

provide adequate protection to the highway, its safe operation, aesthetic quality, and maintenance.

(3) Specifications for and methods of installation; requirements for preservation and restoration of highway facilities, appurtenances, and natural features and vegetation on the right-of-way; and limitations on the utility's activities within the right-of-way including installation within areas set forth by § 645.209(h) of this part should be prescribed as necessary to protect highway interests.

(4) Measures necessary to protect traffic and its safe operation during and after installation of facilities, including control-of-access restrictions, provisions for rerouting or detouring traffic, traffic control measures to be employed, procedures for utility traffic control plans, limitations on vehicle parking and materials storage, protection of open excavations, and the like must be provided.

(5) A State transportation department may deny a utility's request to occupy highway right-of-way based on State law, regulation, or ordinances or the State transportation department's policy. However, in any case where the provisions of this part are to be cited as the basis for disapproving a utility's request to use and occupy highway right-of-way, measures must be provided to evaluate the direct and indirect environmental and economic effects of any loss of productive agricultural land or any impairment of the productivity of any agricultural land that would result from the disapproval. The environmental and economic effects on productive agricultural land together with the possible interference with or impairment of the use of the highway and the effect on highway safety must be considered in the decision to disapprove any proposal by a utility to use such highway right-of-way.

(d) Compliance with applicable State laws and approved State transportation department utility accommodation policies must be assured. The responsible State transportation department's file must contain evidence of the written arrangements which set forth the terms under which utility facilities are to cross or otherwise oc-

cupy highway right-of-way. All utility installations made on highway right-of-way shall be subject to written approval by the State transportation department. However, such approval will not be required where so provided in the use and occupancy agreement for such matters as utility facility maintenance, installation of service connections on highways other than freeways, or emergency operations.

(e) The State transportation department shall set forth in its utility accommodation plan detailed procedures, criteria, and standards it will use to evaluate and approve individual applications of utilities on freeways under the provisions of § 645.209(c) of this part. The State transportation department also may develop such procedures, criteria and standards by class of utility. In defining utility classes, consideration may be given to distinguishing utility services by type, nature or function and their potential impact on the highway and its user.

(f) The means and authority for enforcing the control of access restrictions applicable to utility use of controlled access highway facilities should be clearly set forth in the State transportation department plan.

(Information collection requirements in paragraphs (a), (b) and (c) were approved under control number 2125-0522, and paragraph (d) under control number 2125-0514)

[50 FR 20354, May 15, 1985, as amended at 53 FR 2834, Feb. 2, 1988; 55 FR 25828, June 25, 1990; 65 FR 70312, Nov. 22, 2000]

**§ 645.213 Use and occupancy agreements (permits).**

The written arrangements, generally in the form of use and occupancy agreements setting forth the terms under which the utility is to cross or otherwise occupy the highway right-of-way, must include or incorporate by reference:

(a) The transportation department standards for accommodating utilities. Since all of the standards will not be applicable to each individual utility installation, the use and occupancy agreement must, as a minimum, describe the requirements for location, construction, protection of traffic, maintenance, access restriction, and

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any special conditions applicable to each installation.

(b) A general description of the size, type, nature, and extent of the utility facilities being located within the highway right-of-way.

(c) Adequate drawings or sketches showing the existing and/or proposed location of the utility facilities within the highway right-of-way with respect to the existing and/or planned highway improvements, the traveled way, the right-of-way lines and, where applicable, the control of access lines and approved access points.

(d) The extent of liability and responsibilities associated with future adjustment of the utilities to accommodate highway improvements.

(e) The action to be taken in case of noncompliance with the transportation department's requirements.

(f) Other provisions as deemed necessary to comply with laws and regulations.

(Approved by the Office of Management and Budget under control number 2125–0522)

### § 645.215 Approvals.

(a) Each State transportation department shall submit a statement to the FHWA on the authority of utilities to use and occupy the right-of-way of State highways, the State transportation department's power to regulate such use, and the policies the State transportation department employs or proposes to employ for accommodating utilities within the right-of-way Federal-aid highways under its jurisdiction. Statements previously submitted and approved by the FHWA need not be resubmitted provided the statement adequately addresses the requirements of this part. When revisions are deemed necessary the changes to the previously approved statement may be submitted separately to the FHWA for approval. The State transportation department shall include similar information on the use and occupancy of such highways by private lines where permitted. The State shall identify those areas, if any, of Federal-aid highways within its borders where the State transportation department is without legal authority to regulate use by utilities. The statement shall address the nature of the formal agree-

ments with local officials required by § 645.209(g) of this part. It is expected that the statements required by this part or necessary revisions to previously submitted and approved statements will be submitted to FHWA within 1 year of the effective date of this regulation.

(b) Upon determination by the FHWA that a State transportation department's policies satisfy the provisions of 23 U.S.C. 109, 111, and 116, and 23 CFR 1.23 and 1.27, and meet the requirements of this regulation, the FHWA will approve their use on Federal-aid highway projects in that State.

(c) Any changes, additions or deletions the State transportation department proposes to the approved policies are subject to FHWA approval.

(d) When a utility files a notice or makes an individual application or request to a STD to use or occupy the right-of-way of a Federal-aid highway project, the STD is not required to submit the matter to the FHWA for prior concurrence, except when the proposed installation is not in accordance with this regulation or with the STD's utility accommodation policy approved by the FHWA for use on Federal-aid highway projects.

(e) The State transportation department's practices under the policies or agreements approved under § 645.215(b) of this part shall be periodically reviewed by the FHWA.

(Information collection requirements in paragraph (a) were approved by the Office of Management and Budget under control number 2125–0514)

[50 FR 20354, May 15, 1985, as amended at 53 FR 2834, Feb. 2, 1988; 60 FR 34851, July 5, 1995; 65 FR 70312, Nov. 22, 2000]

## PART 646—RAILROADS

### Subpart A—Railroad-Highway Insurance Protection

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