

Dated: November 5, 1995.
 Mary A. Ryan,
Assistant Secretary for Consular Affairs.
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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: Notice of proposed rulemaking (NPRM).

SUMMARY: The FHWA proposes to amend its regulation on the emergency relief (ER) program in order to incorporate changes made by the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA). The time period in which the Federal share payable for certain eligible emergency repairs is 100 percent would be extended from 90 days to 180 days; 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 would be increased from \$5 million to \$20 million; and the term "Federal-aid highway systems" would 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 would be incorporated into the regulation.

DATES: Written comments are due on or before January 12, 1996. Comments received after that date will be considered to the extent practicable.

ADDRESSES: All written, signed comments should refer to the docket number that appears at the top of this document and should be submitted to Room 4232, HCC-10, 400 Seventh Street, SW., Washington, D.C. 20590. All comments and suggestions received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

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, D.C. 20590.

SUPPLEMENTARY INFORMATION:

Background

The current FHWA regulations implementing the emergency relief program are found primarily in 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. The FHWA intends to amend these regulations in the following manner and for the reasons indicated below.

In subpart A, the terms "Federal-aid system" and "Federal-aid highway system" would 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."

In section 668.101, the second sentence would be amended by replacing "Federal roads not on the Federal-aid system" with "roads on Federal lands." This modification reflects the change in terminology used to describe highways eligible for Federal assistance and clarifies the cross reference to emergency relief funding for roads on Federal lands which is contained in subpart B of part 668.

Section 668.105(e) would be amended by adding the phrase "or by a toll authority for repair of the highway facility" after the words "political subdivision" in the last sentence. This amendment would require that an ER project receive a credit for that portion of insurance proceeds recovered by a toll authority that are attributable to the cost of capital improvements.

In section 668.107, the last sentence in paragraph (a) would 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 would be made to conform section 668.107(a) to 23 U.S.C 120(e) (as amended by section 1022 of the ISTEA).

In section 668.107, the second sentence of paragraph (b) would be 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 would parallel an amendment made to 23 U.S.C. 125(b)(2) by section 1022(b) of the ISTEA.

Section 668.109 would be amended to expand and clarify the eligible uses for ER funds based on recent experiences in administering the ER program. ER funds would be eligible to participate in:

1. Repair of traffic damage to roadway surfaces, including those on designated detours, attributable to emergency relief work.

2. Repair of damage to the surface of Federal-aid highways caused by traffic making necessary repairs to other transportation facilities (for example, trucks hauling materials to repair a damaged railroad facility).

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

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

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

Section 668.109 (c)(1) would be amended to clarify the extent to which certain activities listed under heavy maintenance are eligible for ER participation. The amendment would amend the policy that slope damage that does not extend into the travelled way is not eligible for ER participation. It is FHWA's current policy to consider repair of significant slip-outs of cut or fill slopes, even if the slip-outs do not extend into the travelled way, as an activity potentially eligible for ER funding.

Section 668.109 (c)(2) would be amended to cross-reference the newly added Section 668.109(b)(7) which discusses the extent to which ER funding can participate in the repair of damage to roadway surfaces caused by traffic.

Section 668.109 (c)(6) would be amended to cross-reference the newly added section 668.109(b)(9) which discusses the extent to which ER funding can participate in raising grades of Federal-aid highways due to an unprecedented rise in basin water levels.

Section 668.109(c)(7) would be amended to redefine the term "scheduled." As currently defined, the term 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, State now is required to develop a Statewide transportation improvement program which is to be submitted to the FHWA for approval. The existing definition of "scheduled" also refers to the current or next fiscal year's Highway Bridge Replacement and Rehabilitation Program or to a determination if contract plans are prepared. To update and simplify the definition of "scheduled," the proposed definition would refer only to the approved Statewide transportation improvement program.

A new paragraph (c)(10) would be added to Section 668.109 to make clear that the loss of toll revenue is not eligible for reimbursement.

Section 668.113(a) would be 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 section 668.113 and therefore cross-reference to 23 CFR part 630 is no longer needed.

Section 668.113(b)(1) would 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 can 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.

A few minor editorial changes in sections 668.109(b)(3) and 668.11(b)(2) would be made for clarity.

Rulemaking Analysis and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable, but the FHWA may issue a final rule at any time after the close of the comment period. In addition to the late comments, the FHWA will also continue to file relevant information in the docket as it becomes available after the comment closing date, and interested persons should continue to examine the docket for new material.

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

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking will be minimal. These proposed 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 proposed changes would 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 would 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 would 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 proposed amendments would not preempt any State law or State regulation, and no additional costs or burdens would be imposed on the States

thereby. In addition, this rule would 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 purpose of the Paperwork Reduction Act of 1980, 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 Part 668

Disaster assistance, Grant programs-transportation, Highways and roads, Reporting and recordkeeping requirements.

Issued on: October 23, 1995.

Rodney E. Slater,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA proposes to amend 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 added to read as set forth below and the authority citations for subparts A and B 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 stead the words "roads on Federal lands".

§ 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 adding in its place the figure "\$20 million".

6. Section 668.109, is amended in paragraph (b)(3) by revising the misspelled word "Actual" to read "Actual"; in paragraph (b)(5) by removing the word "and" after the semicolon; by removing the period at the end of paragraph (b)(6) and adding a semicolon in its place; by adding paragraphs (b)(7), (b)(8), (b)(9), and (b)(10); by republishing the introductory text of paragraph (c); by revising paragraphs (c)(1), (c)(2), (c)(6), and (c)(7); by removing the period at the end of paragraph (c)(8) and adding "; and" in its place; and by adding paragraph (c)(9) to read as follows:

§ 668.109 Eligibility.

* * * * *

(b) * * *

(7) Repair of traffic damage to roadway surfaces, including those on designated detours, caused by the movement of traffic during or following the incident period attributable to emergency relief work; and repair of damage to surface of Federal-aid highways caused by traffic making necessary repairs to Federal-aid highways as well as traffic making repairs to other transportation facilities, i.e., railroads, airports, ports, etc.;

(8) Temporary work to maintain essential traffic, such as, raising a roadway grade during a period of

flooding by placing fill and temporary surface material;

(9) 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

(10) 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, 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 for traffic damage repair as noted in paragraph (b)(7) of this section;

* * * * *

(6) Repair or reconstruction of facilities affected by long-term, pre-existing conditions or predictable developing situations, such as, gradual, longterm rises in water levels in basins or slow moving slides;

(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);

* * * * *

(9) Reimbursing loss of toll revenue.

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§ 668.111 [Amended]

7. In § 668.111, paragraph (b)(2) is amended by removing the words "receipt of".

8. In § 668.113, paragraph (a) is amended by revising the first and second sentences, and paragraph (b)(1) is revised 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.

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Coast Guard

33 CFR Part 110

[CGD08-95-019]

RIN 2115-AA98

Anchorage Grounds, Mississippi River Below Baton Rouge, LA., Including South and Southwest Passes

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to revise the anchorage regulations for the Mississippi River below Baton Rouge, La., including South and Southwest Passes in order to expand seven anchorages and establish four new anchorages in response to revetment work along the banks of the Mississippi River by the Army Corps of Engineers which has reduced the available space within existing anchorages.

DATES: Comments must be received by January 12, 1996.

ADDRESSES: Comments should be mailed to: Commander (oan), Eighth Coast Guard District, 501 Magazine Street, New Orleans, LA 70130-3396. The comments and other material related to this notice will be available for inspection and copying in Room 1211 at the above address. Normal office hours are between 7 a.m. and 3:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.