

Side-by-side comparison of 23 CFR 710 Subpart F—Federal Assistance Programs

Old Rule	Updated (New) Rule
§ 710.601 Federal land transfer.	§ 710.601 Federal land transfers.
(a) The provisions of this subpart apply to any project undertaken with funds for the National Highway System. When the FHWA determines that a strong Federal transportation interest exists, these provisions may also be applied to highway projects that are eligible for Federal-aid under Chapters 1 and 2 of title 23, of the United States Code, and to highway-related transfers that are requested by a State in conjunction with a military base closure under the Defense Base Closure and Realignment Act of 1990 (Public Law 101-510, 104 Stat. 1808, as amended).	(a) The provisions of this subpart apply to any project constructed on a Federal-aid highway or under Chapter 2 of title 23, of the United States Code. When the FHWA determines that a strong Federal transportation interest exists, these provisions may also be applied to highway projects that are eligible for Federal funding under Chapters 1 and 2 of title 23, of the United States Code, and to highway-related transfers that are requested by a State in conjunction with a military base closure under the Defense Base Closure and Realignment Act of 1990 (Public Law 101-510, 104 Stat. 1808, as amended).
(b) Sections 107(d) and 317 of title 23, of the United States Code provide for the transfer of lands or interests in lands owned by the United States to an STD or its nominee for highway purposes.	(b) Under certain conditions, real property interests owned by the United States may be transferred to a non-Federal owner for use for highway purposes. Sections 107(d) and 317 of title 23, United States Code, establish the circumstances under which such transfers may occur, and the parties eligible to receive such transfers.
(c) The STD may file an application with the FHWA, or can make application directly to the land-owning agency if the land-owning agency has its own authority for granting interests in land.	(c) An eligible party may file an application with FHWA, or can make application directly to the Federal land management agency if the Federal land management agency has its own authority for granting interests in land.
(d) Applications under this section shall include the following information:	(d) Applications under this section shall include the following information:
(1) The purpose for which the lands are to be used;	(1) The purpose for which the lands are to be used;
(2) The estate or interest in the land required for the project;	(2) The estate or interest in the land required for the project;
(3) The Federal-aid project number or other appropriate references;	(3) The Federal project number or other appropriate references;
(4) The name of the Federal agency exercising jurisdiction over the land and identity of the installation or activity in possession of the land;	(4) The name of the Federal agency exercising jurisdiction over the land and identity of the installation or activity in possession of the land;
(5) A map showing the survey of the lands to be acquired;	(5) A map showing the survey of the lands to be acquired;
(6) A legal description of the lands desired; and	(6) A legal description of the lands desired; and
(7) A statement of compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4332, <i>et seq.</i>) and any other applicable Federal environmental laws, including the National Historic Preservation Act (16 U.S.C. 470(f)), and 23 U.S.C. 138.	(7) A statement of compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4332, <i>et seq.</i>) and any other applicable Federal environmental laws, including the National Historic Preservation Act (16 U.S.C. 470(f)), and 23 U.S.C. 138.
(e) If the FHWA concurs in the need for the transfer, the land-owning agency will be notified and a right-of-entry requested. The land-owning agency shall have a period of four months in which to designate conditions necessary for the adequate protection and utilization of the reserve or to certify that the proposed appropriation is contrary to the public interest or inconsistent with the purposes for which such land or materials have been reserved. The FHWA may	(e) If the FHWA concurs in the need for the transfer, the Federal land management agency will be notified and a right-of-entry requested. For projects not on the Interstate System, the Federal land management agency shall have a period of 4 months in which to designate conditions necessary for the adequate protection and utilization of the reserve or to certify that the proposed appropriation is contrary to the public interest or inconsistent with

<p>extend the four-month reply period at the timely request of the land-owning agency for good cause.</p>	<p>the purposes for which such land or materials have been reserved. The FHWA may extend the reply period at the timely request of the Federal land management agency for good cause.</p>
	<p>(f) The FHWA may participate in the payment of fair market value or the functional replacement of impacted facilities under 710.509 and the reimbursement of the ordinary and reasonable direct costs of the Federal land management agency for the transfer when reimbursement is required by the Federal land management agency's governing laws as a condition of the transfer.</p>
<p>(f) Deeds for conveyance of lands or interests in lands owned by the United States shall be prepared by the STD and certified by an attorney licensed within the State as being legally sufficient. Such deeds shall contain the clauses required by the FHWA and 49 CFR 21.7(a)(2). After the STD prepares the deed, it will submit the proposed deed with the certification to the FHWA for review and execution.</p>	<p>(g) Deeds for conveyance of real property interests owned by the United States shall be prepared by the eligible party and must be certified as being legally sufficient by an attorney licensed within the State where the real property is located. Such deeds shall contain the clauses required by FHWA and 49 CFR 21.7(a)(2). After the eligible party prepares the deed, it will submit the proposed deed with the certification to FHWA for review and execution.</p>
<p>(g) Following execution, the STD shall record the deed in the appropriate land record office and so advise the FHWA and the concerned agency.</p>	<p>(h) Following execution by FHWA, the eligible party shall record the deed in the appropriate land record office and so advise FHWA and the affected Federal land management agency.</p>
<p>(h) When the need for the interest acquired under this subpart no longer exists, the STD must restore the land to the condition which existed prior to the transfer and must give notice to the FHWA and to the concerned Federal agency that such interest will immediately revert to the control of the Federal agency from which it was appropriated or to its assigns. Alternative arrangements may be made for the sale or reversion or restoration of the lands no longer required as part of a memorandum of understanding or separate agreement.</p>	<p>(i) When the need for the interest acquired under this subpart no longer exists, the party that received the real property must restore the land to the condition which existed prior to the transfer, or to a condition that is acceptable to the Federal land management agency to which such property would revert, and must give notice to FHWA and to the affected Federal land management agency that such interest will immediately revert to the control of the Federal land management agency from which it was appropriated or to its assigns. Where authorized by Federal law, the Federal land management agency and such party may enter into a separate agreement to release the reversion clause and make alternative arrangements for the sale, restoration, or other disposition of the lands no longer needed.</p>
<p>§ 710.603 Direct Federal acquisition.</p>	<p>§ 710.603 Direct Federal acquisition.</p>
<p>(a) The provisions of this section apply to any land and or improvements needed in connection with any project on the Interstate System, defense access roads, public lands highways, park roads, parkways, Indian reservation roads, and projects performed by the FHWA in cooperation with Federal and State agencies. For projects on the Interstate System and defense access roads, the provisions of this part are applicable only where the State is unable to acquire the required right-of-way or is unable to obtain possession with sufficient promptness.</p> <p>(b) To enable the FHWA to make the necessary finding to proceed with the acquisition of the rights-of-way, the STDs written application for Federal</p>	<p>(a) The provisions of this paragraph may be applied to any real property that is owned by the United States and is needed in connection with a project for the construction, reconstruction, or improvement of any section of the Interstate System or for a Defense Access Road project under 23 U.S.C. 210, if the SDOT is unable to acquire the required ROW or is unable to obtain possession with sufficient promptness. If the landowner tenders a right-of-entry or other right of possession document required by State law any time before FHWA makes a determination that the SDOT is unable to acquire the ROW with sufficient promptness, the SDOT is legally obligated to accept such</p>

acquisition shall include:	tender and FHWA may not proceed with Federal acquisition. To enable FHWA to make the necessary findings and to proceed with the acquisition of the ROW, the SDOT's written application for Federal acquisition must include the following:
(1) Justification for the Federal acquisition of the lands or interests in lands;	(1) Justification for the Federal acquisition of the lands or interests in lands;
(2) The date the FHWA authorized the STD to commence right-of-way acquisition, the date of the project agreement and a statement that the agreement contains the provisions required by 25 U.S.C. 111;	(2) The date FHWA authorized the SDOT to commence ROW acquisition, the date of the project agreement, and a statement that the agreement contains the provisions required by 23 U.S.C. 111;
(3) The necessity for acquisition of the particular lands under request;	(3) The necessity for acquisition of the particular lands under request;
(4) A statement of the specific interests in lands to be acquired, including the proposed treatment of control of access;	(4) A statement of the specific interests in lands to be acquired, including the proposed treatment of control of access;
(5) The STDs intentions with respect to the acquisition, subordination, or exclusion of outstanding interests, such as minerals and utility easements, in connection with the proposed acquisition;	(5) The SDOT's intentions with respect to the acquisition, subordination, or exclusion of outstanding interests, such as minerals and utility easements, in connection with the proposed acquisition;
(6) A statement on compliance with the provisions of part 771 of this chapter;	(6) A statement on compliance with the provisions of parts 771 and 774 of this chapter, as applicable;
(7) Adequate legal descriptions, plats, appraisals, and title data;	(7) Adequate legal descriptions, plats, appraisals, and title data;
(8) An outline of the negotiations which have been conducted by the STD with landowners;	(8) An outline of the negotiations that have been conducted with landowners;
(9) An agreement that the STD will pay its pro rata share of costs incurred in the acquisition of, or the attempt to acquire rights-of-way; and	(9) An agreement that the SDOT will pay its pro rata share of costs incurred in the acquisition of, or the attempt to acquire, ROW; and
(10) A statement that assures compliance with the applicable provisions of the Uniform Act. (42 U.S.C. 4601, et seq.)	(10) A statement that assures compliance with the applicable provisions of the Uniform Act. (42 U.S.C. 4601, et seq.)
(c) If the landowner tenders a right-of-entry or other right of possession document required by State law any time before the FHWA makes a determination that the STD is unable to acquire the rights-of-way with sufficient promptness, the STD is legally obligated to accept such tender and the FHWA may not proceed with Federal acquisition.	(b) Except as provided in paragraph (a) of this section, direct Federal acquisitions from non-Federal owners for projects administered by the FHWA Office of Federal Lands Highway may be carried out in accordance with applicable Federal condemnation laws. The FHWA will proceed with such a direct Federal acquisition only when the public agency responsible for the road is unable to obtain the ROW necessary for the project. The public agency must make a written request to FHWA for the acquisition and, if the public agency is a Federal agency, the request shall include a commitment that any real property obtained will be under that agency's sole jurisdiction and control and FHWA will have no jurisdiction or control over the real

	property as a result of the acquisition. The FHWA may require the applicant to provide any information FHWA needs to make the required determinations or to carry out the acquisition.
(d) If the STD obtains title to a parcel prior to the filing of the Declaration of Taking, it shall notify the FHWA and immediately furnish the appropriate U.S. Attorney with a disclaimer together with a request that the action against the landowner be dismissed (ex parte) from the proceeding and the estimated just compensation deposited into the registry of the court for the affected parcel be withdrawn after the appropriate motions are approved by the court.	(c) If the applicant for direct Federal acquisition obtains title to a parcel prior to the filing of the Declaration of Taking, it shall notify FHWA and immediately furnish the appropriate U.S. Attorney with a disclaimer together with a request that the action against the landowner be dismissed (ex parte) from the proceeding and the estimated just compensation deposited into the registry of the court for the affected parcel be withdrawn after the appropriate motions are approved by the court.
(e) When the United States obtains a court order granting possession of the real property, the FHWA shall authorize the STD to take over supervision of the property. The authorization shall include, but need not be limited to, the following:	(d) When the United States obtains a court order granting possession of the real property, FHWA shall authorize the applicant for direct Federal acquisition to immediately take over supervision of the property. The authorization shall include, but need not be limited to, the following:
(1) The right to take possession of unoccupied properties;	(1) The right to take possession of unoccupied properties;
(2) The right to give 90 days notice to owners to vacate occupied properties and the right to take possession of such properties when vacated;	(2) The right to give 90 days notice to owners to vacate occupied properties and the right to take possession of such properties when vacated;
(3) The right to permit continued occupancy of a property until it is required for construction and, in those instances where such occupancy is to be for a substantial period of time, the right to enter into rental agreements, as appropriate, to protect the public interest;	(3) The right to permit continued occupancy of a property until it is required for construction and, in those instances where such occupancy is to be for a substantial period of time, the right to enter into rental agreements, as appropriate, to protect the public interest;
(4) The right to request assistance from the U.S. Attorney in obtaining physical possession where an owner declines to comply with the court order of possession;	(4) The right to request assistance from the U.S. Attorney in obtaining physical possession where an owner declines to comply with the court order of possession;
(5) The right to clear improvements and other obstructions;	(5) The right to clear improvements and other obstructions;
(6) Instructions that the U.S. Attorney be notified prior to actual clearing, so as to afford him an opportunity to view the lands and improvements, to obtain appropriate photographs, and to secure appraisals in connection with the preparation of the case for trial;	(6) Instructions that the U.S. Attorney be notified prior to actual clearing, so as to afford him an opportunity to view the lands and improvements, to obtain appropriate photographs, and to secure appraisals in connection with the preparation of the case for trial;
(7) The requirement for appropriate credits to the United States for any net salvage or net rentals obtained by the State, as in the case of right-of-way acquired by the State for Federal-aid projects; and	(7) The requirement for appropriate credits to the United States for any net salvage or net rentals obtained by the applicant for direct Federal acquisition, as in the case of ROW acquired by an SDOT for Federal-aid projects; and
(8) Instructions that the authority granted to the STD is not intended to preclude the U.S. Attorney from taking action, before the STD has made arrangements for removal, to reach a settlement with the former owner which would include provision for removal.	(8) Instructions that the authority granted to the applicant for direct Federal acquisition is not intended to preclude the U.S. Attorney from taking action, before the applicant has made arrangements for removal, to reach a settlement with the former owner which would include provision for removal.

<p>(f) If the Federal Government initiates condemnation proceedings against the owner of real property in a Federal court and the final judgment is that the Federal agency cannot acquire the real property by condemnation, or the proceeding is abandoned, the court is required by law to award such a sum to the owner of the real property that in the opinion of the court provides reimbursement for the owner's reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of the condemnation proceedings.</p>	<p>(e) If the Federal Government initiates condemnation proceedings against the owner of real property in a Federal court and the final judgment is that FHWA cannot acquire the real property by condemnation, or the proceeding is abandoned, the court is required by law to award such a sum to the owner of the real property that in the opinion of the court provides reimbursement for the owner's reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of the condemnation proceedings.</p>
<p>(g) As soon as practicable after the date of payment of the purchase price or the date of deposit in court of funds to satisfy the award of the compensation in a Federal condemnation, the FHWA shall reimburse the owner to the extent deemed fair and reasonable, the following costs:</p>	<p>(f) As soon as practicable after the date of payment of the purchase price or the date of deposit in court of funds to satisfy the award of the compensation in a Federal condemnation, FHWA shall reimburse the owner to the extent deemed fair and reasonable, the following costs:</p>
<p>(1) Recording fees, transfer taxes, and similar expenses incidental to conveying such real property to the United States;</p>	<p>(1) Recording fees, transfer taxes, and similar expenses incidental to conveying such real property to the United States;</p>
<p>(2) Penalty costs for prepayment of any preexisting recorded mortgage entered into in good faith encumbering such real property; and</p>	<p>(2) Penalty costs for prepayment of any preexisting recorded mortgage entered into in good faith encumbering such real property; and</p>
<p>(3) The pro rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the United States or the effective date of possession, whichever is the earlier.</p>	<p>(3) The pro rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the United States or the effective date of possession, whichever is the earlier.</p>
<p>(h) The lands or interests in lands, acquired under this section, will be conveyed to the State or the appropriate political subdivision thereof, upon agreement by the STD, or said subdivision to:</p> <ol style="list-style-type: none"> (1) Maintain control of access where applicable; (2) Accept title thereto; (3) Maintain the project constructed thereon; (4) Abide by any conditions which may set forth in the deed; and (5) Notify the FHWA at the appropriate time that all the conditions have been performed by the State. 	<p>(g) The lands or interests in lands, acquired under this section, will be conveyed to the State or the appropriate political subdivision thereof, upon agreement by the SDOT, or said subdivision to:</p> <ol style="list-style-type: none"> (1) Maintain control of access where applicable; (2) Accept title thereto; (3) Maintain the project constructed thereon; (4) Abide by any conditions which may set forth in the deed; and (5) Notify the FHWA at the appropriate time that all the conditions have been performed.
<p>(i) The deed from the United States to the State, or to the appropriate political subdivision thereof, shall include the conditions required by 49 CFR part 21. The deed shall be recorded by the grantee in the appropriate land record office, and the FHWA shall be advised of the recording date.</p>	<p>(h) The deed from the United States to the State, or to the appropriate political subdivision thereof, or in the case of a Federal applicant for a direct Federal acquisition any document designating jurisdiction, shall include the conditions required by 49 CFR part 21 and shall not include any grant of jurisdiction to FHWA. The deed shall be recorded by the grantee in the appropriate land record office, and the FHWA shall be advised of the recording date.</p>