

**Statutory Notes and Related Subsidiaries**

## EFFECTIVE DATE OF 2022 AMENDMENT

Pub. L. 117-251, §8(b), Dec. 20, 2022, 136 Stat. 2357, provided that: “The amendments made by this section [amending this section] shall apply with respect to amounts appropriated on or after the date of enactment of this Act [Dec. 20, 2022].”

**§ 5189e. Essential service providers****(a) Definition**

In this section, the term “essential service provider” means an entity that—

(1)(A) provides

(i) wireline or mobile telephone service, Internet access service, radio or television broadcasting, cable service, or direct broadcast satellite service;

(ii) electrical power;

(iii) natural gas;

(iv) water and sewer services; or

(v) any other essential service, as determined by the President; or

(B) is a tower owner or operator;

(2) is—

(A) a municipal entity;

(B) a nonprofit entity; or

(C) a private, for profit entity; and

(3) is contributing to efforts to respond to an emergency or major disaster.

**(b) Authorization for accessibility**

Unless exceptional circumstances apply, in an emergency or major disaster, the head of a Federal agency, to the greatest extent practicable, shall not—

(1) deny or impede access to the disaster site to an essential service provider whose access is necessary to restore and repair an essential service; or

(2) impede the restoration or repair of the services described in subsection (a)(1).

**(c) Implementation**

In implementing this section, the head of a Federal agency shall follow all applicable Federal laws, regulations, and policies.

(Pub. L. 93-288, title IV, §427, formerly §425, as added Pub. L. 109-347, title VI, §607, Oct. 13, 2006, 120 Stat. 1941; renumbered §427, Pub. L. 113-2, div. B, §1102(1), Jan. 29, 2013, 127 Stat. 39; amended Pub. L. 115-141, div. P, title III, §302, Mar. 23, 2018, 132 Stat. 1087.)

**Editorial Notes**

## AMENDMENTS

2018—Subsec. (a)(1). Pub. L. 115-141 designated existing provisions as subpar. (A), redesignated former subpars. (A) to (E) as cls. (i) to (v), respectively, of subpar. (A), substituted “wireline or mobile telephone service, Internet access service, radio or television broadcasting, cable service, or direct broadcast satellite service” for “telecommunications service” in cl. (i), and added subpar. (B).

**§ 5189f. Public assistance program alternative procedures****(a) Approval of projects**

The President, acting through the Administrator of the Federal Emergency Management

Agency, may approve projects under the alternative procedures adopted under this section for any major disaster or emergency declared on or after January 29, 2013. The Administrator may also apply the alternate procedures adopted under this section to a major disaster or emergency declared before enactment of this Act for which construction has not begun as of the date of enactment of this Act.<sup>1</sup>

**(b) Adoption**

The Administrator, in coordination with States, tribal and local governments, and owners or operators of private nonprofit facilities, may adopt alternative procedures to administer assistance provided under sections 5170b(a)(3)(A), 5172, 5173, and 5192(a)(5) of this title.

**(c) Goals of procedures**

The alternative procedures adopted under subsection (a) shall further the goals of—

(1) reducing the costs to the Federal Government of providing such assistance;

(2) increasing flexibility in the administration of such assistance;

(3) expediting the provision of such assistance to a State, tribal or local government, or owner or operator of a private nonprofit facility; and

(4) providing financial incentives and disincentives for a State, tribal or local government, or owner or operator of a private nonprofit facility for the timely and cost-effective completion of projects with such assistance.

**(d) Participation****(1) In general**

Participation in the alternative procedures adopted under this section shall be at the election of a State, tribal or local government, or owner or operator of a private nonprofit facility consistent with procedures determined by the Administrator.

**(2) No conditions**

The President may not condition the provision of Federal assistance under this chapter on the election by a State, local, or Indian tribal government, or owner or operator of a private nonprofit facility to participate in the alternative procedures adopted under this section.

**(e) Minimum procedures**

The alternative procedures adopted under this section shall include the following:

(1) For repair, restoration, and replacement of damaged facilities under section 5172 of this title—

(A) making grants on the basis of fixed estimates, if the State, tribal or local government, or owner or operator of the private nonprofit facility agrees to be responsible for any actual costs that exceed the estimate;

(B) providing an option for a State, tribal or local government, or owner or operator of a private nonprofit facility to elect to receive an in-lieu contribution, without reduction, on the basis of estimates of—

<sup>1</sup> See References in Text note below.

(i) the cost of repair, restoration, reconstruction, or replacement of a public facility owned or controlled by the State, tribal or local government or owner or operator of a private nonprofit facility; and

(ii) management expenses;

(C) consolidating, to the extent determined appropriate by the Administrator, the facilities of a State, tribal or local government, or owner or operator of a private nonprofit facility as a single project based upon the estimates adopted under the procedures;

(D) if the actual costs of a project completed under the procedures are less than the estimated costs thereof, the Administrator may permit a grantee or subgrantee to use all or part of the excess funds for—

(i) cost-effective activities that reduce the risk of future damage, hardship, or suffering from a major disaster; and

(ii) other activities to improve future Public Assistance operations or planning;

(E) in determining eligible costs under section 5172 of this title, the Administrator shall make available, at an applicant's request and where the Administrator or the certified cost estimate prepared by the applicant's professionally licensed engineers has estimated an eligible Federal share for a project of at least \$5,000,000, an independent expert panel to validate the estimated eligible cost consistent with applicable regulations and policies implementing this section;

(F) in determining eligible costs under section 5172 of this title, the Administrator shall, at the applicant's request, consider properly conducted and certified cost estimates prepared by professionally licensed engineers (mutually agreed upon by the Administrator and the applicant), to the extent that such estimates comply with applicable regulations, policy, and guidance; and

(G) once certified by a professionally licensed engineer and accepted by the Administrator, the estimates on which grants made pursuant to this section are based shall be presumed to be reasonable and eligible costs, as long as there is no evidence of fraud.

(2) For debris removal under sections 5170b(a)(3)(A), 5173, and 5192(a)(5) of this title—

(A) making grants on the basis of fixed estimates to provide financial incentives and disincentives for the timely or cost-effective completion if the State, tribal or local government, or owner or operator of the private nonprofit facility agrees to be responsible to pay for any actual costs that exceed the estimate;

(B) using a sliding scale for determining the Federal share for removal of debris and wreckage based on the time it takes to complete debris and wreckage removal;

(C) allowing use of program income from recycled debris without offset to the grant amount;

(D) reimbursing base and overtime wages for employees and extra hires of a State, tribal or local government, or owner or operator of a private nonprofit facility per-

forming or administering debris and wreckage removal;

(E) providing incentives to a State or tribal or local government to have a debris management plan approved by the Administrator and have pre-qualified 1 or more debris and wreckage removal contractors before the date of declaration of the major disaster; and

(F) if the actual costs of projects under subparagraph (A) are less than the estimated costs of the project, the Administrator may permit a grantee or subgrantee to use all or part of the excess funds for—

(i) debris management planning;

(ii) acquisition of debris management equipment for current or future use; and

(iii) other activities to improve future debris removal operations, as determined by the Administrator.

**(f) Waiver authority**

Until such time as the Administrator promulgates regulations to implement this section, the Administrator may—

(1) waive notice and comment rulemaking, if the Administrator determines the waiver is necessary to expeditiously implement this section; and

(2) carry out the alternative procedures under this section as a pilot program.

**(g) Overtime payments**

The guidelines for reimbursement for costs under subsection (e)(2)(D) shall ensure that no State or local government is denied reimbursement for overtime payments that are required pursuant to the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.).

**(h) Report**

**(1) In general**

Not earlier than 3 years, and not later than 5 years, after January 29, 2013, the Inspector General of the Department of Homeland Security shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report on the alternative procedures for the repair, restoration, and replacement of damaged facilities under section 5172 of this title authorized under this section.

**(2) Contents**

The report shall contain an assessment of the effectiveness of the alternative procedures, including—

(A) whether the alternative procedures helped to improve the general speed of disaster recovery;

(B) the accuracy of the estimates relied upon;

(C) whether the financial incentives and disincentives were effective;

(D) whether the alternative procedures were cost effective;

(E) whether the independent expert panel described in subsection (e)(1)(E) was effective; and

(F) recommendations for whether the alternative procedures should be continued

and any recommendations for changes to the alternative procedures.

(Pub. L. 93-288, title IV, § 428, as added Pub. L. 113-2, div. B, § 1102(2), Jan. 29, 2013, 127 Stat. 39; amended Pub. L. 115-254, div. D, § 1207(c), (d), Oct. 5, 2018, 132 Stat. 3440, 3441.)

#### Editorial Notes

##### REFERENCES IN TEXT

The date of enactment of this Act, referred to in subsec. (a), probably means the date of enactment of Pub. L. 113-2, which enacted this section and was approved Jan. 29, 2013.

This chapter, referred to in subsec. (d)(2), 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.

The Fair Labor Standards Act of 1938, referred to in subsec. (g), is act June 25, 1938, ch. 676, 52 Stat. 1060, which is classified generally to chapter 8 (§ 201 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see section 201 of Title 29 and Tables.

##### AMENDMENTS

2018—Subsec. (d). Pub. L. 115-254, § 1207(c), designated existing provisions as par. (1), inserted heading, and added par. (2).

Subsec. (e)(1)(G). Pub. L. 115-254, § 1207(d), added subpar. (G).

#### 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.

#### § 5189g. Unified Federal review

##### (a) In general

Not later than 18 months after January 29, 2013, and in consultation with the Council on Environmental Quality and the Advisory Council on Historic Preservation, the President shall establish an expedited and unified interagency review process to ensure compliance with environmental and historic requirements under Federal law relating to disaster recovery projects, in order to expedite the recovery process, consistent with applicable law.

##### (b) Contents

The review process established under this section shall include mechanisms to expeditiously address delays that may occur during the recovery from a major disaster and be updated, as appropriate, consistent with applicable law.

(Pub. L. 93-288, title IV, § 429, as added Pub. L. 113-2, div. B, § 1106, Jan. 29, 2013, 127 Stat. 45.)

#### Statutory Notes and Related Subsidiaries

##### UNIFIED FEDERAL ENVIRONMENTAL AND HISTORIC PRESERVATION REVIEW

Pub. L. 115-254, div. D, § 1220, Oct. 5, 2018, 132 Stat. 3453, provided that:

“(a) REVIEW AND ANALYSIS.—Not later than 180 days after the date of enactment of this Act [Oct. 5, 2018],

the Administrator [of the Federal Emergency Management Agency] shall review the Unified Federal Environmental and Historic Preservation review process established pursuant to section 429 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5189g), and submit a report to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate that includes the following:

“(1) An analysis of whether and how the unified process has expedited the interagency review process to ensure compliance with the environmental and historic requirements under Federal law relating to disaster recovery projects.

“(2) A survey and analysis of categorical exclusions used by other Federal agencies that may be applicable to any activity related to a major disaster or emergency declared by the President under section 401 or 501, respectively, of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170, 5191).

“(3) Recommendations on any further actions, including any legislative proposals, needed to expedite and streamline the review process.

“(b) REGULATIONS.—After completing the review, survey, and analyses under subsection (a), but not later than 2 years after the date of enactment of this Act, and after providing notice and opportunity for public comment, the Administrator shall issue regulations to implement any regulatory recommendations, including any categorical exclusions identified under subsection (a), to the extent that the categorical exclusions meet the criteria for a categorical exclusion under section 1508.4 of title 40, Code of Federal Regulations, and section II of DHS Instruction Manual 023-01-001-01.”

#### § 5189h. Agency accountability

##### (a) Public assistance

Not later than 5 days after an award of a public assistance grant is made under section 5172 of this title that is in excess of \$1,000,000, the Administrator of the Federal Emergency Management Agency shall publish on the website of the Federal Emergency Management Agency the specifics of each such grant award, including—

- (1) identifying the Federal Emergency Management Agency Region;
- (2) the disaster or emergency declaration number;
- (3) the State, county, and applicant name;
- (4) if the applicant is a private nonprofit organization;
- (5) the damage category code;
- (6) the amount of the Federal share obligated; and
- (7) the date of the award.

##### (b) Mission assignments

###### (1) In general

Not later than 5 days after the issuance of a mission assignment or mission assignment task order, the Administrator of the Federal Emergency Management Agency shall publish on the website of the Federal Emergency Management Agency any mission assignment or mission assignment task order to another Federal department or agency regarding a major disaster in excess of \$1,000,000, including—

- (A) the name of the impacted State or Indian Tribe;
- (B) the disaster declaration for such State or Indian Tribe;
- (C) the assigned agency;