

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 These provisions have become outdated and unnecessary as a result of amendments made by the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (Pub.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