

CHAPTER 2—OTHER HIGHWAYS

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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 “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 L. 105-178, title I, §1112(b), June 9, 1998, 112 Stat. 151, substituted “Recreational trails program” for “Repealed” in item 206.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 L. 97-424, title I, §126(e)(3), Jan. 6, 1983, 96 Stat. 2116, substituted “Repealed” in items 206 through 209 which read “Park roads and trails”, “Parkways”, “Indian reservation roads”, “Public lands highways”, respectively.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.—

(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.).

(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, 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 is classified principally to subchapter II (§450 et seq.) of chapter 14 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 450 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.