

## Appendix D - Law and Regulation

### D.1 Select Provisions of 23 U.S.C., Highways, Related to the ERFO Program

#### Sec. 101. Definitions.

- (a) Definitions. In this title, the following definitions apply:
- (4) **County.** The term "county" includes corresponding units of government under any other name in States that do not have county organizations and, in those States in which the county government does not have jurisdiction over highways, any local government unit vested with jurisdiction over local highways.
  - (5) **Federal-aid highway.** The term "Federal-aid highway" means a highway eligible for assistance under this chapter other than a highway classified as a local road or rural minor collector.
  - (6) **Federal-aid system.** The term "Federal-aid system" means any of the Federal-aid highway systems described in section 103.
  - (7) **Federal lands highway.** The term "Federal lands highway" means a forest highway, public lands highway, park road, parkway, refuge road, and Indian reservation road that is a public road.
  - (8) **Forest development roads and trails.** The term "forest development roads and trails" means forest roads and trails under the jurisdiction of the Forest Service.
  - (9) **Forest highway.** The term "forest highway" means a forest road under the jurisdiction of, and maintained by, a public authority and open to public travel.
  - (10) **Forest road or trail.** The term "forest road or trail" means a road or trail wholly or partly within, or adjacent to, and serving the National Forest System that is necessary for the protection, administration, and utilization of the National Forest System and the use and development of its resources.
  - (11) **Highway.** The term "highway" includes (A) a road, street, and parkway; (B) a right-of-way, bridge, railroad-highway crossing, tunnel, drainage structure, sign, guardrail, and protective structure, in connection with a highway; and (C) a portion of any interstate or international bridge or tunnel and the approaches thereto, the cost of which is assumed by a State transportation department, including such facilities as may be required by the United States Customs and Immigration Services in connection with the operation of an international bridge or tunnel.

- (12) **Indian reservation road.** The term "Indian reservation road" means a public road that is located within or provides access to an Indian reservation or Indian trust land or restricted Indian land that is not subject to fee title alienation without the approval of the Federal Government, or Indian and Alaska Native villages, groups, or communities in which Indians and Alaskan Natives reside, whom the Secretary of the Interior has determined are eligible for services generally available to Indians under Federal laws specifically applicable to Indians.
- (14) **Maintenance.** The term "maintenance" means the preservation of the entire highway, including surface, shoulders, roadsides, structures, and such traffic-control devices as are necessary for safe and efficient utilization of the highway.
- (19) **Park road.** The term "park road" means a public road, including a bridge built primarily for pedestrian use, but with capacity for use by emergency vehicles, that is located within, or provides access to, an area in the National Park System with title and maintenance responsibilities vested in the United States.
- (20) **Parkway.** The term "parkway", as used in Chapter 2 of this title, means a parkway authorized by Act of Congress on lands to which title is vested in the United States.
- (23) **Public authority.** The term "public authority" means a Federal, State, county, town, or township, Indian tribe, municipal or other local government or instrumentality with authority to finance, build, operate, or maintain toll or toll-free facilities.
- (24) **Public lands development roads and trails.** The term "public lands development roads and trails" means those roads and trails that the Secretary of the Interior determines are of primary importance for the development, protection, administration, and utilization of public lands and resources under the control of the Secretary of the Interior.
- (25) **Public lands highway.** The term "public lands highway" means a forest road under the jurisdiction of and maintained by a public authority and open to public travel or any highway through unappropriated or unreserved public lands, nontaxable Indian lands, or other Federal reservations under the jurisdiction of and maintained by a public authority and open to public travel.
- (27) **Public road.** The term "public road" means any road or street under the jurisdiction of and maintained by a public authority and open to public travel.

- (28) **Refuge road.** The term "refuge road" means a public road that provides access to or within a unit of the National Wildlife Refuge System and for which title and maintenance responsibility is vested in the United States Government.

### **23 U.S.C. Sec. 120. Federal share payable**

- (e) **Emergency Relief** - The Federal share payable on account of any repair or reconstruction provided for by funds made available under Section 125 of this title on account of any project on a Federal-aid highway, including the Interstate System, shall not exceed the Federal share payable on a project on such system as provided in subsections (a) and (b) of this section; except that (1) the Federal share payable for eligible emergency repairs to minimize damage, protect facilities, or restore essential traffic accomplished within 180 days after the actual occurrence of the natural disaster or catastrophic failure may amount to 100 percent of the costs thereof; and (2) the Federal share payable on account of any repair or reconstruction of forest highways, forest development roads and trails, park roads and trail, parkways, public lands highways, public lands development roads and trails, and Indian reservation roads may amount to 100 percent of the cost thereof. The total cost of a project may not exceed the cost of repair or reconstruction of a comparable facility. As used in this section with respect to bridges and in Section 144 of this title, "a comparable facility" shall mean a facility which meets the current geometric and construction standards required for the types and volume of traffic which such facility will carry over its design life.

### **Sec. 125. Emergency relief**

- (a) **General Eligibility.** Subject to this section and Section 120, an emergency fund is authorized for expenditure by the Secretary for the repair or reconstruction of highways, roads, and trails, in any part of the United States, including Indian reservations, that the Secretary finds have suffered serious damage as a result of:
- (1) natural disaster over a wide area, such as by a flood, hurricane, tidal wave, earthquake, severe storm, or landslide; or
  - (2) catastrophic failure from any external cause.
- (b) **Restriction on Eligibility.** In no event shall funds be used pursuant to this section for the repair or reconstruction of bridges that have been permanently closed to all vehicular traffic by the State or responsible local official because of imminent danger of collapse due to a structural deficiency or physical deterioration.

- (c) **Funding.** Subject to the following limitations, there are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) such sums as may be necessary to establish the fund authorized by this section and to replenish it on an annual basis:
- (1) Not more than \$100,000,000 is authorized to be obligated in any one fiscal year commencing after September 30, 1980, to carry out the provisions of this section; except that, if in any fiscal year the total of all obligations under this section is less than the amount authorized to be obligated in such fiscal year, the unobligated balance of such amount shall remain available until expended and shall be in addition to amounts otherwise available to carry out this section each year.
  - (2) Pending such appropriation or replenishment, the Secretary may obligate from any funds heretofore or hereafter appropriated for obligation in accordance with this title, including existing Federal-aid appropriations, such sums as may be necessary for the immediate prosecution of the work herein authorized. Funds obligated under this paragraph shall be reimbursed from such appropriation or replenishment.
- (d) The Secretary may expend funds from the emergency fund herein authorized for the repair or reconstruction of highways on Federal-aid highways in accordance with the provisions of this chapter: Provided, that (1) obligations for projects under this section, including those on highways, roads, and trails mentioned in subsection (e) of this section, resulting from a single natural disaster or a single catastrophic failure in a State shall not exceed \$100,000,000, and (2) the total obligations for projects under this section in any fiscal year in the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands shall not exceed \$20,000,000.

Notwithstanding any provision of this chapter, actual and necessary costs of maintenance and operation of ferryboats providing temporary substitute highway traffic service, less the amount of fares charged, may be expended from the emergency fund herein authorized on Federal-aid highways.

Except as to highways, roads, and trails mentioned in subsection (e) of this section, no funds shall be so expended unless the Secretary has received an application therefore from the State highway department, and unless an emergency has been declared by the Governor of the State and concurred in by the Secretary, except that if the President has declared such emergency to be a major disaster for the purposes of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.), concurrence of the Secretary is not required.

- (e) The Secretary may expend funds from the emergency fund herein authorized, either independently or in cooperation with any other branch of the Government, State agency, organization, or person, for the repair or reconstruction of forest highways, forest development roads and trails, park roads and trails, parkways, public lands highways, public lands development roads and trails, and Indian reservation roads, whether or not such highways, roads, or trails are on any of the Federal-aid highways.
- (f) **Treatment of Territories.** For the purposes of this section, the Virgin Islands, Guam, American Samoa, and the Commonwealth of Northern Mariana Islands shall be considered to be States and parts of the United States, and the chief executive officer of each territory shall be considered to be Governor of a State.

## D.2 Title 23, Code of Federal Regulations

### PART 668 EMERGENCY RELIEF PROGRAM

Subpart B Procedures for Federal Agencies for Federal Roads – Authority granted under: 23 U.S.C. 101, 120(e), 125 and 315; 49 CFR 1.48(b).

#### § 668.201 Purpose.

To establish policy, procedures, and program guidance for the administration of emergency relief to Federal agencies for the repair or reconstruction of Federal roads which are found to have suffered serious damage by a natural disaster over a wide area or by catastrophic failure. [43 FR 59485, 12/21/1978]

#### §668.203 Definitions.

- (a) **Applicant.** Any Federal agency which submits an application for emergency relief and which has authority to repair or reconstruct Federal roads.
- (b) **Betterments.** Added protective features, such as, the relocation or rebuilding of roadways at a higher elevation or the extension, replacement or raising of bridges, and added facilities not existing prior to the natural disaster or catastrophic failure such as additional lanes, upgraded surfacing, or structures.
- (c) **Catastrophic failure.** The sudden failure of a major element or segment of a Federal road which is not primarily attributable to gradual and progressive deterioration or lack of proper maintenance. The closure of a facility because of imminent danger of collapse is not in itself a sudden failure.
- (d) **Emergency repairs.** Those repairs, including necessary preliminary engineering, construction engineering, and temporary traffic operations,

undertaken during or immediately after a natural disaster or catastrophic failure (1) to restore essential travel, (2) to protect remaining facilities, or (3) to minimize the extent of damage.

- (e) **Federal roads.** Forest highways, forest development roads and trails, park roads and trails, parkways, public lands highways, public lands development roads and trails, and Indian reservation roads as defined under 23 U.S.C. 101(a).
- (f) **Finding.** A letter or other official correspondence issued by the Direct Federal Division Engineer (Direct Federal Division Engineer) to a Federal agency giving notification that pursuant to 23 U.S.C. 125, Federal roads have (Affirmative Finding) or have not (Negative Finding) been found to have suffered serious damage as the result of (1) a natural disaster over a wide area, or (2) a catastrophic failure.
- (g) **Natural disaster.** An unusual natural occurrence such as a flood, hurricane, severe storm, tidal wave, earthquake, or landslide which causes serious damage.
- (h) **Permanent work.** Repair or reconstruction to pre-disaster or other allowed geometric and construction standards and related Preliminary Engineering and Construction Engineering.
- (i) **Direct Federal Division Engineer.** Director of one of the Direct Federal field offices located in Vancouver, WA; Denver, CO; and Arlington, VA. [43 FR 59485, Dec. 12, 1978, as amended at 47 FR 10529, Mar. 11, 1982].

§ 668.205 Policy.

- (a) This emergency relief program is intended to pay the unusually heavy expenses in the repair and reconstruction of Federal roads resulting from damage caused by natural disasters over a wide area or catastrophic failures.
- (b) Emergency relief work shall be given prompt attention and priority over non-emergency work.
- (c) Permanent work shall be done by contract awarded by competitive bidding through formal advertising, where feasible.
- (d) It is in the public interest to perform emergency repairs immediately and prior approval or authorization from the Direct Federal Division Engineer is not required. Emergency repairs may be performed by the method of contracting (advertised contract, negotiated contract, or force account) which the applicant or the Federal Highway Administration (where

Federal Highway Administration performs the work) determines to be most suited for this work.

- (e) Emergency relief projects shall be promptly constructed. Projects not under construction by the end of the second fiscal year following the year in which the disaster occurred will be reevaluated by the Direct Federal Division Engineer and will be withdrawn from the approved Program of Projects unless suitable justification is provided by the applicant to warrant retention.
- (f) The Finding for natural disasters will be based on both the extraordinary character of the natural disturbance and the wide area of impact. Storms of unusual intensity occurring over a small area do not meet these conditions.
- (g) Diligent efforts shall be made to recover repair costs from the legally responsible parties to reduce the project costs where highway damages are caused by ships, barge tows, highway vehicles, vehicles with illegal loads, and similar improperly controlled objects or events.
- (h) Emergency funds shall not duplicate assistance under another Federal program or compensation from insurance or any other source. Where other funding compensates for only part of an eligible cost, emergency relief funding can be used to pay the remaining costs. [43 FR 59485, Dec. 12, 1978, as amended at 47 FR 10529, Mar. 11, 1982].

§ 668.207 Federal share payable from emergency fund.

The Federal share payable under this program is 100 percent of the cost.  
[43 FR 59485, Dec. 12, 1978]

§ 668.209 Eligibility of work.

- (a) Permanent work must have prior program approval in accordance with paragraph (a) of § 668.215 unless such work is performed as emergency repairs.
- (b) Emergency repairs, including permanent work performed incidental to emergency repairs, and all Preliminary Engineering may begin immediately and do not need prior program approval. Reimbursement shall be contingent upon the work ultimately being approved in accordance with the requirements of paragraph (a) of § 668.215.
- (c) To qualify for emergency relief, the damaged or destroyed road or trail must be designated as a Federal road.
- (d) Replacement highway facilities are appropriate when it is not practical and economically feasible to repair or restore a damaged element to its

preexisting condition. Emergency relief is limited to the cost of a new facility constructed 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.

- (e) Emergency relief funds may participate to the extent of eligible repair costs when proposed projects contain betterments or other work not eligible for emergency funds.
- (f) Work may include:
  - (1) Repair to, or reconstruction of, seriously damaged highway elements for a distance which would be within normal highway right-of-way limits, including necessary clearance of debris and other deposits in drainage courses, where such work would not be classed as heavy maintenance.
  - (2) Restoration of stream channels when the work is necessary for the satisfactory operation of the federal road. The applicant must have responsibility and authority for maintenance and proper operation of stream channels restored.
  - (3) Betterments where clearly economically justified to prevent future recurring damage. Economic justification acceptable to the Direct Federal Division Engineer must weigh the cost of such betterments against the risk of eligible recurring damage and the cost of future repair.
  - (4) Actual Preliminary Engineering and Construction Engineering costs on approved projects.
  - (5) Emergency repairs. [43 FR 59485, Dec. 12, 1978, as amended at 47 FR 10529, Mar. 11, 1982].

§ 668.211 Notification, damage assessment, and finding.

- (a) Notification. During or as soon as possible after a natural disaster or catastrophic failure, each applicant will notify the Direct Federal Division Engineer of its tentative intent to apply for emergency relief and request that a Finding be made.
- (b) Acknowledgment. The Direct Federal Division Engineer will promptly acknowledge the notification and briefly describe subsequent damage assessment, Finding, and application procedures.



- (c) Field report. The applicant shall cooperate with the Direct Federal Division Engineer to promptly make a field survey of overall damage and in the preparation of a field report.
- (d) Finding. Using the field report and other information deemed appropriate, the Direct Federal Division Engineer will promptly issue a Finding, and if an Affirmative Finding is made, establish the date after which repair or reconstruction will be considered for emergency relief, and note the dates of the extraordinary natural occurrence or catastrophic event responsible for the damage or destruction.
- (e) Detailed site inspections.
  - (1) If an Affirmative Finding is made, the applicant shall cooperate with the Direct Federal Division Engineer to make a detailed inspection of each damage site.
  - (2) If it appears certain an Affirmative Finding will be made, the Direct Federal Division Engineer may elect to make these site inspections at the time damage is initially assessed pursuant to paragraph (c) of this section.
- (f) The Applicant shall make available to Federal Highway Administration personnel conducting damage survey and estimate work maps depicting designated Federal roads in the affected area. [43 FR 59485, Dec. 12, 1978, as amended at 47 FR 10529, Mar. 11, 1982].

§ 668.213 Application procedures.

- (a) Based on the detailed site inspections and damage estimates prepared pursuant to paragraph (e) of § 668.211, the Applicant will submit an application in the form of a letter to the Direct Federal Division Engineer which shall include a list of projects for which emergency relief is requested. The application shall be submitted within three (3) months after an Affirmative Finding.
- (b) The list of projects shall include emergency repairs, Preliminary Engineering, and permanent work, and provide for each project a location, length, project number, type of damage, description of work with a separate breakdown for betterments including a justification for those intended for emergency relief funding, proposed method of construction, estimated cost, and any other information requested by the Direct Federal Division Engineer.
- (c) If the initial list of projects is incomplete, a subsequent list(s) of projects shall be forwarded to the Direct Federal Division Engineer for approval consideration as soon as possible. [43 FR 59485, Dec. 12, 1978, as amended at 47 FR 10529, Mar. 11, 1982].

§ 668.215 Programming and project procedures.

- (a) The Direct Federal Division Engineer will advise the applicant in writing which projects in the application, or in any subsequent submittals pursuant to paragraph (c) of § 668.213 are approved, including any approval conditions. Approved projects shall constitute the approved Program of Projects (program).
- (b) Plans, specifications, and estimates shall be developed based on work identified in the approved program.
- (c) The Direct Federal Division Engineer will approve PS&E's, concur in the award of contracts or the rejection of bids, determine that construction by the force account method is in the public interest, and accept completed work in accordance with interagency procedures established by the Direct Federal Division Engineer.
- (d) The applicant shall notify the Direct Federal Division Engineer in writing of the semi-annual status and completion of each emergency relief project constructed by applicant forces. [43 FR 59485, Dec. 12, 1978, as amended at 47 FR 10529, Mar. 11, 1982].