

U.S. Department of Transportation

## Federal Highway Administration

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### FHWA Order 5182.1

Order

Subject Emergency Relief Program

Responsibilities

Classification Code

Date February 22, 2016

Office of Primary

5182.1

Interest HIPA-10

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Par.

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1. What is the purpose of this Order? This Order provides procedures for administration of the Emergency Relief (ER) program by the FHWA Office of Program Administration (HIPA-10) and Federal-aid division offices (Division). It is intended to strengthen the administration and oversight of the ER program to ensure the effective use of limited ER funding for eligible projects to restore Federal-aid roads and bridges after a qualified event.
  2. Is this a new FHWA Order? Yes, this is a new Order.
  3. What is the scope of this Order? This Order applies to the ER program implemented under the provisions of Section 125 of title 23, United States Code (U.S.C.), and Section 668, Subpart A, of title 23, Code of Federal Regulations (CFR). This Order does not apply to repairs under the Emergency Relief for Federally Owned Roads (ERFO) program administered by the Office of Federal Lands Highway (FLH) under 23 CFR 668 Subpart B.
  4. What authorities govern this Order?
    - a. [23 U.S.C. 125. Emergency relief.](#)

- b. [23 U.S.C. 120, Federal share payable.](#)
- c. [23 CFR 668, Emergency Relief Program, Subpart A - Procedures for Federal-aid Highways.](#)
- d. [Emergency Relief Manual, \(May 31, 2013 or as superseded\).](#)

## 5. Why is this Order necessary?

The FHWA must ensure that ER fund are only used for allowable, necessary, and reasonable costs.

External and internal reviews have expressed concerns about the administration of the ER program nationally. These reviews found different levels of oversight in determining eligible costs; lack of controls to prevent expansion of work beyond the scope and cost of a comparable facility; inconsistency in the documentation that Divisions maintain; variability in classifying repairs as either emergency or permanent; lack of verification that the appropriate federal share is being applied; and tardiness in making Disaster Assessments and Detailed Damage Inspections, and in submitting ER funding applications. These reviews also noted inconsistency in the contents of ER applications; inadequate oversight concerning the timely construction of ER projects and the completion and closure of ER events; and varying levels of oversight during ER project implementation.<sup>1</sup>

## 6. What definitions are used in this Order?

Definitions are provided in [23 CFR 668.103](#).

## 7. What are the responsibilities of FHWA Federal-aid divisions?

Divisions have the primary responsibility to ensure effective use of ER funds. The following actions are components of effective Division stewardship of the ER program.

### a. Initial Steps

1. Contact the State Department of Transportation (SDOT) during or shortly after a potentially eligible event occurs to ascertain if the SDOT will seek ER funds and the need for a quick release (QR). Coordinate with HIPA-10.
2. Advise the SDOT to perform a disaster assessment as soon as practical after an event occurs to determine the severity of damage to Federal-aid highways.
3. Coordinate with the SDOT on the Letter of Intent and Acknowledgement Letter.
4. Ensure that the SDOT submits a damage survey summary report at least six weeks after its Letter of Intent. The Division may extend this time in very unusual circumstances. The ER Manual lists items to be included in the damage survey summary report.
5. Establish the actual date of the event as the disaster start date.
6. Communicate requirements and deadlines to the SDOT for submitting ER application materials.



## b. Next Steps

Detailed Damage Inspection Reports (DDIR) are prepared to document the damage, the scope and estimated cost of the repair work, and the eligibility of repairs and any betterments, and to classify work as emergency or permanent repair.

Divisions are responsible for determining and documenting the eligibility of ER sites. While SDOTs may prepare DDIRs, Divisions have the responsibility to review and approve each eligible DDIR.

Divisions should:

1. Participate in inspections of potential ER sites (subject to staff and budget constraints) to establish the severity and extent of damages and the types of repairs that will be required.
2. Review for eligibility and approve each DDIR. Ensure that the DDIR contains items required in the “Detailed Damage Inspections” section of the ER Manual. Ensure that DDIRs are not approved for preexisting damage. The Division’s delegation of authority should define who will review and approve DDIRs.
3. Delineate those activities that will be classified as emergency repairs and those that will be classified as permanent repairs. Emergency repairs are only those repairs to minimize the extent of damage, to protect remaining facilities, and to restore essential traffic that are undertaken during or immediately following a disaster. In most cases, they should be completed within 180 days plus any approved extension due to inaccessibility. In cases where emergency repairs will take longer, the federal share will be reduced.
4. Concur in those instances where the duration of emergency repairs will exceed 180 days.
5. Ensure that all eligible DDIRs are completed within three months of the event. Divisions may extend this time due to constraints in accessing sites or based on the size of the event, but typically no more than two additional months.
6. Work with the SDOT to develop an initial “best estimate” of ER needs for the event. Pending requests should be updated as more accurate estimates are developed.
7. Ensure that SDOTs understand that no new sites may be added to the comprehensive list of eligible project sites and costs later than two years after the disaster start date. Monitor project costs to ensure that any cost increases are not the result of unjustified or ineligible scope changes. Update DDIRs if cost estimates increase by 20 percent above the initial estimate.
8. Ensure eligibility is limited to the cost of a comparable facility that meets the current geometric and construction standards required for the types and volume of traffic that the facility will carry over its design life. Extensive realignments, changes in facility character, or mitigation above that which is necessary to attain a National Environmental Policy Act (NEPA) decision, secure permits, and build a



comparable facility will require funds from a source other than ER to pay for the additional cost for such improvements.

9. Coordinate with HIPA-10 before approving eligibility for building comparable facilities that will have a combined estimated cost over \$25 million.
10. Review the economic justification and determine eligibility of proposed betterments using a benefit-cost analysis. The analysis should weigh the cost of the betterment against the risk of eligible recurring damage and the cost of future repairs, taking into account current and future climate conditions when possible. Upgrading to meet current design standards is generally not considered to be a betterment.
11. Encourage SDOTs to consider opportunities to use other funding sources to improve the resilience of Federal-aid highways. FHWA supports planning, designing and constructing highways under the Federal-aid program to adapt to current and future climate change and extreme weather events. Project sponsors may use best available information when estimating the design event, consistent with [FHWA Order 5520](#), Transportation System Preparedness and Resilience to Climate Change and Extreme Weather Events, 2014 <sup>2</sup>, and [Executive Order 13690](#), Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input.
12. Retain the following documentation for each disaster electronically or in hard copy:
  - SDOT Letter of Intent;
  - Division Acknowledgement Letter;
  - Governor's Proclamation and/or Presidential Declaration;
  - SDOT Damage Survey Summary Report;
  - SDOT ER quick release request, if applicable;
  - SDOT ER standard method request letter;
  - Division Administrator's finding of eligibility;
  - Approved DDIR with initial and final cost estimates; and an
  - Application with comprehensive list of eligible sites and costs.

**c. Submission of requests for ER funding.**

1. QR request:

- After consulting with the SDOT, the Division determines if a QR is warranted based on its assessment of whether the event threshold will be met, of the SDOT's need for immediate funding, and of whether a Presidential or Governor's emergency or disaster declaration will be issued.
- Provide the following information to HIPA: disaster code and event title, brief description of the event with typical damages, list of U.S. Congressional Districts affected, and QR amount requested.



- The Division Administrator sends a request to the Outlook e-mail group, "FHWA ER Quick Release." This group has been set up for rapid communication of QR requests.
- HIPA-10 sends a recommendation to the Office of the Administrator (HOA) by email.
- The FHWA Administrator decides whether to approve a QR and the amount of the QR. Once the QR is approved, HOA sends an e-mail to the Outlook group named "FHWA ER Quick Release" indicating the approval and amount of the QR.
- HIPA-10 adds required information to the Grants Notification System and notifies FHWA's Congressional Affairs Team. The Congressional Affairs Team coordinates with the Office of the Secretary's Governmental Affairs Team on a concurrent notification to the congressional authorizing and appropriations committees. The Office of Public Affairs may then issue a press release.
- HIPA-10 issues the allocation memorandum.
- Obligate funds only after the President's or Governor's declaration is made and sufficient information on the severity of damage to make an affirmation of ER eligibility has been received. If the QR funds are not obligated within six months of the allocation date and consult with the SDOT to determine if the funds are required. If the funds are no longer needed, HIPA-10 will withdraw them.

## 2. Standard ER request method (Required Documents):

- SDOT Letter of Intent – As soon as possible after it is clear there is eligible damage and the ER threshold will likely be met. Generally during or shortly after the disaster.
- Division Acknowledgement Letter – Generally within several days of the receipt of the SDOT Letter of Intent.
- Governor's Proclamation or Presidential Declaration – As soon as this is available.
- SDOT ER Request Letter – As soon as this is available.
- SDOT damage survey summary report – Within six weeks of the State Letter of Intent, except for unusual circumstances (23 CFR 688.111(b)(2)).
- Division ER Request to HQ – As soon as this is available.
- ER application with comprehensive list of eligible sites and costs – No later than two years after the disaster start date (23 U. S. C. 125(d)).

### d. Monitoring during Construction

Monitor construction as provided in the Stewardship and Oversight Agreement. ER projects should be subjected to the same risk-based assessment process as are other projects when designating Projects of Division Interest (PoDI).<sup>3</sup> ER funds may have additional risk because they are in addition to a State's regular apportionment and subject to a variety of program-specific requirements (emergency vs. permanent repairs, limitations on betterments, etc.). Divisions must ensure that these funds are only used for eligible work on designated ER events. Following large scale ER events, Divisions may



consider performing a Compliance Assessment Program (CAP) review of the use of ER funds, weighing other risks.

**e. Funds Management**

Divisions should:

1. Authorize project agreements and obligate funds. Ensure the correct Federal share is applied and the scope of work is consistent with the DDIR.
2. Work with the SDOT to expedite the obligation of ER funds and completion of repairs. Ensure the accuracy of obligations in project agreements. Authorizations should be based on accurate cost estimates for each phase that is ready to proceed.
3. Ensure that the SDOT has a process preventing the 100% Federal share for emergency repairs from being used beyond the times allowed in 23 U.S.C. 120. Using a risk-based approach, verify and document that the appropriate federal share is being used.
4. Monitor unexpended obligations on ER projects so they do not become inactive.
5. Review, at least annually, the progress in advancing ER projects to construction and close out, ensuring compliance with 23 CFR 668.105(h) requirements that ER projects advance to construction obligation by the end of the second fiscal year following the disaster. The Division must review, approve, and document any extensions.
6. Ensure projects are closed in accordance with [2 CFR 200.343](#).
7. Notify HIPA-10 of any excess ER funds that can be withdrawn.

**f. Third Party ER Events**

For damage caused by a third party where ER funds have been provided, such as a truck crash into a bridge pier, ensure that the SDOT makes prompt and diligent efforts to recover repair costs from the legally responsible party. The Federal share of the recovery is to be credited to the ER project.

Track the status of recovery efforts and provide updates to HIPA-10 in accordance with paragraph 8.c.3 of this Order. Coordinate settlement matters with the Office of Chief Counsel.

**8. What are the responsibilities of the Office of Program Administration?**

**a. Program Management**

HIPA-10 will update and maintain the ER Manual consistent with this Order, including templates of required correspondence. The Manual will contain guidance on the information to be included in the benefit-cost analysis to demonstrate that any proposed betterment will result in a savings over future recurring repair costs under the Emergency Relief Program.

## b. Allocation of ER funding

### 1. Coordinate QR funding requests.

- Maintain updated QR policy and procedures;
- Keep Divisions informed of changes;
- Coordinate review and approval of QR requests;
- Coordinate with the Offices of Policy and Public Affairs on congressional notification and press releases; and
- Issue allocation memos and coordinate allocations with the Office of the Chief Financial Officer.

### 2. Coordinate annual obligation needs and allocations.

- Maintain a list of current nationwide ER obligation needs and plans;
- Prepare allocation requests for HOA approval;
- Coordinate with the Offices of Policy and Public Affairs on congressional notification and press releases; and
- Issue allocation memo and coordinate allocation with the Office of the Chief Financial Officer.

## c. Funds management

### 1. Track balances of available unallocated ER funds.

### 2. Review unobligated and unexpended balances monthly. Coordinate withdrawal of excess ER funds with Divisions.

### 3. Track recovery of insurance proceeds for eligible ER third party events every six months.

### 4. Track any applicable event caps.

### 5. Maintain a database of ER allocations and withdrawals.

### 6. Maintain a database of ER events and final costs.

## 9. Where can I obtain additional information?

For additional guidance, contact FHWA's Office of Infrastructure, Federal-aid Program Team (HIPA-10), or see the [Emergency Relief Manual](#).

<sup>1</sup> See [Government Accountability Office \(GAO\) Report GAO-07-245](#), "Highway Emergency Relief: Reexamination Needed to Address Fiscal Imbalance and Long-term Sustainability," (February 2007); [GAO Report GAO-12-45](#), Highway Emergency Relief Strengthened Oversight of Project Eligibility Decisions Needed," (November 2011); and Program Management Improvement Team Report, National Review of the Emergency Relief Program (May 2013).

<sup>2</sup> Technical assistance available at: [https://www.fhwa.dot.gov/environment/climate\\_change/adaptation/](https://www.fhwa.dot.gov/environment/climate_change/adaptation/).

<sup>3</sup> See PoDI guidance at: <https://www.fhwa.dot.gov/federalaid/stewardship/150504podi.pdf>.



A handwritten signature in blue ink, appearing to read 'G. Nadeau', written in a cursive style.

Gregory G. Nadeau  
Administrator