

290-RICR-20-00-5

TITLE 290 - DEPARTMENT OF TRANSPORTATION

CHAPTER 20 - GOVERNMENT AND UTILITIES

SUBCHAPTER 00 - N/A

Part 5 - Accommodating Utility Facilities Within Public Freeway Rights-of-Way and Public Railroad Rights-of-Way

5.1 Authority and Purpose

A. Authority

1. The following regulations are promulgated to administer the Department's policy for accommodating utility facilities within Freeway rights-of-way and Railroad rights-of-way pursuant to The Utilities Act, 23 C.F.R. § 645.201 *et seq.* and R.I. Gen. Laws §§ 24-8-34, 24-10-2, 24-10-3, 37-7-8 and Chapter 42-35.

B. Purpose

1. The purpose of these regulations is to prescribe conditions for the regulation of utility facilities within Freeway rights-of-way, and granting of easements and right-of-way within Railroad rights-of-way. No easement or right-of-way will be granted that will or may adversely impact future transportation needs of the citizens of Rhode Island.

5.2 Applicability

Provisions herein apply to both Freeway and Railroad rights-of-way unless otherwise specified.

5.3 Incorporated Materials

- A. These regulations hereby adopt and incorporate the Federal Highway Administration's "Manual on Uniform Traffic Control Devices for Streets and Highways," (MUTCD), 23 C.F.R. § 655(F) (2009 Edition) by reference, not including any further editions or amendments thereof and only to the extent that the provisions therein are not inconsistent with these regulations.
- B. These regulations hereby adopt and incorporate American Railway Engineering and Maintenance of Way Association's "Manual for Railway Engineering" (2018) by reference, not including any further editions or amendments thereof and only to the extent that the provisions therein are not inconsistent with these regulations.

- C. These regulations hereby adopt and incorporate American Association of State Highway and Transportation Officials' "Roadside Design Guide" (2011 Edition including Roadside Design Guide 4th Edition (2011) Errata issued in 2015)," by reference, not including any further editions or amendments thereof and only to the extent that the provisions therein are not inconsistent with these regulations.

5.4 Definitions

- A. The following definitions shall apply to this regulation:

1. "Active railroad right-of-way" means any railroad right-of-way acquired by the State to preserve present or future transportation needs on which there currently exists a freight, passenger or excursion train service provided through an existing operating agreement between the rail operator and the Department, and on which there is no federal abandonment decision through the Surface Transportation Board (STB).
2. "Applicant" means any individual, firm, corporation, partnership or agency, public or private, that has filed a Freeway or a Railroad Right-of-Way Utility Permit Application.
3. "Application" means a Freeway or Railroad Right-of-Way Utility Permit Application.
4. "Clear zone" means the total roadside border area, starting at the edge of the traveled way, available for safe use by errant vehicles, as defined in the latest edition of the American Association of State Highway and Transportation Officials "Roadside Design Guide (2011, 4th Edition)," including all revisions. This area may consist of a shoulder, a recoverable slope, a non-recoverable slope, and/or a clear run-out area. The desired width is dependent upon the traffic volumes and speeds and on the roadside geometry.
5. "Department" means the Rhode Island Department of Transportation.
6. "Director" means the Director of the Rhode Island Department of Transportation, whose address is Two Capitol Hill, Room 210, Providence, Rhode Island 02903.
7. "Easement" means a non possessing interest held by one person in land of another whereby the first person is accorded partial use of such land for a specific purpose. An easement restricts but does not abridge the rights of the fee owner to the use and enjoyment of his/her land.
8. "Freeway" means a highway, and its associated ramp system, with full control of access as defined in AASHTO Standards and as listed:

I-95	CT/S/L TO MA S/L
I-195	I-95 TO MA S/L
I-295	I-95 TO MA S/L
ROUTE 1	PROSSER TRAIL TO WAKEFIELD CUT OFF
ROUTE 4	ROUTE 138 TO I-95
ROUTE 6	ROUTE 102 TO ROUTE 101
ROUTE 6	I-295 TO I-95
ROUTE 10	PARK AVENUE TO ROUTE 6
ROUTE 24	ROUTE 114 TO MA S/L
ROUTE 37	NATICK AVENUE TO POST ROAD
ROUTE 78	ROUTE 1 TO CT S/L
ROUTE 99	ROUTE 146 TO MENDON ROAD
ROUTE 114	I-195 TO FORBES STREET
ROUTE 138	ROUTE 1 TO ADMIRAL KALBFUS ROAD
ROUTE 146	I-95 TO RESERVOIR ROAD
ROUTE 146	ROUTE 146A TO MA S/L
AIRPORT CONNECTOR	I-95 TO POST ROAD
RED BRIDGE EXTENSION	WATERMAN STREET TO TAUNTON AVENUE

9. "Lease" means a contract, written or oral, by which possession of land and/or a building is given by the owner to another person for a specified period of time and for the rent specified.
10. "License" means a personal privilege to do some act on the land of another.
11. "Maintainer" means any individual, firm, corporation, partnership or agency, public or private, that enters into an agreement with the Department to maintain a utility facility permitted under this Part.
12. "Owner" means any individual, firm, corporation, partnership or agency, public or private, that owns a utility facility permitted under these regulations.
13. "Permit" means a Freeway or a Railroad Utility Permit. All permits shall include temporary or permanent easements, or both, for use of State property.
14. "Railroad right-of-way" means any active or inactive Railroad right-of-way acquired by the State for future transportation needs.
15. "Utility facility" means, as used herein, as defined in The Utilities Act, 23 C.F.R. § 645.207.

5.5 General Restrictions

5.5.1 Permits

- A. A Permit is required for the installation of any Utility Facility within a Freeway right-of-way or within a Railroad right-of-way. The process for acquiring a Permit is specified in § 5.6 of this Part.
- B. In order to obtain a permit, Applicants must review and agree to the provisions of the State of Rhode Island Department of Transportation Standard Specifications for Road and Bridge Construction.

5.5.2 Transverse Installations

- A. Transverse installation of utility facilities will be permitted only where there is no prudent alternative to the installation of said facility within a Freeway right-of-way or a Railroad right-of-way.
- B. Access to said transverse installations will only be permitted as specified in § 5.5.4 of this Part.
- C. Freeway Right-of-Way

1. Said installation shall be as close to perpendicular as possible to the Freeway alignment, and in all cases shall be limited to longitudinal distances of less than 1,000 feet, or unless otherwise approved by the Department.
2. Said installation shall not endanger the safety of the motoring public and shall not adversely affect the Freeway.
3. Any above ground structure shall be placed at a safe distance from the shoulder as determined by the Department and outside the clear zone as defined in the American Association of State Highway and Transportation Officials "Roadside Design Guide," incorporated above in § 5.3 of this Part.

D. Railroad Right-of-Way

1. Said installation shall be as close to perpendicular as possible to the Railroad alignment, and in all cases shall be limited to longitudinal distances of less than 1,000 feet, or unless otherwise approved by the Department.
2. Said installation shall not endanger the safety of the motoring public and shall not adversely affect the public use.
3. Any above ground structure shall be placed at a safe distance from the transportation portion of the right-of-way as determined by the Department.

5.5.3 Longitudinal Installations

- A. Longitudinal Installations of utility facilities within a Freeway right-of-way or a Railroad right-of-way are permitted only when there is no feasible or prudent alternative to the installation of said facility.
- B. Access to longitudinal installations will be permitted as specified in § 5.5.4 of this Part.
- C. Freeway Right-of-Way
 1. Installations are to be permitted only in close proximity to the Freeway line and outside the clear zone. Installation in the median area will generally be discouraged.
 2. A utility access control line will be established between the proposed utility installation and the through roadway ramps. Service connections to adjacent properties shall not be permitted from within the utility strip.

3. Where such longitudinal installations are requested, the utility owner must in each case show to Department's satisfaction:
 - a. That the accommodation will not adversely affect highway and traffic safety.
 - b. That alternate locations are not available or cannot be implemented at reasonable cost, from the standpoint of providing efficient utility services in a manner conducive to safety, durability, and economy of maintenance and operations; that the accommodation will not adversely affect the design, construction, operation, maintenance or stability of the freeway; and that it will not interfere with or impair the present use or future expansion of the freeway.
 - c. That disapproval of the use of the State right-of-way would result in the loss of productive agricultural land, or loss of productivity of agricultural land, if any. In this case, the utility must provide information on the direct and indirect environmental and economic effects of such loss, which effects will be evaluated and considered by the Department.
 - d. That the accommodation satisfies the conditions of § 5.5.4 of this Part.

D. Railroad Right-of-Way

1. Installations are to be permitted only in close proximity to the edge of the right-of-way.
2. Service connections to adjacent properties shall not be permitted from within the utility strip.
3. Where such longitudinal installations are requested, the utility owner must in each case show to the Department's satisfaction:
 - a. That the accommodation will not adversely affect the right-of-way and public safety.
 - b. That alternate locations are not available or cannot be implemented at reasonable cost, from the standpoint of providing efficient utility services in a manner conducive to safety, durability, and economy of maintenance and operations; that the accommodation will not adversely affect the design, construction, operation, maintenance or stability of the Railroad right-of-way; and that it will not interfere with or impair the present use or future expansion of the right-of-way.

- c. That disapproval of the use of the State right-of-way would result in the loss of productive agricultural land, or loss of productivity of agricultural land, if any. In this case, the utility must provide information on the direct and indirect environmental and economic effects of such loss, which effects will be evaluated and considered by the Department.
- d. That the accommodation satisfies the conditions of § 5.5.4 of this Part.

5.5.4 Access

A. Freeway Right-of-Way

- 1. Access for construction and/or servicing a Utility Facility within a Freeway line should be limited to access via:
 - a. Frontage road, where provided
 - b. Nearby or adjacent public roads and streets
 - c. Trails along or near the Freeway right-of-way line connecting only to an intersecting road from any one point or all of which entry may be made to the outer portion of the Freeway right-of-way
- 2. A locked gate in the freeway fence line may be utilized to meet periodic service access needs pursuant to “Agreements relating to use of and access to rights of way Interstate System”, 23 U.S.C § 111. A gated point of access installed in an interstate highway freeway fence line will require the approval of the FHWA.
- 3. Access to the Utility Facility from the through roadways or connecting ramp shall not be permitted except for special cases where alternate locations and/or means of access are unavailable or impractical due to terrain and other environmental constraints and said use shall not adversely affect the safety of the motoring public or impair the Freeway.
- 4. Access for construction and/or servicing a Utility Facility within a Freeway right-of-way shall minimize disruption and be in conformance with the guidance found in the latest edition of the “Manual on Uniform Traffic Control Devices for Streets and Highways” (MUTCD, 2009 Edition), incorporated above in § 5.3 of this Part.

B. Railroad Right-of-Way

- 1. An Applicant must coordinate access for construction and/or servicing with the railroad operator for an application in an Active Railroad right-of-way.

2. Access for construction and/or servicing a Utility Facility within a Railroad right-of-way shall minimize disruption and be in conformance with the guidance found in the latest edition of the "Manual on Uniform Traffic Control Devices for Streets and Highways" (MUTCD 2009) and the American Railway Engineering and Maintenance of Way Association's "Manual for Railway Engineering" (2018), incorporated above in § 5.3 of this Part.

5.5.5 Maintenance of Traffic Within a Public Freeway

- A. When accessing a utility facility within a public freeway, the Permittee shall:
 1. Maintain any road affected by its work open to traffic and keep such road in a condition that shall safely and adequately accommodate such traffic.
 2. Furnish, erect and maintain all traffic control including barricades, warning signs, delineators, flaggers and pilot cars in accordance with the "Manual on Uniform Traffic Control Devices for Streets and Highways" (MUTCD 2009), incorporated above in § 5.3 of this Part, subject to monitoring by the Department.
 3. Submit for the Department's approval, a Traffic Control Plan for all utility work which would have any effect upon freeway traffic.
- B. This traffic control protection will be maintained until the project has been completed to the Department's satisfaction.

5.5.6 Protection from Suits

- A. As a condition of receipt of a permit, the Permittee shall defend, indemnify, protect and save harmless the State and its agents, servants and employees from and against any and all suits, claims, losses, demands or damages of whatever kind or nature arising out of the issuance of said permit or claimed to arise out of any act, error or omission of the Permittee, its agents, servants and employees in the performance of work covered by the permit.
- B. A performance bond and certificates of insurance shall be required. The performance bond shall be obtained by the Permittee and submitted to the Department prior to the Permittee initiating utility work.

5.5.7 Relocation

It will be the responsibility of the Maintainer to accomplish any relocation of the Utility Facility at its expense. Any such relocation shall be subject to review and approval by the Department. If a relocation is required by the Department, the Maintainer will receive due notice and must comply with the relocation with all deliberate speed.

5.5.8 Maintenance of Utility Facility

- A. The Department may perform emergency maintenance on the Utility Facility for which it shall be reimbursed by the Maintainer. In the event the Maintainer needs to perform emergency maintenance on the facility, the Department will be notified as soon as reasonably possible. Full coverage will be in place to cover liability claims against the Department and a new permit will be required.
- B. Should the Maintainer need to replace all or a portion of an existing utility, a new easement will be required only in the event that the work should extend beyond the limits of the original easement. Otherwise the Maintainer will be vested with the right to complete all work under the original grant of easement.
- C. Freeway Right-of-Way
 - 1. The Maintainer shall maintain the Utility Facility in a condition satisfactory to the Department which does not endanger the safety of the motoring public and does not adversely affect the Freeway right-of-way.
- D. Railroad Right-of-Way
 - 1. The Maintainer shall maintain the Utility Facility in a condition satisfactory to the Department which does not endanger the safety of the motoring public and does not adversely affect the current or future use of the Railroad right-of-way.

5.6 Permit Process

5.6.1 Filing

- A. Freeway Right-of-Way
 - 1. Any applicant seeking to install a Utility Facility within a Freeway shall do so by filing a Freeway Utility Permit Application with the Department's Division of Maintenance.
 - 2. At the time of such Application, the Applicant shall pay to the Department any fee required by statute.
 - 3. All Applications must also be signed by the Applicant and the Owner of the facility, if different than the applicant, and any municipality or other parties responsible for future maintenance
- B. Railroad Right-of-Way
 - 1. Any person, firm, corporation, or governmental agency seeking to install a Utility Facility within a Railroad right-of-way shall do so by filing a Utility Permit Application with the Department's Division of Maintenance.

2. At the time of such Application, the Applicant shall pay to the Department any fee required by statute.
3. All Applications must be signed by a governmental agency or public utility agreeing to be responsible for all future maintenance of the facility.

5.6.2 Copies

Completed Applications must be accompanied by four (4) copies of a preliminary plan showing the plan and profile view of the proposed facility as well a traffic control plan, both stamped by a registered professional engineer, and two (2) copies of a detailed discussion of all possible alternatives to the Freeway or Railroad installation proposal.

5.6.3 Easement, Lease, License, or Other Empowering Agreements

- A. During the review process, the Applicant must, at its own expense, provide any additional information relevant to the Application requested by the Department.
- B. In addition, the Owner must enter into either temporary and permanent easement agreements or a lease or license with the Department, regarding its use of State property, unless such use is in reference to maintenance, repair, testing, operation, replacement, reconducting, or upgrading that does not have an adverse impact on, or increase the area of the use of, the State right-of-way, or is a relocation required by the Department of existing Utility Facilities within Freeway right-of-way for Freeway Utility Permits or within Railroad Right-of-Way for Railroad Utility Permits.
- C. In no case shall this exception allow the use of an easement, lease, license, or other empowering agreement by any entity other than the Owner without the prior written agreement of the State.

5.6.4 National Environmental Policy Act (NEPA)

Any Application within the jurisdiction of the National Environmental Policy Act, 42 U.S.C § 4321, as amended, shall be reviewed by the Federal Highway Administration. The approval of utility installations along or across Freeway right-of-way or Railroad right-of-way meets the criteria for a categorical exclusion under, The Environmental Impact and Related Procedures Act, 23 CFR § 771.117; however, any action which normally would be classified as a categorical exclusion but may involve unusual circumstances will be evaluated on a case-by-case basis per 23 C.F.R § 771.117(b)

5.6.5 Decision

A decision by the Chief Engineer will be rendered within forty-five calendar (45) days of receipt of a completed Application by the Maintenance Division, and any additional information requested by the Department.

5.6.6 Conditions and Bond

- A. As a result of the Departmental staff review and the action of the Chief Engineer, the Application will be either approved as submitted with standard conditions, approved with additional conditions or denied as submitted.
- B. The Applicant will be notified, by mail, of the decision.
- C. A performance bond issued by a company licensed to conduct business in the State of Rhode Island and in an amount sufficient to assure that all the terms and conditions of the permit granted by the Department shall be obtained by the Applicant and submitted to the Department prior to the Maintainer initiating any utility work.

5.6.7 Appeal

- A. An Applicant dissatisfied with the decision of the Chief Engineer, may appeal to the Director.
- B. The appeal must be in writing and include a copy of the original decision and be submitted to the Director within fifteen (10) business days of the rendering of the decision.
- C. The Director's decision will be made within thirty- five (35) business days of receipt of the appeal.
- D. The Director's decision may be appealed to the Superior Court in accordance with the Administrative Procedures Act, R.I. Gen. Laws § 42-35-15.

5.6.8 State Properties Committee

All easements, leases, licenses, or other empowering agreements are subject to the approval of the State Properties Committee pursuant to R.I. Gen. Laws §§ 37-7-8 and 37-7-9; therefore, all permits are contingent on that approval.

5.7 Compensation

- A. Compensation for the installation of a utility facility will be determined by the Department based upon the fair market value of the property utilized.
- B. In reference to municipalities and non-profit, Public Utilities Commission regulated utilities, it shall be the Department's recommendation to the State Properties Committee that fair market value be waived and no compensation be due.
- C. Payment must be in the form of a certified check or money order made payable to the Rhode Island Department of Transportation. Cash will not be accepted.

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SUBCHAPTER 00 - N/A

PART 5 - ACCOMMODATING UTILITY FACILITIES WITHIN PUBLIC FREEWAY RIGHTS-OF-WAY AND PUBLIC RAILROAD RIGHTS-OF-WAY (290-RICR-20-00-5)

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