Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Section 866.5785 is added to subpart F to read as follows:

§ 866.5785 Anti-Saccharomyces cerevisiae (S. cerevisiae) antibody (ASCA) test systems.

(a) *Identification.* The Anti-*Saccharomyces cerevisiae* (*S. cerevisiae*) antibody (ASCA) test system is an in vitro diagnostic device that consists of the reagents used to measure, by immunochemical techniques, antibodies to *S. cerevisiae* (baker's or brewer's yeast) in human serum or plasma. Detection of *S. cerevisiae* antibodies may aid in the diagnosis of Crohn's disease.

(b) *Classification.* Class II (special controls). The special control is FDA's ''Guidance for Industry and FDA Reviewers: Class II Special Control Guidance Document for Anti-*Saccharomyces cerevisiae* (*S. cerevisiae*) Antibody (ASCA) Premarket Notifications.''

Dated: November 9, 2000.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 00–29841 Filed 11–21–00; 8:45 am]

BILLING CODE 4160–01–F

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: Final rule.

SUMMARY: The FHWA is issuing a final rule amending its regulation prescribing policies, procedures, and reimbursement provisions for the relocation and adjustment 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: This final rule is effective January 22, 2001.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Scott, Office of Program Administration, HIPA–20, (202) 366–4104; or Mr. Reid Alsop, Office of the Chief Counsel, HCC–31, (202) 366–0791, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590–0001. 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

The amendments in this final rule are based primarily on the notice of proposed rulemaking (NPRM) published at 65 FR 6344 on February 9, 2000 (FHWA Docket No. FHWA–99–6232). All comments received in response to this NPRM have been considered in adopting these amendments.

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 at 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 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 accommodation 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 eliminated the requirement for FHWA pre-award review and/or approval of consultant contracts for preliminary engineering; increased the ceiling for lump sum agreements from $25,000 to $100,000; clarified the meaning of the term ''approved program'' and the methodology to be used to compute indirect or overhead rates; required utilities to submit final billings within one year following completion of the utility relocation work; eliminated the certification of completed utility work and the requirement for evidence of payment prior to reimbursement; 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.

This final rule amends the regulation as follows:

- Incorporates an amendment conforming the utilities regulations to the Transportation Equity Act for the 21st Century (TEA–21), Public Law 105–178, 112 Stat. 107.
- Eliminates the $100,000 upper limit for lump-sum agreements.
- Allows reimbursement for utility relocations to be based upon unit costs.
- Clarifies the intent of the regulation requiring utilities to submit final billings within one year following completion of work.
- Deletes the provision encouraging STDs to adopt the alternate procedure for utilities.
- States that the most important consideration in determining whether a proposed facility is a utility or not, is how the STD views it under its own State laws and/or regulations.
- Eliminates a confusing provision to clarify the intent that the utility regulations are not applicable to longitudinal installations of private lines.

Discussion of Comments

Interested persons were invited to participate in the development of this final rule by submitting written comments in response to the NPRM in Docket No. FHWA–99–6232 on or before April 10, 2000. Comments were received from 6 STDs and 1 utility company. A summary of the comments

received relative to each proposed amendment follows.

Section 645.101 Purpose

In § 645.101, it was proposed to change the term ''utility facilities'' to ''utilities'' in an effort to more clearly set forth the intent to include utility lines and systems, as well as facilities. There was no opposition to this proposed amendment. A favorable comment was received from one STD. Even so, the FHWA has considered this comment, and other informal input, and has decided not to pursue this proposed amendment. The terms ''utilities'' and ''utility facilities'' have come to mean essentially the same thing. The Congress even uses the terms interchangeably in authorizing legislation contained in 23 U.S.C. 123.

Section 645.105 Definitions

In § 645.105, paragraph designations are removed from all definitions and all definitions are placed in alphabetical order to conform subpart A to the existing format in subpart B. Also, the definitions ''State highway agency'' and ''Highway agency (HA)'' are changed to ''State transportation department'' and ''Transportation department,'' respectively, to conform the utilities regulation to section 1212(a) of the TEA–21.

Section 645.109 Preliminary Engineering

In § 645.109, paragraph (c) is amended to reflect the correct title for 23 CFR part 172. It is presently shown as ''Administration of Negotiated Contracts.'' It should be ''Administration of Engineering and Design Related Service Contracts.'' This was not addressed in the NPRM.

Section 645.113 Agreements and Authorizations

In § 645.113, paragraph (f) is 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. There was no opposition to this amendment. Favorable comments were received from four STDs and one utility. The amendment will provide the States greater flexibility in utilizing the lump sum payment arrangement should they so desire. 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 will increase the number of utility relocations potentially eligible for lump sum payment.

Section 645.117 Cost Development and Reimbursement

In § 645.117, paragraph (a)(3) is added in order to allow reimbursement for utility relocations to be based upon unit costs for labor, materials and supplies, equipment, and other related costs, in lieu of actual costs. There was no opposition to this amendment. Favorable comments were received from three STDs and one utility. This amendment will provide the States greater flexibility in utilizing the lump sum payment arrangement, and will also decrease unnecessary paperwork and encourage innovation.

In § 645.117, paragraph (i)(2) is amended to clarify the intent of the regulation requiring utilities to submit final billings within one year following completion of work. There was no opposition to this amendment. Favorable comments were received from three STDs and one utility. The intent is 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 are not submitted within that time frame, to consider previous payments made to the utility to be final. This regulation is intended to be a tool to help STDs close out projects in a timely manner, but it does allow exceptions to be made. 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

In § 645.119, the first sentence in paragraph (c) is amended to delete the provision encouraging STDs to adopt the alternate procedure for utilities, but continues 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. There was no opposition to this amendment. A favorable comment was received from one STD. 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

In § 645.201, it was proposed to change the term ''utility facilities'' to ''utilities'' in an effort to more clearly set forth the intent to include utility lines and systems, as well as facilities. There was no opposition to this proposed amendment. Even so, the FHWA has decided not to pursue this proposed amendment. The terms ''utilities'' and ''utility facilities'' have come to mean essentially the same thing. Furthermore, authorizing legislation in 23 U.S.C. 109(l)(1) uses the term ''utility facilities'' throughout in regard to accommodating utilities on highway rights-of-way.

Section 645.203 Applicability

In § 645.203, it was proposed to add a new paragraph, paragraph (e), in order to apply the utility accommodation regulations to facilities similar to utilities (*i.e.,* facilities, such as fiber optics and wireless telecommunications, that are considered by the FHWA to be included in the definition of ''utility facility'' in this subpart, and are considered to be utilities by many, but not all, of the States). Comments were received from two STDs, one in favor of the proposed amendment and one opposed. The Minnesota DOT was opposed because it believed the amendment would serve to define wireless telecommunications as a utility and would unduly influence State policies.

The FHWA has considered these comments, and other informal input, and has decided not to pursue this proposed amendment. While it would have provided uniformity and simplicity (by avoiding fiber optics, wireless telecommunications, and similar facilities, from being accommodated under one FHWA procedure in one State and a different FHWA procedure in another State), it would have conflicted with the FHWA's longstanding 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. There was also the appearance that accommodating non-utilities under regulations in this subpart might interfere with other requirements currently in effect for accommodating non-utilities, particularly in regard to fair market

value, use of revenues for title 23 purposes, and the environment.

Section 645.205 Policy

In § 645.205, it was proposed to add a new paragraph (e), in order to indicate States may charge a fee for utility use of highway rights-of-way on Federal-aid highway projects, and to suggest that if they do the proceeds should be used for title 23, U.S.C., purposes. Comments were received from four STDs and one utility company. Two STDs were in favor of this proposed amendment, but two other STDs and one utility company expressed some concern and/or requested clarification. The Arkansas Department of Transportation (DOT) indicated its State law might not allow fees to be charged for utility use of its rights-of-way. The Wisconsin DOT suggested revised wording. The Mid American Energy Company requested further clarification.

The FHWA has considered these comments, and other informal input, and has decided not to pursue this proposed amendment. It has been the FHWA's policy for many years to allow States to charge fees for utility use of highway right-of-way if they desire, and to allow them to use the proceeds as they see fit. In the past, fees charged for utility use were generally just enough to cover the cost of processing permits. Now, with the advent of fiber optics and wireless telecommunications, opportunities exist for the States to make substantial profits. In such cases, the FHWA has informally encouraged the States to use such proceeds for transportation purposes. This proposed amendment would have formally established the FHWA's desire for proceeds from fees charged for utility use of highway right-of-way to be used for transportation purposes. Although this is a valid desire, the utility regulations are probably not the best place to express it. This is because Federal law is silent on charging fees for utilities, thus leaving it to the States to decide for themselves. The FHWA considers utility use of highway right-of-way to be in the public interest. It therefore has no desire to require the charging of fees, and since Federal law does not require such, there is no real reason to try to regulate a practice that is working well. Relative to the use of fees obtained for the use of highway right-of-way, the FHWA only desires to encourage the States to use such proceeds for transportation purposes. Again, since there is no desire at this time to regulate this activity, a statement to this effect in FHWA's guidance literature is considered to be sufficient.

Section 645.207 Definitions

In § 645.207, the definitions ''State highway agency'' and ''Highway agency'' are changed to ''State transportation department'' and ''transportation department,'' respectively, to conform the utilities regulation to section 1212(a) of the TEA–21. 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'' is to ensure the most recent information is used. Reference to FHWA Regional Offices is 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. There was no opposition to these amendments. No comments were received.

Section 645.209 General Requirements

In § 645.209, it was proposed to amend paragraph (d) 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. Comments were received from two STDs, one was in favor of the proposed amendment, and the other questioned the definition of the term ''project.''

The FHWA has considered these comments and decided not to pursue this amendment. Upon further consideration of the existing regulations it was found that the term ''highway'' used in this subpart, and as defined in § 645.207, means any public way for vehicular travel constructed or improved in whole or part with Federal-aid highway funds. It was the intent of the amendment to clarify the distinction between highways actually constructed or improved using Federal-aid highway funds, and highways eligible for construction or improvement with Federal-aid highway funds. It may be a moot point. Even though STDs may only be required to regulate utility use on highways where Federal-aid highway funds have been used, as a practical matter it is difficult for them to adopt one policy for federally funded highways versus a different policy for adjoining State funded highways. 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 highways constructed or improved using Federal-aid highway funds, and highways eligible for construction of improvement using Federal-aid highway funds, is considered to be sufficiently covered in the existing utility regulations.

In § 645.209, paragraph (j) is 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. There was no opposition to these amendments. Comments were received from one STD, and it was in favor of the changes.

In § 645.209, paragraph (m) is 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. There was no opposition to this amendment. A favorable comment was received from one STD. This determination is important because utilities are handled under this regulation; whereas, private lines and other non-utilities are handled under other regulations. 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.

In § 645.209, we proposed to add a new paragraph (n), in order to: (1) 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; and (2) 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. Comments were received from six STDs concerning this proposal. Two STDs were in favor of this proposed amendment, but four STDs expressed some concerns. The Oregon DOT found the proposed amendment to be very disturbing because it would conflict with State law prohibiting the use of State highway funds for utility purposes. The Wisconsin DOT was concerned about conveying property to utilities and made several suggestions for clarification and improvement of the

proposed amendment. The Pennsylvania DOT recommended changing the language to indicate STDs ''may,'' rather than ''should'' take certain actions. The Minnesota DOT was unclear as to the use of some of the words in the proposed amendment.

The FHWA has considered these comments, and other informal input, and has decided not to pursue the proposed amendment in § 645.209. The intent was to encourage STDs to consider utility right-of-way needs during the development of projects, and to subsequently consider acquiring right-of-way for utilities. Many STDs are already doing these things. The FHWA would like to encourage other STDs to do the same, but has no desire at this time to require them to do so. However, within the context of a regulation, the difference between encouragement and requirements may become blurred. In addition, there are many underlying issues within the broad scope of the proposed amendments that cannot be addressed adequately in a regulation to satisfy the needs and constraints of individual States. The FHWA, therefore, deems it more appropriate to make its desires known in its guidance literature.

Section 645.211 State Highway Agency Accommodation Policies

In § 645.211, the section heading is changed to reflect the statutory name change from ''State highway agency'' to ''State transportation department.'' The introductory paragraph is 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 discussed in § 645.207 above. There was no opposition to these amendments. No comments were received.

Section 645.215 Approvals

In § 645.215, paragraph (d) is amended to remove all references to the approval of longitudinal installations of private lines. There was no opposition to this amendment. No comments were received. 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 covers the use of highway right-of-way, including air space, for non-highway purposes. This provision excludes longitudinal private line installations from coverage under the utility regulations. It was not originally intended for longitudinal private lines to be handled under the FHWA's right-of-way provisions, but it has become common practice to include them in this category. Not knowing 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 right-of-way items.

Rulemaking Analyses and Notices

All comments received before the close of business on April 10, 2000, were considered in developing the final rule. The comments are available for examination using FHWA docket number 99–6232 in the docket room at the above address or via the electronic addresses provided above.

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

The FHWA has determined this action is not a significant regulatory action within the meaning of Executive Order 12866, nor a significant regulatory action within the Department of Transportation's regulatory policies and procedures. The amendments 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 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 amendments 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 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 human and natural environment.

Executive Order 13132 (Federalism Assessment)

This 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 rule 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 rule merely reduces the level of Federal approval actions by placing greater responsibility at the State or local level. Throughout the 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 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 rulemakings are subject to the information collection provisions of the PRA. The FHWA has determined that this action would not constitute an information collection within the scope or meaning of the PRA. Implementation of this rule 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 at 23 CFR 645. As a result, no additional information collection burdens are 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 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 implementation of this rule.

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 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 rule does 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.

In consideration of the foregoing, the FHWA amends title 23, Code of Federal Regulations, part 645 as follows:

Issued on: November 9, 2000.

Kenneth R. Wykle,

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).

2. In part 645, wherever they appear, remove the words indicated in the first column in the table below and add in their place the words indicated in the second column:

Remove	Add
Highway agency	Transportation department.
Highway agencies	Transportation departments.
State highway agency	State transportation department.
State highway agencies.	State transportation departments.
HA	TD.
SHA	STD.

§ 645.105 [Amended]

3. Amend § 645.105 by removing the paragraph designations from all definitions and by placing all definitions in alphabetical order.

4. Revise § 645.109(c) to read as follows:

§ 645.109 Preliminary engineering.

* * * * *

(c) The procedures in 23 CFR part 172, Administration of Engineering and Design Related Service Contracts, may be used as a guide for reviewing proposed consultant contracts.

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

§ 645.113 Agreements and authorizations.

* * * * *

(f) When proposed utility relocation and adjustment 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. Amend § 645.117 to add paragraph (a)(3) and to revise paragraph (i)(2) to read as follows:

§ 645.117 Cost development and reimbursement.

(a) * * *

(3) The STD may develop, or work in concert with utility companies to develop, other acceptable costing methods, such as unit costs, to estimate and reimburse utility relocation expenditures. Such other methods shall be founded in generally accepted industry practices and be reasonably supported by recent actual expenditures. Unit costs should be developed periodically and supported annually by a maintained data base of relocation expenses. Development of any alternate costing method should consider the factors listed in paragraphs (b) through (g) of this section. Streamlining of the cost development and reimbursement procedures is encouraged so long as adequate accountability for Federal expenditures is maintained. Concurrence by the FHWA is required for any costing method used other than actual cost.

* * * * *

(i) * * *

(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 text of § 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. Amend § 645.207 by revising the definition for ''clear zone'' 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. This publication 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, D.C. 20001, or electronically at *http://www.aashto.org.*

* * * * *

9. In § 645.209, revise paragraph (j) and add paragraph (m) to read as follows:

§ 645.209 General requirements.

* * * * *

(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 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 it under its own State laws and/or regulations.

10. Amend § 645.211 by revising the introductory text of the section 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. These publications 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, or electronically at http://www.aashto.org. At a minimum, such policies shall make adequate provisions with respect to the following:

* * * * *

11. 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 regulation or with the STD's utility accommodation policy approved by the FHWA for use on Federal-aid highway projects.

* * * * *

[FR Doc. 00–29572 Filed 11–21–00; 8:45 am]

BILLING CODE 4910–22–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6859–3]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final deletion of the John Deere Ottumwa Works Site (Site) from the National Priorities List (NPL).

SUMMARY: EPA Region VII announces the deletion of the John Deere Ottumwa Works Site (Site) from the NPL and requests public comment on this action. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended (CERCLA). EPA and the Iowa Department of Natural Resources (IDNR) have determined that all appropriate response actions have been implemented and remedial actions conducted at the site to date remain protective of human health and the environment.

DATES: This ''direct final'' action will be effective January 22, 2001 unless EPA receives significant adverse or critical comments by December 22, 2000. If written dissenting comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Debra L. Kring, Environmental Protection Specialist, U.S. Environmental Protection Agency, 901 North 5th Street, Kansas City, KS 66101. Comprehensive information on this Site is available through the public docket which is available for viewing at the U.S. EPA Region VII Superfund Division Records Center, 901 North 5th Street, Kansas City, KS 66101.

FOR FURTHER INFORMATION CONTACT: Debra L. Kring, U.S. Environmental Protection Agency, Superfund Division, 901 North 5th Street, Kansas City, KS 66101, (913) 551–7725, fax (913) 551–7063.

SUPPLEMENTARY INFORMATION:

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I. Introduction

The Environmental Protection Agency (EPA), Region VII announces the deletion of the John Deere Ottumwa Works site, Ottumwa, Iowa from the NPL, Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300. The EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of these sites. EPA and the Iowa Department of Natural Resources (IDNR) have determined that the remedial action at the Site has been successfully executed. EPA will accept comments on this notice thirty days after publication of this document in the **Federal Register**.

Section II of this action explains the criteria for deleting sites from the NPL. Section III discusses the procedures that EPA is using for this action. Section IV discusses the history of the John Deere Ottumwa Site and explains how the Site meets the deletion criteria. Section V states EPA's action to delete the releases of the Site from the NPL unless dissenting comments are received during the comment period.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that sites may be deleted from, or recategorized on the NPL where no further response is appropriate. In making a determination to delete a release from the NPL, EPA shall consider, in consultation with the state, whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

(iii) The remedial investigation has shown that the release poses no significant threat to public health or the