

12. Emergency Procedures

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12.1. Introduction

The Federal Highway Administration (FHWA) Emergency Relief (ER) Program (23 Code of Federal Regulations (CFR) 668) was established to provide policy and guidance for the administration of emergency funds to repair or reconstruct Federal-aid routes that have serious damage as a direct result of a declared event. The ER Program is intended to aid States in repairing road facilities that suffered widespread serious damage resulting from a natural disaster over a wide area or serious damage from a catastrophic failure.

This Chapter describes the National Environmental Policy Act (NEPA) document process for emergency repairs and relief actions that will be eligible for ER aid. Section 106 and emergencies are addressed in 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 the Statewide Environmental Office (SEO) (See EPM Chapter 2). The Categorical Exclusion (CE) process applies for all emergency repairs that are CE actions (See EPM Chapter 3). In the rare instance that a CE is not appropriate and an Environmental Assessment (EA) is required, coordinate with the SEO (See EPM Chapter 4), and follow the Council on Environmental Quality (CEQ) Memorandum on [Emergencies and the National Environmental Policy Act Guidance](#) 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 traffic, 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 EPM Section 2.2.2).
- There are no unusual circumstances (See EPM Section 2.2.3)

12.3. Requirements for FHWA Emergency Relief

Emergency events that qualify for FHWA ER funding occur in two ways:

- The Governor declares a disaster emergency under Alaska Statute (AS) [26.23](#) for the project area and FHWA concurs, or
- The President of the United States declares an emergency under the Stafford Act ([42 U.S.C. 5121 et seq.](#)) 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. An event generally must have caused at least \$700,000 in federally reimbursable damage for the event to be eligible for ER funding (23 CFR 668, Subpart A). Disaster damage less than \$700,000 is generally considered to be heavy maintenance or routine emergency repair. The ER program provides the funding to repair and restore highway facilities to pre-disaster conditions.

To qualify for 100-percent Federal share as an emergency repair on Federal-aid highways, the repair must meet the following two conditions:

1) Emergency repairs must meet any one of the following three criteria in accordance with the definition in 23 USC 120(e) which is Codified in 23 CFR 668.103:

- Minimizing the extent of the damage
- Protecting remaining facilities
- Restoring essential traffic

These three criteria are not examples, but rather are eligibility conditions under 23 USC 120(e) that are demonstrated and documented as part of an ER application under 23 CFR 668.111, 668.113(a) and 668.213(b).

2) Emergency work was accomplished within the first 270 days following the event or within the allowable time extension due to the inability to access a site to evaluate damages and repair costs (23 USC 120(e)[1-3]).

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 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. The link below leads to the FHWA Emergency Relief Manual for more information on the topic:

<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). To qualify under c(9), an emergency declaration is required by the Governor of the State which is concurred in by the Secretary, or by the President pursuant to the Robert T. Stafford Act (43 USC 5121). When the emergency declaration has been made, the following actions are allowable under c(9):

- Emergency repairs under [23 USC 125](#); and
- The repair, reconstruction, restoration, retrofitting, or replacement of any road, highway, bridge, tunnel, or transit facility (such as a ferry dock or bus transfer station), including ancillary transportation facilities (such

as pedestrian/bicycle paths and bike lanes), that is in operation or under construction when damaged and the action:

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

For emergency repairs under (c)(9) that began within 270 days of the emergency event, work can begin prior to NEPA approval. If more than 270 days from the emergency event declaration, NEPA documents should be approved prior to actions taken under (c)(9).

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 permitting process or emergency exemptions.

12.6. Emergency NEPA Document Preparation

The following list outlines the steps that should be taken to prepare a NEPA document for emergency repair projects:

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 Capitol Project with ER funding for preliminary response teams to charge to, if necessary.
4. Instead of a 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 state and federal permitting agencies 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 EPM Chapter 3).
7. If the action does not qualify for a CE, contact SEO, and determine whether an EA (See EPM Chapter 4) and Finding of No Significant Impact (FONSI) will be required.

Technical Appendix

[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 \(40 CFR 1506.12\)](#) 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 U.S.C. 5121](#).