

## SUBCHAPTER B—PAYMENT PROCEDURES

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AUTHORITY: 23 U.S.C. 101(e), 106, 109(e), 114(a), 120(g), 121, 122, 130, and 315; and 49 CFR 1.48(b).

#### Subpart A [Reserved]

#### Subpart B—Construction Engineering Costs

SOURCE: 58 FR 39143, July 22, 1993, unless otherwise noted.

##### § 140.201 Purpose.

The purpose of this subpart is to prescribe policies for claiming reimbursement for eligible construction engineering (CE) costs.

##### § 140.203 Policy.

(a) State highway agencies (SHA) may be reimbursed for the Federal share of CE costs incurred as described in § 140.703.

(b) Reimbursement for CE costs for Federal-aid construction projects shall be subject to the limitation set forth in § 140.205.

##### § 140.205 Limitation.

(a) The estimated CE costs for a SHA for a fiscal year shall not exceed, in the aggregate, 15 percent of the total estimated costs of all projects financed within the boundaries of the State with Federal-aid highway funds in such fiscal year, exclusive of the costs of rights-of-way, preliminary engineering, and CE.

(b) For control purposes, a SHA's estimated CE costs percentage will be determined by the ratio of the total amount obligated for CE to the total amount obligated for all projects financed with Federal-aid highway funds during the fiscal year, after excluding from such totals, the obligations for rights-of-way, preliminary engineering,

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and CE. This percentage shall not exceed 15 percent at the end of the fiscal year. The CE limitation may be applied on either a Federal or State fiscal year basis.

(1) Amounts to be included in the determination for CE will be the aggregate total of all obligations of CE, including original project obligations at the authorization stage, all subsequent adjustments during the fiscal year, and all adjustments (debits or credits) to projects authorized in previous fiscal years.

(2) The CE limitation determination for each fiscal year will be treated separately and may not be adjusted after the end of that fiscal year.

(c) Projects which are closed (final voucher processed) as of December 18, 1991, may be reopened to accept adjustments and additional eligible project charges. All obligation/deobligation adjustments must be included in the current fiscal year calculation. However, the CE cost for each of these projects shall be limited to 15 percent of each project construction cost in accordance with the provisions in effect prior to December 18, 1991.

(d) If the SHA claims CE costs as an average percentage of the actual construction costs in accordance with 23 U.S.C. 120(g), the average rate shall be determined based upon reimbursable CE costs and shall not exceed 15 percent, exclusive of the costs of rights-of-way, preliminary engineering, and CE.

### § 140.207 Application of limitation.

The limitation applies to all projects financed with Federal-aid highway funds.

## Subparts C–D [Reserved]

## Subpart E—Administrative Settlement Costs—Contract Claims

SOURCE: 44 FR 59233, Oct. 15, 1979, unless otherwise noted.

### § 140.501 Purpose.

This regulation establishes the criteria for eligibility for reimbursement of administrative settlement costs in defense of contract claims on projects

performed by a State under Federal-aid procedures.

### § 140.503 Definition.

Administrative settlement costs are costs related to the defense and settlement of contract claims including, but not limited to, salaries of a contracting officer or his/her authorized representative, attorneys, and/or members of State boards of arbitration, appeals boards, or similar tribunals, which are allocable to the findings and determinations of contract claims, but not including administrative or overhead costs.

### § 140.505 Reimbursable costs.

(a) Federal funds may participate in administrative settlement costs which are:

- (1) Incurred after notice of claim,
- (2) Properly supported,
- (3) Directly allocable to a specific Federal-aid or Federal project,
- (4) For employment of special counsel for review and defense of contract claims, when
  - (i) Recommended by the State Attorney General or State Highway Agency (SHA) legal counsel and
  - (ii) Approved in advance by the FHWA Division Administrator, with advice of FHWA Regional Counsel, and
- (5) For travel and transportation expenses, if in accord with established policy and practices.

(b) No reimbursement shall be made if it is determined by FHWA that there was negligence or wrongdoing of any kind by SHA officials with respect to the claim.

## Subpart F—Reimbursement for Bond Issue Projects

SOURCE: 48 FR 54971, Dec. 8, 1983, unless otherwise noted.

### § 140.601 Purpose.

To prescribe policies and procedures for the use of Federal funds by State highway agencies (SHAs) to aid in the retirement of the principal and interest of bonds, pursuant to 23 U.S.C. 122 and the payment of interest on bonds of eligible Interstate projects.