a manner and form deemed appropriate by the SHD. Applications, including a proposed airspace agreement, shall be forwarded to the FHWA together with SHD recommendations for approval and any necessary supplemental information. The submission shall affirmatively provide for adherence to all policy requirements contained in this subpart where such are appropriate to the intended use.

(f) All nonhighway use of airspace shall be covered by a properly executed airspace agreement. The agreement shall contain the following:

(1) The party responsible for developing and operating the airspace.

(2) A general statement of the proposed use.

(3) The general design for the use of the space, including any facilities to be constructed, and such maps, plans, or sketches as are necessary to set out pertinent features in relation to the highway facility.

(4) A detailed three-dimensional description of the space to be used, except when the surface area beneath an elevated highway structure or adjacent to a highway roadway is to be used for recreation, public park, beautification, parking of motor vehicles, public mass transit facilities, and other similar uses. In such cases, a metes and bounds description of the surface area, together with appropriate plans or cross sections clearly defining the vertical use limits may be furnished in lieu of a three-dimensional description.

(5) Provision that any significant revision in the design or construction of a facility described in subsection 5f(3) above shall receive prior approval by the SHD subject to concurrence by the FHWA.

³The Federal-Aid Highway Program Manual may be examined at the Federal Highway Administration; 400 7th Street SW., Washington, DC 20590.

(6) Provision that any change in the authorized use of airspace shall receive prior approval by the SHD subject to concurrence by the FHWA.

(7) Provision that such airspace shall not be transferred, assigned, or conveyed to another party without prior SHD approval subject to concurrence by the FHWA.

(8) Provision that the agreement will be revocable in the event that the airspace facility ceases to be used or is abandoned.

(9) Provision for the agreement to be revoked if the agreement is violated and such violation is not corrected within a reasonable length of time after written notice of noncompliance has been given. Further, that in the event the agreement is revoked and the SHD deems it necessary to request the removal of the facility occupying the airspace, the removal shall be accomplished by the responsible party in a manner prescribed by the SHD at no cost to the FHWA. An exception to this provision is permitted when the improvements revert to the State upon termination of the agreement.

(10) When deemed necessary by the SHD or the FHWA, provision for adequate insurance by the responsible party for the payment of any damages which may occur during or after construction of the airspace facilities to hold the State harmless. Exception to this requirement may be made where the proposal is for the use by a public or quasi-public agency, when such agency is assigned the specific responsibility for payment of any related damages occurring to the highway facility and to the public for personal injury, loss of life, and property damage.

(11) Provision for the SHD and authorized FHWA representatives to enter the airspace facility for the purpose of inspection, maintenance, or reconstruction of the highway facility when necessary.

(12) Provision that the facility to occupy the airspace will be maintained so as to assure that the structures and the area within the highway right-of-way boundaries will be kept in good condition, both as to safety and appearance, and that such maintenance will be accomplished in a manner so as to cause no unreasonable interference with

highway use. In the event the responsible party fails in its maintenance obligations, there will be provision for the SHD to enter the premises to perform such work.

(13) Appropriate provisions of Appendix "C" of the State's Civil Rights Assurances⁴ with respect to title VI of the Civil Rights Act of 1964 and 49 CFR part 21.

(g) Use of air space beneath the established gradeline of the highway shall provide sufficient vertical and horizontal clearances for the construction, operation, maintenance, ventilation, and safety of the highway facility.

(h) The proposed use of airspace above the established gradeline of the highway shall not, at any point between two points established 15 feet beyond the two outer edges of the geometric section (highway prism) of the highway, extend below a horizontal plane which is at least 16 feet 4 inches above the gradeline of the highway, or the minimum vertical clearance plus 4 inches as approved by the State, except as necessary for columns, foundations or other support structures. Where control and directional signs needed for the highway are to be installed beneath an overhead structure, vertical clearance will be at least 20 feet from the gradeline of the highway to the lowest point of the soffit of the overhead structure. Exceptions to the lateral limits set forth above, when justified by the SHD, may be considered on an individual basis by the FHWA.

(i) Piers, columns, or any other portion of the airspace structure shall not be erected in a location which will interfere with visibility or reduce sight distance or in any other way interfere materially with the safety and free flow of traffic on the highway facility.

(j) The structural supports for the airspace facility shall be located to clear all horizontal and vertical dimensions established by the SHD. Supports shall be clear of the shoulder or safety walks of the outer roadway. However, supports may be located in the median

⁴Appendix "C" of the State's Civil Rights Assurances may be examined at any office of the State Highway Department or at the Federal Highway Administration; 400 7th Street SW., Washington, DC 20590.

or outer separation when the SHD determines and the FHWA concurs that such medians and outer separations are of sufficient width. All supports are to be back of or flush with the face of any wall at the same location. Supports shall be adequately protected by means acceptable to the SHD and the FHWA. No supports shall be located in the ramp gores, or in a position so as to interfere with the signing necessary for the proper use of the ramp.

(k) The use of airspace shall not result in either highway or nonhighway users being unduly exposed to hazardous conditions because of highway location, design, maintenance, and operation features.

(l) Appropriate safety precautions and features necessary to minimize the possibility of injury to users of either the highway facility or airspace due to traffic accidents occurring on the highway or accidents resulting from non-highway uses shall be provided. Airspace facilities shall not be approved for construction over or under the highways, unless the plans therefor contain adequate provisions, acceptable to the SHD and the FHWA, for evacuation of the structures or facilities in case of a major accident endangering the occupants of such structures or facilities.

(m) Any airspace facility shall be fire resistant in accordance with the provisions of the local applicable building codes found to be acceptable by the SHD and the FHWA. Such airspace facility shall not be used for the manufacture or storage of flammable, explosive, or hazardous material or for any occupation which is deemed by the SHD or the FHWA to be a hazard to highway or nonhighway users. Proposals involving the construction of improvements in airspace should be approved by the State authority responsible for fire protection standards. In cases where the SHD or the FHWA questions the acceptability of the existing code, conformance with a nationally accepted model building code will be required.

(n) No structure or structures built over a highway facility shall occupy more length of the highway than will permit adequate natural ventilation of the enclosed section of the highway for

the conditions at the location, assuming a volume of traffic equal to capacity. Each such covered length shall be preceded and followed by uncovered lengths of highway that will safely affect natural ventilation. The SHD shall determine such lengths for each particular case, subject to FHWA concurrence. Exceptions may be considered when complete tunnel ventilation is provided. Unless tunnel ventilation is provided, structures over highways shall be so designed and constructed as to facilitate natural ventilation of the highway. To this end, the underside and any supports for such structures shall have smooth and easily cleanable surfaces. Supports for such structures shall leave as much open space on the sides of the highway as feasible. Such space shall be appropriately graded where deemed necessary or desirable by the SHD.

(o) The design, occupancy, and use of any structure over or under a highway facility shall be such that neither the use, safety, appearance, nor the enjoyment of the highway will be adversely affected by fumes, vapors, odors, drippings, droppings, or discharges of any kind therefrom.

(p) On-premise signs, displays, or devices may be erected on structures occupying highway airspace, but shall be restricted to those indicating ownership and type of on-premise activities and shall be subject to regulation by the SHD and the FHWA with respect to number, size, location, and design.

(q) Construction of any structure above or below a highway facility shall not require any temporary or permanent change in alignment or profile of an existing highway without prior approval by the SHD and the FHWA.

(r) Where either the SHD or the FHWA is of the opinion that the proposed use of airspace requires changes in or additions to existing highway facilities for the proper operation and maintenance of highways, such facilities shall be provided without cost to Federal funds. There may be exception to this policy when the proposed use is for highway related or other public or quasi-public use which would assist in integrating the highway into the local

environment and enhance other publicly supported programs. This provision is not intended to expand existing limitations upon expenditures from the highway trust fund, nor is it intended to conflict with the provisions of volume 7, chapter 7, section 8, of the Federal-Aid Highway Program Manual,⁵ relating to joint development of highway corridors and multiple use of roadway properties.

(s) Proposed airspace facilities shall be designed and constructed in a manner which will permit access to the highway facility for the purpose of inspection, maintenance, and reconstruction when necessary.

(t) Permission shall not be granted for any use of airspace which does not conform with the provisions of current, appropriate Federal Aviation Administration regulations.

(u) Approval for the use and occupancy of highway right-of-way for the parking of motor vehicles shall be granted only if proper consideration has been given to the need for the following:

(1) Parking design or arrangement to assure orderly and functional parking.

(2) Plantings or other screening measures to improve the esthetics and appearance of the area.

(3) Surfacing, lighting, fencing, striping, curbs, wheel stops, pier protection devices, etc.

(4) Access for fire protection and fire fighting equipment.

(v) Disposition of income received from the authorized use of airspace shall be the SHD's responsibility and credit to Federal funds is not required.

§ 713.205 Inventory.

The SHD shall maintain an inventory of all authorized uses of airspace. This inventory which shall be available for review by appropriate Federal and State agencies shall include but not be limited to the following items for each authorized use of airspace:

(a) Location by project, survey station, or other appropriate method.

⁵The Federal-Aid Highway Program Manual may be examined at the Federal Highway Administration; 400 7th Street SW., Washington, DC 20590.

(b) Identification of the authorized user of the airspace.

(c) A three-dimensional description or a metes and bounds description.

(d) As-built construction plans of the highway facility at the location where the use of airspace was authorized.

(e) Pertinent construction plans of the facility authorized to occupy the airspace.

(f) A copy of the executed airspace agreement.

Subpart C—Disposal of Rights-of-Way

§ 713.301 Purpose.

This subpart prescribes Federal Highway Administration (FHWA) policies and procedures for disposal of portions of highway rights-of-way no longer needed for highway purposes.

§ 713.302 Applicability.

(a) The provisions of this subpart apply to disposals of rights-of-way where Federal-aid highway funds have participated in either the right-of-way or physical construction costs of a project.

(b) The provisions of this subpart do not apply to the matters covered in part 620, subpart B of this chapter.

(1) Where a section of highway including the right-of-way is abandoned;

(2) Where only changes in access control are involved; and

(3) To relinquishments of highway facilities for continued use for highway purposes.

(c) The provisions of this section do not apply:

(1) Where whole sections of the Interstate System are withdrawn under the provisions of 23 U.S.C. 103(e)(2) and (4), or

(2) Where real property has been acquired for planned highway purposes, but because of environmental concerns, widespread public objections, or other similar considerations, the State highway department (SHD) or other appropriate State authority determines not to construct the planned highway facility.

[39 FR 34651, Sept. 27, 1974, as amended at 40 FR 3767, Jan. 24, 1975; 41 FR 9321, Mar. 4, 1976]

§ 713.303 Definitions.

For purposes of this subpart the following definitions apply:

(a) *Disposal*. The conveyance for uses other than for highways of unneeded portions of highway rights-of-way (in contrast to relinquishment, which is the conveyance of a portion of a highway right-of-way or facility by a State highway department (SHD) to another government agency for highway use).

(b) *Final acceptance*. (1) On Federal-aid construction projects, the date of acceptance of the physical construction by FHWA; and

(2) On Federal-aid right-of-way projects, where there is no Federal-aid construction, the date the FHWA determines to be the date of completion of the acquisition of the right-of-way authorized by FHWA to be acquired for the project.

§ 713.304 General requirements.

(a) The conveyance may be to any public entity or private party.

(b) When disposal of unneeded portions of highway rights-of-way involve a change in the access control line, provisions of part 620, subpart B of this chapter also apply.

(c) Federal, State and local conservation, recreation, park, or other appropriate agencies shall be afforded the opportunity to acquire by purchase or donation in accordance with the State law, tracts of right-of-way being considered for disposal when there is indication that such tracts have a present or potential use for parks, conservation, recreational or related purposes. The SHD shall notify the appropriate agencies of its intention to dispose of unneeded portions of right-of-way which it considers to have present or potential use for the aforementioned purposes.

(d) Lands or interests therein are not to be disposed of if they are suitable for retention in order to restore, preserve, or improve the scenic beauty and environmental quality adjacent to the highway.

(e) When right-of-way which has been acquired with Federal-aid participation is disposed of without requiring a credit to Federal funds, the instrument of conveyance shall contain appropriate provisions of "Appendix C" of the

State's title VI Civil Rights Assurances⁶ with respect to the Civil Rights Act of 1964, and the Department of Transportation Regulations (49 CFR part 21).

[39 FR 34651, Sept. 27, 1974, as amended at 41 FR 9321, Mar. 4, 1976]

§ 713.305 Application for approval.

(a) A SHD shall submit a request to FHWA for prior approval to dispose of highway rights-of-way when the determination that the property is no longer needed for highway purposes occurs after:

(1) Final acceptance of a Federal-aid physical construction project, where Federal funds have participated in the right-of-way and construction costs, or construction costs only; or

(2) Final acceptance of a right-of-way acquisition project where Federal-aid highway funds do not participate in the cost of the physical construction.

(b) The request shall include:

(1) An explanation of why the right-of-way is not needed; and

(2) A plan which identifies the right-of-way proposed for disposition in relation to construction features and to the remaining right-of-way.

§ 713.306 Excess right-of-way resulting from plan changes.

(a) Prior to final acceptance of a project, a portion of the right-of-way authorized by FHWA and acquired by the SHD may become unnecessary for the highway project. The unneeded portion usually results from plan changes. Right-of-way authorized and acquired to a natural boundary, but not incorporated into the right-of-way at the time of final acceptance of the project, is considered to be in the nature of a plan change.

(b) When the plan change results in excess right-of-way, a separate request for prior approval of disposal need not be submitted.

(c) Where credit to Federal funds is required in accordance with § 713.307 and the determination as to the

⁶Appendix "C" of the State's Civil Rights Assurances may be examined at any office of the State Highway Department or at the Federal Highway Administration; 400 7th Street, SW., Washington, DC 20590.

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unneded right-of-way is made prior to final acceptance of the project, the disposal shall be accomplished prior to submission of the final voucher for the project or not later than 2 years from the time the highway facility is opened to traffic, whichever is earlier. However, prior to expiration of the specified time period, the SHD may request and the FHWA may approve an extension of the time. If the property is not sold within the approved time limit, the cost of acquisition of the unneded portion must be credited to the project if Federal reimbursement has been made therefor.

§ 713.307 Credit to Federal funds.

(a) When right-of-way is disposed of to another governmental agency for public use, FHWA does not require a charge to the agency and no credit to Federal funds is required. If, for any reason, there is a payment to the State for the land transferred and Federal funds participated in the cost of acquisition of the right-of-way, the amount received shall be credited to Federal funds at the same pro rata share as Federal funds participated in the cost of acquisition of the right-of-way.

(b) If the disposal is to a part other than a Federal, State, or local governmental agency for public use, and Federal funds participated in the cost of acquisition of the right-of-way, there shall be a credit to Federal funds at the same pro rata share as Federal funds participated in the cost of acquisition of the right-of-way. The amount credited shall be the result of disposal by one of the following means:

- (1) Public sale; or
(2) Negotiations based on current appraised fair market value.

(c) When a credit to Federal funds is required, the cost of disposition may be deducted from the sales price.

§ 713.308 Uneconomic remnants.

(a) An uneconomic remnant incorporated within the right-of-way limits loses its identity and becomes part of the right-of-way. Should it no longer be needed for highway purposes, disposal of the area would be in the same manner as any other portion of highway rights-of-way.

(b) When the uneconomic remnant is not incorporated within the approved right-of-way limits, no FHWA approval to dispose of it is required. Upon disposal of such remnant, a credit to Federal funds is required in accordance with the provisions of § 713.307 of this part.

[39 FR 34651, Sept. 27, 1974, as amended at 44 FR 73019, Dec. 17, 1979]

PART 750—HIGHWAY BEAUTIFICATION

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