

## PART 667—PERIODIC EVALUATION OF FACILITIES REPEATEDLY REQUIRING REPAIR AND RECONSTRUCTION DUE TO EMERGENCY EVENTS

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**Authority:** Sec. 1315(b) of Pub. L. 112–141, 126 Stat. 405; 23 U.S.C. 109, 144, and 315; 49 CFR 1.85.

### § 667.1 Statewide evaluation.

Each State, acting through its department of transportation (State DOT), shall conduct statewide evaluations to determine if there are reasonable alternatives to roads, highways, and bridges that have required repair and reconstruction activities on two or more occasions due to emergency events. The evaluations shall be conducted in accordance with the requirements in this part.

### § 667.3 Definitions.

For purposes of this part:

**Catastrophic failure** means the sudden failure of a major element or segment of a road, highway, or bridge due to an external cause. The failure must not be primarily attributable to gradual and progressive deterioration or lack of proper maintenance.

**Evaluation** means an analysis that includes identification and consideration of any alternative that will mitigate, or partially or fully resolve, the root cause of the recurring damage, the costs of achieving the solution, and the likely duration of the solution. The evaluations shall consider the risk of recurring damage and cost of future repair under current and future environmental conditions. These considerations typically are a part of the planning and project development process.

**Emergency event** means a natural disaster or catastrophic failure resulting in an emergency declared by the Governor of the State or an emergency or disaster declared by the President of the United States.

**Reasonable alternatives** include options that could partially or fully achieve the following:

(1) Reduce the need for Federal funds to be expended on emergency repair and reconstruction activities;

(2) Better protect public safety and health and the human and natural environment; and

(3) Meet transportation needs as described in the relevant and applicable Federal, State, local, and tribal plans and programs.

Relevant and applicable plans and programs include the Long-Range Statewide Transportation Plan, Statewide Transportation Improvement Plan (STIP), Metropolitan Transportation Plan(s), and Transportation Improvement Program(s) (TIP) that are developed under part 450 of this title.

**Repair and reconstruction** means work on a road, highway, or bridge that has one or more reconstruction elements. The term includes permanent repairs such as restoring pavement surfaces, reconstructing damaged bridges and culverts, and replacing highway appurtenances, but excludes emergency repairs as defined in 23 CFR 668.103.

**Roads, highways, and bridges** means a highway, as defined in 23 U.S.C. 101(a)(11), that is open to the public and eligible for financial assistance under title 23, U.S.C.; but excludes tribally owned and federally owned roads, highways, and bridges.

### § 667.5 Data time period, availability, and sources.

(a) The beginning date for every evaluation under this part shall be January 1, 1997. The end date must be no earlier than December 31 of the year preceding the date on which the evaluation is due for completion. Evaluations should cover a longer period if useful data is reasonably available. Subject to the timing provisions in § 667.7, evaluations must include any road, highway, or bridge that, on or after January 1, 1997, required repair and reconstruction on two or more occasions due to emergency events.

(b) State DOTs must use reasonable efforts to obtain the data needed for the evaluation. If the State DOT determines the necessary data for the evaluation is unavailable, the State DOT must document in the evaluation the lack of available data for that facility.

(c) A State DOT may use whatever sources and types of data it determines are useful to the evaluation. Available data sources include reports or other information required to receive emergency repair funds under title 23, other sources used to apply for Federal or nonfederal funding, and State or local records pertaining to damage sustained and/or funding sought.

### § 667.7 Timing of evaluations.

(a) Not later than November 23, 2018, the State DOT must complete the statewide evaluation for all NHS roads, highways and bridges. The State DOT shall update the evaluation after every emergency event to the extent needed to

add any roads, highways, or bridges subject to this paragraph that were affected by the event. The State DOT shall review and update the entire evaluation at least every 4 years. In establishing its evaluation cycle, the State DOT should consider how the evaluation can best inform the State DOT's preparation of its asset management plan and STIP.

(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 STIP.

### § 667.9 Consideration of evaluations.

(a) The State DOT shall consider the results of an evaluation prepared under this part when developing projects. State DOTs and metropolitan planning organizations are encouraged to include consideration of the evaluations during the development of transportation plans and programs, including TIPs and STIPs, and during the environmental review process under part 771 of this title. Nothing in this section prohibits State DOTs from proceeding with emergency repairs to restore functionality of the system, or from receiving emergency repair funding under part 668 of this title.

(b) The FHWA will periodically review the State DOT's compliance under this part, including evaluation performance, consideration of evaluation results during project development, and overall results achieved. Nothing in this paragraph limits FHWA's ability to consider the results of the evaluations when relevant to an FHWA decision, including when making a planning finding under 23 U.S.C. 134(g)(8), making decisions during the environmental review process under part 771 of this title, or when approving funding. The State DOT must make evaluations required under this part available to FHWA upon request.

Dated: October 11, 2016.

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