

Editorial Notes

AMENDMENTS

1995—Subsec. (a). Pub. L. 104-88 substituted “13101” for “10101a”.

1994—Subsec. (b). Pub. L. 103-272 substituted “This subtitle and chapters 221 and 315 of this title” for “Subtitle I and chapter 31 of subtitle II of this title and the Department of Transportation Act (49 App. U.S.C. 1651 et seq.)”.

1991—Subsec. (d). Pub. L. 102-240, §1036(a), added subsec. (d).

Subsec. (e). Pub. L. 102-240, §5001, added subsec. (e).

1984—Subsec. (b). Pub. L. 98-216 substituted “49 App. U.S.C.” for “49 U.S.C.”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104-88 effective Jan. 1, 1996, see section 2 of Pub. L. 104-88, set out as an Effective Date note under section 1301 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by section 1036(a) of Pub. L. 102-240 effective Dec. 18, 1991, and applicable to funds authorized to be appropriated or made available after Sept. 30, 1991, and, with certain exceptions, not applicable to funds appropriated or made available on or before Sept. 30, 1991, see section 1100 of Pub. L. 102-240, set out as a note under section 104 of Title 23, Highways.

§ 303. Policy on lands, wildlife and waterfowl refuges, and historic sites

(a) It is the policy of the United States Government that special effort should be made to preserve the natural beauty of the countryside and public park and recreation lands, wildlife and waterfowl refuges, and historic sites.

(b) The Secretary of Transportation shall cooperate and consult with the Secretaries of the Interior, Housing and Urban Development, and Agriculture, and with the States, in developing transportation plans and programs that include measures to maintain or enhance the natural beauty of lands crossed by transportation activities or facilities.

(c) APPROVAL OF PROGRAMS AND PROJECTS.—Subject to subsections (d) and (h), the Secretary may approve a transportation program or project (other than any project for a park road or parkway under section 204¹ of title 23) requiring the use of publicly owned land of a public park, recreation area, or wildlife and waterfowl refuge of national, State, or local significance, or land of an historic site of national, State, or local significance (as determined by the Federal, State, or local officials having jurisdiction over the park, area, refuge, or site) only if—

(1) there is no prudent and feasible alternative to using that land; and

(2) the program or project includes all possible planning to minimize harm to the park, recreation area, wildlife and waterfowl refuge, or historic site resulting from the use.

(d) DE MINIMIS IMPACTS.—

(1) REQUIREMENTS.—

(A) REQUIREMENTS FOR HISTORIC SITES.—The requirements of this section shall be considered to be satisfied with respect to an area described in paragraph (2) if the Sec-

retary determines, in accordance with this subsection, that a transportation program or project will have a de minimis impact on the area.

(B) REQUIREMENTS FOR PARKS, RECREATION AREAS, AND WILDLIFE OR WATERFOWL REFUGES.—The requirements of subsection (c)(1) shall be considered to be satisfied with respect to an area described in paragraph (3) if the Secretary determines, in accordance with this subsection, that a transportation program or project will have a de minimis impact on the area. The requirements of subsection (c)(2) with respect to an area described in paragraph (3) shall not include an alternatives analysis.

(C) CRITERIA.—In making any determination under this subsection, the Secretary shall consider to be part of a transportation program or project any avoidance, minimization, mitigation, or enhancement measures that are required to be implemented as a condition of approval of the transportation program or project.

(2) HISTORIC SITES.—With respect to historic sites, the Secretary may make a finding of de minimis impact only if—

(A) the Secretary has determined, in accordance with the consultation process required under section 306108 of title 54, United States Code,² that—

(i) the transportation program or project will have no adverse effect on the historic site; or

(ii) there will be no historic properties affected by the transportation program or project;

(B) the finding of the Secretary has received written concurrence from the applicable State historic preservation officer or tribal historic preservation officer (and from the Advisory Council on Historic Preservation if the Council is participating in the consultation process); and

(C) the finding of the Secretary has been developed in consultation with parties consulting as part of the process referred to in subparagraph (A).

(3) PARKS, RECREATION AREAS, AND WILDLIFE OR WATERFOWL REFUGES.—With respect to parks, recreation areas, or wildlife or waterfowl refuges, the Secretary may make a finding of de minimis impact only if—

(A) the Secretary has determined, after public notice and opportunity for public review and comment, that the transportation program or project will not adversely affect the activities, features, and attributes of the park, recreation area, or wildlife or waterfowl refuge eligible for protection under this section; and

(B) the finding of the Secretary has received concurrence from the officials with jurisdiction over the park, recreation area, or wildlife or waterfowl refuge.

(e) SATISFACTION OF REQUIREMENTS FOR CERTAIN HISTORIC SITES.—

¹ See References in Text note below.

² So in original. The words “, United States Code” probably should not appear.

(1) IN GENERAL.—The Secretary shall—

(A) align, to the maximum extent practicable, the requirements of this section with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and section 306108 of title 54, including implementing regulations; and

(B) not later than 90 days after the date of enactment of this subsection, coordinate with the Secretary of the Interior and the Executive Director of the Advisory Council on Historic Preservation (referred to in this subsection as the “Council”) to establish procedures to satisfy the requirements described in subparagraph (A) (including regulations).

(2) AVOIDANCE ALTERNATIVE ANALYSIS.—

(A) IN GENERAL.—If, in an analysis required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the Secretary determines that there is no feasible or prudent alternative to avoid use of a historic site, the Secretary may—

(i) include the determination of the Secretary in the analysis required under that Act;

(ii) provide a notice of the determination to—

(I) each applicable State historic preservation officer and tribal historic preservation officer;

(II) the Council, if the Council is participating in the consultation process under section 306108 of title 54; and

(III) the Secretary of the Interior; and

(iii) request from the applicable preservation officer, the Council, and the Secretary of the Interior a concurrence that the determination is sufficient to satisfy subsection (c)(1).

(B) CONCURRENCE.—If the applicable preservation officer, the Council, and the Secretary of the Interior each provide a concurrence requested under subparagraph (A)(iii), no further analysis under subsection (c)(1) shall be required.

(C) PUBLICATION.—A notice of a determination, together with each relevant concurrence to that determination, under subparagraph (A) shall—

(i) be included in the record of decision or finding of no significant impact of the Secretary; and

(ii) be posted on an appropriate Federal website by not later than 3 days after the date of receipt by the Secretary of all concurrences requested under subparagraph (A)(iii).

(3) ALIGNING HISTORICAL REVIEWS.—

(A) IN GENERAL.—If the Secretary, the applicable preservation officer, the Council, and the Secretary of the Interior concur that no feasible and prudent alternative exists as described in paragraph (2), the Secretary may provide to the applicable preservation officer, the Council, and the Secretary of the Interior notice of the intent of the Secretary to satisfy subsection (c)(2) through the consultation requirements of section 306108 of title 54.

(B) SATISFACTION OF CONDITIONS.—To satisfy subsection (c)(2), the applicable preservation officer, the Council, and the Secretary of the Interior shall concur in the treatment of the applicable historic site described in the memorandum of agreement or programmatic agreement developed under section 306108 of title 54.

(f) REFERENCES TO PAST TRANSPORTATION ENVIRONMENTAL AUTHORITIES.—

(1) SECTION 4(F) REQUIREMENTS.—The requirements of this section are commonly referred to as section 4(f) requirements (see section 4(f) of the Department of Transportation Act (Public Law 89-670; 80 Stat. 934) as in effect before the repeal of that section).

(2) SECTION 106 REQUIREMENTS.—The requirements of section 306108 of title 54 are commonly referred to as section 106 requirements (see section 106 of the National Historic Preservation Act of 1966 (Public Law 89-665; 80 Stat. 917) as in effect before the repeal of that section).

(g) BRIDGE EXEMPTION FROM CONSIDERATION.—A common post-1945 concrete or steel bridge or culvert (as described in 77 Fed. Reg. 68790) that is exempt from individual review under section 306108 of title 54 shall be exempt from consideration under this section.

(h) RAIL AND TRANSIT.—

(1) IN GENERAL.—Improvements to, or the maintenance, rehabilitation, or operation of, railroad or rail transit lines or elements thereof that are in use or were historically used for the transportation of goods or passengers shall not be considered a use of a historic site under subsection (c), regardless of whether the railroad or rail transit line or element thereof is listed on, or eligible for listing on, the National Register of Historic Places.

(2) EXCEPTIONS.—

(A) IN GENERAL.—Paragraph (1) shall not apply to—

(i) stations; or

(ii) bridges or tunnels located on—

(I) railroad lines that have been abandoned; or

(II) transit lines that are not in use.

(B) CLARIFICATION WITH RESPECT TO CERTAIN BRIDGES AND TUNNELS.—The bridges and tunnels referred to in subparagraph (A)(ii) do not include bridges or tunnels located on railroad or transit lines—

(i) over which service has been discontinued; or

(ii) that have been railbanked or otherwise reserved for the transportation of goods or passengers.

(Pub. L. 97-449, §1(b), Jan. 12, 1983, 96 Stat. 2419; Pub. L. 100-17, title I, §133(d), Apr. 2, 1987, 101 Stat. 173; Pub. L. 109-59, title VI, §6009(a)(2), Aug. 10, 2005, 119 Stat. 1875; Pub. L. 113-287, §5(p), Dec. 19, 2014, 128 Stat. 3272; Pub. L. 114-94, div. A, title I, §§1301(b), 1302(b), 1303(b), title XI, §11502(b), Dec. 4, 2015, 129 Stat. 1376, 1378, 1690.)

HISTORICAL AND REVISION NOTES

| <i>Revised Section</i> | <i>Source (U.S. Code)</i> | <i>Source (Statutes at Large)</i> |
|------------------------|---------------------------|--|
| 303(a) | 49:1651(b)(2). | Oct. 15, 1966, Pub. L. 89-670, §2(b)(2), 80 Stat. 931. |

HISTORICAL AND REVISION NOTES—CONTINUED

| Revised Section | Source (U.S. Code) | Source (Statutes at Large) |
|-----------------|--------------------------------------|---|
| | 49:1653(f) (1st sentence). | Oct. 15, 1966, Pub. L. 89-670, § 4(f), 80 Stat. 934; restated Aug. 23, 1968, Pub. L. 90-495, § 18(b), 82 Stat. 824. |
| 303(b) | 49:1653(f) (2d sentence). | |
| 303(c) | 49:1653(f) (less 1st, 2d sentences). | |

In subsection (a), the words “hereby declared to be” before “the policy” are omitted as surplus. The words “of the United States Government” are substituted for “national” for clarity and consistency.

In subsection (b), the words “crossed by transportation activities or facilities” are substituted for “traversed” for clarity.

In subsection (c), before clause (1), the words “After August 23, 1968” after “Secretary” are omitted as executed. The word “transportation” is inserted before “program” for clarity. In clause (2), the words “or project” are added for consistency.

Editorial Notes

REFERENCES IN TEXT

Section 204 of title 23, referred to in subsec. (c), was repealed and a new section 204 enacted by Pub. L. 112-141, div. A, title I, § 1119(a), July 6, 2012, 126 Stat. 473, 489.

The National Environmental Policy Act of 1969, referred to in subsec. (e)(1)(A), (2)(A), 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.

The date of enactment of this subsection, referred to in subsec. (e)(1)(B), is the date of enactment of Pub. L. 114-94, which was approved Dec. 4, 2015.

AMENDMENTS

2015—Subsec. (c). Pub. L. 114-94, § 11502(b)(1), substituted “subsections (d) and (h)” for “subsection (d)”. Subsec. (e). Pub. L. 114-94, § 1301(b), added subsec. (e). Subsec. (f). Pub. L. 114-94, § 1302(b), added subsec. (f). Subsec. (g). Pub. L. 114-94, § 1303(b), added subsec. (g). Subsec. (h). Pub. L. 114-94, § 11502(b)(2), added subsec. (h).

2014—Subsec. (d)(2)(A). Pub. L. 113-287 substituted “section 306108 of title 54, United States Code” for “section 106 of the National Historic Preservation Act (16 U.S.C. 470f)” in introductory provisions.

2005—Subsec. (c). Pub. L. 109-59, § 6009(a)(2)(A), inserted heading and substituted “Subject to subsection (d), the Secretary” for “The Secretary” in introductory provisions.

Subsec. (d). Pub. L. 109-59, § 6009(a)(2)(B), added subsec. (d).

1987—Subsec. (c). Pub. L. 100-17 inserted “(other than any project for a park road or parkway under section 204 of title 23)” after “program or project”.

Statutory Notes and Related Subsidiaries

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.

TREATMENT OF MILITARY FLIGHT OPERATIONS

Pub. L. 105-85, div. A, title X, § 1079, Nov. 18, 1997, 111 Stat. 1916, provided that: “No military flight operation (including a military training flight), or designation of airspace for such an operation, may be treated as a transportation program or project for purposes of section 303(c) of title 49, United States Code.”

§ 303a. Development of water transportation

(a) **POLICY.**—It is the policy of Congress—

(1) to promote, encourage, and develop water transportation, service, and facilities for the commerce of the United States; and

(2) to foster and preserve rail and water transportation.

(b) **DEFINITION.**—In this section, “inland waterway” includes the Great Lakes.

(c) **REQUIREMENTS.**—The Secretary of Transportation shall—

(1) investigate the types of vessels suitable for different classes of inland waterways to promote, encourage, and develop inland waterway transportation facilities for the commerce of the United States;

(2) investigate water terminals, both for inland waterway traffic and for through traffic by water and rail, including the necessary docks, warehouses, and equipment, and investigate railroad spurs and switches connecting with those water terminals, to develop the types most appropriate for different locations and for transferring passengers or property between water carriers and rail carriers more expeditiously and economically;

(3) consult with communities, cities, and towns about the location of water terminals, and cooperate with them in preparing plans for terminal facilities;

(4) investigate the existing status of water transportation on the different inland waterways of the United States to learn the extent to which—

(A) the waterways are being used to their capacity and are meeting the demands of traffic; and

(B) water carriers using those waterways are interchanging traffic with rail carriers;

(5) investigate other matters that may promote and encourage inland water transportation; and

(6) compile, publish, and distribute information about transportation on inland waterways that the Secretary considers useful to the commercial interests of the United States.

(Pub. L. 103-272, § 4(j)(6)(A), July 5, 1994, 108 Stat. 1366.)

HISTORICAL AND REVISION NOTES

| Revised Section | Source (U.S. Code) | Source (Statutes at Large) |
|-----------------|--------------------|---|
| 303a | 49 App.:142. | Feb. 28, 1920, ch. 91, § 500, 41 Stat. 499; Aug. 6, 1981, Pub. L. 97-31, § 12(9), 95 Stat. 154. |

Section 4(j)(6)(A) amends 49:ch. 3 by restating 49 App.:142 as section 303a because the provision more appropriately belongs in chapter 3.

In subsection (a)(2), the words “in full vigor both” are omitted as surplus.

In subsection (b), the words “be construed to” are omitted as surplus.

In subsection (c)(1), the word “appropriate” is omitted as surplus. The word “vessels” is substituted for “boats” for consistency in the revised title and with other titles of the United States Code.

In subsection (c)(2), the words “the subject of”, “apparatus”, “appliances in connection therewith”, and “or interchange” are omitted as surplus.

In subsection (c)(3), the words “appropriate” and “suitable” are omitted as surplus.