

Summary of changes by the FAST Act to the Emergency Relief for Federally Owned Roads (ERFO) Program

Purpose

This purpose of this document is to provide a summary of the changes to the Emergency Relief for Federally Owned Roads (ERFO) program pursuant to section 125 of title 23, United States Code, as amended by section 1107 of the Fixing America's Surface Transportation (FAST) Act and Consolidated Appropriations Act, 2016.

Framework

The Emergency Relief (ER) Program (23 U.S.C. 125) supports the repair and reconstruction of highways, roads, and trails, in any area of the United States, including Indian reservations, that the Secretary of Transportation finds to have suffered serious damage as a result of a natural disaster over a wide area or catastrophic failure from any external cause. The ERFO component of the ER Program (codified in 23 U.S.C. 125(e)) addresses such damage to tribal transportation facilities, Federal lands transportation facilities, and other federally-owned roads that are open to public travel. The FAST Act and the Consolidated Appropriations Act, 2016, made changes to the ER Program that affect the ERFO component of the ER program as well as Federal Lands Access Transportation Facilities as shown below.

For additional information about FAST Act changes to the ER Program, visit: https://www.fhwa.dot.gov/specialfunding/er/fastact_qa.cfm. The information below supplements FHWA's ERFO Disaster Assistance Manual located at <http://flh.fhwa.dot.gov/programs/erfo>, which will be updated to reflect the changes to the program and to provide more detailed guidance where required.

Program Changes

Debris Removal

Section 1107 of the FAST Act expanded debris removal eligibility to include projects located on tribal transportation facilities, Federal lands transportation facilities, or other federally-owned roads that are open to public travel (as defined in 23 U.S.C. 125(e)(1)). The change provides that debris removal resulting from a qualifying event on these facilities is ER-eligible even if the President has declared a major disaster or emergency under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).

The change does not affect debris removal eligibility for Federal-aid roads owned by States and subrecipients.

Federal Share

Section 1408(b) of the FAST Act eliminated the 100 percent Federal share for repairs or reconstruction resulting from a qualifying ER event performed on Federal Lands Access Transportation Facilities. ER projects on these roads are now subject to the same Federal share as ER projects on other Federal-aid roads. (23 U.S.C. 120). The Consolidated Appropriations Act, 2016, made this change effective for ER-eligible disasters that occur on or after October 1, 2015.

“Other Federally owned roads that are open to public travel” are now eligible for 100% Federal share under 23 U.S.C. 120(e)(2). Under MAP-21, “other federal roads” were subject to a sliding scale for Federal share of permanent repairs.

Tribal transportation facilities¹ and Federal lands transportation facilities² remain eligible for 100% Federal share under 23 U.S.C. 120(e)(2).

Open to Public Travel

“Open to public travel” is defined in 23 U.S.C. 125(e)(1)(A): “The term ‘open to public travel’ means, with respect to a road, that, except during scheduled periods, extreme weather conditions, or emergencies, the road (i) is maintained; (ii) is open to the general public; and (iii) can accommodate travel by a standard passenger vehicle, without restrictive gates or prohibitive signs or regulations, other than for general traffic control or restrictions based on size, weight, or class of registration.”

Standard Passenger Car Vehicle

Section 1107 of the FAST Act newly defined “standard passenger vehicle” in 23 U.S.C. 125(e)(1)(B) for use in the subsection. “The term ‘standard passenger vehicle’ means a vehicle with 6 inches of clearance from the lowest point of the frame, body, suspension, or differential to the ground.”

¹ Tribal Transportation Facilities – The term “tribal transportation facility” means a public highway, road, bridge, trail, or transit system that is located on or provides access to tribal land and appears on the national tribal transportation facility inventory described in section 202(b)(1) of title 23, United States Code. 23 U.S.C. 101(a)(31).

² Federal Lands Transportation Facilities - The term “Federal lands transportation facility” means a public highway, road, bridge, trail, or transit system that is located on, is adjacent to, or provides access to Federal lands for which title and maintenance responsibility is vested in the Federal Government, and that appears on the national Federal lands transportation facility inventory described in section 203(c) of title 23, United States Code. 23 U.S.C. 101(a)(8).