

To: Federal-aid Division Leadership, Planning Discipline, ER Coordinators, TAM Discipline

This memo is to clarify requirements and necessary actions to assist State DOTs with compliance with 23 CFR Part 667 – *Periodic Evaluation of Facilities Requiring Repair and Reconstruction Due to Emergency Events*.

As a reminder, per 23 CFR 667.7(b), “Beginning on November 23, 2020, for all roads, highways, and bridges not included in the evaluation prepared under paragraph (a) of this section, the State DOT must prepare an evaluation that conforms with this part for the affected portion of the road, highway, or bridge prior to including any project relating to such facility in its Statewide Transportation Improvement Program (STIP).”

The November 2018 Part 667 [Questions and Answers Regarding Implementation of 23 CFR Part 667](#) discusses Part 667 requirements, including the requirements for non-NHS facilities described above. Division offices should take the lead with States to ensure there is a plan for how the State will address this requirement.

The attached flowchart describes the general process for meeting the requirements of conducting the evaluations, and guidance on using that information within the asset management and planning processes, along with its relation to the emergency relief program.

States must complete Part 667 evaluations of all roads, highways, and bridges (excluding tribally-owned and federally-owned highways). Part 667 delayed implementation of the requirement for non-NHS routes until November 23, 2020. Per the Q&A:

On and after November 23, 2020, compliance reviews would include requirements applicable to non-NHS routes as well. After this date, the State DOT must complete an evaluation for the affected portion of the repeatedly damaged facility before a project for that facility on a non-NHS route can be included in the STIP (23 CFR 667.7(b)), and the State DOT must consider the evaluation when developing the project (23 CFR 667.9(a)). When reviewing a State DOT’s authorization requests for projects not on the NHS, Division Offices should check whether the facility is subject to the evaluation requirement before the project can go on the STIP.

States do not have to submit the evaluations to FHWA for review or approval, but States must consider the evaluations relating to NHS and other assets included in their Transportation Asset Management Plan (TAMP)¹ and provide the evaluations to FHWA on request.² Further, States must update NHS evaluations after every emergency event and must also review and update all NHS evaluations every four years³. Updated TAMPs must reflect changes per 23 CFR 515.13(c), including the addition of any facilities that newly qualify as repeatedly damaged. Divisions should ensure that their State has completed the assessment for repeatedly-damaged facilities both on and off the NHS in accordance with applicable requirements, and discuss with their State the process that is in place to ensure the STIP is compliant going forward. The summary description of the condition of NHS pavements and bridges in State TAMPs should be informed by the evaluations⁴. State DOTs, in development and update of their TAMP risk analysis, must include a summary of the evaluations of repeatedly-damaged facilities that

¹ 23 CFR 515.7(c)(1), 23 CFR 515.9(d)(6) and 23 CFR 515.9(l)(5)

² 23 CFR 667.9(b)

³ 23 CFR 667.7(a)

⁴ 23 CFR 515.9(d)(3)

discusses the results relating to the State's NHS pavements and bridges⁵. The State DOT is to consider these risks as they develop their investment strategies for managing the NHS⁶, and should discuss in the TAMP how their investment strategies are influenced by the risk management analysis, including Part 667 information where there are repeatedly damaged facilities.

Since implementation of 23 CFR Part 667 is multidisciplinary, we encourage Division Office asset management staff, planning staff, and Emergency Relief (ER) program staff to coordinate within the Division Office and, similarly, coordinate with their State DOT counterparts. They should ensure that the Division office and their State DOT counterparts are reviewing STIP updates and STIP amendments prior to FHWA approval to identify projects that are affected by the Part 667 requirements that went into effect for non-NHS projects on November 23, 2020, and to ensure that the State DOT is conducting the appropriate project evaluations where they are required.

For most States, the STIP cycle runs concurrent with the Federal fiscal year, so fiscal year (FY) 2021 STIP should already be in place and non-NHS projects contained in a STIP approved before November 23, 2020, do not have to have a Part 667 evaluation. However, for any project added through a STIP amendment after November 23, 2020, and for future STIPs (FY 2022 and beyond), the State DOT and Division will have to check whether the facility is subject to the evaluation requirement, and the State will have to complete the evaluation if applicable, before the project can go on the STIP. The FHWA goal is to find an efficient process for this so that projects are not overlooked (which could result in an issue with project authorization and ultimately improper payments).

We appreciate your assistance and attention to the successful implementation of 23 CFR Part 667, and its potential for improving resilient infrastructure.

Except for the statutes and regulations cited, the contents of this memo do not have the force and effect of law and are not meant to bind the public in any way. This memo is intended only to provide clarity regarding existing requirements under the law or agency policies.

⁵ 23 CFR 515.7(c)(6)

⁶ 23 CFR 515.7(e)