

(b) Since by tradition and practice highway and utility facilities frequently coexist within common right-of-way or along the same transportation corridors, it is essential in such situations that these public service facilities be compatibly designed and operated. In the design of new highway facilities consideration should be given to utility service needs of the area traversed if such service is to be provided from utility facilities on or near the highway. Similarly the potential impact on the highway and its users should be considered in the design and location of utility facilities on or along highway right-of-way. Efficient, effective and safe joint highway and utility development of transportation corridors is important along high speed and high volume roads, such as major arterials and freeways, particularly those approaching metropolitan areas where space is increasingly limited. Joint highway and utility planning and development efforts are encouraged on Federal-aid highway projects.

(c) The manner in which utilities cross or otherwise occupy the right-of-way of a direct Federal or Federal-aid highway project can materially affect the highway, its safe operation, aesthetic quality, and maintenance. Therefore, it is necessary that such use and occupancy, where authorized, be regulated by transportation departments in a manner which preserves the operational safety and the functional and aesthetic quality of the highway facility. This subpart shall not be construed to alter the basic legal authority of utilities to install their facilities on public highways pursuant to law or franchise and reasonable regulation by transportation departments with respect to location and manner of installation.

(d) When utilities cross or otherwise occupy the right-of-way of a direct Federal or Federal-aid highway project on Federal lands, and when the right-of-way grant is for highway purposes only, the utility must also obtain and comply with the terms of a right-of-way or other occupancy permit for the Federal agency having jurisdiction over the underlying land.

[50 FR 20354, May 15, 1985, as amended at 53 FR 2833, Feb. 2, 1988]

#### § 645.207 Definitions.

For the purpose of this regulation, the following definitions shall apply:

*Aesthetic quality*—those desirable characteristics in the appearance of the highway and its environment, such as harmony between or blending of natural and manufactured objects in the environment, continuity of visual form without distracting interruptions, and simplicity of designs which are desirably functional in shape but without clutter.

*Border area*—the area between the traveled way and the right-of-way line.

*Clear roadside policy*—that policy employed by a transportation department to provide a clear zone in order to increase safety, improve traffic operations, and enhance the aesthetic quality of highways by designing, constructing and maintaining highway roadsides as wide, flat, and rounded as practical and as free as practical from natural or manufactured hazards such as trees, drainage structures, non-yielding sign supports, highway lighting supports, and utility poles and other ground-mounted structures. The policy should address the removal of roadside obstacles which are likely to be associated with accident or injury to the highway user, or when such obstacles are essential, the policy should provide for appropriate countermeasures to reduce hazards. Countermeasures include placing utility facilities at locations which protect out-of-control vehicles, using breakaway features, using impact attenuation devices, or shielding. In all cases full consideration shall be given to sound engineering principles and economic factors.

*Clear zone*—the total roadside border area starting at the edge of the traveled way, available for safe use by errant vehicles. This area may consist of a shoulder, a recoverable slope, a non-recoverable slope, and/or the area at the toe of a non-recoverable slope available for safe use by an errant vehicle. The desired width is dependent upon the traffic volumes and speeds, and on the roadside geometry. The current edition of the AASHTO "Roadside Design Guide" should be used as a guide for establishing clear zones for

various types of highways and operating conditions. This publication is available for inspection and copying from the FHWA Washington Headquarters and all FHWA Division Offices as prescribed in 49 CFR part 7. Copies of current AASHTO publications are available for purchase from the American Association of State Highway and Transportation Officials, Suite 225, 444 North Capitol Street, NW., Washington, D.C. 20001, or electronically at <http://www.aashto.org>.

*Direct Federal highway projects*—those active or completed highway projects such as projects under the Federal Lands Highways Program which are under the direct administration of the Federal Highway Administration (FHWA)

*Federal-aid highway projects*—those active or completed highway projects administered by or through a State transportation department which involve or have involved the use of Federal-aid highway funds for the development, acquisition of right-of-way, construction or improvement of the highway or related facilities, including highway beautification projects under 23 U.S.C. 319, Landscaping and Scenic Enhancement.

*Freeway*—a divided arterial highway with full control of access.

*Highway*—any public way for vehicular travel, including the entire area within the right-of-way and related facilities constructed or improved in whole or in part with Federal-aid or direct Federal highway funds.

*Transportation department*—that department, agency, commission, board, or official of any State or political subdivision thereof, charged by its law with the responsibility for highway administration.

*Private lines*—privately owned facilities which convey or transmit the commodities outlined in the definition of *utility facility* of this section, but devoted exclusively to private use.

*Right-of-way*—real property, or interests therein, acquired, dedicated or reserved for the construction, operation, and maintenance of a highway in which Federal-aid or direct Federal highway funds are or have been involved in any stage of development. Lands acquired

under 23 U.S.C. 319 shall be considered to be highway right-of-way.

*State transportation department*—the transportation department of one of the 50 States, the District of Columbia, or Puerto Rico.

*Use and occupancy agreement*—the document (written agreement or permit) by which the transportation department approves the use and occupancy of highway right-of-way by utility facilities or private lines.

*Utility facility*—privately, publicly or cooperatively owned line, facility, or system for producing, transmitting, or distributing communications, cable television, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water not connected with highway drainage, or any other similar commodity, including any fire or police signal system or street lighting system, which directly or indirectly serves the public. The term utility shall also mean the utility company inclusive of any substantially owned or controlled subsidiary. For the purposes of this part, the term includes those utility-type facilities which are owned or leased by a government agency for its own use, or otherwise dedicated solely to governmental use. The term utility includes those facilities used solely by the utility which are a part of its operating plant.

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#### § 645.209 General requirements.

(a) *Safety*. Highway safety and traffic safety are of paramount, but not of sole, importance when accommodating utility facilities within highway right-of-way. Utilities provide an essential public service to the general public. Traditionally, as a matter of sound economic public policy and law, utilities have used public road right-of-way for transmitting and distributing their services. The lack of sufficient right-of-way width to accommodate utilities outside the desirable clear zone, in and of itself, is not a valid reason to preclude utilities from occupying the highway right-of-way. However, due to