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FHWA Emergency Relief (ER) Program

Mahmmud Yousef – ER Program Specialist



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Training Agenda

- Program Overview
- Application Process
- Emergency Repair vs. Permanent Repairs
- Detailed Damage Inspection Reports (DDIR)
- Debris Removal
- Betterments and Resiliency Improvements
- Contract Requirements
- Online Resources
- Wrap-up



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Emergency Relief

Program Overview

Description and Requirements



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Federal Disaster Programs

- The slides discuss two separate Federal disaster programs:
 - FEMA – Robert T. Stafford Disaster Relief and Emergency Assistance Act
 - FHWA – Emergency Relief Program



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Definition

- What is the Emergency Relief Program?
 - **23 U.S.C. 125(a)**: Repair or reconstruction of highways, roads, and trails that have suffered serious damage as a result of (1) natural disaster over a wide area, such as by a flood, hurricane, tidal wave, earthquake, severe storm, wildfire, or landslide; or (2) catastrophic failures from any external cause.



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Purpose of the ER Program

Purpose and intent of the Emergency Relief program:

- The 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 23 CFR 668.105(a).
- Supplemental \$\$
 - State program
 - Local program
- Restoration to pre-disaster conditions (exceptions might apply)



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Natural Disaster

- **23 CFR 668.103:** Unusual natural occurrence that causes serious damage.



Source: Getty Images/Roberto Machado Noa



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Catastrophic Failure

- **23 CFR 668.103:** The sudden failure of a major element or segment of the highway system due to an external cause. The failure must not be primarily attributable to gradual and progressive deterioration or lack of proper maintenance.



Source: Getty Images/toos



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Not Intended for ...

- Relieving maintenance responsibilities of Federal-aid recipients
 - Heavy maintenance
- Non-Federal-aid highways
- Work performed prior to the event date



Source: FHWA Florida Division

Source: Emergency Relief Manual, Federal-aid Highways, Updated May 31, 2013, Page 16



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Funding the Program

- \$100 million set aside from the Highway Trust Fund for nationwide coverage in any single year.
- Minimum \$700,000 (Federal share) threshold per event.
 - If less than \$700,000, additional justification must be provided for why it is beyond the scope of heavy maintenance or routine emergency repair.



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Roadway Eligibility

- Federal-aid highways as defined in 23 U.S.C. Section 101:
 - NO local roads
 - NO rural minor collectors
 - Use Functional Classification maps



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Important Deadlines



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Eligibility Limits

- The site should have suffered \$5,000 in *damages* to be eligible for ER funds.
 - If less than \$5,000 in damages, additional justification is required.
- Sites *cannot* be combined to meet the \$5,000 minimum damage threshold, with the following exception:
 - Generally, a site is an individual location where damage has occurred. However, a site could include several adjoining locations where similar damage, related to the same cause, has occurred.
- Grouping damages to form a site based solely on a political subdivision (i.e., county or city boundaries) should not be accepted.



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Application Process



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Application Process

- Governor's Proclamation or President's Declaration
 - Listing of Counties
 - Governor's Proclamation must be signed by the governor
 - Letter of Intent by State Department of Transportation (DOT)
 - FHWA Acknowledgment
 - Submission of ER application
 - Event Eligibility Determination
- ✓ LOI, Acknowledgment letter and ER Application can be submitted on the ER Data Portal.

Source: Emergency Relief Manual, Federal-aid Highways, Updated May 31, 2013, Chapter 3



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Emergency Repairs

vs.

Permanent Repairs



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Emergency Repairs

23 CFR 668.103

- Minimize extent of damage.
- Protect remaining facilities.
- Restore essential traffic.
 - Example: If a bridge washes out and there is a detour available, the detour and Maintenance of Traffic (MOT) is considered the Emergency Repair.
 - If there is no viable detour, then installing a temporary bridge could be considered an Emergency Repair.



Emergency Repairs

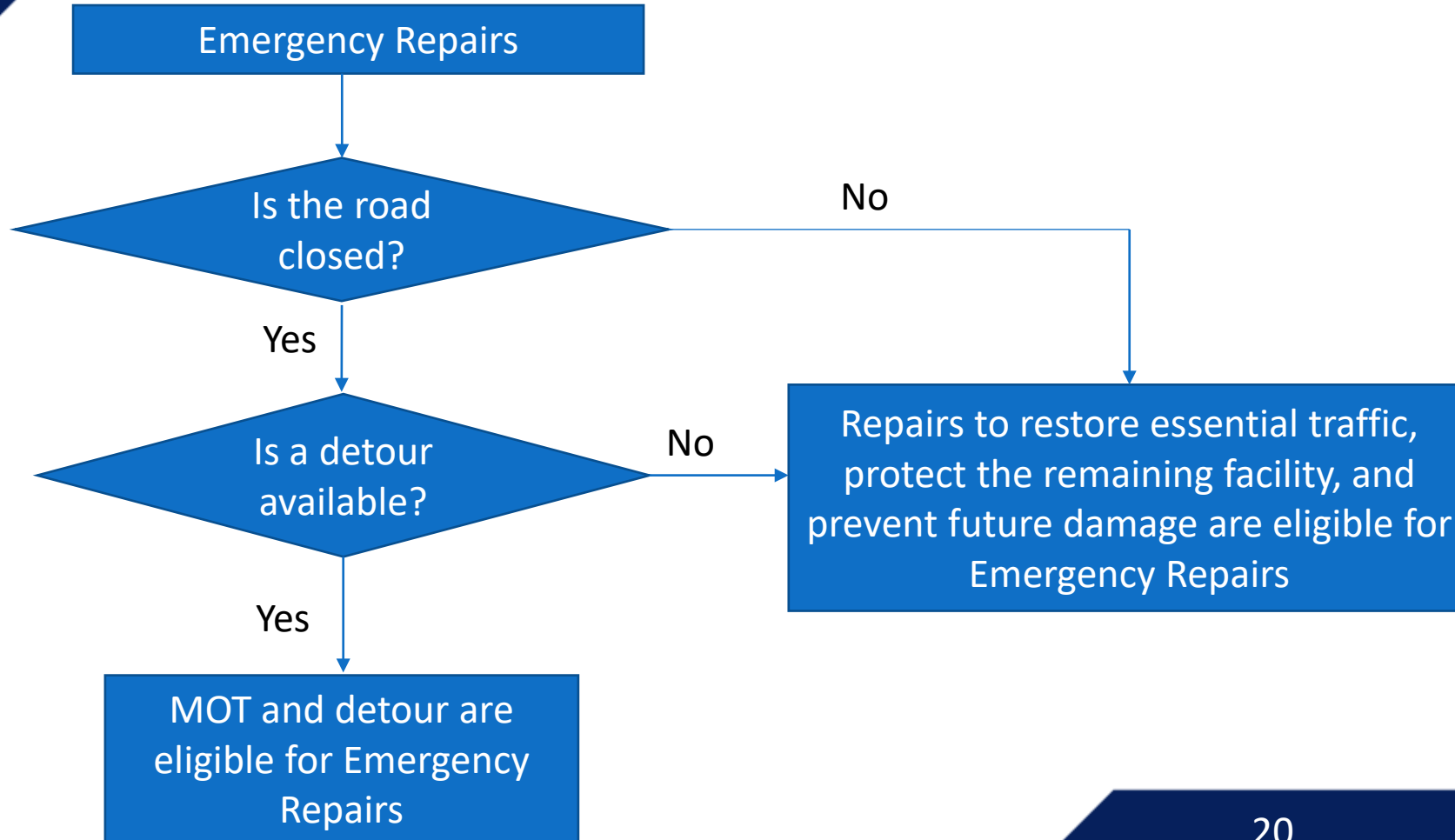
- Emergency Repairs may begin *without* FHWA prior authorization.
- For Emergency Repairs, all costs incurred within 270 days receive 100% funding.
- Normal pro-rata share for work performed after 270 days.

Source: Infrastructure Investment and Jobs Act (IIJA), Section 11107 Amended, 23 U.S.C. 120(e)(1), effective October 1, 2021;
23 CFR 668.109(a)(1)



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Emergency Repairs – Determination Process





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Emergency Repairs

Example:



Source: Florida DOT



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Permanent Repairs

23 CFR 668.109(b)(1)

- Requires prior FHWA approval and authorization. (23 CFR 420.115)
- Restoring highway to pre-disaster condition.
 - Pro-rata share:
 - 90% for Interstate
 - 80% for non-Interstate
- Cost-effectiveness finding *required* for Force Account work for permanent repairs. (23 CFR.205)



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Emergency & Permanent Repairs



Source: Florida DOT



Source: Florida DOT



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Detailed Damage Inspection Report (DDIR)



DDIR Example

Page 1:

- Emergency Repairs
- Event Information
- Important Notes

U.S. Department of Transportation Federal Highway Administration					DETAILED DAMAGE INSPECTION REPORT (DDIR) Title 23 Emergency Relief Program					FHWA Disaster Number	
Site Location (Name of road, milepost, coordinates, distance from nearest intersection, etc.)										Disaster Date	
										Report Number	
Description of Damage (Provide specific details - Bituminous shoulder undermined, slope failure, washed out culvert, etc.)										Inspection Date	
										Federal-aid Route Number	
										State/County/City	
										Congressional District	
Verify the following for DDIR approval consideration.											
<input type="checkbox"/> Map of damaged site (if adjoining locations are combined to one site, all locations must be shown). <input type="checkbox"/> Photos of the damaged site. <input type="checkbox"/> Damaged site is on an eligible federal-aid highway. (not functionally classified as a local or rural minor collector).											
*NEPA is required for all emergency and permanent repair projects. *All construction projects shall comply with federal requirements (FHWA 1273, Davis Bacon, etc.). *Permanent repair projects require prior FHWA Authorization. *Each site must have suffered \$5,000 in actual damage to be eligible. If less than \$5,000 additional justification is required.											
SECTION 1: EMERGENCY REPAIR COST ESTIMATE											
Emergency Repairs	Work Items	Unit	Unit Price	Quantity	Cost						
Contracting Method <input type="checkbox"/> Force Account <input type="checkbox"/> Standard Competitively Bid Contract <input type="checkbox"/> Negotiated Contract <input type="checkbox"/> Other (state type of contracting method)								Preliminary Engineering (PE)			
								Construction Engineering (CE)			
								Right-of-Way			
Was a detour used as the emergency repairs? <input type="checkbox"/> Yes <input type="checkbox"/> No (Justification required)								Emergency Repair Total		0	
Contracting Agency <input type="checkbox"/> FDOT <input type="checkbox"/> LAP <input type="checkbox"/> Tribe											



DDIR Example

Page 2:

- Permanent Repairs
- Additional Notes
- Signatures

U.S. Department of Transportation Federal Highway Administration				DETAILED DAMAGE INSPECTION REPORT (DDIR) Title 23 Emergency Relief Program		Report Number	
SECTION 2: PERMANENT REPAIR COST ESTIMATE							
Permanent Repairs	Work Items	Unit	Unit Price	Quantity	Cost		
Contracting Method (Tentative)			Preliminary Engineering (PE)				
<input type="checkbox"/> Standard Competitively Bid Contract <input type="checkbox"/> Other (Prior FHWA approval is required)			Construction Engineering (CE)				
Contracting Agency			Right-of-Way				
<input type="checkbox"/> FDOT <input type="checkbox"/> LAP <input type="checkbox"/> Tribe			Permanent Repair Total		0		
Estimated Total Repair Cost					0		
Additional Notes:							
Signature for Local Agency Recommendation		Date	Signature for State DOT Recommendation		Date		
DDIR approval does not constitute a funding authorization. An ER application must be approved by the FHWA Division Administrator before funds can be authorized (23 CFR § 668.111(c)).							
FOR FHWA ONLY			Site Eligible <input type="checkbox"/> Yes <input type="checkbox"/> No				
Signature for DDIR Approval		Date	Comments				



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Detailed Damage Inspection Report

- What it IS:
 - In most cases, one is written per site.
 - It is a preliminary cost ESTIMATE.
 - It is a determination of eligibility.
 - It is a brief description of the scope of work.
 - It is used to support a request to headquarters for Emergency Relief funding.



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Detailed Damage Inspection Report

- What it is NOT:
 - It is not a contracting mechanism.
 - Is never to be used to indicate actual scope, quantities, or prices to the contractor.
 - It is not a NEPA determination or approval.
 - It is not authorization to begin Permanent Repair work.



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Revised DDIRs

- A Scope/Cost Change
 - >20% of original DDIR estimate
- ALL revised DDIRs require FHWA approval
- DDIRs above \$25M must be sent to FHWA HQ office (HISM-10)



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Debris Removal



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Map-21 Changes – Debris Removal

- Presidential Declaration – Stafford Act (debris category activated):
 - FEMA handles most debris removal
 - Do not include in ER DDIR
- Governor’s Proclamation (non-Stafford Act):
 - FHWA handles debris on Federal-aid highways
 - Only debris deposited by disaster
- Counties not included in the Stafford Act but included in the Governor’s Proclamation are eligible under the FHWA ER program.

Source: Emergency Relief Manual, Federal-aid Highways, Updated May 31, 2013, Page 10



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Map-21 Changes – Debris Removal

Some debris removal is eligible for FEMA funding in lieu of FHWA-ER funding.

- Eligible sites on Federal-aid highways ...
 - Governor's Declaration/No Presidential Declaration
 - ER eligible
 - Presidential Declaration/Debris eligible under Stafford Act
 - Not ER eligible
 - Presidential Declaration/Debris not eligible under Stafford Act
 - ER eligible

Source: Emergency Relief Manual, Federal-aid Highways, Updated May 31, 2013, Page 10



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Debris Removal Activities

Debris Removal reimbursement for:

- Debris pickup
- Hauling
 - Hauling costs to locations outside the general proximity of the damaged highway are not eligible.

Source: Emergency Relief Manual, Federal-aid Highways, Updated May 31, 2013, Page 10



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Debris Removal Activities

Debris Removal

- Load tickets – date, quantity, and location
- Summary sheet of all load ticket data
- Invoices – monitoring, disposal, etc.
- Keep FHWA eligible debris and associated costs separate from FEMA debris
- **Photos of debris operation – before and during debris removal**
- If by Force Account document labor, equipment, and materials



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Betterments and Resiliency Improvements



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Betterments Funded with ER

- FHWA prior approval is *required*.
- Requires approval of an economic justification for added cost.
- Economic justification must weigh the cost of the betterment against the risk of eligible recurring damage and the cost of future repair.
 - Note that for the justification, only costs to the FHWA ER program are included. Other costs, such as traveler delay or reduced economic activity, are not included.

Source: Emergency Relief Manual, Page 24 and 2019 Memo: Integration of Resilient Infrastructure in the Emergency Relief Program.



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Other Betterments Considerations

- Provide justification for betterment and how it will provide a cost saving to the ER program in the long run.
- Provide cost breakout of replace-in-kind and betterment options.
- If betterment is not approved for ER funds ...
 - May be funded with State, local, or Federal funds.

Source: Emergency Relief Manual, Federal-aid Highways, Updated May 31, 2013, Page 24



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Resilient Infrastructure

- Resilience: Ability of transportation agencies to adapt infrastructure to accommodate changing conditions.
- State DOTs and Metropolitan Planning Organizations (MPOs) are required to consider incorporating resiliency in projects as part of the planning process.
- Resiliency improvements under the ER program require an economic justification.
- Resilient features could be eligible for regular Federal funds (non-ER program funds).

Source: FHWA "Integration of Resilient Infrastructure in the Emergency Relief Program," October 11, 2019, Memo



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Resilient Infrastructure in ER Program

- Basic intent of ER is to replace in kind and restore to pre-disaster condition.
- Repaired facility rebuilt to current design standards.
 - Eligible for ER funds
 - Does not require additional justification



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Contract Requirements



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Contract Requirements

- All Federal-aid rules apply to contracts (Emergency and Permanent Repairs)
 - FHWA Form 1273
 - Davis-Bacon Labor Rates
 - Disadvantaged Business Enterprises (DBE)
 - Americans with Disabilities Act (ADA)
 - Buy America
 - No Convict Labor
- Design Standards
- Environmental NEPA Issues/Process



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FHWA NEPA Process

- Emergency Relief program must comply with NEPA.
- Emergency Repair: Categorical Exclusion.
 - With coordination, as applicable
- Permanent Repairs:
 - Typically Categorical Exclusion, with exceptions
 - Betterments
 - Any impacts to environmental resources
- Emergency and Permanent Repair projects must follow NEPA procedures.

Source: Emergency Relief Manual, Federal-aid Highways, Updated May 31, 2013, Page 12, and 23 CFR 771



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Exceptions: Davis-Bacon Act

- Davis-Bacon and Related Acts (DBRA):
 - Provisions do not apply to work performed by State/local forces.
 - Provisions do not apply to debris removal-only contracts.
 - Provisions DO apply if debris removal is performed in conjunction with any construction, alteration, or repair work.

Source: Emergency Relief Manual, Federal-aid Highways, Updated May 31, 2013, Page 56, and 23 U.S.C. 113



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Required Certifications

- Emergency Repairs and Permanent Repairs require the following certifications:
 - Utility certification
 - Right of Way certification
 - Railroad certification
- For Emergency Repairs: Certification can be completed during project construction.
- For Permanent Repairs: Certifications are required prior to project authorization in Financial Management Information Systems (FMIS).

Source: 23 CFR 635.307(a) and 23 CFR 635.309



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Questions?



Image source: Pixabay/Peggy Marco



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Online Resources

1. FHWA Emergency Relief Program Website
<https://www.fhwa.dot.gov/programadmin/erelief.cfm>
2. FHWA ER Manual
<http://www.fhwa.dot.gov/reports/erm/er.pdf>
3. Federal-aid Essentials for Local Public Agencies – Emergency Relief Program Videos
<http://www.fhwa.dot.gov/federal-aidessentials/>
4. Benefit-Cost Analysis (example)
<https://www.fema.gov/grants/tools/benefit-cost-analysis>



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Emergency Relief Team

Alex Appel
ER Program Team Leader
202-366-4652
alex.appel@dot.gov

Laurel McGinley
ER Resiliency Coordinator
202-366-4654
laurel.mcginley@dot.gov

Katie Hulbert
Senior ER Program Manager
202-809-4758
kathleen.hulbert@dot.gov

Brenda Hernacki
ER Program Manager
808-541-2309
brenda.Hernacki@dot.gov

Mahmmud Yousef
ER Program Manager
407-867-6433
mahmmud.yousef@dot.gov

Victor Carreras
ERFO Program Manager
202-868-3443
victor.carreras@dot.gov