

3. Ratification List.

4. Petitions and Complaints:

(a) Automotive visor/illuminated mirror package and components thereof. (Docket No. 1190).

5. Inv. 731-TA-255 [Preliminary] (Animal feed grade DL-methionine from France)—briefing and vote.

6. Inv. 701-TA-243, 244 [Preliminary] and Inv. 731-TA-256, 258 [Preliminary] (carbon steel wire rod from Poland, Portugal and Venezuela)—briefing and vote.

7. Any items left over from previous agenda.

CONTACT PERSON FOR MORE

INFORMATION: Kenneth R. Mason, Secretary, (202) 523-0161.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-11783 Filed 5-13-85; 8:56 am]

BILLING CODE 7020-02-M

6

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: At 11:00 a.m., Wednesday, May 22, 1985.

PLACE: Room 331, 701 E Street, NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratification List.
4. Petitions and Complaints:
5. Inv. TA-201-55 (Nonrubber footwear)—briefing and vote on injury.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE

INFORMATION: Kenneth R. Mason, Secretary, (202) 523-0161.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-11784 Filed 5-13-85; 8:58 am]

BILLING CODE 7020-02-M

7

INTERSTATE COMMERCE COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, May 21, 1985.

PLACE: Hearing Room A, Interstate Commerce Commission Building, 12th & Constitution Ave., NW., Washington, D.C. 20423.

STATUS: Open Special Conference.

MATTER TO BE DISCUSSED: Ex Parte No. 297 (Sub-No. 7), Motor Carrier Rate Bureaus—Expansion of Collective Rate-making Territory.

CONTACT PERSON FOR MORE

INFORMATION: Robert R. Dahlgren,

Office of Public Affairs, Telephone: (202) 275-7252.

James H. Bayne,

Secretary.

[FR Doc. 85-11785 Filed 5-13-85; 9:14 am]

BILLING CODE 7590-01-M

8

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

TIME AND DATE: The meeting will commence at 9:00 a.m., Friday, May 24, 1985 and continue until all official business is completed.

PLACE: Capitol Holiday Inn, 550 C Street, SW., Columbia Room, Washington, D.C. 20024.

STATUS OF MEETING: Open [A portion of the meeting is to be closed to discuss personnel, personal, litigation, and investigatory matters under the Government in the Sunshine Act (5 U.S.C. 552b(c) (2), (6), (7), (9) (B), and (10) and 45 CFR 1622.5(a), (e), (f), (g), and (h)).]

MATTERS TO BE CONSIDERED:

1. Approval of Agenda
2. Approval of Minutes—March 7 and 8, 1985
3. Report from Interim Corporation President
4. Report from Special Committee on Presidential Search
5. Action on Recommendations of the Operations and Regulations Committee—45 CFR 1601 (By-Laws)—45 CFR 1622 (Sunshine Act)—45 CFR 1620 (Priorities)—45 CFR 1614 (Private Attorney Involvement)
6. Actions on Recommendations of the Audit and Appropriations Committee—Reorganization of the Office of Field Services—Allocation Formula for Fiscal Year 1986 Basic Field Grants—Allocation of Fiscal Year 1984 Carryover funds
7. Discussion of litigation and investigatory matters (Closed)
8. Discussion of personnel and personal matters (Closed)

CONTACT PERSON FOR MORE

INFORMATION: Dennis Daugherty, Executive Office, (202) 272-4040.

Date issued: May 13, 1985.

Dennis Daugherty,

Acting Secretary.

[FR Doc. 85-11831 Filed 5-13-85; 1:15 p.m.]

BILLING CODE 6820-35-M

9

LEGAL SERVICES CORPORATION

Operations and Regulations Committee Meeting

TIME AND DATE: Meeting will commence at 9:00 a.m., Thursday, May 23, 1985 and

continue until all official business is completed.

PLACE: Capitol Holiday Inn, 550 C Street, SW., Columbia Room, Washington, D.C. 20024.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda
2. Approval of Minutes—April 25, 1985
3. Report from the Office of Field Services—45 CFR 1614 (Private Attorney Involvement)
4. Report from the Audit Division—45 CFR 1614 (Private Attorney Involvement)
5. Report from the Office of the General Counsel—45 CFR 1614 (Private Attorney Involvement)—45 CFR 1612 (Lobbying)
6. Recommendations to full Board on above cited Regulations.
7. Other Regulations Adopted after April 27, 1984.

CONTACT PERSON FOR MORE

INFORMATION: Tom Bovard, Office of General Counsel, (202) 272-4010.

Date issued: May 13, 1985.

Dennis Daugherty,

Acting Secretary.

[FR Doc. 85-11832 Filed 5-13-85; 1:15 pm]

BILLING CODE 6820-35-M

10

LEGAL SERVICES CORPORATION

Committee on Audit and Appropriations

TIME AND DATE: The meeting will commence at 1:30 p.m. on Thursday, May 23, 1985 or at the adjournment of the meeting of the Operations and Regulations Committee, whichever is later, and continue until all official business is completed.

PLACE: Capitol Holiday Inn, 550 C Street, SW., Columbia Room, Washington, D.C. 20024.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda
2. Approval of Draft Minutes—April 25, 1985
3. Reorganization of the Office of Field Services
4. Allocation of Fiscal Year 1984 Carryover funds
5. Allocation formula for Fiscal Year 1986 Basic Field Grants

CONTACT PERSON FOR MORE

INFORMATION: Joel Thimell, Executive Office, (202) 272-4040.

Date issued: May 13, 1985.

Dennis Daugherty,

Acting Secretary.

[FR Doc. 85-11833 Filed 5-13-85; 1:15 pm]

BILLING CODE 6820-35-M

11

MARINE MAMMAL COMMISSION

TIME AND DATE: The meeting will commence at 10:00 a.m., Tuesday, May 21, 1985 and continue until all official business is completed.

PLACE: Room 211, Douglas F. Manchester Executive Conference Center, University of San Diego, Alcalá Park, San Diego, California 92110.

STATUS: The meeting will be open to public observation. Public participation will be allowed if time permits and it is determined to be desirable by the Chairman.

MATTERS TO BE CONSIDERED:

- (1) Priorities for Commission activities over the next year;
- (2) Scope and content of the Commission's Annual Meeting, 24, 25, 26 October 1985;
- (3) Provisions for ensuring compliance with the Government in the Sunshine Act;
- (4) Budget; and
- (5) Appropriations and other Congressional Hearings.

CONTACT PERSON FOR MORE

INFORMATION: John R. Twiss, Jr., Executive Director, Marine Mammal Commission, 1625 I Street, NW., Washington, D.C. 20006, 202/653-8237.

Dated: May 10, 1985.

John R. Twiss, Jr.,

Executive Director.

[FR Doc. 85-11786 Filed 5-13-85; 8:45 am]

BILLING CODE 6820-31-M

12

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of May 6, 1985.

A closed meeting will be held on Tuesday, May 7, 1985, at 10:00 a.m.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meeting may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C.

552(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10).

Chairman Shad and Commissioners Cox and Marinaccio voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, May 7, 1985, at 10:00 a.m., will be:

- Formal order of investigation.
- Institution of administrative proceedings of an enforcement nature.
- Settlement of administrative proceedings of an enforcement nature.
- Litigation matter.
- Institution of injunctive action.
- Opinion.

At times changes in Commission priorities require alternations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: David Martin at (202) 272-2179.

John Wheeler,

Secretary.

April 30, 1985.

[FR Doc. 85-11770 Filed 5-13-85 8:53 am]

BILLING CODE 8010-01-M

Federal Register

**Wednesday
May 15, 1985**

Part II

Department of Transportation

Federal Highway Administration

23 CFR Part 645

Utility Relocations, Adjustments and Reimbursement; Final Rule

Accommodation of Utilities; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 645

[FHWA Docket No. 79-8, Notice 3]

Utility Relocations, Adjustments and Reimbursement

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is amending its regulation which prescribes policies, procedures, and reimbursement provisions for the adjustment and relocation of utility facilities on Federal-aid and direct Federal highway projects. The final rule clarifies existing provisions and eliminates unnecessary and duplicative requirements.

EFFECTIVE DATE: June 14, 1985.

FOR FURTHER INFORMATION CONTACT:

James A. Carney, Office of Engineering, 202-426-0450; Harvey C. Wood, Office of Fiscal Services, 202-426-0563; or Michael J. Laska, Office of the Chief Counsel, 202-426-0762; Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

On February 27, 1979, the FHWA issued an advance notice of proposed rulemaking (ANPRM) published as 44 FR 12209, FHWA Docket No. 79-8. Its purpose was to solicit comments in anticipation of a future revision of FHWA's regulation prescribing the policies, procedures, and reimbursement provisions for the adjustment and relocation of utility facilities associated with Federal-aid and direct Federal highway construction.

A total of 25 commenters replied to the ANPRM: 9 being from utility companies or their representatives; 15 from State highway agencies (SHA); and 1 from a county highway agency. Generally, the commenters supported some revision to the regulation, although 3 utility companies and 1 SHA believed the present regulation should remain unchanged.

Several specific changes to the existing regulation were suggested by the commenters. Most of these suggestions were incorporated within a notice of proposed rulemaking (NPRM), FHWA Docket No. 79-8; Notice 2 (45 FR 6924, November 20, 1980), which presented the FHWA's proposals for updating its current regulation covering the policies, procedures, and

reimbursement provisions for the adjustment and relocation of utility facilities. There were 22 comments to the NPRM. Comments were received from 12 SHA's, 9 utility companies or their trade organizations, and the Center for Auto Safety.

Overall, the responses were supportive of the rewritten regulation as proposed. Several commenters, representing both the States and the utility industry, made favorable remarks on the overall proposed regulation and many commenters presented additional supportive comments regarding specific subparts of the proposed regulation.

Because of the favorable responses received, the final rule is being issued with few changes from the text proposed in the NPRM. The changes are minor clarifications or editorial. The following discussion addresses the substantive issues most frequently mentioned by the commenters.

1. Payment of Interest

Although the FHWA's inability to pay for interest costs was specifically discussed in the preamble of the NPRM, two utility companies and one SHA asked the FHWA to reconsider its position. The FHWA cannot pay interest under existing law and regulation. A change in law would be necessary before such payments could be made and it is not planned to pursue such a change at this time.

2. Cross-Reference to Other Regulations

The NPRM contained a limited number of cross-references to other regulations within 23 CFR which apply to utility adjustments. One SHA believes researching these references would be time-consuming to a user of the utility relocation regulation. However, other commenters offered suggestions as to where additional cross-references would be helpful. It must be recognized that there are several requirements within 23 CFR which apply to utility relocations and adjustments. The FHWA's approach has been to present the majority of these within 23 CFR 645. However, in those instances where this was not possible without duplicating other material already available, selected cross-references have been used.

3. Preliminary Engineering

Based on comments on the wording in the NPRM, there is some confusion concerning preliminary engineering activities to be conducted by the utility's own forces, those forces of the highway agency, or a consultant hired by the highway agency. A new § 645.109(a) has been added to clarify that these

methods for providing engineering services can be eligible for Federal participation.

4. Lump-Sum Agreements

The NPRM proposed raising the ceiling on the lump-sum payment arrangement from \$10,000 to \$25,000. This revision was put into effect via a final rule issued January 6, 1983 (48 FR 1948, January 17, 1983).

5. Expired Service Life Credit

Six commenters made a direct reference to the proposed change which would no longer require expired service life credit on segments of a utility's service, distribution, or transmission lines, regardless of length. Three SHA's and two utilities expressed agreement with the change in policy. One SHA objected to this change as the commenter interpreted it to mean that no expired service life credits would be required under any circumstances. This interpretation is incorrect in that an expired service life credit would still be required when there is a replacement of major facilities used for the production, transfer, or storage of a utility's products. Because the proposed change in expired service life credit requirements was well received by most commenters and possibly misinterpreted by the one negative commenter, it was decided to include this change in policy in the final rule.

6. Use of Rates in Lieu of Actual Costs

Two utilities indicated that because it is common practice to establish average rates for certain costs such as labor surcharges, the regulation should allow for this method of establishing costs. The FHWA agrees with this comment. Several of the reimbursement provisions addressed in the NPRM allowed for use of average costs. Provisions have been added to §§ 645.117(c)(1) and 645.117(e)(4) of the final rule to allow use of properly documented average rates when dealing with labor surcharges and material handling costs.

7. Audit Requirements

A SHA suggested that the regulation include provisions which would not require audits, or limit audits to a sampling basis, on less costly utility relocations. The audit requirements are being deleted from §§ 645.117(i)(4) and 645.119(c)(2) to provide the States with more flexibility in performing utility audits.

8. Alternate Procedure Exceptions

One utility and one SHA suggested that there should be fewer exceptions to

the alternate procedure process listed in § 645.119(b). These exceptions represent the more unusual circumstances which might arise and are basically the same as those in the regulation being superseded by this issuance. Therefore, no change is being made.

8. Alternate Procedure—Safety Requirements

The Center for Auto Safety presented several comments on this section of the proposed regulation. The center for Auto Safety believed the alternate procedure is a new application of the certification, acceptance (CA) process described in 23 CFR Part 640, Certification Acceptance, and this should be acknowledged by an appropriate cross-reference. It is noted that the alternate procedure requirements were first established in 1968 and predate by several years CA requirements. Although somewhat similar to CA, the alternate procedures requirements are self-contained and no cross-reference to CA is necessary.

The Center also believes alternate procedure requirements should make explicit reference to such matters as highway safety improvement requirements and traffic control plans in work zones. Section 645.119(c)(1)(i) of the final rule cross-references 23 CFR Part 645, Subpart B, Accommodation of Utilities, and it is within this latter regulation that FHWA addresses safety requirements related to the use or occupancy of highway rights-of-way. No further cross-reference should be necessary.

10. Payment for Utilities on Local Projects

The FHWA's existing regulation does not permit Federal-aid funds to participate in payments made by a political subdivision of a State for utility adjustments when State law prohibits the State from making such payment. In the NPRM, FHWA proposed to modify its eligibility criteria to allow Federal-aid funds to participate in payments made by political subdivisions provided payment by the political subdivision meets the general eligibility criteria and does not violate the terms of a use and occupancy agreement, or legal contract between the utility and political subdivision.

No significant objections were raised by commenters and this provision is being incorporated into the final rule. In implementing this provision, a distinction is being made between Federal-aid highway projects within local areas when the SHA can participate in project costs versus Federal-aid highway projects within local areas when only the political

subdivisions can participate in project costs. For the former situation when the SHA can participate in the highway project costs, the FHWA may participate in utility adjustment costs incurred by political subdivisions only to the extent the SHA has the authority to pay. In the latter situation when only the political subdivision can participate in the highway project costs, FHWA may participate in those utility adjustment costs incurred by the political subdivision, including costs paid for by the political subdivision for the adjustment of utility facilities it owns, in accordance with the overall eligibility criteria found in this regulation.

Regulatory Impact

The FHWA has determined that this document contains neither a major rule under Executive Order 12291 nor a significant regulation under the Department of Transportation regulatory policies and procedures.

The revised regulation updates and clarifies FHWA provisions for adjustment of utility facilities on Federal-aid and direct Federal highway projects. Specifically, modifications are provided regarding the extent utility adjustments are eligible for Federal-aid reimbursement and the application of expired service life credits. Additionally, the revised regulation simplifies and significantly reduces the number of unnecessary and duplicative requirements found in the existing regulation which will reduce implementation costs. Although the economic impact of this rulemaking action will be minimal, a Final Regulatory Evaluation has been prepared and is available for inspection in the public docket and may be obtained by contacting Mr. James A. Carney at the address provided under the heading "For Further Information Contact."

For these reasons and under the criteria of the Regulatory Flexibility Act (Pub. L. 96-354), the FHWA certifies that this action will not have a significant economic impact on a substantial number of small entities.

The rulemaking contains three information collection requirements. These items have been approved by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). The submission of an eligibility statement for utility adjustments required by § 645.107(g) has been approved by OMB (OMB No. 2125-0515) and expires June 30, 1986, unless renewed prior to that date pursuant to 5 CFR Part 1320. The requirement to develop and record costs for utility

adjustments found in Section 645.117 has been approved by OMB (OMB No. 2125-0519) and expires November 30, 1987, unless renewed prior to that date pursuant to 5 CFR Part 1320. The submission of alternate procedures for processing utility adjustments discussed in Section 645.119 has been approved by OMB (OMB No. 2125-0533) and expires November 30, 1985, unless renewed prior to that date pursuant to 5 CFR Part 1320.

Note.—The Appendix to Subpart A is removed.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

List of Subjects in 23 CFR Part 645

Grant programs—transportation, Highways and roads, Reporting and recordkeeping requirements, Utilities—adjustments, relocations, and reimbursement.

Issued on: May 8, 1985.

L.P. Lamm,

Deputy Federal Highway Administrator,
Federal Highway Administration.

In consideration of the foregoing, and under the authority of 23 U.S.C. 123, 315 and 49 CFR 1.48(b), the FHWA hereby revises Subpart A of Part 645 of Title 23 of the Code of Federal Regulations to read as set forth below.

PART 645—UTILITIES

Subpart A—Utility Relocations, Adjustments, and Reimbursement

Sec.	
645.101	Purpose.
645.103	Applicability.
645.105	Definitions.
645.107	Eligibility.
645.109	Preliminary engineering.
645.111	Right-of-way.
645.113	Agreements and authorizations.
645.115	Construction.
645.117	Cost development and reimbursement.
645.119	Alternate procedure.

Subpart A—Utility Relocations, Adjustments, and Reimbursement

Authority: 23 U.S.C. 123 and 315; 49 CFR 1.48(b).

§ 645.101 Purpose.

To prescribe the policies, procedures, and reimbursement provisions for the adjustment and relocation of utility facilities on Federal-aid and direct Federal projects.

§ 645.103 Applicability.

(a) The provisions of this regulation apply to reimbursement claimed by a State highway agency (SHA) for costs incurred under an approved and properly executed highway agency (HA)/utility agreement and for payment of costs incurred under all Federal Highway Administration (FHWA)/utility agreements.

(b) Procedures on the accommodation of utilities are set forth in 23 CFR Part 645, Subpart B, Accommodation of Utilities.

(c) When the lines or facilities to be relocated or adjusted due to highway construction are privately owned, located on the owner's land, devoted exclusively to private use and not directly or indirectly serving the public, the provisions of the FHWA's right-of-way procedures in 23 CFR Chapter I, Subchapter H, Right-of-Way and Environment, apply. When applicable, under the foregoing conditions, the provisions of this regulation may be used as a guide to establish a cost-tolerance.

(d) The FHWA's reimbursement to the SHA will be governed by State law (or State regulation) or the provisions of this regulation, whichever is more restrictive. When State law or regulation differs from this regulation, a determination shall be made by the SHA subject to the concurrence of the FHWA as to which standards will govern, and the record documented accordingly, for each relocation encountered.

(e) For direct Federal projects, all references herein to the SHA or HA are inapplicable, and it is intended that the FHWA be considered in the relative position of the SHA or HA.

§ 645.105 Definitions.

For the purposes of this regulation, the following definitions shall apply:

(a) *Authorization*—for Federal-aid projects authorization to the SHA by the FHWA, or for direct Federal projects authorization to the utility by the FHWA, to proceed with any phase of a project. The date of authorization establishes the date of eligibility for Federal funds to participate in the costs incurred on that phase of work.

(b) *Betterment*—any upgrading of the facility being relocated that is not attributable to the highway construction and is made solely for the benefit of and at the election of the utility.

(c) *Cost of relocation*—the entire amount paid by or on behalf of the utility properly attributable to the relocation after deducting from that amount any increase in value of the new facility, and any salvage derived from the old facility.

(d) *Cost of Removal*—the amount expended to remove utility property including the cost of demolishing, dismantling, removing, transporting, or otherwise disposing of utility property and of cleaning up to leave the site in a neat and presentable condition.

(e) *Cost of salvage*—the amount expended to restore salvaged utility property to usable condition after its removal.

(f) *Direct Federal projects*—highway projects such as projects under the Federal Lands Highways Program which are under the direct administration of the FHWA.

(g) *Highway agency (HA)*—that department, commission, board, or official of any State or political subdivision thereof, charged by its law with the responsibility for highway administration.

(h) *Indirect or overhead costs*—those costs which are not readily identifiable with one specific task, job, or work order. Such costs may include indirect labor, social security taxes, insurance, stores expense, and general office expenses. Costs of this nature generally are distributed or allocated to the applicable job or work orders, other accounts and other functions to which they relate. Distribution and allocation is made on a uniform basis which is reasonable, equitable, and in accordance with generally accepted cost accounting practices.

(i) *Relocation*—the adjustment of utility facilities required by the highway project. It includes removing and reinstalling the facility, including necessary temporary facilities, acquiring necessary right-of-way on the new location, moving, rearranging or changing the type of existing facilities and taking any necessary safety and protective measures. It shall also mean constructing a replacement facility that is both functionally equivalent to the existing facility and necessary for continuous operation of the utility service, the project economy, or sequence of highway construction.

(j) *Salvage value*—the amount received from the sale of utility property that has been removed or the amount at which the recovered material is charged to the utility's accounts, if retained for reuse.

(k) *State highway agency*—the highway agency of one of the 50 States, the District of Columbia, or Puerto Rico.

(l) *Use and occupancy agreement*—the document (written agreement or permit) by which the HA approves the use and occupancy of highway right-of-way by utility facilities or private lines.

(m) *Utility*—a privately, publicly, or cooperatively owned line, facility or

system for producing, transmitting, or distributing communications, cable television, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water not connected with highway drainage, or any other similar commodity, including any fire or police signal system or street lighting system, which directly or indirectly serves the public. The term utility shall also mean the utility company inclusive of any wholly owned or controlled subsidiary.

(n) *Work order system*—a procedure for accumulating and recording into separate accounts of a utility all costs to the utility in connection with any change in its system or plant.

§ 645.107 Eligibility.

(a) When requested by the SHA, Federal funds may participate, at the pro rata share applicable, in an amount actually paid by an HA for the costs of utility relocations. Federal participation is subject to the provisions of § 645.103(d) of this part and may be made under one or more of the following conditions when:

(1) the SHA 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.

(2) the utility occupies privately or publicly owned land, including public road or street right-of-way, and the SHA certifies that the payment by the HA is made pursuant to a law authorizing such payment in conformance with the provisions of 23 U.S.C. 123, and/or

(3) The utility occupies publicly owned land, including public road and street 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 SHA certifies that the HA has the legal authority or obligation to make such payments.

(b) On projects which the SHA 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 SHA from making payment for relocation of utility facilities.

(c) On projects which the SHA 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 when the SHA certifies that such payment is based upon the provisions of § 645.107(a) of this part and does not violate the terms of a use

and occupancy agreement, or legal contract, between the utility and the HA.

(d) Federal funds are not eligible to participate in any costs for which the utility contributes or repays the HA, except for utilities owned by the political subdivision on projects which qualify under the provisions of § 645.107(c) of this part in which case the costs of the utility are considered to be costs of the HA.

(e) The FHWA may deny Federal fund participation in any payments made by a HA 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.

(f) 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, shall be considered the rights of the SHA in the absence of State law to the contrary.

(g) In lieu of the individual certifications required by § 645.107(a) and (c), the SHA may file a statement with the FHWA setting forth the conditions under which the SHA will make payments for the relocation of utility facilities. The FHWA may approve Federal fund participation in utility relocations proposed by the SHA under the conditions of the statement when the FHWA 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.

(h) 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.

(i) 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 HA, 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 subsequent to authorization of the work by the FHWA. 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.

(j) Federal funds are eligible to participate in the costs of preliminary engineering and allied services for utilities, 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 FHWA has authorized the SHA to proceed in accordance with 23 CFR 630, Subpart A, Federal-Aid Programs Approval and Project Authorization.

[The information collection requirements in paragraph (g) of this section have been approved under OMB control No. 2125-0515]

§ 645.109 Preliminary engineering.

(a) As mutually agreed to by the HA and utility, and subject to the provisions of paragraph (b) of this section, preliminary engineering activities associated with utility relocation work may be done by:

(1) The HA's or utility's engineering forces;

(2) An engineering consultant selected by the HA, after consultation with the utility, the contract to be administered by the HA; or,

(3) An engineering consultant selected by the utility, with the approval of the HA, the contract to be administered by the utility.

(b) When a utility is not adequately staffed to pursue the necessary preliminary engineering and related work for the utility relocation, Federal funds may participate in the amount paid to engineers, architects, and others for required engineering and allied services provided such amounts are not based on a percentage of the cost of relocation. When Federal participation is requested by the SHA in the cost of such services, the utility and its consultant shall agree in writing as to the services to be provided and the fees and arrangements for the services. Federal funds may participate in the cost of such services performed under existing written continuing contracts when it is demonstrated that such work is performed regularly for the utility in its own work and that the costs are reasonable. Prior approval by the FHWA of consulting services is necessary, except the FHWA may forgo preaward review and/or approval of any proposed consultant contract which is not expected to exceed \$10,000.

(c) The procedures in 23 CFR Part 172, Administration of Negotiated Contracts,

may be used as a guide for reviewing proposed consultant contracts.

§ 645.111 Right-of-way.

(a) Federal participation may be approved for the cost of replacement right-of-way provided:

(1) The utility has the right of occupancy in its existing location because it holds the fee, an easement, or another real property interest, the damaging or taking of which is compensable in eminent domain, or the acquisition is made in the interest of project economy or is necessary to meet the requirements of the highway project, and

(2) There will be no charge to the project for that portion of the utility's existing right-of-way being transferred to the HA for highway purposes.

(b) The utility shall determine and make a written valuation of the replacement right-of-way that it acquires in order to justify amounts paid for such right-of-way. This written valuation shall be accomplished prior to negotiation for acquisition.

(c) Acquisition of replacement right-of-way by the HA on behalf of a utility or acquisition of nonoperating real property from a utility shall be in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 *et seq.*) and applicable right-of-way procedures in 23 CFR Chapter I, Subchapter H, Right-of-Way and Environment.

(d) When the utility has the right-of-occupancy in its existing location because it holds the fee, an easement, or another real property interest, and it is not necessary by reason of the highway construction to adjust or replace the facilities located thereon, the taking of and damage to the utility's real property, including the disposal or removal of such facilities, may be considered a right-of-way transaction in accordance with provisions of the applicable right-of-way procedures in 23 CFR Chapter I, Subchapter H, Right-of-Way and Environment.

§ 645.113 Agreements and authorizations.

(a) On Federal-aid and direct Federal projects involving utility relocations, the utility and the HA shall agree in writing on their separate responsibilities for financing and accomplishing the relocation work. When Federal participation is requested, the agreement shall incorporate this regulation by reference and designate the method to be used for performing the work (by contract or force account) and for developing relocation costs. The method

proposed by the utility for developing relocation costs must be acceptable to both the HA and the FHWA. The preferred method for the development of relocation costs by a utility is on the basis of actual direct and related indirect costs accumulated in accordance with a work order accounting procedure prescribed by the applicable Federal or State regulatory body.

(b) When applicable, the written agreement shall specify the terms and amounts of any contribution or repayments made or to be made by the utility to the HA in connection with payments by the HA to the utility under the provisions of § 645.107 of this regulation.

(c) The agreement shall be supported by plans, specifications when required, and itemized cost estimates of the work agreed upon, including appropriate credits to the project, and shall be sufficiently informative and complete to provide the HA and the FHWA with a clear description of the work required.

(d) When the relocation involves both work to be done at the HA's expense and work to be done at the expense of the utility, the written agreement shall state the share to be borne by each party.

(e) In the event there are changes in the scope of work, extra work or major changes in the planned work covered by the approved agreement, plans, and estimates, Federal participation shall be limited to costs covered by a modification of the agreement, a written change, or extra work order approved by the HA and the FHWA.

(f) When the estimated cost to the HA of proposed utility relocation work on a project for a specific utility company is \$25,000 or less, the FHWA may approve an agreement between the HA and the utility for a lump-sum payment without later confirmation by audit of actual costs. Lump-sum agreements in excess of \$25,000 may be approved when the FHWA finds that this method of developing costs would be in the best interest of the public.

(g) Except as otherwise provided by § 645.113(h), authorization by the FHWA to the SHA to proceed with the physical relocation of a utility's facilities may be given after:

(1) The utility relocation work, or the right-of-way, or physical construction phase of the highway construction work is included in an approved program.

(2) The appropriate environmental evaluation and public hearing procedures required by 23 CFR Part 771, Environmental Impact and Related Procedures, have been satisfied.

(3) The FHWA has reviewed and approved the plans, estimates, and proposed or executed agreements for the utility work and is furnished a schedule for accomplishing the work.

(h) The FHWA may authorize the physical relocation of utility facilities before the requirements of § 645.113(g)(2) are satisfied when the relocation or adjustment of utility facilities meets the requirements of § 645.107(i) of this regulation.

(i) Whenever the FHWA has authorized right-of-way acquisition under the hardship and protective buying provisions of 23 CFR Part 712, the Acquisition Functions, the FHWA may authorize the physical relocation of utility facilities located in whole or in part on such right-of-way.

(j) When all efforts by the HA and utility fail to bring about written agreement of their separate responsibilities under the provisions of this regulation, the SHA shall submit its proposal and a full report of the circumstances to the FHWA. Conditional authorizations for the relocation work to proceed may be given by the FHWA to the SHA with the understanding that Federal funds will not be paid for work done by the utility until the SHA proposal has been approved by the FHWA.

(k) The FHWA will consider for approval any special procedure under State law, or appropriate administrative or judicial order, or under blanket master agreements with the utilities, that will fully accomplish all of the foregoing objectives and accelerate the advancement of the construction and completion of projects.

§ 645.115 Construction.

(a) Part 635, Subpart B, of this title, Force Account Construction (justification required for force account work), states that it is cost-effective for certain utility adjustments to be performed by a utility with its own forces and equipment, provided the utility is qualified to perform the work in a satisfactory manner. This cost-effectiveness finding covers minor work on the utility's existing facilities routinely performed by the utility with its own forces. When the utility is not adequately staffed and equipped to perform such work with its own forces and equipment at a time convenient to and in coordination with the associated highway construction, such work may be done by:

(1) A contract awarded by the HA or utility to the lowest qualified bidder based on appropriate solicitation,

(2) Inclusion as part of the HA's highway construction contract let by the HA as agreed to by the utility.

(3) An existing continuing contract, provided the costs are reasonable, or

(4) A contract for low-cost incidental work, such as tree trimming and the like, awarded by the HA or utility without competitive bidding, provided the costs are reasonable.

(b) When it has been determined under Part 635, Subpart B, that the force account method is not the most cost-effective means for accomplishing the utility adjustment, such work is to be done under competitive bid contracts as described in § 645.115(a) (1) and (2) or under an existing continuing contract provided it can be demonstrated this is the most cost-effective method.

(c) Costs for labor, materials, equipment, and other services furnished by the utility shall be billed by the utility directly to the HA. The special provisions of contracts let by the utility or the HA shall be explicit in this respect. The costs of force account work performed for the utility by the HA and of contract work performed for the utility under a contract let by the HA shall be reported separately from the costs of other force account and contract items on the highway project.

§ 645.117 Cost development and reimbursement.

(a) *Developing and recording costs.* (1) All utility relocation costs shall 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 HA and the FHWA. 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, shall constitute the maximum amount on which Federal participation may be based.

(2) Each utility shall 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 shall be kept separately from those relating to construction.

(b) *Direct labor costs.* (1) 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 includes labor associated with preliminary engineering, construction engineering, right-of-way, and force account construction.

(2) 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) Amounts paid to engineers, architects and others for services directly related to projects may be reimbursed.

(c) *Labor surcharges.* (1) 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 SHA 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.

(2) 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.

(d) *Overhead and indirect construction costs.* (1) Overhead and indirect construction costs not charged directly to work order or construction accounts may be allocated to the relocation provided the allocation is made on an equitable basis. All costs included in the allocation shall be eligible for Federal reimbursement, reasonable, and actually incurred by the utility.

(2) Costs not eligible for Federal reimbursement include, but are not limited to, the costs associated with advertising, sales promotion, interest on borrowings, the issuance of stock, bad debts, uncollectible accounts receivable, contributions, donations, entertainment, fines, penalties, lobbying, and research programs.

(3) The records supporting the entries for overhead and indirect construction costs shall show the total amount, rate, and allocation basis for each additive, and are subject to audit by representatives of the State and Federal Government.

(e) *Material and supply costs.* (1) 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 shall not be required to change its existing standards for materials used in permanent changes to its facilities. Costs shall be determined as follows:

(i) Materials and supplies furnished from company stock shall be billed at the current stock prices for such new or used materials at time of issue.

(ii) Materials and supplies not furnished from company stock shall be billed at actual costs to the utility delivered to the project site.

(iii) 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 shall include the deduction of all offered discounts, rebates, and allowances.

(iv) The cost of rehabilitating rather than replacing existing utility facilities to meet the requirements of a project is reimbursable, provided this cost does not exceed replacement costs.

(2) Materials recovered from temporary use and accepted for reuse by the utility shall be credited to the project at prices charged to the job, less a consideration for loss in service life at 10 percent. Materials recovered from the permanent facility of the utility that are accepted by the utility for return to stock shall 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, shall be sold to the highest bidder by the HA or utility following an opportunity for HA inspection and appropriate solicitation for bids. If the utility practices a system of periodic disposal by sale, credit to the project shall be at

the going prices supported by records of the utility.

(3) Federal participation may be approved for the total cost of removal when either 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 constructor elects to remove and recover the materials, Federal funds shall not participate in removal costs which exceed the value of the materials recovered.

(4) 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 which are representative of actual costs may be used if approved by the SHA 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. 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.

(f) *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 paragraph (f) (1) and (2) of this section are impractical due to project location or schedule.

(g) *Transportation costs.* (1) The utility's cost, consistent with its overall policy, of necessary employee transportation and subsistence directly attributable to the project is reimbursable.

(2) Reasonable cost 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.

(h) *Credits.* (1) Credit to the highway project will be required for the cost of any betterments to the facility being

replaced or adjusted, and for the salvage value of the materials removed.

(2) 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 shall not be required for a segment of the utility's service, distribution, or transmission lines.

(3) No betterment credit is required for additions or improvements which are:

- (i) Required by the highway project,
- (ii) Replacement devices or materials that are of equivalent standards although not identical,
- (iii) Replacement of devices or materials no longer regularly manufactured with next highest grade or size,

(iv) Required by law under governmental and appropriate regulatory commission code, or

(v) Required by current design practices regularly followed by the company in its own work, and there is a direct benefit to the highway project.

(4) When the facilities, including equipment and operating facilities, described in § 645.117(h)(2) are not being replaced, but are being rehabilitated and/or moved, as necessitated by the highway project, no credit for accrued depreciation is needed.

(5) In no event will the total of all credits required under the provisions of this regulation exceed the total costs of adjustment exclusive of the cost of additions or improvements necessitated by the highway construction.

(i) **Billings.** (1) After the executed HA/utility agreement has been approved by the FHWA, the utility may be reimbursed through the SHA by progress billings for costs incurred. Cost for materials stockpiled at the project site or specifically purchased and delivered to the utility for use on the project may also be reimbursed on progress billings following approval of the executed HA/utility agreement.

(2) The utility shall provide one final and complete billing of all costs incurred, or of the agreed-to lump-sum, at the earliest practicable date. The final billing to the FHWA shall include a certification by the SHA that the work is complete, acceptable, and in accordance with the terms of the agreement.

(3) 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 3 years from the date final payment has been received by the utility.

(4) Reimbursement for a final utility billing shall not be approved until the HA furnishes evidence that it has paid the utility from its own funds.

(The information collection requirements in paragraph (i) of this section have been approved under OMB Control Number 2125-0159.)

§ 645.119 Alternate procedure.

(a) This alternate procedure is provided to simplify the processing of utility relocations or adjustments under the provisions of this regulation. Under this procedure, except as otherwise provided in paragraph (b) of this section, the SHA is to act in the relative position of the FHWA for reviewing and approving the arrangements, fees, estimates, plans, agreements, and other related matters required by this regulation as prerequisites for authorizing the utility to proceed with and complete the work.

(b) The scope of the SHA's approval authority under the alternate procedure includes all actions necessary to advance and complete all types of utility work under the provisions of this regulation except in the following instances:

(1) Utility relocations and adjustments involving major transfer, production, and storage facilities such as generating plants, power feed stations, pumping stations and reservoirs.

(2) Utility relocations falling within the scope of § 645.113 (h), (i), and (j), and § 645.107(i) of this regulation.

(c) Each SHA is encouraged to adopt the alternate procedure and file a formal application for approval by the FHWA. The application must include the following:

(1) The SHA's written policies and procedures for administering and processing Federal-aid utility adjustments. Those policies and procedures must make adequate provisions with respect to the following:

(i) Compliance with the requirements of this regulation, except as otherwise provided by § 645.119(b), and the provisions of 23 CFR Part 645, Subpart B, Accommodation of Utilities.

(ii) Advance utility liaison, planning, and coordination measures for providing adequate lead time and early scheduling of utility relocation to minimize interference with the planned highway construction.

(iii) Appropriate administrative, legal, and engineering review and coordination procedures as needed to

establish the legal basis of the HA's payment; the extent of eligibility of the work under State and Federal laws and regulations; the more restrictive payment standards under § 645.103(d) of this regulation; the necessity of the proposed utility work and its compatibility with proposed highway improvements; and the uniform treatment of all utility matters and actions, consistent with sound management practices.

(iv) Documentation of actions taken in compliance with SHA policies and the provisions of this regulation, shall be retained by the SHA.

(2) A statement signed by the chief administrative officer of the SHA certifying that:

(i) Federal-aid utility relocations will be processed in accordance with the applicable provisions of this regulation, and the SHA's utility policies and procedures submitted under § 645.119(c)(1).

(ii) Reimbursement will be requested only for those costs properly attributable to the proposed highway construction and eligible for participation under the provisions of this regulation.

(d) The SHA's application and any changes to it will be submitted to the FHWA for review and approval.

(e) After the alternate procedure has been approved, the FHWA may authorize the SHA to proceed with utility relocation on a project in accordance with the certification, subject to the following conditions:

(1) The utility work must be included in an approved program.

(2) The SHA must submit a request in writing for such authorization. The request shall include a list of the utility relocations to be processed under the alternate procedure, along with the best available estimate of the total costs involved.

(f) The FHWA may suspend approval of the alternate procedure when any FHWA review discloses noncompliance with the certification. Federal funds will not participate in relocation costs incurred that do not comply with the requirements under § 645.119(c)(1).

(The information collection requirements in paragraph (c) of this section have been approved under OMB control number 2125-0533.

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