**CHECKLIST FOR FEDERAL PARTICIPATION**

|  |  |
| --- | --- |
| **Project Name:** | |
| **Approvals:**  (name, signature, date) | **RE:** |
| **Field Manager:** |
| **CO Engineer:** |

Use this form to document the determination of federal participation of Change Order work on federally funded projects. Select the type of change(s) included in this Change Order. Expand the section header by clicking the arrow to the left of the check box and insert an explanation regarding the determination of federal participation. Note the applicable item number(s) for each explanation. An explanation is required for all changes. Federal references are provided within each section to aid in the determination of federal participation.

Per [23 CFR 1.9(a)](https://www.ecfr.gov/current/title-23/part-1/section-1.9#p-1.9(a)), Federal-aid funds shall not participate in any cost which is not incurred in conformity with applicable Federal and State law, the regulations of Title 23, and policies and procedures prescribed by the FHWA.

# Quantity Change

Major

Minor

[23 CFR 635.123](https://www.ecfr.gov/current/title-23/chapter-I/subchapter-G/part-635/subpart-A/section-635.123) – Contract Procedures, Determination and Documentation of Pay Quantities

Type explanation here regarding the determination financial participation for the change.

Changes where due diligence was done during design and/or construction (e.g. borings, screenings, NEPA/CED, utility & ROW coordination, etc.) may be considered eligible for federal participation.

# New Work and Force Account

[23 CFR 635.120](https://www.ecfr.gov/current/title-23/chapter-I/subchapter-G/part-635/subpart-A/section-635.120) – Contract Procedures; Changes and Extra Work

[23 CFR 633.208](https://www.ecfr.gov/current/title-23/section-633.208) – Federal Aid Contracts; Maintenance

[FHWA Letter](https://www.fhwa.dot.gov/programadmin/contracts/111596.cfm) - Cardinal Change in Scope of Work

Type explanation here regarding the determination financial participation for the change.

Changes where due diligence was done during design and/or construction (e.g. borings, screenings, NEPA/CED, utility & ROW coordination, etc.) may be considered eligible for federal participation.

# Differing Site Condition

[23 CFR 635.109](https://www.ecfr.gov/current/title-23/chapter-I/subchapter-G/part-635/subpart-A/section-635.109) – Contract Procedures; Standardized Changed Condition Clauses

[FHWA Geotechnical Engineering Guideline #15 (GT-15)](https://www.fhwa.dot.gov/engineering/geotech/policymemo/gt-15.pdf) – Differing Site Conditions

Type explanation here regarding the determination financial participation for the change.

Changes where due diligence was done during design and/or construction (e.g. borings, screenings, NEPA/CED, utility & ROW coordination, etc.) may be considered eligible for federal participation.

# Constructive Acceleration

Type explanation here regarding the determination financial participation for the change.

Acceleration may be eligible for federal participation if the work would normally be participating and acceleration would result in a lower overall cost than not accelerating.

# Inefficiencies

Type explanation here regarding the determination financial participation for the change.

# Delays and Modifications to Time (Subsection 108.11)

[23 CFR 635.120(c)](https://www.ecfr.gov/current/title-23/part-635/section-635.120#p-635.120(c))  – Contract Procedures; Changes and Extra Work

[23 CFR 635.121](https://www.ecfr.gov/current/title-23/chapter-I/subchapter-G/part-635/subpart-A/section-635.121) – Contract Procedures, Contract Time and Contract Time Extensions

[23 CFR 635.307](https://www.ecfr.gov/current/title-23/chapter-I/subchapter-G/part-635/subpart-C/section-635.307) – Physical Construction Authorization; Coordination

[23 CFR 635.127(e)](https://www.ecfr.gov/current/title-23/part-635/section-635.127#p-635.127(e)) – Contract Procedures; Agreement Provisions Regarding Overruns in Contract Time

Type explanation here regarding the determination financial participation for the change.

Reasons for federal participation include additional participating work, excusable delays per Specifications, approved progress schedule updates and time impact evaluations, coordination with utilities, railroads, ROW, etc.)

# Utility Issue / Delay

[23 CFR 645.107](https://www.ecfr.gov/current/title-23/chapter-I/subchapter-G/part-645#645.107) – Utility Relocations, Adjustments, and Reimbursement; Eligibility

[23 CFR 635.307](https://www.ecfr.gov/current/title-23/chapter-I/subchapter-G/part-635/subpart-C/section-635.307) – Physical Construction Authorization; Coordination

[23 CFR 646.212](https://www.ecfr.gov/current/title-23/part-646/section-646.212#p-646.212(a)(1)) – Railroads; Federal Share

Type explanation here regarding the determination financial participation for the change.

Changes where due diligence was done during design and/or construction (e.g. borings, screenings, NEPA/CED, utility & ROW coordination, etc.) may be considered eligible for federal participation.

# R.O.W. Issue / Delay

[23 CFR 1.23](https://www.ecfr.gov/current/title-23/chapter-I/subchapter-A/part-1/section-1.23) – General Management & Administration; Rights-of-Way

[23 CFR 635.307](https://www.ecfr.gov/current/title-23/chapter-I/subchapter-G/part-635/subpart-C/section-635.307) – Physical Construction Authorization; Coordination

[23 CFR 635.309(c)(3)(v)](https://www.ecfr.gov/current/title-23/part-635/section-635.309#p-635.309(c)(3)(v)) – Physical Construction Authorization; Authorization

Type explanation here regarding the determination financial participation for the change.

Changes where due diligence was done during design and/or construction (e.g. borings, screenings, NEPA/CED, utility & ROW coordination, etc.) may be considered eligible for federal participation.

# Errors & Omission

[FHWA Memorandum](https://www.fhwa.dot.gov/programadmin/contracts/090878.cfm) - Participation in the Cost of Corrective Work Resulting from Construction Engineering Errors

[FHWA Memorandum](https://www.fhwa.dot.gov/construction/contracts/780815.cfm) - Federal Participation in Construction Engineering Errors

[FHWA Memorandum](https://www.fhwa.dot.gov/programadmin/contracts/071263.cfm) - Participation in Engineering Errors

Type explanation here regarding the determination financial participation for the change.

Changes where due diligence was done during design and/or construction (e.g. borings, screenings, NEPA/CED, utility & ROW coordination, etc.) may be considered eligible for federal participation.

Partial federal participation may be possible, such as the difference in cost between the original design and revised design.

# Claim Settlement

[23 CFR 635.124](https://www.ecfr.gov/current/title-23/chapter-I/subchapter-G/part-635/subpart-A/section-635.124) – Contract Procedures, Participation in Contract Claim Awards and Settlements

Type explanation here regarding the determination financial participation for the change.

**Items Typically not Eligible for Federal Participation**

The following is a representative list of those construction items that are typically considered ineligible for participation with Federal funds. This list is not all-inclusive, and on occasion, the RE may encounter items, which are questionable. The RE should consult the Field Manager, Regional Change Order Engineer, and FHWA as needed. The FHWA will participate on a case-by-case basis, if deemed beneficial to the project.

As a general rule, the following items would not be eligible:

1. Any items associated with normal maintenance activities, for instance, cleaning drainage system.

2. Payment for re-doing faulty work.

3. The value of additional or extra work resulting from a design error or omission for which the Department could seek reimbursement from the design consultant.

4. Traffic damaged items.

5. Time extensions and additional costs incurred due to utility delays and unavailability of right-of- way.

6. Payment for added survey cost for work added to the contract where the bid items provide for the proration of the survey bid based on the final contract cost.

7. Spare parts.

8. Material and parts not incorporated into the project and turned over to Operations.

9. Material not meeting contract specifications but incorporated into the project.

10. Additional work resulting from unapproved change of plan.

11. Claims, as noted below:

1. If it has been determined that NJDOT employees, officers, or agents acted with gross negligence, or participated in intentional acts or omissions, fraud, or other acts not consistent with usual State practices in project design, plan preparation, contract administration, or other activities which gave rise to the claim.
2. In such cost items are consequential or punitive damages, anticipated profit, or any award or payment of attorney’s fees paid by the State to an opposing party in litigation.
3. In tort, inverse condemnation, or other claims erroneously styled as claims “under a contract.”
4. For the value of additional or extra work resulting from an error or omission for which the Department could seek reimbursement from a consultant.