

## 12. Emergency Procedures

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### 12.1. Introduction

The Federal Highway Administration (FHWA) Emergency Relief (ER) Program Title 23, Code of Federal Regulations (CFR) Section 668 was established to provide policy and guidance to repair or reconstruct federal-aid routes that have serious damage as a direct result of a declared event.

This Chapter describes the National Environmental Policy Act (NEPA) document process for emergency repairs and relief actions that will be eligible for FHWA ER aid. Section 106 and emergencies are addressed in Chapter 10, Section 10.5.

### 12.2. Emergency NEPA Process Overview

When an emergency event has occurred, the State is empowered to undertake immediate emergency repairs to restore essential traffic service and to prevent further damage to Federal-aid highway facilities.

The NEPA process should start concurrent with emergency repairs or as soon as possible following the decision to take emergency action. The emergency repairs may proceed prior to NEPA document approval.

The NEPA process for emergency repairs is substantively similar to non-emergency actions. As with other Federal Actions, obtain a Class of Action (COA) from Statewide Environmental Office (SEO) (see Chapter 2). The Categorical Exclusion (CE) process applies for all emergency repairs that are CE actions (see Chapter). In the rare instance that a CE is not appropriate and an Environmental Assessment (EA) is required, coordinate with SEO (see Chapter 4), and follow the Council on Environmental Quality ([CEQ Memorandum on Emergencies and NEPA](#)) for a concise, focused EA.

Emergency repairs can start prior to NEPA documentation approval if:

- Necessary to protect public safety where there is imminent danger, or necessary to restore essential travel, minimize the extent of damage, or protect the remaining facilities of a damaged transportation system.
- The emergency repairs will not have significant adverse impacts on environmental or cultural resources (see Section 2.2.2).
- There are no unusual circumstances (see Section 2.2.3) and;
- The repair action is within 180 days of the emergency event.

### 12.3. Requirements for FHWA Emergency Relief

Emergency events that qualify for FHWA ER occur in two ways: if the Governor declares an emergency under Alaska Statutes (AS) 26.23 for the project area and FHWA concurs, or the President of the United States declares an emergency under the Stafford Act Section 5121 of Title 42 of the United States Code (42 U.S.C. 5121) for the project area.

The FHWA may also determine whether an event or multiple events are ER eligible, if the total costs of repairs will exceed \$700,000. The ER program provides the funding to repair and restore highway facilities to pre-disaster conditions.

If no qualifying emergency declaration has been made, but the damage was caused by a sudden and unexpected external event, e.g., natural disaster, or manmade disaster, explosion, hazardous spill, etc., and the local government has declared an emergency or is requesting emergency assistance, then proceed with the expectation that a qualifying emergency declaration will be made in the future.

Deterioration or failure caused by delayed maintenance, in the absence of a sudden and unexpected event, is not an emergency.

## 12.4. When NEPA Applies

For the purposes of NEPA compliance, assume that the emergency repair is or will be eligible for FHWA ER funds if the roads and bridges are damaged as a direct result of a natural disaster or catastrophic failure from an external cause and are Federal-aid highways. Federal-aid highways are public roads that are classified as arterial, urban collectors and major rural collectors.

Highways that are classified as minor rural collectors or local roads are *not* eligible for ER funding even if other Federal-aid funds have been used on those roads. For example, "off system" bridges that were replaced with Federal-aid funds or non-highway projects that were constructed with enhancement funds are not eligible for ER funding.

<https://www.fhwa.dot.gov/reports/erm/er.pdf>

## 12.5. Class of Action Determination

If the action qualifies for a CE, the most appropriate COA will likely be 23 CFR 771.117(c)(9) Emergency repairs under [23 U.S.C. 125](#) if the action:

(A) Occurs within the existing right-of-way and in a manner that substantially conforms to the preexisting design, function, and location as the original (which may include upgrades to meet existing codes and standards as well as upgrades warranted to address conditions that have changed since the original construction); and

(B) Is commenced within a 2-year period beginning on the date of the declaration.

NOTE: The (c)(9) COA can be used for both emergency repairs for which prior NEPA approval is *not* required and repairs that stem from the emergency event, but for which NEPA approval *is required* prior to the action. If more than 180 days from the emergency event declaration, NEPA documents should be approved prior to actions taken under 23 CFR 771.117(c)(9).

For emergency repairs under (c)(9) that began within 180 days of the emergency event, work can begin prior to NEPA approval.

In addition to NEPA review, emergency operations will have to comply with other applicable environmental laws, regulations, and Executive Orders, which require additional agency coordination to obtain the appropriate permits and approvals. Many of the common permits and approvals have

exemptions or expedited review procedures under emergency situations, and generally are still required prior to repairs. Regional Environmental Managers (REMs) should contact and coordinate with the relevant permitting agencies as soon as possible during/following an emergency event to begin the permitting process or emergency exemptions.

## 12.6. Emergency NEPA Document Preparation

Steps:

1. A damage assessment report or preliminary assessment report should be completed by DOT&PF as soon as practical following the emergency. The REM should work with the Regional Emergency Response Point of Contact to obtain the damage report.
2. Project control will develop a project name, which usually corresponds with the location of emergency, type of event, and date of event.
  - a. The project name should identify the emergency event and emergency relief/repair. For example: *Johnston Bridge Replacement Anchorage Earthquake Emergency Relief.*
3. Project control will also establish a Capital Project with ER funding for 1<sup>st</sup> Responders to charge to, if necessary.
4. Instead of a State Transportation Improvement Program (STIP) project description for an emergency relief action, the project description should include all the work that was, or will be, completed for the ER project.
5. REMs determine which if any permitting agencies (state and federal) need to be contacted based on the specific emergency repair action. Contact permitting agencies as soon as possible to inform them of the emergency action, coordinate operations and obtain any necessary authorizations.

Most permitting agencies (state and federal) have emergency authorization procedures. Obtaining authorizations from permitting agencies can proceed prior to the NEPA document process.

6. Complete a COA form and CE form for the action (see Chapter 3).
7. If the action does not qualify for a CE, contact SEO, and determine whether an EA (see Chapter 4) and Finding of No Significant Impact (FONSI) will be required.

## Technical Appendix

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[FHWA Emergency Relief Program](#) provides information on FHWA's special funding for Emergencies.

[The Emergency Relief Manual](#) covers procedures applicable to FHWA ER program for Federal-aid highways.

The [CEQ regulations](#) (40 CFR 1506.11) and guidance provide for alternative arrangements for NEPA compliance in emergency situations.

The Alaska Disaster Act, when the Alaska Governor declares an emergency is located at [AS 26.23](#).

The Stafford Act is where the President of the United States declares an emergency. More information can be found at [42 USC 5121](#).