

of a tarping system are width exclusive, provided they are add-on pieces designed to bear only the load of the tarping system itself and are not integral parts of the load-bearing headerboard structure;

- (j) Tie-down assembly on platform trailers;
- (k) Wall variation from true flat; and
- (l) Weevil pins and sockets on low-bed trailers.

[67 FR 15110, Mar. 29, 2002]

## PART 660—SPECIAL PROGRAMS (DIRECT FEDERAL)

### Subpart A—Forest Highways

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### Subpart A—Forest Highways

AUTHORITY: 16 U.S.C. 1608–1610; 23 U.S.C. 101, 202, 204, and 315; 49 CFR 1.48.

SOURCE: 59 FR 30300, June 13, 1994, unless otherwise noted.

#### § 660.101 Purpose.

The purpose of this subpart is to implement the Forest Highway (FH) Program which enhances local, regional, and national benefits of FHs funded under the public lands highway category of the coordinated Federal Lands Highway Program. As provided in 23 U.S.C. 202, 203, and 204, the program, developed in cooperation with State and local agencies, provides safe and adequate transportation access to and through National Forest System (NFS)

lands for visitors, recreationists, resource users, and others which is not met by other transportation programs. Forest highways assist rural and community economic development and promote tourism and travel.

#### § 660.103 Definitions.

In addition to the definitions in 23 U.S.C. 101(a), the following apply to this subpart:

*Cooperator* means a non-Federal public authority which has jurisdiction and maintenance responsibility for a FH.

*Forest highway* means a forest road under the jurisdiction of, and maintained by, a public authority and open to public travel.

*Forest road* means a road wholly or partly within, or adjacent to, and serving the NFS and which is necessary for the protection, administration, and utilization of the NFS and the use and development of its resources.

*Jurisdiction* means the legal right or authority to control, operate, regulate use of, maintain, or cause to be maintained, a transportation facility, through ownership or delegated authority. The authority to construct or maintain such a facility may be derived from fee title, easement, written authorization, or permit from a Federal agency, or some similar method.

*Metropolitan Planning Organization (MPO)* means that organization designated as the forum for cooperative transportation decisionmaking pursuant to the provisions of part 450 of this title.

*Metropolitan Transportation Plan* means the official intermodal transportation plan that is developed and adopted through the metropolitan transportation planning process for the metropolitan planning area.

*National Forest System* means lands and facilities administered by the Forest Service (FS), U.S. Department of Agriculture, as set forth in the Forest and Rangeland Renewable Resource Planning Act of 1974, as amended (16 U.S.C. 1601 note, 1600–1614).

*Open to public travel* means except during scheduled periods, extreme weather conditions, or emergencies, open to the general public for use with

a standard passenger auto, without restrictive gates or prohibitive signs or regulations, other than for general traffic control or restrictions based on size, weight, or class of registration.

*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.

*Public lands highway* means: (1) A forest road under the jurisdiction of and maintained by a public authority and open to public travel or (2) 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.

*Public road* means any road or street under the jurisdiction of and maintained by a public authority and open to public travel.

*Renewable resources* means those elements within the scope of responsibilities and authorities of the FS as defined in the Forest and Rangeland Renewable Resource Planning Act of August 17, 1974 (88 Stat. 476) as amended by the National Forest Management Act of October 22, 1976 (90 Stat. 2949; 16 U.S.C. 1600-1614) such as recreation, wilderness, wildlife and fish, range, timber, land, water, and human and community development.

*Resources* means those renewable resources defined above, plus other non-renewable resources such as minerals, oil, and gas which are included in the FS's planning and land management processes.

*Statewide transportation plan* means the official transportation plan that is: (1) Intermodal in scope, including bicycle and pedestrian features, (2) addresses at least a 20-year planning horizon, and (3) covers the entire State pursuant to the provisions of part 450 of this title.

**§ 660.105 Planning and route designation.**

(a) The FS will provide resource planning and related transportation information to the appropriate MPO and/or State Highway Agency (SHA) for use in developing metropolitan and statewide

transportation plans pursuant to the provisions of part 450 of this title. Co-operators shall provide various planning (23 U.S.C. 134 and 135) information to the Federal Highway Administration (FHWA) for coordination with the FS.

(b) The management systems required under 23 U.S.C. 303 shall fulfill the requirement in 23 U.S.C. 204(a) regarding the establishment and implementation of pavement, bridge, and safety management systems for FHs. The results of bridge management systems and safety management systems on all FHs and results of pavement management systems for FHs on Federal-aid highways are to be provided by the SHAs for consideration in the development of programs under § 660.109 of this part. The FHWA will provide appropriate pavement management results for FHs which are not Federal-aid highways.

(c) The FHWA, in consultation with the FS, the SHA, and other cooperators where appropriate, will designate FHs.

(1) The SHA and the FS will nominate forest roads for FH designation.

(2) The SHA will represent the interests of all cooperators. All other agencies shall send their proposals for FHs to the SHA.

(d) A FH will meet the following criteria:

(1) Generally, it is under the jurisdiction of a public authority and open to public travel, or a cooperator has agreed, in writing, to assume jurisdiction of the facility and to keep the road open to public travel once improvements are made.

(2) It provides a connection between adequate and safe public roads and the resources of the NFS which are essential to the local, regional, or national economy, and/or the communities, shipping points, or markets which depend upon those resources.

(3) It serves:

(i) Traffic of which a preponderance is generated by use of the NFS and its resources; or

(ii) NFS-generated traffic volumes that have a substantial impact on roadway design and construction; or

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(iii) Other local needs such as schools, mail delivery, commercial supply, and access to private property within the NFS.

**§ 660.107 Allocations.**

On October 1 of each fiscal year, the FHWA will allocate 66 percent of Public Lands Highway funds, by FS Region, for FHs using values based on relative transportation needs of the NFS, after deducting such sums as deemed necessary for the administrative requirements of the FHWA and the FS; the necessary costs of FH planning studies; and the FH share of costs for approved Federal Lands Coordinated Technology Implementation Program studies.

**§ 660.109 Program development.**

(a) The FHWA will arrange and conduct a conference with the FS and the SHA to jointly select the projects which will be included in the programs for the current fiscal year and at least the next 4 years. Projects included in each year's program will be selected considering the following criteria:

- (1) The development, utilization, protection, and administration of the NFS and its resources;
- (2) The enhancement of economic development at the local, regional, and national level, including tourism and recreational travel;
- (3) The continuity of the transportation network serving the NFS and its dependent communities;
- (4) The mobility of the users of the transportation network and the goods and services provided;
- (5) The improvement of the transportation network for economy of operation and maintenance and the safety of its users;
- (6) The protection and enhancement of the rural environment associated with the NFS and its resources; and
- (7) The results for FHs from the pavement, bridge, and safety management systems.

(b) The recommended program will be prepared and approved by the FHWA with concurrence by the FS and the SHA. Following approval, the SHA shall advise any other cooperators in the State of the projects included in the final program and shall include the

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approved program in the State's process for development of the Statewide Transportation Improvement Program. For projects located in metropolitan areas, the FHWA and the SHA will work with the MPO to incorporate the approved program into the MPO's Transportation Improvement Program.

**§ 660.111 Agreements.**

(a) A statewide FH agreement shall be executed among the FHWA, the FS, and each SHA. This agreement shall set forth the responsibilities of each party, including that of adherence to the applicable provisions of Federal and State statutes and regulations.

(b) The design and construction of FH projects will be administered by the FHWA unless otherwise provided for in an agreement approved under this subpart.

(c) A project agreement shall be entered into between the FHWA and the cooperator involved under one or more of the following conditions:

- (1) A cooperator's funds are to be made available for the project or any portion of the project;
- (2) Federal funds are to be made available to a cooperator for any work;
- (3) Special circumstances exist which make a project agreement necessary for payment purposes or to clarify any aspect of the project; or
- (4) It is necessary to document jurisdiction and maintenance responsibility.

**§ 660.112 Project development.**

(a) Projects to be administered by the FHWA or the FS will be developed in accordance with FHWA procedures for the Federal Lands Highway Program. Projects to be administered by a cooperator shall be developed in accordance with Federal-aid procedures and procedures documented in the statewide agreement.

(b) The FH projects shall be designed in accordance with part 625 of this chapter or those criteria specifically approved by the FHWA for a particular project.

**§ 660.113 Construction.**

(a) No construction shall be undertaken on any FH project until plans, specifications, and estimates have been

concluded in by the cooperator(s) and the FS, and approved in accordance with procedures contained in the state-wide FH agreement.

(b) The construction of FHs will be performed by the contract method, unless construction by the FHWA, the FS, or a cooperator on its own account is warranted under 23 U.S.C. 204(e).

(c) Prior to final construction acceptance by the contracting authority, the project shall be inspected by the cooperator, the FS, and the FHWA to identify and resolve any mutual concerns.

#### § 660.115 Maintenance.

The cooperator having jurisdiction over a FH shall, upon acceptance of the project in accordance with § 660.113(c), assume operation responsibilities and maintain, or cause to be maintained, any project constructed under this subpart.

#### § 660.117 Funding, records and accounting.

(a) The Federal share of funding for eligible FH projects may be any amount up to and including 100 percent. A cooperator may participate in the cost of project development and construction, but participation shall not be required.

(b) Funds for FHs may be used for:

- (1) Planning;
- (2) Federal Lands Highway research;
- (3) Preliminary and construction engineering; and
- (4) Construction.

(c) Funds for FHs may be made available for the following transportation-related improvement purposes which are generally part of a transportation construction project:

- (1) Transportation planning for tourism and recreational travel;
- (2) Adjacent vehicular parking areas;
- (3) Interpretive signage;
- (4) Acquisition of necessary scenic easements and scenic or historic sites;
- (5) Provisions for pedestrians and bicycles;
- (6) Construction and reconstruction of roadside rest areas including sanitary and water facilities; and
- (7) Other appropriate public road facilities as approved by the FHWA.

(d) Use of FH funds for right-of-way acquisition shall be subject to specific approval by the FHWA.

(e) Cooperators which administer construction of FH projects shall maintain their FH records according to 49 CFR part 18.

(f) Funds provided to the FHWA by a cooperator should be received in advance of construction procurement unless otherwise specified in a project agreement.

### Subparts B–D [Reserved]

#### Subpart E—Defense Access Roads

AUTHORITY: 23 U.S.C. 210, 315; 49 CFR 1.48(b).

SOURCE: 49 FR 21924, May 24, 1984, unless otherwise noted.

#### § 660.501 Purpose.

The purpose of this regulation is to prescribe policies and procedures governing evaluations of defense access road needs, and administration of projects financed under the defense access roads and other defense related special highway programs.

#### § 660.503 Objectives.

The defense access roads program provides a means by which the Federal Government may pay its fair share of the cost of:

- (a) Highway improvements needed for adequate highway service to defense and defense related installations;
- (b) New highways to replace those which must be closed to permit establishment or expansion of defense installations;
- (c) Repair of damage to highways caused by major military maneuvers;
- (d) Repair of damages due to the activities of contractors engaged in the construction of missile sites; and
- (e) Missile routes to ensure their continued ability to support the missile transporter-erector (TE) vehicle.

#### § 660.505 Scope.

This regulation focuses on procedures as they apply to the defense access roads and other special highway programs of the Department of Defense (DOD).

**§ 660.507 Definitions.**

(a) *Defense installation.* A military reservation or installation, or defense related industry or source of raw materials.

(b) *Military Traffic Management Command (MTMC).* The military transportation agency with responsibilities assigned by the Secretary of Defense for maintaining liaison with the Federal Highway Administration (FHWA) and other agencies for the integration of defense needs into the Nation's highway program.

(c) *Certification.* The statement to the Secretary of Transportation by the Secretary of Defense (or such other official as the President may designate) that certain roads are important to the national defense.

(d) *Access road.* An existing or proposed public highway which is needed to provide essential highway transportation services to a defense installation. (This definition may include public highways through military installations only when right-of-way for such roads is dedicated to public use and the roads are maintained by civil authority.)

(e) *Replacement road.* A public road constructed to replace one closed by establishment of a new, or the expansion of an old, defense installation.

(f) *Maneuver area road.* A public road in an area delineated by official orders for field maneuvers or exercises of military forces.

(g) *Transporter-erector route.* A public road specifically designated for use by the TE vehicle for access to missile sites.

**§ 660.509 General principles.**

(a) State and local highway agencies are expected to assume the same responsibility for developing and maintaining adequate highways to permanent defense installations as they do for highways serving private industrial establishments or any other permanent traffic generators. The Federal Government expects that highway improvements in the vicinity of defense installations will receive due priority consideration and treatment as State and local agencies develop their programs of improvement. The FHWA will provide assistance, as requested by MTMC,

to ascertain State program plans for improvements to roads serving as access to defense installations. Roads which serve permanent defense installations and which qualify under established criteria as Federal-aid routes should be included in the appropriate Federal-aid system.

(b) It is recognized that problems may arise in connection with the establishment, expansion, or operation of defense installations which create an unanticipated impact upon the long-range requirements for the development of highways in the vicinity. These problems can be resolved equitably only by Federal assistance from other than normal Federal-aid highway programs for part or all of the cost of highway improvements necessary for the functioning of the installation.

**§ 660.511 Eligibility.**

(a) The MTMC has the responsibility for determining the eligibility of proposed improvements for financing with defense access roads funds. The evaluation report will be furnished to MTMC for its use in making the determination of eligibility and certification of importance to the national defense. The criteria upon which MTMC will base its determination of eligibility are included in the Federal-Aid Highway Program Manual, Volume 6, Chapter 9, Section 5, Attachment 2.<sup>1</sup>

(b) If the project is determined to be eligible for financing either in whole or in part with defense access road funds, MTMC will certify the project as important to the national defense and will authorize expenditure of defense access road funds. The Commander, MTMC, is the only representative of the DOD officially authorized to make the certification required by section 210, title 23, U.S.C., in behalf of the Secretary of Defense.

**§ 660.513 Standards.**

(a) Access roads to permanent defense installations and all replacement roads shall be designed to conform to

<sup>1</sup>This document is available for inspection and copying from the FHWA headquarters and field offices as prescribed by 49 CFR part 7, appendix D.

the same standards as the agency having jurisdiction is currently using for other comparable highways under similar conditions in the area. In general, where the agency having jurisdiction does not have established standards, the design shall conform to American Association of State Highway and Transportation Officials (AASHTO) standards. Should local agencies desire higher standards than are currently being used for other comparable highways under similar conditions in the area, they shall finance the increases in cost.

(b) Access roads to temporary military establishments or for service to workers temporarily engaged in construction of defense installations should be designed to the minimum standards necessary to provide service for a limited period without intolerable congestion and hazard. As a guide, widening to more than two lanes generally will not be undertaken to accommodate anticipated one-way, peak-hour traffic of less than 1,200 vehicles per hour and resurfacing or strengthening of existing pavements will be held to the minimum type having the structural integrity to carry traffic for the short period of anticipated use.

**§ 660.515 Project administration.**

(a) Determination of the agency best able to accomplish the location, design, and construction of the projects covered by this regulation will be made by the FHWA Division Administrator after consultation with the State and/or local highway agency within whose jurisdiction the highway lies. When an agency other than the State or local highway agency is selected to administer the project, the Division Administrator will be responsible during the life of the project for any necessary coordination between the selected agency and the State or local highway agency.

(b) Defense access road projects under the supervision of a State or local highway agency, whether on or off the Federal-aid system, shall be administered in accordance with Federal-aid procedures, as modified specifically herein or as limited by the delegations of authority to Regional and Division Administrators, unless approval of other procedures has been obtained

from Washington Headquarters Office of Direct Federal Programs (HDF-1).

(c) The Division Administrator shall have a firm commitment from the State or local highway agency, within whose jurisdiction the access road lies, that it will accept the responsibility for maintenance of the completed facility before authorization of acquisition of right-of-way or construction of a project.

(d) When defense access road funds are available for a pro-rata portion of the total project cost, the remaining portion of the project may be funded as a Federal-aid project if on a Federal-aid route. Defense access road funds shall not be substituted for the State's matching share of the Federal-aid portion of a project.

**§ 660.517 Maneuver area roads.**

(a) Claims by a highway agency for costs incurred to restore, to their former condition, roads damaged by maneuvers involving a military force at least equal in strength to a ground division or an air wing will be paid from funds appropriated for the maneuver and transferred to FHWA by the DOD agency. Defense access road funds may be used to reimburse the highway authority pending transfer of funds by the DOD agency.

(b) Costs incurred by State or local highway authorities while conducting a pre- or post-condition survey may be included in the claim to DOD for direct settlement or in the damage repair project as appropriate.

**§ 660.519 Missile installations and facilities.**

Should damage occur to public highways as a result of construction activities, the contractor would normally be held responsible for restoring the damages. However, should the contractor deny responsibility on the basis of contract terms, restoration is provided for under 23 U.S.C. 210(h).

(a) *Restoration under the contract.* (1) The highway agency having jurisdiction over the road shall take appropriate actions, such as load and speed restrictions, to protect the highway. When extensive damage is anticipated and the contractor under the terms of the contract is responsible, it may be

necessary to require a performance bond to assure restoration.

(2) If the contractor does not properly maintain the roads when requested in writing, the highway agency having jurisdiction over the road shall perform extraordinary maintenance as necessary to keep the roads serviceable and maintain adequate supporting records of the work performed. Claims shall be presented to the contractor for this extraordinary maintenance and any other work required to restore the roads. If the contractor denies responsibility on the basis of the contract terms, the claim with the required supporting documentation shall be presented to the contracting officer for disposition and arrangement for reimbursement.

(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 661—INDIAN RESERVATION ROAD BRIDGE PROGRAM

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AUTHORITY: 23 U.S.C. 120(j) and (k), 202, and 315; 49 CFR 1.48.

SOURCE: 64 FR 38572, July 19, 1999, unless otherwise noted.