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# Use of Highway Rights of Way by Utilities

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## New FHWA policy on safe, effective accommodation of utilities by federal-aid highway projects

■ JAMES A. CARNEY

On February 2, 1988, the Federal Highway Administration (FHWA) modified its regulations dealing with the use of freeways by utilities. This activity has generated considerable interest and controversy. It is very possible that many do not fully understand what was done and why. I would like to take this opportunity to bring into focus and, perhaps, clarify, the changes made.

First, it would be a mistake to assume that the regulatory changes open up the interstate highway system for widespread use by utilities. In order to provide a uniform approach to utilities' use of the newly proposed interstate highway system, a national policy was developed in the late 1950s. This policy, established by the American Association of State Highway Officials, adopted by the FHWA as a standard to be applied to the interstate highway system. The policy discouraged the use of this system by utilities. It was reasonably accepted by most and has served the nation well during the period of initial construction of the interstate highway system.

In recent years, some state highway authorities and other concerned parties questioned the need for continuing with the across-the-board restrictive covenants of this policy. Some believed that certain types

of utilities could be permitted and that these would have very little impact on the freeway systems. In consideration of these views and concerns, the FHWA agreed that a more flexible policy position would be appropriate. To achieve this, reference to the current American Association of State Highway and Transportation Officials (AASHTO) freeway utility policy was removed from the federal regulations as a federal mandate. *In its place each state is to adopt its own freeway utility accommodation plan best suited to its needs and conditions.* However, the ASSHTO freeway utility policy continues to exist as a guide.

Federal regulations place considerable responsibility upon the states to ensure that utility use of freeways is safe and does not impair the highway. The state highway agencies' freeway accommodation plans must adequately address these issues. The new procedures recognize that these issues may be addressed differently, but effectively, from state to state. Certainly, a difference in treatment can be recognized when comparing a low volume rural freeway with a high volume congested urban facility on limited right of way (ROW). Also, some types of utilities are not as obtrusive as others. In any event, some utilities may be permitted on some freeways under carefully controlled conditions and such use would not interfere in any significant way with the operations of the facility. Each state must now decide on the controlling conditions best suited to its needs and the variable circumstances it wishes to accommodate in its new freeway

policies, *if any.*

Once the state freeway utility accommodation plan has been approved by the FHWA, the state may approve individual requests without referral to the FHWA. This is the way all other utility permits have been handled for years on highways other than freeways. From now on all highways will be administered the same as regards utility use. FHWA approves the states' utility accommodation policies for federal-aid highways. States handle and administer individual permits thereunder and ensure that utility use conforms with the requirements of the approved plan and policies.

There is no doubt that the transition from a "no utility use of freeways" policy to one which may permit more frequent use will be difficult. Certainly, the controls which must now be exercised by both highway and utility authorities will be much more demanding on all parties. The issues now deal with how this can be done safely and without compromise to the integrity of the freeway.

I would recommend that those who are involved with utilities and highway joint use take the time to read the FHWA regulation on utility accommodation. It is a powerful tool for establishing a uniform basis for the sound management of highway/utility joint use matters. It clearly recognizes the rights of utilities to use highway row. On the other hand, it makes clear that such use must be compatible with the primary functions of the road and streets to carry traffic in a safe manner. Preservation of the integrity of the highway and its safe use and the protection of the sizeable investment of public funds in federal-aid highway projects are primary concerns. To address these concerns, a series of policy statements and basic principles are set forth for consideration and guidance. The overall process results in the development by each state highway agency of its own accommodation policies, practices, and detailed procedures. Each state has considerable latitude to permit or not to permit utility use of highway row and the conditions of such use. In addition to establishing this state oriented and managed administrative process, the regulations discuss or address the following major items:

1. joint highway and utility planning and development of transportation corridors;
2. use of highway row by utilities as regulated by highway authorities in a

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- manner which preserves the operational safety and function and *aesthetic* quality of the highway;
3. full control of access features of freeways preserved by the use of utility access control lines and utility strips;
  4. restricted installation of utility poles within the clear recovery areas of a highway;
  5. elimination of utility safety hazards

- by the state highway agency, in cooperation with utilities;
6. the definition of utility now including facilities used solely for governmental purposes;
  7. potential use of highway row by utilities as a consideration in setting row needs.
- Efficient, safe, and effective use of highway rights of way by utilities in a manner

compatible with highway needs and uses is in the public interest. There are many problems, and accomplishing these objectives will not be easy. However, I am convinced that over time these goals can be reached provided there is a commitment by all concerned to work together to achieve them. The highway user and utility rate payer are one and the same. These matters must be resolved from this common viewpoint.

IRWA

## Mail Ballot Passes

The accountancy corporation of Gail Denson, C.P.A., has reported the following:

Total ballots mailed:	8,432
Total ballots returned:	5,086
Yes	4,588
No	496
Abstain	2

1. To amend the Articles of Incorporation so as to delete the prohibition against political activity therefrom only as to issues involving the **certification and/or licensing** of one or more of the disciplines which make up the Association's membership.
2. To amend Article XII of the International Bylaws so as to allow lobbying and/or political activity:
  - a. ONLY as to issues involving the **certification and/or licensing** of one or more of the disciplines which make up the Association's membership,
  - b. ONLY in accordance with rules and policies established by the International Executive Committee,
  - c. ONLY on issues selected by the International Executive Committee,
  - d. ONLY by individuals selected by the International Executive Committee.

The International Executive Committee will be adopting rules and policies for political activity at its next meeting. In the interim, if there are questions, please contact a member of the IEC.