

“(1) in consultation with the applicable Federal land management agencies, establish clear procedures that are—

“(A) applicable to the alternative contracting method; and

“(B) to the maximum extent practicable, consistent with the requirements applicable to Federal procurement transactions;

“(2) solicit input on the use of the alternative contracting method from the affected industry prior to using the method; and

“(3) analyze and prepare an evaluation of the use of the alternative contracting method.”

NATIONALLY SIGNIFICANT FEDERAL LANDS AND TRIBAL PROJECTS PROGRAM

Pub. L. 114-94, div. A, title I, §1123, Dec. 4, 2015, 129 Stat. 1370, as amended by Pub. L. 117-58, div. A, title I, §11127, Nov. 15, 2021, 135 Stat. 507, 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 \$12,500,000.

“(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) COST SHARE.—

“(1) FEDERAL SHARE.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), the Federal share of the cost of a project shall be up to 90 percent.

“(B) TRIBAL PROJECTS.—In the case of a project on a tribal transportation facility (as defined in section 101(a) of title 23, United States Code), the Federal share of the cost of the project shall be 100 percent.

“(2) NON-FEDERAL SHARE.—Notwithstanding any other provision of law, any Federal funds may be used to pay the non-Federal share of the cost of a project carried out under this section.

“(h) USE OF FUNDS.—

“(1) IN GENERAL.—For each fiscal year, of the amounts made available to carry out this section—

“(A) 50 percent shall be used for eligible projects on Federal lands transportation facilities and Federal lands access transportation facilities (as those terms are defined in section 101(a) of title 23, United States Code); and

“(B) 50 percent shall be used for eligible projects on tribal transportation facilities (as defined in section 101(a) of title 23, United States Code).

“(2) REQUIREMENT.—Not less than 1 eligible project carried out using the amount described in paragraph (1)(A) shall be in a unit of the National Park System with not less than 3,000,000 annual visitors.

“(3) AVAILABILITY.—Amounts made available to carry out this section 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. 5307(b)) 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 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 the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5301 et seq.), 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 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 with¹ Indian Self-Determination and Education Assistance Act (25 U.S.C. 5301 et seq.).

(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. 5301 et seq.), 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. 5301 et seq.) 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,

¹ So in original. Probably should be followed by “the”.

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. 5301 et seq.).

(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. 5301 et seq.).

(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. 5301 et seq.), 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. 5301 et seq.).

(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 bridges eligible for the tribal transportation program classified as in poor condition, having low load capacity, or needing geometric improvements.

(2) USE OF FUNDS.—Funds made available to carry out this subsection shall be used—

(A) to carry out any planning, design, engineering, preconstruction, construction, and inspection of new or replacement tribal transportation facility bridges;

(B) to replace, rehabilitate, seismically retrofit, paint, apply calcium magnesium acetate, sodium acetate/formate, or other environmentally acceptable, minimally corrosive anti-icing and deicing composition; or

(C) to implement any countermeasure for tribal transportation facility bridges classified as in poor condition, having a low load capacity, or needing geometric improvements, 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 classified as in poor condition, having a low load capacity, or needing geometric improvements.

(4) APPROVAL REQUIREMENT.—The Secretary may make funds available under this subsection 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 4 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; Pub. L. 117-58, div. A, title I, §§11524(c), 11525(m), title IV, §§14004, 14008(d), Nov. 15, 2021, 135 Stat. 606, 608, 648, 651.)

Editorial Notes

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. (b) and (c), is Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, which is classified principally to chapter 46 (§5301 et seq.) of Title 25, Indians. 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, §§115(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

2021—Pub. L. 117-58, §11525(m)(1), substituted “(25 U.S.C. 5301 et seq.)” for “(25 U.S.C. 450 et seq.)” wherever appearing.

Subsec. (a)(10)(B). Pub. L. 117-58, §11525(m)(2), substituted “(25 U.S.C. 5307(b))” for “(25 U.S.C. 450e(b))”.

Subsec. (b)(5). Pub. L. 117-58, §11525(m)(3), inserted “the” after “agreement under” in introductory provisions.

Subsec. (d)(1). Pub. L. 117-58, §11524(c)(1), substituted “bridges eligible for the tribal transportation program classified as in poor condition, having low load capacity, or needing geometric improvements” for “deficient bridges eligible for the tribal transportation program”.

Subsec. (d)(2). Pub. L. 117-58, §14004, added par. (2) and struck out former par. (2). Prior to amendment, text read as follows: “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 deicing composition; or

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

Subsec. (d)(3)(C). Pub. L. 117-58, §11524(c)(2), substituted “classified as in poor condition, having a low load capacity, or needing geometric improvements” for “structurally deficient or functionally obsolete”.

Subsec. (e)(1). Pub. L. 117-58, §14008(d), substituted “4 percent” for “2 percent”.

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.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 117-58 effective Oct. 1, 2021, see section 10003 of Pub. L. 117-58, set out as a note under section 101 of this title.

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.

ENVIRONMENTAL REVIEWS FOR CERTAIN TRIBAL TRANSPORTATION FACILITIES

Pub. L. 117-58, div. A, title IV, §14002, Nov. 15, 2021, 135 Stat. 646, provided that:

“(a) DEFINITION OF TRIBAL TRANSPORTATION SAFETY PROJECT.—

“(1) IN GENERAL.—In this section, the term ‘tribal transportation safety project’ means a project described in paragraph (2) that is eligible for funding under section 202 of title 23, United States Code.

“(2) PROJECT DESCRIBED.—A project described in this paragraph is a project that corrects or improves a hazardous road location or feature or addresses a highway safety problem through 1 or more of the activities described in any of the clauses under section 148(a)(4)(B) of title 23, United States Code.

“(b) REVIEWS OF TRIBAL TRANSPORTATION SAFETY PROJECTS.—

“(1) IN GENERAL.—The Secretary [of the Interior] or the Secretary of Transportation, as applicable, or the head of another Federal agency responsible for a decision related to a tribal transportation safety project shall complete any approval or decision for the review of the tribal transportation safety project required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) or any other applicable Federal law on an expeditious basis using the shortest existing applicable process.

“(2) REVIEW OF APPLICATIONS.—Not later than 45 days after the date of receipt of a complete application by an Indian tribe for approval of a tribal transportation safety project, the Secretary or the Secretary of Transportation, as applicable, shall—

“(A) take final action on the application; or

“(B) provide the Indian tribe a schedule for completion of the review described in paragraph (1), including the identification of any other Federal agency that has jurisdiction with respect to the project.

“(3) DECISIONS UNDER OTHER FEDERAL LAWS.—In any case in which a decision under any other Federal law relating to a tribal transportation safety project (including the issuance or denial of a permit or license) is required, not later than 45 days after the Secretary or the Secretary of Transportation, as applicable, has made all decisions of the lead agency under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) with respect to the project, the head of the Federal agency responsible for the decision shall—

“(A) make the applicable decision; or

“(B) provide the Indian tribe a schedule for making the decision.

“(4) EXTENSIONS.—The Secretary or the Secretary of Transportation, as applicable, or the head of the Federal agency may extend the period under paragraph (2) or (3), as applicable, by an additional 30 days

by providing the Indian tribe notice of the extension, including a statement of the need for the extension.

“(5) NOTIFICATION AND EXPLANATION.—In any case in which a required action is not completed by the deadline under paragraph (2), (3), or (4), as applicable, the Secretary, the Secretary of Transportation, or the head of a Federal agency, as applicable, shall—

“(A) notify the Committees on Indian Affairs and Environment and Public Works of the Senate and the Committee on Natural Resources of the House of Representatives of the failure to comply with the deadline; and

“(B) provide to the Committees described in subparagraph (A) a detailed explanation of the reasons for the failure to comply with the deadline.”

PROGRAMMATIC AGREEMENTS FOR TRIBAL CATEGORICAL EXCLUSIONS

Pub. L. 117–58, div. A, title IV, §14003, Nov. 15, 2021, 135 Stat. 648, provided that:

“(a) IN GENERAL.—The Secretary [of the Interior] and the Secretary of Transportation shall enter into programmatic agreements with Indian tribes that establish efficient administrative procedures for carrying out environmental reviews for projects eligible for assistance under section 202 of title 23, United States Code.

“(b) INCLUSIONS.—A programmatic agreement under subsection (a)—

“(1) may include an agreement that allows an Indian tribe to determine, on behalf of the Secretary and the Secretary of Transportation, whether a project is categorically excluded from the preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

“(2) shall—

“(A) require that the Indian tribe maintain adequate capability in terms of personnel and other resources to carry out applicable agency responsibilities pursuant to section 1507.2 of title 40, Code of Federal Regulations (or successor regulations);

“(B) set forth the responsibilities of the Indian tribe for making categorical exclusion determinations, documenting the determinations, and achieving acceptable quality control and quality assurance;

“(C) allow—

“(i) the Secretary and the Secretary of Transportation to monitor compliance of the Indian tribe with the terms of the agreement; and

“(ii) the Indian tribe to execute any needed corrective action;

“(D) contain stipulations for amendments, termination, and public availability of the agreement once the agreement has been executed; and

“(E) have a term of not more than 5 years, with an option for renewal based on a review by the Secretary and the Secretary of Transportation of the performance of the Indian tribe.”

STUDY OF ROAD MAINTENANCE ON INDIAN LAND

Pub. L. 117–58, div. A, title IV, §14006, Nov. 15, 2021, 135 Stat. 649, provided that:

“(a) DEFINITIONS.—In this section:

“(1) INDIAN LAND.—The term ‘Indian land’ has the meaning given the term ‘Indian lands’ in section 3 of the Native American Business Development, Trade Promotion, and Tourism Act of 2000 (25 U.S.C. 4302).

“(2) INDIAN TRIBE.—The term ‘Indian tribe’ has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304).

“(3) ROAD.—The term ‘road’ means a road managed in whole or in part by the Bureau of Indian Affairs.

“(4) SECRETARY.—The term ‘Secretary’ means the Secretary [of the Interior], acting through the Assistant Secretary for Indian Affairs.

“(b) STUDY.—Not later than 2 years after the date of enactment of this Act [Nov. 15, 2021], the Secretary, in consultation with the Secretary of Transportation, shall carry out a study to evaluate—

“(1) the long-term viability and useful life of existing roads on Indian land;

“(2) any steps necessary to achieve the goal of addressing the deferred maintenance backlog of existing roads on Indian land;

“(3) programmatic reforms and performance enhancements necessary to achieve the goal of restructuring and streamlining road maintenance programs on existing or future roads located on Indian land; and

“(4) recommendations on how to implement efforts to coordinate with States, counties, municipalities, and other units of local government to maintain roads on Indian land.

“(c) TRIBAL CONSULTATION AND INPUT.—Before beginning the study under subsection (b), the Secretary shall—

“(1) consult with any Indian tribes that have jurisdiction over roads eligible for funding under the road maintenance program of the Bureau of Indian Affairs; and

“(2) solicit and consider the input, comments, and recommendations of the Indian tribes described in paragraph (1).

“(d) REPORT.—On completion of the study under subsection (b), the Secretary, in consultation with the Secretary of Transportation, shall submit to the Committees on Indian Affairs and Environment and Public Works of the Senate and the Committees on Natural Resources and Transportation and Infrastructure of the House of Representatives a report on the results and findings of the study.

“(e) STATUS REPORT.—Not later than 2 years after the date of enactment of this Act, and not less frequently than every 2 years thereafter, the Secretary, in consultation with the Secretary of Transportation, shall submit to the Committees on Indian Affairs and Environment and Public Works of the Senate and the Committees on Natural Resources and Transportation and Infrastructure of the House of Representatives a report that includes a description of—

“(1) the progress made toward addressing the deferred maintenance needs of the roads on Indian land, including a list of projects funded during the fiscal period covered by the report;

“(2) the outstanding needs of the roads that have been provided funding to address the deferred maintenance needs;

“(3) the remaining needs of any of the projects referred to in paragraph (1);

“(4) how the goals described in subsection (b) have been met, including—

“(A) an identification and assessment of any deficiencies or shortfalls in meeting the goals; and

“(B) a plan to address the deficiencies or shortfalls in meeting the goals; and

“(5) any other issues or recommendations provided by an Indian tribe under the consultation and input process under subsection (c) that the Secretary determines to be appropriate.”

MAINTENANCE OF CERTAIN INDIAN RESERVATION ROADS

Pub. L. 117–58, div. A, title IV, §14007, Nov. 15, 2021, 135 Stat. 650, provided that: “The Commissioner of U.S. Customs and Border Protection may transfer funds to the Director of the Bureau of Indian Affairs to maintain, repair, or reconstruct roads under the jurisdiction of the Director, subject to the condition that the Commissioner and the Director shall mutually agree that the primary user of the subject road is U.S. Customs and Border Protection.”

TRIBAL TRANSPORTATION SAFETY NEEDS

Pub. L. 117–58, div. A, title IV, §14008(a)–(c), Nov. 15, 2021, 135 Stat. 650, 651, provided that:

“(a) DEFINITIONS.—In this section:

“(1) ALASKA NATIVE.—The term ‘Alaska Native’ has the meaning given the term ‘Native’ in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

“(2) ALASKA NATIVE VILLAGE.—The term ‘Alaska Native village’ has the meaning given the term ‘Native village’ in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

“(3) INDIAN TRIBE.—The term ‘Indian tribe’ has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304).

“(b) BEST PRACTICES, STANDARDIZED CRASH REPORT FORM.—

“(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act [Nov. 15, 2021], the Secretary of Transportation, in consultation with the Secretary [of the Interior], Indian tribes, Alaska Native villages, and State departments of transportation shall develop—

“(A) best practices for the compiling, analysis, and sharing of motor vehicle crash data for crashes occurring on Indian reservations and in Alaska Native communities; and

“(B) a standardized form for use by Indian tribes and Alaska Native communities to carry out those best practices.

“(2) PURPOSE.—The purpose of the best practices and standardized form developed under paragraph (1) shall be to improve the quality and quantity of crash data available to and used by the Federal Highway Administration, State departments of transportation, Indian tribes, and Alaska Native villages.

“(3) REPORT.—On completion of the development of the best practices and standardized form under paragraph (1), the Secretary of Transportation shall submit to the Committees on Indian Affairs and Environment and Public Works of the Senate and the Committees on Natural Resources and Transportation and Infrastructure of the House of Representatives a report describing the best practices and standardized form.

“(c) USE OF IMARS.—The Director of the Bureau of Indian Affairs shall require all law enforcement offices of the Bureau, for the purpose of reporting motor vehicle crash data for crashes occurring on Indian reservations and in Alaska Native communities—

“(1) to use the crash report form of the applicable State; and

“(2) to upload the information on that form to the Incident Management Analysis and Reporting System (IMARS) of the Department of the Interior.”

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; Pub. L. 117–58, div. A, title I, §11128, Nov. 15, 2021, 135 Stat. 508, 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 [of Transportation] 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 [of Transportation] 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 per-

cent 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) FUNDING.—

“(1) SET-ASIDE.—For each of fiscal years 2022 through 2026, of the amounts made available to carry out the tribal transportation program under section 202 of title 23, United States Code, for that fiscal year, the Secretary shall use \$9,000,000 to carry out the program.

“(2) AUTHORIZATION OF APPROPRIATIONS.—In addition to amounts made available under paragraph (1), 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 2022 through 2026.

“(3) ADMINISTRATION.—The funds made available under paragraphs (1) and (2) 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.

DEFINITION OF SECRETARY

Pub. L. 117-58, div. A, title IV, § 14001, Nov. 15, 2021, 135 Stat. 646, provided that: “In this title [amending this section and section 102 of Title 49, Transportation, and enacting provisions set out as notes under this section], the term ‘Secretary’ means the Secretary of the Interior.”

§ 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 than \$20,000,000¹ 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.

¹ So in original.