

Side-by-side comparison of 23 CFR 710 Subpart B—Program Administration

Old Rule	Updated (New) Rule
§ 710.201 State responsibilities.	§ 710.201 Grantee and subgrantee responsibilities.
(a) Organization. Each STD shall be adequately staffed, equipped, and organized to discharge its real property-related responsibilities.	(See § 710.201(b))
	(a) <i>Program oversight.</i> States administer the Federal-aid highway program, funded under chapter 1 of title 23, United States Code, through their SDOTs. The SDOT shall have overall responsibility for the acquisition, management, and disposal of real property interests on its Federal-aid projects, including when those projects are carried out by the SDOT’s subgrantees or contractors. This responsibility shall include ensuring compliance with the requirements of this part and other Federal laws, including regulations. Non-SDOT grantees of funds under title 23 must comply with the requirements under this part, except as otherwise expressly provided in this part, and are responsible for assuring compliance by their subgrantees and contractors with the requirements of this part and other Federal laws, including regulations.
(b) Program oversight. The STD shall have overall responsibility for the acquisition, management, and disposal of real property on Federal-aid projects. This responsibility shall include assuring that acquisitions and disposals by a State agency are made in compliance with legal requirements of State and Federal laws and regulations.	(See § 710.201(a))
	(b) <i>Organization.</i> Each grantee and subgrantee, including any other acquiring agency acting on behalf of a grantee or subgrantee, shall be adequately staffed, equipped, and organized to discharge its real property related responsibilities.
(c) Right-of-way (ROW) operations manual. Each STD which receives funding from the highway trust fund shall maintain a manual describing its right-of-way organization, policies, and procedures. The manual shall describe functions and procedures for all phases of the real estate program, including appraisal and appraisal review, negotiation and eminent domain, property management, and relocation assistance. The manual shall also specify procedures to prevent conflict of interest and avoid fraud, waste, and abuse. The manual shall be in sufficient detail and depth to guide State employees and others involved in acquiring and managing real property. The State manuals should be developed and updated, as a minimum, to meet the following schedule:	(c) <i>ROW manual.</i> (1) Every grantee must ensure that its title 23-funded projects are carried out using an FHWA-approved and up-to-date ROW manual or RAMP that is consistent with applicable Federal requirements, including the Uniform Act and this part. Each SDOT that receives funding under title 23, United States Code, shall maintain an approved and up-to-date ROW manual describing its ROW organization, policies, and procedures. Non-SDOT grantees may use one of the procedures in paragraph (d) to meet the requirements in this paragraph; however, the ROW manual options can only be used with SDOT approval and permission. The ROW manual shall describe functions and procedures for all phases of the ROW program, including appraisal and appraisal review, waiver valuation, negotiation and eminent domain, property management, relocation assistance, administrative settlements, legal settlements, and oversight of its subgrantees and contractors. The ROW manual shall also specify procedures to prevent conflict of interest and avoid fraud, waste, and abuse. The ROW manual shall be in

	<p>sufficient detail and depth to guide the grantee, its employees, and others involved in acquiring, managing, and disposing of real property interests. Grantees, subgrantees, and their contractors must comply with current FHWA requirements whether or not the requirements are included in the FHWA-approved ROW manual.</p> <p>(2) The SDOT's ROW manual must be developed and updated, as a minimum, to meet the following schedule:</p>
<p>(1) The STD shall prepare and submit for approval by FHWA an up-to-date Right-of-Way Operations Manual by no later than January 1, 2001.</p>	<p>(i) The SDOTs shall prepare and submit for approval by FHWA an up-to-date ROW Manual by no later than 2 years after the publication of this rule.</p>
<p>(2) Every five years thereafter, the chief administrative officer of the STD shall certify to the FHWA that the current ROW operations manual conforms to existing practices and contains necessary procedures to ensure compliance with Federal and State real estate law and regulation.</p>	<p>(ii) Every 5 years thereafter, the chief administrative officer of the SDOT shall certify to the FHWA that the current SDOT ROW manual conforms to existing practices and contains necessary procedures to ensure compliance with Federal and State real estate law and regulation, including this part.</p>
<p>(3) The STD shall update the manual periodically to reflect changes in operations and submit the updated materials for approval by the FHWA.</p>	<p>(iii) The SDOT shall update its ROW manual periodically to reflect changes in operations and submit the updated materials for approval by the FHWA.</p>
<p>(d) Compliance responsibility. The STD is responsible for complying with current FHWA requirements whether or not its manual reflects those requirements.</p>	<p>(d) <i>ROW manual alternatives.</i> Non-SDOT grantees, and all subgrantees, design-build contractors, and other acquiring agencies carrying out a project funded by a grant under title 23, United States Code, must demonstrate that they will use FHWA-approved ROW procedures for acquisition and other real estate activities, and that they have the ability to comply with current FHWA requirements, including this part. This can be done through any of the following methods:</p> <p>(1) Certification in writing that the acquiring agency will adopt and use the FHWA-approved SDOT ROW manual;</p> <p>(2) Submission of the acquiring agency's own ROW manual to the grantee for review and determination whether it complies with Federal and State requirements, together with a certification that once the reviewing agency approves the manual, the acquiring agency will use the approved ROW manual; or</p> <p>(3) Submission of a RAMP setting forth the procedures the acquiring agency or design-build contractor intends to follow for a specified project or group of projects, along with a certification that if the reviewing agency approves the RAMP, the acquiring agency or design-build contractor will follow the approved RAMP for the specified program or project(s). The use of a RAMP is appropriate for a subgrantee, non-SDOT grantee, or design-build contractor if that party infrequently carries out title 23 programs or projects, the program or project is non-controversial, and the project is not complex.</p> <p>Subgrantees, design-build contractors, and other acquiring agencies carrying out a project for an SDOT submit the required certification and information to the SDOT, and the SDOT will review and make a determination on behalf of FHWA. Non-SDOT grantees submit the required certification and information directly to FHWA. Non-SDOT</p>

	grantees are responsible for submitting to FHWA the required certification and information for any subgrantee, contractor, and other acquiring agency carrying out a project for the non-SDOT grantee.
(e) Adequacy of real property interest. The real property interest acquired for all Federal-aid projects funded pursuant to title 23 of the United States Code shall be adequate for the construction, operation, and maintenance of the resulting facility and for the protection of both the facility and the traveling public.	(See § 710.305(b))
(f) Recordkeeping. The acquiring agency shall maintain adequate records of its acquisition and property management activities. (1) Acquisition records, including records related to owner or tenant displacements, and property inventories of improvements acquired shall be in sufficient detail to demonstrate compliance with this part and 49 CFR part 24. These records shall be retained at least 3 years from either: (i) The date the State receives Federal reimbursement of the final payment made to each owner of a property and to each person displaced from a property, or (ii) The date a credit toward the Federal share of a project is approved based on early acquisition activities of the State. (2) Property management records shall include inventories of real property considered excess to project needs, all authorized uses of airspace, and other leases or agreements for use of real property managed by the STD.	(e) <i>Record keeping.</i> The acquiring agency shall maintain adequate records of its acquisition and property management activities. (1) Acquisition records, including records related to owner or tenant displacements, and property inventories of improvements acquired shall be in sufficient detail to demonstrate compliance with this part and 49 CFR part 24. These records shall be retained at least 3 years from the later of either: (i) The date the SDOT or other grantee receives Federal reimbursement of the final payment made to each owner of a property and to each person displaced from a property; or (ii) The date of reimbursement for early acquisitions or credit toward the State share of a project is approved based on early acquisition activities under § 710.501. (2) Property management records shall include inventories of real property interests considered excess to project or program needs, as well as all authorized ROW use agreements for real property acquired with title 23 funds or incorporated into a program or project that received title 23 funding.
(g) Procurement. Contracting for all activities required in support of State right-of-way programs through use of private consultants and other services shall conform to 49 CFR 18.36.	(f) <i>Procurement.</i> Contracting for all activities required in support of an SDOT's or other grantee's ROW projects or programs through the use of private consultants and other services shall conform to 2 CFR 200.317, except to the extent that the procurement is required to adhere to requirements under 23 U.S.C. 112(b)(2) and 23 CFR 172 for engineering and design related consultant services.
(h) Use of other public land acquisition organizations or private consultants. The STD may enter into written agreements with other State, county, municipal, or local public land acquisition organizations or with private consultants to carry out its authorities under paragraph (b) of this section. Such organizations, firms, or individuals must comply with the policies and practices of the STD. The STD shall monitor any such real property acquisition activities to assure compliance with State and Federal law and requirements and is responsible for informing such organizations of all such requirements and for imposing sanctions in cases of material non-compliance.	(g) <i>Use of other public land acquisition organizations, conservation organizations, or private consultants.</i> The grantee may enter into written agreements with other State, county, municipal, or local public land acquisition organizations, conservation organizations, private consultants, or other persons to carry out its authorities under this part. Such organizations, firms, or persons must comply with the grantee's ROW manual or RAMP as approved in accordance with paragraphs (c) or (d) of this section. The grantee shall monitor any such real property interest acquisition activities to ensure compliance with State and Federal law, and is responsible for informing such persons of all such requirements and for imposing sanctions in cases of material non-compliance.

<p>(i) Approval actions. Except for the Interstate system, the STD and the FHWA will agree on the scope of property related oversight and approval actions that the FHWA will be responsible for under this part. The content of the most recent oversight agreement shall be reflected in the State right-of-way operations manual. The oversight agreement, and thus the manual, will indicate for which non-Interstate Federal-aid project submission of materials for review and approval are required.</p>	<p>(h) <i>Assignment of FHWA approval actions to an SDOT.</i> The SDOT and FHWA will agree in their Stewardship/Oversight Agreement on the scope of property-related oversight and approvals under this part that will be performed directly by FHWA and those that FHWA will assign to the SDOT. This assignment provision does not apply to other grantees of title 23 funds. The content of the most recent Stewardship/Oversight Agreement shall be reflected in the FHWA-approved SDOT ROW manual. The agreement, and thus the SDOT ROW manual, will indicate which Federal-aid projects require submission of materials for FHWA review and approval. The FHWA retains responsibility for any approval action not expressly assigned to the SDOT in the Stewardship/Oversight Agreement.</p>
<p>(j) Approval of just compensation. The amount determined to be just compensation shall be approved by a responsible official of the acquiring agency.</p>	<p>(See § 710.305(c))</p>
<p>(k) Description of acquisition process. The STD shall provide persons affected by projects or acquisitions advanced under title 23 of the United States Code with a written description of its real property acquisition process under State law and of the owner's rights, privileges, and obligations. The description shall be written in clear, non-technical language and, where appropriate, be available in a language other than English.</p>	<p>(See § 710.305(d))</p>
<p>§ 710.203 Funding and reimbursement.</p>	<p>§ 710.203 Funding and reimbursement.</p>
<p>(a) General conditions. The following conditions are a prerequisite to Federal participation in the costs of acquiring real property except as provided in § 710.501 for early acquisition:</p>	<p>(a) <i>General conditions.</i> Except as otherwise provided in § 710.501 for early acquisition, a State agency only may acquire real property, including mitigation property, with title 23 grant funds if the following conditions are satisfied:</p>
<p>(1) The project for which the real property is acquired is included in an approved Statewide Transportation Improvement Program (STIP);</p>	<p>(1) The project for which the real property is acquired is included in an approved Statewide Transportation Improvement Program (STIP);</p>
<p>(2) The State has executed a project agreement;</p>	<p>(2) The grantee has executed a project agreement or other agreement recognized under title 23 reflecting the Federal funding terms and conditions for the project;</p>
<p>(3) Preliminary acquisition activities, including a title search and preliminary property map preparation necessary for the completion of the environmental process, can be advanced under preliminary engineering prior to National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et seq.) clearance, while other work involving contact with affected property owners must normally be deferred until</p>	<p>(3) Preliminary acquisition activities, including a title search, appraisal, appraisal review and waiver valuation preparation, preliminary property map preparation and preliminary relocation planning activities, limited to searching for comparable properties, identifying replacement neighborhoods and identifying available public services, can be advanced under preliminary engineering, as defined in § 646.204, prior to completion of NEPA (42 U.S.C. § 4321 et seq.) review, while other work involving contact with affected</p>

after NEPA approval, except as provided in 23 CFR 710.503 for protective buying and hardship acquisition; and in 23 CFR 710.501, early acquisition. Appraisal completion may be authorized as preliminary right-of-way activity prior to completion of the environmental document; and	property owners for purposes of negotiation and relocation assistance must normally be deferred until after NEPA approval, except as provided in 23 CFR 710.501, early acquisition; and in 23 CFR 710.503 for protective buying and hardship acquisition; and
(4) Costs have been incurred in conformance with State and Federal law requirements.	(4) Costs have been incurred in conformance with State and Federal requirements.
(b) Direct eligible costs. Federal participation in real property costs is limited to the costs of property incorporated into the final project and the associated direct costs of acquisition, unless provided otherwise. Participation is provided for:	(b) <i>Direct eligible costs.</i> Federal funds may only participate in direct costs that are identified specifically as an authorized acquisition activity such as the costs of acquiring the real property incorporated into the final project and the associated direct costs of acquisition, except in the case of a State that has an approved indirect cost allocation plan as stated in 23 CFR 710.203(d) or specifically provided by statute. Participation is provided for:
(1) Real property acquisition. Usual costs and disbursements associated with real property acquisition required under the laws of the State, including the following:	(1) <i>Real property acquisition.</i> Usual costs and disbursements associated with real property acquisition as required under the laws of the State, including the following:
(i) The cost of contracting for private acquisition services or the cost associated with the use of local public agencies.	(i) The cost of contracting for private acquisition services or the cost associated with the use of local public agencies;
(ii) The cost of acquisition activities, such as, appraisal, appraisal review, cost estimates, relocation planning, right-of-way plan preparation, title work, and similar necessary right-of-way related work.	(ii) Ordinary and reasonable costs of acquisition activities, such as, appraisal, waiver valuation development, appraisal review, cost estimates, relocation planning, ROW plan preparation, title work, and similar necessary ROW related work;
(iii) The cost to acquire real property, including incidental expenses.	(iii) The compensation paid for the real property interest and costs normally associated with completing the purchase, such as document fees and document stamps. The costs of acquiring options and other contractual rights to acquire an interest in land, rights to control use or development, leases, ROWs, and any other similar action to acquire or preserve rights-of way for a transportation facility are eligible costs when FHWA determines such costs are actual, reasonable and necessary costs. Costs under this paragraph do not include salary and related expenses for an acquiring agency's employees (see payroll-related expenses in paragraph (5));
(iv) The cost of administrative settlements in accordance with 49 CFR 24.102(i), legal settlements, court awards, and costs incidental to the condemnation process.	(iv) The cost of administrative settlements in accordance with 49 CFR 24.102(i), legal settlements, court awards, and costs incidental to the condemnation process. This includes reasonable acquiring agency attorney's fees, but excludes attorney's fees for

	other parties except where required by State law (including an order of a court of competent jurisdiction) or approved by FHWA; and
(v) The cost of minimum payments and appraisal waiver amounts included in the State approved manual.	(v) The cost of minimum payments and waiver valuation amounts included in the approved ROW manual or approved RAMP.
	(vi) Ordinary and reasonable costs associated with closing, and costs of finalizing the acquisition.
(2) Relocation assistance and payments. Usual costs and disbursements associated with the following: (i) Relocation assistance and payments required under 49 CFR part 24, and (ii) Relocation assistance and payments provided under the laws of the State that may exceed the requirements of 49 CFR part 24, except for relocation assistance and payments provided to aliens not lawfully present in the United States.	(2) <i>Relocation assistance and payments.</i> Usual costs and disbursements associated with the following: (i) Relocation assistance and payments required under 49 CFR part 24; and (ii) Relocation assistance and payments provided under the laws of the State that may exceed the requirements of 49 CFR part 24, except for relocation assistance and payments provided to aliens not lawfully present in the United States.
(3) Damages. The cost of severance and/or consequential damages to remaining real property resulting from a partial acquisition, actual or constructive, of real property for a project based on elements compensable under applicable State law.	(3) <i>Damages.</i> The cost of severance and/or consequential damages to remaining real property resulting from a partial acquisition, actual or constructive, of real property for a project based on elements compensable under State law.
(4) Property management. The net cost of managing real property prior to and during construction to provide for maintenance, protection, and the clearance and disposal of improvements until final project acceptance.	(4) <i>Property management.</i> The net cost of managing real property prior to and during construction to provide for maintenance, protection, and the clearance and disposal of improvements until final project acceptance.
(5) Payroll-related expenses and technical guidance. Salary and related expenses of employees of an acquiring agency are eligible costs in accordance with OMB Circular A-87 (available at http://www.whitehouse.gov/omb/circulars). This includes State costs incurred for managing or providing technical guidance, consultation or oversight on projects where right-of-way services are performed by a political subdivision or others.	(5) <i>Payroll-related expenses.</i> Salary and related expenses (compensation for personal services) of employees of an acquiring agency for work on a project funded by a title 23 grant are eligible costs in accordance with 2 CFR part 225 (formerly OMB Circular A-87), as are salary and related expenses of a grantee's employees for work with an acquiring agency or a contractor to ensure compliance with Federal requirements on a title 23 project if the work is dedicated to a specific project and documented in accordance with 2 CFR part 225.
(6) Property not incorporated into a project funded under title 23 of the United States Code. The cost of property not incorporated into a project may be eligible for reimbursement in the following circumstances:	(6) <i>Property not incorporated into a project funded under title 23, United States Code.</i> The cost of property not incorporated into a project may be eligible for reimbursement in the following circumstances:
(i) General. Costs for construction material sites, property acquisitions to a logical boundary, or for eligible transportation enhancement, sites for disposal of hazardous materials, environmental	(i) <i>General.</i> Costs for construction material sites, property acquisitions to a logical boundary, eligible Transportation Alternatives Program (TAP) projects, sites for disposal of hazardous materials, environmental mitigation, environmental banking

mitigation, environmental banking activities, or last resort housing.	activities, or last resort housing; and
(ii) Easements not incorporated into the right-of-way. The cost of acquiring easements outside the right-of-way for permanent or temporary use.	(ii) <i>Easements and alternate access not incorporated into the ROW.</i> The cost of acquiring easements and alternate access points necessary for highway construction and maintenance outside the approved ROW limits for permanent or temporary use.
(7) Uneconomic remnants. The cost of uneconomic remnants purchased in connection with the acquisition of a partial taking for the project as required by the Uniform Act.	(7) <i>Uneconomic remnants.</i> The cost of uneconomic remnants purchased in connection with the acquisition of a partial taking for the project as required by the Uniform Act.
(8) Access rights. Payment for full or partial control of access on an existing highway (i.e., one not on a new location), based on elements compensable under applicable State law. Participation does not depend on another real property interest being acquired or on further construction of the highway facility.	(8) <i>Access rights.</i> Payment for full or partial control of access on an existing road or highway (i.e., one not on a new location), based on elements compensable under applicable State law. Participation does not depend on another real property interest being acquired or on further construction of the highway facility.
(9) Utility and railroad property.	(9) <i>Utility and railroad property.</i>
(i) The cost to replace operating real property owned by a displaced utility or railroad and conveyed to an STD for a highway project, as provided in 23 CFR part 140, subpart I, Reimbursement for Railroad Work, and 23 CFR part 645, Subpart A, Utility Relocations, Adjustments and Reimbursement, and 23 CFR part 646, Subpart B, Railroad-Highway Projects.	(i) The cost to replace operating real property owned by a displaced utility or railroad and conveyed to an acquiring agency for a project, as provided in 23 CFR part 140, subpart I, Reimbursement for Railroad Work, and 23 CFR part 645, Subpart A, Utility Relocations, Adjustments and Reimbursement, and 23 CFR part 646, Subpart B, Railroad-Highway Projects; and
(ii) Participation in the cost of acquiring non-operating utility or railroad real property shall be in the same manner as that used in the acquisition of other privately owned property.	(ii) Participation in the cost of acquiring non-operating utility or railroad real property shall be in the same manner as that used in the acquisition of other privately owned property.
(c) Withholding payment. The FHWA may withhold payment under the conditions in 23 CFR 1.36 where the State fails to comply with Federal law or regulation, State law, or under circumstances of waste, fraud, and abuse.	(c) <i>Withholding payment.</i> The FHWA may withhold payment under the conditions described in 23 CFR 1.36 for failure to comply with Federal law or regulation, State law, or under circumstances of waste, fraud, and abuse.
(d) Indirect costs. Indirect costs may be claimed under the provisions of OMB Circular A-87. Indirect costs may be included on Federal-aid billings after the indirect cost rate has been approved by FHWA. [64 FR 71290, Dec. 21, 1999, as amended at 67 FR 12863, Mar. 20, 2002]	(d) <i>Indirect costs.</i> Indirect costs may be claimed under the provisions of 2 CFR part 225 (formerly OMB Circular A-87). Indirect costs may be included on billings after the indirect cost allocation plan has been prepared in accordance with 2 CFR part 225 and approved by FHWA, other cognizant Federal agency, or, in the case of an SDOT subgrantee without a rate approved by a cognizant Federal agency, by the SDOT. Indirect costs for an SDOT may include costs of providing program-level guidance, consultation, and oversight to other acquiring agencies and contractors where ROW activities on title 23-funded projects are performed by non-SDOT personnel.