
23 CODE OF FEDERAL REGULATIONS 713

Subpart B - Management of Airspace

- 713.201 Purpose: to prescribe 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 use of highway rights of way as covered in volume 7, chapter 7, section 8 of the Federal Aid Highway Program Manual {3} {3} - the Federal-Aid Highway Program Manual may be examined at the Federal Highway Administration, 400 7th Street SW, Washington, D.C., 20590; and bikeways and pedestrian walkways as covered in part 652 of this chapter.
- 713.203 Definition: airspace, 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 SHD has acquired sufficient legal right, title, and interest in the ROW of a highway on a Federal aid system to permit the use of certain airspace for non-highway purposes and when 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 non-highway 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 non-highway 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 ROW 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.

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- (f) All non-highway 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 3-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 3-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.
 - (6) Provision that any change in the authorized use of airspace shall receive prior approval by the SHD, subject to concurrent 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 non-compliance 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 ROW 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 Assurances {4} with respect to title VI of the Civil Rights Act of 1964 and 49 CFR part 21. {4} - Appendix "C" of the State's Civil Rights Assurances may be examined at any office of the SHD or at the FHWA, 400 7th Street S.W., Washington, D.C., 20590.
- (g) Use of airspace 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.
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- (h) The proposed use of airspace above the established gradeline of the highway shall not at any point between 2 points established 15 feet beyond the 2 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 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 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 non-highway 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 non-highway 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 effect 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.
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- (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 exceptions 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. {5} - the Federal-Aid Highway Program Manual may be examined at the FHWA, 400 7th Street S.W., Washington, D.C., 20590.
 - (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 ROW 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.
- (b) Identification of the authorized user of the airspace.
- (c) A 3-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.