California 90261, telephone (310) 297–0010.

SUPPLEMENTARY INFORMATION:

History

On May 9, 1995, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR Part 71) by modifying the Class D and E airspace areas at Camp Pendleton MCAS, CA (60 FR 24592). This action will provide additional controlled airspace for instrument flight rules operations at Camp Pendleton MCAS, CA.

Interesting parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. Class D and E airspace designations are published in paragraphs 5000 and 6004 of FAA Order 7400.9B, dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends the Class D and E airspace areas at Camp Pendleton MCAS, CA, by providing additional controlled airspace for instrument flight rules operations at Camp Pendleton MCAS, CA.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 5000 Class D Airspace

* * * * *

AWP CA D Camp Pendleton MCAS, CA [Revised]

Camp Pendleton MCAS (Munn Field), CA
(lat. 33°18′05″N, long. 117°21′18″W)

That airspace extending upward from the surface to and including 2600 feet MSL within a 4-mile radius of Camp Pendleton MCAS (Munn Field) extending clockwise from a point beginning at lat. 33°21′46″N, long. 117°19′26″W, to lat. 33°16′21″N, long. 117°25′38″W, and thence northeast to within a 2.6-Mile radius of Camp Pendleton MCAS (Munn Field) extending clockwise from a point beginning at lat. 33°17′30″N, long. 117°24′21″W, to lat. 33°20′38″N, long. 117°20′38″W, thence northeast to the point of beginning. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Director.

* * * * *

Paragraph 6004 Class E airspace areas designated as an extension to a Class D surface area

* * * * *

AWP CA E4 Camp Pendleton MCAS, CA [Revised]

Camp Pendleton MCAS (Munn Field), CA
(lat. 33°18′05″N, long. 117°21′18″W)
Oceanside VORTAC
(lat. 33°14′26″N, long. 117°25′04″W)

That airspace extending upward from the surface within 1.4 miles each side of the Oceanside VORTAC 042° radial extending from the 4-miles radius of Camp Pendleton MCAS to 11.6 miles northeast of the Oceanside VORTAC. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Director.

* * * * *

Issued in Los Angeles, California, on June 20, 1995.

Richard R. Lien,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 95–16442 Filed 7–3–95; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

23 CFR Part 645

[FHWA Docket No. 94–8]

RIN 2125–AD31

Utilities

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is amending its regulations on utilities. These amendments eliminate the requirement for FHWA preaward review and/or approval of consultant contracts for preliminary engineering and increase the ceiling for lump sum agreements from $25,000 to $100,000. They clarify the meaning of the term ''approved program'' and the methodology to be used to compute indirect or overhead rates. They require utilities to submit final billings within one year following completion of the utility relocation work. They eliminate the requirements for State highway agencies (SHAs) to certify the completion of utility work and to provide evidence of payment prior to reimbursement. They bring the definition of ''clear zone'' into conformance with the American Association of State Highway and Transportation Officials (AASHTO) ''Roadside Design Guide.'' Finally, they incorporate an amendment conforming the utilities regulations to the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102–240, 105 Stat. 1914. The FHWA is making these changes to conform the utilities regulations to more recent laws, regulations, and guidance; to clarify these regulations; and to give the SHAs more flexibility in implementing them.

EFFECTIVE DATE: This final rule is effective August 4, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry L. Poston, Office of Engineering, 202–366–0450, or Mr. Wilbert Baccus, Office of the Chief Counsel, 202–366–0780, 400 Seventh Street, SW., Washington, D.C. 20590.

SUPPLEMENTARY INFORMATION:

Background

The amendments in this final rule are based primarily on the notice of

proposed rulemaking (NPRM) published in the May 17, 1994, **Federal Register** at 59 FR 25579 (FHWA Docket No. 94–8). All comments received in response to this NPRM have been considered in adopting these amendments.

Current FHWA regulations regarding utility relocation and accommodation matters have evolved from basic principles established decades ago, with many of the policies remaining unchanged. The current regulations are found in title 23, Code of Federal Regulations, part 645 (23 CFR part 645). Subpart A of this part pertains to utility relocations, adjustments, and reimbursement. Subpart B pertains to the accommodation of utilities. Part 645 was revised on May 15, 1985, when a final rule was published in the **Federal Register** at 50 FR 20344. Two significant changes have occurred since then, on February 2 and July 1, 1988, when amendments to the regulation were published in the **Federal Register** at 53 FR 2829 and 53 FR 24932. The February 2 amendment provided that each SHA must decide, as part of its utility relocation plan, whether to allow longitudinal utility installations within the access control limits of freeways and, if allowed, under what circumstances. The July 1 amendment clarified that costs incurred by highway agencies in implementing projects solely for safety corrective measures to reduce the hazards of utilities to highway users are eligible for Federal-aid participation.

This final rule amends these regulations in the following manner and for the reasons indicated below.

In § 645.109, paragraph (b) is amended to eliminate the requirement for FHWA preaward review and/or approval of consultant contracts for preliminary engineering and related work. The amendment increases the number of consultant contracts that can be advanced without prior FHWA approval and provides for consistency in the administration of consultant agreements.

In § 645.113, paragraph (f) is amended to increase the ceiling for lump sum agreements from $25,000 to $100,000. This provides the SHAs greater flexibility in utilizing the lump sum payment arrangement. The purpose of allowing lump sum agreements in lieu of agreements based on an accounting of actual costs is to reduce the administrative burden associated with utility relocation projects. Under the lump sum process, cost accounting is easier, project billings are simplified, and a final audit of detailed cost records is not required. Final project costs are typically quite close to the costs estimated for small, routine projects. The FHWA believes that the small degree of accuracy that might be realized if more detailed cost accounting methods were followed does not justify the extra cost involved in carrying out detailed audits. This revision increases the number of utility relocations potentially eligible for lump sum payment, anticipates future needs, and responds, in part, to the fact that since the $25,000 limit was established in 1983, inflation has reduced the number and limited the scope of projects eligible for lump sum payments.

In § 645.113, paragraph (g)(1) is amended to change the term ''approved program'' to ''Statewide transportation improvement program.'' Title 23, United States Code, section 135 (23 U.S.C. 135) requires a Statewide transportation improvement program to include all projects in the State which are proposed for Federal-aid highway funding. This program replaces the ''approved program'' previously required in 23 U.S.C. 105. This amendment conforms the utilities regulation to section 135 by specifying that utility relocation work must be included in an ''approved Statewide transportation improvement program.''

In § 645.117, paragraph (d)(1) is amended to clarify the methodology to be used for computing indirect overhead rates. The definition of indirect costs, and what may or may not be included, is set forth in 48 CFR part 31, Contract Cost Principles and Procedures. Part 31 is referenced in 49 CFR part 18, the common rule for Federal grants, cooperative agreements, and subawards to State, local, and Indian tribal governments. However, to avoid any misunderstandings and to assure consistency with the common rule, a reference to 48 CFR 31 is added to the utilities regulations.

In § 645.117, paragraph (i)(2) is revised to require utilities to submit final billings within one year following completion of the work, otherwise previous payments to utilities may be considered final and projects may be closed out, except as agreed to between the SHA and the utility. This change will assist highway agencies in their efforts to obtain timely final billings from the utilities. Some utility bills are received years after the work is completed, thus delaying audit activity and project closure. Billings received from utilities more than one year following completion of the utility relocation work may be paid if the SHA so desires, and Federal funds may participate in these payments.

In § 645.117, paragraph (i)(2) is further revised to eliminate the requirement that the SHA certify that utility work is complete, acceptable, and in accordance with the terms of the agreement. These certifications are no longer considered necessary because all third party agreements and non-construction contracts are reviewed by the FHWA on a program basis. This revision will reduce paperwork and expedite the submittal of final billings from the utilities.

In § 645.117, paragraph (i)(4) is removed. This paragraph prohibited Federal reimbursement for a final utility billing until the highway agency furnished evidence that it had paid the utility with its own funds. This regulation is contrary to the general FHWA practice whereby the FHWA reimburses the SHAs for costs incurred, not for actual payments made.

Section 645.207 is amended to change the term ''clear recovery area'' to ''clear zone,'' to revise the definition of ''clear zone'' to conform to the one contained in AASHTO's ''Roadside Design Guide,'' [1] and to add a definition of the term ''border area'' which is contained in the definition of ''clear zone.'' In § 645.209, paragraph (a) is amended to clarify the FHWA's continuing intent to accommodate utilities within highway rights-of-way when sufficient clear zone is not available, and paragraph (b) is amended to change the term ''clear recovery area'' to ''clear zone.'' These changes provide consistency with AASHTO's ''Roadside Design Guide,'' a 1989 document which should be used as a guide for establishing clear zones for various types of highways and operating conditions. The term ''clear recovery area'' originated in 1985 and, though worded somewhat differently, meant essentially the same as the term ''clear zone.'' These terms were often used interchangeably. The ''Roadside Design Guide,'' however, uses the term ''clear zone'' exclusively. Hence, to avoid confusion, the term ''clear zone'' is incorporated into the utilities regulations.

In § 645.215, paragraph (a) is amended to change the term ''Federal-aid system'' to ''Federal-aid highway.'' This revision is in accordance with a conforming amendment in section 1016(f)(1)(B) of the ISTEA changing the term ''Federal-aid system'' in 23 U.S.C. 109(l) to ''Federal-aid highway.''

[1] The ''Roadside Design Guide'' is incorporated by reference at 23 CFR 625.5(a)(3). It is available for purchase from the American Association of State Highway and Transportation Officials, 444 North Capitol Street, NW., Washington, DC 20001. Also, it is available for inspection as provided in 49 CFR part 7, appendix D.

Discussion of Comments

Interested persons were invited to participate in the development of this final rule by submitting written comments on the NPRM to Docket 94–8 on or before July 18, 1994. Comments were received from 10 SHAs and 6 utilities representatives. A summary of the comments received relative to each proposed amendment follows.

In § 645.109, paragraph (b) is amended to eliminate the requirement for FHWA preaward review and/or approval of consultant contracts for preliminary engineering. Four SHAs and 5 utilities commenters were in favor of the amendment proposed in the NPRM to increase the upper limit on the value of such contracts from $10,000 to $25,000. One SHA recommended that the upper limit be increased even more.

In § 645.113, paragraph (f) is amended to increase the ceiling for lump sum agreements from $25,000 to $100,000. Four SHAs were in favor of this proposed amendment; 5 utilities commenters recommended that the upper limit be increased even more.

In § 645.117, paragraph (d)(1) is amended to clarify the methodology to be used to compute indirect or overhead rates. Four SHAs and 5 utilities commenters were in favor of this proposed amendment.

In § 645.117, paragraph (i)(2) is amended to require utilities to submit final billings within one year following completion of work. Four SHAs were in favor of the amendment proposed in the NPRM to establish a 180-day final billing deadline. Three SHAs and 6 utilities commenters recommended that the final billing deadline be established for a period of time longer than 180 calendar days proposed in the NPRM and suggested several other time periods.

In §§ 645.207 and 645.209, the definition of ''clear zone'' is revised to parallel the definition of this term in AASHTO's ''Roadside Design Guide.'' Four SHAs were in favor of this proposed amendment; 1 SHA recommended that the Texas Transportation Institute's (TTI) ''A Supplement to a Guide for Selecting, Designing, and Locating Traffic Barriers'' be included with the AASHTO ''Roadside Design Guide'' as a good technical reference; 5 utilities commenters recommended that the clear zone definition specify that the clear zone ends at the right-of-way line.

Section 645.215 incorporates a conforming amendment contained in section 1016(f)(1)(B) of the ISTEA that changes the term ''Federal-aid systems'' to ''Federal-aid highways.'' Four SHAs were in favor of this proposed amendment.

A discussion of the specific comments received and the FHWA responses to them follows.

Comment 1

One SHA recommended that § 645.109(b) be modified to increase the upper limit on the value of consultant contracts for preliminary engineering for which the FHWA may forgo preaward review and/or approval from $10,000 to $100,000, rather than simply increasing it to $25,000 as the FHWA had proposed.

Response

The FHWA has decided to totally eliminate the requirement for FHWA preaward review and/or approval of consultant contracts for preliminary engineering, consistent with the administration of other consultant agreements. The determination to allow a utility to use a consultant for preliminary engineering should be made by the SHA, not the FHWA, when the utility agreement is executed. This change will be accomplished by eliminating the last sentence of § 645.109(b).

Comment 2

Five utilities commenters recommended that § 645.113(f) be modified to increase the ceiling for lump sum agreements from $25,000 to $200,000. They asserted that this was desirable because the administrative cost of tracking ''actual cost'' projects adds significantly to the cost of the undertaking for both the utility and the SHAs that must approve the billing.

Response

This recommendation was not adopted. The increase from $25,000 to $100,000 will increase the number of utility relocations potentially eligible for lump sum payments and reduce the administrative burden associated with utility relocation projects. An increase even higher than $100,000, such as to the recommended $200,000, may have been possible. However, it is desired at this time to retain the $100,000 figure because it seems to represent a good break point between major and minor work and because it corresponds more closely to increasing inflation rates which have over the years reduced the number and limited the scope of projects eligible for lump sum payments. Provisions for lump sum payments for utility relocation work were first addressed by the FHWA in Policy and Procedure Memorandum 30–4 (PPM 30–4)[2] dated December 31, 1957. These provisions pertained to very minor work estimated to cost less than $2,500, work that normally would be performed by a utility with its own forces. Increases up to the present $25,000 limit, which was established in 1983, were based primarily upon inflation rates. Projecting inflation from 1983 to 1995 provides a figure which is slightly less than $100,000, but the $100,000 figure is used several other places in the Federal regulations as a break point between major and minor work. Even so, the FHWA will monitor the effects of increasing the lump sum ceiling to $100,000, primarily through discussions with States and utilities' coordinators, and will consider the possibility of increasing the figure in the near future if such is deemed appropriate.

Comment 3

Three SHAs and 6 utilities commenters had reservations about the proposed amendment to § 645.117(i)(2) to require utilities to submit final billings within 180 calendar days following completion of work. They all basically supported the concept of establishing a deadline for submitting final billings, but strongly indicated that 180 calendar days were not enough. The utilities commenters recommended that at least 270 calendar days be provided. Two SHAs recommended 365 calendar days. The utilities commenters asserted that (a) a 180 calendar day requirement would be burdensome to utilities, especially those that are joint pole users, because of cross billing from other parties, and (b) it is often very difficult to secure final bills simply because of the number of parties involved and the time required to verify and reconcile the accuracy of the billing. One SHA stated that the 180 calendar day limit would not provide the utilities sufficient time to compile changes and submit their final bills, and that, historically, 80 percent of utility billings are received between 180 and 365 calendar days after completion of the utility relocation work. Another SHA indicated that the 180 calendar day limit would put an unreasonable burden on the State since its regulations did not contain a time limit.

Response

These recommendations were adopted with a slight, but more flexible, modification. The comments revealed a

[2] The Federal Highway Administration's Policy and Procedure Memorandums are available for inspection and copying from the FHWA headquarters and field offices as prescribed at 49 CFR part 7, appendix D.

general consensus that it would be desirable to establish a time period following completion of the utility relocation work during which final billings must be submitted, but that 180 calendar days were not enough. Hence, § 645.117(i)(2) is amended to require utilities to submit final billings 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 SHA and the utility.

Comment 4

One SHA requested clarification of the term ''completion of work'' as it is used in the proposed amendment to § 645.117(i)(2). For example, the commenter asked whether the work would be completed when finished in the field by the utility or its contractor, when the highway project was finished, or at some other milestone.

Response

The intent of the proposed amendment was to require utilities to submit final billings within a certain time period following physical completion of the utility relocation work in the field. Hence, § 645.117(i)(2) is amended to require utilities to submit final billings within one year following completion of the utility relocation work.

Comment 5

One SHA suggested that the proposed amendment to require utilities to submit final billings within 180 calendar days following completion of work be modified to allow for time extensions beyond the 180 calendar day limit if the SHA should so choose. The SHA argued that this modification was needed to alleviate conflicts with a State law permitting claims against the State to be submitted within one year from the time of accrual.

Response

This recommendation was adopted. As stated in the NPRM, the FHWA intended to allow billings received after the specified time period to be paid at the discretion of the highway agency. Hence, § 645.117(i)(2) is amended to require utilities to submit final billings within one year following completion of the utility relocation work, with exceptions as agreed to between the SHA and the utility.

Comment 6

Five utilities commenters recommended that the definition of ''clear zone'' in the proposed amendment to § 645.207 be modified to clearly indicate that the clear zone ends at the right-of-way line.

Response

This suggested amendment was not made to the ''clear zone'' definition, but was incorporated elsewhere in the regulations. The purpose for amending § 645.207 was to provide consistency with AASHTO's ''Roadside Design Guide.'' To do so, the term ''clear recovery area'' was changed to ''clear zone'' and the definition of ''clear zone'' in the ''Roadside Design Guide'' was adopted. However, to clarify the intent of the revised regulation, a definition of ''border area'' was added. This, taken together with the definition of ''clear zone,'' means that the area that actually can be made available for the safe use of errant vehicles is limited by the right-of-way width. For all practical purposes, the old definition of ''clear recovery area'' is the same as the actual clear zone. In cases where sufficient right-of-way is not available to accommodate the minimum clear zone distance required, highway agencies should consider acquiring additional right-of-way, taking into account not only clear zone but other highway and utility needs. In all cases, full consideration should be given to sound engineering principles and economic factors. Utility facilities should be treated the same as other roadside hazards. Little will be gained by moving utilities, unless their presence in the clear zone presents a significantly greater hazard to motorists than any other hazards.

Comment 7

One SHA suggested that TTI's ''A Supplement to a Guide for Selecting, Designing, and Locating Traffic Barriers'' be included with the AASHTO ''Roadside Design Guide'' as a good technical reference in the proposed amendment to § 645.207.

Response

This suggestion was not adopted. AASHTO's ''Roadside Design Guide,'' 1989, superseded AASHTO's ''Guide for Selecting, Designing, and Locating Traffic Barriers,'' 1977, and the TTI supplement which came into use in the early 1980's, even though much of the guidance in the new document was the same as in the superseded documents. One significant difference between the ''Roadside Design Guide'' and the two earlier documents is the determination of minimum clear zones on slopes. Current AASHTO guidelines consider embankment slopes between 3:1 and 4:1 to be non-recoverable (i.e., any vehicle leaving the roadway will likely go to the bottom of the slope). Consequently, the clear zone should not end on the slope itself, and a clear run-out area beyond the toe of such a slope is desirable. This was not considered in the 1977 barrier guide or the TTI supplement, so the information in these documents is no longer accurate for non-recoverable slopes. Any SHA may modify the earlier guidance and continue to use it to determine minimum clear zones on existing facilities. However, the FHWA believes a more practical approach is for each highway agency to develop and implement a policy on utility pole locations that encourages maximum offsets consistent with existing conditions and based on a cost-effectiveness analysis.

Comment 8

One SHA expressed a concern about non-regulatory guidance in the FHWA's ''Federal-Aid Policy Guide'' [3] dealing with the use of fixed amount (lump sum) payments to utilities. The wording in the non-regulatory supplement to part 645 (NS 23 CFR 645A, Attachment), case I, paragraph 2, indicates that the lump sum payments may be made for work performed by a utility with its own forces. It was requested that the FHWA guidance in the non-regulatory supplement be revised to allow lump sum payments to be made for work performed for a utility under a utility-let or continuing contract.

Response

Provisions for lump sum payments for utility relocation work were first addressed by the FHWA in PPM 30–4 dated December 31, 1957. These provisions pertained to very minor work estimated to cost less than $2,500, work that normally would be performed by a utility with its own forces. There was no apparent intent, however, in PPM 30–4 or any subsequent FHWA guidance or regulation, to preclude lump sum payments for work performed by a contractor under a utility-let contract. If the utility uses an existing continuing contractor, payment should be made by the method the utility has previously established with the contractor. If the continuing contract establishes a lump sum payment for certain types of work, this payment method can be used for the Federal-aid project if the SHA believes the cost is reasonable. If the utility lets a contract, payment should be based on the methods that are customary and acceptable for the work

[3] The Federal Highway Administration's ''Federal-Aid Policy Guide'' is available for inspection and copying from the FHWA headquarters and field offices as prescribed at 49 CFR part 7, appendix D.

involved, which could potentially include the lump sum payment method.

In light of these comments, the FHWA is revising its regulations to incorporate the amendments outlined in the NPRM with some modifications to clarify the proposals and to address concerns raised by commenters.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. The amendments would simply make minor changes to update the utilities regulations to conform to recent laws, regulations, and guidance and to clarify existing policies. It is anticipated that the economic impact of this rulemaking will be minimal because the amendments would only clarify or simplify procedures presently being used by SHAs and utilities. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this rule on small entities. Based on the evaluation, the FHWA certifies that this action will not have a significant economic impact on a substantial number of small entities. This is because the amendments would only clarify or simplify procedures used by SHAs and utilities in accordance with existing laws, regulations, and guidance.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that it does not have sufficient federalism implications to warrant the preparation of a separate federalism assessment. This action merely conforms the utilities regulations to recent laws, regulations, and guidance; clarifies these regulations; and gives the SHAs more flexibility in implementing them.

Executive Order 12372 (Intergovernmental Review)

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

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et. seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 645

Grant Programs—transportation, Highways and roads, Utilities—relocations, adjustment, reimbursement.

In consideration of the foregoing, title 23, Code of Federal Regulations, part 645 is amended as set forth below.

Issued on: June 22, 1995.

Rodney E. Slater,

Federal Highway Administrator.

PART 645—UTILITIES

1. The authority citation for part 645 continues to read as follows:

Authority: 23 U.S.C. 101, 109, 111, 116, 123, and 315; 23 CFR 1.23 and 1.27; 49 CFR 1.48(b); and E.O. 11990, 42 FR 26961 (May 24, 1977).

§ 645.109 [Amended]

2. In § 645.109, paragraph (b) is amended by removing the last sentence.

§ 645.113 [Amended]

3. In § 645.113, paragraph (f) is amended by removing the figure ''$25,000'' wherever it appears and adding in its place the figure ''$100,000'', and paragraph (g)(1) is amended by revising the term ''approved program'' to read ''approved Statewide transportation improvement program''.

4. In § 645.117, paragraph (i)(4) is removed, and paragraphs (d)(1) and (i)(2) are revised to read as follows:

§ 645.117 Cost development and reimbursement.

* * * * *

(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, actually incurred by the utility, and consistent with the provisions of 48 CFR part 31.

* * * * *

(i) *Billings.* (1) * * *

(2) The utility shall 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 SHA and the utility.

* * * * *

5. Section 645.207 is amended by removing the paragraph designations from all definitions; by placing the definitions in alphabetical order; by removing the definition of ''clear recovery area''; by removing the words ''clear recovery area'' from the first sentence in the definition for ''clear roadside policy'' and adding in their place the words ''clear zone''; and by adding the definitions of ''border area'' and ''clear zone'' as follows:

§ 645.207 Definitions.

* * * * *

Border area—the area between the traveled way and the right-of-way line.

* * * * *

Clear zone—the total roadside border area starting at the edge of the traveled way, available for safe use by errant vehicles. This area may consist of a shoulder, a recoverable slope, a non-recoverable slope, and/or the area at the toe of a non-recoverable slope available for safe use by an errant vehicle. The desired width is dependent upon the traffic volumes and speeds, and on the roadside geometry. The AASHTO ''Roadside Design Guide,'' 1989, should be used as a guide for establishing clear zones for various types of highways and operating conditions. It is available for inspection from the FHWA Washington Headquarters and all FHWA Division and Regional Offices as prescribed in 49 CFR part 7, appendix D. Copies of current AASHTO publications are available for purchase from the American Association of State Highway and Transportation Officials, Suite 225,

444 North Capitol Street, NW., Washington, DC. 20001.

* * * * *

6. In § 645.209, paragraph (a) is amended by adding a new sentence between the existing third and fourth sentences to read as set forth below, and paragraph (b) is amended by removing the words ''clear recovery'' in the second sentence and ''clear recovery area'' in the third sentence and adding in their place the words ''clear zone''.

§ 645.209 General requirements.

(a) *Safety*. * * * The lack of sufficient right-of-way width to accommodate utilities outside the desirable clear zone, in and of itself, is not a valid reason to preclude utilities from occupying the highway right-of-way. * * *

§ 645.215 [Amended]

7. In § 645.215, paragraph (a), the fifth sentence, is amended by removing the words ''of the Federal-aid highway system'' and adding in their place the words ''of Federal-aid highways''.

[FR Doc. 95–16403 Filed 7–3–95; 8:45 am]
BILLING CODE 4910–22–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1960

Basic Program Elements for Federal Employee Occupational Safety and Health Programs

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Final rule.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is amending 29 CFR part 1960 to permit implementation of its multi-employer worksite policy in the federal sector and to incorporate into the federal program the medical access provisions for the private sector set forth at 29 CFR 1910.20.

EFFECTIVE DATE: July 5, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. John E. Plummer, Director, Office of Federal Agency Programs, Room N3112, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 (202–219–9329).

SUPPLEMENTARY INFORMATION:

(A) Multi-employer Policy

Private sector employers in conventional, one-employer workplaces are accountable under the Occupational Safety and Health Act for providing safe working conditions for their employees. In private sector worksites where the working environment is controlled by more than one employer, such as in construction or other activities involving subcontractors, OSHA's long-standing policy has been to hold multiple employers responsible for the correction of workplace hazards in appropriate cases. Thus, when safety or health hazards occur on multi-employer worksites in the private sector, OSHA will issue citations not only to the employer whose employees were exposed to the violation, but to other employers such as general contractors or host employers, who can reasonably be expected to have identified or corrected the hazard by virtue of their supervisory role over the worksite.

OSHA's current citation practice for multi-employer operations is described in the OSHA Field Inspection Reference Manual (FIRM), OSHA Instruction CPL 2.103 at III–28,29 (1994). OSHA's multi-employer policy, which has been upheld numerous times by the Occupational Safety and Health Review Commission and the federal courts, does not confer special or extraordinary burdens on superintending employers, but merely recognizes that employers with overall administrative responsibility for an ongoing project are responsible under the Occupational Safety and Health Act for taking reasonable steps to correct, or to require the correction of, hazards of which they could reasonably be expected to be aware. Moreover, a variety of OSHA safety and health standards specifically require certain categories of employer to take reasonable steps to assure the safety of all employees other than their own. Host employers in refineries and other operations where chemical process hazards are present are required, for example, to inform contract employers of hazards and take other administrative steps to assure safe contractor practices, *see* 29 CFR 1910.119(h). Similarly, employers engaged in hazardous waste operations are required, among other things, to implement programs to assure that contractor and subcontractor employees are informed of the nature, level, and degree of exposure likely on the site, *see* 29 CFR 1910.120(i).

In its role as the lead agency for implementing and reviewing compliance with Executive Order 12291, ''Federal Agency Safety Programs and Responsibilities'', and 29 CFR part 1960, *Basic Elements for Federal Employee Occupational Safety and Health Programs,* OSHA requires federal agencies to comply with all occupational safety and health standards, and, generally, to assume responsibility for worker protection in a manner comparable to private employers, including multi-employer worksite responsibility in appropriate circumstances. However, most multi-employer workplaces in the federal sector involve a mixed workforce of civil service and private contractor employees. Under the current wording of 29 CFR part 1960, the safety responsibilities of a federal agency run only to federal workers, and employees of federal contractors are specifically excluded, *see* 29 CFR 1960.1(f). OSHA had no intention when it issued this regulation to inadvertently limit the compliance responsibilities of federal agencies in multi-employer worksites; instead, the language in 1960.1(f) was intended only to assure that contractors on federally-owned or administered jobsites remain subject to the full range of OSHA enforcement remedies available in the private sector.

For this reason, the provisions of 29 CFR 1960.1(f) are being clarified by deleting the language which suggests that federal agencies are accountable for the safety of federal employees exclusively, while retaining a provision which makes clear that private contractor remain subject to private sector enforcement remedies. This change is intended to ensure that the health and safety responsibilities of federal agencies on multi-employer worksites are comparable to those of private employers in comparable circumstances.

(B) Medical Records Access

Section 19 of the OSH Act, Executive Order 12196, and 29 CFR part 1960 require agency heads to implement occupational safety and health programs consistent with standards promulgated under section 6 of the OSH Act. Because 29 CFR 1910.20, which regulates employee access to exposure and medical records, was promulgated pursuant to section 8 of the OSH Act, under existing regulations it would not be a required element of an agency program. Therefore, OSHA is amending 29 CFR 1960.66 by adding a new paragraph (f) to make 29 CFR 1910.20 a required element of federal agency safety and health programs.

Administrative Procedure

The clarification of federal agency safety responsibilities on multi-employer jobsites has no regulatory effect on private parties, and applies only to federal agencies. It is, accordingly, a ''rule of agency procedure or practice'' within the meaning of the Administrative Procedure Act, 5 U.S.C. 553(b)(3). Similarly, the requirement