

## 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)<sup>2</sup> 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

<sup>2</sup>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.