



DEPARTMENT OF TRANSPORTATION

[4910-22-P]

Federal Highway Administration

23 CFR Part 710

RIN 2125-AF77

Right-of-Way and Real Estate; Correction

AGENCY: Federal Highway Administration (FHWA), U.S. Department of Transportation (DOT).

ACTION: Correcting amendment.

SUMMARY: This rule makes a technical correction to the regulations concerning right-of-way and real estate. The amendment contained herein makes no substantive change to the FHWA regulations, policies, or procedures. This rule updates the language to move a misplaced word.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Arnold Feldman, Office of Real Estate Services, (202) 366-2028, Arnold.Feldman@dot.gov; or Hannah Needleman, Office of the Chief Counsel, (202) 366-1345, Hannah.Needleman@dot.gov; Federal Highway Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

Office hours for the FHWA are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded from the Office of the Federal Register's home page at: <http://www.archives.gov> and the Government Publishing Office's Web page at: <http://www.gpoaccess.gov/nara>.

Background

This rule makes a technical correction to the regulations that govern Direct Federal Acquisition to correct a misplaced word in the first sentence of 23 CFR 710.603(a). The preamble to the Final Rule (81 FR 57716, August 23, 2016) discusses this sentence and makes clear that no changes would be made to the sentence proposed in the NPRM (79 FR 69998, November 24, 2014). However, the regulatory text adopted switches the order of the words in the sentence. This action corrects the regulatory text to reduce confusion and reflect the Agency's intended language. Specifically, the word "not" is relocated so that the current relevant portion of language is changed from "[t]he provisions of this paragraph may not be applied to any real property that is owned by the United States" to read "[t]he provisions of this paragraph may be applied to any real property that is not owned by the United States."

Rulemaking Analyses and Notice

Under the Administrative Procedure Act (5 U.S.C. 553(b)), an agency may waive the normal notice and comment requirements if it finds, for good cause, that they are impracticable, unnecessary, or contrary to the public interest. The FHWA finds that notice and comment for this rule is unnecessary and contrary to the public interest because it will have no substantive impact, is technical in nature, and relates only to

management, organization, procedure, and practice. The FHWA does not anticipate receiving meaningful comments on it. States, local governments, and their consultants rely upon the regulations corrected by this action. This correction will reduce confusion for these entities and should not be unnecessarily delayed. Accordingly, for the reasons listed above, the agencies find good cause under 5 U.S.C. 553(b)(3)(B) to waive notice and opportunity for comment.

Executive Order 12866 (Regulatory Planning and Review,) Executive Order 13563 (Improving Regulation and Regulatory Review), Executive Order 13771 (Reducing Regulations and Controlling Regulatory Costs), 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 the U.S. Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking will be minimal. This rule only entails a minor correction that will not in any way alter the regulatory effect of 23 CFR part 710. Thus, this final rule will not adversely affect, in a material way, any sector of the economy. In addition, these changes will not interfere with any action taken or planned by another agency and will not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. This action complies with EOs 12866, 13563, and 13771 to improve regulation. The FHWA considers this proposed rule to be an EO 13771 deregulatory action because it is intended to reduce confusion and reflect the Agency's intended language.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601-612) FHWA has evaluated the effects of this action on small entities and have determined that the action will not have a significant economic impact on a substantial number of small entities. This final rule will not make any substantive changes to our regulations or in the way that our regulations affect small entities; it merely corrects technical errors. For this reason, FHWA certifies that this action will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule does not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4, March 22, 1995, 109 Stat. 48). This rule does not impose any requirements on State, local, or Tribal governments, or the private sector and, thus, will not require those entities to expend any funds.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and FHWA has determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment. The FHWA has also determined that this action does not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to these programs.

Paperwork Reduction Act

This action does not create any new information collection requirements for which a Paperwork Reduction Act submission to the Office of Management and Budget would be needed under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501-3520.

National Environmental Policy Act

The FHWA has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4347) and has determined that this action will not have any effect on the quality of the environment.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this action under Executive Order 13175, dated November 6, 2000, and concluded that this rule will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian Tribal government; and will not preempt Tribal law. There are no requirements set forth in this rule that directly affect one or more Indian Tribes. Therefore, a Tribal summary impact statement is not required.

Executive Order 12988 (Civil Justice Reform)

This rule 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)

Under Executive Order 13045, Protection of Children from Environmental Health and Safety Risks, this final rule is not economically significant and does not involve an environmental risk to health and safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This final 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.

Executive Order 13211 (Energy Effects)

This final rule has been analyzed under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The FHWA has determined that it is not a significant energy action under that order because it is not a significant regulatory action under Executive Order 12866 and this final rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

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 twice each year. The RINs 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 710

Grant programs-transportation, Highways and roads, Real property acquisition, Reporting and recordkeeping requirements, Rights-of-way.

Issued on: May 3, 2018

Brandye L. Hendrickson
Acting Administrator

In consideration of the foregoing, 23 CFR part 710 is amended as set forth below.

PART 710—RIGHT-OF-WAY AND REAL ESTATE

1. The authority citation for part 710 continues to read as follows:

Authority: Secs.1302 and 1321, Pub. L. 112-141, 126 Stat. 405. Sec. 1307, Pub. L. 105-178, 112 Stat. 107; 23 U.S.C. 101(a), 107, 108, 111, 114, 133, 142(f), 156, 204, 210, 308, 315, 317, and 323; 42 U.S.C. 2000d et seq., 4633, 4651-4655; 2 CFR 200.311; 49 CFR 1.48(b) and (cc), parts 21 and 24; 23 CFR 1.32.

2. Amend § 710.603 by revising the first sentence of paragraph (a) to read as follows:

§710.603 Direct Federal acquisition.

(a) The provisions of this paragraph may be applied to any real property that is not owned by the United States and is needed in connection with a project for the construction, reconstruction, or improvement of any section of the Interstate System or for a Defense

Access Road project under 23 U.S.C. 210, if the SDOT is unable to acquire the required ROW or is unable to obtain possession with sufficient promptness. * * *

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