

DEPARTMENT OF TRANSPORTATION**Federal Highway Administration****23 CFR Part 668**

[FHWA Docket No. 97-3105]

RIN 2125-AE27

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 to revise the threshold used in determining eligibility for a disaster from \$500,000 to \$700,000. The threshold is used to distinguish between heavy maintenance or routine emergency repairs and serious damage eligible under the ER program. In addition, the FHWA is amending the regulation to include the recent clarifying guidance on administering ER funding eligibility for betterment/replacement facilities, for project and project features resulting from the National Environmental Policy Act (NEPA) process, and for traffic damage caused by response vehicles. Also, this document presents changes to the ER application process; minor revisions to guidance for eligible uses; and the revised policy of delegating the approval authority to FHWA Division Administrators, previously exercised by the Federal Highway Administrator, to make the initial "finding" approving ER assistance for a new disaster and related administrative procedural changes.

EFFECTIVE DATE: June 1, 2000.**FOR FURTHER INFORMATION CONTACT:**

Mohan P. Pillay, Office of Program Administration, 202-366-4655, or Harold Aikens, Office of the Chief Counsel, 202-366-0764, FHWA, 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 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 may be downloaded by using a computer, 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 web page at: <http://www.access.gpo.gov/nara>.

Background

The changes to the FHWA's ER regulations embraced in 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 June 7, 1999, at 64 FR 30263 (FHWA Docket No. 97-3105). This NPRM was published based on an advanced notice of proposed rulemaking (ANPRM) published in the **Federal Register** on February 19, 1998, to generate discussion and comments on the appropriateness of the previous threshold value, as well as any additional options/concepts regarding establishment of a disaster eligibility threshold. Interested persons were invited to participate in the development of this final rule by submitting written comments on the NPRM to FHWA Docket 97-3105 on or before August 6, 1999. Comments were received from 11 entities. The commenters include: 8 State Departments of Transportation (DOT), 1 county government, 1 State Association of County Engineers, and the American Road and Transportation Builders Association (ARTBA). All comments received in response to amendments 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.

ER Threshold

After considering all comments received, the FHWA has decided to increase the threshold to \$700,000. In § 668.105(j), the second sentence is being amended by replacing \$500,000 with \$700,000. This amendment is made to reflect the change in the current purchasing power of the dollar based on the increase in the composite bid price index for Federal-aid highway construction from 1987 to 1997. The FHWA plans to periodically review the threshold and adjust it, as appropriate, through future rulemakings. In exceptional circumstances, such as in the case of Territories and in States with

small highway programs, a disaster under the \$700,000 threshold could be considered eligible for ER funding, as has been the case with damage in the range of \$500,000 or slightly less under the previous disaster eligibility threshold.

Of the comments received with regard to the ER threshold, seven opposed and two supported the increase in the threshold. One commenter expressed concern about the effect the increase could have on a local agency when the disaster is isolated to a small area of the State and substantial amount of damage costs would be incurred by a local agency, yet the \$700,000 threshold is not met statewide. Another commenter suggested that the threshold should be determined by using a tier system that would insure fairness to those States which have a lesser ability to cope with disasters.

One of the arguments by commenters against revising the existing threshold is that they allege it would create extreme hardship on local units of government, which have very limited resources, and could force States and local governments to divert funds from other pressing State and local highway investments. Commenters also assert that they do not have the flexibility to shift resources from other areas to cover the cost of road damage due to a natural disaster. Another comment was that the cumulative budgetary impact for the State Department of Transportation and for the local municipalities can be significant during times of multiple events within a short time span. The commenters provided no explanation or evidence why it was appropriate or feasible for the Federal government, rather than the State governments, to pay these costs from its very limited resources.

One commenter referred to the ANPRM and pointed out that "only 20 percent of disasters funded in 1996 involved sums of less than \$1 million and this suggests that a threshold of \$500,000 is not causing FHWA to be flooded with small applications for disaster relief and that FHWA is proposing to fix a problem that simply does not exist." The principle reason the FHWA is increasing the threshold is not to reduce the financial and/or administrative burden of this program on the Federal government; rather, the increase to the threshold reflects the change in purchasing power of the dollar since the \$500,000 threshold was established in 1987.

Since the proposed rulemaking allows for a disaster under the \$700,000 threshold to be considered in exceptional circumstances for States

with small highway programs, one commenter recommended that consideration also be given to local agencies where there is a substantial amount of damage even though the \$700,000 threshold was not met statewide. This recommendation would mean that any State where a local agency sustained a substantial amount of damage, but below the \$700,000 threshold, could qualify for the ER program funding assistance. This approach would defeat the very purpose of the threshold concept, and, therefore the FHWA has not adopted this recommendation.

One commenter wanted all public highway facilities to be eligible for the ER program by including those non-Federal-aid highway facilities currently eligible for the Federal Emergency Management (FEMA) public assistance program. The Congress, by statute, has limited the ER program to Federal-aid highways and roads on Federal lands. Any change to have the ER program cover all public roads would require a statutory amendment and is beyond the scope of this rulemaking activity. Also, the commenter states that repair costs for both damaged Federal-aid and non-Federal-aid highways should be considered when determining whether an event meets the threshold under the ER program. The FHWA does not agree with this concept. Since the ER program is limited by statute to repair of Federal-aid highways, determinations of the extent of damage necessary to trigger ER funding for an event should be directly related to eligible repair costs under the ER program.

One commenter is of the opinion that determining the threshold based on a tiered system would insure fairness to those States which have a lesser ability to cope with disasters that should meet a higher threshold to be eligible under the ER program. The FHWA believes that counties and other local agencies would not be treated equally from State to State if a tiered approach is adopted. For example, a county whose Federal-aid highways that have sustained \$1.5 million of eligible ER repair costs, but located in a State where the ER eligibility threshold is set at \$2 million, would not receive any benefits from the FHWA ER program funds. On the other hand, another county with the same amount of damage, but located in a State with a \$1 million threshold, would be eligible to receive ER assistance.

One commenter expressed concern about the application of the threshold to basin flooding situations. It is FHWA's position that the threshold would normally be applied to each individual basin; however, situations can arise

where several basins in close proximity can be treated as one event for application of the threshold.

ER Program Administration

The regulation is being amended to include recent clarifying guidance on administering the ER program. Also, amendments are included to reflect the recent revised procedure that delegated the approval authority to the FHWA Division Administrator to make the initial "finding" approving ER assistance for a new disaster, and to incorporate related administrative and procedural changes to the ER program. The revised procedure on delegation of approval authority is considered a matter relating to internal agency management. Prior notice and comment are unnecessary under the Administrative Procedure Act or under DOT Order 2100.5, Policies and Procedures for Simplification, Analysis, and Review of Regulations," dated May 22, 1980.¹

In § 668.103, a definition for "betterments" is being added. Because there has been a wide variety of interpretations, this addition will clarify guidance for determining ER funding eligibility and clearly establish the meaning of the term for the purposes of the FHWA's ER program. There was no opposition in the discussion of this term in the regulation.

One commenter expressed concern that the phrase "rebuilding of roadways at a higher elevation" included in the betterment definition conflicts with § 668.109(b)(8) relative to grade raises made necessary by long term loss of use of a highway due to basin flooding. It is noted that typically the repair of a road damaged due to basin flooding involves raising the grade of the road which does not require justification as a betterment as long as the proposed grade raise is reasonable and limited to critical Federal-aid highways. The FHWA agrees that clarification is helpful, and is modifying § 668.109(b)(8) to clearly indicate that grade raises associated with basin flooding are not considered to be a betterment for the purpose of 23 CFR 668.109(b)(6).

Also, § 668.103 is being amended to modify the definition of "emergency repairs" by replacing the word "travel" with the word "traffic" to be consistent with other uses of this phrase in title 23, United States Code, and in this regulation concerning the ER program.

In § 668.109(b)(6), the phrase "such as relocation, replacement, upgrading or other added features not existing prior

to the disaster," is being removed to eliminate confusion in interpreting the term "betterments" for the ER funding eligibility determination. Neither relocation or replacement of a highway facility is always considered a betterment under the ER program. There were no comments concerning the recommended change.

Section 668.109(c)(2)(i) is being amended to insert the term "to any public road" after the word "damage" to further clarify the meaning of the sentence. No comments were received on this change.

Section 668.109(c)(2)(iii) is being amended to expand the eligibility of ER funds to repair damages to Federal-aid highways caused by vehicles making repairs to other transportation facilities as well as by vehicles, such as fire engines or trucks removing debris, which are responding to a disaster. No comments were received on this change.

Section 668.109(c)(8) is being amended to add the term "including snow and ice removal" after the word "system." This will clarify that snow and ice removal are part of the other normal maintenance activities and are not eligible for ER funding. No comments were received on this change.

Section 668.109 (d) is being amended to further clarify the guidance on eligibility of replacement highway facilities, particularly in those special cases where replacement of a damaged highway is not practical or feasible at its existing location, and an alternative is developed through the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) process. No comments were received concerning on this change.

Section 668.113(b)(1) is being revised to reflect the current project procedures. The reference to "the certification acceptance procedures found in 23 U.S.C. 117" is being eliminated because the method using certification acceptance procedures in administering Federal-aid projects has been eliminated from title 23, U. S. Code, by the Transportation Equity Act for the 21st Century (TEA-21), Public Law 105-178, 112 Stat.107(1998) No comments were received concerning this change.

Several sections of the regulation are amended to reflect the recently revised procedure which delegated to the FHWA Division Administrator the approval authority to determine whether an event qualifies for ER assistance. Previously this approval authority rested with the Federal Highway Administrator in the Washington Headquarters, and the requests for an ER determination with supporting documents from the FHWA

¹ This document is available for inspection and copying as prescribed in 49 CFR part 7.

Division offices had to be sent to the Federal Highway Administrator for approval. By delegating this approval authority to the FHWA Division Administrator, the agency's determination should be made more quickly, thus providing prompt affirmation to State and local highway officials concerning the eligibility of an event for ER assistance and also allowing permanent repair work to commence sooner. Accordingly, this approval action change will also require further changes to the regulation involved with preparation and submission of information supporting the request for ER funding for an event. The sections of the regulation being amended are described below:

1. Sections 668.105(j) and 668.109(a) indicate to show that the FHWA Division Administrator, instead of the Federal Highway Administrator, is making the determination as to whether an event qualifies for ER assistance; and
2. Section 668.111 covering application procedures, reflect that the approval authority now rests with the FHWA Division Administrator. A field report will no longer be required. Instead, a damage survey summary report is to be prepared which will provide a factual basis for the FHWA Division Administrator to make a determination that serious damage has occurred to Federal-aid highways. The damage survey summary report should include by political subdivision or other recognized geographic boundaries, a description of the types and extent of damage to highways and a preliminary estimate of cost of restoration or reconstruction of damaged Federal-aid highway in each jurisdiction. Use of the "Quick Release" method for an ER application and determination will also be incorporated into the procedures.

Rulemaking Analysis 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 U.S. Department of Transportation's regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking would be minimal. These proposed changes would not adversely affect, in a material way, any sector of the economy. In addition, these changes would not interfere with any action taken or planned by another agency and would not materially alter the budgetary impact of any entitlements, grants, user

fees, or loan programs. This rulemaking proposes to amend current regulations implementing the emergency relief program to revise the ER eligibility threshold established 10 years ago, as well as to incorporate changes made to clarify the guidance on the ER program. It is not anticipated that these 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 would not have a significant economic impact on a substantial number of small entities.

The economic impact on States and local jurisdictions would be minimal because the increase in threshold value is kept at a minimum level only to account for inflation based on the increase in the composite index for Federal-aid highway construction from 1987 to 1997. These amendments 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 are not significantly affected by this final rule. In any event, 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.

Unfunded Mandates Reform Act

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), the FHWA must prepare a budgetary impact statement on any proposal or final rule that includes a Federal mandate that may result in estimated annual costs to State, local or tribal government of \$100 million or more. The Congressional Budget Office has also concluded that Pub. L. 105–117 would impose no Federal mandates, as defined in the Unfunded Mandates Reform Act, and would impose no significant costs on State, local, or tribal government. The FHWA concurs in that conclusion, and does not intend to impose any duties upon State, local, or tribal governments beyond those prescribed by Pub. L. 105–117.

Executive Order 12988 (Civil Justice Reform)

This action meets the 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 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 13132 (Federalism)

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 action 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.

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 proposed action does not contain a collection of information requirement for the purpose of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

National Environmental Policy Act

The agency has analyzed this proposed 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

Emergency relief program, Grant programs-transportation, Highways and roads.

Issued on: April 25, 2000.

Kenneth R. Wykle,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA amends title 23, Code of Federal Regulations, part 668 as set forth below:

PART 668—EMERGENCY RELIEF PROGRAM

1. The authority citation for part 668 continues to read as follows:

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

Subpart A—Procedures for Federal-Aid Highways

2. Section 668.103 is amended by adding in alphabetical order the term "Betterments", and by amending the term "Emergency repairs" by revising paragraph (3) to read as follows:

§ 668.103 Definitions.

* * * * *

Betterments. Added protective features, such as rebuilding of roadways at a higher elevation or the lengthening of bridges, or changes which modify the function or character of a highway facility from what existed prior to the disaster or catastrophic failure, such as additional lanes or added access control.

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Emergency Repairs * * *

(3) Restoring essential traffic.

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§ 668.105 [Amended]

3. Section 668.105(j), is amended by removing the figure "\$500,000 and adding in its stead the figure "\$700,000" and by moving the term "FHWA Administrator" and adding the term "FHWA Division Administrator."

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§ 668.107 [Amended]

4. Section 668.107(b) is amended by removing the last sentence.

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5. Section 668.109 is amended by revising paragraphs (a), introductory

text, (b)(6), (b)(8), (c)(2)(i) and (iii), (c)(8), and (d) to read as follows:

§ 668.109 Eligibility.

(a) The eligibility of all work is contingent upon approval by the FHWA Division Administrator of an application for ER and inclusion of the work in an approved program of projects.

* * * * *

(b) * * *

(6) Betterments, only where clearly economically justified to prevent future recurring damage. Economic justification must weigh the cost of betterment against the risk of eligible recurring damage and the cost of future repair;

* * * * *

(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. Such grade raises are not considered to be a betterment for the purpose of 23 CFR 668.109(b)(6); and

* * * * *

(c) * * *

(2) * * *

(i) Repair of surface damage to any public road caused by traffic making repairs to Federal-aid highways.

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(iii) Repair of surface damage to Federal-aid highways caused by vehicles responding to a disaster; provided the surface damage has occurred during the first 60 days after a disaster occurrence, unless otherwise approved by the FHWA Division Administrator.

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(8) Other normal maintenance and operation functions on the highway system including snow and ice removal; and

* * * * *

(d) Replacement of a highway facility at its existing location is appropriate when it is not technically and economically feasible to repair or restore a seriously damaged element to its predisaster condition and is limited in ER reimbursement to the cost of a new facility to current design standards of comparable capacity and character to the destroyed facility. With respect to a bridge, a comparable facility is one which meets current geometric and construction standards for the type and volume of traffic it will carry during its design life. Where it is neither practical nor feasible to replace a damaged highway facility in kind at its existing location, an alternative selected through the National Environmental Policy Act

(NEPA) process, if of comparable function and character to the destroyed facility, is eligible for ER reimbursement.

* * * * *

6. Section 668.111 is revised to read as follows:

§ 668.111 Application procedures.

(a) Notification. As soon as possible after the disaster, the applicant shall notify the FHWA Division Administrator of its intent to apply for ER funds.

(b) Damage survey. As soon as practical after occurrence, the State will make a preliminary field survey, working cooperatively with the FHWA Division Administrator and other governmental agencies with jurisdiction over eligible highways. The preliminary field survey should be coordinated with the Federal Emergency Management Agency work, if applicable, to eliminate duplication of effort. The purpose of this survey is to determine the general nature and extent of damage to eligible highways.

(1) A damage survey summary report is to be prepared by the State. The purpose of the damage survey summary report is to provide a factual basis for the FHWA Division Administrator's finding that serious damage to Federal-aid highways has been caused by a natural disaster over a wide area or a catastrophe. The damage survey summary report should include by political subdivision or other generally recognized administrative or geographic boundaries, a description of the types and extent of damage to highways and a preliminary estimate of cost of restoration or reconstruction for damaged Federal-aid highways in each jurisdiction. Pictures showing the kinds and extent of damage and sketch maps detailing the damaged areas should be included, as appropriate, in the damage survey summary report.

(2) Unless very unusual circumstances prevail, the damage survey summary report should be prepared within 6 weeks following the applicant's notification.

(3) For large disasters where extensive damage to Federal-aid highways is readily evident, the FHWA Division Administrator may approve an application under § 668.111(d) prior to submission of the damage survey summary report. In these cases, an abbreviated damage survey summary report, summarizing eligible repair costs by jurisdiction, is to be prepared and submitted to the FHWA Division Administrator after the damage inspections have been completed.

(c) *Application.* Before funds can be made available, an application for ER must be made to, and approved by the FHWA Division Administrator. The application shall include:

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

(2) A copy of the damage survey summary report, as appropriate.

(d) *Approval of application.* The FHWA Division Administrator's approval of the application constitutes the finding of eligibility under 23 U.S.C. 125 and shall constitute approval of the application.

7. Section 668.113 is amended in paragraph (a), last sentence, by removing "field report" and adding "damage survey summary report", and by revising paragraphs (b)(1) and (b)(3) to read as follows:

§ 668.113 Program and project procedures

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(b) *Project procedures.* (1) Projects for permanent repairs shall be processed in accordance with regular Federal-aid procedures. In those cases where a regular Federal-aid project in a State similar to the ER project would be handled under the project oversight exceptions found in title 23, United States Code, the ER project can be handled in a similar fashion 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 all ER projects. The FHWA Division Administrator has the discretion to undertake final inspections on ER projects as deemed appropriate.

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

[FR Doc. 00-10780 Filed 5-1-00; 8:45 am]

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 905

[Docket No. FR-4423-C-08]

RIN 2577-AB87

Allocation of Funds Under the Capital Fund; Capital Fund Formula; Amendment

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule; amendment.

SUMMARY: On March 16, 2000, HUD published its final rule to implement the new formula system for allocation of funds to public housing agencies for their capital needs. This rule makes one amendment to the March 16, 2000 final rule to correct the regulatory provision concerning performance awards for high performing PHAs.

DATES: *Effective Date.* June 1, 2000.

FOR FURTHER INFORMATION CONTACT: William Flood, Director, Office of Capital Improvements, Public and Indian Housing, Room 4134, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410-0500; telephone (202) 708-1640 ext. 4185 (this telephone number is not toll-free). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

On March 16, 2000 (65 FR 14422), HUD issued its final rule to implement the new formula system for allocation of funds to public housing agencies for their capital needs, as required by statute. The March 16, 2000 final rule followed publication of a September 14, 1999 proposed rule which was developed through the negotiated rulemaking process, and which took into consideration public comment received on the proposed rule. This rule amends the March 16, 2000 final rule to correct an error concerning performance awards for high performing PHAs.

In the preamble to the final rule, HUD stated that § 905.10(j) of the proposed rule, which addresses the performance reward factor, was revised at the final rule stage to reflect the status of implementation of the Public Housing Assessment System (PHAS). (See 65 FR 14423, first column.)

Section 905.10(j)(3) of the rule text provided as follows:

The first performance awards will be given based upon PHAS scores for PHA fiscal years ending December 31, 2000, March 31, 2001, June 30, 2001, and September 30, 2001, with PHAs typically having received those PHAS scores within approximately 3 months after the end of those fiscal years. (See 65 FR 14429, third column)

The regulatory text, however, did not accurately reflect the status of implementation of PHAS. The final rule that made amendments to the PHAS was published on January 11, 2000 (65 FR 1712), and took effect on February 10, 2000. The PHAS final rule provides that the first PHAS scores will be issued for PHAs with fiscal years ending on or after March 31, 2000, and therefore these PHAs will be the first to be eligible for a performance award. Given the January 11, 2000 PHAS final rule, § 905.10(j)(3) of the Capital Fund final rule did not reflect the status of implementation of PHAS, as the preamble to the Capital Fund rule advised that this section would.¹

To correct the inconsistency between the preamble and the regulatory text in the March 16, 2000 final rule, HUD is amending the March 16, 2000 final rule to remove paragraph (3) of § 902.10(j). On further consideration, HUD determined that there is no need for the rule to list the dates when PHAs will be eligible for performance awards under the Capital Fund Formula based on PHAS scores. As noted in the preamble, PHAs are eligible for a performance award upon receipt of their PHAS scores (whenever the PHAS scores are issued) and if they are designated high performers under PHAS.

II. Justification for Final Rulemaking

In general, HUD publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking at 24 CFR part 10. Part 10, however, provides for exceptions from that general rule where HUD finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when the prior public procedure is "impracticable, unnecessary, or contrary to the public interest" (24 CFR 10.1). HUD finds that good cause exists to publish this rule for effect without first soliciting public comment, in that prior public procedure is unnecessary. The purpose of this rule is limited to amending an error in the March 16,

¹ The PHAS Transition Notice issued by HUD on October 21, 1999 (64 FR 56677) advised that PHAs with fiscal years ending September 30, 1999, or December 31, 1999, would receive PHAS advisory scores. The January 11, 2000 PHAS final rule is consistent with the transition notice in providing that the first PHAS scores will be issued for PHAs with fiscal years ending on or after March 31, 2000.