

Federal Highway Administration, DOT

§ 668.103

(b) *Restoration under 23 U.S.C. 210(h)*.
(1) To implement 23 U.S.C. 210(h), DOD must make the determination that a contractor for a missile installation or facility did not include in the bid the cost of repairing damage caused to public highways by the operation of the contractor's vehicles and equipment. The FHWA must then make the determination that the State highway agency is, or has been, unable to prevent such damage by restrictions upon the use of the highways without interference with, or delay in, the completion of the contract. If these determinations are made, the Division Administrator will be authorized by the Washington Headquarters to reimburse the highway agency for the cost of the work necessary to keep the roads in a serviceable condition.

(2) Upon receipt of a damage claim, division office representatives accompanied by representatives of the agencies that made the original condition survey will inspect the roads on which damage is claimed. The Division Administrator shall then prepare an estimate of the cost of restoring the roads to original condition as well as any documented cost for extraordinary maintenance for which reimbursement has not been received. No allowance for upgrading the roads shall be included.

PART 667 [RESERVED]

PART 668—EMERGENCY RELIEF PROGRAM

Subpart A—Procedures for Federal-Aid Highways

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

Subpart A—Procedures for Federal-Aid Highways

SOURCE: 52 FR 21948, June 10, 1987, unless otherwise noted.

§ 668.101 Purpose.

To establish policy and provide program guidance for the administration of emergency funds for the repair or reconstruction of Federal-aid highways, which are found to have suffered serious damage by natural disasters over a wide area or serious damage from catastrophic failures. Guidance for application by Federal agencies for reconstruction of Federal roads that are not part of the Federal-aid highways is contained in 23 CFR part 668, subpart B.

[52 FR 21948, June 10, 1987, as amended at 61 FR 67212, Dec. 20, 1996]

§ 668.103 Definitions.

In addition to others contained in 23 U.S.C. 101(a), the following definitions shall apply as used in this regulation:

Applicant. The State highway agency is the applicant for Federal assistance under 23 U.S.C. 125 for State highways and local roads and streets which are a part of the Federal-aid highways.

Catastrophic failure. The sudden failure of a major element or segment of the highway system due to an external cause. The failure must not be 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.

Emergency repairs. Those repairs including temporary traffic operations undertaken during or immediately following the disaster occurrence for the purpose of:

- (1) Minimizing the extent of the damage,
- (2) Protecting remaining facilities, or
- (3) Restoring essential travel.

External cause. An outside force or phenomenon which is separate from the damaged element and not primarily the result of existing conditions.

Heavy maintenance. Work usually done by highway agencies in repairing damage normally expected from seasonal and occasionally unusual natural conditions or occurrences. It includes work at a site required as a direct result of a disaster which can reasonably be accommodated by a State or local road authority's maintenance, emergency or contingency program.

Natural disaster. A sudden and unusual natural occurrence, including but not limited to intense rainfall, floods, hurricanes, tornadoes, tidal waves, landslides, volcanoes or earthquakes which cause serious damage.

Proclamation. A declaration of emergency by the Governor of the affected State.

Serious damage. Heavy, major or unusual damage to a highway which severely impairs the safety or usefulness of the highway or results in road closure. Serious damage must be beyond the scope of heavy maintenance.

State. Any one of the United States, the District of Columbia, Puerto Rico or the Virgin Islands, Guam, American Samoa or Commonwealth of the Northern Mariana Islands.

[52 FR 21948, June 10, 1987, as amended at 61 FR 67212, Dec. 20, 1996]

§ 668.105 Policy.

(a) The Emergency Relief (ER) program is intended to aid States in repairing road facilities which have suffered widespread serious damage resulting from a natural disaster over a wide area or serious damage from a catastrophic failure.

(b) ER funds are not intended to supplant other funds for correction of pre-existing, nondisaster related deficiencies.

(c) The expenditure of ER funds for emergency repair shall be in such a manner so as to reduce, to the greatest extent feasible, the cost of permanent restoration work.

(d) The approval to use available ER funds to repair or restore highways damaged by a natural disaster shall be based on the combination of the ex-

traordinary character of the natural disturbance and the wide area of impact as well as the seriousness of the damage. Storms of unusual intensity occurring over a small area may not meet the above conditions.

(e) ER funds shall not duplicate assistance under another Federal program or compensation from insurance or any other source. Partial compensation for a loss by other sources will not preclude emergency fund assistance for the part of such loss not compensated otherwise. Any compensation for damages or insurance proceeds including interest recovered by the State or political subdivision or by a toll authority for repair of the highway facility must be used upon receipt to reduce ER fund liability on the project.

(f) Prompt and diligent efforts shall be made by the State to recover repair costs from the legally responsible parties to reduce the project costs particularly where catastrophic damages are caused by ships, barge tows, highway vehicles, or vehicles with illegal loads or where damage is increased by improperly controlled objects or events.

(g) The processing of ER requests shall be given prompt attention and shall be given priority over non-emergency work.

(h) ER projects shall be promptly constructed. Any project that has not advanced to the construction obligation stage by the end of the second fiscal year following the disaster occurrence will not be advanced unless suitable justification to warrant retention is furnished to the FHWA.

(i) Permanent repair and reconstruction work, not accomplished as emergency repairs, shall be done by the contract method unless the State Highway agency adequately demonstrates that some other method is more cost effective as described in 23 CFR 635.204. Emergency repair work may be accomplished by the contract, negotiated contract or highway agency force account methods as determined by the Highway agency as best suited to protect the public health and safety.

(j) ER program funding is only to be used to repair highways which have been seriously damaged and is not intended to fund heavy maintenance or routine emergency repair activities

which should normally be funded as contingency items in the State and local road programs. An application for ER funds in the range of \$500,000 or less must be accompanied by a showing as to why the damage repair involved is considered to be beyond the scope of heavy maintenance or routine emergency repair. As a general rule, widespread nominal road damages in this range would not be considered to be of a significant nature justifying approval by the FHWA Administrator for ER funding.

[52 FR 21948, June 10, 1987, as amended at 61 FR 67212, Dec. 20, 1996]

§ 668.107 Federal share payable.

(a) The Federal share payable on account of any repair or reconstruction provided for by funds made available under 23 U.S.C. 125 of this title on account of any project on a Federal-aid highway system, including the Interstate System, shall not exceed the Federal share payable on a project on such system as provided in 23 U.S.C. 120; except that 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.

(b) Total obligations of ER funds in any State, excluding the Virgin Islands, Guam, American Samoa or Commonwealth of the Northern Mariana Islands, for all projects (including projects on both the Federal-aid systems and those on Federal roads under 23 CFR part 668, subpart B), resulting from a single natural disaster or a single catastrophic failure, shall not exceed \$100 million per disaster or catastrophic failure. The total obligations for ER projects in any fiscal year in the Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands shall not exceed \$20 million. Upon receipt of the field reports and estimates, allocations of available funds will be made by FHWA Headquarters in Washington, DC.

[52 FR 21948, June 10, 1987, as amended at 52 FR 32540, Aug. 28, 1987; 61 FR 67212, Dec. 20, 1996]

§ 668.109 Eligibility.

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

(1) Prior FHWA approval or authorization is not required for emergency repairs and preliminary engineering (PE).

(2) Permanent repairs or restoration must have prior FHWA program approval and authorization, unless done as part of the emergency repairs.

(b) ER funds may participate in:

(1) Repair to or reconstruction of seriously damaged highway elements as necessary to restore the facility to pre-disaster conditions, including necessary clearance of debris and other deposits in drainage courses within the right-of way (ROW);

(2) Restoration of stream channels outside the highway ROW when:

(i) The public highway agency has responsibility for the maintenance and proper operation of the stream channel section, and

(ii) The work is necessary for satisfactory operation of the highway system involved;

(3) Actual PE and construction engineering costs on approved projects;

(4) Emergency repairs;

(5) Temporary operations, including emergency traffic services such as flagging traffic through inundated sections of highways, undertaken by the applicant during or immediately following the disaster;

(6) Betterments, such as relocation, replacement, upgrading or other added features not existing prior to the disaster, only where clearly economically justified to prevent future recurring damage. Economic justification must weigh the cost of the betterment against the risk of eligible recurring damage and the cost of future repair;

(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.;

(3) Repair of damage not directly related to, and isolated away from, the pattern of the disaster;

(4) Routine maintenance of detour routes, not related to the increased traffic volumes, such as mowing, maintaining drainage, pavement signing, snow plowing, etc.;

(5) Replacement of damaged or lost material not incorporated into the highway such as stockpiled materials or items awaiting installation;

(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) Other normal maintenance and operation functions on the highway system; and

(9) Reimbursing loss of toll revenue.

(d) Replacement highway facilities are appropriate when it is not technically and economically feasible to repair or restore a seriously damaged element to its predisaster condition and are 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.

(e) Except as otherwise provided in paragraph (b)(6) of this section, the total cost of a project eligible for ER funding may not exceed the cost of repair or reconstruction of a comparable facility. ER funds may participate to the extent of eligible repair costs when proposed projects contain unjustified betterments or other work not eligible for ER funds.

[52 FR 21948, June 10, 1987, as amended at 61 FR 67212, Dec. 20, 1996]

§ 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) *Field report.* As soon as practical after the occurrence, the State will promptly 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 for preparation of a field report by the FHWA Division Administrator.

(1) The purpose of the field report is to provide a factual basis for the Federal Highway 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 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 Federal-aid systems in each jurisdiction. To the extent available, similar information on other roads should be included. A description of the nature and characteristics of the natural disaster or catastrophe, and dates of occurrence (incident period), should be coordinated with the Federal Emergency Management Agency (FEMA) and included in the report. When the President has declared "a major disaster," detailed information on the extraordinary natural disturbance is not required; however, the seriousness of the road damage must be documented. Pictures showing the kinds and extent of damage and sketch maps detailing the damage areas should be included in the field report.

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

(c) *Application.* Before funds can be made available, an application for ER must be made to, and approved by the FHWA Administrator. The application shall be submitted to the FHWA Division Administrator, who will forward it through channels to FHWA Headquarters. 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 field report.

(d) *Approval of application.* The Federal Highway Administrator's approval of the application constitutes the finding of eligibility under 23 U.S.C. 125

and shall constitute approval of the application.

(Approved by the Office of Management and Budget under control number 2125-0525)

[52 FR 21948, June 10, 1987, as amended at 61 FR 67212, Dec. 20, 1996]

§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. The FHWA field office will assist the applicant and other affected agencies in preparation of the program. This work may involve joint site inspections to view damage and reach tentative agreement on type of permanent corrective work to be undertaken. Program data should be kept to a minimum, but should be sufficient to identify the approved disaster or catastrophe and to permit a determination of the eligibility and propriety of proposed work. If the field report is determined by the FHWA Division Administrator to be of sufficient detail to meet these criteria, additional program support data need not be submitted.

(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) Simplified procedures, including abbreviated plans should be used where appropriate.

(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.

[52 FR 21948, June 10, 1987, as amended at 61 FR 67212, Dec. 20, 1996]

Subpart B—Procedures for Federal Agencies for Federal Roads

§ 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, Dec. 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 (PE), construction engineering (CE), 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 develop-

ment 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 (DFDE) 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 PE and CE.

(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. 21, 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 DFDE 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 (FHWA) (where FHWA 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 re-evaluated by the DFDE 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. 21, 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. 21, 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 PE 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 shall 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 pre-existing 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 DFDE must weigh the cost of such betterments against the risk of eligible recurring damage and the cost of future repair.

(4) Actual PE and CE costs on approved projects.

(5) Emergency repairs.

[43 FR 59485, Dec. 21, 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 DFDE of its tentative intent to apply for emergency relief and request that a Finding be made.

(b) *Acknowledgment.* The DFDE will promptly acknowledge the notification and briefly describe subsequent damage

assessment, Finding, and application procedures.

(c) *Field report.* The applicant shall cooperate with the DFDE 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 DFDE 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 DFDE to make a detailed inspection of each damage site.

(2) If it appears certain an Affirmative Finding will be made, the DFDE 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 FHWA personnel conducting damage survey and estimate work maps depicting designated Federal roads in the affected area.

[43 FR 59485, Dec. 21, 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 DFDE which shall include a list of projects for which emergency relief is requested. The application shall be submitted within 3 months after an Affirmative Finding.

(b) The list of projects shall include emergency repairs, PE, 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 DFDE.

(c) If the initial list of projects is incomplete, a subsequent list(s) of

projects shall be forwarded to the DFDE for approval consideration as soon as possible.

[43 FR 59485, Dec. 21, 1978, as amended at 47 FR 10529, Mar. 11, 1982]

§ 668.215 Programming and project procedures.

(a) The DFDE 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 (PS&E) shall be developed based on work identified in the approved program.

(c) The DFDE 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 DFDE.

(d) The applicant shall notify the DFDE in writing of the semi-annual status and completion of each emergency relief project constructed by applicant forces.

[43 FR 59485, Dec. 21, 1978, as amended at 47 FR 10529, Mar. 11, 1982]

PART 669—ENFORCEMENT OF HEAVY VEHICLE USE TAX

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AUTHORITY: 23 U.S.C. 141(d) and 315; 49 CFR 1.48(b).

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