

formance of or the failure to exercise or perform a discretionary function or duty on the part of a Federal agency or an employee of the Federal Government in carrying out the provisions of this chapter.

(Pub. L. 93-288, title III, § 305, formerly § 308, May 22, 1974, 88 Stat. 149; renumbered § 305, Pub. L. 100-707, title I, § 105(d), Nov. 23, 1988, 102 Stat. 4691.)

#### Editorial Notes

##### REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 93-288, May 22, 1974, 88 Stat. 143. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of this title and Tables.

##### PRIOR PROVISIONS

A prior section 305 of Pub. L. 93-288 was classified to section 5145 of this title prior to repeal by Pub. L. 100-707.

#### § 5149. Performance of services

##### (a) Utilization of services or facilities of State and local governments

In carrying out the purposes of this chapter, any Federal agency is authorized to accept and utilize the services or facilities of any State or local government, or of any agency, office, or employee thereof, with the consent of such government.

##### (b) Appointment of temporary personnel, experts, and consultants; acquisition, rental, or hire of equipment, services, materials and supplies

In performing any services under this chapter, any Federal agency is authorized—

(1) to appoint and fix the compensation of such temporary personnel as may be necessary, without regard to the provisions of title 5 governing appointments in competitive service;

(2) to employ experts and consultants in accordance with the provisions of section 3109 of such title, without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates; and

(3) to incur obligations on behalf of the United States by contract or otherwise for the acquisition, rental, or hire of equipment, services, materials, and supplies for shipping, drayage, travel, and communications, and for the supervision and administration of such activities. Such obligations, including obligations arising out of the temporary employment of additional personnel, may be incurred by an agency in such amount as may be made available to it by the President.

##### (c) Appointment of temporary personnel in the Federal Emergency Management Agency

The Administrator of the Federal Emergency Management Agency is authorized to appoint temporary personnel, after serving continuously for 3 years, to positions in the Federal Emergency Management Agency in the same manner that competitive service employees with com-

petitive status are considered for transfer, reassignment, or promotion to such positions. An individual appointed under this subsection shall become a career-conditional employee, unless the employee has already completed the service requirements for career tenure.

##### (d) Personnel performing service responding to disasters and emergencies

###### (1) USERRA employment and reemployment rights

The protections, rights, benefits, and obligations provided under chapter 43 of title 38 shall apply to intermittent personnel appointed pursuant to subsection (b)(1) to perform service to the Federal Emergency Management Agency under sections 5170 and 5191 of this title or to train for such service.

###### (2) Notice of absence from position of employment

Preclusion of giving notice of service by necessity of service under subsection (b)(1) to perform service to the Federal Emergency Management Agency under sections 5170 and 5191 of this title or to train for such service shall be considered preclusion by “military necessity” for purposes of section 4312(b) of title 38 pertaining to giving notice of absence from a position of employment. A determination of such necessity shall be made by the Administrator and shall not be subject to review in any judicial or administrative proceeding.

(Pub. L. 93-288, title III, § 306, formerly § 309, May 22, 1974, 88 Stat. 149; renumbered § 306, Pub. L. 100-707, title I, § 105(d), Nov. 23, 1988, 102 Stat. 4691; amended Pub. L. 115-254, div. D, § 1222, Oct. 5, 2018, 132 Stat. 3454; Pub. L. 117-178, § 2, Sept. 29, 2022, 136 Stat. 2110.)

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##### REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 93-288, May 22, 1974, 88 Stat. 143. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of this title and Tables.

##### PRIOR PROVISIONS

A prior section 306 of Pub. L. 93-288 was classified to section 5146 of this title prior to repeal by Pub. L. 100-707.

##### AMENDMENTS

2022—Subsec. (d). Pub. L. 117-178 added subsec. (d).  
2018—Subsec. (c). Pub. L. 115-254 added subsec. (c).

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115-254 applicable to each major disaster and emergency declared by the President on or after Aug. 1, 2017, and authorities provided under div. D of Pub. L. 115-254 applicable to each major disaster and emergency declared by the President on or after Jan. 1, 2016, except as otherwise provided, see section 1202 of Pub. L. 115-254, set out as a note under section 5121 of this title.

#### § 5150. Use of local firms and individuals

##### (a) Contracts or agreements with private entities

###### (1) In general

In the expenditure of Federal funds for debris clearance, distribution of supplies, recon-