| **COLUMN 1** | **COLUMN 2** | **COLUMN 3** |
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| **“Fixing America's Surface** **Transportation Act” (“FAST Act”)****(Public Law 114-94)****Sec. 1121. Tribal Transportation** **Self-Governance Program****(23 U.S.C. §207)** | **PROPOSED REGULATION**  | **COMMENTS** |
| **207(d) Annual Funding Agreements**.—(1) FUNDING AGREEMENT REQUIRED.—After entering into a compact with an Indian tribe under subsection (c), the Secretary shall negotiate and enter into a written annual funding agreement with the Indian tribe.(2) CONTENTS.—(A) IN GENERAL.—1. FORMULA FUNDING AND DISCRETIONARY GRANTS.—A funding agreement entered into with an Indian tribe shall authorize the Indian tribe, as determined by the Indian tribe, to plan, conduct, consolidate, administer, and receive full tribal share funding, tribal transit formula funding, and funding to tribes from discretionary and competitive grants administered by the Department for all programs, services, functions, and activities (or portions thereof) that are made available to Indian tribes to carry out tribal transportation programs and programs, services, functions, and activities (or portions thereof) administered by the Secretary that are otherwise available to Indian tribes.

(ii) TRANSFERS OF STATE FUNDS.—* 1. INCLUSION OF TRANSFERRED FUNDS IN FUNDING AGREEMENT.—A funding agreement entered into with an Indian tribe shall include Federal-aid funds apportioned to a State under chapter 1 if the State elects to provide a portion of such funds to the Indian tribe for a project eligible under section 202(a). The provisions of this section shall be in addition to the methods for making funding contributions described in section 202(a)(9). Nothing in this section shall diminish the authority of the Secretary to provide funds to an Indian tribe under section 202(a)(9).

**(II) METHOD FOR TRANSFERS.—If a State elects to provide funds described in subclause (I) to an Indian tribe**—(aa) the transfer may occur in accordance with section 202(a)(9); or(bb) the State shall transfer the funds back to the Secretary and the Secretary shall transfer the funds to the Indian tribe in accordance with this section.(III) RESPONSIBILITY FOR TRANSFERRED FUNDS.—Notwithstanding any other provision of law, if a State provides funds described in sub-clause (I) to an Indian tribe—(aa) the State shall not be responsible for constructing or maintaining a project carried out using the funds or for administering or supervising the project or funds during the applicable statute of limitations period related to the construction of the project; and(bb) the Indian tribe shall be responsible for constructing and maintaining a project carried out using the funds and for administering and supervising the project and funds in accordance with this section during the applicable statute of limitations period related to the construction of the project.(B) ADMINISTRATION OF TRIBAL SHARES.—The tribal shares referred to in subparagraph (A) shall be provided without regard to the agency or office of the Department within which the program, service, function, or activity (or portion thereof) is performed.(C) FLEXIBLE AND INNOVATIVE FINANCING.—(i) IN GENERAL.—A funding agreement entered into with an Indian tribe under paragraph (1) shall include provisions pertaining to flexible and innovative financing if agreed upon by the parties.(ii) TERMS AND CONDITIONS.—(I) AUTHORITY TO ISSUE REGULATIONS.—The Secretary may issue regulations to establish the terms and conditions relating to the flexible and innovative financing provisions referred to in clause (i).(II) TERMS AND CONDITIONS IN ABSENCE OF REGULATIONS.—If the Secretary does not issue regulations under subclause (I), the terms and conditions relating to the flexible and innovative financing provisions referred to in clause (i) shall be consistent with—(aa) agreements entered into by the Department under—(AA) section 202(b)(7); and (BB) section 202(d)(5), as in effect before the date of enactment of MAP–21 (Public Law 112–141); or(bb) regulations of the Department of the Interior relating to flexible financing contained in part 170 of title 25, Code of Federal Regulations, as in effect on the date of enactment of the FAST Act.(3) TERMS.—A funding agreement shall set forth—(A) terms that generally identify the programs, services, functions, and activities (or portions thereof) to be performed or administered by the Indian tribe; and(B) for items identified in subparagraph (A)—(i) the general budget category assigned;(ii) the funds to be provided, including those funds to be provided on a recurring basis;(iii) the time and method of transfer of the funds;(iv) the responsibilities of the Secretary and the Indian tribe; and(v) any other provision agreed to by the Indian tribe and the Secretary.(4) SUBSEQUENT FUNDING AGREEMENTS.—(A)APPLICABILITY OF EXISTING AGREEMENT.—Absent notification from an Indian tribe that the Indian tribe is withdrawing from or retroceding the operation of 1 or more programs, services, functions, or activities (or portions thereof) identified in a funding agreement, or unless otherwise agreed to by the parties, each funding agreement shall remain in full force and effect until a subsequent funding agreement is executed.(B) EFFECTIVE DATE OF SUBSEQUENT AGREEMENT.— The terms of the subsequent funding agreement shall be retroactive to the end of the term of the preceding funding agreement.(5) CONSENT OF INDIAN TRIBE REQUIRED.—The Secretary shall not revise, amend, or require additional terms in a new or subsequent funding agreement without the consent of the Indian tribe that is subject to the agreement unless such terms are required by Federal law.**207(h) TRANSFER of FUNDS**TRANSFER OF FUNDS.—The Secretary shall provide funds to an Indian tribe under a funding agreement in an amount equal to—(1) the sum of the funding that the Indian tribe would otherwise receive for the program, function, service, or activity in accordance with a funding formula or other allocation method established under this title or chapter 53 of title 49; and(2) such additional amounts as the Secretary determines equal the amounts that would have been withheld for the costs of the Bureau of Indian Affairs for administration of the program or project.**207(l) APPLICABILITY of ISDEAA**(l) APPLICABILITY OF INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT.—Except to the extent in conflict with this section (as determined by the Secretary), the following provisions of the Indian Self-Determination and Education Assistance Act shall apply to compact and funding agreements (except that any reference to the Secretary of the Interior or the Secretary of Health and Human Services in such provisions shall be treated as a reference to the Secretary of Transportation):. . . **207(l)(3)**  Subsections (a), (b), (d), (e), (g), (h), (i), and (k) of section 508 of such Act (25 U.S.C. 458aaa–7), relating to transfer of funds.**207(l)(8) Application of other Sections**Subsections (a) and (b) of section 516 of such Act (25 U.S.C. 458aaa–15), relating to application of title I provisions | Proposed regulatory provisions of col. 2 (below) closely track DHHS’s title V regulations (42 CFR Part 137), Subparts E (Funding Agreement) F (Statutorily Mandated Grants) and G (Funding), with modifications to reflect section 207 of title 23 (edition should also reflect Minneapolis, MN discussions of November 15-17, 2016).This composite combines Admin Workgroup proposed regulatory provisions that implement sections 207(d), (h) and (L) of the Tribal Transportation Self-Governance Program per the instructions from the Minneapolis, MN Workgroup discussions. **SUBPART \_\_** — **FUNDING AGREEMENTS****§ ###.01 What is a funding agreement?**A funding agreement is a legally binding and mutually enforceable written agreement that identifies the programs, services, functions and activities (PSFAs) that the Tribe will carry out under the Compact, the funds being transferred from the modal administrations of the Department in support of the PSFAs, and such other terms as are required or may be agreed upon by the Secretary and the Tribe pursuant to 23 U.S.C. § 207. **§ ###.02 What PSFAs must be included in a funding agreement?**At the Tribe’s option, all PSFAs identified in and in accordance with section 207(d)(2)(A) of title 23 must be included in a funding agreement, subject to section \_\_ of this Part regarding the rejection of final offers.**§ ###.03 What Tribal shares may be included in a funding agreement?**At the Tribe’s election, all Tribal shares identified in the Tribal Transportation Program and Tribal Transit Program under sections 207(d)(2)(A) and 207(h) of title 23 may be included in a funding agreement, including Tribal shares of Department discretionary and competitive grants.**§ ###.04 May a funding agreement include provisions for the Secretary to perform certain activities associated with the PSFAs performed by the Tribe under a “buyback” arrangement between the Tribe and the Secretary?** Upon the agreement of the Secretary and the Tribe reflected in a funding agreement, the Tribe may use a portion of its Tribal shares to pay for activities to be performed by the Secretary that are associated with the PSFAs carried out by the Tribe under the Compact and funding agreement (commonly known as a “buyback” arrangement). TERMS AND CONDITIONS IN A FUNDING AGREEMENT**§ ###.05 What terms and conditions must be included in a funding agreement?**A funding agreement must include terms required under section 207(d)(3) of title 23 and provisions regarding reassumption pursuant to section 207(f)(2)(A) of title 23, unless provisions relating to reassumption have been included in a compact. The funding agreement shall set forth terms that generally identify the PSFAs (or portions thereof) to be performed or administered by the Tribe, including the general budget category assigned, the funds to be provided, including those funds to be provided on a recurring basis, the time and method of transfer of the funds, the responsibilities of the Secretary and the Indian tribe, and any other provision agreed to by the Tribe and the Secretary.**§ ###.06 May additional terms and conditions be included in a funding agreement?**Yes, any other provision agreed to by the Tribe and the Secretary may be included in the funding agreement as provided in section 207(d)(3)(B)(v) of title 23.**§ ###.07 Do any provisions of Title I and Title V of Pub. L. 93-638 apply to compacts and funding agreements under section 207 of title 23?** 1. Yes, the provisions of title I and title V listed in section 207(l ) of title 23 and section 314 of Pub. L. 101-512, as amended, mandatorily apply to a compact and funding agreement to the extent they are not in conflict with the Tribal Transportation Self-Governance Program (as determined by the Secretary) (except that any reference to the Secretary of the Interior or the Secretary of Health and Human Services in such provisions shall be treated as a reference to the Secretary).
2. The provisions of title V referenced in section 207(l ) of title 23 are sections 506(a), (b), (d), (g) and (h) (25 U.S.C. § 5386(a), (b), (d), (g) and (h)), 507(b), (c), (d), (e) and (g) (25 U.S.C. § 5387(a), (b), (d), (g) and (h)), 508(a), (b), (d), (e), (g), (h), (i) and (k) (25 U.S.C. § 5388(a), (b), (d), (e), (g), (h), (i) and (k)), 509 (25 U.S.C. § 5389), 511 (25 U.S.C. § 5390), 512(a)(1) and (2), (c), (d), (e) and (f) (25 U.S.C. § 5392(a)(1) and (2), (c), (d), (e) and (f)), except that subsection (c)(1) of that section shall be applied by substituting “transportation facilities and other facilities” for “school buildings, hospitals and other facilities,” 515(a) and (b) (25 U.S.C. § 5395(a) and (b)), 516(a) and (b) (25 U.S.C. § 5396(a) and (b)) and 518 (25 U.S.C. § 5398).
3. The provisions of title I referenced in section 516(a) of the Act (25 U.S.C. § 5396(a)) are sections 5 (25 U.S.C. § 5305), 6 (25 U.S.C. § 5306), 7 25 U.S.C. § 5307), 102(c) and (d) (25 U.S.C. §§ 5321(c) and (d)), 104 (25 U.S.C. § 5323), 105(k) and (l) (25 U.S.C. §§ 5328 and 5329), 106(a) through (k) (25 U.S.C. §§ 5325(a) through (k)), and 111 ((25 U.S.C. § 5332).
4. In addition, as prescribed by 25 U.S.C. § 5396(b) and made applicable to the Tribal Transportation Self-Governance Program by 23 U.S.C. § 207(l )(8), at the request of a Tribe, any other provision of title I of Pub. L. 93-638, as amended, to the extent such provision is not in conflict with section 207 of title 23 (as determined by the Secretary), shall be made a part of a funding agreement or compact.

**§ ###.08 What is the effect of incorporating a title I or title V provision into a compact or funding agreement?**The incorporated title I or title V provision shall have the same force and effect as if it were set out in full in 23 U.S.C. § 207. **§ ###.09 What if a Tribe requests such incorporation at the negotiation stage of a compact or funding agreement?**In the event that a Tribe request such incorporation at the negotiation stage of a compact or funding agreement, such incorporation shall be deemed effective immediately and shall control the negotiation and resulting compact and funding agreement.TERM OF A FUNDING AGREEMENT**§ ###.10 What is the term of a funding agreement?**A funding agreement shall have the term mutually agreed to by the parties. As provided in 23 U.S.C. § 207(d)(4)(A), absent notification from a Tribe that it is withdrawing or retroceding the operation of one or more PSFAs (or portions thereof) identified in the funding agreement, or unless agreed to by the parties, each funding agreement shall remain in full force and effect until a subsequent funding agreement is executed.**§ ###.11 Does a funding a**g**reement remain in effect after the end of its term?** Yes, the provisions of a funding agreement, including all recurring increases received for Tribal shares and continuing eligibility for other increases, remain in full force and effect until a subsequent funding agreement is executed. As provided in 23 U.S.C. § 207(d)(4)(B), upon execution of a subsequent funding agreement, the provisions of such a funding agreement are retroactive to the end of the term of the preceding funding agreement. **§ ###.12 How is a funding agreement amended?**A funding agreement may be amended by the parties as provided for in the funding agreement, section 207 of title 23, or this part. As prescribed by 23 U.S.C. § 207(d)(5), the Secretary shall not revise, amend, or require additional terms in a new or subsequent funding agreement without the consent of the Indian tribe that is subject to the agreement unless such terms are required by Federal law. **SUBPART \_\_-DISCRETIONARY AND COMPETITIVE GRANTS****§ ###.13 May a discretionary and competitive grant administered by the Department be added to a funding agreement?**Yes, in accordance with section 207(d)(2)(A)(i) of title 23, funding from discretionary and competitive grants administered by the Department for all PSFAs (or portions thereof) that are made available to tribes to carry out tribal transportation programs and funding from PSFAs (or portions thereof) administered by the Secretary that are otherwise available to tribes may be added to the funding agreement after such grant has been awarded to the tribe. **§ ###.14 May a Tribe receive discretionary and competitive grant funds in an annual lump sum advance payment?**Yes, grant funds shall be added to the funding agreement as an annual lump sum advance payment after the grant is awarded to the Tribe. **§ ###.15 May a Tribe keep interest earned on discretionary and competitive grant funds?**Yes, a Tribe may keep interest earned on discretionary and competitive grant funds paid to a Tribe under its funding agreement.**§ ###.16 How may a Tribe use interest earned on discretionary and competitive grant funds?**Interest earned on such funds pending disbursement by the Tribe may be used to enhance the grant program including allowable administrative costs. **§ ###.17 May funds from a discretionary or competitive grant be reallocated by the Tribe?**No, unless it is permitted under the statute authorizing the grant or under the terms and conditions of the grant award, the Tribe shall use the funds from a discretionary or competitive grant for the purpose for which the funds were originally authorized as prescribed by 23 U.S.C. § 207(e)(1)(B). **§ ###.18 May a discretionary or competitive grant program be redesigned?**No, unless it is permitted under the statute authorizing the grant or under the terms and conditions of the grant award, a program added to a funding agreement under a discretionary or competitive grant may not be redesigned. **§ ###.19 Are the reporting requirements different for a discretionary and competitive grant program added to a funding agreement?**Yes, the requirements for a discretionary and competitive grant program added to a funding agreement are subject to the terms and conditions of the grant award. **§ ###.20 May the Secretary and the Tribe develop separate programmatic reporting requirements for discretionary and competitive grants?** Yes, the Secretary and the Tribe may develop separate programmatic reporting requirements for discretionary and competitive grants. [Proposed definition of “**discretionary or competitive grant**” = means a grant specifically designated in a statute for a defined purpose administered by the Department for all programs, services, functions and activities (or portions thereof) that are made available to a public authority, including an Indian tribe, to carry out transportation or other programs, and programs, services, functions and activities (or portions thereof) administered by the Secretary that are otherwise available to an Indian tribe.”]**§ ###.21 Are Tribes and their employees carrying out discretionary and competitive grant programs added to a funding agreement covered by the Federal Tort Claims Act (FTCA)?**Yes, Tribes and their employees carrying out discretionary and competitive grant programs included in the funding agreement are covered by the FTCA. Regulations governing coverage under the FTCA are published at 25 CFR Part 900, Subpart M and §\_\_\_\_\_\_\_\_\_herein. **SUBPART ## - FUNDING**GENERAL**§ ###.22 What funds must the Secretary transfer to a Tribe in a funding agreement?**Subject to the terms of any compact or funding agreement, the Secretary must transfer to a Tribe all funds provided for in the funding agreement, pursuant to sections 207(d)(2) of title 23 and other funds agreed to be provided. A funding agreement shall authorize the Tribe to receive full tribal shares funding, tribal transit formula funding, funding to tribes from discretionary and competitive grants administered by the Department for all PSFAs (or portions thereof) that are made available to Tribes to carry out tribal transportation programs, and PSFAs (or portions thereof) administered by the Secretary that are otherwise available to Indian tribes. As prescribed in 23 U.S.C. § 207(d)(2)(B), with respect to tribal shares included in a funding agreement, such funds shall be provided without regard to the agency or office of the Department within which the PSFA (or portion thereof) is performed. The Secretary shall provide funding for periods covered by joint resolution adopted by Congress making continuing appropriations, to the extent permitted by such resolutions. **§ ###.23 What funds must the Secretary include in a funding agreement?**Pursuant to section 207 of title 23, the Secretary must include funds in a funding agreement in an amount equal to:1. the sum of the funding that the Tribe would otherwise receive for the PSFA in accordance with a funding formula or other allocation method established under title 23 or chapter 53 of title 49; and
2. such additional amounts as the Secretary determines equal the amounts that would have been withheld for the costs of the Bureau of Indian Affairs for administration of the program or project.
3. any other funds required by section 516(a) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. § 5396), as made applicable to the Program by 23 U.S.C. § 207(l)(8).

**§ ###.24 When must the Secretary transfer to a tribe the funds identified in a funding agreement?**When a funding agreement requires an annual transfer of funding to be made at the beginning of a fiscal year, or requires semiannual or other periodic transfers of funding to be made, the first such transfer shall be made not later than 30 days after the apportionment of such funds by the Office of Management and Budget (OMB) to the Department, unless the funding agreement provides otherwise. **§ ###.25 When must the Secretary transfer funds that were not paid as part of the initial lump sum payment (or initial periodic payment)?**The Secretary must transfer any funds that were not paid in the initial lump sum payment (or initial periodic payment) within 30 days after distribution methodologies and other decisions regarding payment of those funds have been made by the Department. **§ ###.26 May a Tribe negotiate a funding agreement for a term longer or shorter than one year?** Yes, upon the Tribe’s request, the Secretary must negotiate a funding agreement for a term longer or shorter than a year. All references in these regulations to funding agreements shall also include funding agreements for a term longer or shorter than one year.TRANSFERS OF STATE FUNDS **§ ###.27 May a funding agreement include Federal-aid funds apportioned to a State under chapter 1 of title 23 United States Code?**Yes, as authorized under section 207(d)(2)(A)(ii) of title 23, Federal-aid funds apportioned to a State under chapter 1 of title 23, shall be included in a funding agreement and used for a project eligible under section 202(a) of title 23.**§###.28 Are other transfer arrangements available for the transfer to a Tribe of Federal-aid funds apportioned to a State?**Yes. The transfer of Federal-aid funds to a Tribe may also occur in accordance with section 202(a)(9) of title 23 United States Code. Nothing in these regulations shall diminish the authority of the Secretary to provide funds to a Tribe under section 202(a)(9) of title 23. **§###.29 Which entity is responsible for the transfer of Federal-aid funds apportioned to a State under chapter 1 of title 23 and transferred to a Tribe under a funding agreement?**In accordance with 23 U.S.C. § 207(d)(2)(A)(III), if a State provides Federal-aid funds to a Tribe, the Indian tribe shall be responsible for constructing and maintaining a project carried out using the Federal-aid funds and for administering and supervising the project and funds in accordance with section 207(d)(A)(ii) during the applicable statute of limitations period related to the construction of the project. The State shall not be responsible for constructing or maintaining a project carried out using the Federal-aid funds or for administering or supervising the project or funds during the applicable statute of limitations period related to the construction of the project. **§###.30 May any funds received from a State, county, or local subdivision be credited to appropriations for the tribal transportation program and made available to a Tribe under a funding agreement in this part?** Yes, in accordance with section 202(a)(9) of title 23, any funds received from a State, county, or local subdivision shall be credited to appropriations available for the tribal transportation program transferred to a Tribe under a funding agreement under this part. FLEXIBLE FINANCING**§###.31 May a funding agreement include provisions pertaining to flexible or innovative financing?**Yes, as provided in section 207(d)(2)(C) of title 23 and §\_\_\_\_ herein, a funding agreement shall include the following provisions pertaining to flexible and innovative financing:“Tribes may use flexible financing in the same manner as States to finance eligible projects, unless otherwise prohibited by law.“Tribes may issue bonds or enter into other debt-financing instruments under 23 U.S.C. 122 with the expectation of payment of tribal transportation program funds, or other federal funds not prohibited by law, to satisfy the instruments.“Under 23 U.S.C. 603, the Secretary may enter into an agreement for secured loans or lines of credit for Tribal Transportation and other eligible projects meeting the requirements contained in 23 U.S.C. 602. Tribes, or with the consent of Secretary, the Department may service federal credit instruments. The secured loans or lines of credit must be paid from tolls, user fees, payments owing to the obligor under a public-private partnership or other dedicated revenue sources.“Tribes may use Tribal Transportation Program funds, or other eligible funds, as collateral for loans or bonds to finance eligible projects. Upon the request of an Indian tribe, the Secretary shall provide necessary documentation to banks and other financial institutions.”**§###.32 Can an Indian tribe use Tribal Transportation Program funds under section 202(a) of title 23 to leverage other funds or to pay back loans?**1. An Indian tribe can use Tribal Transportation Program funds under section 202(a) of title 23 to leverage other funds.
2. An Indian tribe can use such funds to pay back loans or other finance instruments that were used for a project that:
3. The Tribe paid for in advance of the current year using non-Tribal Transportation Program or other eligible funds;
4. Was included in an FHWA-approved Tribal Transportation Program Transportation Improvement Program (TTPTIP); and
5. Was included in the National Tribal Transportation Facility Inventory (NTTFI) at the time of construction.

**§###.33 Can a tribe apply for loans or credit from a State infrastructure bank?**Yes. A tribe can apply for loans or credit from a State infrastructure bank. Upon the request of a tribe, the Department will provide necessary documentation to a State infrastructure bank to facilitate obtaining loans and other forms of credit for a Tribal Transportation Program or other eligible project.**§###.34 How long must a project financed through flexible financing remain on a TTPTIP?****Tribes** must identify each Tribal Transportation Program project financed through flexible financing along with the repayment amount on their annual TTPTIP until the flexible financing instrument has been satisfied.**§###.35 Can a Tribe use other federal funds included in a funding agreement to leverage other funds or to pay back loans?**Yes, except when prohibited by federal law. PROHIBITIONS**§ ###.36 Is the Secretary prohibited from failing or refusing to transfer funds that are due to a Tribe under the funding agreement to carry out the PSFAs to be ?**Yes, section 508(d)(1)(A) and (B) of the Act [25 U.S.C. 5388(d)(1)(A) and (B)] as made applicable to the Program by 23 U.S.C. 207(l)(3), expressly prohibit the Secretary from:1. Failing or refusing to transfer to a Tribe its full share funds due under the funding agreement, except as required by Federal law, and
2. From withholding portions of such funds for transfer over a period of years.

**§ ###.37 Is the Secretary prohibited from reducing the amount of funds required under the Program to make funding available for monitoring or administration by the Secretary?**Yes, the Secretary is prohibited from reducing the amount of funds required under the Self-Governance Program to make funding available for self-governance monitoring or administration.**§ ###.38 May the Secretary reduce the amount of formula funds due under the Program in subsequent years?**No, in accordance with section 508(d)(1)(C)(ii) of the Act [25 U.S.C. 5388(d)(1)(C)(ii)], the Secretary is prohibited from reducing the amount of funds required under the Program, except pursuant to:1. a reduction in appropriations or a change in allocation formula or applicable obligation limitation from the previous fiscal year for the PSFAs included in a compact or funding agreement;
2. a congressional directive in legislation or accompanying report;
3. a tribal authorization;
4. a change in the amount of pass-through funds subject to the terms of the funding agreement; or
5. completion of a project, activity, or program for which such funds were provided.

**§ ###.39 May the Secretary reduce the amount of funds required under the Program to pay for Federal functions, including Federal pay costs, Federal employee retirement benefits, automated data processing, technical assistance, and monitoring of activities under the Act?**No, the Secretary may not reduce the amount of funds required under this section to pay for Federal functions, including Federal pay costs, Federal employee retirement benefits, automated data processing, technical assistance, and monitoring of activities under the Tribal Transportation Self-Governance Program.**§ ###.40 May the Secretary reduce the amount of funds required under the Self-Governance Program to pay for costs of Federal personnel displaced by self-governance compacts and funding agreements?**No, the Secretary may not reduce the amount of funds required under this section to pay for costs of Federal personnel displaced by the Program.**§ ###.41 May the Secretary increase the funds required under the funding agreement?**Yes, the Secretary may increase the funds required under the funding agreement. However, the Tribe and the Secretary must agree to any transfer of funds to the Tribe unless otherwise provided for in the funding agreement.ACQUISITON OF GOODS AND SERVICES**§ ###.42 Must the Secretary acquire and transfer to a Tribe federal supplies and resources to carry out a compact and funding agreement?**If statutorily available, and upon the Tribe’s request, the Secretary shall acquire personnel, supplies (including those from federal warehouses and supply sources such as lodging, airlines and other transportation), and federal resources available to the Secretary, and transfer the same to the Tribe in order to carry out a compact or funding agreement.PROMPT PAYMENT ACT**§ ###.42 Does the Prompt Payment Act apply to funds transferred to a Tribe in a compact or funding agreement?**Yes, the Prompt Payment Act, 39 U.S.C. section 3901 *et seq.,* applies to the transfer of all funds due under a compact or funding agreement authorized pursuant to the Self-Governance Program. See also § ###.1225 through ###.1228 and [137.341(f)].INTEREST OR OTHER INCOME ON TRANSFERS**§ ###.43 May a Tribe retain and spend interest earned on any funds paid under a compact or funding agreement?**Yes, pursuant to section 25 U.S.C. 5388(h), a Tribe may retain and spend interest earned on any funds paid under a compact or funding agreement.**§ ###.44 May a Tribe carryover from one year to the next any funds that remain at the end of the funding agreement?**Yes, pursuant to section 25 U.S.C. 5388(i), a Tribe may carryover from one year to the next any funds that remain at the end of the funding agreement.**§ ###.45 Is a Tribe obligated to continue performance under a compact or funding agreement if the Secretary does not transfer sufficient funds?**No, if a Tribe believes that the total amount of funds provided for a specific PSFA in a compact or funding agreement is insufficient, the Tribe must provide reasonable written notice of such insufficiency to the Secretary. If the Secretary does not increase the amount of funds transferred under the funding agreement in a quantity sufficient for the Tribe to complete the PSFA, as jointly determined by the Tribe and the Secretary, the Tribe may suspend performance of the PSFA until such time as additional funds are transferred.**§ ###.46 Will the Compacts and Funding Agreements be affected by subsequent transportation authorization Acts?**Unless Congress explicitly revokes the Secretary’s authority to carry out compacts and funding agreements under this section, existing compacts and funding agreements will be unaffected by subsequent transportation authorization Acts. Compacts and funding agreements will continue in force according to 23 U.S.C. 207(d)(4) and will not end due to operation of law or any other default mechanisms.  |  42 CFR Part 137 Subpart E – Funding Agreements 137.40 137.41 137.42Q&A § ###.04 is in lieu of “retained shares” and reflects Admin Workgroup’s desire to recognize “buyback” arrangements currently in practice between FHWA and tribes.137.45 and 23 U.S.C. 207(d)(3)(A) and (B)137.46 and 23 U.S.C. 207(d)(3)(B)(v).137.47 and23 U.S.C. 207(l )137.47(b) 25 U.S.C. § 5396 and 23 U.S.C. § 207(l )(8).137.48 137.49 and 25 U.S.C. § 5396(b)137.55 and23 U.S.C. 207(d)(4)(A)137.56 and23 U.S.C. 207(d)(4)(B)137.57 and 207(d)(5)42 CFR Part 137 Subpart F – Statutorily Mandated Grants137.60 and 207(d)(2)(A)(i) 137.65137.66137.67137.68 and207(e)(1)(B).137.69 and 23 U.S.C. 207(e)(1)(B)137.70137.71 Recommend that Admin Wrkgrp develop appropriate reporting requirements137.72 42 CFR Part 137 Subpart G – Funding137.75 and23 U.S.C. 207(d)(2)Q&A ###.22 (p. 10) and Q&A ###.23 (p. 11) should be kept separate as they cover separate sections of 23 USC 207. Q&A ###.22 addresses transfer of funds under a funding agreement per 23 U.S.C. 207(d)(2). Q&A ###.23 addresses the inclusion of funds per 23 U.S.C. 207(h). Despite the similarities in the terms, they cover different statutory provisions and should remain separate Q&As.137.79 and 23 U.S.C. 207(d), (h) and (l)137.76 137.77137.78new 23 U.S.C. 207(d)(2)(A)new23 USC 202(a)(9)Note: the OPS workgroup has drafted a highlighted version of this section possibly to be deleted?new23 U.S.C. 207(d)(2)(A)(III)New23 U.S.C. 202(a)(9)(A) and (B)23 USC 207(d)(2)(C)25 CFR 170.22725 CFR 170.22825 CFR 170.229170.230new137.85137.86137.87137.88137.89137.90137.95 [refer to Operations]137.96137.100137.105137.115new |