

**§ 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**

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.

**(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—
    - (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; and

(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.

(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 performing 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

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

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.)

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.

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.

**§ 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.)

SUBCHAPTER IV—EMERGENCY ASSISTANCE PROGRAMS

**§ 5191. Procedure for declaration**

**(a) Request and declaration**

All requests for a declaration by the President that an emergency exists shall be made by the Governor of the affected State. Such a request shall be based on a finding that the situation is of such severity and magnitude that effective response is beyond the capabilities of the State and the affected local governments and that Federal assistance is necessary. As a part of such request, and as a prerequisite to emergency assistance under this chapter, the Governor shall take appropriate action under State law and direct execution of the State's emergency plan. The Governor shall furnish information describing the State and local efforts and resources which have been or will be used to alleviate the emergency, and will define the type and extent of Federal aid required. Based upon such Governor's request, the President may declare that an emergency exists.

**(b) Certain emergencies involving Federal primary responsibility**

The President may exercise any authority vested in him by section 5192 of this title or section 5193 of this title with respect to an emergency when he determines that an emergency exists for which the primary responsibility for response rests with the United States because the emergency involves a subject area for which, under the Constitution or laws of the United States, the United States exercises exclusive or preeminent responsibility and authority. In determining whether or not such an emergency exists, the President shall consult the Governor of any affected State, if practicable. The President's determination may be made without regard to subsection (a) of this section.

**(c) Indian tribal government requests**

**(1) In general**

The Chief Executive of an affected Indian tribal government may submit a request for a