

formance of or the failure to exercise or perform a discretionary function or duty on the part of a Federal agency or an employee of the Federal Government in carrying out the provisions of this chapter.

(Pub. L. 93-288, title III, § 305, formerly § 308, May 22, 1974, 88 Stat. 149; renumbered § 305, Pub. L. 100-707, title I, § 105(d), Nov. 23, 1988, 102 Stat. 4691.)

Editorial Notes

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.

PRIOR PROVISIONS

A prior section 305 of Pub. L. 93-288 was classified to section 5145 of this title prior to repeal by Pub. L. 100-707.

§ 5149. Performance of services

(a) Utilization of services or facilities of State and local governments

In carrying out the purposes of this chapter, any Federal agency is authorized to accept and utilize the services or facilities of any State or local government, or of any agency, office, or employee thereof, with the consent of such government.

(b) Appointment of temporary personnel, experts, and consultants; acquisition, rental, or hire of equipment, services, materials and supplies

In performing any services under this chapter, any Federal agency is authorized—

(1) to appoint and fix the compensation of such temporary personnel as may be necessary, without regard to the provisions of title 5 governing appointments in competitive service;

(2) to employ experts and consultants in accordance with the provisions of section 3109 of such title, without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates; and

(3) to incur obligations on behalf of the United States by contract or otherwise for the acquisition, rental, or hire of equipment, services, materials, and supplies for shipping, drayage, travel, and communications, and for the supervision and administration of such activities. Such obligations, including obligations arising out of the temporary employment of additional personnel, may be incurred by an agency in such amount as may be made available to it by the President.

(c) Appointment of temporary personnel in the Federal Emergency Management Agency

The Administrator of the Federal Emergency Management Agency is authorized to appoint temporary personnel, after serving continuously for 3 years, to positions in the Federal Emergency Management Agency in the same manner that competitive service employees with com-

petitive status are considered for transfer, reassignment, or promotion to such positions. An individual appointed under this subsection shall become a career-conditional employee, unless the employee has already completed the service requirements for career tenure.

(d) Personnel performing service responding to disasters and emergencies

(1) USERRA employment and reemployment rights

The protections, rights, benefits, and obligations provided under chapter 43 of title 38 shall apply to intermittent personnel appointed pursuant to subsection (b)(1) to perform service to the Federal Emergency Management Agency under sections 5170 and 5191 of this title or to train for such service.

(2) Notice of absence from position of employment

Preclusion of giving notice of service by necessity of service under subsection (b)(1) to perform service to the Federal Emergency Management Agency under sections 5170 and 5191 of this title or to train for such service shall be considered preclusion by “military necessity” for purposes of section 4312(b) of title 38 pertaining to giving notice of absence from a position of employment. A determination of such necessity shall be made by the Administrator and shall not be subject to review in any judicial or administrative proceeding.

(Pub. L. 93-288, title III, § 306, formerly § 309, May 22, 1974, 88 Stat. 149; renumbered § 306, Pub. L. 100-707, title I, § 105(d), Nov. 23, 1988, 102 Stat. 4691; amended Pub. L. 115-254, div. D, § 1222, Oct. 5, 2018, 132 Stat. 3454; Pub. L. 117-178, § 2, Sept. 29, 2022, 136 Stat. 2110.)

Editorial Notes

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.

PRIOR PROVISIONS

A prior section 306 of Pub. L. 93-288 was classified to section 5146 of this title prior to repeal by Pub. L. 100-707.

AMENDMENTS

2022—Subsec. (d). Pub. L. 117-178 added subsec. (d).
2018—Subsec. (c). Pub. L. 115-254 added subsec. (c).

Statutory Notes and Related Subsidiaries

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.

§ 5150. Use of local firms and individuals

(a) Contracts or agreements with private entities

(1) In general

In the expenditure of Federal funds for debris clearance, distribution of supplies, recon-

struction, and other major disaster or emergency assistance activities which may be carried out by contract or agreement with private organizations, firms, or individuals, preference shall be given, to the extent feasible and practicable, to those organizations, firms, and individuals residing or doing business primarily in the area affected by such major disaster or emergency.

(2) Construction

This subsection shall not be considered to restrict the use of Department of Defense resources under this chapter in the provision of assistance in a major disaster.

(3) Specific geographic area

In carrying out this section, a contract or agreement may be set aside for award based on a specific geographic area.

(b) Implementation

(1) Contracts not to entities in area

Any expenditure of Federal funds for debris clearance, distribution of supplies, reconstruction, and other major disaster or emergency assistance activities which may be carried out by contract or agreement with private organizations, firms, or individuals, not awarded to an organization, firm, or individual residing or doing business primarily in the area affected by such major disaster shall be justified in writing in the contract file.

(2) Transition

Following the declaration of an emergency or major disaster, an agency performing response, relief, and reconstruction activities shall transition work performed under contracts in effect on the date on which the President declares the emergency or major disaster to organizations, firms, and individuals residing or doing business primarily in any area affected by the major disaster or emergency, unless the head of such agency determines that it is not feasible or practicable to do so.

(3) Formulation of requirements

The head of a Federal agency, as feasible and practicable, shall formulate appropriate requirements to facilitate compliance with this section.

(c) Prior contracts

Nothing in this section shall be construed to require any Federal agency to breach or renegotiate any contract in effect before the occurrence of a major disaster or emergency.

(Pub. L. 93-288, title III, § 307, as added Pub. L. 109-295, title VI, § 694, Oct. 4, 2006, 120 Stat. 1459; amended Pub. L. 109-347, title VI, § 611, Oct. 13, 2006, 120 Stat. 1943.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(2), 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.

PRIOR PROVISIONS

A prior section 5150, Pub. L. 93-288, title III, § 307, formerly § 310, May 22, 1974, 88 Stat. 150; renumbered § 307

and amended Pub. L. 100-707, title I, § 105(e), Nov. 23, 1988, 102 Stat. 4691; Pub. L. 109-218, § 2, Apr. 20, 2006, 120 Stat. 333, provided for the use of local firms and individuals for major disaster or emergency assistance activities, prior to repeal by Pub. L. 109-295, title VI, § 694, Oct. 4, 2006, 120 Stat. 1459.

A prior section 307 of Pub. L. 93-288 was renumbered section 304 by Pub. L. 100-707 and is classified to section 5147 of this title.

AMENDMENTS

2006—Subsec. (b)(3). Pub. L. 109-347 added par. (3).

§ 5151. Nondiscrimination in disaster assistance

(a) Regulations for equitable and impartial relief operations

The President shall issue, and may alter and amend, such regulations as may be necessary for the guidance of personnel carrying out Federal assistance functions at the site of a major disaster or emergency. Such regulations shall include provisions for insuring that the distribution of supplies, the processing of applications, and other relief and assistance activities shall be accomplished in an equitable and impartial manner, without discrimination on the grounds of race, color, religion, nationality, sex, age, disability, English proficiency, or economic status.

(b) Compliance with regulations as prerequisite to participation by other bodies in relief operations

As a condition of participation in the distribution of assistance or supplies under this chapter or of receiving assistance under this chapter, governmental bodies and other organizations shall be required to comply with regulations relating to nondiscrimination promulgated by the President, and such other regulations applicable to activities within an area affected by a major disaster or emergency as he deems necessary for the effective coordination of relief efforts.

(Pub. L. 93-288, title III, § 308, formerly § 311, May 22, 1974, 88 Stat. 150; renumbered § 308 and amended Pub. L. 100-707, title I, § 105(f), Nov. 23, 1988, 102 Stat. 4691; Pub. L. 109-295, title VI, § 689a, Oct. 4, 2006, 120 Stat. 1449.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), 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.

PRIOR PROVISIONS

A prior section 308 of Pub. L. 93-288 was renumbered section 305 by Pub. L. 100-707 and is classified to section 5148 of this title.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109-295 inserted "disability, English proficiency," after "age."

1988—Subsec. (b). Pub. L. 100-707 substituted "this chapter" for "section 5172 or 5174 of this title" after "assistance under".

§ 5152. Use and coordination of relief organizations

(a) In providing relief and assistance under this chapter, the President may utilize, with