

NATIONAL FOREST RECEIPTS / SECURE RURAL SCHOOLS PROGRAM

AS 41.15.180

3 AAC 132.010 – 132.900

Historically, the distribution of funds under the National Forest Receipts program was authorized under a 1908 federal law (16 USC 500) where 25 percent of the annual income earned from activities within a national forest was shared with the State for distribution to boroughs, cities and regional educational attendance areas (REAs) located within the national forest. In the 1990s, Forest Service revenues began to decline, largely as a result of diminished timber sales volume. The Secure Rural Schools and Community Self-Determination Act of 2000 authorized enhanced and gradually declining payments to ease the transition to reduced federal revenues. With the passage of the “Secure Rural Schools and Community Self-Determination Act of 2000”, the State must choose annually to receive either the 25% payment under the 1908 National Forest Receipts or the Secure Rural Schools payment. Secure Rural Schools payments are based on the average of the three highest National Forest Receipts payments made to the State during the “eligibility period” of 1987 – 2000. The State choosing the Secure Rural Schools payment over the 25 percent National Forest Receipts payments is financially advantageous for recipient communities and school districts.

Secure Rural Schools was initially authorized for FFY2001 through FFY2007. In 2008, H.R. 1424 (the \$700 Billion Economic Rescue Package) included legislation reauthorizing the Secure Rural School Program for the period FFY2008 through FFY2011. The reauthorization language included new provisions that revised the formula using multiple factors including acres of Federal lands within each borough, the average of the three highest 25 percent payments made to each borough during the eligibility period, and an adjustment based on per capita personal income. The legislation also called for an annual reduction in funding of 10 percent through the 4-year reauthorization period. In 2012, H.R. 4348, Moving Ahead for Progress in the 21st Century Act or “MAP-21” provided a one-year reauthorization. In 2013, Congress passed a one-year reauthorization of the Secure Rural Schools and Community Self Determination Act as part of HR 527 Helium Stewardship Act. Under the Helium bill, annual reductions in funding were reduced to 5 percent a year.

Most recently, a two-year reauthorization of the Secure Rural Schools and Community Self-Determination Act of 2000 (SRS) was included in H.R. 2, Medicare Access and CHIP Reauthorization Act of 2015. The Act was approved by the U.S. Congress and signed by President Obama on April 16. The Act reauthorizes the program retroactively for FFY2014 and through FFY2015. Provisions in H.R.2 expedite the FFY2014 SRS payments to counties by requiring the federal government to make payments within 45 days of the bill’s enactment. If the Secure Rural Schools Program is not extended by Congress, National Forest Receipt payments in FFY 2016 will revert back to the original distribution formula.

Payments under the Secure Rural Schools Program are allocated under Titles I, II, and III.

The Program requires that at least 15% but no more than 20% of each borough's payment be spent on either Title II or Title III "special projects" with the balance to be spent on the traditional schools and roads categories (Title I). Title II projects are on federal lands, require the use of a 15 member Resource Advisory Committee (RAC) for project review and recommendation and are administered directly by the Forest Service. Title III projects include a limited list of activities that a borough can undertake and approve itself. Boroughs that receive a total payment less than \$100,000 can elect to spend 100% of their payment on Title I schools and roads.

Title I payments to organized boroughs are received by the State and passed through to the organized borough. Payments can be used by the borough at their discretion for schools and/or roads.

The State of Alaska receives the payment on behalf of the unorganized borough and distributes a calculated portion of the payment to local governments and the State's regional education attendance areas (REAA) located in the Tongass and Chugach National Forests. School payments to first class cities and REAAs are based on student enrollment (the October ADM). Road payments to first and second class cities are calculated as the proportion of the number of road miles within municipal boundaries plus the number of state road miles maintained by the municipality under agreement with the state compared to the total number of road miles.

Under AS 41.15.180 (j), the portion of the unorganized borough's road payment remaining unobligated and unexpended on June 30 is deposited into the State's general fund to offset expenses for school and road maintenance. In the past, the legislature has appropriated a portion of these funds to the Alaska Department of Transportation and Public Facilities for road projects and maintenance. However during the past few years, the legislature in the State's annual operating budget has chosen to appropriate the excess funds back to the cities and REAAs in the unorganized borough. This appropriation provides local governments and school districts in the unorganized with over \$800 thousand in additional school and road funding.

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NATIONAL FOREST RECEIPTS / SECURE RURAL SCHOOLS STATUTES

Sec. 41.15.180. National forest income.

(a) When the commissioner of commerce, community, and economic development receives national forest income under 16 U.S.C. 500, the commissioner shall immediately pay to each organized borough in which national forest land is located a share of the income from that forest; an organized borough's share of income from a national forest shall be proportional to the area of the national forest located within its boundaries.

(b) There is created as a separate account in the general fund the unorganized borough national forest receipts fund. The fund consists of national forest income received by the Department of Commerce, Community, and Economic Development under 16 U.S.C. 500 for the percentage of a national forest located within the unorganized borough. Seventy-five percent of the fund shall be allocated for public schools and 25 percent for public roads.

(c) From the percentage of the unorganized borough national forest receipts fund allocated to the public schools under (b) of this section, the commissioner shall pay to each home rule or first class city located within the unorganized borough and within a national forest or within 20 miles of a national forest, or regional educational attendance area that has a school located within the unorganized borough and within a national forest or within 20 miles of a national forest, a share of the income from the public schools allocation of the fund. A home rule city, first class city, or regional educational attendance area's share shall be calculated as the proportion of the number of children in average daily membership of the city school district or regional educational attendance area compared to the total number of children in average daily membership in city school districts located within the unorganized borough and within the national forest or within 20 miles of the national forest and in regional educational attendance areas that have a school located within the unorganized borough and within the national forest or within 20 miles of the national forest.

(d) From the percentage of the unorganized borough national forest receipts fund allocated to public roads under (b) of this section, the commissioner shall pay to each

- (1) home rule city, first class city, or second class city that exercises road powers, that is located within the unorganized borough and within a national forest or within 20 miles of a national forest, a share of the income from the roads allocation of the fund; a home rule city, first class city, or second class city's share shall be calculated as the proportion of the number of road miles within municipal boundaries over which the community exercises road powers plus the number of state road miles maintained by the municipality under agreement with the state compared to the total number of road miles maintained by state or local governments in the unorganized borough and within the national forest or within 20 miles of the national forest;
- (2) municipality organized under federal law as an Indian reserve that existed before the enactment of 43 U.S.C. 1618(a) and is continued in existence under that subsection and that has formed a community development corporation under (m) of this section, that exercises road powers and that is located within the unorganized borough and within the national forest or within 20 miles of the national forest a share of the income from the roads allocation of the fund; the share due a municipality organized under federal law that exercises road powers shall be calculated as the proportion of the number of road miles within municipal boundaries over which the community exercises road powers plus the number of state road miles maintained by the municipality under agreement with the state compared to the total number of road miles maintained by state or local governments in the unorganized borough and within the national forest or within 20 miles of the national forest; however, the commissioner may pay income from national forest receipts under this paragraph only after the corporation has delivered a written waiver of sovereign immunity from legal action by the state to recover all or a portion of the money distributed under this section.

(e) A distribution made under (a) of this section shall be expended for public schools and public roads. A distribution made under (c) of this section shall be expended for public schools. A distribution made under (d) of this section shall be expended for public roads.

(f) For the purpose of making distributions from the fund, the commissioner of commerce, community, and economic development shall consult with the commissioner of education and early development, for purposes of determining the number of children in average daily membership in the public schools affected by this section, and the commissioner of transportation and public facilities, to determine the total number of road miles in the unorganized borough affected by this section.

(g) An organized borough, home rule city, first class city, second class city, regional educational attendance area, or a municipality organized under federal law that receives a national forest income payment or distribution under 16 U.S.C. 500 or this section shall annually report and account to the commissioner of commerce, community, and economic development its use of the payment or distribution for the purposes provided in (a) - (e) of this section. The commissioner of commerce, community, and economic development may not distribute national forest income under this section to an entity in the unorganized borough that has previously failed to report and account as required under this subsection.

(h) For purposes of this section, if a portion of a home rule city, first class city, or second class city, or municipality organized under federal law in the unorganized borough is located within the national forest or within 20 miles of a national forest or if a regional educational attendance area has a school located within the national forest or within 20 miles of the national forest, the entire home rule city, first class city, or second class city, regional educational attendance area, or municipality organized under federal law is considered to be within the national forest.

(i) A payment or distribution made under this section shall be made under an appropriation for the purpose.

(j) That portion of the unorganized borough national forest receipts fund remaining in the account unobligated and unexpended on June 30 of a fiscal year shall be deposited into the unrestricted portion of the general fund and shall be used to offset expenses of the general fund for school and road maintenance in the affected areas of the unorganized borough for which direct distribution of funds has not been made.

(k) The department may adopt regulations necessary to implement this section that are consistent with federal law.

(l) If any provision of this section is determined by the department to be in conflict with federal requirements regarding the allocation of money received by the state from the federal government under (a) of this section, the provision that is in conflict is inoperative to the extent of the conflict. The determination does not affect the operation of any other provision of this section. Upon a determination that a provision of this section is in conflict with federal requirements regarding the allocation of money received from the federal government, the department may adopt regulations that modify the requirements of that provision to the extent necessary to comply with the federal requirements.

(m) To qualify to receive money under (d)(2) of this section, a municipality organized under federal law as an Indian reserve shall form a community development corporation with authority to determine how the money will be used. The charter must require that the governing board of the corporation shall be

elected at an annual election open to all residents of the municipality organized under federal law who are registered and qualified to vote in state elections. The department may distribute money for the municipality organized under federal law only to a corporation organized in accordance with this subsection and only after the corporation has delivered a written waiver of sovereign immunity from legal action by the state to recover all or a portion of the money distributed under (d)(2) of this section. (n) In this section, "number of children in average daily membership" means the number of full-time equivalent students enrolled in the city school district or regional educational attendance area, excluding correspondence students residing outside the school district's or regional educational attendance area's boundaries, that receives a share of the income from the public schools allocation of the fund created in (b) of this section.

NATIONAL FOREST RECEIPTS / SECURE RURAL SCHOOLS REGULATIONS

3 AAC 132.010. Purpose

3 AAC 132.010 - 3 AAC 132.160 implement, interpret, and make specific AS 41.15.180 to provide for payments under the national forest receipts program to eligible municipalities and regional educational attendance areas.

3 AAC 132.020. Objective

The objective of the national forest receipts program is to allocate a share of national forest income under 16 U.S.C. 500 and AS 41.15.180 to eligible

- (1) municipalities to be expended for public schools, public roads, and Title II and Title III projects; and
- (2) regional educational attendance areas to be expended for public schools and Title II and Title III projects.

3 AAC 132.030. Delegation of authority

The commissioner will, in the commissioner's discretion, delegate the authority to administer the national forest receipts program under AS 41.15.180 to the municipal and regional assistance division in the department.

3 AAC 132.040. Eligibility requirements

To be eligible to receive a payment under the national forest receipts program, a municipality or regional educational attendance area must

- (1) apply to the department under the procedures set out in 3 AAC 132.050 - 3 AAC 132.160;
- (2) be classified before July 1 of the application year, as a
 - (A) municipality under AS 29.04.010 - 29.04.030;

- (B) municipality organized as an Indian reserve having formed a community development corporation under AS 29.60.365 ; or
 - (C) regional educational attendance area under AS 14.08.031 ; and
- (3) be located within
- (A) the national forest; or
 - (B) 20 miles of the national forest.

3 AAC 132.050. Application procedures

- (a) An application for payment under the national forest receipts program must be made on a form provided by the department.
- (b) On or before July 1 of each application year, the department will distribute application forms to municipalities and regional educational attendance areas that the department determines may be eligible for participation in the national forest receipts program. The department will make application forms available to the public upon request.
- (c) To be eligible for the national forest receipts program, an applicant must meet the eligibility requirements in 3 AAC 132.040 and must submit to the department an annual application form including, as appropriate, a certified road mileage statement as described in 3 AAC 132.080, a declaration allocating the applicant's share of project money between Title II and Title III projects, a waiver of sovereign immunity as described in 3 AAC 132.090, and an annual accounting report as described in 3 AAC 132.120. The submissions required in this subsection must be postmarked no later than August 15 of the application year.
- (d) The commissioner will, in the commissioner's discretion, waive the filing deadline if the commissioner determines that the municipality or regional educational attendance area made a good faith effort to comply with the provisions of this section and if the commissioner determines that a waiver will not unreasonably disrupt the administration of the program.

3 AAC 132.055. Allocation of national forest receipts program money between the Tongass and Chugach National Forests

The department will use the following formula to allocate the state's annual full payment of national forest receipts received from the federal government between the Tongass and Chugach National Forests for distribution to eligible applicants located within each national forest:

- (1) 98.43 percent will be allocated for the Tongass National Forest;
- (2) 1.57 percent will be allocated for the Chugach National Forest.

3 AAC 132.060. Calculation of national forest within boroughs

The amount of a payment made under the national forest receipts program to each borough will be calculated based upon the area of the national forest located within its boundaries as of September 30 of the state fiscal year immediately preceding the application year.

3 AAC 132.070. Calculation of average daily membership

The amount of a payment made under the national forest receipts program to a regional educational attendance area or a municipal school district in the unorganized borough for public schools will be calculated based upon the average daily membership of school districts as determined under AS 14.17.600 and AS 41.15.180 (m), for the state fiscal year immediately preceding the application year.

3 AAC 132.080. Calculation of locally maintained roads

(a) The amount of a payment made under the national forest receipts program to a municipality in the unorganized borough for public roads will be calculated based upon the number of road miles located within the municipality over which the municipality exercises road powers plus the number of state road miles maintained by the municipality under a road maintenance agreement with the state in effect as of September 30 of the state fiscal year immediately preceding the application year.

(b) A municipality shall submit with its annual application to the department a road mileage statement certified by the mayor of the number of miles of eligible locally maintained roads. The road mileage statement must be on a form provided by the department. The department may require the municipality to submit a scale map displaying the roads claimed.

3 AAC 132.085. Calculation of Title II and Title III projects

(a) The amount of Title II and Title III project money allocated for the unorganized borough under the national forest receipts program is 15 percent of the payment to the unorganized borough calculated under 3 AAC 132.060.

(b) National forest receipts program money allocated to the state under AS 41.15.180 (j) is exempt from the requirements of this section.

(c) The portion of national forest receipts program money that is allocated to each municipality or regional educational attendance area in the unorganized borough, and that must be used under (a) of this section for Title II and Title III projects, will be based upon the municipality's or regional educational attendance area's pro rata share of the total amount allocated under AS 41.15.180 (c) and (d) during the application year to the municipality or regional educational attendance area.

(d) If the total amount of national forest receipts program money allocated to a municipality or regional educational attendance area in the unorganized borough for schools under AS 41.15.180 (c), roads under AS 41.15.180 (d), and Title II and Title III projects under this section is less than \$100,000, that amount is exempt from the requirement that the municipality or regional educational attendance area spend a portion of its national forest receipts program payment on Title II or Title III projects. If the amount is exempt under this subsection, the municipality or regional educational attendance area shall spend an amount for schools and roads that is equal to the amount that would have been allocated for Title II or Title III projects, and shall allocate that amount between schools and roads so that the amounts spent on schools and roads are proportional to the amounts allocated for schools under AS 41.15.180 (c) and roads under AS 41.15.180 (d).

(e) Notwithstanding (c) of this section, if the total amount of national forest receipts program money allocated to a municipality or regional educational attendance area in the unorganized borough for schools under AS 41.15.180 (c), roads under AS 41.15.180 (d), and Title II and Title III projects under this section is \$100,000 or more, the department will

- (1) require the municipality or regional educational attendance area to spend a pro rata share of the total amount of national forest receipts program money that the department determines under (b) and (d) of this section to be exempt; and
- (2) proportionately reduce, by the pro rata share of the total amount of national forest receipts program money that the department determines under (b) and (d) of this section to be exempt, the portions of national forest receipts program money allocated to the municipality or regional educational attendance area for schools under AS 41.15.180 (c) and roads under AS 41.15.180 (d), so that the 15-percent requirement in (a) of this section is met.

3 AAC 132.090. Waiver of sovereign immunity

A municipality that is organized under federal law as an Indian reserve that existed before the enactment of 43 U.S.C. 1618(a) and is continued in existence under that subsection, that has formed a community development corporation under AS 29.60.365, and that applies for a payment from the national forest receipts program shall submit with its annual application to the department a written waiver of sovereign immunity from legal action by the state to recover all or a portion of the payments distributed. The written waiver of sovereign immunity must be on a form provided by the department.

3 AAC 132.100. Expenditure of national forest receipts for public schools

A payment made under the national forest receipts program for public schools must be used only for the operation, maintenance, repair or construction of public schools and may be used as the local government contribution to public schools under AS 14.17.410.

3 AAC 132.110. Expenditure of national forest receipts for public roads

A payment made under the national forest receipts program for public roads must be used only for the operation, maintenance, repair, or construction of public roads over which the municipality exercises road powers. The purchase of materials and equipment used to operate, maintain, repair, or construct public roads is permitted under this section.

3 AAC 132.115. Expenditure of national forest receipts for Title III projects; public comment period

(a) National forest receipts program money for Title III projects may be used by a municipality or regional educational attendance area for one or more of the following purposes:

- (1) reimbursement for search-and-rescue, fire-fighting, and other emergency services performed on federal lands and paid for by the municipality or regional educational attendance area;
- (2) reimbursement for all or part of the costs incurred by the municipality or regional educational attendance area to pay the salaries and benefits of its employees who supervise adults or juveniles performing mandatory community service on federal lands;
- (3) acquisition of easements on a willing-seller basis to provide for
 - (A) non-motorized access to public lands for hunting, fishing, and other recreational purposes; or
 - (B) conservation easements;
- (4) establishing or conducting forest-related after-school programs;

- (5) education of homeowners in fire-sensitive ecosystems about the consequences of wildfires and techniques in home siting, home construction, and home landscaping that can increase the protection of people and property from wildfires;
 - (6) planning efforts to reduce or mitigate the impact of development on adjacent federal lands and to increase the protection of people and property from wildfires.
- (b) Before spending national forest receipts program money on a Title III project for a purpose set out in (a) of this section, the municipality or regional educational attendance area must give public notice of the proposed Title III project and provide for a minimum 45-day public comment period.
- (c) For purposes of (b) of this section public notice must consist of
- (1) publication of a description of the proposed Title III project, at least one time, in a newspaper of general circulation in the municipality or regional educational attendance area; or
 - (2) posting of a description of the proposed Title III project in at least three public and prominent locations within the boundaries of the municipality or regional educational attendance area.
- (d) After public notice under (b) and (c) of this section and the end of the 45-day public comment period, the municipality or regional educational attendance area may change the proposed Title III project based on comments received, or may carry out the project as described in the public notice.

3 AAC 132.120. Accounting and reporting requirements

A municipality or regional educational attendance area that receives a payment from the national forest receipts program shall establish a separate accounting of the receipt and expenditure of the payment. A municipality or regional educational attendance area shall submit with its annual application to the department an accounting report that documents the expenditure of the income received from the national forest receipts program in the previous application year. The report must be on a form provided by the department and must be certified by the mayor of the municipality or by the superintendent of the regional educational attendance area.

3 AAC 132.130. Reduction of payments

The department will reduce a municipality's or regional educational attendance area's payment under the national forest receipts program if the department determines that a municipality or regional educational attendance area failed to properly expend a payment received from the national forest receipts program. The amount of the reduction will equal the amount determined by the department to have been improperly expended. At the discretion of the department, the reduction will occur over more than one application year. The department will notify the municipality or regional educational attendance area of the determination in writing by certified mail.

3 AAC 132.140. Appeal procedures

- (a) A municipality or regional educational attendance area may appeal a determination made by the department under 3 AAC 132.130 to the commissioner. An appeal must be made in writing to the commissioner within 15 days after receipt of the department's determination.
- (b) Not later than 15 days after receipt of the appeal, the commissioner or the commissioner's designee will decide the appeal and will notify the municipality or regional educational attendance area of the

decision in writing by certified mail. The written decision is the agency's final administrative decision for purposes of appeal to superior court.

3 AAC 132.150. Underpayment and adjustment

(a) A municipality or regional educational attendance area may submit a request for adjustment if the municipality or the regional educational attendance area believes that an underpayment was made. A request for adjustment under this section must be made in writing to the commissioner and must be postmarked on or before August 1 of the application year following the application year in which the underpayment was made. The request must include evidence to demonstrate a good faith effort by the municipality or regional educational attendance area to comply with the provisions of this chapter and must include documentation in support of the adjustment.

(b) Not later than 15 days after receipt of the request for adjustment, the commissioner or the commissioner's designee will make a determination and will notify the municipality or regional educational attendance area of the decision in writing by certified mail. The written decision is the agency's final administrative decision for purposes of appeal to the superior court.

(c) Upon a determination by the commissioner or the commissioner's designee that the municipality or regional educational attendance area made a good faith effort to comply with the provisions of this chapter and that an underpayment was made, the department will adjust the payment during the application year in which the request for adjustment was made. The adjustment will be the difference between the amount that the municipality or regional educational attendance area received and the amount it was entitled to receive.

(d) If the commissioner or the commissioner's designee determines that the municipality or regional educational attendance area did not make a good faith effort to comply with the provisions of this chapter or that an underpayment was not made, the request for adjustment will be denied.

3 AAC 132.160. Overpayment and adjustment

(a) If the department determines that a payment that a municipality or regional educational attendance area received under the national forest receipts program exceeded the amount that the municipality or regional educational attendance area was entitled to receive during an application year, the department either will

(1) request that the excess payment be returned to the state; or

(2) reduce the municipality's or regional educational attendance area's payment during the following application year.

(b) If the commissioner or the commissioner's designee determines that it is in the best interests of the state and the municipality or regional educational attendance area, the commissioner or the commissioner's designee will reduce the municipality's or regional educational attendance area's payment under (a)(2) of this section over a period of not more than three application years.

(c) The commissioner or the commissioner's designee will waive the return of the overpayment if the commissioner or the commissioner's designee determines that

(1) the municipality or regional educational attendance area reasonably and in good faith relied upon the department's determination of the amount of the payment; and

(2) the reason for the overpayment was all or in substantial part departmental error.

3 AAC 132.900. Definitions

In this chapter

- (1) "application year" means the state fiscal year during which a municipality or regional educational attendance area submits an application form for a payment under this chapter;
- (2) "automotive equipment" means a self-propelled vehicle with a minimum of three wheels used to transport one or more persons, materials, or commodities;
- (3) "commissioner" means the commissioner of the Department of Commerce, Community, and Economic Development;
- (4) "department" means the Department of Commerce, Community, and Economic Development;
- (5) "public roads" means public right-of-ways dedicated and maintained for use by automotive equipment;
- (6) "public schools" means a school that is a member of a district of the state public school system as defined by AS 14.12.010 ;
- (7) "federal lands" means lands within the National Forest System as defined in 16 U.S.C. 1609(a) (sec. 11(a) of the Forest and Rangeland Renewable Resources Planning Act);
- (8) "Title II project" means a project authorized under 16 U.S.C. 500 and secs. 201 - 208, P.L. 106-393 (Secure Rural Schools and Community Self-Determination Act of 2000);
- (9) "Title III project" means a project authorized under 16 U.S.C. 500 and secs. 301 - 303, P.L. 106-393 (Secure Rural Schools and Community Self-Determination Act of 2000).