

account subject to the titling requirements set forth in § 416.645. Dedicated accounts may not be in the form of certificates of deposit, mutual funds, stocks, bonds or trusts.

(2) A representative payee shall use dedicated account funds, whether deposited on a mandatory or permissive basis (as described in § 416.546), for the benefit of the child and only for the following allowable expenses—

(i) Medical treatment and education or job skills training;

(ii) If related to the child's impairment(s), personal needs assistance; special equipment; housing modification; and therapy or rehabilitation; or

(iii) Other items and services related to the child's impairment(s) that we determine to be appropriate. The representative payee must explain why or how the other item or service relates to the impairment(s) of the child.

(3) Representative payees must keep records and receipts of all deposits to and expenditures from dedicated accounts, and must submit these records to us upon our request, as explained in §§ 416.635 and 416.665.

(4) The use of funds from a dedicated account in any manner not authorized by this section constitutes a misapplication of benefits. These misapplied benefits are not an overpayment as defined in § 416.537; however, if we determine that a representative payee knowingly misapplied funds in a dedicated account, that representative payee shall be liable to us in an amount equal to the total amount of the misapplied funds.

(5) The restrictions described in this section and the income and resource exclusions described in §§ 416.1124(c)(20) and 416.1247 shall continue to apply until all funds in the dedicated account are depleted or eligibility for benefits terminates, whichever comes first. This continuation of the restrictions and exclusions applies in situations where funds remain in the account in any of the following situations—

(i) A child attains age 18, continues to be eligible and receives payments directly;

(ii) A new representative payee is appointed. When funds remaining in a dedicated account are returned to us by the former representative payee, the new representative payee must establish an account in a financial institution into which we will deposit these funds, even if the amount is less than that prescribed in § 416.546; or

(iii) During a period of suspension due to ineligibility as described in § 416.1321, administrative suspension,

or a period of eligibility for which no payment is due.

Subpart K—[Amended]

10. The authority citation for subpart K of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act (42 U.S.C. 902(a)(5), 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383); sec. 211, Pub. L. 93–66, 87 Stat. 154 (42 U.S.C. 1382 note).

11. Section 416.1124 is amended by removing the “and” at the end of paragraph (c)(18) and the period at the end of paragraph (c)(19), adding “; and” at the end of paragraph (c)(19), and adding paragraph (c)(20) to read as follows:

§ 416.1124 Unearned income we do not count.

* * * * *

(c) * * *

(20) Interest or other earnings on a dedicated account which is excluded from resources. (See § 416.1247).

Subpart L—[Amended]

12. The authority citation for subpart L of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act (42 U.S.C. 902(a)(5), 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383); sec. 211, Pub. L. 93–66, 87 Stat. 154 (42 U.S.C. 1382 note).

13. Section 416.1210 is amended by removing the “and” at the end of paragraph (p) and the period at the end of paragraph (q), adding “; and” at the end of paragraph (q), and adding paragraph (r) to read as follows:

§ 416.1210 Exclusions from resources; general.

* * * * *

(r) Dedicated financial institution accounts as provided in § 416.1247.

14. A new § 416.1247 is added to read as follows:

§ 416.1247 Exclusion of a dedicated account in a financial institution.

(a) *General.* In determining the resources of an individual (or spouse, if any), the funds in a dedicated account in a financial institution established and maintained in accordance with § 416.640(e) will be excluded from resources. This exclusion applies only to benefits which must or may be deposited in such an account, as specified in § 416.546, and accrued interest or other earnings on these benefits. If these funds are commingled

with any other funds (other than accumulated earnings or interest) this exclusion will not apply to any portion of the funds in the dedicated account.

(b) *Exclusion during a period of suspension or termination.* (1) *Suspension.* The exclusion of funds in a dedicated account and interest and other earnings thereon continues to apply during a period of suspension due to ineligibility as described in § 416.1321, administrative suspension, or a period of eligibility for which no payment is due, so long as the individual's eligibility has not been terminated as described in §§ 416.1331 through 416.1335.

(2) *Termination.* Once an individual's eligibility has been terminated, any funds previously excluded under paragraph (a) of this section may not be excluded if the individual establishes a subsequent period of eligibility by filing a new application.

[FR Doc. 96–32134 Filed 12–19–96; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 668

[FHWA Docket No. 95–25]

RIN 2125–AD60

Emergency Relief Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is amending its regulation on the emergency relief (ER) program in order to incorporate changes made to 23 U.S.C. 120 and 125 by the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (Pub. L. 102–240, 105 Stat. 1914). The time period in which the Federal share payable for certain eligible emergency repairs is 100 percent will be extended from 90 days to 180 days as a result of this final rule; the limit for total obligations for ER projects in any fiscal year in the Virgin Islands, Guam, American Samoa, and the Commonwealth of Northern Mariana Islands will be increased from \$5 million to \$20 million; and the term “Federal-aid highway systems” will be replaced with the term “Federal-aid highways” to conform with terminology now used to describe highways eligible for Federal-aid ER assistance. In addition, various statements clarifying eligible uses of ER funding will be incorporated into the regulation.

EFFECTIVE DATE: January 21, 1997.

FOR FURTHER INFORMATION CONTACT:

Mohan P. Pillay, Office of Engineering, 202-366-4655, or Wilbert Baccus, Office of the Chief Counsel, 202-366-0780, FHWA, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Background

The changes to the FHWA's ER regulations, which will result from this final rule, were developed based on the comments made to a notice of proposed rulemaking (NPRM) on this subject published in the Federal Register on November 13, 1995, at 60 FR 56962 (FHWA Docket No. 95-25). Interested persons were invited to participate in the development of this final rule by submitting written comments on the NPRM to FHWA Docket 95-25 on or before January 12, 1996. Comments were received from 7 State highway agencies (SHAs). All comments received on the amendments proposed in the NPRM have been considered in adopting this final rule.

The current FHWA regulations implementing the emergency relief program are found primarily at 23 CFR part 668. Subpart A of part 668 sets forth the procedures for the administration of ER funds for the repair or reconstruction of Federal-aid highways. This final rule amends these regulations in the following manner and for the reasons indicated below.

Three of the States expressed support in general for the changes proposed by the NPRM. The other four States supported individual changes and/or presented suggestions on further changes to be made. Amendments to the rule, along with suggested changes by commenters, are discussed below.

In subpart A, the terms "Federal-aid system" and "Federal-aid highway system" will be replaced with the term "Federal-aid highways." The revision is in accordance with The Dire Emergency Supplemental Appropriations Act (Pub. L. 102-302, 106 Stat. 248) which amended 23 U.S.C. 125(b) by replacing the term "Federal-aid highway systems including the Interstate System" with the term "Federal-aid highways." No changes were suggested by commenters.

In § 668.101, the second sentence will be amended by replacing "Federal roads not on the Federal-aid system" with "Federal roads that are not part of Federal-aid highways." The NPRM proposal was to replace "Federal roads not on the Federal-aid system" with "roads on Federal lands." One commenter recommended changing the words "roads on Federal lands" to

"Federal roads that are not part of Federal-aid highways" to be consistent with the term Federal roads used in Part 668, Subpart B, Procedures for Federal Agencies for Federal Roads, which is cross referenced here. The FHWA agrees with the commenter's recommendation and it was incorporated into this final rule.

Section 668.105(e) will be amended by adding the words "or by a toll authority for repair of the highway facility" after the words "political subdivision" in the last sentence. This amendment clarifies that any compensation or insurance received by a toll authority whose facility is being repaired with ER funding must be appropriately credited to the ER project. In the case of a toll facility, the credit would be based on that portion of the compensation or insurance attributable to the cost of repair of capital improvements. No comments were received on this amendment.

In § 668.107, paragraph (a) will be amended to extend to 180 days the current 90-day time period following a natural disaster or catastrophic failure in which the Federal share payable for certain eligible emergency repair costs may amount to 100 percent. This amendment is made to conform § 668.107(a) to 23 U.S.C. 120(e) (as amended by section 1022 of the ISTEA, Public Law 102-240, 105 Stat. 1914 (1991)). One State suggested a further extension from 180 days up to 360 days on a case-by-case basis "where high water levels continue to cause damage and/or cause delays in performing emergency work." FHWA does not have any flexibility to extend the 180-day time period for the 100 percent Federal share for emergency repairs. The Federal share, including the 180-day time period, is established by 23 U.S.C. 120(e) and there is no authority to change the time period. Another State requested clarification as to whether 180 days "after the disaster" starts on the initial day of the occurrence or 180 days after the last day of the occurrence. The intent is that 180 days starts on the initial day of the occurrence. In certain circumstances, emergency repair work to restore essential traffic, or to protect the remaining facilities, or to minimize the extent of damage cannot be undertaken on the initial day of the occurrence of the disaster. In such circumstances, it is acceptable to consider the date on which the first emergency work was undertaken as the beginning day of the first 180 days. It is emphasized that there is only one 180-day period for the entire disaster.

In § 668.107, the second sentence of paragraph (b) is amended to raise to \$20

million the current \$5 million limit on the total amount of obligations for emergency relief projects in any fiscal year in the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. This amendment is made to conform this provision with that set forth in 23 U.S.C. 125(b)(2) (as amended by section 1022(b) of the ISTEA). No changes were suggested by commenters.

One State suggested several minor editorial changes to §§ 668.107 (a) and (b) including revised language that reflects a new definition of "emergency repairs." This new definition for "emergency repairs" along with FHWA reasons for not including it as part of the final rule are discussed later in this preamble. Additionally, the minor editorial changes did not significantly clarify or improve the wording in these two sections. As a result, the FHWA is making no further changes to §§ 668.107 (a) and (b) other than those discussed above.

Section 668.109(b) is amended to expand and clarify the eligible uses for ER funds based on recent experiences in administering the ER program. ER funds will now be eligible to participate in:

1. Raising of roadway grades temporarily to maintain essential traffic service during flooding.

This is a new activity considered eligible for ER funding. No changes were suggested by commenters. A new paragraph (b)(7) will be added to § 668.109 by this final rule to incorporate this change.

2. Raising grades of critical Federal-aid highways faced with long-term loss of use due to an unprecedented rising in basin water level.

In the past, reconstruction or repair of highways affected by basin flooding was generally not considered eligible for ER funding. Basin flooding was seen as a gradual rise in water level that could be predicted. Hence, work to prevent potential damage could be anticipated and was not considered eligible for ER funding. Now, basin flooding is an eligible activity under the ER program if it can be shown that (1) there has been an unprecedented rise in water level, both in terms of the magnitude of the increase and the time frame in which the increase occurred; and (2) there will be long-term loss of use of Federal-aid routes. As with any other disaster considered for funding under the ER program, for basin flooding, the Federal share of the estimated cost to raise the grade of critical Federal-aid routes to restore traffic service should exceed the \$500,000 minimum threshold. No changes were suggested by the commenters. A new paragraph (b)(8)

will be added to § 668.109 by this final rule to incorporate this change.

3. Repair of toll facilities when the provisions of 23 U.S.C. 129 are met.

This provision clarifies that ER funds can participate in repair of toll facilities on Federal-aid highways provided a toll agreement under 23 U.S.C. 129 is executed. No comments were received on this provision. A new paragraph (b)(9) will be added to § 668.109 by this final rule to incorporate this change.

4. Repair of surface damage by traffic but only on designated detour routes (both Federal-aid highways and non-Federal-aid highways) or on Federal-aid highways where the surface damage has been caused by traffic in route to make repairs to other damaged non-highway transportation facilities. For a more detailed discussion of roadway surface damage caused by this kind of traffic, see the discussion on § 668.109(c)(2) in this preamble.

In addition to the above mentioned items, one State recommended that the regulation be changed to make the following items also eligible for ER funding: (1) The replacement of equipment that is lost while it is being used to protect or open a facility to traffic; (2) the purchase of aeronautical equipment to be used in surveying site damages; (3) the construction of statewide command centers to be used to direct emergency service.

The FHWA is not expanding ER eligibility to include these three items. The ER program is not intended to compensate a State for all the costs it faces in responding to a disaster. For example, although ER funding may pay for the time that equipment is used to make eligible ER repairs, it is expected the State will assume the risks associated with the loss or damage of this equipment. In addition, it is expected that a State highway agency will be responsible for the costs associated with setting up command centers and other actions, such as utilizing aeronautical equipment, it deems necessary for managing its response to a disaster.

Section 668.109(c), which describes activities ineligible for ER funding, will be amended in § 668.109(c)(1) to eliminate the reference to slip-outs in cut or fill slopes which do not extend to the traveled way. This revision will allow ER funding to be used to repair significant slope damage, even if the slope damage does not extend into the traveled way. Two States expressed opposition to this change, although upon further review of their comments it appears they misunderstood the NPRM proposal and, in fact, both States support extending ER funding eligibility

to cover this situation. One State suggested adding the words "off the traveled way" after the phrase "mud and debris deposits" to clarify the paragraph. The FHWA agrees this will help clarify the intent of this provision and the suggested change was included in this final rule.

Section 668.109(c)(2) will be amended to allow limited use of ER funds to repair roadway surface damage caused by traffic on designated detours and by traffic in route to repair other non-highway transportation facilities. In general, repair of traffic damage to roadway surfaces, even if this damage is aggravated by saturated subgrade conditions or by inundation of the roadway, is not eligible for ER fund participation. In the past, one exception was allowed: ER funds could participate in repair of surface damage caused by vehicles making repairs on Federal-aid highways. For example, there may be a need to immediately haul material to a damaged Federal-aid highway facility to begin emergency repairs and in doing so the haul vehicles significantly damage roadway surfaces, either of Federal-aid or non-Federal-aid highways. In these instances, ER funds have been able to participate in repair of the damaged roadway surfaces and this exception is retained in the regulation.

As a result of the amendment to § 668.109(c)(2), ER funds will now be eligible for participation in the repair of surface damage to a designated detour (which may lie on both Federal-aid and non-Federal-aid routes) caused by traffic that has been detoured from a damaged Federal-aid highway. This may include roadway surface repairs to provide reasonable traffic service during the period of time the detour is in use as well as surface repairs to the detour route to restore the detour roadway surface to its predisaster condition after detour traffic has been removed. A designated detour is the officially signed detour that highway officials have established to reroute traffic around the damaged portion of the Federal-aid highway. In addition, ER funds will also be able to participate in the repair of surface damage to Federal-aid highways (only) caused by vehicles making repairs to other damaged non-highway transportation facilities, for example, surface damage caused by vehicles hauling materials to repair a damaged railroad facility.

Two States suggested that ER eligibility be further expanded to include traffic damage to roadways that have saturated bases. If, after periods of heavy rainfall or when flood waters recede, highway officials find that roadbeds are saturated, it is expected

that these officials will control subsequent traffic use of these roads in such a manner that this traffic will not damage the facility. Accordingly, the FHWA plans to continue to limit ER eligibility to repair roadway surfaces to those cases where damage has been caused directly by the flood waters, other than those exceptional circumstances listed in amended § 668.109(c)(2).

Section 668.109(c)(6) is amended to cross-reference newly added § 668.109(b)(8) which discusses the extent to which ER funding can participate in raising grades of Federal-aid highways to compensate for an unprecedented rise in basin water levels.

Section 668.109(c)(7) is amended to redefine the term "scheduled." As currently defined, the term signifies permanent repair or replacement of a deficient bridge is included in the approved Federal-aid program, the current or next year's Highway Bridge Replacement and Rehabilitation Program, or in the contract plans being prepared. The current definition refers to an approved Federal-aid program, which is a program incorporating various projects submitted by a State to the FHWA for approval in accordance with the requirements of 23 U.S.C. 105; however, 23 U.S.C. 105 has been superseded by the new requirements of 23 U.S.C. 135 and, as a result, a State now is required to develop a Statewide Transportation Improvement Program (STIP) which is to be submitted to the FHWA for approval. To update and simplify the definition of "scheduled," the amended definition would refer only to the approved STIP. One State suggested that a bridge project be considered scheduled if the construction phase is included in the FHWA approved current annual element of the STIP. The purpose of this provision is to prevent a State from using ER funding to replace or reconstruct a deficient bridge when it was already planning to use other funding sources for that purpose. The FHWA believes that an approved STIP, in which the State has identified a funding source to advance projects during the upcoming 3-year period, reasonably reflects a State's intent to have used non-ER funding source for a bridge project. Therefore, the proposal to limit the term "scheduled" to only the first year of the STIP is not being adopted.

A new paragraph (c)(10) will be added to § 668.109 to make clear that the loss of toll revenue is not eligible for reimbursement. No comments were received on this new section.

Section 668.113(a) is amended to remove the outdated reference to the program requirements of 23 CFR part 630. The requirements for a program of ER projects are adequately described in § 668.113; therefore, cross-reference to 23 CFR part 630 is no longer needed. No comments were received regarding this change.

Section 668.113(b)(1) will be amended to reflect the current policy on project review, oversight, and administration as applicable to ER projects. In those cases where a regular Federal-aid project (in a State) similar to the ER project would be handled under the certification acceptance procedures found in 23 U.S.C. 117 or the project oversight exceptions found in 23 U.S.C. 106, the ER project may, as a result of this final rule, be handled under these alternate procedures subject to the following two conditions: (1) Any betterment to be incorporated into the project and for which ER funding is requested must receive prior FHWA approval, and (2) the FHWA reserves the right to conduct final inspections on ER projects as deemed appropriate. No comments were received on this change.

In addition to the changes described above, minor editorial changes in §§ 668.109(b)(3) and 668.111(b)(2) will also be made for clarity.

One State commented on several sections of Part 668, subpart A which were not proposed for change and/or modification in the NPRM. The State suggested revision of the definition for emergency repairs and the addition of several new definitions as well as changes to other provisions of the regulation. These suggestions are discussed below.

The commenter proposed to revise the definition of "emergency repairs" to read as follows: those repairs including traffic operations undertaken during or within 180 days after the actual occurrence of a natural disaster or catastrophic failure for the purpose of (1) minimizing the extent of damage (2) protecting remaining facilities, or (3) restoring essential travel.

The major purpose of emergency repairs is to immediately open the road to essential travel. By eliminating the term "immediate" from the current definition and also by including the term "work undertaken within 180 days," the revised definition implies that there is no urgency in undertaking repairs. Further, the statutory 180-day limit found in 23 U.S.C. 120(e) defines a time period for a special Federal match and is not related to the definition of what is or is not an emergency repair. The FHWA feels that the existing definition of emergency

repairs is adequate and no change is being made.

The commenter also proposed adding new definitions to the regulation for the following terms: actual occurrence, betterments, eligible repair costs, site, and sub-applicant. In some cases, these new definitions were in conjunction with other suggested changes to the regulation. The FHWA believes that most of the new definitions are unnecessary at this time; however, some may be considered during future revisions to the regulation.

The commenter proposed to amend § 668.105(i) to allow application of the small purchase procedures of the Federal common rule regulations in 49CFR18.36(d)(1) to permanent repair and reconstruction work. The common rule regulation may not apply to highway construction grants as provided in 49 CFR 18.36(j) which states that "23 U.S.C. 112(a) directs the Secretary to require recipients of highway construction grants to use bidding methods that are 'effective in securing competition'." Permanent repairs and reconstruction work under the ER program are viewed as construction grants subject to 23 U.S.C. 112(a). Therefore, this proposed change is not acceptable.

The commenter proposed to amend § 668.105(j) to require that the FHWA consider the estimated cost of non-Federal-aid highway damage in determining whether a disaster is of a magnitude to qualify it for assistance under the ER program. The FHWA is not adopting this change. The FHWA believes that in determining whether a disaster has caused enough damage to trigger eligibility under FHWA's ER program, only damage to Federal-aid highways should be considered. If significant damage has occurred to non-Federal-aid highways, typically the Federal government will assist in paying for repair of these non-Federal-aid highways through the Federal Emergency Management Agency's program. The ER program is not intended to take care of all repair costs. When a disaster occurs, State and local highway agencies must expect additional expenditures. The existing requirement that there be at least \$500,000 in estimated ER expenditures for Federal-aid highways before a State struck by a disaster will be considered eligible for ER funding is viewed as a reasonable threshold and will be retained.

The commenter proposed to amend § 668.109(a) to read as follows:

(a) the eligibility of all work is contingent upon approval by the Federal Highway

Administrator of an application for ER in accordance with the following: (1) prior FHWA approval or authorization is not required for emergency repairs and related preliminary engineering (PE), right of way and construction engineering (CE), and (2) permanent repairs or restoration including PE, right of way and CE must have prior FHWA program approval and authorization unless these activities are carried out in conjunction with emergency repairs.

Although, there is no requirement for prior FHWA approval for emergency repairs, the emergency repair projects including preliminary engineering and right-of-way must be included along with the permanent repair in an approved program of projects according to the existing regulation. This requirement satisfies the planning process requirements of 23 U.S.C. 135 and serves the purpose of keeping an inventory of projects funded with ER funds for subsequent reimbursement of the costs.

Further, the commenter's proposal is more restrictive than the existing regulation. If adopted, prior FHWA approval would be required for preliminary engineering associated with permanent repairs. The existing regulation does not require prior FHWA approval for preliminary engineering regardless of whether it is associated with permanent repair or emergency repair. Thus, the FHWA has decided not to adopt the proposed amendment.

The commenter proposed to add a new paragraph to § 668.109(b) making costs incurred by the State to conduct preliminary field surveys on Federal-aid highways under local jurisdiction eligible for ER reimbursement. As noted previously, it is expected that State and local highway agencies will assume some costs in responding to a disaster. The FHWA believes that it is not unreasonable to expect the State to fund costs associated with preliminary damage surveys necessary for managing its response to a disaster. Accordingly, the FHWA is not making this activity eligible for reimbursement.

The commenter proposed to remove the provision in § 668.109(c)(4) which does not allow ER funds to participate in maintenance of detours. In general, the FHWA does not agree with this proposal. Routine maintenance of a detour similar to routine maintenance of a highway, is the responsibility of the State. Plowing snow, mowing roadsides, maintaining drainage and normal replacement of pre-existing permanent roadway signs, are examples of routine maintenance activities that the State should perform on the detour facility or detour route without ER funding assistance.

However, the FHWA is agreeable to the use of ER funds to perform repairs to the roadway surface of the detour during the time the detour is in use. For example, an interstate route is damaged and closed by a disaster, and the interstate traffic is detoured to a parallel State route. The State route may not have an adequate pavement structure to handle the added traffic, and because of the need to immediately provide traffic service, there is no time to overlay the State route before the interstate traffic is detoured to it. The roadway surface of the detour may begin to suffer failures that require quick repairs, so that the detour can continue to provide reasonable traffic service. These repairs are eligible for ER funding.

As previously discussed in the preamble, § 668.109(c)(2) is amended to allow ER funds to participate in the repair of surface damage to a designated detour. This may include surface repairs while the detour is in use as well as those repairs needed to restore the surface to its predisaster condition after traffic has been removed from the detour.

In addition, § 668.109(c)(4) is amended to clarify that the prohibition against use of ER funds for maintenance of detours is limited to routine maintenance activities not related to the increased traffic volumes.

The commenter proposed to amend § 668.111(c)(1) on application procedures to indicate that a copy of the Presidential declaration itself is an acceptable option. The President's declaration is related to disaster relief under authority of P.L. 93-288, and is in response to a request from the Governor. The proclamation by the Governor as required in title 23 is an entirely separate official action from the declaration by the President of the United States. The FHWA agrees with this revision and the section is amended to read as follows:

"A copy of the Governor's proclamation or request for Presidential declaration or a Presidential declaration."

The commenter proposed to amend § 668.113(b) to add, for clarification, a cross-reference to FHWA's Environmental Impact and Related Procedures regulation, 23 CFR part 771, where there is a provision stating that emergency repair work is considered a categorical exclusion and normally does not require further approval under the National Environmental Policy Act. The FHWA agrees that such a cross reference would be useful and a new provision is being added to § 668.113(b) to read as follows: "Emergency repair work meets the criteria for categorical exclusions

pursuant to 23 CFR 771.117 and normally does not require any further National Environmental Policy Act (NEPA) approvals."

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

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of the Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking will be minimal. These changes 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 rulemaking merely amends current regulations implementing the emergency relief program to incorporate changes made to this program by Congress in the ISTEA. It is not anticipated that these changes will affect the total Federal funding available under the ER program. Consequently, 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 hereby certifies that this action will not have a significant economic impact on a substantial number of small entities. These amendments will only clarify and simplify procedures used for providing emergency relief assistance to States in accordance with the existing laws, regulations, and guidance. The ER funds received by the States will not be significantly affected by these proposed amendments. States are not included in the definition of "small entity" set forth in 5 U.S.C. 601. Therefore, this action will not have a significant economic impact on a substantial number of small entities for the purposes of the Regulatory Flexibility Act.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

These amendments will not preempt any State law or State regulation, and no additional costs or burdens will be imposed on the States thereby. In addition, this rule will not affect the States' ability to discharge traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for the purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501-3500.

National Environmental Policy Act

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

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number 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 668

Emergency Relief Program, Grant programs—transportation, Highways and roads.

Issued on: December 12, 1996.

Rodney E. Slater,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA is amending title 23, Code of Federal Regulations, part 668 as set forth below.

PART 668—EMERGENCY RELIEF PROGRAM

1. The authority citation for part 668 is revised to read as set forth below and all other authority citations which appear throughout part 668 are removed:

Authority: 23 U.S.C. 101, 120(e), 125 and 315; 49 CFR 1.48(b).

Subpart A—Procedures for Federal-Aid Highways**§ 668.101 [Amended]**

2. In § 668.101, the second sentence is amended by removing the words "Federal roads not on the Federal-aid system" and adding in their place the words "Federal roads that are not part of the Federal-aid highways".

§ 668.103 [Amended]

3. Section 668.103 is amended by removing the paragraph designations (a) through (i) from the definitions; in the definition for "Applicant" by removing the words "Federal-aid highway system" and adding in their place the words "Federal-aid highways".

§ 668.105 [Amended]

4. In § 668.105, the last sentence of paragraph (e) is amended by adding the words "or by a toll authority for repair of the highway facility" after the words "political subdivision."

§ 668.107 [Amended]

5. Section 668.107, is amended in paragraph (a) by removing the words "within 90 days" and adding in their place the words "within 180 days" and in paragraph (b) by removing the figure "\$5 million" and inserting in its place the figure "\$20 million".

6. Section 668.109, is amended in paragraph (b)(3) by replacing the misspelled word "Actural" with the word "Actual"; in paragraph (b)(5) by removing the word "and" after the semicolon; by replacing the period at the end of paragraph (b)(6) with a semicolon; by adding paragraphs (b)(7), (b)(8), and (b)(9); by revising paragraphs (c)(1), (c)(2), (c)(4), (c)(6), and (c)(7); and by adding paragraph (c)(9) to read as follows:

§ 668.109 Eligibility.

* * * * *

(b) * * *

(7) Temporary work to maintain essential traffic, such as raising roadway grade during a period of flooding by placing fill and temporary surface material;

(8) Raising the grades of critical Federal-aid highways faced with long-term loss of use due to basin flooding as defined by an unprecedented rise in basin water level both in magnitude and time frame; and

(9) Repair of toll facilities when the provisions of 23 U.S.C. 129 are met. If a toll facility does not have an executed toll agreement with the FHWA at the time of the disaster, a toll agreement may be executed after the disaster to qualify for that disaster.

(c) ER funds may not participate in:

(1) Heavy maintenance such as repair of minor damages consisting primarily of eroded shoulders, filled ditches and culverts, pavement settlement, mud and debris deposits off the traveled way, slope sloughing, slides, and slip-outs in cut or fill slopes. In order to simplify the inspection and estimating process, heavy maintenance may be defined using dollar guidelines developed by the States and Divisions with Regional concurrence;

(2) Repair of surface damage caused by traffic whether or not the damage was aggravated by saturated subgrade or inundation, except ER funds may participate in:

(i) Repair of surface damage caused by traffic making repairs to Federal-aid highways;

(ii) Repair of surface damage to designated detours (which may lie on both Federal-aid and non-Federal-aid routes) caused by traffic that has been detoured from a damaged Federal-aid highway; and

(iii) Repair of surface damage to Federal-aid highways caused by vehicles making necessary repairs to other damaged non-highway transportation facilities, ie; railroads, airports, ports, etc.;

* * * * *

(4) Routine maintenance of detour routes, not related to the increased traffic volumes, such as mowing, maintaining drainage, pavement signing, snow plowing, etc.

* * * * *

(6) Repair or reconstruction of facilities affected by long-term, pre-existing conditions or predictable developing situations, such as, gradual, long-term rises in water levels in basins or slow moving slides, except for raising grades as noted in § 668.109(b)(8).

(7) Permanent repair or replacement of deficient bridges scheduled for replacement with other funds. A project is considered scheduled if the construction phase is included in the FHWA approved Statewide Transportation Improvement Program (STIP);

(8) * * *

(9) Reimbursing loss of toll revenue.

* * * * *

§ 668.111 [Amended]

7. In § 668.111, paragraph (b)(2) is amended by removing the words "receipt of", and paragraph (c)(1) is revised to read as follows:

§ 668.111 Application Procedures.

* * * * *

(c) * * *

(1) A copy of the Governor's proclamation, request for a Presidential

declaration, or a Presidential declaration; and

* * * * *

8. In § 668.113, paragraph (a) is amended by revising the first and second sentences, paragraph (b)(1) is revised, and paragraph (b)(3) is added to read as follows:

§ 668.113 Program and project procedures.

(a) Immediately after approval of an application, the FHWA Division Administrator will notify the applicant to proceed with preparation of a program which defines the work needed to restore or replace the damaged facilities. It should be submitted to the FHWA Division Administrator within 3 months of receipt of this notification.

* * *

(b) *Project Procedures.* (1) Projects for permanent repairs shall be processed in accordance with regular Federal-aid procedures, except in those cases where a regular Federal-aid project (in a State) similar to the ER project would be handled under the certification acceptance procedures found in 23 U.S.C. 117 or the project oversight exceptions found in 23 U.S.C. 106, the ER project can be handled under these alternate procedures subject to the following two conditions:

(i) Any betterment to be incorporated into the project and for which ER funding is requested must receive prior FHWA approval; and

(ii) The FHWA reserves the right to conduct final inspections on ER projects as deemed appropriate.

(2) * * *

(3) Emergency repair meets the criteria for categorical exclusions pursuant to 23 CFR 771.117 and normally does not require any further National Environmental Policy Act (NEPA) approvals.

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BILLING CODE 4910-22-P

DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Part 1**

[TD 8699]

RIN 1545-AS19

Credit for Employer Social Security Taxes Paid on Employee Tips

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Removal of temporary regulations.