

**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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**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.

**SUMMARY:** This document removes the temporary regulations pertaining to the credit for employer FICA taxes paid with respect to certain tips received by employees of food or beverage establishments. The temporary regulations were published in the Federal Register on December 23, 1993. Statutory changes made by the Small Business Job Protection Act of 1996 have made these temporary regulations obsolete.

**EFFECTIVE DATE:** The removal of the temporary regulations is effective January 1, 1994.

**FOR FURTHER INFORMATION CONTACT:** Jean M. Casey at (202) 622-6060 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Background**

On December 23, 1993, the IRS published temporary regulations (TD 8503)(58 FR 68033) under section 45B of the Internal Revenue Code of 1986 (Code). Amendments made by sec. 1112(a) of the Small Business Job Protection Act of 1996 (Pub. L. 104-188) render the temporary regulations obsolete. Therefore, temporary regulation § 1.45B-1T is being removed.

On December 23, 1993, the IRS also issued a notice of proposed rulemaking (EE-71-93)(58 FR 68091) under section 45B of the Code. This notice of proposed rulemaking is being withdrawn in a separate document.

**Explanation of provisions**

Section 45B of the Code describes a business tax credit allowable under section 38 for food and beverage establishments. The credit is equal to the employer's Federal Insurance Contributions Act (FICA) obligation attributable to certain employee tips. The credit is reduced, however, if the nontip wages paid to an employee during a month are less than the amount that would have been payable to the employee at the federal minimum wage rate. The temporary regulations provide that this credit is available only for employer FICA taxes paid after December 31, 1993, with respect to tips received for services performed after December 31, 1993. The temporary regulations also provide that the credit applies only to taxes paid on tips that are reported to the employer by its employees.

Section 1112(a) of the Small Business Job Protection Act of 1996 amended Code section 45B to provide that the credit is available for employer FICA taxes paid after December 31, 1993, regardless of when the services with respect to which the tips are received

were performed. Section 1112(a) also provides that the credit is available whether or not the tips on which the employer FICA taxes were paid were reported to the employer by the employee. These provisions are effective as if included in the legislation under which section 45B was originally enacted, and thus render the temporary regulations obsolete.

**Drafting Information**

The principal author of these regulations is Jean M. Casey of the Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

**List of Subjects in 26 CFR Part 1**

Income taxes, Penalties, Reporting and recordkeeping requirements.

**Removal of Temporary Regulations**

**PART 1—INCOME TAXES**

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

Authority: 26 U.S.C. 7805 \* \* \*

**§ 1.45B-1T [Removed]**

Par. 2. Section 1.45B-1T is removed. Margaret Milner Richardson,  
*Commissioner of Internal Revenue.*

Approved: December 11, 1996.

Donald C. Lubick,

*Acting Assistant Secretary of the Treasury.*

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**DEPARTMENT OF THE INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Part 936**

[SPATS No. OK-019-FOR]

**Oklahoma Regulatory Program**

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** OSM is approving a proposed amendment to the Oklahoma regulatory program (hereinafter referred to as the "Oklahoma program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Oklahoma proposed revisions to and additions of regulations pertaining to

repair or compensation for material damage resulting from subsidence caused by underground coal mining operations and to replacement of water supplies adversely impacted by underground coal mining operations. The amendment is intended to revise the Oklahoma program to be consistent with the corresponding Federal regulations.

**EFFECTIVE DATE:** December 20, 1996.

**FOR FURTHER INFORMATION CONTACT:**

Jack R. Carson, Acting Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135-6548, Telephone: (918) 581-6430.

**SUPPLEMENTARY INFORMATION:**

- I. Background on the Oklahoma Program
- II. Submission of the Proposed Amendment
- III. Director's Findings
- IV. Summary and Disposition of Comments
- V. Director's Decision
- VI. Procedural Determinations

**I. Background on the Oklahoma Program**

On January 19, 1981, the Secretary of the Interior conditionally approved the Oklahoma program. Background information on the Oklahoma program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the January 19, 1981, Federal Register (46 FR 4902). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 936.15 and 936.16.

**II. Submission of the Proposed Amendment**

On March 31, 1995, OSM promulgated rules to implement new section 720 of SMCRA, 30 U.S.C. 1201 *et seq.* Section 720, which took effect on October 24, 1992, as part of the Energy Policy Act of 1992, Public Law 102-486, 206 Stat. 2776, requires all underground coal mining operations conducted after October 24, 1992, to promptly repair or compensate for material damage caused by subsidence to noncommercial buildings and occupied residential dwellings and related structures. It also requires the replacement of drinking, domestic, and residential water supplies that have been adversely impacted by underground coal mining operations conducted after that date.

By letter dated July 17, 1996 (Administrative Record No. OK-975), Oklahoma submitted a proposed amendment to its program pursuant to SMCRA. Oklahoma submitted the proposed amendment in response to a May 20, 1996, letter (Administrative