

reserve tonnage raisins held beyond the crop year of acquisition shall be made in accordance with this paragraph. Each handler, producer, dehydrator, and other person who furnishes boxes or bins in which such raisins are held for the account of the Committee on August 1 shall be compensated for the use of such boxes and bins. The rate of compensation shall be: For boxes, two and one-half cents per day, not to exceed a total payment of \$1 per box per year, per average net weight of raisins in a sweatbox, with equivalent rates for raisins in boxes other than sweatboxes; and for bins 20 cents per day per bin, not to exceed a total of \$10 per bin per year. For purposes of this paragraph, *box* means any container with a capacity of less than 1,000 pounds and *bin* means any container with a capacity of 1,000 pounds, or more. The average net weight of raisins in each type of box shall be the industry average as computed by the Committee for the box in which the raisins are so held. No further compensation shall be paid unless the raisins are so held in the boxes on the succeeding August 1.

\* \* \* \* \*

Dated: February 3, 2000.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 00-2980 Filed 2-8-00; 8:45 am]

BILLING CODE 3410-02-P

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### 23 CFR Part 645

[FHWA Docket No. FHWA-99-6232]

RIN 2125-AE68

#### Utilities

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM); request for comments.

**SUMMARY:** The FHWA proposes to amend its regulation prescribing policies, procedures, and reimbursement provisions for the adjustment and relocation of existing utility facilities, and for the accommodation of new utility facilities and private lines on the right-of-way of Federal-aid and direct Federal highway projects. These amendments will bring the FHWA's utilities regulation into conformance with recent laws, regulations, or guidance, and will provide State transportation

departments (STDs) clarification and more flexibility in implementing it.

**DATES:** Comments in response to this NPRM must be received on or before April 10, 2000.

**ADDRESSES:** Submit written, signed comments to the docket number appearing at the top of this document. You must submit your comments to the Docket Clerk, U.S. DOT Dockets Room, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590. All comments will be available for examination at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. To receive notification of receipt of comments you must include a pre-addressed, stamped envelope or postcard.

**FOR FURTHER INFORMATION CONTACT:** Mr. Paul Scott, (202) 366-4104, Office of Program Administration, HIPA-20, or Mr. Reid Alsop, (202) 366-0791, Office of the Chief Counsel, HCC-31. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

#### SUPPLEMENTARY INFORMATION:

##### Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL-401, by using the universal resource locator (URL): <http://dms.dot.gov>. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded by using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512-1661. Internet users may reach the Office of the Federal Register's home page at: <http://www.nara.gov/fedreg> and the Government Printing Office's database at: <http://www.access.gpo.gov/nara>.

##### Background

Present FHWA regulations regarding utility relocation and accommodation matters have evolved from basic principles established decades ago, with many of the policies remaining unchanged. The present regulations are found in 23 CFR part 645. Subpart A of this part pertains to utility relocations, adjustments, and reimbursement. Subpart B pertains to the accommodation of utilities.

The utility regulations were revised on May 15, 1985, when a final rule was published in the **Federal Register** at 50 FR 20344. Three significant changes have occurred since then, on February 2 and July 1, 1988, when amendments

to the regulation were published at 53 FR 2829 and 53 FR 24932; and on July 5, 1995, when a final rule was published at 60 FR 34846. The February 2, 1988, amendment provided that each State 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, 1988, 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. The July 5, 1995, amendment raised the upper limit for FHWA forgoing preaward review and/or approval of consultant contracts for preliminary engineering from \$10,000 to \$25,000; increased the ceiling for lump sum agreements from \$25,000 to \$100,000; clarified the methodology to be used to compute indirect or overhead rates; required utilities to submit final billings within 180 calendar days following completion of the work; brought the definition of "clear zone" into conformance with the American Association of State Highway and Transportation Officials (AASHTO) "Roadside Design Guide"; and conformed the utilities regulations to the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Public Law 102-240, 105 Stat. 1914.

The proposed amendments would change the regulation as follows:

- Eliminate the \$100,000 upper limit for lump-sum agreements.
- Allow reimbursement for labor surcharge, material, and supply costs to be based upon unit costs, as well as average costs, in lieu of actual costs.
- Apply the utility regulations to facilities similar to utilities, *i.e.*, facilities, such as wireless telecommunications towers, that are included in the definition of utility and are considered to be utilities by many, but not all, of the States.
- Suggest the Federal share of net income from revenues obtained by STDs for utility use of highway rights-of-way on Federal-aid highway projects be used by the State for projects eligible under title 23, U.S.C.
- Clarify the intent of the regulations that STDs control utility use of highway right-of-way on Federal-aid highway projects within the State and its political subdivisions, but not necessarily on all Federal-aid highways.
- Set forth as the most important consideration in determining whether

a proposed installation is a utility or not is how the STD views it under its own State laws and/or regulations.

—Suggest when a STD intends to permit utilities to use and occupy the right-of-way on a Federal-aid highway project, such potential use should be a consideration in determining the extent and adequacy of the right-of-way needed for the project.

—Suggest when acquiring highway right-of-way, the STD, in consultation with the utilities, should consider acquiring sufficient right-of-way to accommodate utility needs.

—Indicate when a STD acquires and retains right-of-way on a Federal-aid highway project for use by utilities in accordance with established standard criteria pursuant to State law, ordinance, or administrative practice, such right-of-way may be considered eligible for Federal-aid reimbursement as an integral part of the project right-of-way.

—Eliminate a confusing provision to clarify the intent that the utility regulations are not applicable to longitudinal installations of private lines.

—Delete the provision encouraging STDs to adopt the alternate procedure for utilities.

—Incorporate an amendment conforming the utilities regulations to the Transportation Equity Act for the 21st Century (TEA–21), Public Law 105–178, 112 Stat. 107.

The FHWA proposes to amend these regulations in the following manner and for the reasons indicated below.

### Section-by-Section Analysis

#### Section 645.101 Purpose

The term “utility facilities” would be changed to “utilities.” The term “utilities” has commonly been used to describe lines, facilities, or systems for producing, transmitting, or distributing communications, electricity, or any other similar commodity. Hence, the term “utility facilities,” as presently used to describe the purpose of subpart A, though technically correct, is not all inclusive as it fails to cover “lines” and “systems.” The term “utilities” is a more common term and better covers all possible adjustment or relocation activities.

#### Section 645.105 Definitions

Paragraph designations would be removed from all definitions and all definitions would be placed in alphabetical order in order to conform subpart A to the existing format in subpart B. Also, the definitions “State highway agency” and “Highway agency

(HA)” would be changed to “State transportation department” and “Transportation department,” respectively, to conform the utilities regulation to section 1212(a) of the TEA–21. The definition “adjustment” would be added, and the definition “relocation” would be revised. Adjustment and relocation are two separate activities in subpart A, but both are included under the definition for relocation. This amendment would merely separate the one, all-inclusive definition, into two separate definitions without changing the intent or meaning of either activity.

#### Section 645.113 Agreements and Authorizations

Paragraph (f) would be amended to eliminate the \$100,000 ceiling for using the lump sum payment arrangement for reimbursement for utility adjustments on Federal-aid and direct Federal highway projects. The proposed amendment would provide the States 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. The FHWA believes 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 would increase the number of utility relocations potentially eligible for lump sum payment.

#### Section 645.117 Cost Development and Reimbursement

Paragraphs (c)(1) and (e)(4) would be revised to: Allow reimbursement for labor surcharge, material, and supply costs based upon unit costs, as well as average costs, in lieu of actual costs; indicate average rates or unit costs may be adjusted as deemed appropriate by the STD or the FHWA; and indicate approval of the methodology to be used and periodic STD reviews may provide all the oversight necessary to satisfy the intent of the regulations. The proposed amendments would provide the States greater flexibility in utilizing the lump sum payment arrangement. They would also decrease unnecessary paperwork and encourage innovation.

Paragraph (i)(2) would be revised to clarify the intent of the regulation requiring utilities to submit final billings within 180 calendar days

following completion of work. The intent was to authorize STDs to require utilities to submit final bills for utility relocation work within one year of completion of the work, and if final bills were not submitted within that time frame, to consider previous payments to the utility to be final. This regulation was intended to be a tool to help STDs close out projects in a timely manner; however, the intent was also to allow STDs to make exceptions. If they desire, STDs may pay bills received from utilities more than one year following completion of the work and be reimbursed with Federal-aid highway funds for eligible items.

#### Section 645.119 Alternate Procedure

The first sentence in paragraph (c) would be amended to delete the provision encouraging STDs to adopt the alternate procedure for utilities, but would continue to indicate that if they want to adopt the alternate procedure, they may do so by filing a formal application to the FHWA for approval. The alternate procedure was a forerunner of the certification acceptance process and was similar in many ways. But, with passage of the TEA–21, the States were given the option of exempting the FHWA from oversight on many Federal-aid projects under the provisions of 23 U.S.C. 106(b). As a result, there became limited interest in using the alternate procedure for utilities. The alternate procedure will remain available for STDs that want to use it, but the FHWA will no longer encourage STDs to use it.

#### Section 645.201 Purpose

The term “utility facilities” would be changed to “utilities.” The term “utilities” has commonly been used to describe lines, facilities, or systems for producing, transmitting, or distributing communications, electricity, or any other similar commodity. The term “utility facilities,” as presently used to describe the purpose of subpart B, though technically correct, is not all inclusive as it fails to cover “lines” and “systems.” The term “utilities” better covers all possible accommodation activities.

#### Section 645.203 Applicability

Paragraph (e) would be added to apply the utility regulations to facilities similar to utilities, *i.e.*, facilities, such as wireless telecommunications towers, that are considered by the FHWA to be included in the definition of “utility” in this subpart and are considered to be utilities by many, but not all, of the States. This proposed amendment would only effect the FHWA

accommodation procedures. Presently, utilities may be accommodated on highway right-of-way under provisions in this subpart; whereas, non-utilities may also be accommodated on highway right-of-way, but under provisions in another regulation, 23 CFR 1.23(c). The FHWA definition of "utilities" and many States' definitions of "utilities" cover wireless telecommunications towers; whereas, some States' definitions of "utilities" do not. The proposed amendment would allow wireless telecommunications towers, and other similar facilities, whether considered by an individual State to be "utilities" or not, to be accommodated under the provisions contained in this part of the utility regulations. This will provide uniformity by avoiding wireless telecommunications towers, and similar facilities, from being accommodated under one FHWA procedure in one State and a different FHWA procedure in another State.

#### *Section 645.205 Policy*

Paragraph (e) is added to indicate States may charge a fee for utility use of highway rights-of-way on Federal-aid highway projects, but suggests that if they do the proceeds should be used for title 23, U.S.C., projects. It has been the FHWA's policy for many years to allow States to charge fees for utility use if they desire, but to allow them to use the proceeds as they see fit. The FHWA has informally encouraged the States to use such proceeds for transportation purposes. This proposed amendment would formally establish the FHWA's desire for proceeds from fees charged for utility use of highway right-of-way to be used for title 23, U.S.C., purposes.

#### *Section 645.207 Definitions*

The definitions "State highway agency" and "Highway agency" would be changed to "State transportation department" and "transportation department," respectively, to conform the utilities regulation to section 1212(a) of the TEA-21.

The definition "utility facility" would be changed to "utility," and in the definition "private lines" the term "utility facility" would be changed to "utility." As discussed previously, the term "utilities" has commonly been used to describe lines, facilities, or systems for producing, transmitting, or distributing communications, electricity, or any other similar commodity. Hence, the term "utility facilities," as presently used to describe the purpose of subpart B, though technically correct, is not all inclusive as it fails to cover "lines" and "systems." The term "utilities" better

covers all possible accommodation activities.

The definition of "clear zone" is amended to remove the date of the referenced publication and to indicate that the most current edition should be used, and to remove the reference to FHWA Regional Offices. The purpose for deleting the date of the publication and making reference to "the most current edition" would be to ensure the most recent information is used. Reference to FHWA Regional Offices would be deleted because in a recent reorganization all FHWA Regional Offices were abolished. All utility-related responsibilities of the FHWA Regional Offices have been delegated to FHWA Division Offices.

#### *Section 645.209 General Requirements*

Paragraph (d) would be amended to clarify the intent that STDs control utility use of highway right-of-way on Federal-aid highway projects within the State and its political subdivisions, but not necessarily on all Federal-aid highways. The FHWA's concern in this regard is limited to streets and highways that have been developed and constructed using Federal-aid highway funds. Even though STDs may only be required to regulate utility use on Federal-aid highway projects, as a practical matter it is difficult for them to adopt one policy for Federal-aid funded projects versus a different policy for adjoining State funded projects. As a result, STDs normally adopt a utility accommodation policy that covers highway routes under their jurisdiction as a group. Even so, the distinction in this regard between Federal-aid projects and Federal-aid highways may be helpful.

Paragraph (j) would be amended to remove the date of the referenced publication and indicate the most current edition should be used, and to remove the reference to FHWA Regional Offices. The reasons for doing this are the same as discussed in § 645.207 above.

Paragraph (m) would be added to clarify existing policy that the most important consideration in determining whether a proposed installation is a "utility" or not is how the STD views it under its own State laws and/or regulations, and a lesser, but nonetheless important consideration in making this determination is the definition of a "utility" in the definitions section of subpart B. This determination is important because utilities are handled under this regulation; whereas, private lines and other non-utilities are handled under other regulations, except for wireless

telecommunications towers and other similar facilities as discussed above in § 645.203. As in many utility-related matters, the FHWA policy is broad enough in this instance to cover most situations, but nonetheless, in States where the State policy is more restrictive, and sometimes more liberal, than the FHWA policy, the FHWA will normally look upon a particular situation in the same manner the State does.

Paragraph (n) would be added to encourage STDs, when they intend to permit utilities to use and occupy the right-of-way on a Federal-aid highway project, to consider such potential use in determining the extent and adequacy of the right-of-way needed for the project. Paragraph (n) would also encourage STDs, in consultation with the utilities, to consider acquiring the right-of-way needed to accommodate the utilities, with the understanding they may keep the acquired right-of-way, or may sell, lease, or somehow convey it to the utilities. This will minimize inconvenience to property owners. Right-of-way acquired for utility purposes and retained by STDs may be eligible for Federal-aid reimbursement.

The FHWA's authority for allowing utility use and occupancy of the right-of-way of Federal-aid and direct Federal highway projects is contained in 23 CFR 1.23. Under the provisions of this section, the State must acquire right-of-way which is adequate not only for the construction of the highway facility, but also for its operation and maintenance. The right-of-way must be devoted exclusively to public highway purposes.

Section 1.23(c) permits certain non-highway uses of the right-of-way which are found to be in the public interest, provided such uses do not impair the highway or interfere with the free and safe flow of traffic thereon. Such a public interest finding has been made for utility facilities. A direct relationship exists between § 1.23 requirements concerning the adequacy of right-of-way to be acquired and the provisions for permitted non-highway uses. Proposed non-highway uses cannot be of a nature which would negate the general requirement regarding the adequacy of the right-of-way. Therefore, it is implicit in the public interest finding for utility use of the right-of-way of Federal-aid or direct Federal highway projects that there must be adequate space available to locate the utility facilities in a manner which does not interfere with the safe and efficient operations of the highway. Consequently, when a State intends to permit utilities to use and occupy

public highway right-of-way, such potential use should be a consideration in determining the extent and adequacy of the right-of-way needed for the project. Failure to recognize the impact of such use, as well as other uses on private property located adjacent to the public highway right-of-way, may affect the safe and efficient operations of the highway and may result in the acquisition of right-of-way which is inadequate to meet the needs of the highway and the traveling public.

For example, little would be gained by acquiring restricted right-of-way and denying its use to certain utilities if these utilities could locate their facilities on private property adjacent to the restricted right-of-way with substantially the same impact on the highway and its user. The issue of adequate accommodation of utilities is a legitimate consideration in the development of highway projects. This is particularly true of land service facilities where the highway user and utility consumer tend to be one and the same.

A corresponding issue then becomes who pays for right-of-way acquired to accommodate utilities, the STD or the utilities. This is a matter to be determined by the affected parties. No matter who ends up paying for the right-of-way, it is normally desirable for the STD to approach a property owner for the purpose of acquiring all the right-of-way needed for both the highway and the utilities. The STD may later sell, lease, or somehow convey a portion of the right-of-way to the utilities for their use. At any rate, the property owner is only inconvenienced once. Should the STD decide to acquire right-of-way for utilities and retain possession, Federal-aid highway funds may be eligible to participate in the acquisition costs of the needed right-of-way. Utility use of highway right-of-way is not considered to be a use for a highway purpose. Therefore, Federal-aid highway funds are, theoretically, not eligible to participate in right-of-way acquired solely for the purpose of accommodating utility facilities in excess of that normally acquired in accordance with standard criteria and procedures. Even so, when a State or locality routinely dedicates or permits a portion of the road and street right-of-way for use by utilities in accordance with established standard criteria pursuant to State law, ordinance, or administrative practice, such right-of-way may be considered eligible for Federal-aid reimbursement as an integral part of the project right-of-way.

#### *Section 645.211 State Highway Agency Accommodation Policies*

The section heading would be changed to reflect the statutory name change from "State highway agency" to "State transportation department." The introductory paragraph would be amended to remove the dates of the referenced publications and indicate that the most current editions should be used, and to remove the reference to FHWA Regional Offices. This is for the same reasons as discussed in § 645.207 above.

#### *Section 645.215 Approvals*

Paragraph (d) would be amended to remove all references to the approval of longitudinal installations of private lines. In § 645.203, it is indicated that private lines installed longitudinally on highway right-of-way are to be approved under the provisions of § 1.23(c) which cover the use of highway right-of-way, including air space, for non-highway purposes. This provision in § 645.203 was intended to exclude longitudinal private line installations from coverage under the utility regulations. It was not originally intended, however, for longitudinal private lines to be handled under the FHWA's air space provisions, but since that time, air space has come to be defined to include everything over, under, and on the right-of-way, and it has become common practice to include longitudinal private lines in this category. Not knowing that this would happen when § 645.203 was written, another reference was made to longitudinal private lines in § 645.215(d)(2) relative to approvals. This reference is no longer applicable and conflicts with existing requirements for handling air space items; therefore, it would be removed from the utility regulations.

#### **Rulemaking Analyses and Notices**

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination using the docket number appearing at the top of this document in the docket room at the above address or via the electronic addresses provided above. The FHWA will file comments received in the docket and will consider late comments to the extent practicable. The FHWA may, however, issue a final rule at any time after the close of the comment period. In addition to late comments, the FHWA will also continue to file in the docket relevant information becoming available after the comment closing date, and interested

persons should continue to examine the docket for new material.

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

The FHWA has determined that this proposed action is not a significant regulatory action within the meaning of Executive Order 12866, nor would it be a significant regulatory action within the Department of Transportation's regulatory policies and procedures. The proposed amendments would simply make minor changes to update the utilities regulations to conform to recent laws, regulations, or guidance, and to clarify existing policies. It is anticipated that the economic impact of this rulemaking will be minimal because the proposed amendments would only simplify or clarify procedures presently being used by STDs 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 proposed amendments would only clarify or simplify procedures used by STDs and utilities in accordance with existing laws, regulations, or guidance.

#### **National Environmental Policy Act**

The FHWA has also analyzed this proposed action for the purpose of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), and anticipates this action would not have any effect on the quality of the human and natural environment.

#### **Executive Order 13132 (Federalism Assessment)**

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and it has been determined this action does not have a substantial direct effect or sufficient Federalism implications on States that would limit the policymaking discretion of the States. Nothing in this document directly preempts any State law or regulation. This proposed rule would merely reduce the level of Federal approval actions by placing greater responsibility at the State or local level. Throughout the proposed regulation

there is an effort to keep administrative burdens to a minimum.

#### **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.

#### **Unfunded Mandates Reform Act of 1995**

This proposed rule does not impose a Federal mandate resulting in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year (2 U.S.C. 1531 *et seq.*).

#### **Paperwork Reduction Act**

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must determine whether requirements contained in proposed rulemakings are subject to the information collection provisions of the PRA. The FHWA has determined that this proposed action would not constitute an information collection within the scope or meaning of the PRA. Implementation of this proposal would impose no burden on the States and private entities because it merely provides clarification and more flexibility to STDs in implementing the FHWA's utilities regulations contained in 23 CFR 645. As a result, no additional information collection burdens will be imposed on the States, the local governments, or the private sector.

At present, the FHWA sponsors four information collections that are related to public utilities requirements. Each of these collections is currently cleared by the Office of Management and Budget (OMB). These FHWA collections are entitled as follows: (1) Develop and Submit Utility Accommodation Policies, OMB Control No. 2125-0514; (2) Eligibility Statement for Utility Adjustments, OMB Control No. 2125-0515; (3) Developing and Recording Costs for Utility Adjustments, OMB Control No. 2125-0519; and (4) Utility Use and Occupancy Agreements, OMB Control No. 2125-0522. The currently approved burden hours for these collections would not be affected by this proposal.

#### **Executive Order 12988 (Civil Justice Reform)**

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice

Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### **Executive Order 13045 (Protection of Children)**

We have analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

#### **Executive Order 12630 (Taking of Private Property)**

This proposed rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### **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.

In consideration of the foregoing, the FHWA proposes to amend title 23, Code of Federal Regulations, by revising part 645, subparts A and B to read as set forth below.

Issued on: January 28, 2000.

**Kenneth R. Wykle,**  
*Administrator.*

#### **PART 645—[REVISED]**

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).

2. In part 645, revise all references in the left column wherever they appear to read as shown in the right column:

Old reference	New reference
Highway agency .....	Transportation department
Highway agencies .....	Transportation departments

Old reference	New reference
State highway agency	State transportation department
State highway agencies.	State transportation departments
HA .....	TD
SHA .....	STD

3. Revise § 645.101 to read as follows:

#### **§ 645.101 Purpose.**

The purpose of this subpart is to prescribe policies, procedures, and reimbursement provisions for the adjustment and relocation of utilities on Federal-aid and direct Federal highway projects.

4. Amend § 645.105 by removing the paragraph designations from all definitions; by placing all definitions in alphabetical order; by adding the definition “adjustment”; and by revising the definition “relocation” to read as follows:

#### **§ 645.105 Definitions.**

\* \* \* \* \*

**Adjustment**—the adjustment of utility facilities required by the highway project. It includes moving, rearranging, or changing the type of existing facilities at the existing location, and taking any necessary safety and protective measures. It also means constructing a replacement facility in place that is both functionally equivalent to the existing facility and necessary for continuous operation of the utility service, the project economy, or sequence of highway construction.

\* \* \* \* \*

**Relocation**—the relocation of utility facilities required by the highway project. It includes removing and reinstalling the facility at a new location, including necessary temporary facilities, acquiring necessary right-of-way on the new location, moving, rearranging or changing the type of existing facilities, and taking any necessary safety and protective measures. It also means constructing a replacement facility that is both functionally equivalent to the existing facility and necessary for continuous operation of the utility service, the project economy, or sequence of highway construction.

\* \* \* \* \*

5. Revise § 645.113(f) to read as follows:

#### **§ 645.113 Agreements and authorizations.**

\* \* \* \* \*

(f) When proposed utility adjustment or relocation work on a project for a specific utility company can be clearly defined and the cost can be accurately

estimated, the FHWA may approve an agreement between the TD and the utility company for a lump-sum payment without later confirmation by audit of actual costs.

\* \* \* \* \*

6. Revise § 645.117(c)(1), (e)(4), and (i)(2) to read as follows:

**§ 645.117 Cost development and reimbursement.**

\* \* \* \* \*

(c) *Labor surcharges.* (1) Labor surcharges include worker compensation insurance, public liability and property damage insurance, and such fringe benefits as the utility has established for the benefit of its employees. The cost of labor surcharges will be reimbursed at actual cost to the utility, or, at the option of the utility, average rates or unit costs which are representative of actual costs may be used in lieu of actual costs if approved by the STD and the FHWA. Prior FHWA approval of the methodology to be used in developing average rates or unit costs and periodic STD reviews may provide all the oversight that is necessary to satisfy the intent of the regulations in this subpart. These average rates or unit costs should be adjusted at least once annually, or as otherwise deemed appropriate by the STD and the FHWA, to take into account known anticipated changes and correction for any over or under applied costs for the preceding period.

\* \* \* \* \*

(e) *Material and supply costs.* \* \* \*

(4) The actual and direct costs of handling and loading materials and supplies at company stores or material yards, and of unloading and handling recovered materials accepted by the utility at its stores or material yards are reimbursable. In lieu of actual costs, average rates or unit costs which are representative of actual costs may be used if approved by the STD and the FHWA. Prior FHWA approval of the methodology to be used in developing average rates or unit costs and periodic STD reviews may provide all the oversight that is necessary to satisfy the intent of the regulations in this subpart. These average rates or unit costs should be adjusted at least once annually, or as otherwise deemed appropriate, to take into account known anticipated changes and correction for any over or under applied costs for the preceding period. At the option of the utility, five percent of the amounts billed for the materials and supplies issued from company stores and material yards or the value of recovered materials will be reimbursed

in lieu of actual, average, or unit costs for handling.

\* \* \* \* \*

(i) Billings. \* \* \*

(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 STD and the utility. Billings received from utilities more than one year following completion of the utility relocation work may be paid if the STD so desires, and Federal-aid highway funds may participate in these payments.

\* \* \* \* \*

7. Revise the introductory paragraph in § 645.119(c) to read as follows:

**§ 645.119 Alternate procedure.**

\* \* \* \* \*

(c) To adopt the alternate procedure, the STD must file a formal application for approval by the FHWA. The application must include the following:

\* \* \* \* \*

8. Revise § 645.201 to read as follows:

**§ 645.201 Purpose.**

The purpose of this subpart is to prescribe policies and procedures for accommodating utilities and private lines on the right-of-way of Federal-aid and direct Federal highway projects.

9. Amend § 645.203 in paragraph (c) by removing the last word “and”; in paragraph (d) by replacing the last period with “, and”; and by adding paragraph (e) to read as follows:

**§ 645.203 Applicability.**

\* \* \* \* \*

(e) Facilities similar to utilities (*i.e.*, facilities, such as wireless telecommunications towers, that are included in the definition of “utility” in this subpart and are considered to be utilities by many, but not all, of the States).

10. Amend § 645.205 by adding paragraph (e) to read as follows:

**§ 645.205 Policy.**

\* \* \* \* \*

(e) States may charge a fee for utility use of highway rights-of-way on Federal-aid highway projects. When this is done, the Federal share of net income from the revenues obtained should be used by the State for projects eligible under title 23, United States Code. Disposition of income received shall be the STD's responsibility and credit to Federal funds is not required.

11. Amend § 645.207 by revising the definitions “clear zone” and “private

lines” by revising the definition heading “utility facility” to read “utility” and by placing all definitions in alphabetical order to read as follows:

**§ 645.207 Definitions.**

\* \* \* \* \*

*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 current edition of the AASHTO “Roadside Design Guide” should be used as a guide for establishing clear zones for various types of highways and operating conditions. It is available for inspection and copying from the FHWA Washington Headquarters and all FHWA Division Offices as prescribed in 49 CFR part 7. 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.).

\* \* \* \* \*

*Private lines*—privately-owned facilities which convey or transmit the commodities outlined in the definition of “utility” of this section, but are devoted exclusively to private use.

\* \* \* \* \*

12. In § 645.209, revise paragraphs (d) and (j); and add paragraphs (m) and (n) to read as follows:

**§ 645.209 General requirements.**

\* \* \* \* \*

(d) *Uniform policies and procedures.* For a highway agency to fulfill its responsibilities to control utility use of highway right-of-way on Federal-aid highway projects within the State and its political subdivisions, it must exercise or cause to be exercised, adequate regulation over such use and occupancy through the establishment and enforcement of reasonably uniform policies and procedures for utility accommodation.

\* \* \* \* \*

(j) *Traffic control plan.* Whenever a utility installation, adjustment or maintenance activity will affect the movement of traffic or traffic safety, the utility shall implement a traffic control plan and utilize traffic control devices as necessary to ensure the safe and expeditious movement of traffic around the work site and the safety of the utility

work force in accordance with procedures established by the transportation department. The traffic control plan and the application of traffic control devices shall conform to the standards set forth in the current edition of the "Manual on Uniform Traffic Control Devices" (MUTCD) and 23 CFR part 630, subpart J. (This publication is incorporated by reference and is on file at the Office of the Federal Register in Washington, DC. It is available for inspection and copying from the FHWA Washington Headquarters and all FHWA Division Offices as prescribed in 49 CFR part 7.).

\* \* \* \* \*

(m) *Utility determination.* In determining whether a proposed installation is a "utility" or not, the most important consideration is how the STD views a particular facility under its own State law and/or regulations.

(n) *Right-of-way considerations.* When an STD intends to permit utilities to use and occupy the right-of-way on a Federal-aid highway project, such potential use should be a consideration in determining the extent and adequacy of the right-of-way needed for the project. When acquiring highway right-of-way, the STD in consultation with the utilities should consider acquiring sufficient right-of-way to accommodate utility needs. This will minimize inconvenience to property owners. The STD may retain possession of the acquired right-of-way, or may sell, lease, or convey it to the utilities. When an STD acquires and retains right-of-way on a Federal-aid highway project for use by utilities in accordance with established standard criteria pursuant to State law, ordinance, or administrative practice, such right-of-way may be considered eligible for Federal-aid reimbursement as an integral part of the project right-of-way.

13. Amend § 645.211 by revising the introductory paragraph to read as follows:

**§ 645.211 State transportation department accommodation policies.**

The FHWA should use the current editions of the AASHTO publications, "A Guide for Accommodating Utilities Within Highway Right-of-Way" and "Roadside Design Guide" to assist in the evaluation of adequacy of STD utility accommodation policies. They are available for inspection from the FHWA Washington Headquarters and all FHWA Division Offices as prescribed in 49 CFR part 7. 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.). At a minimum, such policies shall make adequate provisions with respect to the following:

\* \* \* \* \*

14. Revise § 645.215(d) to read as follows:

**§ 645.215 Approvals.**

\* \* \* \* \*

(d) When a utility files a notice or makes an individual application or request to a STD to use or occupy the right-of-way of a Federal-aid highway project, the STD is not required to submit the matter to the FHWA for prior concurrence, except when the proposed installation is not in accordance with this subpart or with the STD's utility accommodation policy approved by the FHWA for use on Federal-aid highway projects.

\* \* \* \* \*

[FR Doc. 00-2674 Filed 2-8-00; 8:45 am]

BILLING CODE 4910-22-P

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 46 CFR Part 15

[USCG 1999-6097]

#### Federal Pilotage for Foreign-Trade Vessels in Maryland

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of public meeting and extension of comment period.

**SUMMARY:** The Coast Guard is holding a public meeting to solicit comments on a proposed change to the licensing requirements for pilots of vessels engaged in foreign trade, under way on the navigable waterways within the State of Maryland. We have proposed to require that such vessels be under the direction and control of Federally-licensed pilots when not under the direction and control of State-licensed pilots. Because of substantial interest, we have scheduled a public meeting on March 1, 2000, regarding the proposed rule, and we have extended the public comment period until April 1, 2000. We encourage you to provide oral and written comments about the proposed change.

**DATES:** The public meeting is scheduled for Wednesday, March 1, 2000, from 7 p.m. to 10 p.m. The meeting will convene at 7 p.m.; however, it may conclude before 10 p.m. if we finish early. Comments and related material must reach the Docket Management Facility on or before April 1, 2000.

**ADDRESSES:** The public meeting will be held at the Bachelors Officers' Quarters (B.O.Q.) conference room at the Coast Guard Yard, Building 28A, 2401 Hawkins Point Road, Baltimore, MD 21226-1791.

Because of heightened security considerations on Federal installations, we will require photo identification (a driver's license, merchant mariner's document, or State identification) for admittance to the Coast Guard Yard. Please register in advance of the meeting with Mr. Timothy Farley, Office of Investigations and Analysis (G-MOA), Coast Guard, phone 202-267-1414, e-mail Tfarley@comdt.uscg.mil. For security and organizational purposes, we want to know your name and whether you intend to speak at the meeting. The resulting list will assist security guards at the gate and provide the order of speakers at the meeting. Individuals who do not call in advance may be required to sign in at the gate. Vehicles and possessions are subject to search pursuant to Title 41 of the Code of Federal Regulations, part 101-20.

To make sure your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG 1999-6097), U.S. Department of Transportation, room PL-401, 400 Seventh Street SW., Washington, DC 20590-0001.

(2) By delivery to room PL-401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

(3) By fax to the Docket Management Facility at 202-493-2251.

(4) Electronically through the Web Site for the Docket Management System at <http://dms.dot.gov>.

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public will become part of this docket and will be available for inspection or copying at room PL-401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at <http://dms.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:** For questions on this proposed rule, contact Mr. Timothy Farley, Office of Investigations and Analysis (G-MOA), Coast Guard, telephone 202-267-1414, e-mail Tfarley@comdt.uscg.mil; or you