

Federal Highway Administration, DOT**§ 645.107**

with the responsibility for highway administration.

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

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.

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.

[50 FR 20345, May 15, 1985, as amended at 65 FR 70311, Nov. 22, 2000]

§ 645.107 Eligibility.

(a) When requested by the STD, Federal funds may participate, subject to the provisions of § 645.103(d) of this part and at the pro rata share applicable, in an amount actually paid by an TD for the costs of utility relocations. Federal funds may participate in safety corrective measures made under the provisions of § 645.107(k) of this part. Federal funds may also participate for relocations necessitated by the actual construction of highway project made under one or more of the following conditions when:

(1) The STD 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 STD certifies that the payment by the TD 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 STD certifies that the TD has the legal authority or obligation to make such payments.

(b) On projects which the STD 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, other than those proposed under the provisions of § 645.107(k) of this part, when State law prohibits the STD from making payment for relocation of utility facilities.

(c) On projects which the STD 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 necessitated by the actual construction of a highway project when the STD 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 TD or for utility safety corrective measures under the provisions of § 645.107(k) of this part.

(d) Federal funds are not eligible to participate in any costs for which the utility contributes or repays the TD, 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 TD.

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

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STD in the absence of State law to the contrary.

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

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FHWA has authorized the STD to proceed in accordance with 23 CFR part 630, subpart A, Federal-Aid Programs Approval and Project Authorization.

(k) Federal funds may participate in projects solely for the purpose of implementing safety corrective measures to reduce the roadside hazards of utility facilities to the highway user. Safety corrective measures should be developed in accordance with the provisions of 23 CFR 645.209(k).

(Information collection requirements in paragraph (g) were approved by the Office of Management and Budget under control number 2125-0515)

[50 FR 20345, May 15, 1985, as amended at 53 FR 24932, July 1, 1988]

§ 645.109 Preliminary engineering.

(a) As mutually agreed to by the TD 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 TD's or utility's engineering forces;

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

(3) An engineering consultant selected by the utility, with the approval of the TD, 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 STD 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.