

excluded agreements representing the purchase of excluded burial spaces (see § 416.1124(c) (9) and (15)).

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## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### 23 CFR Part 667

[FHWA Docket No. 95-28]

RIN 2125-AD69

#### Elimination of Regulations Concerning the Public Lands Highways Discretionary Funds Program

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

**ACTION:** Notice of proposed rulemaking (NPRM) to remove a regulation.

**SUMMARY:** The FHWA is proposing to eliminate its regulations outlining the procedures to be followed in administering the Public Lands Highways (PLH) discretionary funds program. These provisions have become outdated and unnecessary as a result of amendments made by the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (Pub. L. 102-240, 105 Stat. 1914) to the statutory provisions in title 23 of the United States Code (U.S.C.) which authorize distribution of some of the funds appropriated for Public Lands Highways among the States on the basis of need. These amendments to title 23, U.S.C., significantly modify and clarify the eligibility criteria and selection process of the PLH discretionary program; as a result, the FHWA regulations concerning the PLH discretionary program have become obsolete. Consequently, in the interests of streamlining FHWA regulations and providing more flexibility in the administration of this program, the FHWA is proposing to eliminate these regulations.

**DATES:** Comments must be received on or before February 5, 1996.

**ADDRESSES:** Submit written, signed comments to FHWA Docket No. 95-28, Federal Highway Administration, Room 4232, HCC-10, Office of the Chief Counsel, 400 Seventh Street, SW., Washington, DC 20590. All comments 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 notice of

receipt of comments must include a self-addressed, stamped postcard.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mohan P. Pillay, Office of Engineering, HNG-12, (202) 366-4655 or Mr. Wilbert Baccus, Office of the Chief Counsel, HCC-32, (202) 366-1397, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:** Through the PLH Discretionary Program, the FHWA administers the allocation of Federal funds in the manner authorized by § 202(b) of title 23 of the U.S.C. "among those States having unappropriated or unreserved public lands, nontaxable Indian lands or other Federal reservations." Approximately \$56 million was made available to the States for the PLH Discretionary Program in FY 1995. The statute directs that 34 percent of the sums appropriated for public lands highways in a given fiscal year is to be allocated on the basis of need among qualifying States that apply for such funds through their State highway departments. (23 U.S.C. 202(b).) The statute also provides that these PLH funds are available for any kind of transportation project eligible for assistance under title 23, U.S.C., that is within or adjacent to or provides access to public lands areas. (23 U.S.C. 204(b).)

Although Congress did not direct that regulations be promulgated to implement the funding scheme established by this statute, the FHWA did promulgate regulations which outline the procedures for administering the PLH discretionary program. These regulations, for the most part, merely reiterate the application process and selection criteria outlined in the statute. For instance, the statute establishes that PLH discretionary funds are to be distributed on the basis of need among the States that apply through their State highway departments and that preference is to be given to those projects which are significantly impacted by Federal land and resource management activities. Part 667 restates these provisions, but it also supplements the statutory provisions with overly detailed descriptions of factors to be considered in the selection process and of the steps taken in the application and selection procedure. In addition, part 667 restates some of the factors established in the statute as defining the eligibility of certain projects for these funds.

The eligibility criteria and selection process of the PLH discretionary

program were modified and greatly clarified by amendments to title 23, U.S.C., that were enacted as part of the ISTEA (Pub. L. 102-240, 105 Stat. 1914). One change resulting from these amendments is that title 23, U.S.C., now provides a more detailed explanation of the kinds of projects which are eligible for PLH discretionary funds. The regulation delineating eligibility criteria in part 667 states that funds may be used for "engineering and construction of the mainline roadway including adjacent vehicular parking areas and construction elements related to scenic easements." (§ 667.7.) After the ISTEA amendments, title 23, U.S.C., now includes a provision entitled "Eligible Projects" which lists adjacent vehicular parking areas and acquisition of necessary scenic easements as two of seven types of projects qualifying for PLH funds.

These PLH regulations have also now become inconsistent with title 23, U.S.C., as a result of the ISTEA amendments. Section 667.7 of the regulations states that "funds may not be used for right-of-way costs, maintenance or other ancillaries such as sanitary, water and fire control facilities"; however, the list of eligible projects added to title 23, U.S.C. by the ISTEA includes, "construction and reconstruction of roadside rest areas including sanitary and water facilities." Thus, in general, the provisions regarding eligibility for PLH discretionary funds currently included in the FHWA regulations have become both outdated and unnecessary.

Amendments to title 23, U.S.C., added by the ISTEA also modify the selection process and the factors that will be taken into account in allocating PLH discretionary funds among the States. As a result of the ISTEA amendments, title 23, U.S.C., now states that preference will still be given to projects which are significantly impacted by Federal land and resource management activities, but now such preference will be given only if these projects are proposed by a State which contains at least 3 percent of the total public lands in the Nation. In light of this statutory change, the regulations in part 667 have become outdated because they provide that all projects which significantly benefit or improve Federal land and resource management will be given preference.

Consequently, as this examination of part 667 reveals, these regulations concerning the PLH discretionary program are unnecessary and in many instances either straightforwardly redundant or outdated because they have become inconsistent with the

authorizing statute. Therefore, the FHWA is proposing to eliminate part 667 as opposed to amending it to account for the changes brought about by the ISTEA amendments. Elimination of these regulations would provide more flexibility in administration of the PLH discretionary program. In addition, elimination of part 667 would have the effect of further streamlining FHWA regulations in accordance with the objectives of the President's Regulatory Reinvention Initiative.

#### Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination 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 late comments, the FHWA will also continue to file in the docket relevant information that 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 considered the impact of this document and has determined that it is neither a significant rulemaking action within the meaning of Executive Order 12866 nor a significant rulemaking under the regulatory policies and procedures of the Department of Transportation. This rulemaking would result in the elimination of FHWA regulations regarding administration of the PLH discretionary program. These regulations have become outdated and are unnecessary in light of the fact that the statutory provisions authorizing allocation of these funds adequately delineate the procedures to be used and the factors to be considered in selecting the States that will receive funding. This rulemaking eliminating these obsolete regulations would not cause any significant changes to the amount of funding available under the PLH Discretionary Program or to the process by which applicants are selected to receive funding. Thus, it is anticipated that the economic impact of this rulemaking will be minimal. In addition, it will not create a serious inconsistency with any other agency's action or materially alter the budgetary impact of any entitlements, grants, user

fees, or loan programs; nor will elimination of these regulations raise any novel legal or policy issues. 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 and has determined that elimination of the FHWA regulations regarding administration of PLH discretionary funds will not have a significant economic impact on a substantial number of small entities. Elimination of these regulations will not affect the amount of funding available to the States through the PLH Discretionary Program or the procedures used to select the States eligible to receive these funds. Furthermore, States are not included in the definition of "small entity" set forth in 5 U.S.C. 601. Therefore, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

#### 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 raise sufficient federalism implications to warrant the preparation of a federalism assessment. Elimination of these obsolete FHWA regulations concerning the PLH Discretionary Program would not preempt any State law or State regulation. No additional costs or burdens would be imposed on the States as a result of this action, and the States' ability to discharge traditional State governmental functions would not be affected by this rulemaking.

#### Executive Order 12372

Catalog of 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 create a collection of information requirement for the purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501-3520.

#### National Environmental Policy Act

The FHWA has analyzed this rulemaking for the purposes 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. Therefore an environmental impact statement is not required.

#### Regulatory 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 667

Highways and roads, Public lands highway funds.

Issued on: November 27, 1995.

Rodney E. Slater,

*Federal Highway Administrator.*

In consideration of the foregoing and under the authority of 23 U.S.C. 202, 204, and 315, the FHWA proposes to remove and reserve part 667 of title 23, Code of Federal Regulations, as set forth below.

#### **PART 667—PUBLIC LANDS HIGHWAYS FUNDS [REMOVED AND RESERVED]**

1. Part 667 is removed and reserved.

[FR Doc. 95-29647 Filed 12-5-95; 8:45 am]

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#### **DEPARTMENT OF LABOR**

#### **Occupational Safety and Health Administration**

#### **29 CFR Parts 1910, 1915 and 1926**

[Docket No. H-071B]

#### **Occupational Exposure to Methylene Chloride**

**AGENCY:** Occupational Safety and Health Administration (OSHA), Department of Labor.

**ACTION:** Proposed rule; Limited reopening of the rulemaking record.

**SUMMARY:** On October 24, 1995, the Occupational Safety and Health Administration (OSHA) reopened the record (60 FR 54462) for the proposed revision of the regulation of methylene chloride (MC) (56 FR 57036, November 7, 1991) to incorporate recently concluded research on MC carcinogenicity.