

Federal Highway Administration, DOT

§ 635.303

This definition of *emergency* has no applicability to the Emergency Relief Program of 23 CFR part 668.

[39 FR 35158, Sept. 30, 1974, as amended at 48 FR 22912, May 23, 1983; 52 FR 45172, Nov. 25, 1987]

§ 635.204 Determination of more cost effective method or an emergency.

(a) Congress has expressly provided that the contract method based on competitive bidding shall be used by a State highway agency or county for performance of highway work financed with the aid of Federal funds unless the State highway agency demonstrates, to the satisfaction of the Secretary, that some other method is more cost effective or that an emergency exists.

(b) When a State highway agency determines it necessary due to an emergency to undertake a federally financed highway construction project by force account or negotiated contract method, it shall submit a request to the Division Administrator identifying and describing the project, the kinds of work to be performed, the method to be used, the estimated costs, the estimated Federal Funds to be provided, and the reason or reasons that an emergency exists.

(c) Except as provided in paragraph (b) of this section, when a State highway agency desires that highway construction work financed with the aid of Federal funds, other than the kinds of work designated under § 635.205(b), be undertaken by force account, it shall submit a request to the Division Administrator identifying and describing the project and the kind of work to be performed, the estimated costs, the estimated Federal funds to be provided, and the reason or reasons that force account for such project is considered cost effective.

(d) The Division Administrator shall notify the State highway agency in writing of his/her determination.

[52 FR 45172, Nov. 25, 1987]

§ 635.205 Finding of cost effectiveness.

(a) It may be found cost effective for a State highway agency or county to undertake a federally financed highway construction project by force account when a situation exists in which the rights or responsibilities of the com-

munity at large are so affected as to require some special course of action, including situations where there is a lack of bids or the bids received are unreasonable.

(b) Pursuant to authority in 23 U.S.C. 112(b), it is hereby determined that by reason of the inherent nature of the operations involved, it is cost effective to perform by force account the adjustment of railroad or utility facilities and similar types of facilities owned or operated by a public agency, a railroad, or a utility company provided that the organization is qualified to perform the work in a satisfactory manner. The installation of new facilities shall be undertaken by competitive bidding except as provided in § 635.204(c). Adjustment of railroad facilities shall include minor work on the railroad's operating facilities routinely performed by the railroad with its own forces such as the installation of grade crossing warning devices, crossing surfaces, and minor track and signal work. Adjustment of utility facilities shall include minor work on the utility's existing facilities routinely performed by the utility with its own forces and includes minor installations of new facilities to provide power, minor lighting, telephone, water and similar utility service to a rest area, weigh-station, movable bridge, or other highway appurtenance, provided such installation cannot feasibly be done as incidental to a major installation project such as an extensive highway lighting system.

[52 FR 45173, Nov. 25, 1987]

Subpart C—Physical Construction Authorization

SOURCE: 40 FR 17251, Apr. 18, 1975, unless otherwise noted.

§ 635.301 Purpose.

To prescribe the policies and procedures under which a State highway agency may be authorized to advance a Federal-aid highway project to the physical construction stage.

§ 635.303 Applicability.

The provisions of this subpart are applicable to all Federal-aid highway construction projects except projects

§ 635.305

constructed under an approved Certification Acceptance Plan.

§ 635.305 Physical construction.

For purposes of this subpart the physical construction of a project is considered to consist of the actual construction of the highway itself with its appurtenant facilities. It includes any removal, adjustment or demolition of buildings or major obstructions, and utility or railroad work that is a part of the contract for the physical construction.

§ 635.307 Coordination.

(a) The right-of-way clearance, utility, and railroad work are to be so coordinated with the physical construction that no unnecessary delay or cost for the physical construction will occur.

(b) All right-of-way clearance, utility, and railroad work performed separately from the contract for the physical construction of the project are to be accomplished in accordance with provisions of the following:

- (1) 23 CFR part 140, subpart I;
- (2) 23 CFR part 646, subpart B;
- (3) 23 CFR 710.403; and
- (4) 23 CFR part 645, subpart A.

[40 FR 17251, Apr. 18, 1975, as amended at 40 FR 25585, June 17, 1975; 64 FR 71289, Dec. 21, 1999]

§ 635.309 Authorization.

Authorization to advertise the physical construction for bids or to proceed with force account construction thereof shall normally be issued as soon as, but not until, all of the following conditions have been met:

(a) The plans, specifications, and estimates (PS&E) therefor have been approved.

(b) A statement is received from the State, either separately or combined with the information required by § 635.309(c), that either all right-of-way clearance, utility, and railroad work has been completed or that all necessary arrangements have been made for it to be undertaken and completed as required for proper coordination with the physical construction schedules. Where it is determined that the completion of such work in advance of the highway construction is not fea-

23 CFR Ch. I (4-1-02 Edition)

sible or practical due to economy, special operational problems and the like, there shall be appropriate notification provided in the bid proposals identifying the right-of-way clearance, utility, and railroad work which is to be underway concurrently with the highway construction.

(c) A statement is received from the State certifying that all individuals and families have been relocated to decent, safe and sanitary housing or the State has made available to relocatees adequate replacement housing in accordance with the provisions of the current Federal Highway Administration (FHWA) directive(s) covering the administration of the Highway Relocation Assistance Program and that one of the following has application:

(1) All necessary rights-of-way, including control of access rights when pertinent, have been acquired including legal and physical possession. Trial or appeal of cases may be pending in court but legal possession has been obtained. There may be some improvements remaining on the right-of-way but all occupants have vacated the lands and improvements and the State has physical possession and the right to remove, salvage, or demolish these improvements and enter on all land.

(2) Although all necessary rights-of-way have not been fully acquired, the right to occupy and to use all rights-of-way required for the proper execution of the project has been acquired. Trial or appeal of some parcels may be pending in court and on other parcels full legal possession has not been obtained but right of entry has been obtained, the occupants of all lands and improvements have vacated and the State has physical possession and right to remove, salvage, or demolish these improvements.

(3) The acquisition or right of occupancy and use of a few remaining parcels is not complete, but all occupants of the residences on such parcels have had replacement housing made available to them in accordance with 49 CFR 24.204. The State may request authorization on this basis only in very unusual circumstances. This exception must never become the rule. Under these circumstances, advertisement for