

ceeding fiscal year” after “allocate for such fiscal year”.

Subsec. (a)(2). Pub. L. 109-59, § 1105(b), substituted “2007” for “2000” and “October 15 of such” for “October 1 of the succeeding”, inserted “for such fiscal year and the succeeding fiscal year” after “Account”, and inserted at end “No reduction under this paragraph and no reduction under section 1102(h), and no reduction under title VIII or any amendment made by title VIII, of the SAFETEA-LU shall be made for a fiscal year if, as of October 1 of such fiscal year the balance in the Highway Trust Fund (other than the Mass Transit Account) exceeds \$6,000,000,000.”

Subsec. (b)(1)(A). Pub. L. 109-59, § 1105(c), (e), struck out “for” before “Federal-aid highway” and substituted “equity bonus” for “minimum guarantee” and “SAFETEA-LU” for “Transportation Equity Act for the 21st Century”.

Subsec. (c). Pub. L. 109-59, § 1105(d), inserted “the highway safety improvement program,” after “the surface transportation program,”.

1999—Subsec. (a)(2). Pub. L. 106-159, § 102(a)(2)(A), inserted “and the motor carrier safety grant program” after “relief”.

Subsec. (b)(1)(A). Pub. L. 106-159, § 102(a)(2)(B), inserted “and the motor carrier safety grant program” after “program”, substituted “title,” for “title and”, and inserted “, and subchapter I of chapter 311 of title 49” after “21st Century”.

Subsecs. (e) to (g). Pub. L. 106-113, which directed amendment of section 110 by adding subsecs. (e) to (g) at the end, was executed to this section to reflect the probable intent of Congress. See Codification note above.

1998—Subsec. (a). Pub. L. 105-178, § 1105(c)(1), as added by Pub. L. 105-206, § 9002(e), substituted “In general” for “Determination of amount” in heading and amended text of subsec. (a) generally. Prior to amendment, text read as follows: “On October 15 of fiscal year 1999, and each fiscal year thereafter, the Secretary shall allocate an amount of funds equal to the amount determined pursuant to section 251(b)(1)(B)(I)(cc) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(b)(2)(B)(I)(cc)).”

Subsec. (b)(2), (4). Pub. L. 105-178, § 1105(c)(2), as added by Pub. L. 105-206, § 9002(e), substituted “subsection (a)(1)” for “subsection (a)”.

Subsec. (c). Pub. L. 105-178, § 1105(c)(3), as added by Pub. L. 105-206, § 9002(e), substituted “the Interstate and National Highway System program” for “the Interstate Maintenance program, the National Highway System program”.

#### EFFECTIVE DATE OF 1998 AMENDMENT

Title IX of Pub. L. 105-206 effective simultaneously with enactment of Pub. L. 105-178 and to be treated as included in Pub. L. 105-178 at time of enactment, and provisions of Pub. L. 105-178, as in effect on day before July 22, 1998, that are amended by title IX of Pub. L. 105-206 to be treated as not enacted, see section 9016 of Pub. L. 105-206, set out as a note under section 101 of this title.

#### SPECIAL RULE

Pub. L. 109-59, title I, § 1105(f), Aug. 10, 2005, 119 Stat. 1166, provided that: “If the amount available pursuant to section 110 of title 23, United States Code, for fiscal year 2007 is greater than zero, the Secretary [of Transportation] shall—

“(1) determine the total amount necessary to increase each State’s rate of return (as determined under section 105(b)(1)(A) of title 23, United States Code) to 92 percent, excluding amounts provided under this paragraph;

“(2) allocate to each State the lesser of—

“(A) the amount computed for that State under paragraph (1); or

“(B) an amount determined by multiplying the total amount calculated under section 110 of title

23, United States Code, for fiscal year 2007 by the ratio that—

“(i) the amount determined for such State under paragraph (1); bears to

“(ii) the total amount computed for all States in paragraph (1); and

“(3) allocate amounts remaining in excess of the amounts allocated in paragraph (2) to all States in accordance with section 110 of title 23, United States Code.”

#### § 111. Agreements relating to use of and access to rights-of-way—Interstate System

(a) IN GENERAL.—All agreements between the Secretary and the State transportation department for the construction of projects on the Interstate System shall contain a clause providing that the State will not add any points of access to, or exit from, the project in addition to those approved by the Secretary in the plans for such project, without the prior approval of the Secretary. Such agreements shall also contain a clause providing that the State will not permit automotive service stations or other commercial establishments for serving motor vehicle users to be constructed or located on the rights-of-way of the Interstate System. Such agreements may, however, authorize a State or political subdivision thereof to use or permit the use of the airspace above and below the established grade line of the highway pavement for such purposes as will not impair the full use and safety of the highway, as will not require or permit vehicular access to such space directly from such established grade line of the highway, or otherwise interfere in any way with the free flow of traffic on the Interstate System. Nothing in this section, or in any agreement entered into under this section, shall require the discontinuance, obstruction, or removal of any establishment for serving motor vehicle users on any highway which has been, or is hereafter, designated as a highway or route on the Interstate System (1) if such establishment (A) was in existence before January 1, 1960, (B) is owned by a State, and (C) is operated through concessionaries or otherwise, and (2) if all access to, and exits from, such establishment conform to the standards established for such a highway under this title.

(b) VENDING MACHINES.—Notwithstanding subsection (a), any State may permit the placement of vending machines in rest and recreation areas, and in safety rest areas, constructed or located on rights-of-way of the Interstate System in such State. Such vending machines may only dispense such food, drink, and other articles as the State transportation department determines are appropriate and desirable. Such vending machines may only be operated by the State. In permitting the placement of vending machines, the State shall give priority to vending machines which are operated through the State licensing agency designated pursuant to section 2(a)(5) of the Act of June 20, 1936, commonly known as the “Randolph-Sheppard Act” (20 U.S.C. 107a(a)(5)). The costs of installation, operation, and maintenance of vending machines shall not be eligible for Federal assistance under this title.

(c) MOTORIST CALL BOXES.—

(1) IN GENERAL.—Notwithstanding subsection (a), a State may permit the placement of mo-

torist call boxes on rights-of-way of the National Highway System. Such motorist call boxes may include the identification and sponsorship logos of such call boxes.

(2) SPONSORSHIP LOGOS.—

(A) APPROVAL BY STATE AND LOCAL AGENCIES.—All call box installations displaying sponsorship logos under this subsection shall be approved by the highway agencies having jurisdiction of the highway on which they are located.

(B) SIZE ON BOX.—A sponsorship logo may be placed on the call box in a dimension not to exceed the size of the call box or a total dimension in excess of 12 inches by 18 inches.

(C) SIZE ON IDENTIFICATION SIGN.—Sponsorship logos in a dimension not to exceed 12 inches by 30 inches may be displayed on a call box identification sign affixed to the call box post.

(D) SPACING OF SIGNS.—Sponsorship logos affixed to an identification sign on a call box post may be located on the rights-of-way at intervals not more frequently than 1 per every 5 miles.

(E) DISTRIBUTION THROUGHOUT STATE.—Within a State, at least 20 percent of the call boxes displaying sponsorship logos shall be located on highways outside of urbanized areas with a population greater than 50,000.

(3) NONSAFETY HAZARDS.—The call boxes and their location, posts, foundations, and mountings shall be consistent with requirements of the Manual on Uniform Traffic Control Devices or any requirements deemed necessary by the Secretary to assure that the call boxes shall not be a safety hazard to motorists.

(Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 895; Pub. L. 87-61, title I, §104(a), June 29, 1961, 75 Stat. 122; Pub. L. 95-599, title I, §114, Nov. 6, 1978, 92 Stat. 2697; Pub. L. 100-17, title I, §110(a), Apr. 2, 1987, 101 Stat. 146; Pub. L. 104-59, title III, §306, Nov. 28, 1995, 109 Stat. 580; Pub. L. 105-178, title I, §1212(a)(2)(A)(i), June 9, 1998, 112 Stat. 193; Pub. L. 109-59, title I, §1412, Aug. 10, 2005, 119 Stat. 1234; Pub. L. 110-244, title I, §104, June 6, 2008, 122 Stat. 1578.)

AMENDMENTS

2008—Subsec. (d). Pub. L. 110-244 struck out subsec. (d) which related to idling reduction facilities in rights-of-way of Interstate System.

2005—Subsec. (d). Pub. L. 109-59 added subsec. (d).

1998—Subsecs. (a), (b). Pub. L. 105-178 substituted “State transportation department” for “State highway department”.

1995—Subsec. (c). Pub. L. 104-59 added subsec. (c).

1987—Pub. L. 100-17 designated existing provision as subsec. (a), inserted heading for subsec. (a), and added subsec. (b).

1978—Pub. L. 95-599 inserted provision listing situations which would not require the discontinuance, obstruction, or removal of any establishment for serving motor vehicle users.

1961—Pub. L. 87-61 substituted “to use or permit the use of the airspace above and below the established grade line of the highway pavement for such purposes as will not impair the full use and safety of the highway, as will not require or permit vehicular access to such space directly from such established grade line of the highway, or otherwise interfere” for “to use the airspace above and below the established grade line of

the highway pavement for the parking of motor vehicles provided such use does not interfere”.

INTERSTATE OASIS PROGRAM

Pub. L. 109-59, title I, §1310, Aug. 10, 2005, 119 Stat. 1219, provided that:

“(a) IN GENERAL.—Not later than 180 days after the date of enactment of this section [Aug. 10, 2005], in consultation with the States and other interested parties, the Secretary [of Transportation] shall—

“(1) establish an interstate oasis program; and

“(2) after providing an opportunity for public comment, develop standards for designating, as an interstate oasis, a facility that—

“(A) offers—

“(i) products and services to the public;

“(ii) 24-hour access to restrooms; and

“(iii) parking for automobiles and heavy trucks; and

“(B) meets other standards established by the Secretary.

“(b) STANDARDS FOR DESIGNATION.—The standards for designation under subsection (a) shall include standards relating to—

“(1) the appearance of a facility; and

“(2) the proximity of the facility to the Dwight D. Eisenhower National System of Interstate and Defense Highways.

“(c) ELIGIBILITY FOR DESIGNATION.—If a State (as defined in section 101(a) of title 23, United States Code) elects to participate in the interstate oasis program, any facility meeting the standards established by the Secretary [of Transportation] shall be eligible for designation under this section.

“(d) LOGO.—The Secretary [of Transportation] shall design a logo to be displayed by a facility designated under this section.”

VENDING MACHINES; PLACEMENT IN REST, RECREATION, AND SAFETY REST AREAS; STATE OPERATION OF MACHINES

Pub. L. 97-424, title I, §111, Jan. 6, 1983, 96 Stat. 2106, provided that notwithstanding section 111 of this title before Oct. 1, 1983, any State could permit placement of vending machines in rest and recreation areas and in safety rest areas constructed or located on rights-of-way of National System of Interstate and Defense Highways [now Dwight D. Eisenhower System of Interstate and Defense Highways] in such State. Such vending machines could only dispense such food, drink, and other articles as the State highway department determined were appropriate and desirable. Such vending machines could only be operated by the State. In permitting the placement of vending machines under this section, the State had to give priority to vending machines which were operated through the State licensing agency designated pursuant to section 2(a)(5) of the Act of June 20, 1936, known as the Randolph-Sheppard Act (20 U.S.C. 107a(a)(5)).

DEMONSTRATION PROJECT FOR VENDING MACHINES IN REST AND RECREATION AREAS

Section 153 of Pub. L. 95-599 authorized Secretary of Transportation to implement a demonstration project respecting placement of vending machines in rest and recreation areas and to report not later than two years after Nov. 6, 1978, on results of such project.

REVISION OF AGREEMENTS RELATING TO UTILIZATION OF SPACE ON RIGHTS-OF-WAY

Section 104(b) of Pub. L. 87-61 authorized Secretary of Commerce [now Transportation], on application, to revise any agreement made prior to June 29, 1961, to extent that such agreement relates to utilization of space on rights-of-way on National System of Interstate and Defense Highways [now Dwight D. Eisenhower System of Interstate and Defense Highways] to conform to section 111 of this title as amended by subsection (a).

### § 112. Letting of contracts

(a) In all cases where the construction is to be performed by the State transportation department or under its supervision, a request for submission of bids shall be made by advertisement unless some other method is approved by the Secretary. The Secretary shall require such plans and specifications and such methods of bidding as shall be effective in securing competition.

#### (b) BIDDING REQUIREMENTS.—

(1) IN GENERAL.—Subject to paragraphs (2) and (3), construction of each project, subject to the provisions of subsection (a) of this section, shall be performed by contract awarded by competitive bidding, unless the State transportation department demonstrates, to the satisfaction of the Secretary, that some other method is more cost effective or that an emergency exists. Contracts for the construction of each project shall be awarded only on the basis of the lowest responsive bid submitted by a bidder meeting established criteria of responsibility. No requirement or obligation shall be imposed as a condition precedent to the award of a contract to such bidder for a project, or to the Secretary's concurrence in the award of a contract to such bidder, unless such requirement or obligation is otherwise lawful and is specifically set forth in the advertised specifications.

#### (2) CONTRACTING FOR ENGINEERING AND DESIGN SERVICES.—

(A) GENERAL RULE.—Subject to paragraph (3), each contract for program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping, or architectural related services with respect to a project subject to the provisions of subsection (a) of this section shall be awarded in the same manner as a contract for architectural and engineering services is negotiated under chapter 11 of title 40.

(B) PERFORMANCE AND AUDITS.—Any contract or subcontract awarded in accordance with subparagraph (A), whether funded in whole or in part with Federal-aid highway funds, shall be performed and audited in compliance with cost principles contained in the Federal Acquisition Regulations of part 31 of title 48, Code of Federal Regulations.

(C) INDIRECT COST RATES.—Instead of performing its own audits, a recipient of funds under a contract or subcontract awarded in accordance with subparagraph (A) shall accept indirect cost rates established in accordance with the Federal Acquisition Regulations for 1-year applicable accounting periods by a cognizant Federal or State government agency, if such rates are not currently under dispute.

(D) APPLICATION OF RATES.—Once a firm's indirect cost rates are accepted under this paragraph, the recipient of the funds shall apply such rates for the purposes of contract estimation, negotiation, administration, reporting, and contract payment and shall not be limited by administrative or de facto ceilings of any kind.

(E) PRENOTIFICATION; CONFIDENTIALITY OF DATA.—A recipient of funds requesting or using the cost and rate data described in subparagraph (D) shall notify any affected firm before such request or use. Such data shall be confidential and shall not be accessible or provided, in whole or in part, to another firm or to any government agency which is not part of the group of agencies sharing cost data under this paragraph, except by written permission of the audited firm. If prohibited by law, such cost and rate data shall not be disclosed under any circumstances.

(F)(F)<sup>1</sup> Subparagraphs (B), (C), (D) and (E) herein shall not apply to the States of West Virginia or Minnesota.

#### (3) DESIGN-BUILD CONTRACTING.—

(A) IN GENERAL.—A State transportation department or local transportation agency may award a design-build contract for a qualified project described in subparagraph (C) using any procurement process permitted by applicable State and local law.

(B) LIMITATION ON FINAL DESIGN.—Final design under a design-build contract referred to in subparagraph (A) shall not commence before compliance with section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332).

(C) QUALIFIED PROJECTS.—A qualified project referred to in subparagraph (A) is a project under this chapter (including intermodal projects) for which the Secretary has approved the use of design-build contracting under criteria specified in regulations issued by the Secretary.

(D) REGULATORY PROCESS.—Not later than 90 days after the date of enactment of the SAFETEA-LU, the Secretary shall issue revised regulations under section 1307(c) of the Transportation Equity Act for 21st Century (23 U.S.C. 112 note; 112 Stat. 230) that—

(i) do not preclude a State transportation department or local transportation agency, prior to compliance with section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332), from—

(I) issuing requests for proposals;

(II) proceeding with awards of design-build contracts; or

(III) issuing notices to proceed with preliminary design work under design-build contracts;

(ii) require that the State transportation department or local transportation agency receive concurrence from the Secretary before carrying out an activity under clause (i); and

(iii) preclude the design-build contractor from proceeding with final design or construction of any permanent improvement prior to completion of the process under such section 102.

(E) DESIGN-BUILD CONTRACT DEFINED.—In this paragraph, the term “design-build contract” means an agreement that provides for design and construction of a project by a

<sup>1</sup> So in original.