

section in a manner satisfactory to the President, the President shall withdraw the approval.

- (5) Audits - The President shall provide for periodic audits of the hazard mitigation grant programs administered by States under this subsection.

Sec. 405. Federal Facilities (42 U.S.C. 5171)

- (a) Repair, reconstruction, restoration or replacement of United States facilities - The President may authorize any Federal agency to repair, reconstruct, restore, or replace any facility owned by the United States and under the jurisdiction of such agency which is damaged or destroyed by any major disaster if he determines that such repair, reconstruction, restoration, or replacement is of such importance and urgency that it cannot reasonably be deferred pending the enactment of specific authorizing legislation or the making of an appropriation for such purposes, or the obtaining of congressional committee approval.
- (b) Availability of funds appropriated to agency for repair, reconstruction, restoration, or replacement of agency facilities - In order to carry out the provisions of this section, such repair, reconstruction, restoration, or replacement may be begun notwithstanding a lack or an insufficiency of funds appropriated for such purpose, where such lack or insufficiency can be remedied by the transfer, in accordance with law, of funds appropriated to that agency for another purpose.
- (c) Steps for mitigation of hazards - In implementing this section, Federal agencies shall evaluate the natural hazards to which these facilities are exposed and shall take appropriate action to mitigate such hazards, including safe land-use and construction practices, in accordance with standards prescribed by the President.

Sec. 406. Repair, Restoration, and Replacement of Damaged Facilities (42 U.S.C. 5172)*

- (a) Contributions -

- (1) In general -The President may make contributions -

- (A) to a State or local government for the repair, restoration, reconstruction, or replacement of a public facility damaged or destroyed by a major disaster and for associated expenses incurred by the government; and
- (B) subject to paragraph (3), to a person that owns or operates a private nonprofit facility damaged or destroyed by a major disaster for the repair, restoration, reconstruction, or replacement of the facility and for associated expenses incurred by the person.

(2) Associated expenses - For the purposes of this section, associated expenses shall include -

- (A) the costs of mobilizing and employing the National Guard for performance of eligible work;
- (B) the costs of using prison labor to perform eligible work, including wages actually paid, transportation to a worksite, and extraordinary costs of guards, food, and lodging; and
- (C) base and overtime wages for the employees and extra hires of a State, local government, or person described in paragraph (1) that perform eligible work, plus fringe benefits on such wages to the extent that such benefits were being paid before the major disaster.

(3) Conditions for assistance to private nonprofit facilities -

- (A) In general - The President may make contributions to a private nonprofit facility under paragraph (1)(B) only if -
 - (i) the facility provides critical services (as defined by the President) in the event of a major disaster; or
 - (ii) the owner or operator of the facility -
 - (I) has applied for a disaster loan under section 7(b) of the Small Business Act (15 U.S.C. 636(b)); and
 - (II) (aa) has been determined to be ineligible for such a loan; or
 - (bb) has obtained such a loan in the maximum amount for which the Small Business Administration determines the facility is eligible.
- (B) Definition of critical services - In this paragraph, the term “critical services” includes power, water (including water provided by an irrigation organization or facility), sewer, wastewater treatment, communications, education, and emergency medical care.

(4) Notification to Congress - Before making any contribution under this section in an amount greater than \$20,000,000, the President shall notify

- (A) the Committee on Environment and Public Works of the Senate;
- (B) the Committee on Transportation and Infrastructure of the House of Representatives;
- (C) the Committee on Appropriations of the Senate; and
- (D) the Committee on Appropriations of the House of Representatives.

(b) Federal Share -

- (1) Minimum federal share - Except as provided in paragraph (2), the Federal share of assistance under this section shall be not less than 75 percent of the eligible cost of repair, restoration, reconstruction, or replacement carried out under this section.

Note: Paragraph (2) takes effect after FEMA has promulgated an implementing regulation.

(2) Reduced federal share - The President shall promulgate regulations to reduce the Federal share of assistance under this section to not less than 25 percent in the case of the repair, restoration, reconstruction, or replacement of any eligible public facility or private nonprofit facility following an event associated with a major disaster -

- (A) that has been damaged, on more than one occasion within the preceding 10-year period, by the same type of event; and
- (B) the owner of which has failed to implement appropriate mitigation measures to address the hazard that caused the damage to the facility.

(c) Large In-Lieu Contributions -

(1) For public facilities -

- (A) In general - In any case in which a State or local government determines that the public welfare would not best be served by repairing, restoring, reconstructing, or replacing any public facility owned or controlled by the State or local government, the State or local government may elect to receive, in lieu of a contribution under subsection (a)(1)(A), a contribution in an amount equal to 90 percent of the Federal share of the Federal estimate of the cost of repairing, restoring, reconstructing, or replacing the facility and of management expenses.
- (B) Use of funds - Funds contributed to a State or local government under this paragraph may be used -
 - (i) to repair, restore, or expand other selected public facilities;
 - (ii) to construct new facilities; or
 - (iii) to fund hazard mitigation measures that the State or local government determines to be necessary to meet a need for governmental services and functions in the area affected by the major disaster.
- (C) Limitations - Funds made available to a State or local government under this paragraph may not be used for -
 - (i) any public facility located in a regulatory floodway (as defined in section 59.1 of title 44, Code of Federal Regulations (or a successor regulation)); or
 - (ii) any uninsured public facility located in a special flood hazard area identified by the Director of the Federal Emergency Management Agency under the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.).

(2) For private nonprofit facilities -

- (A) In general - In any case in which a person that owns or operates a private nonprofit facility determines that the public welfare would not best be served by repairing, restoring, reconstructing, or replacing the facility, the person may elect to receive, in lieu of a contribution under subsection (a)(1)(B), a contribution in an amount equal to 75 percent of the Federal share of the Federal estimate of the cost of repairing, restoring, reconstructing, or replacing the facility and of management expenses.
- (B) Use of funds - Funds contributed to a person under this paragraph may be used -
 - (i) to repair, restore, or expand other selected private nonprofit facilities owned or operated by the person;
 - (ii) to construct new private nonprofit facilities to be owned or operated by the person; or
 - (iii) to fund hazard mitigation measures that the person determines to be necessary to meet a need for the person's services and functions in the area affected by the major disaster.
- (C) Limitations - Funds made available to a person under this paragraph may not be used for--
 - (i) any private nonprofit facility located in a regulatory floodway (as defined in section 59.1 of title 44, Code of Federal Regulations (or a successor regulation)); or
 - (ii) any uninsured private nonprofit facility located in a special flood hazard area identified by the Director of the Federal Emergency Management Agency under the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.).

(d) Flood insurance -

- (1) Reduction of Federal assistance - If a public facility or private nonprofit facility located in a special flood hazard area identified for more than 1 year by the Director pursuant to the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.) is damaged or destroyed, after the 180th day following November 23, 1988, by flooding in a major disaster and such facility is not covered on the date of such flooding by flood insurance, the Federal assistance which would otherwise be available under this section with respect to repair, restoration, reconstruction, and replacement of such facility and associated expenses shall be reduced in accordance with paragraph (2).

- (2) Amount of reduction - The amount of a reduction in Federal assistance under this section with respect to a facility shall be the lesser of -
- (A) the value of such facility on the date of the flood damage or destruction, or
 - (B) the maximum amount of insurance proceeds which would have been payable with respect to such facility if such facility had been covered by flood insurance under the National Flood Insurance Act of 1968 on such date.
- (3) Exception - Paragraphs (1) and (2) shall not apply to a private nonprofit facility which is not covered by flood insurance solely because of the local government's failure to participate in the flood insurance program established by the National Flood Insurance Act.
- (4) Dissemination of information - The President shall disseminate information regarding the reduction in Federal assistance provided for by this subsection to State and local governments and the owners and operators of private nonprofit facilities who may be affected by such a reduction.

Note: The following version of subsection (e) remains in effect until the cost estimation procedures established under paragraph (3) of the revised version of subsection 406(e) – see next subsection – take effect.

(e) Net Eligible Cost –

- (1) General Rule – For purposes of this section, the cost of repairing, restoring, reconstructing, or replacing a public facility or private nonprofit facility on the basis of the design of such facility as it existed immediately prior to the major disaster and in conformity with current applicable codes, specifications, and standards (including floodplain management and hazard mitigation criteria required by the President or by the Coastal Barrier Resources Act (16 U.S.C. 3501 et seq.)) shall, at a minimum, be treated as the net eligible cost of such repair, restoration, reconstruction, or replacement.
- (2) Special Rule – In any case in which the facility being repaired, restored, reconstructed, or replaced, under this section was under construction on the date of the major disaster, the cost of repairing, restoring, reconstruction, or replacing such facility shall include, for purposes of this section, only those costs which, under the contract for such construction, are the owner's responsibility and not the contractor's responsibility.

Note: The following version of subsection 406(e)(1) and (2) becomes effective when the procedures established by paragraph (3) of this subsection take effect. Subsection 406(e)(4) is currently in effect.

(e) Eligible Cost -

(1) Determination -

- (A) In general - For the purposes of this section, the President shall estimate the eligible cost of repairing, restoring, reconstructing, or replacing a public facility or private nonprofit facility--
 - (i) on the basis of the design of the facility as the facility existed immediately before the major disaster; and
 - (ii) in conformity with codes, specifications, and standards (including floodplain management and hazard mitigation criteria required by the President or under the Coastal Barrier Resources Act (16 U.S.C. 3501 et seq.)) applicable at the time at which the disaster occurred.
- (B) Cost estimation procedures -
 - (i) In general - Subject to paragraph (2), the President shall use the cost estimation procedures established under paragraph (3) to determine the eligible cost under this subsection.
 - (ii) Applicability - The procedures specified in this paragraph and paragraph (2) shall apply only to projects the eligible cost of which is equal to or greater than the amount specified in section 5189 of this title.

(2) Modification of eligible cost -

- (A) Actual cost greater than ceiling percentage of estimated cost - In any case in which the actual cost of repairing, restoring, reconstructing, or replacing a facility under this section is greater than the ceiling percentage established under paragraph (3) of the cost estimated under paragraph (1), the President may determine that the eligible cost includes a portion of the actual cost of the repair, restoration, reconstruction, or replacement that exceeds the cost estimated under paragraph (1).
- (B) Actual cost less than estimated cost -
 - (i) Greater than or equal to floor percentage of estimated cost - In any case in which the actual cost of repairing, restoring, reconstructing, or replacing a facility under this section is less than 100 percent of the cost estimated under paragraph (1), but is greater than or equal to the floor percentage established under paragraph (3) of the cost estimated under paragraph (1), the State or local government or person receiving funds under this section shall use the excess funds

to carry out cost-effective activities that reduce the risk of future damage, hardship, or suffering from a major disaster.

- (ii) Less than floor percentage of estimated cost - In any case in which the actual cost of repairing, restoring, reconstructing, or replacing a facility under this section is less than the floor percentage established under paragraph (3) of the cost estimated under paragraph (1), the State or local government or person receiving assistance under this section shall reimburse the President in the amount of the difference.

- (C) No effect on appeals process - Nothing in this paragraph affects any right of appeal under section 5189a of this title.

(3) Expert panel -

- (A) Establishment - Not later than 18 months after October 30, 2000, the President, acting through the Director of the Federal Emergency Management Agency, shall establish an expert panel, which shall include representatives from the construction industry and State and local government.

- (B) Duties - The expert panel shall develop recommendations concerning

- (i) procedures for estimating the cost of repairing, restoring, reconstructing, or replacing a facility consistent with industry practices; and

- (ii) the ceiling and floor percentages referred to in paragraph (2).

- (C) Regulations - Taking into account the recommendations of the expert panel under subparagraph (B), the President shall promulgate regulations that establish

- (i) cost estimation procedures described in subparagraph (B)(i); and

- (ii) the ceiling and floor percentages referred to in paragraph (2).

- (D) Review by President - Not later than 2 years after the date of promulgation of regulations under subparagraph (C) and periodically thereafter, the President shall review the cost estimation procedures and the ceiling and floor percentages established under this paragraph.

- (E) Report to Congress - Not later than 1 year after the date of promulgation of regulations under subparagraph (C), 3 years after that date, and at the end of each 2-year period thereafter, the expert panel shall submit to Congress a report on the appropriateness of the cost estimation procedures.

- (4) Special rule - In any case in which the facility being repaired, restored, reconstructed, or replaced under this section was under construction on the date of the major disaster, the cost of repairing, restoring, reconstructing, or replacing the facility shall include, for the purposes of this section, only

Note: The following Subsection 406(f) will be repealed when the regulation to implement section 324 has been promulgated.

(f) Associated Expenses – For purposes of this section, associated expenses include the following –

(1) Necessary costs – Necessary costs of requesting, obtaining, and administering Federal assistance based on a percentage of assistance provided as follows:

(A) For an applicant whose net eligible costs equal \$100,000, 3 percent of such net eligible costs.

(B) For an applicant whose net eligible cost equal \$100,000 or more but less than \$1,000,000, \$3,000 plus 2 percent of such net eligible costs in excess of \$100,000.

(C) For an applicant whose net eligible costs equal \$1,000,000 or more but less than \$5,000,000, \$21,000 plus 1 percent of such net eligible costs in excess or \$1,000,000.

(D) For an applicant whose net eligible costs equal \$5,000,000 or more, \$61,000 plus 1/2 percent of such eligible costs in excess of \$5,000,000.

(2) Extraordinary Costs – Extraordinary costs incurred by a State for preparation of damage survey reports, final inspection reports, project applications, final audits, and related field inspections by State employees, including overtime pay and per diem and travel expense of such employees, but not including pay for regular time of such employees, based on the total amount of assistance provided under section 403, 404, 406, 407, 502, and 503 in such State in connection with the major disaster as follows.

(A) If such total amount is less than \$100,000, 3 percent of such total amount.

(B) If such total amount is \$100,000 or more but less than \$1,000,000, \$3,000 plus 2 percent of such total amount in excess of \$100,000.

(C) If such total amount is \$1,000,000 or more but less than \$5,000,000, \$21,000 plus 1 percent of such total amount in excess of \$1,000,000.

(D) If such total amount is \$5,000,000 or more, \$61,000 plus 1/2 per cent of such total amount in excess of \$5,000,000.

(3) Costs of National Guard – The costs of mobilizing and employing the National Guard for performance of eligible work.

- (4) Costs of Prison Labor – The costs of using prison labor to perform eligible work, including wages actually paid, transportation to a worksite, and extraordinary costs of guards, food, and lodging.
- (5) Other Labor Costs – Base and overtime wages for an applicant's employees and extra hires performing eligible work plus fringe benefits on such wages to the extent that such benefits were being paid before the disaster.

Sec. 407. Debris Removal (42 U.S.C. 5173)*

- (a) Presidential Authority - The President, whenever he determines it to be in the public interest, is authorized -
 - (1) through the use of Federal departments, agencies, and instrumentalities, to clear debris and wreckage resulting from a major disaster from publicly and privately owned lands and waters; and
 - (2) to make grants to any State or local government or owner or operator of a private non-profit facility for the purpose of removing debris or wreckage resulting from a major disaster from publicly or privately owned lands and waters.
- (b) Authorization by State or local government; indemnification agreement - No authority under this section shall be exercised unless the affected State or local government shall first arrange an unconditional authorization for removal of such debris or wreckage from public and private property, and, in the case of removal of debris or wreckage from private property, shall first agree to indemnify the Federal Government against any claim arising from such removal.
- (c) Rules relating to large lots - The President shall issue rules which provide for recognition of differences existing among urban, suburban, and rural lands in implementation of this section so as to facilitate adequate removal of debris and wreckage from large lots.
- (d) Federal share - The Federal share of assistance under this section shall be not less than 75 percent of the eligible cost of debris and wreckage removal carried out under this section.
- (e) Expedited Payments -
 - (1) Grant Assistance – In making a grant under subsection (a)(2), the President shall provide not less than 50 percent of the President's initial estimate of the Federal share of assistance as an initial payment in accordance with paragraph (2).
 - (2) Date of Payment – Not later than 60 days after the date of the estimate described in paragraph (1) and not later than 90 days after the date on which