

The Fair Labor Standards Act of 1938, referred to in subsec. (d)(2), 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.

#### PRIOR PROVISIONS

A prior section 403 of Pub. L. 93-288 was renumbered section 407 by Pub. L. 100-707 and is classified to section 5173 of this title.

#### AMENDMENTS

2018—Subsec. (a)(3)(J). Pub. L. 115-254 struck out subpar. (J) added by Pub. L. 109-308, which was identical to subpar. (J) added by Pub. L. 109-295. See 2006 Amendment note below.

2013—Subsec. (d). Pub. L. 113-2 added subsec. (d).

2006—Subsec. (a)(2), (3)(B). Pub. L. 109-295, §689(b)(1), (2)(A), inserted “durable medical equipment,” after “medicine”.

Subsec. (a)(3)(J). Pub. L. 109-295, §689(b)(2)(B)–(D), and Pub. L. 109-308 amended par. (3) by adding identical subpars. (J).

#### 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.

### § 5170c. Hazard mitigation

#### (a) In general

The President may contribute up to 75 percent of the cost of hazard mitigation measures which the President has determined are cost effective and which substantially reduce the risk of, or increase resilience to, future damage, hardship, loss, or suffering in any area affected by a major disaster, or any area affected by a fire for which assistance was provided under section 5187 of this title. Such measures shall be identified following the evaluation of natural hazards under section 5165 of this title and shall be subject to approval by the President. Subject to section 5165 of this title, the total of contributions under this section for a major disaster or event under section 5187 of this title shall not exceed 15 percent for amounts not more than \$2,000,000,000, 10 percent for amounts of more than \$2,000,000,000 and not more than \$10,000,000,000, and 7.5 percent on amounts of more than \$10,000,000,000 and not more than \$35,333,000,000 of the estimated aggregate amount of grants to be made (less any associated administrative costs) under this chapter with respect to the major disaster or event under section 5187 of this title.

#### (b) Property acquisition and relocation assistance

##### (1) General authority

In providing hazard mitigation assistance under this section in connection with flooding, the Administrator of the Federal Emergency Management Agency may provide property acquisition and relocation assistance for projects that meet the requirements of paragraph (2).

#### (2) Terms and conditions

An acquisition or relocation project shall be eligible to receive assistance pursuant to paragraph (1) only if—

(A) the applicant for the assistance is otherwise eligible to receive assistance under the hazard mitigation grant program established under subsection (a); and

(B) on or after December 3, 1993, the applicant for the assistance enters into an agreement with the Administrator that provides assurances that—

(i) any property acquired, accepted, or from which a structure will be removed pursuant to the project will be dedicated and maintained in perpetuity for a use that is compatible with open space, recreational, or wetlands management practices;

(ii) no new structure will be erected on property acquired, accepted or from which a structure was removed under the acquisition or relocation program other than—

(I) a public facility that is open on all sides and functionally related to a designated open space;

(II) a rest room; or

(III) a structure that the Administrator approves in writing before the commencement of the construction of the structure; and

(iii) after receipt of the assistance, with respect to any property acquired, accepted or from which a structure was removed under the acquisition or relocation program—

(I) no subsequent application for additional disaster assistance for any purpose will be made by the recipient to any Federal entity; and

(II) no assistance referred to in subclause (I) will be provided to the applicant by any Federal source.

#### (3) Statutory construction

Nothing in this subsection is intended to alter or otherwise affect an agreement for an acquisition or relocation project carried out pursuant to this section that was in effect on the day before December 3, 1993.

#### (c) Program administration by States

##### (1) In general

A State desiring to administer the hazard mitigation grant program established by this section with respect to hazard mitigation assistance in the State may submit to the President an application for the delegation of the authority to administer the program.

##### (2) Criteria

The President, in consultation and coordination with States and local governments, shall establish criteria for the approval of applications submitted under paragraph (1). Until such time as the Administrator promulgates regulations to implement this paragraph, the Administrator may waive notice and comment rulemaking, if the Administrator determines doing so is necessary to expeditiously implement this section, and may carry out this sec-

tion as a pilot program. The criteria shall include, at a minimum—

- (A) the demonstrated ability of the State to manage the grant program under this section;
- (B) there being in effect an approved mitigation plan under section 5165 of this title; and
- (C) a demonstrated commitment to mitigation activities.

**(3) Approval**

The President shall approve an application submitted under paragraph (1) that meets the criteria established under paragraph (2).

**(4) Withdrawal of approval**

If, after approving an application of a State submitted under paragraph (1), the President determines that the State is not administering the hazard mitigation grant program established by this 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.

**(d) Streamlined procedures**

**(1) In general**

For the purpose of providing assistance under this section, the President shall ensure that—

- (A) adequate resources are devoted to ensure that applicable environmental reviews under the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] and historic preservation reviews under the National Historic Preservation Act<sup>1</sup> are completed on an expeditious basis; and
- (B) the shortest existing applicable process under the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] and the National Historic Preservation Act<sup>1</sup> is utilized.

**(2) Authority for other expedited procedures**

The President may utilize expedited procedures in addition to those required under paragraph (1) for the purpose of providing assistance under this section, such as procedures under the Prototype Programmatic Agreement of the Federal Emergency Management Agency, for the consideration of multiple structures as a group and for an analysis of the cost-effectiveness and fulfillment of cost-share requirements for proposed hazard mitigation measures.

**(e) Advance assistance**

The President may provide not more than 25 percent of the amount of the estimated cost of hazard mitigation measures to a State grantee eligible for a grant under this section before eligible costs are incurred.

**(f) Use of assistance**

Recipients of hazard mitigation assistance provided under this section and section 5133 of this title may use the assistance to conduct ac-

tivities to help reduce the risk of future damage, hardship, loss, or suffering in any area affected by a wildfire or windstorm, such as—

- (1) reseeded ground cover with quick-growing or native species;
- (2) mulching with straw or chipped wood;
- (3) constructing straw, rock, or log dams in small tributaries to prevent flooding;
- (4) placing logs and other erosion barriers to catch sediment on hill slopes;
- (5) installing debris traps to modify road and trail drainage mechanisms;
- (6) modifying or removing culverts to allow drainage to flow freely;
- (7) adding drainage dips and constructing emergency spillways to keep roads and bridges from washing out during floods;
- (8) planting grass to prevent the spread of noxious weeds;
- (9) installing warning signs;
- (10) establishing defensible space measures;
- (11) reducing hazardous fuels;
- (12) mitigating windstorm damage, including replacing or installing electrical transmission or distribution utility pole structures with poles that are resilient to extreme wind and combined ice and wind loadings for the basic wind speeds and ice conditions associated with the relevant location;
- (13) removing standing burned trees; and
- (14) replacing water systems that have been burned and have caused contamination.

**(g) Use of assistance for earthquake hazards**

Recipients of hazard mitigation assistance provided under this section and section 5133 of this title may use the assistance to conduct activities to help reduce the risk of future damage, hardship, loss, or suffering in any area affected by earthquake hazards, including—

- (1) improvements to regional seismic networks in support of building a capability for earthquake early warning;
- (2) improvements to geodetic networks in support of building a capability for earthquake early warning; and
- (3) improvements to seismometers, Global Positioning System receivers, and associated infrastructure in support of building a capability for earthquake early warning.

(Pub. L. 93-288, title IV, §404, as added Pub. L. 100-707, title I, §106(a)(3), Nov. 23, 1988, 102 Stat. 4698; amended Pub. L. 103-181, §§2(a), 3, Dec. 3, 1993, 107 Stat. 2054; Pub. L. 106-390, title I, §104(c)(1), title II, §204, Oct. 30, 2000, 114 Stat. 1559, 1561; Pub. L. 108-7, div. K, title IV, §417, Feb. 20, 2003, 117 Stat. 525; Pub. L. 109-295, title VI, §684, Oct. 4, 2006, 120 Stat. 1447; Pub. L. 111-351, §3(c)(2), Jan. 4, 2011, 124 Stat. 3864; Pub. L. 113-2, div. B, §1104(a), (b), Jan. 29, 2013, 127 Stat. 43; Pub. L. 115-254, div. D, §§1204(b)(1), 1205, 1233, 1235(a), Oct. 5, 2018, 132 Stat. 3439, 3460, 3463.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), 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 National Environmental Policy Act of 1969, referred to in subsec. (d)(1), is Pub. L. 91-190, Jan. 1, 1970,

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

83 Stat. 852, which is classified generally to chapter 55 (§ 4321 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

The National Historic Preservation Act, referred to in subsec. (d)(1), is Pub. L. 89-665, Oct. 15, 1966, 80 Stat. 915, which was classified generally to subchapter II (§ 470 et seq.) of chapter 1A of Title 16, Conservation. The Act, except for section 1, was repealed and restated in division A (§ 300101 et seq.) of subtitle III of Title 54, National Park Service and Related Programs, by Pub. L. 113-287, §§ 3, 7, Dec. 19, 2014, 128 Stat. 3094, 3272. For complete classification of this Act to the Code, see Tables. For disposition of former sections of Title 16, see Disposition Table preceding section 100101 of Title 54.

#### PRIOR PROVISIONS

A prior section 404 of Pub. L. 93-288 was classified to section 5174 of this title prior to repeal by Pub. L. 100-707.

#### AMENDMENTS

2018—Subsec. (a). Pub. L. 115-254, § 1204(b)(1), inserted “, or any area affected by a fire for which assistance was provided under section 5187 of this title” after “affected by a major disaster” in first sentence as inserted by section 1235(a) of Pub. L. 115-254, and inserted “or event under section 5187 of this title” after “major disaster” in two places in third sentence.

Pub. L. 115-254, § 1235(a), substituted “The President may contribute up to 75 percent of the cost of hazard mitigation measures which the President has determined are cost effective and which substantially reduce the risk of, or increase resilience to, future damage, hardship, loss, or suffering in any area affected by a major disaster.” for “The President may contribute up to 75 percent of the cost of hazard mitigation measures which the President has determined are cost-effective and which substantially reduce the risk of future damage, hardship, loss, or suffering in any area affected by a major disaster.”

Subsec. (f). Pub. L. 115-254, § 1205, added subsec. (f).

Subsec. (g). Pub. L. 115-254, § 1233, added subsec. (g).

2013—Subsec. (c)(2). Pub. L. 113-2, § 1104(b), inserted “Until such time as the Administrator promulgates regulations to implement this paragraph, the Administrator may waive notice and comment rulemaking, if the Administrator determines doing so is necessary to expeditiously implement this section, and may carry out this section as a pilot program.” after “applications submitted under paragraph (1).” in introductory provisions.

Subsecs. (d), (e). Pub. L. 113-2, § 1104(a), added subsecs. (d) and (e).

2011—Subsec. (b)(1), (2). Pub. L. 111-351 substituted “Administrator” for “Director” wherever appearing.

2006—Subsec. (a). Pub. L. 109-295, in last sentence, substituted “15 percent for amounts not more than \$2,000,000,000, 10 percent for amounts of more than \$2,000,000,000 and not more than \$10,000,000,000, and 7.5 percent on amounts of more than \$10,000,000,000 and not more than \$35,333,000,000” for “7.5 percent”.

2003—Subsec. (a). Pub. L. 108-7 substituted “7.5 percent” for “15 percent”.

2000—Subsec. (a). Pub. L. 106-390, § 104(c)(1), substituted “section 5165” for “section 5176” in second sentence and “Subject to section 5165 of this title, the total” for “The total” in third sentence.

Subsec. (c). Pub. L. 106-390, § 204, added subsec. (c).

1993—Pub. L. 103-181 designated existing provisions as subsec. (a), inserted heading, substituted “75 percent” for “50 percent” in first sentence, substituted “15 percent of the estimated aggregate amount of grants to be made (less any associated administrative costs) under this chapter with respect to the major disaster” for “10 percent of the estimated aggregate amounts of grants to be made under section 5172 of this title with respect to such major disaster” in last sentence, and added subsec. (b).

#### 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.

#### EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 113-2, div. B, § 1104(c), Jan. 29, 2013, 127 Stat. 43, provided that: “The authority under the amendments made by this section [amending this section] shall apply to—

“(1) any major disaster or emergency declared under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) on or after the date of enactment of this division [Jan. 29, 2013]; and

“(2) a major disaster or emergency declared under that Act before the date of enactment of this division for which the period for processing requests for assistance has not ended as of the date of enactment of this division.”

#### EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103-181, § 2(b), Dec. 3, 1993, 107 Stat. 2054, provided that: “The amendments made by this section [amending this section] shall apply to any major disaster declared by the President pursuant to The [the] Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) on or after June 10, 1993.”

#### TRANSFER OF FUNCTIONS

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of 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.

#### FUNDING OF A FEDERALLY AUTHORIZED WATER RESOURCES DEVELOPMENT PROJECT

Pub. L. 115-254, div. D, § 1210(b), Oct. 5, 2018, 132 Stat. 3444, provided that:

“(1) ELIGIBLE ACTIVITIES.—Notwithstanding section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5155) and its implementing regulations, assistance provided pursuant to section 404 of such Act [42 U.S.C. 5170c] may be used to fund activities authorized for construction within the scope of a federally authorized water resources development project of the Army Corps of Engineers if such activities are also eligible activities under such section.

“(2) FEDERAL FUNDING.—All Federal funding provided under section 404 pursuant to this section shall be applied toward the Federal share of such project.

“(3) NON-FEDERAL MATCH.—All non-Federal matching funds required under section 404 pursuant to this section shall be applied toward the non-Federal share of such project.

“(4) TOTAL FEDERAL SHARE.—Funding provided under section 404 pursuant to this section may not exceed the total Federal share for such project.

“(5) NO EFFECT.—Nothing in this section shall—

“(A) affect the cost-share requirement of a hazard mitigation measure under section 404;

“(B) affect the eligibility criteria for a hazard mitigation measure under section 404;

“(C) affect the cost share requirements of a federally authorized water resources development project; and

“(D) affect the responsibilities of a non-Federal interest with respect to the project, including those related to the provision of lands, easements, rights-of-way, dredge material disposal areas, and necessary relocations.

“(6) LIMITATION.—If a federally authorized water resources development project of the Army Corps of Engineers is constructed with funding provided under section 404 pursuant to this subsection, no further Federal funding shall be provided for construction of such project.”

#### GUIDANCE ON HAZARD MITIGATION ASSISTANCE

Pub. L. 115-254, div. D, §1231, Oct. 5, 2018, 132 Stat. 3459, provided that:

“(a) IN GENERAL.—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 issue guidance regarding the acquisition of property for open space as a mitigation measure under section 404 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170c) that includes—

“(1) a process by which the State hazard mitigation officer appointed for such an acquisition shall, not later than 60 days after the applicant for assistance enters into an agreement with the Administrator regarding the acquisition, provide written notification to each affected unit of local government for such acquisition that includes—

“(A) the location of the acquisition;

“(B) the State-local assistance agreement for the hazard mitigation grant program;

“(C) a description of the acquisition; and

“(D) a copy of the deed restriction; and

“(2) recommendations for entering into and implementing a memorandum of understanding between units of local government and covered entities that includes provisions to allow an affected unit of local government notified under paragraph (1) to—

“(A) use and maintain the open space created by such a project, consistent with section 404 [42 U.S.C. 5170c] (including related regulations, standards, and guidance) and consistent with all adjoining property, subject to the notification of the adjoining property, so long as the cost of the maintenance is borne by the local government; and

“(B) maintain the open space pursuant to standards exceeding any local government standards defined in the agreement with the Administrator described under paragraph (1).

“(b) DEFINITIONS.—In this section:

“(1) AFFECTED UNIT OF LOCAL GOVERNMENT.—The term ‘affected unit of local government’ means any entity covered by the definition of local government in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122), that has jurisdiction over the property subject to the acquisition described in subsection (a).

“(2) COVERED ENTITY.—The term ‘covered entity’ means—

“(A) the grantee or subgrantee receiving assistance for an open space project described in subsection (a);

“(B) the State in which such project is located; and

“(C) the applicable Regional Administrator of the Agency.”

[For definition of “State” as used in section 1231 of Pub. L. 115-254, set out above, see section 1203 of Pub. L. 115-254, set out as a Definitions note under section 5122 of this title.]

#### § 5171. Federal facilities

##### (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.

(Pub. L. 93-288, title IV, § 405, formerly § 401, May 22, 1974, 88 Stat. 153; renumbered § 405, Pub. L. 100-707, title I, § 106(a)(2), Nov. 23, 1988, 102 Stat. 4696.)

#### PRIOR PROVISIONS

A prior section 405 of Pub. L. 93-288 was classified to section 5175 of this title prior to repeal by Pub. L. 100-707.

#### § 5172. Repair, restoration, and replacement of damaged facilities

##### (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;