

Emergency Relief Manual

Summary of Revisions

November 2009 Version

Chapter I. Introduction

Program Overview (Chapter I-B)

- Added last two sentences of third paragraph: "The \$700,000 threshold applies to Federal-aid highway damage eligible under the ER program separate from Federally-owned highway damages eligible under the ERFO program. FHWA's Office of Federal Lands Highway imposes a separate \$700,000 threshold for eligible ERFO events on Federally-owned lands."
- Added fourth paragraph: "State and local governments are expected to prepare for certain natural events such as rainfall and flooding through adequate planning and commitment of resources. Additionally, known recurring or seasonal weather patterns or conditions should be planned for through a State or local agency's annual maintenance budget. Damages from the occurrence of such natural events, other than those of an extraordinary nature, should not rely on the ER program for assistance."
- Added sixth paragraph: "Note that the \$100 million per State cap applies to the combined cost of damages to both Federal-aid highways (ER) and Federal Lands highways (ERFO) for any single event within a State."
- Revised/added last two sentences of seventh paragraph: "During this 180-day period, permanent repair work is reimbursed at the normal pro rata share even if the permanent repair is performed as an incidental part of the emergency repair work. Permanent repair work is not to be considered emergency repair work for the purpose of establishing the eligible Federal share, and can only be reimbursed at 100% if special legislation allows."

Chapter II. Eligibility of Damage Repair Work

General (Chapter II-A)

- Added second and third sentences of first paragraph: definition of "Federal-aid highway" from 23 USC 101(a)(5). Added "Therefore, any highway that is not eligible for assistance under the provisions of 23 U.S.C. Chapter 1, are not eligible for Federal-aid highway ER funding."

Eligible Items (Chapter II-B)

- Added last sentence of first paragraph: "When a pedestrian or bicycle trail that is within the right-of-way of a Federal-aid highway is damaged, that damage is eligible for ER funding whether or not the roadway itself is damaged."

Engineering and Right-of-Way (Chapter II-B.1)

- Removed language stating that certain administrative costs are not eligible. Such costs may be eligible as indirect costs. Eligibility of indirect costs is now addressed in Chapter II-B.2.

Indirect Costs (Chapter II-B.2)

- Added new section on Indirect Costs.
- Indirect costs were made eligible following TEA-21.
- The previous ER Manual did not reflect the change at that time.
- This only applies to agencies otherwise seeking reimbursement of indirect costs.

Detours (Chapter II-B.3)

- Added first paragraph: "Subject to FHWA review and approval, designated detours and supplemental detours are eligible if such detour routes can be shown to relieve excess traffic directly attributable to the eligible disaster."

- Added last sentence of third paragraph: “Although passenger-only ferry services are eligible for ER participation, bus transit services to transport passengers to and from the ferry terminal would not be an eligible ER expense.”

Traffic Damage *(Chapter II-B.4)*

- Revised first sentence of second paragraph: “ER participation should be limited to surface damage that has occurred during the first 60 days after a disaster event, unless otherwise approved by the FHWA Division Administrator.”

Basin Flooding *(Chapter II-B.6.b)*

- Struck the following sentence from the sixth paragraph: “Permanent repairs accomplished as an incidental part of this initial effort to restore essential highway traffic may also receive 100 per cent Federal share reimbursement.” This was replaced with: “All permanent restoration costs and any costs incurred after the first 180 days are to be reimbursed at the normal pro rata share.”

Work on Active Construction Projects *(Chapter II-B.8)*

- Added last five sentences beginning with “The contract documents may specify the responsibility for damages...” and continuing through the end of the paragraph.

Toll Facilities *(Chapter II-B.9)*

- Added sentences two through four: “For example, if a toll facility is on a National Highway System (NHS) route but does not have a section 129 toll agreement in place, then the designation of the route alone does not make this eligible for ER funding. To be eligible for ER funding, the highway must be a Federal-aid highway in accordance with the definition in 23 U.S.C. 101(a)(5).... Since a toll highway that does not have an active section 129 toll agreement in place is not eligible for assistance under title 23, such a roadway cannot receive ER funding.”

Landscaping *(Chapter II-B.11)*

- Added “For example, following a wildfire....” through the end of the paragraph.

Timber and Debris Removal *(Chapter II-B.13)*

- Added first two paragraphs.
- Only debris that is deposited as a direct result of the disaster is eligible for ER funding
- Other debris may be eligible for FEMA funding.
- Divisions are encouraged to work with FEMA to establish debris removal guidance (i.e. “first pass” of debris removal is eligible for ER funding while subsequent passes are covered by FEMA’s Public Assistance Program).

Transportation System Management (TSM) Strategies *(Chapter II-B.14)*

- Added last sentence: “Lost ticket revenue due to redirection of traffic enforcement police services resulting from an emergency is not an eligible ER expense.”

Catastrophic Failure from an External Cause *(Chapter II-B.20)*

- New section.
- The State is responsible for pursuing recovery of repair costs.
- Any compensation for damages must be credited to the ER program.
- This is already covered in the ER regulations [23 CFR 668.105(e) and (f)].

Ineligible Items *(Chapter II-C)*

- Added third sentence of first paragraph: “Incidental costs resulting from a disaster, such as project delay costs or lost toll revenues, are not an eligible ER expense.”

Damage Estimate under \$5,000 per Site *(Chapter II-C.2)*

- Added last sentence: “For this reason, grouping damages to form a site based solely on a political subdivision (i.e., county or city boundaries) should not be accepted.”

Frost Heaving (*Chapter II-C.4*)

- Added last sentence: "Surface roadway damage such as potholes resulting from such conditions are not eligible for ER funding."

Prior Scheduled Work (*Chapter II-C.7*)

- Added last sentence of first paragraph: "As used in this section, the term 'construction phase' refers to the physical construction separate from any other identified phases in the STIP such as planning, design, or right-of-way phases."
- Added second paragraph: "Inclusion of bridge replacement work in a city or local agency capital improvement plan is viewed by FHWA as prior scheduled work and therefore is not eligible for ER funding. In this case, the city or local agency is that agency responsible for capital improvement program funding decisions for that jurisdiction and such a plan is officially recognized for that purpose."

Emergency Transportation Services/First Responders (*Chapter II-C.10*)

- Added second sentence: "Activities associated with first responders to a disaster such as emergency police services, firefighting, emergency medical, and any other rescue-related activities including the use of divers for rescue operations, are not an eligible ER activity."

Mitigation /Preventive Work/Evacuation Prior to a Disaster (*Chapter II-C.11*)

- Added second paragraph: "Costs associated with evacuation activities prior to a disaster such as traffic control and police and traffic management activities associated with evacuation of an area prior to the actual occurrence of an event, such as a hurricane, are not eligible for ER funding."

Radiological Contamination (*Chapter II-C.13*)

- New Section - Radiological contamination, with no incidental structural damage, is not eligible.

Transit Operation and Maintenance Costs (*Chapter II-C.14*)

- New Section - Transit Operation and Maintenance Costs are not eligible.

Intent of Emergency Repairs (*Chapter II-D.1.b*)

- Added last sentence of third paragraph: "However, such permanent repair work is still to be reimbursed at the normal pro rata share for that facility even if the permanent repair is performed as part of the emergency repair work."

Federal Share (180-Day Period) (*Chapter II-D.1.c*)

- Struck last sentence in section: "In certain circumstances, emergency repair work to restore essential traffic, to minimize the extent of damage, or to protect the remaining facilities cannot be undertaken on the initial day of the occurrence of the disaster. In such circumstances, the date on which the first emergency work was undertaken can be accepted as the beginning day of the first 180 days. Regardless, there is only one 180-day period for the entire disaster."
- Revised/added last two sentences of first paragraph: "The 180-day time period is intended to start on the initial day of the disaster occurrence within a particular State. The starting date of a disaster is to be applied on a statewide basis."
- Added second paragraph: "As previously noted in Chapter I, Section B, Program Overview, permanent repair work is not to be considered emergency repair work for the purpose of establishing the eligible Federal share, and can only be reimbursed at 100% if special legislation allows."

Deficient Bridges (*Chapter II-D.2.d*)

- Added fourth sentence of first paragraph: "Inclusion of bridge replacement work in a city or local agency capital improvement plan is viewed by FHWA as prior scheduled work and therefore is not eligible for ER funding (see Chapter II, Section C-7, Prior Scheduled Work)."

Chapter III. Emergency Relief Application Process

Emergency Relief Application Process (*Chapter III*)

- Previously there were three methods for conducting site assessments – this has now been changed to two methods: 1) Traditional and 2) Quick Release.
- Traditional (Expedited) was combined with Traditional.
- The ER Program Flow Chart was revised to reflect these changes.

Chapter IV. Preliminary Steps

Letter of Intent (*Chapter IV-A*)

- Added last sentence: “An electronic copy of the letter of intent should be sent to the Office of Program Administration with a copy to the ER Program Manager.”

Acknowledgment Letter (*Chapter IV-B*)

- Added last sentence of second paragraph: “An electronic copy of the acknowledgement letter should be sent to the Office of Program Administration with a copy to the ER Program Manager.”

Governor's Proclamation (*Chapter IV-C*)

- Added second sentence: “Only those areas of the State that are included in the Governor's proclamation will be eligible for ER funding.”

Chapter V. Disaster Assessment and Damage Survey Summary Report

Damage Assessments (*Chapter V-D*)

- Second paragraph was rewritten to reflect the changes to Chapter III (change from three to two methods for conducting site assessments).

Chapter VI. Project Procedures and Requirements

Fund Management (*Chapter VI-B*)

- Section was substantially rewritten.
- Distinction between “formal” requests and “pending” requests is explained.
- ER fund distribution is to be based on FY obligation needs.
- Funds not obligated by the end of the FY will be withdrawn.
- States cannot hold onto unobligated ER funds to later be applied to future disasters.

Advancing Projects During ER Program Funding Shortages (*Chapter VI-F*)

- Eliminated Option 1 – Use of unobligated ER funds from other events.
- Revised Manual now presents two options to handle ER funding shortages:
 1. Use of regular Federal-aid funds (same as before)
 2. Use of Advance Construction (same as before)

Disaster Code (*Chapter VI-L*)

- Several edits were made to clarify the disaster code designation.

Construction Contracts/Force Account (*Chapter VI-M*)

- Added definition for emergency repairs and language to emphasize that all other repairs are defined as permanent repair work.
- Added reference to 23 CFR 668.105(i).

- Added last sentence: “Permanent repair and reconstruction work must be done by a competitive bid contract method unless the State demonstrates some other method is cost effective as described in 23 CFR 635.204.”

Emergency Repairs (*Chapter VI-M.1*)

- Added last sentence of first paragraph: “Where time and conditions warrant, States are strongly encouraged to first consider using the competitive bidding method of contracting for emergency repairs.”
- Added new second paragraph: “Often, emergency repair work, such as debris removal, can be performed efficiently through the deployment of pre-established emergency repair contracts....”

Force Account (*Chapter VI-M.1.a*)

- Added second sentence of first paragraph: “Public agencies may perform emergency repairs under the force account method, but are not permitted to compete for solicited or negotiated contracts.”

Negotiated Contract (*Chapter VI-M.1.c*)

- Entire section was rewritten.

Lane Rental (*Chapter VI-M.3.b*)

- Dropped Lane Rental section – The Lane Rental description is not needed in the ER Manual, though this contracting method may still be used for ER work.

Contract Requirements (*Chapter VI-M.4*)

- Introductory section was rewritten to apply to both permanent and emergency repair contracts: “Contracts for both permanent repair work and emergency repairs must incorporate all applicable federal requirements. As such, FHWA Form 1273 must be included in all contracts pursuant to 23 CFR 633.102.”

Davis-Bacon Act (*Chapter VI-M.4.a*)

- Section was rewritten to include current Davis-Bacon requirements for debris removal work.
- Davis-Bacon requirements do not apply where emergency contract work is only for the removal of debris (not considered “construction” for the purpose of Davis-Bacon provision).
- Debris removal performed in conjunction with construction is subject to Davis-Bacon requirements.

Equal Employment Opportunity (EEO) (*Chapter VI-M.4.e*)

- New section

Use of Suspended or Debarred Contractors (*Chapter VI-M.4.g*)

- New section

Appendices

Appendix A – Sample ER Request Memorandum

- Added Sample ER request Memorandum