

(Added Pub. L. 112-141, div. A, title I, §1310(a), July 6, 2012, 126 Stat. 540.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (a)(1), 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.

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.

**§ 169. Development of programmatic mitigation plans**

(a) IN GENERAL.—As part of the statewide or metropolitan transportation planning process, a State or metropolitan planning organization may develop 1 or more programmatic mitigation plans to address the potential environmental impacts of future transportation projects.

(b) SCOPE.—

(1) SCALE.—A programmatic mitigation plan may be developed on a regional, ecosystem, watershed, or statewide scale.

(2) RESOURCES.—The plan may encompass multiple environmental resources within a defined geographic area or may focus on a specific resource, such as aquatic resources, parkland, or wildlife habitat.

(3) PROJECT IMPACTS.—The plan may address impacts from all projects in a defined geographic area or may focus on a specific type of project.

(4) CONSULTATION.—The scope of the plan shall be determined by the State or metropolitan planning organization, as appropriate, in consultation with the agency or agencies with jurisdiction over the resources being addressed in the mitigation plan.

(c) CONTENTS.—A programmatic mitigation plan may include—

(1) an assessment of the condition of environmental resources in the geographic area covered by the plan, including an assessment of recent trends and any potential threats to those resources;

(2) an assessment of potential opportunities to improve the overall quality of environmental resources in the geographic area covered by the plan, through strategic mitigation for impacts of transportation projects;

(3) standard measures for mitigating certain types of impacts;

(4) parameters for determining appropriate mitigation for certain types of impacts, such as mitigation ratios or criteria for determining appropriate mitigation sites;

(5) adaptive management procedures, such as protocols that involve monitoring predicted impacts over time and adjusting mitigation measures in response to information gathered through the monitoring; and

(6) acknowledgment of specific statutory or regulatory requirements that must be satisfied when determining appropriate mitigation for certain types of resources.

(d) PROCESS.—Before adopting a programmatic mitigation plan, a State or metropolitan planning organization shall—

(1) consult with each agency with jurisdiction over the environmental resources considered in the programmatic mitigation plan;

(2) make a draft of the plan available for review and comment by applicable environmental resource agencies and the public;

(3) consider any comments received from such agencies and the public on the draft plan; and

(4) address such comments in the final plan.

(e) INTEGRATION WITH OTHER PLANS.—A programmatic mitigation plan may be integrated with other plans, including watershed plans, ecosystem plans, species recovery plans, growth management plans, and land use plans.

(f) CONSIDERATION IN PROJECT DEVELOPMENT AND PERMITTING.—If a programmatic mitigation plan has been developed pursuant to this section, any Federal agency responsible for environmental reviews, permits, or approvals for a transportation project may use the recommendations in a programmatic mitigation plan when carrying out the responsibilities under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(g) PRESERVATION OF EXISTING AUTHORITIES.—Nothing in this section limits the use of programmatic approaches to reviews under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(Added Pub. L. 112-141, div. A, title I, §1311(a), July 6, 2012, 126 Stat. 543.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsecs. (f) and (g), 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.

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.

**§ 170. Funding flexibility for transportation emergencies**

(a) IN GENERAL.—Notwithstanding any other provision of law, a State may use up to 100 percent of any covered funds of the State to repair or replace a transportation facility that has suffered serious damage as a result of a natural disaster or catastrophic failure from an external cause.

(b) DECLARATION OF EMERGENCY.—Funds may be used under this section only for a disaster or emergency declared by the President pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).

(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 to 209. Repealed.]	
210.	Defense access roads.
[211, 212. Repealed.]	
213.	Transportation alternatives <sup>1</sup>
[214 to 216. Repealed.]	
217.	Bicycle transportation and pedestrian walkways.
218.	Alaska Highway.
[219. Repealed.]	

#### AMENDMENTS

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-Amer-

ican Highway”, added item 213, and struck out items 214 “Public lands development roads and trails”, 215 “Territorial highway program”, and 216 “Darién 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 contracts 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.—

<sup>1</sup> So in original. Probably should be followed by a period.