

Chapter 9

Utility Relocations, Adjustments, and Reimbursement

9.1 Utility Relocations

a. Eligibility

1. When requested by the local agency, federal funds may participate, at the pro rata share applicable, in an amount actually paid by a local agency for the costs of utility relocations. Federal participation is subject to the provisions of §645.107(k) of 23 CFR and may be made under one or more of the following conditions when:
 - The local agency certifies that the utility has the right of occupancy in its existing location because it holds the fee, an easement, or other real property interest, the damaging or taking of which is compensable in eminent domain;
 - The utility occupies privately or publicly owned land, including public road or street right-of-way, and the local agency certifies that the payment is made pursuant to a law authorizing such payment in conformance with the provisions of 23 U.S.C.123; and/or
 - The utility occupies publicly owned land, including public road right-of-way, and is owned by a public agency or political subdivision of the state, and is not required by law or agreement to move at its own expense, and the local agency certifies that it has the legal authority or obligation to make such payments.
2. When the local agency has the authority to participate in project costs, federal funds may not participate in payments made by a political subdivision for relocation of utility facilities when state law prohibits the local agency from making payment for relocation of utility facilities.
3. When the local agency does not have the authority to participate in project costs, federal funds may participate in payments made by a political subdivision for relocation of utility facilities. Such payments may be made when the local agency certifies that the payment is based upon the provisions of this part and does not violate the terms of a use and occupancy agreement, or legal contract, between the utility and the local agency.
4. Federal funds are not eligible to participate in any costs for which the utility contributes or repays the local agency except for utilities owned by the political subdivision on projects which qualify under the provisions of (3) of this part in which case the costs of the utility are considered to be costs of the local agency.
5. The MDT may deny federal fund participation in any payments made by a local agency for the relocation of utility facilities when such payments do not constitute a suitable basis for federal fund participation under the provisions of Title 23, U.S.C.
6. The rights of any public agency or political subdivision of a state under contract, franchise, or other instrument or agreement with the utility pertaining to the utility's use and occupancy of publicly owned land, including public road and street right-of-way, will be considered the rights of the local agency in the absence of state law to the contrary.

7. In lieu of the individual certifications required by section a-1, above, the local agency may file a statement with the MDT setting forth the conditions under which the local agency will make payments for the relocation of utility facilities. The MDT may approve federal fund participation in utility relocations proposed by the local agency under the conditions of the statement when the MDT has made an affirmative finding that such statement and conditions form a suitable basis for federal fund participation under the provisions of 23 U.S.C. 123.
 8. Federal funds may not participate in the cost of relocations of utility facilities made solely for the benefit or convenience of a utility, its contractor, or a highway contractor.
 9. When the advance installation of new utility facilities crossing or otherwise occupying the proposed right-of-way of a planned highway project is underway, or scheduled to be underway, prior to the time such right-of-way is purchased by or under control of the local agency, arrangements should be made for such facilities to be installed in a manner that will meet the requirements of the planned highway project. Federal funds are eligible to participate in the additional cost incurred by the utility that are attributable to, and in accommodation of, the highway project provided such costs are incurred subsequent to MDT authorization of the work. Subject to the other provisions of this regulation, federal participation may be approved under the foregoing circumstances when it is demonstrated that the action taken is necessary to protect the public interest and the adjustment of the facility is necessary by reason of the actual construction of the highway project.
 10. Federal funds are eligible to participate in the costs of preliminary engineering when the existing utility facility in conflict is located on private right-of-way, the acquisition of replacement right-of-way for utilities, and the physical construction work associated with utility relocations. Such costs must be incurred by or on behalf of a utility after the date the work is included in an approved program and after the MDT has authorized the local agency to proceed in accordance with 23 CFR 630, Subpart A - Project Authorization and Agreements.
- b. Cost Development and Reimbursement.
1. Developing and recording costs. All utility relocation costs will be recorded by means of work orders in accordance with an approved work order system except when another method of developing and recording costs, such as lump-sum agreement, has been approved by the local agency and the MDT. MDT has developed an alternative procedure for reimbursement for Utility Relocation in accordance with 23 CFR 645.117 - Cost Development and Reimbursement. Except for work done under contracts, the individual and total costs properly reported and recorded in the utility's accounts in accordance with the approved method for developing such costs, or the lump-sum agreement, will constitute the maximum amount on which federal participation may be based.

Each utility will keep its work order system or other approved accounting procedure in such a manner as to show the nature of each addition to or retirement from a facility, the total costs thereof, and the source or sources of cost. Separate work orders may be issued for additions and retirements. Retirements, however, may be included with the construction work order provided that all items relating to retirements will be kept separately from those relating to construction.

2. Direct labor costs. Salaries and wages, at actual or average rates, and related expenses paid by the utility to individuals for the time worked on the project are reimbursable when supported by

adequate records. This may include labor associated with preliminary engineering, construction engineering, right-of-way, and force account construction.

Salaries and expenses paid to individuals who are normally part of the overhead organization of the utility may be reimbursed for the time worked directly on the project when supported by adequate records and when the work performed by such individuals is essential to the project and could not have been accomplished as economically by employees outside the overhead organization.

3. Labor surcharges. Labor surcharges include worker compensation insurance, public liability and property damage insurance, and such fringe benefits as the utility has established for the benefit of its employees. The cost of labor surcharges will be reimbursed at actual cost to the utility or, at the option of the utility, average rates which are representative of actual costs may be used in lieu of actual costs if approved by the MDT and the FHWA. These average rates should be adjusted at least once annually to take into account known anticipated changes and correction for any over or under applied costs for the preceding period.

When the utility is a self-insurer, there may be reimbursement at experience rates properly developed from actual costs. The rates cannot exceed the rates of a regular insurance company for the class of employment covered.

4. The local agency may develop, or work in concert with utility companies to develop other acceptable costing methods, such as unit costs, to estimate and reimburse utility relocation expenditures. Such other methods will be founded on generally accepted industry practices and be reasonably supported by recent actual expenditures. Unit costs should be developed periodically and supported annually by a maintained database of relocation expenses. Streamlining of the cost development and reimbursement procedures is encouraged so long as adequate accountability for Federal expenditures is maintained. Concurrence by the MDT is required for any costing method used other than actual cost.
5. Material and supply costs. Materials and supplies, if available, are to be furnished from company stock except that they may be obtained from other sources near the project site when available at a lower cost. When not available from company stock, they may be purchased either under competitive bids or existing continuing contracts under which the lowest available prices are developed. Minor quantities of materials and supplies and proprietary products routinely used in the utility's operation and essential for the maintenance of system compatibility may be excluded from these requirements. The utility will not be required to change its existing standards for materials used in permanent changes to its facilities. Costs are determined as follows:
 - Materials and supplies furnished from company stock will be billed at the current stock prices for such new or used materials at the time of issue.
 - Materials and supplies not furnished from company stock will be billed at actual costs to the utility delivered to the project site.
 - A reasonable cost for plant inspection and testing may be included in the costs of materials and supplies when such expense has been incurred. The computation of actual costs of materials and supplies will include the deduction of all offered discounts, rebates, and allowances.
 - The cost of rehabilitating rather than replacing existing utility facilities to meet the requirements of a project is reimbursable, provided the rehabilitation costs do not exceed

replacement costs.

Materials recovered from temporary use and accepted for reuse by the utility will be credited to the project at prices charged to the job, less a 10 percent consideration for loss in service life. Materials recovered from the permanent facility of the utility that are accepted by the utility for return to stock will be credited to the project at the current stock prices of such used materials. Materials recovered and not accepted for reuse by the utility, if determined to have a net sale value, will be sold to the highest bidder by the local agency or utility following an opportunity for local agency inspection and appropriate solicitation for bids. If the utility practices a system of periodic disposal by sale, credit to the project will be at the going prices supported by records of the utility.

Federal participation may be approved for the total costs of removal when such removal is required by the highway construction or the existing facilities cannot be abandoned in place for aesthetic or safety reasons. When the utility facilities can be abandoned in place but the utility or highway contractor elects to remove and recover the materials, federal funds will not participate in removal costs which exceed the value of the materials removed.

The actual and direct costs of handling and loading materials and supplies at company stores or material yards, and of unloading and handling recovered materials accepted by the utility at its stores or material yards are reimbursable. In lieu of actual costs, average rates representative of actual costs may be used if approved by the local agency and the MDT. These average rates should be adjusted at least once annually to take into account known anticipated changes and correction for any over or under applied costs for the preceding period. At the option of the utility, 5 percent of the amounts billed for the materials and supplies issued from company stores and material yards, or the value of recovered materials will be reimbursed in lieu of actual or average costs for handling.

6. Equipment costs. The average or actual costs of operation, minor maintenance, and depreciation of utility-owned equipment may be reimbursed. Reimbursement for utility-owned vehicles may be made at average or actual costs. When utility-owned equipment is not available, reimbursement will be limited to the amount of rental paid (1) to the lowest qualified bidder, (2) under existing continuing contracts at reasonable costs, or (3) as an exception by negotiation when (1) and (2) of this section are impractical due to project location or schedule.
7. Transportation costs. The utility's cost, consistent with its overall policy, of necessary employee transportation and subsistence directly attributable to the project is reimbursable.

Reasonable costs for the movement of materials, supplies, and equipment to the project and necessary return to storage including the associated cost of loading and unloading equipment is reimbursable.

8. Credits. Credit to the highway project will be required for the cost of any betterment to the facility being replaced or adjusted, and for the salvage value of the materials removed.
9. Credit to the highway project will be required for the accrued depreciation of a utility facility being replaced, such as a building, pumping station, filtration plant, power plant, substation, or any other similar operational unit. Such accrued depreciation is that amount based on the ratio between the period of actual length of service and total life expectancy applied to the original cost.

Credit for accrued depreciation will not be required for a segment of the utility's service, distribution, or transmission lines.

10. Billing. After the FHWA approves the executed local agency/utility agreement, the utility may be reimbursed through the local agency for costs incurred. MDT has developed an alternative procedure for reimbursement for Utility Relocation in accordance with CFR 23 part 645.117 Cost development and reimbursement.

The utility will provide one final and complete billing of all costs incurred, or of the agreed-to lump-sum, within one year following completion of the utility relocation work, otherwise previous payments to the utility may be considered final, except as agreed to between the local agency and the utility. Billing received from utilities more than one year following completion of the utility relocation work may be paid if the local agency so desires and Federal-aid highway funds may participate in these payments. The final billing to the MDT will include a certification by the local agency that the work is complete, acceptable, and in accordance with the terms of the agreement.

All utility cost records and accounts relating to the project are subject to audit by representatives of the state and federal government for a period of three years from the date final payment has been received by the utility.

9.2 Reimbursement for Railroad Work.

AUTHORITY: 23 U.S.C. 140 Subpart I; 49 CFR 1.49, unless otherwise noted.

SOURCE: 40 FR 16057, April 9, 1975, unless otherwise noted.

- a. Applicability. This subpart, and all references hereinafter made to "urban projects," applies to federal aid projects which include as a component the elimination of hazards of railroad highway crossings, and other projects which use railroad properties or which involve adjustments required by highway construction to either railroad facilities or facilities that are jointly owned or used by railroad and utility companies.
- b. Reimbursement Basis.
 1. General. On urban highway projects involving the elimination of hazards of railroad highway crossings where a railroad company is not obligated to move or to change its facilities at its own expense, reimbursement will be made for the costs incurred in making changes to railroad facilities, required in connection with a federal aid highway project, as hereinafter provided.
 2. Eligibility. To be eligible, the costs must be:
 - For work which is included in an approved program;
 - Incurred subsequent to the date of authorization by the FHWA;
 - Incurred in accordance with the provisions of 23 CFR, Part 646, Subpart B; and
 - Properly attributable to the project.
- c. Labor costs.
 1. General. Salaries and wages, at actual or average rates, and related expenses paid by a company to individuals, for the time they are working on the project, are reimbursable when supported by adequate records. This will include labor costs associated with preliminary engineering, construction engineering, right-of-way, and force account construction.

- Salaries and expenses paid to individuals who are normally part of the overhead organization of the company may be reimbursed for the time they are working directly on the project, such as for accounting and bill preparation, when supported by adequate records and when the work performed by such individuals is essential to the project and could not have been accomplished as economically by employees outside the overhead organization.
 - Amounts paid to engineers, architects and others for services directly related to projects may be reimbursed.
2. Labor surcharges. Labor surcharges include worker compensation insurance, public liability and property damage insurance, and such fringe benefits as the company has established for the benefit of its employees. The cost of labor surcharges will be reimbursed at actual cost to the company or a company may, at its option, use an additive rate or other similar technique in lieu of actual costs provided that the rate is based on historical cost data of the company, such rate is representative of actual costs incurred, the rate is adjusted at least annually taking into consideration known anticipated changes and correcting for any over or under applied costs for the preceding period, and the rate is approved by the SHA and FHWA.

Where the company is a self-insurer there may be reimbursement:

- At experience rates properly developed from actual costs, not to exceed the rates of a regular insurance company for the class of employment covered; or
 - At the option of the company, a fixed rate of 8 percent of direct labor costs for worker compensation and public liability and property damage insurance together.
- d. Overhead and indirect construction costs. MDT may elect to reimburse the railroad company for its overhead and indirect construction costs. The FHWA will participate in these costs provided that:
- The costs are distributed to all applicable work orders and other functions on an equitable and uniform basis in accordance with generally accepted accounting principles;
 - The costs included in the distribution are limited to costs actually incurred by the railroad;
 - The costs are eligible in accordance with the Federal Acquisition Regulation (48 CFR), part 31, Contract Cost Principles and Procedures, relating to contracts with commercial organizations;
 - The costs are considered reasonable;
 - Records are readily available at a single location which adequately support the costs included in the distribution, the method used for distributing the costs, and the basis for determining additive rates;
 - The rates are adjusted at least annually taking into consideration any over-recovery or under-recovery of costs; and
 - The railroad maintains written procedures which assure proper control and distribution of the overhead and indirect construction costs.
- e. Materials and Supplies.
1. Procurement. Materials and supplies, if available, are to be furnished from company stock, except they may be obtained from other sources near the project site when available at less cost.

Where not available from company stock, they may be purchased either under competitive bids or existing continuing contracts, under which the lowest available prices are developed. Minor quantities and proprietary products are excluded from these requirements. The company will not be required to change its existing standards for materials used in permanent changes to its facilities.

2. Costs.

- Materials and supplies furnished from company stock will be billed at current stock price of such new or used material at time of issue.
- Materials and supplies not furnished from company stock will be billed at actual costs to the company delivered to the point of entry on the railroad company's line nearest the source of procurement.
- A reasonable cost of plant inspection and testing may be included in the costs of materials and supplies where such expense has been incurred. The computation of actual costs of materials and supplies will include the deduction of all offered discounts, rebates and allowances.

3. Materials recovered.

- Materials recovered from temporary use and accepted for reuse by the company will be credited to the project at prices charged to the job, less a consideration for loss in service life at 10 percent for rails, angle bars, tie plates and metal turnout materials and 15 percent for all other materials. Materials recovered from the permanent facility of the company that are accepted by the company for return to stock will be credited to the project at current stock prices of such used material.
- Materials recovered and not accepted for reuse by the company, if determined to have a net sale value, will be sold by the State or railroad following an opportunity for State inspection and appropriate solicitation for bids, to the highest bidder; or if the company practices a system of periodic disposal by sale, credit to the project will be at the going prices supported by the records of the company. Where applicable, credit for materials recovered from the permanent facility in length or quantities in excess of that being placed should be reduced to reflect any increased cost of railroad operation resulting from the adjustment.

4. Removal costs. State participation in the costs of removing, salvaging, transporting, and handling recovered materials will be limited to the value of materials recovered, except where MDT approves additional measures for restoration of affected areas as required by the physical construction or by reason of safety or aesthetics.

5. Handling costs. The actual and direct costs of handling and loading out of materials and supplies at and from company stores or material yards and of unloading and handling of recovered materials accepted by the company at its stores or material yards, are reimbursable. At the option of the company, 5 percent of the amounts billed for the materials and supplies which are issued from company stores and material yards will be reimbursable in lieu of actual costs.

6. Credit losses. On projects where a company actually suffers loss by application of credits, the company will have the opportunity of submitting a detailed statement of such loss as a basis for further adjustment.

f. Equipment.

1. Company owned equipment. Cost of company-owned equipment may be reimbursed for the average or actual cost of operation, light and running repairs, and depreciation or at industry rates representative of actual costs as agreed to by the railroad and MDT. Reimbursement for company-owned vehicles may be made at average or actual costs or at rates of recorded use per mile which are representative of actual costs and agreed to by the company and MDT.
2. Other equipment. Where company owned equipment is not available, reimbursement will be limited to the amount of rental paid to the lowest qualified bidder, under existing continuing contracts at reasonable cost, or as an exception, by negotiation where the lowest qualified bidder and under the existing continuing contracts at reasonable cost are impractical due to project location or schedule.

g. Transportation.

1. Employees. The company's cost of necessary employee transportation and subsistence directly attributable to the project, which is consistent with overall policy of the company, is reimbursable.
2. Materials, supplies, and equipment. The most economical movement of materials, supplies and equipment to the project and necessary return to storage, including the associated costs of loading and unloading equipment, is reimbursable. Transportation by a railroad company over its own lines in a revenue train is reimbursable at average or actual costs, at rates which are representative of actual costs, or at rates which the company charges its customers for similar shipments provided the rate structure is documented and available to the public. These rates are to be agreed to by the company and MDT. No charge will be made for transportation by work train other than the operating expenses of the work train. When it is more practicable or more economical to move equipment on its own wheels, reimbursement may be made at average or actual costs or at rates which are representative of actual costs and are agreed to by the railroad and MDT.

h. Credits for Improvements.

1. Credit will be made to the project for additions or improvements which provide higher quality or increased service capability of the operating facility, and which are provided solely for the benefit of the company.
2. Where buildings and other depreciable company structures integral to operation of rail traffic must be replaced, credit will be made to the project as set forth in 23 CFR 646.216(c)(2).
3. No credit is required for additions or improvements which are:
 - Necessitated by the requirements of the highway project.
 - Replacement which, although not identical, are of equivalent standard.
 - Replacements of devices or materials no longer regularly manufactured and the next highest grade or size is used.
 - Required by governmental and appropriate regulatory commission requirements.

4. Protection. The cost of essential protective services which, in the opinion of a railroad company, are required to ensure safety to railroad operations during certain periods of the construction of a project, is reimbursable provided an item for such services is incorporated in the railroad agreement or in a work order issued by the local agency and approved by FHWA.
- i. Maintenance and Extended Construction. The cost of maintenance and extended construction is reimbursable to the extent provided for in 23 CFR 646.216(f)(4), and where included in the State Railroad Agreement or otherwise approved by the state and FHWA.
 - j. Lump Sum Payments. Where approved by FHWA, pursuant to 23 CFR 646.216(d) (3), reimbursement may be made as a lump sum payment, in lieu of actual costs.
 - k. Billings.
 1. After the executed Road Authority-Railroad Agreement, the company may be reimbursed on progress billings of incurred costs. Costs for materials stockpiled at the project site or specifically purchased and delivered to the company for use on the project may be reimbursed on progress billings following approval of the executed Road Authority-Railroad Agreement or the written agreement under 23 CFR 646.218(c).
 2. The company will provide one final and complete billing of all incurred costs, or of the agreed-to lump sum, within one year following completion of the reimbursable railroad work. Otherwise, previous payments to the company may be considered final, except as agreed to between the SHA and the railroad.
 3. All company cost records and accounts relating to the project are subject to audit by representatives of the State and/or the Federal Government for a period of three years from the date final payment has been received by the company.
 4. A railroad company must advise the State promptly of any outstanding obligation of the State's contractor for services furnished by the company such as protective services.

9.3 Other Costs Allowable Subject to FHWA's Approval.

Although some categories of expenditures are not mentioned specifically in 23 CFR 140, "Reimbursement," as eligible for federal participation, should the local agency wish to seek federal participation it is allowed to request approval from the FHWA prior to billing. The expenditures that relate to the federal aid project should be well identified through proper documentation.

9.4 Unallowable Costs

- Bad debts. Any losses arising from uncollectible accounts and other claims and related costs
- Contingencies. Contributions to a contingency reserve or any similar provisions for unforeseen events.
- Contributions and Donations. Contributions and Donation.
- Entertainment. Costs of amusements, social activities, and incidental costs relating thereto, such as meals, beverages, lodgings, rentals, transportation, and gratuities.
- Fines and Penalties. Costs resulting from violations of or failure to comply with federal, state, and local laws and regulations.
- Governor's Expenses. The salaries and expense of the office of the governor of a state or the

chief executive of a political subdivision are considered a cost of general state or local government.

- Interest and Other Financial Costs. Interest on borrowings (however represented), bond discounts, cost of financing and refinancing operations, and legal and professional fees paid in connection therewith, are unallowable except when authorized by federal legislation.
- Legislative Expenses. Salaries and other expenses of the state legislature or similar local governmental bodies, such as county supervisors, city councils, school boards, etc., whether incurred for purposes of legislation or executive direction.
- Under-recovery of Costs under Grant Agreements. Any excess of cost over the federal contribution under one grant agreement is unallowable under other grant agreements

9.5 Tools

Link to FHWA training video on Utility Coordination and Certification Requirements:

<http://www.fhwa.dot.gov/federal-aidessentials/catmod.cfm?id=9>