

agree to forgo rights to any further appeal of the dispute relating to any eligible assistance;

“(C) require that the sponsor of an independent review panel for any alternative dispute resolution under this section be—

“(i) an individual or entity unaffiliated with the dispute (which may include a Federal agency, an administrative law judge, or a reemployed annuitant who was an employee of the Federal Government) selected by the Administrator; and

“(ii) responsible for identifying and maintaining an adequate number of independent experts qualified to review and resolve disputes under this section;

“(D) require an independent review panel to—

“(i) resolve any remaining disputed issue in accordance with all applicable laws, regulations, and Agency interpretations of those laws through its published policies and guidance;

“(ii) consider only evidence contained in the administrative record, as it existed at the time at which the Agency made its initial decision;

“(iii) only set aside a decision of the Agency found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; and

“(iv) in the case of a finding of material fact adverse to the claimant made on first appeal, only set aside or reverse such finding if the finding is clearly erroneous;

“(E) require an independent review panel to expeditiously issue a written decision for any alternative dispute resolution under this section; and

“(F) direct that if an independent review panel for any alternative dispute resolution under this section determines that the basis upon which a party submits a request for alternative dispute resolution is frivolous, the independent review panel shall direct the party to pay the reasonable costs to the Federal Emergency Management Agency relating to the review by the independent review panel. Any funds received by the Federal Emergency Management Agency under the authority of this section shall be deposited to the credit of the appropriation or appropriations available for the eligible assistance in dispute on the date on which the funds are received.

“(c) SUNSET.—A request for review by an independent review panel under this section may not be made after December 31, 2015.”

#### **§ 5189b. Date of eligibility; expenses incurred before date of disaster**

Eligibility for Federal assistance under this subchapter shall begin on the date of the occurrence of the event which results in a declaration by the President that a major disaster exists; except that reasonable expenses which are incurred in anticipation of and immediately preceding such event may be eligible for Federal assistance under this chapter.

(Pub. L. 93-288, title IV, § 424, as added Pub. L. 100-707, title I, § 106(l), Nov. 23, 1988, 102 Stat. 4706.)

#### 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.

#### **§ 5189c. Transportation assistance to individuals and households**

The President may provide transportation assistance to relocate individuals displaced from

their predisaster primary residences as a result of an incident declared under this chapter or otherwise transported from their predisaster primary residences under section 5170b(a)(3) or 5192 of this title, to and from alternative locations for short or long-term accommodation or to return an individual or household to their predisaster primary residence or alternative location, as determined necessary by the President.

(Pub. L. 93-288, title IV, § 425, as added Pub. L. 109-295, title VI, § 689f, Oct. 4, 2006, 120 Stat. 1452.)

#### 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.

#### CODIFICATION

Another section 425 of Pub. L. 93-288 was renumbered section 427 and is classified to section 5189e of this title.

#### **§ 5189d. Case management services**

The President may provide case management services, including financial assistance, to State or local government agencies or qualified private organizations to provide such services, to victims of major disasters to identify and address unmet needs.

(Pub. L. 93-288, title IV, § 426, as added Pub. L. 109-295, title VI, § 689f, Oct. 4, 2006, 120 Stat. 1453.)

#### **§ 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.)

#### 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—

- (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.

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