

In addition to an overall update to reflect new federal regulations, the following text was added at these specific sections. Please note that these are not the entire sections of the manual, only the new text that was added.

7102.01 General Procedure

Per 23 CFR part 710.401, the department must ensure that all sub-grantees, including Local Public Agencies, follow Federal requirements and approved right of way procedures, as provided in this manual section.

7102.02 Decision to Lease

Per 23 CFR part 710.403(d), disposal actions and right of way use agreements, including leasing actions, are subject to 23 CFR part 771. Thus, all leases must have environmental clearance.

Per 23 CFR part 710.405(a), any non-highway alternative use of real property interests requires approval and a determination that such occupancy, use, or reservation is in the public interest; is consistent with the continued use, operations, maintenance, and safety of the facility; and such use does not impair the highway or interfere with the free and safe flow of traffic. The public interest in an arm's length lease or rental, at full fair market value, would be that the right of way use agreement is generating income for the Agency.

Federal Highway Administration Approval

Per the February 20, 2015 ODOT/FHWA Federal-Aid Highway Program Stewardship and Oversight Agreement, and 23 CFR part 710.403, FHWA may not assign to ODOT the decision to allow any right of way use agreement or disposal on or within the approved right of way limits of the Interstate, including any change in access control. Thus, any right of way use agreement (lease, rental, license, etc.) involving Interstate R/W must have the full written approval of FHWA.

Also per the Stewardship and Oversight Agreement, FHWA has transferred to ODOT the right to act in its place and review and approve any right of way use agreement at full fair market value for all Non-Interstate projects. This assignment applies to projects both on and off the National Highway System (NHS). Thus, if an ODOT District is processing a right of way use agreement at full fair market value, and that property is not on an Interstate, the District may approve the request without seeking FHWA concurrence. Districts can exercise this authority after they have completed all of the usual and customary internal and external reviews in connection with the right of way use agreement.

If FHWA review and approval is required, the following applies:

1. If FHWA funded design or construction of a project, but did not participate in buying the parcel, then FHWA engineering review and approval is necessary, but no FMVE concurrence is required.
2. If FHWA funded purchase of the parcel, then both FHWA engineering and valuation/appraisal approval and review are necessary.

FHWA requests for right of way use agreements shall include, at a minimum:

- All District reviews and approvals
- As applicable, a copy of the valuation or appraisal of the property interest to be rented, leased or licensed
- If known, a statement of the proposed use of property, along with all plats, maps, legal descriptions, the requesting party's original written lease request and other material that will

facilitate an understanding of the proposed right of way use agreement, including descriptions of any existing encroachments

- Statement that the property will not be needed during the term of the right of way use agreement and further that the lease, rental or license agreement will not adversely affect the subject highway or the traffic thereon
- Copy of the Categorical Exclusion or other approved environmental documentation

7102.05 Rental Agreements

Per 23 CFR, part 710.405(b), A ROW use agreement must contain provisions that address the following items:

1. Ensure the safety and integrity of the federally assisted facility;
2. Define the term of the agreement;
3. Identify the design and location of the non-highway use;
4. Establish terms for revocation of the ROW use agreement and removal of improvements at no cost to the FHWA;
5. Provide for adequate insurance to hold the grantee and the FHWA harmless;
6. Require compliance with nondiscrimination requirements;
7. Require grantee and FHWA approval, if not assigned to SDOT, and SDOT approval if the agreement affects a Federal-aid highway and the SDOT is not the grantee, for any significant revision in the design, construction, or operation of the non-highway use; and
8. Grant access to the non-highway use by the grantee and FHWA, and the SDOT if the agreement affects a Federal-aid highway and the SDOT is not the grantee, for inspection, maintenance, and for activities needed for reconstruction of the highway facility.

7102.06 Rental Rates

Per 23 CFR part 710.403(e), all leases must charge fair market rent if those properties were acquired with title 23, United States Code, funding. The only exceptions to this requirement must be approved by FHWA in writing, and would be considered for the following:

- There is overall public interest based on social, environmental, or economic benefits or is for a nonproprietary government use
 - o Support documentation must clearly show public benefits and how the State will receive same
- Use by public utilities in conformance with 23 CFR part 645
- Use by railroads in accordance with 23 CFR part 646
- Use for bikeways and pedestrian walkways
- Use for public transportation
- Use for other transportation projects

ODOT's Policies and Procedures Manual at Section 4503 sets forth the processes for establishing fair market rent and performing rent reviews.

7105.01 Letter of Request

1. Identification of the ODOT parcels, and the acreage in each parcel. ODOT parcel numbers and acreage are contained in the original ODOT acquisition deeds. The requesting companies should provide copies of each deed in their request.
2. The company name, contact name, business title, address, phone number and email address of the requesting party.

3. A well map indicating the distance from ODOT's right of way to the well, pad and tank locations. If this information is not yet available, the requesting company must include a statement regarding when they expect to provide it to ODOT.
4. A copy of the application to the Ohio Department of Natural Resources for a well permit or the actual permit, if one has been issued. If this information is not yet available, the company must include a statement in their request regarding when they expect to provide it to ODOT.
5. The amount the company is offering for their bonus payment and royalty payments.
6. The size of the pool or drilling unit and the amount of ODOT's acreage in the pool or drilling unit. If this information is not yet available, the requesting company must include a statement in their request regarding when they expect to provide it to ODOT.
7. The period of time they are requesting for the initial term (the amount of time the company projects they need to get the well drilled and the leased premises in production).
8. A statement regarding whether the well will be a vertical or horizontal well.
9. Identification of the formation and drilling depth requested for the leased premises. The lease will be limited to one of the following geological formations and/or depths.
 - a. The distance from the surface of the land to the top of the Onondaga limestone;
 - b. The distance from the top of the Onondaga limestone to the bottom of the Queenston formation;
 - c. The distance from the bottom of the Queenston formation to the top of the Trenton limestone;
 - d. The distance from the top of the Trenton limestone to the top of the Knox formation; or
 - e. The distance from the top of the Knox formation to the basement rock.
10. The date drilling is planned to commence. If this information is not yet available, the requesting company must include a statement in their request regarding when they expect to provide it to ODOT.
11. A cross section diagram showing well location and depths at entry and exit of right of way, as applicable.

All ODOT parcels are to be leased in their entirety. In addition to any requirements imposed by Sections 1509.24 and 1509.25 of the Ohio Revised Code, and any rules and regulations promulgated thereunder, ODOT's lease will prohibit the drilling of any well and the construction of any portion of a pad or a storage facility nearer than 150 feet from our right of way.

7106 Encroachments

Encroachments within the right of way should be removed by following the obstruction removal procedures in O.R.C. 5515.02. General ongoing encroachment removal is often handled as a Highway Management process, which may include county maintenance forces.

Encroachment removal, as part of the overall right of way project certification process, is detailed in Section 2400 of the Office of Real Estate's Policies and Procedures Manual.