

(c) REPAYMENT.—Funds used under subsection (a) shall be repaid to the program from which the funds were taken in the event that such repairs or replacement are subsequently covered by a supplemental appropriation of funds.

(d) DEFINITIONS.—In this section, the following definitions apply:

(1) COVERED FUNDS.—The term “covered funds” means any amounts apportioned to a State under section 104(b), other than amounts suballocated to metropolitan areas and other areas of the State under section 133(d), but including any such amounts required to be set aside for a purpose other than the repair or replacement of a transportation facility under this section.

(2) TRANSPORTATION FACILITY.—The term “transportation facility” means any facility eligible for assistance under section 125.

(Added Pub. L. 112-141, div. A, title I, §1515(a), July 6, 2012, 126 Stat. 573.)

#### REFERENCES IN TEXT

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, referred to in subsec. (b), is Pub. L. 93-288, May 22, 1974, 88 Stat. 143, which is classified principally to chapter 68 (§5121 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of Title 42 and Tables.

#### EFFECTIVE DATE

Section effective Oct. 1, 2012, see section 3(a) of Pub. L. 112-141, set out as an Effective and Termination Dates of 2012 Amendment note under section 101 of this title.

#### [§§ 181 to 190. Renumbered §§ 601 to 610]

#### CODIFICATION

Subchapter II heading “INFRASTRUCTURE FINANCE” was struck out and sections 181 to 190, which comprised subchapter II of this chapter, were renumbered sections 601 to 610, respectively, and transferred to follow the analysis of chapter 6 of this title, by Pub. L. 109-59, title I, §1602(b)(6)(B), (d), Aug. 10, 2005, 119 Stat. 1247, as amended by Pub. L. 110-244, title I, §101(f), June 6, 2008, 122 Stat. 1574.

#### CHAPTER 2—OTHER HIGHWAYS

|                         |   |
|-------------------------|---|
| Sec.                    |   |
| 201.                    | Federal lands and tribal transportation programs. |
| 202.                    | Tribal transportation program.                    |
| 203.                    | Federal lands transportation program.             |
| 204.                    | Federal lands access program.                     |
| 205.                    | Forest development roads and trails.              |
| 206.                    | Recreational trails program.                      |
| 207.                    | Tribal transportation self-governance program.    |
| [208, 209. Repealed.]   |   |
| 210.                    | Defense access roads.                             |
| [211 to 216. Repealed.] |   |
| 217.                    | Bicycle transportation and pedestrian walkways.   |
| 218.                    | Alaska Highway.                                   |
| [219. Repealed.]        |   |

#### AMENDMENTS

2015—Pub. L. 114-94, div. A, title I, §§1109(c)(6)(B), 1121(b), Dec. 4, 2015, 129 Stat. 1344, 1368, added item 207 and struck out item 213 “Transportation alternatives”.

2012—Pub. L. 112-141, div. A, title I, §§1114(b)(2)(B), 1119(c)(1), 1122(b), 1519(c)(1)(B), July 6, 2012, 126 Stat. 468, 491, 497, 575, substituted “Federal lands and tribal

transportation programs” for “Authorizations” in item 201, “Tribal transportation program” for “Allocations” in item 202, “Federal lands transportation program” for “Availability of funds” in item 203, and “Federal lands access program” for “Federal lands highways program” in item 204, struck out item 212 “Inter-American Highway”, added item 213, and struck out items 214 “Public lands development roads and trails”, 215 “Territorial highway program”, and 216 “Darien Gap Highway”.

2005—Pub. L. 109-59, title I, §1118(b)(3), Aug. 10, 2005, 119 Stat. 1181, substituted “Territorial highway program” for “Territories highway development program” in item 215.

1998—Pub. L. 105-178, title I, §1112(b), June 9, 1998, 112 Stat. 151, substituted “Recreational trails program” for “Repealed” in item 206.

1987—Pub. L. 100-17, title I, §133(e)(1), Apr. 2, 1987, 101 Stat. 173, struck out items 211 “Timber access road hearings”, 213 “Rama Road”, and 219 “Safer of off-system roads”.

1983—Pub. L. 97-424, title I, §126(e)(1), Jan. 6, 1983, 96 Stat. 2115, substituted “Allocations” for “Apportionment for allocation” in item 202.

Pub. L. 97-424, title I, §126(e)(2), Jan. 6, 1983, 96 Stat. 2115, substituted “Federal lands highways programs” for “Forest highways” in item 204.

Pub. L. 97-424, title I, §126(e)(3), Jan. 6, 1983, 96 Stat. 2116, substituted “Repealed” in items 206 through 209 which read “Park roads and trails”, “Parkways”, “Indian reservation roads”, “Public lands highways”, respectively.

1976—Pub. L. 94-280, title I, §135(b), May 5, 1976, 90 Stat. 442, substituted item 219 “Safer of off-system roads” for “Off-system roads”.

1975—Pub. L. 93-643, §122(b), Jan. 4, 1975, 88 Stat. 2290, added item 219.

1973—Pub. L. 93-87, title I, §§124(b), 127(a)(2), Aug. 13, 1973, 87 Stat. 262, 264, added items 217 and 218.

1970—Pub. L. 91-605, title I, §§112(b), 113(b), Dec. 31, 1970, 84 Stat. 1721, 1722, added items 215 and 216.

1962—Pub. L. 87-866, §6(c), Oct. 23, 1962, 76 Stat. 1147, added item 214.

#### §201. Federal lands and tribal transportation programs

(a) PURPOSE.—Recognizing the need for all public Federal and tribal transportation facilities to be treated under uniform policies similar to the policies that apply to Federal-aid highways and other public transportation facilities, the Secretary of Transportation, in collaboration with the Secretaries of the appropriate Federal land management agencies, shall coordinate a uniform policy for all public Federal and tribal transportation facilities that shall apply to Federal lands transportation facilities, tribal transportation facilities, and Federal lands access transportation facilities.

(b) AVAILABILITY OF FUNDS.—

(1) AVAILABILITY.—Funds authorized for the tribal transportation program, the Federal lands transportation program, and the Federal lands access program shall be available for contract upon apportionment, or on October 1 of the fiscal year for which the funds were authorized if no apportionment is required.

(2) AMOUNT REMAINING.—Any amount remaining unexpended for a period of 3 years after the close of the fiscal year for which the funds were authorized shall lapse.

(3) OBLIGATIONS.—The Secretary of the department responsible for the administration of funds under this subsection may incur obligations, approve projects, and enter into con-

tracts under such authorizations, which shall be considered to be contractual obligations of the United States for the payment of the cost thereof, the funds of which shall be considered to have been expended when obligated.

(4) EXPENDITURE.—

(A) IN GENERAL.—Any funds authorized for any fiscal year after the date of enactment of this section under the Federal lands transportation program, the Federal lands access program, and the tribal transportation program shall be considered to have been expended if a sum equal to the total of the sums authorized for the fiscal year and previous fiscal years have been obligated.

(B) CREDITED FUNDS.—Any funds described in subparagraph (A) that are released by payment of final voucher or modification of project authorizations shall be—

- (i) credited to the balance of unobligated authorizations; and
- (ii) immediately available for expenditure.

(5) APPLICABILITY.—This section shall not apply to funds authorized before the date of enactment of this paragraph.

(6) CONTRACTUAL OBLIGATION.—

(A) IN GENERAL.—Notwithstanding any other provision of law (including regulations), the authorization by the Secretary, or the Secretary of the appropriate Federal land management agency if the agency is the contracting office, of engineering and related work for the development, design, and acquisition associated with a construction project, whether performed by contract or agreement authorized by law, or the approval by the Secretary of plans, specifications, and estimates for construction of a project, shall be considered to constitute a contractual obligation of the Federal Government to pay the total eligible cost of—

- (i) any project funded under this title; and
- (ii) any project funded pursuant to agreements authorized by this title or any other title.

(B) EFFECT.—Nothing in this paragraph—

- (i) affects the application of the Federal share associated with the project being undertaken under this section; or
- (ii) modifies the point of obligation associated with Federal salaries and expenses.

(7) FEDERAL SHARE.—

(A) TRIBAL AND FEDERAL LANDS TRANSPORTATION PROGRAM.—The Federal share of the cost of a project carried out under the Federal lands transportation program or the tribal transportation program shall be 100 percent.

(B) FEDERAL LANDS ACCESS PROGRAM.—The Federal share of the cost of a project carried out under the Federal lands access program shall be determined in accordance with section 120.

(c) TRANSPORTATION PLANNING.—

(1) TRANSPORTATION PLANNING PROCEDURES.—In consultation with the Secretary of each appropriate Federal land management agency,

the Secretary shall implement transportation planning procedures for Federal lands and tribal transportation facilities that are consistent with the planning processes required under sections 134 and 135.

(2) APPROVAL OF TRANSPORTATION IMPROVEMENT PROGRAM.—The transportation improvement program developed as a part of the transportation planning process under this section shall be approved by the Secretary.

(3) INCLUSION IN OTHER PLANS.—Each regionally significant tribal transportation program, Federal lands transportation program, and Federal lands access program project shall be—

(A) developed in cooperation with State and metropolitan planning organizations; and

(B) included in appropriate tribal transportation program plans, Federal lands transportation program plans, Federal lands access program plans, State and metropolitan plans, and transportation improvement programs.

(4) INCLUSION IN STATE PROGRAMS.—The approved tribal transportation program, Federal lands transportation program, and Federal lands access program transportation improvement programs shall be included in appropriate State and metropolitan planning organization plans and programs without further action on the transportation improvement program.

(5) ASSET MANAGEMENT.—The Secretary and the Secretary of each appropriate Federal land management agency shall, to the extent appropriate, implement safety, bridge, pavement, and congestion management systems for facilities funded under the tribal transportation program and the Federal lands transportation program in support of asset management.

(6) DATA COLLECTION.—

(A) DATA COLLECTION.—

(i) IN GENERAL.—The Secretaries of the appropriate Federal land management agencies shall collect and report data necessary to implement the Federal lands transportation program, the Federal lands access program, and the tribal transportation program.

(ii) REQUIREMENT.—Data collected to implement the tribal transportation program shall be in accordance with the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).<sup>1</sup>

(iii) INCLUSIONS.—Data collected under this paragraph includes—

(I) inventory and condition information on Federal lands transportation facilities and tribal transportation facilities; and

(II) bridge inspection and inventory information on any Federal bridge open to the public.

(B) STANDARDS.—The Secretary, in coordination with the Secretaries of the appropriate Federal land management agencies,

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

shall define the collection and reporting data standards.

(C) TRIBAL DATA COLLECTION.—In addition to the data to be collected under subparagraph (A), not later than 90 days after the last day of each fiscal year, any entity carrying out a project under the tribal transportation program under section 202 shall submit to the Secretary and the Secretary of the Interior, based on obligations and expenditures under the tribal transportation program during the preceding fiscal year, the following data:

(i) The names of projects and activities carried out by the entity under the tribal transportation program during the preceding fiscal year.

(ii) A description of the projects and activities identified under clause (i).

(iii) The current status of the projects and activities identified under clause (i).

(iv) An estimate of the number of jobs created and the number of jobs retained by the projects and activities identified under clause (i).

(7) COOPERATIVE RESEARCH AND TECHNOLOGY DEPLOYMENT.—The Secretary may conduct cooperative research and technology deployment in coordination with Federal land management agencies, as determined appropriate by the Secretary.

(8) FUNDING.—

(A) IN GENERAL.—To carry out the activities described in this subsection for Federal lands transportation facilities, Federal lands access transportation facilities, and other federally owned roads open to public travel (as that term is defined in section 125(e)), the Secretary shall for each fiscal year combine and use not greater than 5 percent of the funds authorized for programs under sections 203 and 204.

(B) OTHER ACTIVITIES.—In addition to the activities described in subparagraph (A), funds described under that subparagraph may be used for—

(i) bridge inspections on any federally owned bridge even if that bridge is not included on the inventory described under section 203; and

(ii) transportation planning activities carried out by Federal land management agencies eligible for funding under this chapter.

(d) REIMBURSABLE AGREEMENTS.—In carrying out work under reimbursable agreements with any State, local, or tribal government under this title, the Secretary—

(1) may, without regard to any other provision of law (including regulations), record obligations against accounts receivable from the entity; and

(2) shall credit amounts received from the entity to the appropriate account, which shall occur not later than 90 days after the date of the original request by the Secretary for payment.

(e) TRANSFERS.—

(1) IN GENERAL.—To enable the efficient use of funds made available for the Federal lands

transportation program and the Federal lands access program, the funds may be transferred by the Secretary within and between each program with the concurrence of, as appropriate—

(A) the Secretary;

(B) the affected Secretaries of the respective Federal land management agencies;

(C) State departments of transportation; and

(D) local government agencies.

(2) CREDIT.—The funds described in paragraph (1) shall be credited back to the loaning entity with funds that are currently available for obligation at the time of the credit.

(Added Pub. L. 112-141, div. A, title I, §1119(a), July 6, 2012, 126 Stat. 473; amended Pub. L. 114-94, div. A, title I, §§1117(a), 1120, Dec. 4, 2015, 129 Stat. 1356, 1358.)

#### REFERENCES IN TEXT

The date of enactment of this section and the date of enactment of this paragraph, referred to in subsec. (b)(4)(A), (5), is the date of enactment of Pub. L. 112-141, which was approved July 6, 2012.

The Indian Self-Determination and Education Assistance Act, referred to in subsec. (c)(6)(A)(ii), is Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, which was classified principally to subchapter II (§450 et seq.) of chapter 14 of Title 25, Indians, prior to editorial reclassification as chapter 46 (§5301 et seq.) of Title 25. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of Title 25 and Tables.

#### PRIOR PROVISIONS

A prior section 201, Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 906; Pub. L. 97-424, title I, §126(f), Jan. 6, 1983, 96 Stat. 2116; Pub. L. 105-178, title I, §1115(e)(1), June 9, 1998, 112 Stat. 158, related to authorizations, prior to repeal by Pub. L. 112-141, div. A, title I, §1119(a), July 6, 2012, 126 Stat. 473.

#### AMENDMENTS

2015—Subsec. (c)(6)(A). Pub. L. 114-94, §1120(1), inserted cl. (i) designation and heading, substituted period for “in accordance with the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), including—”, added cl. (ii) and introductory provisions of cl. (iii), redesignated former cls. (i) and (ii), as subcls. (I) and (II) of cl. (iii), respectively, and realigned margins.

Subsec. (c)(6)(C). Pub. L. 114-94, §1117(a), added subpar. (C).

Subsec. (c)(7), (8). Pub. L. 114-94, §1120(2), added pars. (7) and (8) and struck out former par. (7). Prior to amendment, text of par. (7) read as follows: “To implement the activities described in this subsection, including direct support of transportation planning activities among Federal land management agencies, the Secretary may use not more than 5 percent for each fiscal year of the funds authorized for programs under sections 203 and 204.”

#### EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114-94 effective Oct. 1, 2015, see section 1003 of Pub. L. 114-94, set out as a note under section 5313 of Title 5, Government Organization and Employees.

#### EFFECTIVE DATE

Section effective Oct. 1, 2012, see section 3(a) of Pub. L. 112-141, set out as an Effective and Termination Dates of 2012 Amendment note under section 101 of this title.

NATIONALLY SIGNIFICANT FEDERAL LANDS AND TRIBAL PROJECTS PROGRAM

Pub. L. 114-94, div. A, title I, §1123, Dec. 4, 2015, 129 Stat. 1370, provided that:

“(a) PURPOSE.—The Secretary [of Transportation] shall establish a nationally significant Federal lands and tribal projects program (referred to in this section as the ‘program’) to provide funding to construct, reconstruct, or rehabilitate nationally significant Federal lands and tribal transportation projects.

“(b) ELIGIBLE APPLICANTS.—

“(1) IN GENERAL.—Except as provided in paragraph (2), entities eligible to receive funds under sections 201, 202, 203, and 204 of title 23, United States Code, may apply for funding under the program.

“(2) SPECIAL RULE.—A State, county, or unit of local government may only apply for funding under the program if sponsored by an eligible Federal land management agency or Indian tribe.

“(c) ELIGIBLE PROJECTS.—An eligible project under the program shall be a single continuous project—

“(1) on a Federal lands transportation facility, a Federal lands access transportation facility, or a tribal transportation facility (as those terms are defined in section 101 of title 23, United States Code), except that such facility is not required to be included in an inventory described in section 202 or 203 of such title;

“(2) for which completion of activities required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) has been demonstrated through—

“(A) a record of decision with respect to the project;

“(B) a finding that the project has no significant impact; or

“(C) a determination that the project is categorically excluded; and

“(3) having an estimated cost, based on the results of preliminary engineering, equal to or exceeding \$25,000,000, with priority consideration given to projects with an estimated cost equal to or exceeding \$50,000,000.

“(d) ELIGIBLE ACTIVITIES.—

“(1) IN GENERAL.—Subject to paragraph (2), an eligible applicant receiving funds under the program may only use the funds for construction, reconstruction, and rehabilitation activities.

“(2) INELIGIBLE ACTIVITIES.—An eligible applicant may not use funds received under the program for activities relating to project design.

“(e) APPLICATIONS.—Eligible applicants shall submit to the Secretary [of Transportation] an application at such time, in such form, and containing such information as the Secretary may require.

“(f) SELECTION CRITERIA.—In selecting a project to receive funds under the program, the Secretary shall consider the extent to which the project—

“(1) furthers the goals of the Department, including state of good repair, economic competitiveness, quality of life, and safety;

“(2) improves the condition of critical transportation facilities, including multimodal facilities;

“(3) needs construction, reconstruction, or rehabilitation;

“(4) has costs matched by funds that are not provided under this section, with projects with a greater percentage of other sources of matching funds ranked ahead of lesser matches;

“(5) is included in or eligible for inclusion in the National Register of Historic Places;

“(6) uses new technologies and innovations that enhance the efficiency of the project;

“(7) is supported by funds, other than the funds received under the program, to construct, maintain, and operate the facility;

“(8) spans 2 or more States; and

“(9) serves land owned by multiple Federal agencies or Indian tribes.

“(g) FEDERAL SHARE.—

“(1) IN GENERAL.—The Federal share of the cost of a project shall be up to 90 percent.

“(2) NON-FEDERAL SHARE.—Notwithstanding any other provision of law, any Federal funds other than those made available under title 23 or title 49, United States Code, may be used to pay the non-Federal share of the cost of a project carried out under this section.

“(h) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section \$100,000,000 for each of fiscal years 2016 through 2020. Such sums shall remain available for a period of 3 fiscal years following the fiscal year for which the amounts are appropriated.”

§ 202. Tribal transportation program

(a) USE OF FUNDS.—

(1) IN GENERAL.—Funds made available under the tribal transportation program shall be used by the Secretary of Transportation and the Secretary of the Interior to pay the costs of—

(A)(i) transportation planning, research, maintenance, engineering, rehabilitation, restoration, construction, and reconstruction of tribal transportation facilities;

(ii) adjacent vehicular parking areas;

(iii) interpretive signage;

(iv) acquisition of necessary scenic easements and scenic or historic sites;

(v) provisions for pedestrians and bicycles;

(vi) environmental mitigation in or adjacent to tribal land—

(I) to improve public safety and reduce vehicle-caused wildlife mortality while maintaining habitat connectivity; and

(II) to mitigate the damage to wildlife, aquatic organism passage, habitat, and ecosystem connectivity, including the costs of constructing, maintaining, replacing, or removing culverts and bridges, as appropriate;

(vii) construction and reconstruction of roadside rest areas, including sanitary and water facilities; and

(viii) other appropriate public road facilities as determined by the Secretary;

(B) operation and maintenance of transit programs and facilities that are located on, or provide access to, tribal land, or are administered by a tribal government; and

(C) any transportation project eligible for assistance under this title that is located within, or that provides access to, tribal land, or is associated with a tribal government.

(2) CONTRACT.—In connection with an activity described in paragraph (1), the Secretary and the Secretary of the Interior may enter into a contract or other appropriate agreement with respect to the activity with—

(A) a State (including a political subdivision of a State); or

(B) an Indian tribe.

(3) INDIAN LABOR.—Indian labor may be employed, in accordance with such rules and regulations as may be promulgated by the Secretary of the Interior, to carry out any construction or other activity described in paragraph (1).

(4) FEDERAL EMPLOYMENT.—No maximum limitation on Federal employment shall be applicable to the construction or improvement of tribal transportation facilities.

(5) FUNDS FOR CONSTRUCTION AND IMPROVEMENT.—All funds made available for the construction and improvement of tribal transportation facilities shall be administered in conformity with regulations and agreements jointly approved by the Secretary and the Secretary of the Interior.

(6) ADMINISTRATIVE EXPENSES.—Of the funds authorized to be appropriated for the tribal transportation program, not more than 5 percent may be used by the Secretary or the Secretary of the Interior for program management and oversight and project-related administrative expenses.

(7) TRIBAL TECHNICAL ASSISTANCE CENTERS.—The Secretary of the Interior may reserve amounts from administrative funds of the Bureau of Indian Affairs that are associated with the tribal transportation program to fund tribal technical assistance centers under section 504(b).

(8) MAINTENANCE.—

(A) USE OF FUNDS.—Notwithstanding any other provision of this title, of the amount of funds allocated to an Indian tribe from the tribal transportation program, for the purpose of maintenance (excluding road sealing, which shall not be subject to any limitation), the Secretary shall not use an amount more than the greater of—

- (i) an amount equal to 25 percent; or
- (ii) \$500,000.

(B) RESPONSIBILITY OF BUREAU OF INDIAN AFFAIRS AND SECRETARY OF THE INTERIOR.—

(i) BUREAU OF INDIAN AFFAIRS.—The Bureau of Indian Affairs shall retain primary responsibility, including annual funding request responsibility, for Bureau of Indian Affairs road maintenance programs on Indian reservations.

(ii) SECRETARY OF THE INTERIOR.—The Secretary of the Interior shall ensure that funding made available under this subsection for maintenance of tribal transportation facilities for each fiscal year is supplementary to, and not in lieu of, any obligation of funds by the Bureau of Indian Affairs for road maintenance programs on Indian reservations.

(C) TRIBAL-STATE ROAD MAINTENANCE AGREEMENTS.—

(i) IN GENERAL.—An Indian tribe and a State may enter into a road maintenance agreement under which an Indian tribe shall assume the responsibility of the State for—

- (I) tribal transportation facilities; and
- (II) roads providing access to tribal transportation facilities.

(ii) REQUIREMENTS.—Agreements entered into under clause (i) shall—

- (I) be negotiated between the State and the Indian tribe; and
- (II) not require the approval of the Secretary.

(9) COOPERATION.—

(A) IN GENERAL.—The cooperation of States, counties, or other local subdivisions may be accepted in construction and improvement.

(B) FUNDS RECEIVED.—Any funds received from a State, county, or local subdivision shall be credited to appropriations available for the tribal transportation program.

(10) COMPETITIVE BIDDING.—

(A) CONSTRUCTION.—

(i) IN GENERAL.—Subject to clause (ii) and subparagraph (B), construction of each project shall be performed by contract awarded by competitive bidding.

(ii) EXCEPTION.—Clause (i) shall not apply if the Secretary or the Secretary of the Interior affirmatively finds that, under the circumstances relating to the project, a different method is in the public interest.

(B) APPLICABILITY.—Notwithstanding subparagraph (A), section 23 of the Act of June 25, 1910 (25 U.S.C. 47) and section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b))<sup>1</sup> shall apply to all funds administered by the Secretary of the Interior that are appropriated for the construction and improvement of tribal transportation facilities.

(b) FUNDS DISTRIBUTION.—

(1) NATIONAL TRIBAL TRANSPORTATION FACILITY INVENTORY.—

(A) IN GENERAL.—The Secretary of the Interior, in cooperation with the Secretary, shall maintain a comprehensive national inventory of tribal transportation facilities that are eligible for assistance under the tribal transportation program.

(B) TRANSPORTATION FACILITIES INCLUDED IN THE INVENTORY.—For purposes of identifying the tribal transportation system and determining the relative transportation needs among Indian tribes, the Secretary shall include, at a minimum, transportation facilities that are eligible for assistance under the tribal transportation program that an Indian tribe has requested, including facilities that—

(i) were included in the Bureau of Indian Affairs system inventory prior to October 1, 2004;

(ii) are owned by an Indian tribal government;

(iii) are owned by the Bureau of Indian Affairs;

(iv) were constructed or reconstructed with funds from the Highway Trust Fund under the Indian reservation roads program since 1983;

(v) are public roads or bridges within the exterior boundary of Indian reservations, Alaska Native villages, and other recognized Indian communities (including communities in former Indian reservations in the State of Oklahoma) in which the majority of residents are American Indians or Alaska Natives;

(vi) are public roads within or providing access to an Indian reservation or Indian

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

trust land or restricted Indian land that is not subject to fee title alienation without the approval of the Federal Government, or Indian or Alaska Native villages, groups, or communities in which Indians and Alaska Natives reside, whom the Secretary of the Interior has determined are eligible for services generally available to Indians under Federal laws specifically applicable to Indians; or

(vii) are primary access routes proposed by tribal governments, including roads between villages, roads to landfills, roads to drinking water sources, roads to natural resources identified for economic development, and roads that provide access to intermodal terminals, such as airports, harbors, or boat landings.

(C) LIMITATION ON PRIMARY ACCESS ROUTES.—For purposes of this paragraph, a proposed primary access route is the shortest practicable route connecting 2 points of the proposed route.

(D) ADDITIONAL FACILITIES.—Nothing in this paragraph precludes the Secretary from including additional transportation facilities that are eligible for funding under the tribal transportation program in the inventory used for the national funding allocation if such additional facilities are included in the inventory in a uniform and consistent manner nationally.

(E) BRIDGES.—All bridges in the inventory shall be recorded in the national bridge inventory administered by the Secretary under section 144.

(2) REGULATIONS.—Notwithstanding sections 563(a) and 565(a) of title 5, the Secretary of the Interior shall maintain any regulations governing the tribal transportation program.

(3) BASIS FOR FUNDING FORMULA.—

(A) BASIS.—

(i) IN GENERAL.—After making the set asides authorized under subparagraph (C) and subsections (a)(6), (c), (d), and (e) on October 1 of each fiscal year, the Secretary shall distribute the remainder authorized to be appropriated for the tribal transportation program under this section among Indian tribes as follows:

(I) For fiscal year 2013—

(aa) for each Indian tribe, 80 percent of the total relative need distribution factor and population adjustment factor for the fiscal year 2011 funding amount made available to that Indian tribe; and

(bb) the remainder using tribal shares as described in subparagraphs (B) and (C).

(II) For fiscal year 2014—

(aa) for each Indian tribe, 60 percent of the total relative need distribution factor and population adjustment factor for the fiscal year 2011 funding amount made available to that Indian tribe; and

(bb) the remainder using tribal shares as described in subparagraphs (B) and (C).

(III) For fiscal year 2015—

(aa) for each Indian tribe, 40 percent of the total relative need distribution factor and population adjustment factor for the fiscal year 2011 funding amount made available to that Indian tribe; and

(bb) the remainder using tribal shares as described in subparagraphs (B) and (C).

(IV) For fiscal year 2016 and thereafter—

(aa) for each Indian tribe, 20 percent of the total relative need distribution factor and population adjustment factor for the fiscal year 2011 funding amount made available to that Indian tribe; and

(bb) the remainder using tribal shares as described in subparagraphs (B) and (C).

(ii) TRIBAL HIGH PRIORITY PROJECTS.—The High Priority Projects program as included in the Tribal Transportation Allocation Methodology of part 170 of title 25, Code of Federal Regulations (as in effect on the date of enactment of the MAP-21), shall not continue in effect.

(B) TRIBAL SHARES.—Tribal shares under this program shall be determined using the national tribal transportation facility inventory as calculated for fiscal year 2012, and the most recent data on American Indian and Alaska Native population within each Indian tribe's American Indian/Alaska Native Reservation or Statistical Area, as computed under the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 et seq.), in the following manner:

(i) 27 percent in the ratio that the total eligible road mileage in each tribe bears to the total eligible road mileage of all American Indians and Alaskan Natives. For the purposes of this calculation, eligible road mileage shall be computed based on the inventory described in paragraph (1), using only facilities included in the inventory described in clause (i), (ii), or (iii) of paragraph (1)(B).

(ii) 39 percent in the ratio that the total population in each tribe bears to the total population of all American Indians and Alaskan Natives.

(iii) 34 percent shall be divided equally among each Bureau of Indian Affairs region. Within each region, such share of funds shall be distributed to each Indian tribe in the ratio that the average total relative need distribution factors and population adjustment factors from fiscal years 2005 through 2011 for a tribe bears to the average total of relative need distribution factors and population adjustment factors for fiscal years 2005 through 2011 in that region.

(C) TRIBAL SUPPLEMENTAL FUNDING.—

(i) TRIBAL SUPPLEMENTAL FUNDING AMOUNT.—Of funds made available for each

fiscal year for the tribal transportation program, the Secretary shall set aside the following amount for a tribal supplemental program:

(I) If the amount made available for the tribal transportation program is less than or equal to \$275,000,000, 30 percent of such amount.

(II) If the amount made available for the tribal transportation program exceeds \$275,000,000—

(aa) \$82,500,000; plus

(bb) 12.5 percent of the amount made available for the tribal transportation program in excess of \$275,000,000.

(ii) TRIBAL SUPPLEMENTAL ALLOCATION.—The Secretary shall distribute tribal supplemental funds as follows:

(I) DISTRIBUTION AMONG REGIONS.—Of the amounts set aside under clause (i), the Secretary shall distribute to each region of the Bureau of Indian Affairs a share of tribal supplemental funds in proportion to the regional total of tribal shares based on the cumulative tribal shares of all Indian tribes within such region under subparagraph (B).

(II) DISTRIBUTION WITHIN A REGION.—Of the amount that a region receives under subclause (I), the Secretary shall distribute tribal supplemental funding among Indian tribes within such region as follows:

(aa) TRIBAL SUPPLEMENTAL AMOUNTS.—The Secretary shall determine—

(AA) which such Indian tribes would be entitled under subparagraph (A) to receive in a fiscal year less funding than they would receive in fiscal year 2011 pursuant to the relative need distribution factor and population adjustment factor, as described in subpart C of part 170 of title 25, Code of Federal Regulations (as in effect on the date of enactment of the MAP-21); and

(BB) the combined amount that such Indian tribes would be entitled to receive in fiscal year 2011 pursuant to such relative need distribution factor and population adjustment factor in excess of the amount that they would be entitled to receive in the fiscal year under subparagraph (B).

(bb) COMBINED AMOUNT.—Subject to subclause (III), the Secretary shall distribute to each Indian tribe that meets the criteria described in item (aa)(AA) a share of funding under this subparagraph in proportion to the share of the combined amount determined under item (aa)(BB) attributable to such Indian tribe.

(III) CEILING.—An Indian tribe may not receive under subclause (II) and based on its tribal share under subparagraph (A) a combined amount that exceeds the amount that such Indian tribe would be

entitled to receive in fiscal year 2011 pursuant to the relative need distribution factor and population adjustment factor, as described in subpart C of part 170 of title 25, Code of Federal Regulations (as in effect on the date of enactment of the MAP-21).

(IV) OTHER AMOUNTS.—If the amount made available for a region under subclause (I) exceeds the amount distributed among Indian tribes within that region under subclause (II), the Secretary shall distribute the remainder of such region's funding under such subclause among all Indian tribes in that region in proportion to the combined amount that each such Indian tribe received under subparagraph (A) and subclauses (I), (II), and (III).

(4) TRANSFERRED FUNDS.—

(A) IN GENERAL.—Not later than 30 days after the date on which funds are made available to the Secretary of the Interior under this paragraph, the funds shall be distributed to, and made available for immediate use by, eligible Indian tribes, in accordance with the formula for distribution of funds under the tribal transportation program.

(B) USE OF FUNDS.—Notwithstanding any other provision of this section, funds made available to Indian tribes for tribal transportation facilities shall be expended on projects identified in a transportation improvement program approved by the Secretary.

(5) HEALTH AND SAFETY ASSURANCES.—Notwithstanding any other provision of law, an Indian tribal government may approve plans, specifications, and estimates and commence road and bridge construction with funds made available from the tribal transportation program through a contract or agreement under<sup>2</sup> Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.),<sup>1</sup> if the Indian tribal government—

(A) provides assurances in the contract or agreement that the construction will meet or exceed applicable health and safety standards;

(B) obtains the advance review of the plans and specifications from a State-licensed civil engineer that has certified that the plans and specifications meet or exceed the applicable health and safety standards; and

(C) provides a copy of the certification under subparagraph (A) to the Deputy Assistant Secretary for Tribal Government Affairs, Department of Transportation, or the Assistant Secretary for Indian Affairs, Department of the Interior, as appropriate.

(6) CONTRACTS AND AGREEMENTS WITH INDIAN TRIBES.—

(A) IN GENERAL.—Notwithstanding any other provision of law or any interagency agreement, program guideline, manual, or policy directive, all funds made available through the Secretary of the Interior under this chapter and section 125(e) for tribal

<sup>2</sup> So in original. Probably should be followed by "the".

transportation facilities to pay for the costs of programs, services, functions, and activities, or portions of programs, services, functions, or activities, that are specifically or functionally related to the cost of planning, research, engineering, and construction of any tribal transportation facility shall be made available, upon request of the Indian tribal government, to the Indian tribal government for contracts and agreements for such planning, research, engineering, and construction in accordance with<sup>1</sup> Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).<sup>1</sup>

(B) EXCLUSION OF AGENCY PARTICIPATION.—All funds, including contract support costs, for programs, functions, services, or activities, or portions of programs, services, functions, or activities, including supportive administrative functions that are otherwise contractible to which subparagraph (A) applies, shall be paid in accordance with subparagraph (A), without regard to the organizational level at which the Department of the Interior has previously carried out such programs, functions, services, or activities.

(7) CONTRACTS AND AGREEMENTS WITH INDIAN TRIBES.—

(A) IN GENERAL.—Notwithstanding any other provision of law or any interagency agreement, program guideline, manual, or policy directive, all funds made available to an Indian tribal government under this chapter for a tribal transportation facility program or project shall be made available, on the request of the Indian tribal government, to the Indian tribal government for use in carrying out, in accordance with the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.),<sup>1</sup> contracts and agreements for the planning, research, design, engineering, construction, and maintenance relating to the program or project.

(B) EXCLUSION OF AGENCY PARTICIPATION.—In accordance with subparagraph (A), all funds, including contract support costs, for a program or project to which subparagraph (A) applies shall be paid to the Indian tribal government without regard to the organizational level at which the Department of the Interior has previously carried out, or the Department of Transportation has previously carried out under the tribal transportation program, the programs, functions, services, or activities involved.

(C) CONSORTIA.—Two or more Indian tribes that are otherwise eligible to participate in a program or project to which this chapter applies may form a consortium to be considered as a single Indian tribe for the purpose of participating in the project under this section.

(D) SECRETARY AS SIGNATORY.—Notwithstanding any other provision of law, the Secretary is authorized to enter into a funding agreement with an Indian tribal government to carry out a tribal transportation facility program or project under subparagraph (A) that is located on an Indian reservation or provides access to the reservation or a community of the Indian tribe.

(E) FUNDING.—The amount an Indian tribal government receives for a program or project under subparagraph (A) shall equal the sum of the funding that the Indian tribal government would otherwise receive for the program or project in accordance with the funding formula established under this subsection and such additional amounts as the Secretary determines equal the amounts that would have been withheld for the costs of the Bureau of Indian Affairs for administration of the program or project.

(F) ELIGIBILITY.—

(i) IN GENERAL.—Subject to clause (ii) and the approval of the Secretary, funds may be made available under subparagraph (A) to an Indian tribal government for a program or project in a fiscal year only if the Indian tribal government requesting such funds demonstrates to the satisfaction of the Secretary financial stability and financial management capability during the 3 fiscal years immediately preceding the fiscal year for which the request is being made.

(ii) CONSIDERATIONS.—An Indian tribal government that had no uncorrected significant and material audit exceptions in the required annual audit of the contracts or self-governance funding agreements made by the Indian tribe with any Federal agency under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.)<sup>1</sup> during the 3-fiscal year period referred in clause (i) shall be conclusive evidence of the financial stability and financial management capability of the Indian tribe for purposes of clause (i).

(G) ASSUMPTION OF FUNCTIONS AND DUTIES.—An Indian tribal government receiving funding under subparagraph (A) for a program or project shall assume all functions and duties that the Secretary of the Interior would have performed with respect to a program or project under this chapter, other than those functions and duties that inherently cannot be legally transferred under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).<sup>1</sup>

(H) POWERS.—An Indian tribal government receiving funding under subparagraph (A) for a program or project shall have all powers that the Secretary of the Interior would have exercised in administering the funds transferred to the Indian tribal government for such program or project under this section if the funds had not been transferred, except to the extent that such powers are powers that inherently cannot be legally transferred under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).<sup>1</sup>

(I) DISPUTE RESOLUTION.—In the event of a disagreement between the Secretary or the Secretary of the Interior and an Indian tribe over whether a particular function, duty, or power may be lawfully transferred to the Indian tribe under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.),<sup>1</sup> the Indian tribe shall have the



right to pursue all alternative dispute resolution and appeal procedures authorized by that Act, including regulations issued to carry out the Act.

(J) **TERMINATION OF CONTRACT OR AGREEMENT.**—On the date of the termination of a contract or agreement under this section by an Indian tribal government, the Secretary shall transfer all funds that would have been allocated to the Indian tribal government under the contract or agreement to the Secretary of the Interior to provide continued transportation services in accordance with applicable law.

(c) **PLANNING.**—

(1) **IN GENERAL.**—For each fiscal year, not more than 2 percent of the funds made available for the tribal transportation program shall be allocated among Indian tribal governments that apply for transportation planning pursuant to the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).<sup>1</sup>

(2) **REQUIREMENT.**—An Indian tribal government, in cooperation with the Secretary of the Interior and, as appropriate, with a State, local government, or metropolitan planning organization, shall carry out a transportation planning process in accordance with section 201(c).

(3) **SELECTION AND APPROVAL OF PROJECTS.**—A project funded under this section shall be—

(A) selected by the Indian tribal government from the transportation improvement program; and

(B) subject to the approval of the Secretary of the Interior and the Secretary.

(d) **TRIBAL TRANSPORTATION FACILITY BRIDGES.**—

(1) **NATIONWIDE PRIORITY PROGRAM.**—The Secretary shall maintain a nationwide priority program for improving deficient bridges eligible for the tribal transportation program.

(2) **FUNDING.**—Before making any distribution under subsection (b), the Secretary shall set aside not more than 3 percent of the funds made available under the tribal transportation program for each fiscal year to be allocated—

(A) to carry out any planning, design, engineering, preconstruction, construction, and inspection of a project to replace, rehabilitate, seismically retrofit, paint, apply calcium magnesium acetate, sodium acetate/formate, or other environmentally acceptable, minimally corrosive anti-icing and de-icing composition; or

(B) to implement any countermeasure for deficient tribal transportation facility bridges, including multiple-pipe culverts.

(3) **ELIGIBLE BRIDGES.**—To be eligible to receive funding under this subsection, a bridge described in paragraph (1) shall—

(A) have an opening of not less than 20 feet;

(B) be classified as a tribal transportation facility; and

(C) be structurally deficient or functionally obsolete.

(4) **APPROVAL REQUIREMENT.**—The Secretary may make funds available under this sub-

section for preliminary engineering, construction, and construction engineering activities after approval of required documentation and verification of eligibility in accordance with this title.

(e) **SAFETY.**—

(1) **FUNDING.**—Before making any distribution under subsection (b), the Secretary shall set aside not more than 2 percent of the funds made available under the tribal transportation program for each fiscal year to be allocated based on an identification and analysis of highway safety issues and opportunities on tribal land, as determined by the Secretary, on application of the Indian tribal governments for eligible projects described in section 148(a)(4).

(2) **PROJECT SELECTION.**—An Indian tribal government, in cooperation with the Secretary of the Interior and, as appropriate, with a State, local government, or metropolitan planning organization, shall select projects from the transportation improvement program, subject to the approval of the Secretary and the Secretary of the Interior.

(f) **FEDERAL-AID ELIGIBLE PROJECTS.**—Before approving as a project on a tribal transportation facility any project eligible for funds apportioned under section 104 in a State, the Secretary shall, for projects on tribal transportation facilities, determine that the obligation of funds for the project is supplementary to and not in lieu of the obligation of a fair and equitable share of funds apportioned to the State under section 104.

(Added Pub. L. 112-141, div. A, title I, §1119(a), July 6, 2012, 126 Stat. 476; amended Pub. L. 114-94, div. A, title I, §§1118, 1446(a)(12), Dec. 4, 2015, 129 Stat. 1358, 1438.)

REFERENCES IN TEXT

The date of enactment of the MAP-21, referred to in subsec. (b)(3)(A)(ii), (C)(ii)(II)(aa)(AA), (III), is deemed to be Oct. 1, 2012, see section 3(a), (b) of Pub. L. 112-141, set out as Effective and Termination Dates of 2012 Amendment notes under section 101 of this title.

The Native American Housing Assistance and Self-Determination Act of 1996, referred to in subsec. (b)(3)(B), is Pub. L. 104-330, Oct. 26, 1996, 110 Stat. 4016, which is classified principally to chapter 43 (§4101 et seq.) of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of Title 25 and Tables.

The Indian Self-Determination and Education Assistance Act, referred to in subsecs. (a) to (c), is Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, which was classified principally to subchapter II (§450 et seq.) of chapter 14 of Title 25, Indians, prior to editorial reclassification as chapter 46 (§5301 et seq.) of Title 25. Section 7(b) of the Act was classified to section 450e(b) of Title 25 prior to editorial reclassification as section 5307(b) of Title 25. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of Title 25 and Tables.

PRIOR PROVISIONS

A prior section 202, Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 906; Pub. L. 94-280, title I, §133, May 5, 1976, 90 Stat. 441; Pub. L. 97-424, title I, §126(a), Jan. 6, 1983, 96 Stat. 2113; Pub. L. 102-240, title I, §1032(a), Dec. 18, 1991, 105 Stat. 1974; Pub. L. 105-178, title I, §§1115(b), (e)(2), (f)(2), 1212(a)(2)(A)(ii), June 9, 1998, 112 Stat. 154, 158, 193; Pub. L. 105-206, title IX, §9002(i), July 22, 1998, 112 Stat.

836; Pub. L. 109-59, title I, § 1119(c)-(g), Aug. 10, 2005, 119 Stat. 1182-1185, related to allocations, prior to repeal by Pub. L. 112-141, div. A, title I, § 1119(a), July 6, 2012, 126 Stat. 473.

#### AMENDMENTS

2015—Subsec. (a)(6). Pub. L. 114-94, § 1118(1), substituted “5 percent” for “6 percent”.

Subsec. (b)(3)(A)(i). Pub. L. 114-94, § 1446(a)(12)(A), inserted “(a)(6),” after “subsections” in introductory provisions.

Subsec. (b)(3)(C)(ii)(IV). Pub. L. 114-94, § 1446(a)(12)(B), substituted “(III).” for “(III).]”.

Subsec. (d)(2). Pub. L. 114-94, § 1118(2), substituted “3 percent” for “2 percent” in introductory provisions.

#### EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114-94 effective Oct. 1, 2015, see section 1003 of Pub. L. 114-94, set out as a note under section 5313 of Title 5, Government Organization and Employees.

#### EFFECTIVE DATE

Section effective Oct. 1, 2012, see section 3(a) of Pub. L. 112-141, set out as an Effective and Termination Dates of 2012 Amendment note under section 101 of this title.

#### TRIBAL HIGH PRIORITY PROJECTS PROGRAM

Pub. L. 112-141, div. A, title I, § 1123, July 6, 2012, 126 Stat. 497, as amended by Pub. L. 113-159, title I, § 1001(b)(2), Aug. 8, 2014, 128 Stat. 1840; Pub. L. 114-21, title I, § 1001(b)(2), May 29, 2015, 129 Stat. 219; Pub. L. 114-41, title I, § 1001(b)(2), July 31, 2015, 129 Stat. 444; Pub. L. 114-73, title I, § 1001(b)(2), Oct. 29, 2015, 129 Stat. 569; Pub. L. 114-87, title I, § 1001(b)(2), Nov. 20, 2015, 129 Stat. 678, provided that:

“(a) DEFINITIONS.—In this section:

“(1) EMERGENCY OR DISASTER.—The term ‘emergency or disaster’ means damage to a tribal transportation facility that—

“(A) renders the tribal transportation facility impassable or unusable;

“(B) is caused by—

“(i) a natural disaster over a widespread area;

or

“(ii) a catastrophic failure from an external cause; and

“(C) would be eligible under the emergency relief program under section 125 of title 23, United States Code, but does not meet the funding thresholds required by that section.

“(2) LIST.—The term ‘list’ means the funding priority list developed under subsection (c)(5).

“(3) PROGRAM.—The term ‘program’ means the Tribal High Priority Projects program established under subsection (b)(1).

“(4) PROJECT.—The term ‘project’ means a project provided funds under the program.

“(b) PROGRAM.—

“(1) IN GENERAL.—The Secretary shall use amounts made available under subsection (h) to carry out a Tribal High Priority Projects program under which funds shall be provided to eligible applicants in accordance with this section.

“(2) ELIGIBLE APPLICANTS.—Applicants eligible for program funds under this section include—

“(A) an Indian tribe whose annual allocation of funding under section 202 of title 23, United States Code, is insufficient to complete the highest priority project of the Indian tribe;

“(B) a governmental subdivision of an Indian tribe—

“(i) that is authorized to administer the funding of the Indian tribe under section 202 of title 23, United States Code; and

“(ii) for which the annual allocation under that section is insufficient to complete the highest priority project of the Indian tribe; or

“(C) any Indian tribe that has an emergency or disaster with respect to a transportation facility included on the national inventory of tribal transportation facilities under section 202(b)(1) of title 23, United States Code.

“(c) PROJECT APPLICATIONS; FUNDING.—

“(1) IN GENERAL.—To apply for funds under this section, an eligible applicant shall submit to the Department of the Interior or the Department an application that includes—

“(A) project scope of work, including deliverables, budget, and timeline;

“(B) the amount of funds requested;

“(C) project information addressing—

“(i) the ranking criteria identified in paragraph (3); or

“(ii) the nature of the emergency or disaster;

“(D) documentation that the project meets the definition of a tribal transportation facility and is included in the national inventory of tribal transportation facilities under section 202(b)(1) of title 23, United States Code;

“(E) documentation of official tribal action requesting the project;

“(F) documentation from the Indian tribe providing authority for the Secretary of the Interior to place the project on a transportation improvement program if the project is selected and approved; and

“(G) any other information the Secretary of the Interior or Secretary considers appropriate to make a determination.

“(2) LIMITATION ON APPLICATIONS.—An applicant for funds under the program may only have 1 application for assistance under this section pending at any 1 time, including any emergency or disaster application.

“(3) APPLICATION RANKING.—

“(A) IN GENERAL.—The Secretary of the Interior and the Secretary shall determine the eligibility of, and fund, program applications, subject to the availability of funds.

“(B) RANKING CRITERIA.—The project ranking criteria for applications under this section shall include—

“(i) the existence of safety hazards with documented fatality and injury accidents;

“(ii) the number of years since the Indian tribe last completed a construction project funded by section 202 of title 23, United States Code;

“(iii) the readiness of the Indian tribe to proceed to construction or bridge design need;

“(iv) the percentage of project costs matched by funds that are not provided under section 202 of title 23, United States Code, with projects with a greater percentage of other sources of matching funds ranked ahead of lesser matches);

“(v) the amount of funds requested, with requests for lesser amounts given greater priority;

“(vi) the challenges caused by geographic isolation; and

“(vii) all weather access for employment, commerce, health, safety, educational resources, or housing.

“(4) PROJECT SCORING MATRIX.—The project scoring matrix established in the appendix to part 170 of title 25, Code of Regulations (as in effect on the date of enactment of this Act [see section 3(a), (b) of Pub. L. 112-141, set out as Effective and Termination Dates of 2012 Amendment notes under section 101 of this title]) shall be used to rank all applications accepted under this section.

“(5) FUNDING PRIORITY LIST.—

“(A) IN GENERAL.—The Secretary of the Interior and the Secretary shall jointly produce a funding priority list that ranks the projects approved for funding under the program.

“(B) LIMITATION.—The number of projects on the list shall be limited by the amount of funding made available.

“(6) TIMELINE.—The Secretary of the Interior and the Secretary shall—

“(A) require applications for funding no sooner than 60 days after funding is made available pursuant to subsection (a);

“(B) notify all applicants and Regions in writing of acceptance of applications;

“(C) rank all accepted applications in accordance with the project scoring matrix, develop the funding priority list, and return unaccepted applications to the applicant with an explanation of deficiencies;

“(D) notify all accepted applicants of the projects included on the funding priority list no later than 180 days after the application deadline has passed pursuant to subparagraph (A); and

“(E) distribute funds to successful applicants.

“(d) EMERGENCY OR DISASTER PROJECT APPLICATIONS.—

“(1) IN GENERAL.—Notwithstanding subsection (c)(6), an eligible applicant may submit an emergency or disaster project application at any time during the fiscal year.

“(2) CONSIDERATION AS PRIORITY.—The Secretary shall—

“(A) consider project applications submitted under paragraph (1) to be a priority; and

“(B) fund the project applications in accordance with paragraph (3).

“(3) FUNDING.—

“(A) IN GENERAL.—If an eligible applicant submits an application for a project under this subsection before the issuance of the list under subsection (c)(5) and the project is determined to be eligible for program funds, the Secretary of the Interior shall provide funding for the project before providing funding for other approved projects on the list.

“(B) SUBMISSION AFTER ISSUANCE OF LIST.—If an eligible applicant submits an application under this subsection after the issuance of the list under subsection (c)(5) and the distribution of program funds in accordance with the list, the Secretary of the Interior shall provide funding for the project on the date on which unobligated funds provided to projects on the list are returned to the Department of the Interior.

“(C) EFFECT ON OTHER PROJECTS.—If the Secretary of the Interior uses funding previously designated for a project on the list to fund an emergency or disaster project under this subsection, the project on the list that did not receive funding as a result of the redesignation of funds shall move to the top of the list the following year.

“(4) EMERGENCY OR DISASTER PROJECT COST.—The cost of a project submitted as an emergency or disaster under this subsection shall be at least 10 percent of the distribution of funds of the Indian tribe under section 202(b) of title 23, United States Code.

“(e) LIMITATION ON USE OF FUNDS.—Program funds shall not be used for—

“(1) transportation planning;

“(2) research;

“(3) routine maintenance activities;

“(4) structures and erosion protection unrelated to transportation and roadways;

“(5) general reservation planning not involving transportation;

“(6) landscaping and irrigation systems not involving transportation programs and projects;

“(7) work performed on projects that are not included on a transportation improvement program approved by the Federal Highway Administration, unless otherwise authorized by the Secretary of the Interior and the Secretary;

“(8) the purchase of equipment unless otherwise authorized by Federal law; or

“(9) the condemnation of land for recreational trails.

“(f) LIMITATION ON PROJECT AMOUNTS.—Project funding shall be limited to a maximum of \$1,000,000 per application, except that funding for disaster or emergency projects shall also be limited to the estimated

cost of repairing damage to the tribal transportation facility.

“(g) COST ESTIMATE CERTIFICATION.—All cost estimates prepared for a project shall be required to be submitted by the applicant to the Secretary of the Interior and the Secretary for certification and approval.

“(h) AUTHORIZATION OF APPROPRIATIONS.—

“(1) IN GENERAL.—There is authorized to be appropriated \$30,000,000 out of the general fund of the Treasury to carry out the program for each of fiscal years 2013 through 2015 and \$5,327,869 out of the general fund of the Treasury to carry out the program for the period beginning on October 1, 2015, and ending on December 4, 2015.

“(2) ADMINISTRATION.—The funds made available under paragraph (1) shall be administered in the same manner as funds made available for the tribal transportation program under section 202 of title 23, United States Code, except that—

“(A) the funds made available for the program shall remain available until September 30 of the third fiscal year after the year appropriated; and

“(B) the Federal share of the cost of a project shall be 100 percent.”

#### ADDITIONAL AUTHORIZATION OF CONTRACT AUTHORITY FOR STATES WITH INDIAN RESERVATIONS

Pub. L. 105-178, title I, §1214(d), June 9, 1998, 112 Stat. 205, as amended by Pub. L. 109-59, title I, §1806, Aug. 10, 2005, 119 Stat. 1460, provided that:

“(1) AVAILABILITY TO STATES.—Not later than October 1 of each fiscal year, funds made available under paragraph (5) for the fiscal year shall be made available by the Secretary, in equal amounts, to each State that has within the boundaries of the State all or part of an Indian reservation having a land area of 10,000,000 acres or more.

“(2) AVAILABILITY TO ELIGIBLE COUNTIES.—

“(A) IN GENERAL.—Each fiscal year, each county that is located in a State to which funds are made available under paragraph (1), and that has in the county a public road described in subparagraph (B), shall be eligible to apply to the State for all or a portion of the funds made available to the State under this subsection to be used by the county to maintain such roads.

“(B) ROADS.—A public road referred to in subparagraph (A) is a public road that—

“(i) is within, adjacent to, or provides access to an Indian reservation described in paragraph (1);

“(ii) is used by a school bus to transport children to or from a school or Headstart program carried out under the Head Start Act (42 U.S.C. 9831 et seq.); and

“(iii) is maintained by the county in which the public road is located.

“(C) ALLOCATION AMONG ELIGIBLE COUNTIES.—

“(i) IN GENERAL.—Except as provided in clause (ii), each State that receives funds under paragraph (1) shall provide directly to each county that applies for funds the amount that the county requests in the application.

“(ii) ALLOCATION AMONG ELIGIBLE COUNTIES.—If the total amount of funds applied for under this subsection by eligible counties in a State exceeds the amount of funds available to the State, the State shall equitably allocate the funds among the eligible counties that apply for funds.

“(3) SUPPLEMENTARY FUNDING.—For each fiscal year, the Secretary shall ensure that funding made available under this subsection supplements (and does not supplant)—

“(A) any obligation of funds by the Bureau of Indian Affairs for road maintenance programs on Indian reservations; and

“(B) any funding provided by a State to a county for road maintenance programs in the county.

“(4) USE OF UNALLOCATED FUNDS.—Any portion of the funds made available to a State under this subsection that is not made available to counties within 1 year

after the funds are made available to the State shall be apportioned among the States in accordance with section 104(b) of title 23, United States Code.

“(5) FUNDING.—

“(A) IN GENERAL.—There is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out this subsection \$1,800,000 for each of fiscal years 2005 through 2009.

“(B) CONTRACT AUTHORITY.—Funds authorized by this subsection shall be available for obligation in the same manner as if the funds were apportioned under chapter 1 of title 23, United States Code.”

INDIAN RESERVATION ROADS

Pub. L. 102-240, title I, §1032(d), Dec. 18, 1991, 105 Stat. 1975, provided that: “Notwithstanding any other provision of law, funds allocated for Indian reservation roads may be used for the purpose of funding road projects on roads of tribally controlled postsecondary vocational institutions.”

Pub. L. 102-240, title I, §1042, Dec. 18, 1991, 105 Stat. 1993, directed Secretary of Transportation to conduct a study on funding needs for Indian reservation roads and to report to Congress on results of the study not later than one year after Dec. 18, 1991, prior to repeal by Pub. L. 105-362, title XV, §1501(c), Nov. 10, 1998, 112 Stat. 3294.

**§ 203. Federal lands transportation program**

(a) USE OF FUNDS.—

(1) IN GENERAL.—Funds made available under the Federal lands transportation program shall be used by the Secretary of Transportation and the Secretary of the appropriate Federal land management agency to pay the costs of—

(A) program administration, transportation planning, research, preventive maintenance, engineering, rehabilitation, restoration, construction, and reconstruction of Federal lands transportation facilities, and—

- (i) adjacent vehicular parking areas;
- (ii) acquisition of necessary scenic easements and scenic or historic sites;
- (iii) provision for pedestrians and bicycles;

(iv) environmental mitigation in or adjacent to Federal land open to the public—

(I) to improve public safety and reduce vehicle-caused wildlife mortality while maintaining habitat connectivity; and

(II) to mitigate the damage to wildlife, aquatic organism passage, habitat, and ecosystem connectivity, including the costs of constructing, maintaining, replacing, or removing culverts and bridges, as appropriate;

(v) construction and reconstruction of roadside rest areas, including sanitary and water facilities;

(vi) congestion mitigation; and

(vii) other appropriate public road facilities, as determined by the Secretary;

(B) capital, operations, and maintenance of transit facilities;

(C) any transportation project eligible for assistance under this title that is on a public road within or adjacent to, or that provides access to, Federal lands open to the public; and

(D) not more \$10,000,000 of the amounts made available per fiscal year to carry out

this section for activities eligible under subparagraph (A)(iv)(I).

(2) CONTRACT.—In connection with an activity described in paragraph (1), the Secretary and the Secretary of the appropriate Federal land management agency may enter into a contract or other appropriate agreement with respect to the activity with—

(A) a State (including a political subdivision of a State); or

(B) an Indian tribe.

(3) ADMINISTRATION.—All appropriations for the construction and improvement of Federal lands transportation facilities shall be administered in conformity with regulations and agreements jointly approved by the Secretary and the Secretary of the appropriate Federal land managing agency.

(4) COOPERATION.—

(A) IN GENERAL.—The cooperation of States, counties, or other local subdivisions may be accepted in construction and improvement.

(B) FUNDS RECEIVED.—Any funds received from a State, county, or local subdivision shall be credited to appropriations available for the class of Federal lands transportation facilities to which the funds were contributed.

(5) COMPETITIVE BIDDING.—

(A) IN GENERAL.—Subject to subparagraph (B), construction of each project shall be performed by contract awarded by competitive bidding.

(B) EXCEPTION.—Subparagraph (A) shall not apply if the Secretary or the Secretary of the appropriate Federal land management agency affirmatively finds that, under the circumstances relating to the project, a different method is in the public interest.

(b) AGENCY PROGRAM DISTRIBUTIONS.—

(1) IN GENERAL.—On October 1, 2011, and on October 1 of each fiscal year thereafter, the Secretary shall allocate the sums authorized to be appropriated for the fiscal year for the Federal lands transportation program on the basis of applications of need, as determined by the Secretary—

(A) in consultation with the Secretaries of the applicable Federal land management agencies; and

(B) in coordination with the transportation plans required under section 201 of the respective transportation systems of—

- (i) the National Park Service;
- (ii) the Forest Service;
- (iii) the United States Fish and Wildlife Service;

(iv) the Corps of Engineers;

(v) the Bureau of Land Management;

(vi) the Bureau of Reclamation; and

(vii) independent Federal agencies with natural resource and land management responsibilities.

(2) APPLICATIONS.—

(A) REQUIREMENTS.—Each application submitted by a Federal land management agency shall include proposed programs at various potential funding levels, as defined by

the Secretary following collaborative discussions with applicable Federal land management agencies.

(B) CONSIDERATION BY SECRETARY.—In evaluating an application submitted under subparagraph (A), the Secretary shall consider the extent to which the programs support performance management, including—

- (i) the transportation goals of—
  - (I) a state of good repair of transportation facilities;
  - (II) a reduction of bridge deficiencies; and
  - (III) an improvement of safety;
- (ii) high-use Federal recreational sites or Federal economic generators; and
- (iii) the resource and asset management goals of the Secretary of the respective Federal land management agency.

(C) PERMISSIVE CONTENTS.—Applications may include proposed programs the duration of which extend over a multiple-year period to support long-term transportation planning and resource management initiatives.

(C) NATIONAL FEDERAL LANDS TRANSPORTATION FACILITY INVENTORY.—

(1) IN GENERAL.—The Secretaries of the appropriate Federal land management agencies, in cooperation with the Secretary, shall maintain a comprehensive national inventory of public Federal lands transportation facilities.

(2) TRANSPORTATION FACILITIES INCLUDED IN THE INVENTORIES.—To identify the Federal lands transportation system and determine the relative transportation needs among Federal land management agencies, the inventories shall include, at a minimum, facilities that—

(A) provide access to high-use Federal recreation sites or Federal economic generators, as determined by the Secretary in coordination with the respective Secretaries of the appropriate Federal land management agencies; and

(B) are owned by 1 of the following agencies:

- (i) The National Park Service.
- (ii) The Forest Service.
- (iii) The United States Fish and Wildlife Service.
- (iv) The Bureau of Land Management.
- (v) The Corps of Engineers.
- (vi) The Bureau of Reclamation.

(3) AVAILABILITY.—The inventories shall be made available to the Secretary.

(4) UPDATES.—The Secretaries of the appropriate Federal land management agencies shall update the inventories of the appropriate Federal land management agencies, as determined by the Secretary after collaborative discussions with the Secretaries of the appropriate Federal land management agencies.

(5) REVIEW.—A decision to add or remove a facility from the inventory shall not be considered a Federal action for purposes of review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(d) BICYCLE SAFETY.—The Secretary of the appropriate Federal land management agency

shall prohibit the use of bicycles on each federally owned road that has a speed limit of 30 miles per hour or greater and an adjacent paved path for use by bicycles within 100 yards of the road unless the Secretary determines that the bicycle level of service on that roadway is rated B or higher.

(Added Pub. L. 112–141, div. A, title I, §1119(a), July 6, 2012, 126 Stat. 486; amended Pub. L. 114–94, div. A, title I, §1119, Dec. 4, 2015, 129 Stat. 1358.)

#### REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (c)(5), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, which is classified generally to chapter 55 (§4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

#### PRIOR PROVISIONS

A prior section 203, Pub. L. 85–767, Aug. 27, 1958, 72 Stat. 906; Pub. L. 86–657, §8(b), July 14, 1960, 74 Stat. 524; Pub. L. 87–866, §7, Oct. 23, 1962, 76 Stat. 1147; Pub. L. 94–280, title I, §117(b), May 5, 1976, 90 Stat. 437; Pub. L. 97–424, title I, §126(f), Jan. 6, 1983, 96 Stat. 2116; Pub. L. 102–240, title I, §1032(f), Dec. 18, 1991, 105 Stat. 1975; Pub. L. 105–178, title I, §1115(c), (e)(3), June 9, 1998, 112 Stat. 156, 158, related to availability of funds, prior to repeal by Pub. L. 112–141, div. A, title I, §1119(a), July 6, 2012, 126 Stat. 473.

#### AMENDMENTS

2015—Subsec. (a)(1)(B). Pub. L. 114–94, §1119(1)(A), substituted “capital, operations,” for “operation”.

Subsec. (a)(1)(D). Pub. L. 114–94, §1119(1)(B), substituted “subparagraph (A)(iv)(I)” for “subparagraph (A)(iv)”.

Subsec. (b)(1)(B)(vi), (vii). Pub. L. 114–94, §1119(2)(A), added cls. (vi) and (vii).

Subsec. (b)(2)(B). Pub. L. 114–94, §1119(2)(B)(i), inserted “performance management, including” after “support” in introductory provisions.

Subsec. (b)(2)(B)(i)(II). Pub. L. 114–94, §1119(2)(B)(ii), substituted “; and” for “, and”.

Subsec. (c)(2)(B)(vi). Pub. L. 114–94, §1119(3), added cl. (vi).

#### EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114–94 effective Oct. 1, 2015, see section 1003 of Pub. L. 114–94, set out as a note under section 5313 of Title 5, Government Organization and Employees.

#### EFFECTIVE DATE

Section effective Oct. 1, 2012, see section 3(a) of Pub. L. 112–141, set out as an Effective and Termination Dates of 2012 Amendment note under section 101 of this title.

### § 204. Federal lands access program

(a) USE OF FUNDS.—

(1) IN GENERAL.—Funds made available under the Federal lands access program shall be used by the Secretary of Transportation and the Secretary of the appropriate Federal land management agency to pay the cost of—

(A) transportation planning, research, engineering, preventive maintenance, rehabilitation, restoration, construction, and reconstruction of Federal lands access transportation facilities located on or adjacent to, or that provide access to, Federal land, and—

- (i) adjacent vehicular parking areas;

(ii) acquisition of necessary scenic easements and scenic or historic sites;

(iii) provisions for pedestrians and bicycles;

(iv) environmental mitigation in or adjacent to Federal land to improve public safety and reduce vehicle-caused wildlife mortality while maintaining habitat connectivity;

(v) construction and reconstruction of roadside rest areas, including sanitary and water facilities; and

(vi) other appropriate public road facilities, as determined by the Secretary;

(B) operation and maintenance of transit facilities; and

(C) any transportation project eligible for assistance under this title that is within or adjacent to, or that provides access to, Federal land.

(2) CONTRACT.—In connection with an activity described in paragraph (1), the Secretary and the Secretary of the appropriate Federal land management agency may enter into a contract or other appropriate agreement with respect to the activity with—

(A) a State (including a political subdivision of a State); or

(B) an Indian tribe.

(3) ADMINISTRATION.—All appropriations for the construction and improvement of Federal lands access transportation facilities shall be administered in conformity with regulations and agreements approved by the Secretary.

(4) COOPERATION.—

(A) IN GENERAL.—The cooperation of States, counties, or other local subdivisions may be accepted in construction and improvement.

(B) FUNDS RECEIVED.—Any funds received from a State, county, or local subdivision for a Federal lands access transportation facility project shall be credited to appropriations available under the Federal lands access program.

(5) COMPETITIVE BIDDING.—

(A) IN GENERAL.—Subject to subparagraph (B), construction of each project shall be performed by contract awarded by competitive bidding.

(B) EXCEPTION.—Subparagraph (A) shall not apply if the Secretary or the Secretary of the appropriate Federal land management agency affirmatively finds that, under the circumstances relating to the project, a different method is in the public interest.

(b) PROGRAM DISTRIBUTIONS.—

(1) IN GENERAL.—Funding made available to carry out the Federal lands access program shall be allocated among those States that have Federal land, in accordance with the following formula:

(A) 80 percent of the available funding for use in those States that contain at least 1 ½ percent of the total public land in the United States managed by the agencies described in paragraph (2), to be distributed as follows:

(i) 30 percent in the ratio that—

(I) recreational visitation within each such State; bears to

(II) the recreational visitation within all such States.

(ii) 5 percent in the ratio that—

(I) the Federal land area within each such State; bears to

(II) the Federal land area in all such States.

(iii) 55 percent in the ratio that—

(I) the Federal public road miles within each such State; bears to

(II) the Federal public road miles in all such States.

(iv) 10 percent in the ratio that—

(I) the number of Federal public bridges within each such State; bears to

(II) the number of Federal public bridges in all such States.

(B) 20 percent of the available funding for use in those States that do not contain at least 1 ½ percent of the total public land in the United States managed by the agencies described in paragraph (2), to be distributed as follows:

(i) 30 percent in the ratio that—

(I) recreational visitation within each such State; bears to

(II) the recreational visitation within all such States.

(ii) 5 percent in the ratio that—

(I) the Federal land area within each such State; bears to

(II) the Federal land area in all such States.

(iii) 55 percent in the ratio that—

(I) the Federal public road miles within each such State; bears to

(II) the Federal public road miles in all such States.

(iv) 10 percent in the ratio that—

(I) the number of Federal public bridges within each such State; bears to

(II) the number of Federal public bridges in all such States.

(2) DATA SOURCE.—Data necessary to distribute funding under paragraph (1) shall be provided by the following Federal land management agencies:

(A) The National Park Service.

(B) The Forest Service.

(C) The United States Fish and Wildlife Service.

(D) The Bureau of Land Management.

(E) The Corps of Engineers.

(c) PROGRAMMING DECISIONS COMMITTEE.—

(1) IN GENERAL.—Programming decisions shall be made within each State by a committee comprised of—

(A) a representative of the Federal Highway Administration;

(B) a representative of the State Department of Transportation; and

(C) a representative of any appropriate political subdivision of the State.

(2) CONSULTATION REQUIREMENT.—The committee described in paragraph (1) shall cooper-

ate with each applicable Federal agency in each State before any joint discussion or final programming decision.

(3) PROJECT PREFERENCE.—In making a programming decision under paragraph (1), the committee shall give preference to projects that provide access to, are adjacent to, or are located within high-use Federal recreation sites or Federal economic generators, as identified by the Secretaries of the appropriate Federal land management agencies.

(Added Pub. L. 112-141, div. A, title I, §1119(a), July 6, 2012, 126 Stat. 489.)

#### PRIOR PROVISIONS

A prior section 204, Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 907; Pub. L. 97-424, title I, §126(b), Jan. 6, 1983, 96 Stat. 2114; Pub. L. 100-17, title I, §133(b)(13), (14), Apr. 2, 1987, 101 Stat. 172; Pub. L. 102-240, title I, §§1030, 1032(b), title VI, §6004(c), Dec. 18, 1991, 105 Stat. 1970, 1974, 2169; Pub. L. 105-178, title I, §1115(d), (e)(4), title V, §5119(a), June 9, 1998, 112 Stat. 156, 158, 452; Pub. L. 109-59, title I, §1119(h)-(k), Aug. 10, 2005, 119 Stat. 1187-1189, related to Federal lands highways program, prior to repeal by Pub. L. 112-141, div. A, title I, §1119(a), July 6, 2012, 126 Stat. 473.

#### EFFECTIVE DATE

Section effective Oct. 1, 2012, see section 3(a) of Pub. L. 112-141, set out as an Effective and Termination Dates of 2012 Amendment note under section 101 of this title.

### § 205. Forest development roads and trails

(a) Funds available for forest development roads and trails shall be used by the Secretary of Agriculture to pay for the costs of construction and maintenance thereof, including roads and trails on experimental and other areas under Forest Service administration. In connection therewith, the Secretary of Agriculture may enter into contracts with a State or civil subdivision thereof, and issue such regulations as he deems advisable.

(b) Cooperation of States, counties, or other local subdivisions may be accepted but shall not be required by the Secretary of Agriculture.

(c) Construction estimated to cost \$50,000 or more per mile or \$50,000 or more per project for projects with a length of less than one mile, exclusive of bridges and engineering, shall be advertised and let to contract. If such estimated cost is less than \$50,000 per mile or \$50,000 per project for projects with a length of less than one mile or if, after proper advertising, no acceptable bid is received or the bids are deemed excessive, the work may be done by the Secretary of Agriculture on his own account.

(d) Funds available for forest development roads and trails shall be available for adjacent vehicular parking areas, which may include electric vehicle charging stations or natural gas vehicle refueling stations, and for sanitary, water, and fire control facilities.

(Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 907; Pub. L. 86-657, §8(c), July 14, 1960, 74 Stat. 524; Pub. L. 88-423, §4(d), Aug. 13, 1964, 78 Stat. 398; Pub. L. 90-495, §9, Aug. 23, 1968, 82 Stat. 820; Pub. L. 102-240, title I, §1032(c), Dec. 18, 1991, 105 Stat. 1975; Pub. L. 112-141, div. A, title I, §1513(c), July 6, 2012, 126 Stat. 572.)

#### AMENDMENTS

2012—Subsec. (d). Pub. L. 112-141 inserted “, which may include electric vehicle charging stations or natural gas vehicle refueling stations,” after “parking areas”.

1991—Subsec. (c). Pub. L. 102-240 substituted “\$50,000” for “\$15,000” wherever appearing.

1968—Subsec. (c). Pub. L. 90-495 increased from \$10,000 to \$15,000 the cost limitation on construction per mile, or per project for projects of less than a mile, which the Forest Service may construct on its own account and struck out provisions spelling out the functions which the Secretary of Agriculture is authorized to perform in carrying out such construction.

1964—Subsec. (a). Pub. L. 88-423 inserted “and other” after “experimental”.

1960—Subsec. (a). Pub. L. 86-657 substituted “may enter into contracts” for “may enter into construction contracts”.

#### EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112-141 effective Oct. 1, 2012, see section 3(a) of Pub. L. 112-141, set out as an Effective and Termination Dates of 2012 Amendment note under section 101 of this title.

#### EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-240 effective Dec. 18, 1991, and applicable to funds authorized to be appropriated or made available after Sept. 30, 1991, and, with certain exceptions, not applicable to funds appropriated or made available on or before Sept. 30, 1991, see section 1100 of Pub. L. 102-240, set out as a note under section 104 of this title.

#### EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-495 effective Aug. 23, 1968, see section 37 of Pub. L. 90-495, set out as a note under section 101 of this title.

### § 206. Recreational trails program

(a) DEFINITIONS.—In this section, the following definitions apply:

(1) MOTORIZED RECREATION.—The term “motorized recreation” means off-road recreation using any motor-powered vehicle, except for a motorized wheelchair.

(2) RECREATIONAL TRAIL.—The term “recreational trail” means a thoroughfare or track across land or snow, used for recreational purposes such as—

(A) pedestrian activities, including wheelchair use;

(B) skating or skateboarding;

(C) equestrian activities, including carriage driving;

(D) nonmotorized snow trail activities, including skiing;

(E) bicycling or use of other human-powered vehicles;

(F) aquatic or water activities; and

(G) motorized vehicular activities, including all-terrain vehicle riding, motorcycling, snowmobiling, use of off-road light trucks, or use of other off-road motorized vehicles.

(b) PROGRAM.—In accordance with this section, the Secretary, in consultation with the Secretary of the Interior and the Secretary of Agriculture, shall carry out a program to provide and maintain recreational trails.

(c) STATE RESPONSIBILITIES.—To be eligible for apportionments under this section—

(1) the Governor of the State shall designate the State agency or agencies that will be re-

responsible for administering apportionments made to the State under this section; and

(2) the State shall establish a State recreational trail advisory committee that represents both motorized and nonmotorized recreational trail users, which shall meet not less often than once per fiscal year.

(d) USE OF APPORTIONED FUNDS.—

(1) IN GENERAL.—Funds apportioned to a State to carry out this section shall be obligated for recreational trails and related projects that—

(A) have been planned and developed under the laws, policies, and administrative procedures of the State; and

(B) are identified in, or further a specific goal of, a recreational trail plan, or a statewide comprehensive outdoor recreation plan required by chapter 2003 of title 54, that is in effect.

(2) PERMISSIBLE USES.—Permissible uses of funds apportioned to a State for a fiscal year to carry out this section include—

(A) maintenance and restoration of existing recreational trails;

(B) development and rehabilitation of trailside and trailhead facilities and trail linkages for recreational trails;

(C) purchase and lease of recreational trail construction and maintenance equipment;

(D) construction of new recreational trails, except that, in the case of new recreational trails crossing Federal lands, construction of the trails shall be—

(i) permissible under other law;

(ii) necessary and recommended by a statewide comprehensive outdoor recreation plan that is required by chapter 2003 of title 54 and that is in effect;

(iii) approved by the administering agency of the State designated under subsection (c)(1); and

(iv) approved by each Federal agency having jurisdiction over the affected lands under such terms and conditions as the head of the Federal agency determines to be appropriate, except that the approval shall be contingent on compliance by the Federal agency with all applicable laws, including the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1600 et seq.), and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.);

(E) acquisition of easements and fee simple title to property for recreational trails or recreational trail corridors;

(F) assessment of trail conditions for accessibility and maintenance;

(G) development and dissemination of publications and operation of educational programs to promote safety and environmental protection, (as those objectives relate to one or more of the use of recreational trails, supporting non-law enforcement trail safety and trail use monitoring patrol programs, and providing trail-related training), but in an amount not to exceed 5 percent of the ap-

portionment made to the State for the fiscal year; and

(H) payment of costs to the State incurred in administering the program, but in an amount not to exceed 7 percent of the apportionment made to the State for the fiscal year.

(3) USE OF APPORTIONMENTS.—

(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C), of the apportionments made to a State for a fiscal year to carry out this section—

(i) 40 percent shall be used for recreational trail or related projects that facilitate diverse recreational trail use within a recreational trail corridor, trailside, or trailhead, regardless of whether the project is for diverse motorized use, for diverse nonmotorized use, or to accommodate both motorized and nonmotorized recreational trail use;

(ii) 30 percent shall be used for uses relating to motorized recreation; and

(iii) 30 percent shall be used for uses relating to nonmotorized recreation.

(B) SMALL STATE EXCLUSION.—Any State with a total land area of less than 3,500,000 acres shall be exempt from the requirements of clauses (ii) and (iii) of subparagraph (A).

(C) STATE ADMINISTRATIVE COSTS.—State administrative costs eligible for funding under paragraph (2)(H) shall be exempt from the requirements of subparagraph (A).

(4) GRANTS.—

(A) IN GENERAL.—A State may use funds apportioned to the State to carry out this section to make grants to private organizations, municipal, county, State, and Federal Government entities, and other government entities as approved by the State after considering guidance from the State recreational trail advisory committee established under subsection (c)(2), for uses consistent with this section.

(B) COMPLIANCE.—A State that makes grants under subparagraph (A) shall establish measures to verify that recipients of the grants comply with the conditions of the program for the use of grant funds.

(e) ENVIRONMENTAL BENEFIT OR MITIGATION.—To the extent practicable and consistent with the other requirements of this section, a State should give consideration to project proposals that provide for the redesign, reconstruction, nonroutine maintenance, or relocation of recreational trails to benefit the natural environment or to mitigate and minimize the impact to the natural environment.

(f) FEDERAL SHARE.—

(1) IN GENERAL.—Subject to the other provisions of this subsection, the Federal share of the cost of a project and the Federal share of the administrative costs of a State under this section shall be determined in accordance with section 120(b).

(2) FEDERAL AGENCY PROJECT SPONSOR.—Notwithstanding any other provision of law, a Federal agency that sponsors a project under this section may contribute additional Federal



funds toward the cost of a project, except that—

(A) the share attributable to the Secretary of Transportation may not exceed the amount determined in accordance with section 120(b) for the cost of a project under this section; and

(B) the share attributable to the Secretary and the Federal agency sponsoring the project may not exceed 95 percent of the cost of a project under this section.

(3) USE OF FUNDS FROM FEDERAL PROGRAMS TO PROVIDE NON-FEDERAL SHARE.—Notwithstanding any other provision of law, the non-Federal share of the cost of the project may include amounts made available by the Federal Government under any Federal program that are—

(A) expended in accordance with the requirements of the Federal program relating to activities funded and populations served; and

(B) expended on a project that is eligible for assistance under this section.

(4) USE OF RECREATIONAL TRAILS PROGRAM FUNDS TO MATCH OTHER FEDERAL PROGRAM FUNDS.—Notwithstanding any other provision of law, funds made available under this section may be used toward the non-Federal matching share for other Federal program funds that are—

(A) expended in accordance with the requirements of the Federal program relating to activities funded and populations served; and

(B) expended on a project that is eligible for assistance under this section.

(5) PROGRAMMATIC NON-FEDERAL SHARE.—A State may allow adjustments to the non-Federal share of an individual project for a fiscal year under this section if the Federal share of the cost of all projects carried out by the State under the program (excluding projects funded under paragraph (2) or (3)) using funds apportioned to the State for the fiscal year does not exceed the Federal share as determined in accordance with section 120(b).

(g) USES NOT PERMITTED.—A State may not obligate funds apportioned to carry out this section for—

(1) condemnation of any kind of interest in property;

(2) construction of any recreational trail on National Forest System land for any motorized use unless—

(A) the land has been designated for uses other than wilderness by an approved forest land and resource management plan or has been released to uses other than wilderness by an Act of Congress; and

(B) the construction is otherwise consistent with the management direction in the approved forest land and resource management plan;

(3) construction of any recreational trail on Bureau of Land Management land for any motorized use unless the land—

(A) has been designated for uses other than wilderness by an approved Bureau of Land

Management resource management plan or has been released to uses other than wilderness by an Act of Congress; and

(B) the construction is otherwise consistent with the management direction in the approved management plan; or

(4) upgrading, expanding, or otherwise facilitating motorized use or access to recreational trails predominantly used by nonmotorized recreational trail users and on which, as of May 1, 1991, motorized use was prohibited or had not occurred.

(h) PROJECT ADMINISTRATION.—

(1) CREDIT FOR DONATIONS OF FUNDS, MATERIALS, SERVICES, OR NEW RIGHT-OF-WAY.—

(A) IN GENERAL.—Nothing in this title or other law shall prevent a project sponsor from offering to donate funds, materials, services, or a new right-of-way for the purposes of a project eligible for assistance under this section. Any funds, or the fair market value of any materials, services, or new right-of-way, may be donated by any project sponsor and shall be credited to the non-Federal share in accordance with subsection (f).

(B) FEDERAL PROJECT SPONSORS.—Any funds or the fair market value of any materials or services may be provided by a Federal project sponsor and shall be credited to the Federal agency's share in accordance with subsection (f).

(C) PLANNING AND ENVIRONMENTAL ASSESSMENT COSTS INCURRED PRIOR TO PROJECT APPROVAL.—The Secretary may allow preapproval planning and environmental compliance costs to be credited toward the non-Federal share of the cost of a project described in subsection (d)(2) (other than subparagraph (H)) in accordance with subsection (f), limited to costs incurred less than 18 months prior to project approval.

(2) RECREATIONAL PURPOSE.—A project funded under this section is intended to enhance recreational opportunity and is not subject to section 138 of this title or section 303 of title 49.

(3) CONTINUING RECREATIONAL USE.—At the option of each State, funds apportioned to the State to carry out this section may be treated as Land and Water Conservation Fund apportionments for the purposes of section 200305(f)(3) of title 54.

(4) COOPERATION BY PRIVATE PERSONS.—

(A) WRITTEN ASSURANCES.—As a condition of making available apportionments for work on recreational trails that would affect privately owned land, a State shall obtain written assurances that the owner of the land will cooperate with the State and participate as necessary in the activities to be conducted.

(B) PUBLIC ACCESS.—Any use of the apportionments to a State to carry out this section on privately owned land must be accompanied by an easement or other legally binding agreement that ensures public access to the recreational trail improvements funded by the apportionments.

(i) CONTRACT AUTHORITY.—Funds authorized to carry out this section shall be available for obli-

gation in the same manner as if the funds were apportioned under chapter 1, except that the Federal share of the cost of a project under this section shall be determined in accordance with this section.

(Added Pub. L. 105-178, title I, §1112(a), June 9, 1998, 112 Stat. 146; amended Pub. L. 109-59, title I, §1109(b)-(e), Aug. 10, 2005, 119 Stat. 1168-1170; Pub. L. 110-244, title I, §101(q), June 6, 2008, 122 Stat. 1576; Pub. L. 113-287, §5(f)(3), Dec. 19, 2014, 128 Stat. 3268.)

#### REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (d)(2)(D)(iv), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

The Forest and Rangeland Renewable Resources Planning Act of 1974, referred to in subsec. (d)(2)(D)(iv), is Pub. L. 93-378, Aug. 17, 1974, 88 Stat. 476, as amended, which is classified generally to subchapter I (§1600 et seq.) of chapter 36 of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1600 of Title 16 and Tables.

The Federal Land Policy and Management Act of 1976, referred to in subsec. (d)(2)(D)(iv), is Pub. L. 94-579, Oct. 21, 1976, 90 Stat. 2743, as amended, which is classified principally to chapter 35 (§1701 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of Title 43 and Tables.

#### PRIOR PROVISIONS

A prior section 206, Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 908, provided for use of funds for construction and improvement of park roads and trails and for administration of such funds according to regulations jointly approved by the Secretary and the Secretary of the Interior, prior to repeal by Pub. L. 97-424, title I, §126(d), Jan. 6, 1983, 96 Stat. 2115.

#### AMENDMENTS

2014—Subsec. (d)(1)(B). Pub. L. 113-287, §5(f)(3)(A), substituted “chapter 2003 of title 54” for “the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-4 et seq.)”.

Subsec. (d)(2)(D)(ii). Pub. L. 113-287, §5(f)(3)(B), substituted “chapter 2003 of title 54” for “the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-4 et seq.)”.

Subsec. (h)(3). Pub. L. 113-287, §5(f)(3)(C), substituted “section 200305(f)(3) of title 54” for “section 6(f)(3) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-8(f)(3))”.

2008—Subsec. (d)(3)(A). Pub. L. 110-244 substituted “(B) and (C)” for “(B), (C), and (D)” in introductory provisions.

2005—Subsec. (d)(2). Pub. L. 109-59, §1109(b), amended par. (2) generally. Prior to amendment, par. (2) consisted of subpars. (A) to (G) relating to permissible uses of funds apportioned to carry out this section.

Subsec. (d)(3)(C), (D). Pub. L. 109-59, §1109(c), redesignated subpar. (D) as (C), substituted “(2)(H)” for “(2)(F)”, and struck out heading and text of former subpar. (C). Text read as follows: “A State recreational trail advisory committee established under subsection (c)(2) may waive, in whole or in part, the requirements of clauses (ii) and (iii) of subparagraph (A) if the State recreational trail advisory committee determines and notifies the Secretary that the State does not have sufficient projects to meet the requirements of clauses (ii) and (iii) of subparagraph (A).”

Subsec. (f)(1). Pub. L. 109-59, §1109(d)(1), inserted “and the Federal share of the administrative costs of a

State” after “project” and substituted “be determined in accordance with section 120(b)” for “not exceed 80 percent”.

Subsec. (f)(2)(A). Pub. L. 109-59, §1109(d)(2), substituted “the amount determined in accordance with section 120(b) for the cost” for “80 percent of the cost”.

Subsec. (f)(2)(B). Pub. L. 109-59, §1109(d)(3), inserted “sponsoring the project” after “Federal agency”.

Subsec. (f)(4), (5). Pub. L. 109-59, §1109(d)(4)-(7), added par. (4), redesignated former par. (4) as (5), substituted “the Federal share as determined in accordance with section 120(b)” for “80 percent”, and struck out heading and text of former par. (5). Text read as follows: “The Federal share of the administrative costs of a State under this subsection shall be determined in accordance with section 120(b).”

Subsec. (h)(1)(C). Pub. L. 109-59, §1109(e), added subpar. (C).

#### USE OF YOUTH SERVICE AND CONSERVATION CORPS

Pub. L. 112-141, div. A, title I, §1524, July 6, 2012, 126 Stat. 580, provided that:

“(a) IN GENERAL.—The Secretary shall encourage the States and regional transportation planning agencies to enter into contracts and cooperative agreements with qualified youth service or conservation corps, as defined in sections 122(a)(2) of Public Law 101-610 (42 U.S.C. 12572(a)(2)) and 106(c)(3) of Public Law 103-82 (42 U.S.C. 12656(c)(3)) to perform appropriate projects eligible under sections 162, 206, [former] 213, and 217 of title 23, United States Code, and under section 1404 of the SAFETEA-LU (119 Stat. 1228).

“(b) REQUIREMENTS.—Under any contract or cooperative agreement entered into with a qualified youth service or conservation corps under this section, the Secretary shall—

“(1) set the amount of a living allowance or rate of pay for each participant in such corps at—

“(A) such amount or rate as required under State law in a State with such requirements; or

“(B) for corps in States not described in subparagraph (A), at such amount or rate as determined by the Secretary, not to exceed the maximum living allowance authorized by section 140 of Public Law 101-610 (42 U.S.C. 12594); and

“(2) not subject such corps to the requirements of section 112 of title 23, United States Code.”

Similar provisions were contained in the following prior acts:

Pub. L. 109-59, title I, §1109(f), Aug. 10, 2005, 119 Stat. 1170.

Pub. L. 105-178, title I, §1112(e), June 9, 1998, 112 Stat. 151.

#### § 207. Tribal transportation self-governance program

(a) ESTABLISHMENT.—Subject to the requirements of this section, the Secretary shall establish and carry out a program to be known as the tribal transportation self-governance program. The Secretary may delegate responsibilities for administration of the program as the Secretary determines appropriate.

(b) ELIGIBILITY.—

(1) IN GENERAL.—Subject to paragraphs (2) and (3), an Indian tribe shall be eligible to participate in the program if the Indian tribe requests participation in the program by resolution or other official action by the governing body of the Indian tribe, and demonstrates, for the preceding 3 fiscal years, financial stability and financial management capability, and transportation program management capability.

(2) CRITERIA FOR DETERMINING FINANCIAL STABILITY AND FINANCIAL MANAGEMENT CAPACITY.—

For the purposes of paragraph (1), evidence that, during the preceding 3 fiscal years, an Indian tribe had no uncorrected significant and material audit exceptions in the required annual audit of the Indian tribe's self-determination contracts or self-governance funding agreements with any Federal agency shall be conclusive evidence of the required financial stability and financial management capability.

(3) **CRITERIA FOR DETERMINING TRANSPORTATION PROGRAM MANAGEMENT CAPABILITY.**—The Secretary shall require an Indian tribe to demonstrate transportation program management capability, including the capability to manage and complete projects eligible under this title and projects eligible under chapter 53 of title 49, to gain eligibility for the program.

(c) **COMPACTS.**—

(1) **COMPACT REQUIRED.**—Upon the request of an eligible Indian tribe, and subject to the requirements of this section, the Secretary shall negotiate and enter into a written compact with the Indian tribe for the purpose of providing for the participation of the Indian tribe in the program.

(2) **CONTENTS.**—A compact entered into under paragraph (1) shall set forth the general terms of the government-to-government relationship between the Indian tribe and the United States under the program and other terms that will continue to apply in future fiscal years.

(3) **AMENDMENTS.**—A compact entered into with an Indian tribe under paragraph (1) may be amended only by mutual agreement of the Indian tribe and the Secretary.

(d) **ANNUAL FUNDING AGREEMENTS.**—

(1) **FUNDING AGREEMENT REQUIRED.**—After entering into a compact with an Indian tribe under subsection (c), the Secretary shall negotiate and enter into a written annual funding agreement with the Indian tribe.

(2) **CONTENTS.**—

(A) **IN GENERAL.**—

(i) **FORMULA FUNDING AND DISCRETIONARY GRANTS.**—A funding agreement entered into with an Indian tribe shall authorize the Indian tribe, as determined by the Indian tribe, to plan, conduct, consolidate, administer, and receive full tribal share funding, tribal transit formula funding, and funding to tribes from discretionary and competitive grants administered by the Department for all programs, services, functions, and activities (or portions thereof) that are made available to Indian tribes to carry out tribal transportation programs and programs, services, functions, and activities (or portions thereof) administered by the Secretary that are otherwise available to Indian tribes.

(ii) **TRANSFERS OF STATE FUNDS.**—

(I) **INCLUSION OF TRANSFERRED FUNDS IN FUNDING AGREEMENT.**—A funding agreement entered into with an Indian tribe shall include Federal-aid funds apportioned to a State under chapter 1 if the State elects to provide a portion of such funds to the Indian tribe for a project el-

igible under section 202(a). The provisions of this section shall be in addition to the methods for making funding contributions described in section 202(a)(9). Nothing in this section shall diminish the authority of the Secretary to provide funds to an Indian tribe under section 202(a)(9).

(II) **METHOD FOR TRANSFERS.**—If a State elects to provide funds described in subclause (I) to an Indian tribe—

(aa) the transfer may occur in accordance with section 202(a)(9); or

(bb) the State shall transfer the funds back to the Secretary and the Secretary shall transfer the funds to the Indian tribe in accordance with this section.

(III) **RESPONSIBILITY FOR TRANSFERRED FUNDS.**—Notwithstanding any other provision of law, if a State provides funds described in subclause (I) to an Indian tribe—

(aa) the State shall not be responsible for constructing or maintaining a project carried out using the funds or for administering or supervising the project or funds during the applicable statute of limitations period related to the construction of the project; and

(bb) the Indian tribe shall be responsible for constructing and maintaining a project carried out using the funds and for administering and supervising the project and funds in accordance with this section during the applicable statute of limitations period related to the construction of the project.

(B) **ADMINISTRATION OF TRIBAL SHARES.**—The tribal shares referred to in subparagraph (A) shall be provided without regard to the agency or office of the Department within which the program, service, function, or activity (or portion thereof) is performed.

(C) **FLEXIBLE AND INNOVATIVE FINANCING.**—

(i) **IN GENERAL.**—A funding agreement entered into with an Indian tribe under paragraph (1) shall include provisions pertaining to flexible and innovative financing if agreed upon by the parties.

(ii) **TERMS AND CONDITIONS.**—

(I) **AUTHORITY TO ISSUE REGULATIONS.**—The Secretary may issue regulations to establish the terms and conditions relating to the flexible and innovative financing provisions referred to in clause (i).

(II) **TERMS AND CONDITIONS IN ABSENCE OF REGULATIONS.**—If the Secretary does not issue regulations under subclause (I), the terms and conditions relating to the flexible and innovative financing provisions referred to in clause (i) shall be consistent with—

(aa) agreements entered into by the Department under—

(AA) section 202(b)(7); and

(BB) section 202(d)(5), as in effect before the date of enactment of MAP-21 (Public Law 112-141); or

(bb) regulations of the Department of the Interior relating to flexible financ-

ing contained in part 170 of title 25, Code of Federal Regulations, as in effect on the date of enactment of the FAST Act.

(3) TERMS.—A funding agreement shall set forth—

(A) terms that generally identify the programs, services, functions, and activities (or portions thereof) to be performed or administered by the Indian tribe; and

(B) for items identified in subparagraph (A)—

(i) the general budget category assigned;

(ii) the funds to be provided, including those funds to be provided on a recurring basis;

(iii) the time and method of transfer of the funds;

(iv) the responsibilities of the Secretary and the Indian tribe; and

(v) any other provision agreed to by the Indian tribe and the Secretary.

(4) SUBSEQUENT FUNDING AGREEMENTS.—

(A) APPLICABILITY OF EXISTING AGREEMENT.—Absent notification from an Indian tribe that the Indian tribe is withdrawing from or retroceding the operation of 1 or more programs, services, functions, or activities (or portions thereof) identified in a funding agreement, or unless otherwise agreed to by the parties, each funding agreement shall remain in full force and effect until a subsequent funding agreement is executed.

(B) EFFECTIVE DATE OF SUBSEQUENT AGREEMENT.—The terms of the subsequent funding agreement shall be retroactive to the end of the term of the preceding funding agreement.

(5) CONSENT OF INDIAN TRIBE REQUIRED.—The Secretary shall not revise, amend, or require additional terms in a new or subsequent funding agreement without the consent of the Indian tribe that is subject to the agreement unless such terms are required by Federal law.

(e) GENERAL PROVISIONS.—

(1) REDESIGN AND CONSOLIDATION.—

(A) IN GENERAL.—An Indian tribe, in any manner that the Indian tribe considers to be in the best interest of the Indian community being served, may—

(i) redesign or consolidate programs, services, functions, and activities (or portions thereof) included in a funding agreement; and

(ii) reallocate or redirect funds for such programs, services, functions, and activities (or portions thereof), if the funds are—

(I) expended on projects identified in a transportation improvement program approved by the Secretary; and

(II) used in accordance with the requirements in—

(aa) appropriations Acts;

(bb) this title and chapter 53 of title 49; and

(cc) any other applicable law.

(B) EXCEPTION.—Notwithstanding subparagraph (A), if, pursuant to subsection (d), an

Indian tribe receives a discretionary or competitive grant from the Secretary or receives State apportioned funds, the Indian tribe shall use the funds for the purpose for which the funds were originally authorized.

(2) RETROCESSION.—

(A) IN GENERAL.—

(i) AUTHORITY OF INDIAN TRIBES.—An Indian tribe may retrocede (fully or partially) to the Secretary programs, services, functions, or activities (or portions thereof) included in a compact or funding agreement.

(ii) REASSUMPTION OF REMAINING FUNDS.—Following a retrocession described in clause (i), the Secretary may—

(I) reassume the remaining funding associated with the retroceded programs, functions, services, and activities (or portions thereof) included in the applicable compact or funding agreement;

(II) out of such remaining funds, transfer funds associated with Department of Interior programs, services, functions, or activities (or portions thereof) to the Secretary of the Interior to carry out transportation services provided by the Secretary of the Interior; and

(III) distribute funds not transferred under subclause (II) in accordance with applicable law.

(iii) CORRECTION OF PROGRAMS.—If the Secretary makes a finding under subsection (f)(2)(B) and no funds are available under subsection (f)(2)(A)(ii), the Secretary shall not be required to provide additional funds to complete or correct any programs, functions, services, or activities (or portions thereof).

(B) EFFECTIVE DATE.—Unless the Indian tribe rescinds a request for retrocession, the retrocession shall become effective within the timeframe specified by the parties in the compact or funding agreement. In the absence of such a specification, the retrocession shall become effective on—

(i) the earlier of—

(I) 1 year after the date of submission of the request; or

(II) the date on which the funding agreement expires; or

(ii) such date as may be mutually agreed upon by the parties and, with respect to Department of the Interior programs, functions, services, and activities (or portions thereof), the Secretary of the Interior.

(f) PROVISIONS RELATING TO SECRETARY.—

(1) DECISIONMAKER.—A decision that relates to an appeal of the rejection of a final offer by the Department shall be made either—

(A) by an official of the Department who holds a position at a higher organizational level within the Department than the level of the departmental agency in which the decision that is the subject of the appeal was made; or

(B) by an administrative judge.

(2) TERMINATION OF COMPACT OR FUNDING AGREEMENT.—

## (A) AUTHORITY TO TERMINATE.—

(i) PROVISION TO BE INCLUDED IN COMPACT OR FUNDING AGREEMENT.—A compact or funding agreement shall include a provision authorizing the Secretary, if the Secretary makes a finding described in subparagraph (B), to—

(I) terminate the compact or funding agreement (or a portion thereof); and

(II) reassume the remaining funding associated with the reassumed programs, functions, services, and activities included in the compact or funding agreement.

(ii) TRANSFERS OF FUNDS.—Out of any funds reassumed under clause (i)(II), the Secretary may transfer the funds associated with Department of the Interior programs, functions, services, and activities (or portions thereof) to the Secretary of the Interior to provide continued transportation services in accordance with applicable law.

(B) FINDINGS RESULTING IN TERMINATION.—The finding referred to in subparagraph (A) is a specific finding of—

(i) imminent jeopardy to a trust asset, natural resources, or public health and safety that is caused by an act or omission of the Indian tribe and that arises out of a failure to carry out the compact or funding agreement, as determined by the Secretary; or

(ii) gross mismanagement with respect to funds or programs transferred to the Indian tribe under the compact or funding agreement, as determined by the Secretary in consultation with the Inspector General of the Department, as appropriate.

(C) PROHIBITION.—The Secretary shall not terminate a compact or funding agreement (or portion thereof) unless—

(i) the Secretary has first provided written notice and a hearing on the record to the Indian tribe that is subject to the compact or funding agreement; and

(ii) the Indian tribe has not taken corrective action to remedy the mismanagement of funds or programs or the imminent jeopardy to a trust asset, natural resource, or public health and safety.

## (D) EXCEPTION.—

(i) IN GENERAL.—Notwithstanding subparagraph (C), the Secretary, upon written notification to an Indian tribe that is subject to a compact or funding agreement, may immediately terminate the compact or funding agreement (or portion thereof) if—

(I) the Secretary makes a finding of imminent substantial and irreparable jeopardy to a trust asset, natural resource, or public health and safety; and

(II) the jeopardy arises out of a failure to carry out the compact or funding agreement.

(ii) HEARINGS.—If the Secretary terminates a compact or funding agreement (or portion thereof) under clause (i), the Sec-

retary shall provide the Indian tribe subject to the compact or agreement with a hearing on the record not later than 10 days after the date of such termination.

(E) BURDEN OF PROOF.—In any hearing or appeal involving a decision to terminate a compact or funding agreement (or portion thereof) under this paragraph, the Secretary shall have the burden of proof in demonstrating by clear and convincing evidence the validity of the grounds for the termination.

(g) COST PRINCIPLES.—In administering funds received under this section, an Indian tribe shall apply cost principles under the applicable Office of Management and Budget circular, except as modified by section 106 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450j-1),<sup>1</sup> other provisions of law, or by any exemptions to applicable Office of Management and Budget circulars subsequently granted by the Office of Management and Budget. No other audit or accounting standards shall be required by the Secretary. Any claim by the Federal Government against the Indian tribe relating to funds received under a funding agreement based on any audit conducted pursuant to this subsection shall be subject to the provisions of section 106(f) of that Act (25 U.S.C. 450j-1(f)).<sup>1</sup>

(h) TRANSFER OF FUNDS.—The Secretary shall provide funds to an Indian tribe under a funding agreement in an amount equal to—

(1) the sum of the funding that the Indian tribe would otherwise receive for the program, function, service, or activity in accordance with a funding formula or other allocation method established under this title or chapter 53 of title 49; and

(2) such additional amounts as the Secretary determines equal the amounts that would have been withheld for the costs of the Bureau of Indian Affairs for administration of the program or project.

## (i) CONSTRUCTION PROGRAMS.—

(1) STANDARDS.—Construction projects carried out under programs administered by an Indian tribe with funds transferred to the Indian tribe pursuant to a funding agreement entered into under this section shall be constructed pursuant to the construction program standards set forth in applicable regulations or as specifically approved by the Secretary (or the Secretary's designee).

(2) MONITORING.—Construction programs shall be monitored by the Secretary in accordance with applicable regulations.

## (j) FACILITATION.—

(1) SECRETARIAL INTERPRETATION.—Except as otherwise provided by law, the Secretary shall interpret all Federal laws, Executive orders, and regulations in a manner that will facilitate—

(A) the inclusion of programs, services, functions, and activities (or portions thereof) and funds associated therewith, in compacts and funding agreements; and

(B) the implementation of the compacts and funding agreements.

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

## (2) REGULATION WAIVER.—

(A) IN GENERAL.—An Indian tribe may submit to the Secretary a written request to waive application of a regulation promulgated under this section with respect to a compact or funding agreement. The request shall identify the regulation sought to be waived and the basis for the request.

## (B) APPROVALS AND DENIALS.—

(i) IN GENERAL.—Not later than 90 days after the date of receipt of a written request under subparagraph (A), the Secretary shall approve or deny the request in writing.

(ii) REVIEW.—The Secretary shall review any application by an Indian tribe for a waiver bearing in mind increasing opportunities for using flexible policy approaches at the Indian tribal level.

(iii) DEEMED APPROVAL.—If the Secretary does not approve or deny a request submitted under subparagraph (A) on or before the last day of the 90-day period referred to in clause (i), the request shall be deemed approved.

(iv) DENIALS.—If the application for a waiver is not granted, the agency shall provide the applicant with the reasons for the denial as part of the written response required in clause (i).

(v) FINALITY OF DECISIONS.—A decision by the Secretary under this subparagraph shall be final for the Department.

## (k) DISCLAIMERS.—

(1) EXISTING AUTHORITY.—Notwithstanding any other provision of law, upon the election of an Indian tribe, the Secretary shall—

(A) maintain current tribal transportation program funding agreements and program agreements; or

(B) enter into new agreements under the authority of section 202(b)(7).

(2) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section may be construed to impair or diminish the authority of the Secretary under section 202(b)(7).

(l) APPLICABILITY OF INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT.—Except to the extent in conflict with this section (as determined by the Secretary), the following provisions of the Indian Self-Determination and Education Assistance Act shall apply to compact and funding agreements (except that any reference to the Secretary of the Interior or the Secretary of Health and Human Services in such provisions shall be treated as a reference to the Secretary of Transportation):

(1) Subsections (a), (b), (d), (g), and (h) of section 506 of such Act (25 U.S.C. 458aaa-5),<sup>1</sup> relating to general provisions.

(2) Subsections (b) through (e) and (g) of section 507 of such Act (25 U.S.C. 458aaa-6),<sup>1</sup> relating to provisions relating to the Secretary of Health and Human Services.

(3) Subsections (a), (b), (d), (e), (g), (h), (i), and (k) of section 508 of such Act (25 U.S.C. 458aaa-7),<sup>1</sup> relating to transfer of funds.

(4) Section 510 of such Act (25 U.S.C. 458aaa-9),<sup>1</sup> relating to Federal procurement laws and regulations.

(5) Section 511 of such Act (25 U.S.C. 458aaa-10),<sup>1</sup> relating to civil actions.

(6) Subsections (a)(1), (a)(2), and (c) through (f) of section 512 of such Act (25 U.S.C. 458aaa-11),<sup>1</sup> relating to facilitation, except that subsection (c)(1) of that section shall be applied by substituting “transportation facilities and other facilities” for “school buildings, hospitals, and other facilities”.

(7) Subsections (a) and (b) of section 515 of such Act (25 U.S.C. 458aaa-14),<sup>1</sup> relating to disclaimers.

(8) Subsections (a) and (b) of section 516 of such Act (25 U.S.C. 458aaa-15),<sup>1</sup> relating to application of title I provisions.

(9) Section 518 of such Act (25 U.S.C. 458aaa-17),<sup>1</sup> relating to appeals.

## (m) DEFINITIONS.—

(1) IN GENERAL.—In this section, the following definitions apply (except as otherwise expressly provided):

(A) COMPACT.—The term “compact” means a compact between the Secretary and an Indian tribe entered into under subsection (c).

(B) DEPARTMENT.—The term “Department” means the Department of Transportation.

(C) ELIGIBLE INDIAN TRIBE.—The term “eligible Indian tribe” means an Indian tribe that is eligible to participate in the program, as determined under subsection (b).

(D) FUNDING AGREEMENT.—The term “funding agreement” means a funding agreement between the Secretary and an Indian tribe entered into under subsection (d).

(E) INDIAN TRIBE.—The term “Indian tribe” means any Indian or Alaska Native tribe, band, nation, pueblo, village, or community that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. In any case in which an Indian tribe has authorized another Indian tribe, an intertribal consortium, or a tribal organization to plan for or carry out programs, services, functions, or activities (or portions thereof) on its behalf under this section, the authorized Indian tribe, intertribal consortium, or tribal organization shall have the rights and responsibilities of the authorizing Indian tribe (except as otherwise provided in the authorizing resolution or in this title). In such event, the term “Indian tribe” as used in this section shall include such other authorized Indian tribe, intertribal consortium, or tribal organization.

(F) PROGRAM.—The term “program” means the tribal transportation self-governance program established under this section.

(G) SECRETARY.—The term “Secretary” means the Secretary of Transportation.

(H) TRANSPORTATION PROGRAMS.—The term “transportation programs” means all programs administered or financed by the Department under this title and chapter 53 of title 49.

(2) APPLICABILITY OF OTHER DEFINITIONS.—In this section, the definitions set forth in sections 4 and 505<sup>1</sup> of the Indian Self-Determina-

tion and Education Assistance Act (25 U.S.C. 450b; 458aaa)<sup>1</sup> apply, except as otherwise expressly provided in this section.

(n) REGULATIONS.—

(1) IN GENERAL.—

(A) PROMULGATION.—Not later than 90 days after the date of enactment of the FAST Act, the Secretary shall initiate procedures under subchapter III of chapter 5 of title 5 to negotiate and promulgate such regulations as are necessary to carry out this section.

(B) PUBLICATION OF PROPOSED REGULATIONS.—Proposed regulations to implement this section shall be published in the Federal Register by the Secretary not later than 42 months after such date of enactment.

(C) EXPIRATION OF AUTHORITY.—The authority to promulgate regulations under subparagraph (A) shall expire 48 months after such date of enactment.

(D) EXTENSION OF DEADLINES.—A deadline set forth in subparagraph (B) or (C) may be extended up to 180 days if the negotiated rulemaking committee referred to in paragraph (2) concludes that the committee cannot meet the deadline and the Secretary so notifies the appropriate committees of Congress.

(2) COMMITTEE.—

(A) IN GENERAL.—A negotiated rulemaking committee established pursuant to section 565 of title 5 to carry out this subsection shall have as its members only Federal and tribal government representatives, a majority of whom shall be nominated by and be representatives of Indian tribes with funding agreements under this title.

(B) REQUIREMENTS.—The committee shall confer with, and accommodate participation by, representatives of Indian tribes, intertribal consortia, tribal organizations, and individual tribal members.

(C) ADAPTATION OF PROCEDURES.—The Secretary shall adapt the negotiated rulemaking procedures to the unique context of self-governance and the government-to-government relationship between the United States and Indian tribes.

(3) Effect.—The lack of promulgated regulations shall not limit the effect of this section.

(4) EFFECT OF CIRCULARS, POLICIES, MANUALS, GUIDANCE, AND RULES.—Unless expressly agreed to by the participating Indian tribe in the compact or funding agreement, the participating Indian tribe shall not be subject to any agency circular, policy, manual, guidance, or rule adopted by the Department, except regulations promulgated under this section.

(Added Pub. L. 114-94, div. A, title I, §1121(a), Dec. 4, 2015, 129 Stat. 1359; amended Pub. L. 115-235, §1, Aug. 14, 2018, 132 Stat. 2443.)

REFERENCES IN TEXT

The date of enactment of MAP-21, referred to in subsec. (d)(2)(C)(ii)(II)(aa)(BB), is deemed to be Oct. 1, 2012, see section 3(a), (b) of Pub. L. 112-141, set out as Effective and Termination Dates of 2012 Amendment notes under section 101 of this title.

The date of enactment of the FAST Act, referred to in subsecs. (d)(2)(C)(ii)(II)(bb) and (n)(1)(A), is the date

of enactment of Pub. L. 114-94, which was approved Dec. 4, 2015.

The Indian Self-Determination and Education Assistance Act, referred to in subsecs. (g), (l), and (m)(2), is Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, which was classified principally to subchapter II (§450 et seq.) of chapter 14 of Title 25, Indians, prior to editorial reclassification as chapter 46 (§5301 et seq.) of Title 25. Sections 4, 106, 506 to 508, 510 to 512, 515, 516, and 518 of the Act were classified to sections 450b, 450j-1, 458aaa-5 to 458aaa-7, 458aaa-9 to 458aaa-11, 458aaa-14, 458aaa-15, and 458aaa-17, respectively, of Title 25, prior to editorial reclassification as sections 5304, 5325, 5386 to 5388, 5390 to 5392, 5395, 5396, and 5398, respectively, of Title 25. Section 505 of the Act probably should be a reference to section 501 of the Act, which defines terms and was classified to section 458aaa of Title 25 prior to editorial reclassification as section 5381 of Title 25. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of Title 25 and Tables.

PRIOR PROVISIONS

A prior section 207, Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 908; Pub. L. 93-87, title I, §150, Aug. 13, 1973, 87 Stat. 275, provided for use of funds for construction and improvement of parkways, including acquisition of rights-of-way and related scenic easements, administration of such funds according to regulations jointly approved by the Secretary and the Secretary of the Interior, and that parkway projects on a Federal-aid system be subject to all requirements of this title and of any other law applicable to highways on such system, prior to repeal by Pub. L. 97-424, title I, §126(d), Jan. 6, 1983, 96 Stat. 2115.

AMENDMENTS

2018—Subsec. (n)(1)(B). Pub. L. 115-235, §1(1), substituted “42 months” for “21 months”.

Subsec. (n)(1)(C). Pub. L. 115-235, §1(2), substituted “48 months” for “30 months”.

EFFECTIVE DATE

Section effective Oct. 1, 2015, see section 1003 of Pub. L. 114-94, set out as an Effective Date of 2015 Amendment note under section 5313 of Title 5, Government Organization and Employees.

**[§§ 208, 209. Repealed. Pub. L. 97-424, title I, § 126(d), Jan. 6, 1983, 96 Stat. 2115]**

Section 208, Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 908; Pub. L. 87-282, Sept. 22, 1961, 75 Stat. 584; Pub. L. 93-643, §102(c), Jan. 4, 1975, 88 Stat. 2281, provided for use of funds for construction and improvement of Indian reservation roads and bridges, supervision of such projects by the Secretary, that such funds be only supplementary to funds apportioned under section 104 of this title, for use of Indian labor in such projects, and for cooperation with States and localities.

Section 209, Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 908; Pub. L. 88-423, §4(b), Aug. 13, 1964, 78 Stat. 397, provided for use of funds for construction and maintenance of public lands highways, cooperation with State agencies, the application of section 112 of this title to public lands highways, and for use of such funds for adjacent ancillary facilities and services.

**§210. Defense access roads**

(a) AUTHORIZATION.—

(1) IN GENERAL.—When defense access roads are certified to the Secretary as important to the national defense by the Secretary of Defense or such other official as the President may designate, the Secretary is authorized, out of the funds appropriated for defense access roads, to provide for—

(A) the construction and maintenance of defense access roads (including bridges,

tubes, tunnels, and culverts or other hydraulic appurtenances on those roads) to—

- (i) military reservations;
- (ii) defense industry sites;
- (iii) air or sea ports that are necessary for or are planned to be used for the deployment or sustainment of members of the Armed Forces, equipment, or supplies; or
- (iv) sources of raw materials;

(B) the reconstruction or enhancement of, or improvements to, those roads to ensure the continued effective use of the roads, regardless of current or projected increases in mean tides, recurrent flooding, or other weather-related conditions or natural disasters; and

(C) replacing existing highways and highway connections that are shut off from general public use by necessary closures, closures due to mean sea level fluctuation and flooding, or restrictions at—

- (i) military reservations;
- (ii) air or sea ports that are necessary for or are planned to be used for the deployment or sustainment of members of the Armed Forces, equipment, or supplies; or
- (iii) defense industry sites.

(2) If it is determined that an action of the Department of Defense will cause a significant transportation impact to access to a military reservation, the Secretary of Defense shall conduct a transportation needs assessment to assess the magnitude of the improvement required to address the impact. The Secretary of Defense, in consultation with the Secretary of Transportation, shall determine the magnitude of the required improvements without regard to the extent to which traffic generated by the reservation is greater than other traffic in the vicinity of the reservation.

(b) Funds appropriated for the purposes of this section shall be available, without regard to apportionment among the several States, for paying all or any part of the cost of construction, reconstruction, resurfacing, restoration, rehabilitation, and preservation of, or enhancements to, defense access roads.

(c) Funds appropriated for defense maneuvers and exercises, may be used by the Secretary in areas certified to the Secretary by the Secretary of Defense as maneuver areas for such activities for construction, maintenance, reconstruction, enhancement, improvement, and repair as may be necessary to keep the highways in those areas, which have been or may be used for training of the Armed Forces, in suitable condition for—

- (1) that training; and
- (2) repairing the damage to those highways caused by—
  - (A) weather-related events, increases in mean high tide levels, recurrent flooding, or natural disasters; or
  - (B) the operations of men and equipment in such training.

(d) Whenever any project for the construction of a circumferential highway around a city or of a radial intracity route thereto submitted by any State is certified by the Secretary of De-

fense, or such other official as the President may designate, as being important for civilian or military defense, such project may be constructed out of the funds heretofore or hereafter authorized to be appropriated for defense access roads.

(e) If the Secretary shall determine that the State transportation department of any State is unable to obtain possession and the right to enter upon and use the required rights-of-way, lands, or interest in lands, improved or unimproved, required for any project authorized by this section with sufficient promptness, the Secretary is authorized to acquire, enter upon, take possession thereof, and expend funds for projects thereon, prior to approval of title by the Attorney General, in the name of the United States, such rights-of-way, lands, or interest in lands as may be required in such State for such projects by purchase, donation, condemnation, or otherwise in accordance with the laws of the United States (including sections 3114 to 3116 and 3118 of title 40). The cost incurred by the Secretary in acquiring any such rights-of-way, lands, or interest in lands may include the cost of examination and abstract of title, certificate of title, advertising, and any fees incidental to such acquisition; and shall be payable out of the funds available for paying the cost or the Federal share of the cost of the project for which such rights-of-way, lands, or interests in lands are acquired. The Secretary is further authorized and directed by proper deed executed in the name of the United States to convey any lands or interests in lands acquired in any State under the provisions of prior Acts or of this section to the State transportation department of such State or to such political subdivision thereof as its laws may provide, upon such terms and conditions as may be agreed upon by the Secretary and the State transportation department, or political subdivisions to which the conveyance is to be made.

(f) The provisions of section 112 of this title are applicable to defense access roads.

(g) If the Secretary shall determine that it is necessary for the expeditious completion of any defense access road project the Secretary may advance to any State out of funds appropriated for defense access roads transferred and available to the Department of Transportation the Federal share of the cost of construction thereof to enable the State transportation department to make prompt payments for acquisition of rights-of-way, and for the construction as it progresses. The sums so advanced shall be deposited in a special fund by the State official authorized by State law to receive such funds, to be disbursed solely upon vouchers approved by the State transportation department for rights-of-way which have been or are being acquired and for construction and other activities actually performed under this section. Upon determination by the Secretary that funds advanced to any State under the provisions of this subsection are no longer required, the amount of the advance which is determined to be in excess of requirements for the project shall be repaid upon demand by the Secretary, and such repayments shall be returned to the credit of the appropriation from which the funds were advanced.



(h) Funds appropriated for the purposes of this section shall be available to pay the cost of repairing damage caused to highways by the operation of vehicles and equipment in the construction of classified military installations and facilities for ballistic missiles if the Secretary shall determine that the State transportation department of any State is, or has been, unable to prevent such damage by restrictions upon the use of such highways without interference with, or delay in, the completion of a contract for the construction of such military reservations or installations. This subsection shall apply notwithstanding any provision of contract holding a party thereto responsible for such damage, if the Secretary of Defense or his designee shall determine, in fact, that construction estimates and the bid of such party did not include allowance for repairing such damage. This subsection shall apply to damage caused by construction work commenced prior to June 1, 1961, and still in progress on that date and construction work which is commenced or for which a contract is awarded on or after June 1, 1961.

(i) REPAIR OF CERTAIN DAMAGES AND INFRASTRUCTURE.—The funds appropriated to carry out this section may be used to pay the cost of repairing damage caused, or any infrastructure to mitigate a risk posed, to a defense access road by recurrent or projected recurrent flooding, sea level fluctuation, a natural disaster, or any other current or projected change in applicable environmental conditions, if the Secretary determines that continued access to a military installation, defense industry site, air or sea port necessary for or planned to be used for the deployment or sustainment of members of the Armed Forces, equipment, or supplies, or to a source of raw materials, has been or is projected to be impacted by those events or conditions.

(Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 908; Pub. L. 86-657, § 8(d), July 14, 1960, 74 Stat. 524; Pub. L. 87-61, title I, § 105, June 29, 1961, 75 Stat. 123; Pub. L. 97-424, title I, § 155, Jan. 6, 1983, 96 Stat. 2134; Pub. L. 100-17, title I, § 133(b)(15), Apr. 2, 1987, 101 Stat. 172; Pub. L. 105-178, title I, § 1212(a)(2)(A)(i), June 9, 1998, 112 Stat. 193; Pub. L. 109-284, § 3(2), Sept. 27, 2006, 120 Stat. 1211; Pub. L. 110-417, div. B, title XXVIII, § 2814(a), Oct. 14, 2008, 122 Stat. 4728; Pub. L. 112-81, div. B, title XXVIII, § 2816(a), Dec. 31, 2011, 125 Stat. 1689; Pub. L. 112-141, div. A, title I, § 1516, July 6, 2012, 126 Stat. 574; Pub. L. 115-232, div. B, title XXVIII, § 2865, Aug. 13, 2018, 132 Stat. 2285; Pub. L. 116-92, div. B, title XXVIII, § 2808, Dec. 20, 2019, 133 Stat. 1885.)

#### AMENDMENTS

2019—Subsec. (a)(1). Pub. L. 116-92, § 2808(1), added par. (1) and struck out former par. (1) which read as follows: “The Secretary is authorized, out of the funds appropriated for defense access roads, to provide for the construction and maintenance of defense access roads (including bridges, tubes, and tunnels thereon) to military reservations, to defense industries and defense industry sites, and to the sources of raw materials when such roads are certified to the Secretary as important to the national defense by the Secretary of Defense or such other official as the President may designate, and for replacing existing highways and highway connections that are shut off from the general public use by necessary closures, closures due to mean sea level fluctuation and flooding, or restrictions at military reservations and defense industry sites.”

Subsec. (b). Pub. L. 116-92, § 2808(2), substituted “construction, reconstruction, resurfacing, restoration, rehabilitation, and preservation of, or enhancements to,” for “the construction and maintenance of”.

Subsec. (c). Pub. L. 116-92, § 2808(3), substituted “certified to the Secretary” for “certified to him”, “activities for construction, maintenance, reconstruction, enhancement, improvement, and repair” for “construction, maintenance, and repair work”, “in those areas” for “therein”, and “condition for—” and pars. (1) and (2) for “condition for such training purposes and for repairing the damage caused to such highways by the operations of men and equipment in such training.”

Subsec. (g). Pub. L. 116-92, § 2808(4), substituted “the Secretary may advance” for “he may advance”, “construction and other activities” for “construction which has been”, and “upon demand by the Secretary” for “upon his demand”.

Subsec. (i). Pub. L. 116-92, § 2808(5), added subsec. (i) and struck out former subsec. (i) which read as follows: “Beginning in fiscal year 2019, funds appropriated for the purposes of this section shall be available to pay the cost of repairing damage caused to, and for any infrastructure to mitigate the risks posed to, highways by recurrent flooding and sea level fluctuation, if the Secretary of Defense shall determine that continued access to a military installation has been impacted by past flooding and mean sea level fluctuation.”

2018—Subsec. (a)(1). Pub. L. 115-232, § 2865(a), substituted “closures, closures due to mean sea level fluctuation and flooding, or restrictions” for “closures or restrictions”.

Subsec. (i). Pub. L. 115-232, § 2865(b), added subsec. (i). 2012—Subsec. (a)(2). Pub. L. 112-141 inserted “, in consultation with the Secretary of Transportation,” before “shall determine”.

2011—Subsec. (a)(2). Pub. L. 112-81 inserted at end “The Secretary of Defense shall determine the magnitude of the required improvements without regard to the extent to which traffic generated by the reservation is greater than other traffic in the vicinity of the reservation.”

2008—Subsec. (a). Pub. L. 110-417 designated existing provisions as par. (1) and added par. (2).

2006—Subsec. (e). Pub. L. 109-284 substituted “sections 3114 to 3116 and 3118 of title 40” for “the Act of February 26, 1931; 46 Stat. 1421”.

1998—Subsecs. (e), (g), (h). Pub. L. 105-178 substituted “State transportation department” for “State highway department” wherever appearing.

1987—Subsec. (g). Pub. L. 100-17 substituted “Transportation” for “Commerce”.

1983—Subsec. (c). Pub. L. 97-424 substituted “Funds appropriated for defense maneuvers and exercises” for “Not exceeding \$5,000,000 of any funds appropriated under the Act approved October 16, 1951 (65 Stat. 422)”.

1961—Subsec. (h). Pub. L. 87-61 added subsec. (h).

1960—Subsec. (g). Pub. L. 86-657 added subsec. (g).

#### EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112-141 effective Oct. 1, 2012, see section 3(a) of Pub. L. 112-141, set out as an Effective and Termination Dates of 2012 Amendment note under section 101 of this title.

#### ECONOMIC ADJUSTMENT COMMITTEE CONSIDERATION OF ADDITIONAL DEFENSE ACCESS ROADS FUNDING SOURCES

Pub. L. 112-81, div. B, title XXVIII, § 2816(b), Dec. 31, 2011, 125 Stat. 1689, provided that:

“(1) CONVENING OF COMMITTEE.—Not later than 90 days after the date of the enactment of this Act [Dec. 31, 2011], the Secretary of Defense, as the chairperson of the Economic Adjustment Committee established in Executive Order No. 127887 [12788] (10 U.S.C. 2391 note), shall convene the Economic Adjustment Committee to consider additional sources of funding for the defense access roads program under section 210 of title 23, United States Code.

“(2) REPORT.—Not later than one year after the date of the enactment of this Act, the Secretary of Defense

shall submit to Congress a report describing the results of the Economic Adjustment Committee deliberations and containing an implementation plan to expand funding sources for the mitigation of significant transportation impacts to access to military reservations pursuant to subsection (b) of section 210 of title 23, United States Code, as amended by subsection (a)."

SEPARATE BUDGET REQUEST FOR PROGRAM

Pub. L. 112–81, div. B, title XXVIII, §2816(c), Dec. 31, 2011, 125 Stat. 1689, provided that: "Amounts requested for a fiscal year for the defense access roads program under section 210 of title 23, United States Code, shall be set forth as a separate budget request in the budget transmitted by the President to Congress for that fiscal year under section 1105 of title 31, United States."

**[§211. Repealed. Pub. L. 100–17, title I, § 133(e)(1), Apr. 2, 1987, 101 Stat. 173]**

Section, Pub. L. 85–767, Aug. 27, 1958, 72 Stat. 909, related to timber access road hearings.

**[§212. Repealed. Pub. L. 112–141, div. A, title I, § 1519(b)(1)(A), July 6, 2012, 126 Stat. 575]**

Section, Pub. L. 85–767, Aug. 27, 1958, 72 Stat. 909, related to the Inter-American Highway.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 2012, see section 3(a) of Pub. L. 112–141, set out as an Effective and Termination Dates of 2012 Amendment note under section 101 of this title.

**[§213. Repealed. Pub. L. 114–94, div. A, title I, § 1109(c)(2), Dec. 4, 2015, 129 Stat. 1343]**

Section, added Pub. L. 112–141, div. A, title I, §1122(a), July 6, 2012, 126 Stat. 494, related to transportation alternatives.

A prior section 213, Pub. L. 85–767, Aug. 27, 1958, 72 Stat. 911, related to construction of Rama Road in Republic of Nicaragua, prior to repeal by Pub. L. 100–17, title I, §133(e)(1), Apr. 2, 1987, 101 Stat. 173.

EFFECTIVE DATE OF REPEAL

Repeal by Pub. L. 114–94 effective Oct. 1, 2015, see section 1003 of Pub. L. 114–94, set out as an Effective Date of 2015 Amendment note under section 5313 of Title 5, Government Organization and Employees.

**[§214. Repealed. Pub. L. 112–141, div. A, title I, § 1119(b), July 6, 2012, 126 Stat. 491]**

Section, added Pub. L. 87–866, §6(b), Oct. 23, 1962, 76 Stat. 1147; amended Pub. L. 97–424, title I, §126(d), Jan. 6, 1983, 96 Stat. 2115, related to public lands development roads and trails.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 2012, see section 3(a) of Pub. L. 112–141, set out as an Effective and Termination Dates of 2012 Amendment note under section 101 of this title.

**[§215. Repealed. Pub. L. 112–141, div. A, title I, § 1114(b)(2)(A), July 6, 2012, 126 Stat. 468]**

Section, added Pub. L. 109–59, title I, §1118(a), Aug. 10, 2005, 119 Stat. 1179, related to territorial highway program.

A prior section 215, added Pub. L. 91–605, title I, §112(a), Dec. 31, 1970, 84 Stat. 1720; amended Pub. L. 95–599, title I, §129(f), Nov. 6, 1978, 92 Stat. 2708; Pub. L. 96–106, §9, Nov. 9, 1979, 93 Stat. 798; Pub. L. 100–17, title I, §133(b)(16), Apr. 2, 1987, 101 Stat. 172, related to territorial highway program, prior to repeal by Pub. L. 109–59, title I, §1118(a), Aug. 10, 2005, 119 Stat. 1179.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 2012, see section 3(a) of Pub. L. 112–141, set out as an Effective and Termination Dates of 2012 Amendment note under section 101 of this title.

**[§216. Repealed. Pub. L. 112–141, div. A, title I, § 1519(b)(1)(A), July 6, 2012, 126 Stat. 575]**

Section, added Pub. L. 91–605, title I, §113(a), Dec. 31, 1970, 84 Stat. 1721, related to the Darien Gap Highway.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 2012, see section 3(a) of Pub. L. 112–141, set out as an Effective and Termination Dates of 2012 Amendment note under section 101 of this title.

**§217. Bicycle transportation and pedestrian walkways**

(a) USE OF STP AND CONGESTION MITIGATION PROGRAM FUNDS.—Subject to project approval by the Secretary, a State may obligate funds apportioned to it under sections 104(b)(2) and 104(b)(4) of this title for construction of pedestrian walkways and bicycle transportation facilities and for carrying out nonconstruction projects related to safe bicycle use.

(b) USE OF NATIONAL HIGHWAY PERFORMANCE PROGRAM FUNDS.—Subject to project approval by the Secretary, a State may obligate funds apportioned to it under section 104(b)(1) of this title for construction of pedestrian walkways and bicycle transportation facilities on land adjacent to any highway on the National Highway System.

(c) USE OF FEDERAL LANDS HIGHWAY FUNDS.—Funds authorized for forest highways, forest development roads and trails, public lands development roads and trails, park roads, parkways, Indian reservation roads, and public lands highways shall be available, at the discretion of the department charged with the administration of such funds, for the construction of pedestrian walkways and bicycle transportation facilities.

(d) STATE BICYCLE AND PEDESTRIAN COORDINATORS.—Each State receiving an apportionment under sections 104(b)(2) and 104(b)(3) of this title shall use such amount of the apportionment as may be necessary to fund in the State department of transportation a position of bicycle and pedestrian coordinator for promoting and facilitating the increased use of nonmotorized modes of transportation, including developing facilities for the use of pedestrians and bicyclists and public education, promotional, and safety programs for using such facilities.

(e) BRIDGES.—In any case where a highway bridge deck being replaced or rehabilitated with Federal financial participation is located on a highway on which bicycles are permitted to operate at each end of such bridge, and the Secretary determines that the safe accommodation of bicycles can be provided at reasonable cost as part of such replacement or rehabilitation, then such bridge shall be so replaced or rehabilitated as to provide such safe accommodations.

(f) FEDERAL SHARE.—For all purposes of this title, construction of a pedestrian walkway and a bicycle transportation facility shall be deemed to be a highway project and the Federal share payable on account of such construction shall be determined in accordance with section 120(b).

## (g) PLANNING AND DESIGN.—

(1) IN GENERAL.—Bicyclists and pedestrians shall be given due consideration in the comprehensive transportation plans developed by each metropolitan planning organization and State in accordance with sections 134 and 135, respectively. Bicycle transportation facilities and pedestrian walkways shall be considered, where appropriate, in conjunction with all new construction and reconstruction of transportation facilities, except where bicycle and pedestrian use are not permitted.

(2) SAFETY CONSIDERATIONS.—Transportation plans and projects shall provide due consideration for safety and contiguous routes for bicyclists and pedestrians. Safety considerations shall include the installation, where appropriate, and maintenance of audible traffic signals and audible signs at street crossings.

(h) USE OF MOTORIZED VEHICLES.—Motorized vehicles may not be permitted on trails and pedestrian walkways under this section, except for—

- (1) maintenance purposes;
- (2) when snow conditions and State or local regulations permit, snowmobiles;
- (3) motorized wheelchairs;
- (4) when State or local regulations permit, electric bicycles; and
- (5) such other circumstances as the Secretary deems appropriate.

(i) TRANSPORTATION PURPOSE.—No bicycle project may be carried out under this section unless the Secretary has determined that such bicycle project will be principally for transportation, rather than recreation, purposes.

(j) DEFINITIONS.—In this section, the following definitions apply:

(1) BICYCLE TRANSPORTATION FACILITY.—The term “bicycle transportation facility” means a new or improved lane, path, or shoulder for use by bicyclists and a traffic control device, shelter, or parking facility for bicycles.

(2) ELECTRIC BICYCLE.—The term “electric bicycle” means any bicycle or tricycle with a low-powered electric motor weighing under 100 pounds, with a top motor-powered speed not in excess of 20 miles per hour.

(3) PEDESTRIAN.—The term “pedestrian” means any person traveling by foot and any mobility-impaired person using a wheelchair.

(4) WHEELCHAIR.—The term “wheelchair” means a mobility aid, usable indoors, and designed for and used by individuals with mobility impairments, whether operated manually or motorized.

(Added Pub. L. 93-87, title I, §124(a), Aug. 13, 1973, 87 Stat. 262; amended Pub. L. 94-280, title I, §134, May 5, 1976, 90 Stat. 441; Pub. L. 95-599, title I, §141(h), Nov. 6, 1978, 92 Stat. 2712; Pub. L. 97-424, title I, §126A, formerly §126, Jan. 6, 1983, 96 Stat. 2116, renumbered §126A, Pub. L. 100-17, title I, §133(a)(2), Apr. 2, 1987, 101 Stat. 170; Pub. L. 100-17, title I, §127, Apr. 2, 1987, 101 Stat. 167; Pub. L. 102-240, title I, §1033, Dec. 18, 1991, 105 Stat. 1975; Pub. L. 104-59, title III, §310(b), Nov. 28, 1995, 109 Stat. 582; Pub. L. 105-178, title I, §1202(a), June 9, 1998, 112 Stat. 168; Pub. L. 109-59, title I, §1954, Aug. 10, 2005, 119 Stat. 1515; Pub. L. 112-141, div. A, title I, §1104(c)(4), July 6,

2012, 126 Stat. 427; Pub. L. 114-94, div. A, title I, §1446(a)(13), Dec. 4, 2015, 129 Stat. 1438.)

## AMENDMENTS

2015—Subsec. (a). Pub. L. 114-94 substituted “104(b)(4)” for “104(b)(3)”.

2012—Subsec. (b). Pub. L. 112-141 substituted “National Highway Performance Program” for “National Highway System” in heading.

2005—Subsec. (c). Pub. L. 109-59 struck out “in conjunction with such trails, roads, highways, and parkways” before period at end.

1998—Subsec. (b). Pub. L. 105-178, §1202(a)(1), inserted “pedestrian walkways and” after “construction of” and struck out “(other than the Interstate System)” after “on the National Highway System”.

Subsec. (e). Pub. L. 105-178, §1202(a)(2), struck out “, other than a highway access to which is fully controlled,” after “located on a highway”.

Subsec. (g). Pub. L. 105-178, §1202(a)(3), added subsec. (g) and struck out heading and text of former subsec. (g). Text read as follows: “Pedestrian walkways and bicycle transportation facilities to be constructed under this section shall be located and designed pursuant to an overall plan to be developed by each metropolitan planning organization and State and incorporated into their comprehensive annual long-range plans in accordance with sections 134 and 135 of this title, respectively. Such plans shall provide due consideration for safety and contiguous routes.”

Subsec. (h). Pub. L. 105-178, §1202(a)(4), substituted “Motorized vehicles may not” for “No motorized vehicles shall” in introductory provisions.

Subsec. (h)(3). Pub. L. 105-178, §1202(a)(5), substituted “motorized wheelchairs;” for “when State and local regulations permit, motorized wheelchairs; and”.

Subsec. (h)(4), (5). Pub. L. 105-178, §1202(a)(6), added par. (4) and redesignated former par. (4) as (5).

Subsec. (j). Pub. L. 105-178, §1202(a)(7), added subsec. (j) and struck out heading and text of former subsec. (j). Text read as follows: “For purposes of this section, a ‘bicycle transportation facility’ means new or improved lanes, paths, or shoulders for use by bicyclists, traffic control devices, shelters, and parking facilities for bicycles.”

1995—Subsec. (f). Pub. L. 104-59 substituted “determined in accordance with section 120(b)” for “80 percent”.

1991—Pub. L. 102-240 substituted “walkways” for “walkway” in section catchline and amended text generally, substituting present provisions for provisions authorizing States to construct pedestrian walkways and bicycle lanes, paths, etc., as Federal-aid highway projects, relating to safe accommodation of bicycles on bridge with deck replaced or rehabilitated with Federal participation, prohibiting bicycle project under this section unless principally for transportation purposes, deeming walkway and bicycle projects as highway projects and setting Federal share at 100 per centum, allowing use of funds authorized for forest highways, forest development roads and trails, etc., for construction of walkways and bicycle routes, prohibiting use of motor vehicles on trails and walkways, and relating to obligation of funds.

1987—Subsec. (b)(1). Pub. L. 100-17 inserted “and sums apportioned or allocated for highway substitute projects in accordance with section 103(e)(4) of this title” after “title” in second sentence.

1983—Subsec. (a). Pub. L. 97-424 designated as subsec. (a) that portion of former subsec. (a) relating to pedestrian walkways. Remainder of former subsec. (a) relating to bicycles was redesignated (b)(1).

Subsec. (b). Pub. L. 97-424 redesignated as par. (1) that portion of former subsec. (a) relating to bicycles and added pars. (2) and (3). Provisions of former subsec. (b) relating to pedestrian walkways and bicycles projects were redesignated (c) and (d), respectively.

Subsec. (c). Pub. L. 97-424 redesignated as subsec. (c) that portion of former subsec. (b) relating to pedestrian

walkways. Provisions of former subsec. (c) relating to pedestrian walkways and to bicycle routes were redesignated (e) and (f), respectively.

Subsec. (d). Pub. L. 97-424 redesignated as subsec. (d) that portion of former subsec. (b) relating to bicycle projects. Former subsec. (d) redesignated (g).

Subsec. (e). Pub. L. 97-424 redesignated as subsec. (e) that portion of former subsec. (c) relating to pedestrian walkways. Former subsec. (e) redesignated (h) and amended.

Subsec. (f). Pub. L. 97-424 redesignated as subsec. (f) that portion of former subsec. (c) relating to bicycle routes.

Subsec. (g). Pub. L. 97-424 redesignated former subsec. (d) as (g).

Subsec. (h). Pub. L. 97-424 redesignated former subsec. (e) as (h), substituted reference to subssecs. (a), (b), (e), and (f) of this section for reference to former subssecs. (a) and (c), and substituted provision that no State shall obligate more than \$4,500,000 for such projects in any fiscal year, except that the Secretary may, upon application, waive this limitation for a State for any fiscal year for provision that no State was to obligate more than \$2,500,000 for such projects for any fiscal year.

1978—Subsec. (a). Pub. L. 95-599 inserted provision relating to energy conservation and struck out requirement that such construction be in conjunction with Federal-aid highways.

1976—Subsec. (e). Pub. L. 94-280 substituted “\$45,000,000” for “\$40,000,000” and “\$2,500,000” for “\$2,000,000”.

#### EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114-94 effective Oct. 1, 2015, see section 1003 of Pub. L. 114-94, set out as a note under section 5313 of Title 5, Government Organization and Employees.

#### EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112-141 effective Oct. 1, 2012, see section 3(a) of Pub. L. 112-141, set out as an Effective and Termination Dates of 2012 Amendment note under section 101 of this title.

#### EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-240 effective Dec. 18, 1991, and applicable to funds authorized to be appropriated or made available after Sept. 30, 1991, and, with certain exceptions, not applicable to funds appropriated or made available on or before Sept. 30, 1991, see section 1100 of Pub. L. 102-240, set out as a note under section 104 of this title.

#### NONMOTORIZED TRANSPORTATION PILOT PROGRAM

Pub. L. 109-59, title I, §1807, Aug. 10, 2005, 119 Stat. 1460, as amended by Pub. L. 110-244, title I, §106, June 6, 2008, 122 Stat. 1602, provided that:

“(a) ESTABLISHMENT.—The Secretary [of Transportation] shall establish and carry out a nonmotorized transportation pilot program to construct, in the following 4 communities selected by the Secretary, a network of nonmotorized transportation infrastructure facilities, including sidewalks, bicycle lanes, and pedestrian and bicycle trails, that connect directly with transit stations, schools, residences, businesses, recreation areas, and other community activity centers:

“(1) Columbia, Missouri.

“(2) Marin County, California.

“(3) Minneapolis, Minnesota.

“(4) Sheboygan County, Wisconsin.

“(b) PURPOSE.—The purpose of the program shall be to demonstrate the extent to which bicycling and walking can carry a significant part of the transportation load, and represent a major portion of the transportation solution, within selected communities.

“(c) GRANTS.—In carrying out the program, the Secretary [of Transportation] may make a grant of \$6,250,000 per fiscal year for each of the communities

set forth in subsection (a) to State, local, and regional agencies that the Secretary determines are suitably equipped and organized to carry out the objectives and requirements of this section. An agency that receives a grant under this section may suballocate grant funds to a nonprofit organization to carry out the program under this section.

“(d) STATISTICAL INFORMATION.—In carrying out the program, the Secretary [of Transportation] shall develop statistical information on changes in motor vehicle, nonmotorized transportation, and public transportation usage in communities participating in the program and assess how such changes decrease congestion and energy usage, increase the frequency of bicycling and walking, and promote better health and a cleaner environment.

“(e) REPORTS.—The Secretary [of Transportation] shall submit to Congress an interim report not later than September 30, 2007, and a final report not later than September 30, 2010, on the results of the program.

“(f) FUNDING.—

“(1) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, out of the Highway Trust Fund (other than the Mass Transit Account), \$25,000,000 for each of fiscal years 2006 through 2009.

“(2) CONTRACT AUTHORITY.—Funds authorized to be appropriated by this section shall be available for obligation in the same manner and to the same extent as if the funds were apportioned under chapter 1 of title 23, United States Code; except that the Federal share of the cost of the project shall be 100 percent, and the funds shall remain available until expended and shall not be transferable.

“(g) TREATMENT OF PROJECTS.—Notwithstanding any other provision of law, projects assisted under this subsection shall be treated as projects on a Federal-aid system under chapter 1 of title 23, United States Code.”

#### DESIGN GUIDANCE

Pub. L. 105-178, title I, §1202(b), June 9, 1998, 112 Stat. 169, provided that:

“(1) IN GENERAL.—In implementing section 217(g) of title 23, United States Code, the Secretary, in cooperation with the American Association of State Highway and Transportation Officials, the Institute of Transportation Engineers, and other interested organizations, shall develop guidance on the various approaches to accommodating bicycles and pedestrian travel.

“(2) ISSUES TO BE ADDRESSED.—The guidance shall address issues such as the level and nature of the demand, volume, and speed of motor vehicle traffic, safety, terrain, cost, and sight distance.

“(3) RECOMMENDATIONS.—The guidance shall include recommendations on amending and updating the policies of the American Association of State Highway and Transportation Officials relating to highway and street design standards to accommodate bicyclists and pedestrians.

“(4) TIME PERIOD FOR DEVELOPMENT.—The guidance shall be developed within 18 months after the date of enactment of this Act [June 9, 1998].”

#### ENERGY CONSERVATION BICYCLE TRANSPORTATION PROGRAM; REPORT

Pub. L. 95-619, title VI, §682, Nov. 9, 1978, 92 Stat. 3287, set forth findings respecting an energy conservation bicycle transportation program and required a study and report not more than one year after Nov. 9, 1978, by the Secretary of Transportation for bicycle use potential, etc.

#### BIKEWAY CONSTRUCTION PROJECTS

Pub. L. 95-599, title I, §141(a)-(e), (i), Nov. 6, 1978, 92 Stat. 2711, 2712, related to establishment by Secretary of design and construction standards for bikeway construction projects and to grants to States for bikeway construction projects, prior to repeal by Pub. L. 100-17, title I, §133(e)(2), Apr. 2, 1987, 101 Stat. 173.

## BIKEWAY DEMONSTRATION PROGRAM

Pub. L. 93-643, § 119, Jan. 4, 1975, 88 Stat. 2288, authorized grants to States for demonstration projects for construction of bikeways, prior to repeal by Pub. L. 100-17, title I, § 133(e)(2), Apr. 2, 1987, 101 Stat. 173.

**§ 218. Alaska Highway**

(a) Notwithstanding any other provision of law upon agreement with the State of Alaska, the Secretary is authorized to expend on the Alaska Marine Highway System any Federal-aid highway funds apportioned to the State of Alaska under this title at a Federal share of 100 per centum.

(b) For purposes of this section, the term "Alaska Marine Highway System" includes all existing or planned transportation facilities and equipment in Alaska, including the lease, purchase, or construction of vessels, terminals, docks, floats, ramps, staging areas, parking lots, bridges and approaches thereto, and necessary roads.

(Added Pub. L. 93-87, title I, § 127(a)(1), Aug. 13, 1973, 87 Stat. 264; amended Pub. L. 94-147, Dec. 12, 1975, 89 Stat. 803; Pub. L. 97-424, title I, § 158, Jan. 6, 1983, 96 Stat. 2135; Pub. L. 105-277, div. A, § 101(g) [title III, § 316], Oct. 21, 1998, 112 Stat. 2681-439, 2681-468; Pub. L. 108-7, div. I, title III, § 327, Feb. 20, 2003, 117 Stat. 413; Pub. L. 109-59, title IV, § 4409, Aug. 10, 2005, 119 Stat. 1778; Pub. L. 112-141, div. A, title I, § 1519(c)(10), formerly § 1519(c)(11), July 6, 2012, 126 Stat. 576, renumbered § 1519(c)(10), Pub. L. 114-94, div. A, title I, § 1446(d)(5)(B), Dec. 4, 2015, 129 Stat. 1438.)

## AMENDMENTS

2015—Pub. L. 114-94 amended Pub. L. 112-141, § 1519(c). See 2012 Amendment notes below.

2012—Subsec. (a). Pub. L. 112-141, § 1519(c)(10)(A), formerly § 1519(c)(11)(A), as renumbered by Pub. L. 114-94, § 1446(d)(5)(B), designated third sentence as subsec. (a), struck out "in addition to such funds," after "provision of law" and "such highway or" after "expend on", and struck out former first, second, fourth, and fifth sentences, including pars. (1) to (5), relating to reconstruction of the Alaska Highway from the Alaskan border to Haines Junction in Canada and the Haines Cutoff Highway from Haines Junction in Canada to Haines, appropriations for reconstruction, obligation limitation enacted for fiscal year 1983, and certain restrictions on expenditures for construction of highways in Canada.

Subsecs. (b), (c). Pub. L. 112-141, § 1519(c)(10)(B), (C), formerly § 1519(c)(11)(B), (C), as renumbered by Pub. L. 114-94, § 1446(d)(5)(B), redesignated subsec. (c) as (b) and struck out former subsec. (b) which read as follows: "The survey and construction work undertaken in Canada pursuant to this section shall be under the general supervision of the Secretary."

2005—Subsec. (a). Pub. L. 109-59, § 4409(1), struck out "prior to the date of the enactment of the reauthorization of the Transportation Equity Act for the 21st Century" before "shall not apply" in introductory provisions.

Subsec. (c). Pub. L. 109-59, § 4409(2), added subsec. (c).  
2003—Subsec. (a). Pub. L. 108-7 inserted "reauthorization of the" before "Transportation".

1998—Subsec. (a). Pub. L. 105-277, § 101(g) [title III, § 316(1)(A)], substituted "to Haines" for "to the south Alaskan border" in first sentence, substituted "such highway or the Alaska Marine Highway System" for "such highway" in third sentence, substituted "any other fiscal year thereafter, including any portion of any other fiscal year thereafter, prior to the date of the enactment of the Transportation Equity Act for the

21st Century" for "any other fiscal year thereafter" in fourth sentence, substituted "construction of the portion of such highways that are in Canada until an agreement" for "construction of such highways until an agreement" in fifth sentence.

Subsec. (b). Pub. L. 105-277, § 101(g) [title III, § 316(2)], inserted "in Canada" after "undertaken".

1983—Subsec. (a). Pub. L. 97-424 inserted provision that notwithstanding any other provision of law, upon agreement with the State of Alaska, the Secretary is authorized to expend on the highway any Federal-aid highway funds apportioned to the State of Alaska under this title at a Federal share of 100 per centum, and that any obligation limitation enacted for fiscal year 1983 or for any other fiscal year thereafter shall not apply to such projects.

1975—Subsec. (a)(1). Pub. L. 94-147 struck out provision requiring that the right-of-way granted by the Canadian Government shall forever be held inviolate as part of such highways in public use.

## EFFECTIVE DATE OF 2015 AMENDMENT

Pub. L. 114-94, div. A, title I, § 1446(d), Dec. 4, 2015, 129 Stat. 1438, provided that the amendment made by section 1446(d)(5)(B) is effective as of July 6, 2012, and as if included in Pub. L. 112-141 as enacted.

## EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112-141 effective Oct. 1, 2012, see section 3(a) of Pub. L. 112-141, set out as an Effective and Termination Dates of 2012 Amendment note under section 101 of this title.

## ALASKAN ROADS STUDY; INVESTIGATION; REPORT TO CONGRESS

Pub. L. 94-280, title I, § 151, May 5, 1976, 90 Stat. 448, authorized the Secretary of Transportation to undertake an investigation and study to determine the cost of, and the responsibility for, repairing the damage to Alaska highways that has been or will be caused by heavy truck traffic during construction of the trans-Alaska pipeline, and required the Secretary to report the initial findings to the Congress on or before Sept. 30, 1976, and the final conclusions on rebuilding costs no later than three months after completion of pipeline construction.

## APPROPRIATIONS AUTHORIZATION

Pub. L. 93-87, title I, § 127(b), Aug. 13, 1973, 87 Stat. 264, provided that: "For the purpose of completing necessary reconstruction of the Alaska Highway from the Alaskan border to Haines Junction in Canada and the Haines Cutoff Highway from Haines Junction in Canada to the south Alaskan border there is authorized to be appropriated the sum of \$58,670,000 to be expended in accordance with the provisions of section 218 of title 23 of the United States Code."

**[§ 219. Repealed. Pub. L. 100-17, title I, § 133(e)(1), Apr. 2, 1987, 101 Stat. 173]**

Section, added Pub. L. 93-643, § 122(a), Jan. 4, 1975, 88 Stat. 2289; amended Pub. L. 94-280, title I, § 135(a), May 5, 1976, 90 Stat. 441; Pub. L. 95-599, title I, § 168(d), Nov. 6, 1978, 92 Stat. 2723; Pub. L. 96-106, § 10(a), Nov. 9, 1979, 93 Stat. 798, related to projects for safer off-system roads.

**CHAPTER 3—GENERAL PROVISIONS**

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| Sec.   |  |
| 301.   | Freedom from tolls.  |
| 302.   | State transportation department.                                   |
| [303.] | Repealed.]   |
| 304.   | Participation by small business enterprises.                       |
| 305.   | Archeological and paleontological salvage.                         |
| 306.   | Mapping.   |
| [307.] | Repealed.]   |
| 308.   | Cooperation with Federal and State agencies and foreign countries. |