

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

(n) REGULATIONS.—

(1) IN GENERAL.—

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

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

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

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

(2) COMMITTEE.—

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

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

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

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

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

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

REFERENCES IN TEXT

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

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

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

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

PRIOR PROVISIONS

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

AMENDMENTS

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

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

EFFECTIVE DATE

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

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

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

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

§210. Defense access roads

(a) AUTHORIZATION.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

AMENDMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

EFFECTIVE DATE OF 2012 AMENDMENT

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

ECONOMIC ADJUSTMENT COMMITTEE CONSIDERATION OF ADDITIONAL DEFENSE ACCESS ROADS FUNDING SOURCES

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

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

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

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

SEPARATE BUDGET REQUEST FOR PROGRAM

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

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

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

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

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

EFFECTIVE DATE OF REPEAL

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

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

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

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

EFFECTIVE DATE OF REPEAL

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

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

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

EFFECTIVE DATE OF REPEAL

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

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

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

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

EFFECTIVE DATE OF REPEAL

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

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

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

EFFECTIVE DATE OF REPEAL

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

§217. Bicycle transportation and pedestrian walkways

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

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

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

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

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

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