



U.S. Department  
of Transportation

**Federal Highway  
Administration**

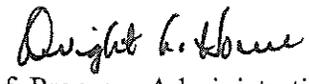
# Memorandum

Subject: **INFORMATION:** Guidance on Utilization  
of Highway Right-of-Way

Date: March 27, 2009

From: Gerald Solomon, Esq.   
Director, Office of Real Estate Services

In Reply Refer To:  
HEPR -1  
HIPA -1

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Director, Office of Program Administration

To: Division Administrators  
Director of Technical Services  
Federal Lands Highway Division Engineers  
Directors of Field Services

The purpose of this memorandum is to provide guidance to Division Utility and Realty Professionals concerning the applicability of Federal laws and regulations to proposals for the longitudinal accommodation, installation, operation and maintenance of public or private utilities within the Interstate System right-of-way. Emerging interest in the production and distribution of renewable energy has led to proposals in several States to install facilities such as wind turbines and solar panels in the highway right-of-way, with the possibility of additional proposals in the future. These facilities may not be explicitly discussed or defined in the current versions of the States' accommodation policies.

The attached guidance emphasizes the need to analyze these policies and other State laws or regulations to determine how or if these features can be accommodated in the highway right-of-way. Also described are steps to determine whether accommodation is conducted under the requirements of 23 CFR Part 645 Subpart B or 23 CFR Part 710. The guidance also compares and contrasts the written agreements necessary for these facilities based on how accommodation is conducted.

Given the emergence of these newer technologies; the potential for additional proposals for use of the Interstate System right-of-way to house wind turbines or solar panels; and the age of the States' utility accommodation policies, the Division Offices and the State DOT's are encouraged to jointly review and evaluate the current edition of their States' accommodation policies, and make modifications and updates as necessary based on the renewable energy considerations as well as other factors that are highlighted in the attached guidance.

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If you have any questions or comments on this guidance, please contact David Leighow in the Office of Real Estate Services, at (503) 587-4734 or Mr. Jeffrey Zaharewicz in the Office of Program Administration, Value Engineering and Utilities at (202) 493-0520.

Attachment