

the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

CONTINUING APPROPRIATIONS FOR FISCAL YEAR 1998

The expiration date of Oct. 23, 1997 (see 1997 Amendment note above) was temporarily extended to Nov. 7, 1997, by Pub. L. 105-64, Oct. 23, 1997, 111 Stat. 1343.

§ 4057. Alternative loss allocation system for indeterminate claims

(a) Definitions

In this section:

(1) Administrator

The term “Administrator” means the Administrator of the Federal Emergency Management Agency.

(2) COASTAL Formula

The term “COASTAL Formula” means the formula established under subsection (b).

(3) Coastal State

The term “coastal State” has the meaning given the term “coastal state” in section 1453 of title 16.

(4) Indeterminate loss

(A) In general

The term “indeterminate loss” means, as determined by an insurance claims adjuster certified under the national flood insurance program and in consultation with an engineer as appropriate, a loss resulting from physical damage to, or loss of, property located in any coastal State arising from the combined perils of flood and wind associated with a named storm.

(B) Requirements

An insurance claims adjuster certified under the national flood insurance program shall only determine that a loss is an indeterminate loss if the claims adjuster determines that—

(i) no material remnant of physical buildings or man-made structures remain except building foundations for the specific property for which the claim is made; and

(ii) there is insufficient or no tangible evidence created, yielded, or otherwise left behind of the specific property for which the claim is made as a result of the named storm.

(5) Named storm

The term “named storm” means any organized weather system with a defined surface circulation and maximum winds of not less than 39 miles per hour which the National

Hurricane Center of the United States National Weather Service names as a tropical storm or a hurricane.

(6) Post-storm assessment

The term “post-storm assessment” means the post-storm assessment developed under section 3611(b) of title 33.

(7) State

The term “State” means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any other territory or possession of the United States.

(8) Secretary

The term “Secretary” means the Secretary of Homeland Security.

(9) Standard insurance policy

The term “standard insurance policy” means any insurance policy issued under the national flood insurance program that covers loss or damage to property resulting from water peril.

(10) Property

The term “property” means real or personal property that is insured under a standard insurance policy for loss or damage to structure or contents.

(11) Under Secretary

The term “Under Secretary” means the Under Secretary of Commerce for Oceans and Atmosphere, in the Under Secretary’s capacity as Administrator of the National Oceanic and Atmospheric Administration.

(b) Establishment of flood loss allocation formula for indeterminate claims

(1) In general

Not later than 180 days after the date on which the protocol is established under section 3611(c)(1) of title 33, the Secretary, acting through the Administrator and in consultation with the Under Secretary, shall establish by rule a standard formula to determine and allocate wind losses and flood losses for claims involving indeterminate losses.

(2) Contents

The standard formula established under paragraph (1) shall—

(A) incorporate data available from the Coastal Wind and Water Event Database established under section 3611(f) of title 33;

(B) use relevant data provided on the National Flood Insurance Program Elevation Certificate for each indeterminate loss for which the formula is used;

(C) consider any sufficient and credible evidence, approved by the Administrator, of the pre-event condition of a specific property, including the findings of any policyholder or insurance claims adjuster in connection with the indeterminate loss to that specific property;

(D) include other measures, as the Administrator considers appropriate, required to determine and allocate by mathematical formula the property damage caused by flood or storm surge associated with a named storm; and

(E) subject to paragraph (3), for each indeterminate loss, use the post-storm assessment to allocate water damage (flood or storm surge) associated with a named storm.

(3) Degree of accuracy required

The standard formula established under paragraph (1) shall specify that the Administrator may only use the post-storm assessment for purposes of the formula if the Under Secretary certifies that the post-storm assessment has a degree of accuracy of not less than 90 percent in connection with the specific indeterminate loss for which the assessment and formula are used.

(c) Authorized use of post-storm assessment and COASTAL Formula

(1) In general

Subject to paragraph (3), the Administrator may use the post-storm assessment and the COASTAL Formula to—

(A) review flood loss payments for indeterminate losses, including as part of the quality assurance reinspection program of the Federal Emergency Management Agency for claims under the national flood insurance program and any other process approved by the Administrator to review and validate payments under the national flood insurance program for indeterminate losses following a named storm; and

(B) assist the national flood insurance program to—

(i) properly cover qualified flood loss for claims for indeterminate losses; and

(ii) avoid paying for any loss or damage to property caused by any peril (including wind), other than flood or storm surge, that is not covered under a standard policy under the national flood insurance program.

(2) Federal disaster declaration

Subject to paragraph (3), in order to expedite claims and reduce costs to the national flood insurance program, following any major disaster declared by the President under section 5170 of this title relating to a named storm in a coastal State, the Administrator may use the COASTAL Formula to determine and pay for any flood loss covered under a standard insurance policy under the national flood insurance program, if the loss is an indeterminate loss.

(3) National Academy of Sciences evaluation

(A) Evaluation required

(i) Evaluation

Upon the issuance of the rule establishing the COASTAL Formula, and each time the Administrator modifies the COASTAL Formula, the National Academy of Sciences shall—

(I) evaluate the expected financial impact on the national flood insurance program of the use of the COASTAL Formula as so established or modified; and

(II) evaluate the validity of the scientific assumptions upon which the formula is based and determine whether the

COASTAL formula¹ can achieve a degree of accuracy of not less than 90 percent in allocating flood losses for indeterminate losses.

(ii) Report

The National Academy of Sciences shall submit a report containing the results of each evaluation under clause (i) to the Administrator, the Committee on Banking, Housing, and Urban Affairs and the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Financial Services and the Committee on Science, Space, and Technology of the House of Representatives.

(B) Effective date and applicability

(i) Effective date

Paragraphs (1) and (2) of this subsection shall not take effect unless the report under subparagraph (A) relating to the establishment of the COASTAL Formula concludes that the use of the COASTAL Formula for purposes of paragraph² (1) and (2) would not have an adverse financial impact on the national flood insurance program and that the COASTAL Formula is based on valid scientific assumptions that would allow a degree of accuracy of not less than 90 percent to be achieved in allocating flood losses for indeterminate losses.

(ii) Effect of modifications

Unless the report under subparagraph (A) relating to a modification of the COASTAL Formula concludes that the use of the COASTAL Formula, as so modified, for purposes of paragraphs (1) and (2) would not have an adverse financial impact on the national flood insurance program and that the COASTAL Formula is based on valid scientific assumptions that would allow a degree of accuracy of not less than 90 percent to be achieved in allocating flood losses for indeterminate losses the Administrator may not use the COASTAL Formula, as so modified, for purposes of paragraphs (1) and (2).

(C) Funding

Notwithstanding section 4017 of this title, there shall be available to the Administrator from the National Flood Insurance Fund, of amounts not otherwise obligated, not more than \$750,000 to carry out this paragraph.

(d) Disclosure of COASTAL Formula

Not later than 30 days after the date on which a post-storm assessment is submitted to the Secretary under section 3611(b)(2)(C) of title 33, for each indeterminate loss for which the COASTAL Formula is used pursuant to subsection (c)(2), the Administrator shall disclose to the policyholder that makes a claim relating to the indeterminate loss—

(1) that the Administrator used the COASTAL Formula with respect to the indeterminate loss; and

¹ So in original. Probably should be capitalized.

² So in original. Probably should be "paragraphs".

(2) a summary of the results of the use of the COASTAL Formula.

(e) Consultation

In carrying out subsections (b) and (c), the Secretary shall consult with—

- (1) the Under Secretary for Oceans and Atmosphere;
- (2) the Director of the National Institute of Standards and Technology;
- (3) the Chief of Engineers of the Corps of Engineers;
- (4) the Director of the United States Geological Survey;
- (5) the Office of the Federal Coordinator for Meteorology;
- (6) State insurance regulators of coastal States; and
- (7) such public, private, and academic sector entities as the Secretary considers appropriate for purposes of carrying out such subsections.

(f) Recordkeeping

Each consideration and measure the Administrator determines necessary to carry out subsection (b) may be required, with advanced approval of the Administrator, to be provided for on the National Flood Insurance Program Elevation Certificate, or maintained otherwise on record if approved by the Administrator, for any property that qualifies for the COASTAL Formula under subsection (c).

(g) Civil penalty

(1) In general

If an insurance claims adjuster knowingly and willfully makes a false or inaccurate determination relating to an indeterminate loss, the Administrator may, after notice and opportunity for hearing, impose on the insurance claims adjuster a civil penalty of not more than \$1,000.

(2) Deposit

Notwithstanding section 3302 of title 31 or any other law relating to the crediting of money, the Administrator shall deposit in the National Flood Insurance Fund any amounts received under this subsection, which shall remain available until expended and be available to the Administrator for purposes authorized for the National Flood Insurance Fund without further appropriation.

(h) Rule of construction

Nothing in this subsection³ shall be construed to require the Administrator to make any payment under the national flood insurance program, or an insurance company to make any payment, for an indeterminate loss based upon post-storm assessment or the COASTAL Formula.

(i) Applicability

Subsection (c) shall apply with respect to an indeterminate loss associated with a named storm that occurs after the date on which the Administrator issues the rule establishing the COASTAL Formula under subsection (b).

(j) Rule of Construction

Nothing in this subsection³ shall be construed to negate, set aside, or void any policy limit, in-

cluding any loss limitation, set forth in a standard insurance policy.

(Pub. L. 90-448, title XIII, §1337, as added Pub. L. 112-141, div. F, title II, §100253, July 6, 2012, 126 Stat. 974.)

PART B—GOVERNMENT PROGRAM WITH INDUSTRY ASSISTANCE

§ 4071. Federal operation of program; determination by Administrator; fiscal agents; report to Congress

(a) If at any time, after consultation with representatives of the insurance industry, the Administrator determines that operation of the flood insurance program as provided under part A cannot be carried out, or that such operation, in itself, would be assisted materially by the Federal Government's assumption, in whole or in part, of the operational responsibility for flood insurance under this chapter (on a temporary or other basis) he shall promptly undertake any necessary arrangements to carry out the program of flood insurance authorized under subchapter I of this chapter through the facilities of the Federal Government, utilizing, for purposes of providing flood insurance coverage, either—

(1) insurance companies and other insurers, insurance agents and brokers, and insurance adjustment organizations, as fiscal agents of the United States,

(2) such other officers and employees of any executive agency (as defined in section 105 of title 5) as the Administrator and the head of any such agency may from time to time, agree upon, on a reimbursement or other basis, or

(3) both the alternatives specified in paragraphs (1) and (2).

(b) Upon making the determination referred to in subsection (a) of this section, the Administrator shall make a report to the Congress and, at the same time, to the private insurance companies participating in the National Flood Insurance Program pursuant to section 4017 of this title. Such report shall—

(1) state the reason for such determinations,

(2) be supported by pertinent findings,

(3) indicate the extent to which it is anticipated that the insurance industry will be utilized in providing flood insurance coverage under the program, and

(4) contain such recommendations as the Administrator deems advisable.

The Administrator shall not implement the program of flood insurance authorized under subchapter I of this chapter through the facilities of the Federal Government until 9 months after the date of submission of the report under this subsection unless it would be impossible to continue to effectively carry out the National Flood Insurance Program operations during this time.

(Pub. L. 90-448, title XIII, §1340, Aug. 1, 1968, 82 Stat. 584; Pub. L. 98-181, title I [title IV, §451(d)(1), (4)], Nov. 30, 1983, 97 Stat. 1229; Pub. L. 101-137, §3, Nov. 3, 1989, 103 Stat. 824; Pub. L. 112-141, div. F, title II, §100238(b)(1), July 6, 2012, 126 Stat. 958.)

³ So in original. Probably should be "this section".