

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,