

§ 668.105 Policy.

(a) The Emergency Relief (ER) program is intended to aid States in repairing road facilities which have suffered widespread serious damage resulting from a natural disaster over a wide area or serious damage from a catastrophic failure.

(b) ER funds are not intended to supplant other funds for correction of pre-existing, non-disaster related deficiencies.

(c) The expenditure of ER funds for emergency repair shall be in such a manner so as to reduce, to the greatest extent feasible, the cost of permanent restoration work.

(d) The approval to use available ER funds to repair or restore highways damaged by a natural disaster shall be based on the combination of the extraordinary character of the natural disturbance and the wide area of impact as well as the seriousness of the damage. Storms of unusual intensity occurring over a small area may not meet the above conditions.

(e) ER funds shall not duplicate assistance under another Federal program or compensation from insurance or any other source. Partial compensation for a loss by other sources will not preclude emergency fund assistance for the part of such loss not compensated otherwise. Any compensation for damages or insurance proceeds including interest recovered by the State or political subdivision or by a toll authority for repair of the highway facility must be used upon receipt to reduce ER fund liability on the project.

(f) Prompt and diligent efforts shall be made by the State to recover repair costs from the legally responsible parties to reduce the project costs particularly where catastrophic damages are caused by ships, barge tows, highway vehicles, or vehicles with illegal loads or where damage is increased by improperly controlled objects or events.

(g) The processing of ER requests shall be given prompt attention and shall be given priority over non-emergency work.

(h) ER projects shall be promptly constructed. Any project that has not advanced to the construction obligation stage by the end of the second fiscal year following the disaster occur-

rence will not be advanced unless suitable justification to warrant retention is furnished to the FHWA.

(i) Permanent repair and reconstruction work, not accomplished as emergency repairs, shall be done by the contract method unless the State Highway agency adequately demonstrates that some other method is more cost effective as described in 23 CFR 635.204. Emergency repair work may be accomplished by the contract, negotiated contract or highway agency force account methods as determined by the Highway agency as best suited to protect the public health and safety.

(j) ER program funding is only to be used to repair highways which have been seriously damaged and is not intended to fund heavy maintenance or routine emergency repair activities which should normally be funded as contingency items in the State and local road programs. An application for ER funds in the range of \$700,000 or less must be accompanied by a showing as to why the damage repair involved is considered to be beyond the scope of heavy maintenance or routine emergency repair. As a general rule, widespread nominal road damages in this range would not be considered to be of a significant nature justifying approval by the FHWA Division Administrator for ER funding.

[52 FR 21948, June 10, 1987, as amended at 61 FR 67212, Dec. 20, 1996; 65 FR 25444, May 2, 2000]

§ 668.107 Federal share payable.

(a) The Federal share payable on account of any repair or reconstruction provided for by funds made available under 23 U.S.C. 125 of this title on account of any project on a Federal-aid highway system, including the Interstate System, shall not exceed the Federal share payable on a project on such system as provided in 23 U.S.C. 120; except that the Federal share payable for eligible emergency repairs to minimize damage, protect facilities, or restore essential traffic accomplished within 180 days after the actual occurrence of the natural disaster or catastrophic failure may amount to 100 percent of the costs thereof.

(b) Total obligations of ER funds in any State, excluding the Virgin Islands, Guam, American Samoa or Commonwealth of the Northern Mariana Islands, for all projects (including projects on both the Federal-aid systems and those on Federal roads under 23 CFR part 668, subpart B), resulting from a single natural disaster or a single catastrophic failure, shall not exceed \$100 million per disaster or catastrophic failure. The total obligations for ER projects in any fiscal year in the Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands shall not exceed \$20 million.

[52 FR 21948, June 10, 1987, as amended at 52 FR 32540, Aug. 28, 1987; 61 FR 67212, Dec. 20, 1996; 65 FR 25444, May 2, 2000]

§ 668.109 Eligibility.

(a) The eligibility of all work is contingent upon approval by the FHWA Division Administrator of an application for ER and inclusion of the work in an approved program of projects.

(1) Prior FHWA approval or authorization is not required for emergency repairs and preliminary engineering (PE).

(2) Permanent repairs or restoration must have prior FHWA program approval and authorization, unless done as part of the emergency repairs.

(b) ER funds may participate in:

(1) Repair to or reconstruction of seriously damaged highway elements as necessary to restore the facility to pre-disaster conditions, including necessary clearance of debris and other deposits in drainage courses within the right-of way (ROW);

(2) Restoration of stream channels outside the highway ROW when:

(i) The public highway agency has responsibility for the maintenance and proper operation of the stream channel section, and

(ii) The work is necessary for satisfactory operation of the highway system involved;

(3) Actual PE and construction engineering costs on approved projects;

(4) Emergency repairs;

(5) Temporary operations, including emergency traffic services such as flagging traffic through inundated sections of highways, undertaken by the appli-

cant during or immediately following the disaster;

(6) Betterments, only where clearly economically justified to prevent future recurring damage. Economic justification must weigh the cost of betterment against the risk of eligible recurring damage and the cost of future repair;

(7) Temporary work to maintain essential traffic, such as raising roadway grade during a period of flooding by placing fill and temporary surface material;

(8) Raising the grades of critical Federal-aid highways faced with long-term loss of use due to basin flooding as defined by an unprecedented rise in basin water level both in magnitude and time frame. Such grade raises are not considered to be a betterment for the purpose of 23 CFR 668.109(b)(6); and

(9) Repair of toll facilities when the provisions of 23 U.S.C. 129 are met. If a toll facility does not have an executed toll agreement with the FHWA at the time of the disaster, a toll agreement may be executed after the disaster to qualify for that disaster.

(c) ER funds may not participate in:

(1) Heavy maintenance such as repair of minor damages consisting primarily of eroded shoulders, filled ditches and culverts, pavement settlement, mud and debris deposits off the traveled way, slope sloughing, slides, and slip-outs in cut or fill slopes. In order to simplify the inspection and estimating process, heavy maintenance may be defined using dollar guidelines developed by the States and Divisions with Regional concurrence;

(2) Repair of surface damage caused by traffic whether or not the damage was aggravated by saturated subgrade or inundation, except ER funds may participate in:

(i) Repair of surface damage to any public road caused by traffic making repairs to Federal-aid highways.

(ii) Repair of surface damage to designated detours (which may lie on both Federal-aid and non-Federal-aid routes) caused by traffic that has been detoured from a damaged Federal-aid highway; and

(iii) Repair of surface damage to Federal-aid highways caused by vehicles responding to a disaster; provided the