

**§ 170.920**

**25 CFR Ch. I (4-1-07 Edition)**

EMERGENCY RELIEF

**§ 170.920 What is the purpose of the provisions relating to emergency relief?**

Sections 170.920 through 170.927 relating to emergency relief are provided for information only and do not change the provisions of 23 CFR part 668 or existing guidance on emergency relief.

**§ 170.921 What emergency or disaster assistance programs are available?**

(a) FHWA operates two emergency relief programs:

(1) The Emergency Relief (ER) Program, which provides disaster assistance for Federal-aid highways owned by State, county and local governments; and

(2) The Emergency Relief for Federally Owned Roads (ERFO) Program, which provides disaster assistance for Federal roads, including Indian Reservation Roads, that have been damaged due to natural disasters (floods, hurricanes, tornadoes, etc.).

(b) The Federal Emergency Management Agency (FEMA) may be considered as an alternate funding source to repair damage that is ineligible under the ER or ERFO Programs.

**§ 170.922 How can States get Emergency Relief Program funds to repair IRR System damage?**

States can request emergency relief program funds to repair damage to Federal-aid highways caused by natural disasters or catastrophic failures. It is the responsibility of individual States to request these funds.

**§ 170.923 What qualifies for ERFO funding?**

(a) Tribes can use ERFO funding to repair damage to IRR transportation facilities (including roads, bridges, and related structures) caused by natural disaster over a widespread area or by a catastrophic failure from any external cause. The Secretary of Transportation determines eligible repairs under 23 CFR 668, subpart B.

(1) Examples of natural disasters include, but are not limited to, floods, earthquakes, tornadoes, landslides, avalanches or severe storms, such as saturated surface conditions and high-

water table caused by precipitation over an extended period of time.

(2) An example of a catastrophic failure includes, but is not limited to, a bridge collapse after being struck by a barge, truck or a landslide.

(b) Structural deficiencies, normal physical deterioration, and routine heavy maintenance do not qualify for ERFO funding.

**§ 170.924 What happens if DOT denies an ERFO claim?**

The appealing tribe or the facility owner (if the tribe is not the owner) may appeal the finding or determination to the Secretary of Transportation at: FHWA, 400 7th St., SW., HFL-1, Washington, DC 20590. If the tribe is appealing it must provide a courtesy copy of its appeal to BIA.

**§ 170.925 Is ERFO funding supplemental to IRR Program funding?**

Yes. If ERFO funds are approved and available, they can be used to supplement IRR construction and maintenance funds for FHWA-approved repairs. If IRR construction or maintenance funds are used to address an approved claim when ERFO funds are unavailable, the next authorized ERFO funds may be used to reimburse the construction or maintenance funds expended.

**§ 170.926 Can a tribe administer approved ERFO repairs under a self-determination contract or a self-governance agreement?**

Yes.

**§ 170.927 How can FEMA Program funds be used to repair damage?**

(a) A tribe can request FEMA Program funds for emergency repairs to damaged roads not on the IRR System if the President has declared a major disaster or emergency. The tribe makes the request by submitting an SF 424, Application for Federal Assistance, directly to FEMA, as described in FEMA Response and Recovery Directorate 9512.4 (Dec. 28, 1999).

(b) Tribes can ask States to seek FEMA Program funds to repair damage to roads not on the IRR System.

## Bureau of Indian Affairs, Interior

## § 170.935

### TRIBAL TRANSPORTATION DEPARTMENTS

#### § 170.930 What is a tribal transportation department?

A tribal transportation department is a department, commission, board, or official of any tribal government charged by its laws with the responsibility for highway construction. Tribal governments, as sovereign nations, have inherent authority to establish their own transportation departments under their own tribal laws. Tribes may staff and organize transportation departments in any manner that best suits their needs. Tribes can receive technical assistance from Indian LTAP centers, BIA regional road engineers, or AASHTO to establish a tribal transportation department.

#### § 170.931 Can tribes use IRR Program funds to pay tribal transportation department operating costs?

Yes. Tribes can use IRR Program funds to pay the cost of planning, administration, and performance of approved IRR Program activities (see appendix A, subpart B). Tribes can also use BIA road maintenance funds to pay the cost of planning, administration, and performance of maintenance activities under this part.

#### § 170.932 Are there other funding sources for tribal transportation departments?

There are many sources of funds that may help support a tribal transportation department. The following are some examples of additional funding sources:

- (a) Tribal general funds;
- (b) Tribal Priority Allocation;
- (c) Tribal permits and license fees;
- (d) Tribal fuel tax;
- (e) Federal, State, private, and local transportation grants assistance;
- (f) Tribal Employment Rights Ordinance fees (TERO); and
- (g) Capacity building grants from Administration for Native Americans and other organizations.

#### § 170.933 Can tribes regulate oversize or overweight vehicles?

Yes. Tribal governments can regulate travel on roads under their jurisdiction and establish a permitting process to regulate the travel of oversize or over-

weight vehicles, in accordance with applicable Federal law. BIA may, with the consent of the affected tribe, establish a permitting process to regulate the travel of oversize or overweight vehicles on BIA-system roads.

### RESOLVING DISPUTES

#### § 170.934 Are alternative dispute resolution procedures available?

(a) Federal agencies should use mediation, conciliation, arbitration, and other techniques to resolve disputes brought by IRR Program beneficiaries. The goal of these alternative dispute resolution (ADR) procedures is to provide an inexpensive and expeditious forum to resolve disputes. Federal agencies should resolve disputes at the lowest possible staff level and in a consensual manner whenever possible.

(b) Except as required in 25 CFR part 900 and part 1000, tribes operating under a self-determination contract or self-governance agreement are entitled to use dispute resolution techniques prescribed in:

- (1) The ADR Act, 5 U.S.C. 571-583;
- (2) The Contract Disputes Act, 41 U.S.C. 601-613; and
- (3) The Indian Self-Determination and Education Assistance Act and the implementing regulations (including for non-construction the mediation and alternative dispute resolution options listed in 25 U.S.C. 4501 (model contract section (b)(12)).

#### § 170.935 How does a direct service tribe begin the alternative dispute resolution process?

(a) To begin the ADR process, a direct service tribe must write to the BIA Regional Director or the Chief of BIA Division of Transportation. The letter must:

- (1) Ask to begin one of the alternative dispute resolution (ADR) procedures in the Administrative Dispute Resolution Act of 1996, 5 U.S.C. 571-583 (ADR Act); and
  - (2) Explain the factual and legal basis for the dispute.
- (b) ADR proceedings will be governed by procedures in the ADR Act and the implementing regulations.