

interests in lands acquired in any State under the provisions of this section, except the outside five feet of any such right-of-way in any State which does not provide control of access, to the State transportation department of such State or such political subdivision thereof as its laws may provide, upon such terms and conditions as to such lands or interests in lands as may be agreed upon by the Secretary and the State transportation department or political subdivisions to which the conveyance is to be made. Whenever the State makes provision for control of access satisfactory to the Secretary, the outside five feet then shall be conveyed to the State by the Secretary, as herein provided.

(d) Whenever rights-of-way, including control of access, on the Interstate System are required over lands or interests in lands owned by the United States, the Secretary may make such arrangements with the agency having jurisdiction over such lands as may be necessary to give the State or other person constructing the projects on such lands adequate rights-of-way and control of access thereto from adjoining lands, and any such agency is directed to cooperate with the Secretary in this connection.

(Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 892; Pub. L. 105-178, title I, § 1212(a)(2)(A)(i), June 9, 1998, 112 Stat. 193; Pub. L. 109-284, § 3(1), Sept. 27, 2006, 120 Stat. 1211.)

REFERENCES IN TEXT

Subsection (c) of section 120 of this title, referred to in subsec. (a)(2), was struck out and a new subsec. (c) was added by Pub. L. 102-240, title I, § 1021(a), Dec. 18, 1991, 105 Stat. 1950.

The Federal-Aid Highway Act of 1956, referred to in subsec. (b), is act June 29, 1956, ch. 462, 70 Stat. 374. For complete classification of this Act to the Code, see Tables. Section 108(b) of the Federal-Aid Highway Act of 1956 is set out as a note under section 101 of this title.

AMENDMENTS

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

1998—Subsec. (c). Pub. L. 105-178 substituted “State transportation department” for “State highway department” in two places.

§ 108. Advance acquisition of real property

(a) IN GENERAL.—

(1) AVAILABILITY OF FUNDS.—For the purpose of facilitating the timely and economical acquisition of real property interests for a transportation improvement eligible for funding under this title, the Secretary, upon the request of a State, may make available, for the acquisition of real property interests, such funds apportioned to the State as may be expended on the transportation improvement, under such rules and regulations as the Secretary may issue.

(2) CONSTRUCTION.—The agreement between the Secretary and the State for the reimbursement of the cost of the real property interests shall provide for the actual construction of the transportation improvement within a period not to exceed 20 years following the fiscal year for which the request is made, unless the Secretary determines that a longer period is reasonable.

(b) Federal participation in the cost of real property interests acquired under subsection (a) of this section shall not exceed the Federal pro rata share applicable to the class of funds from which Federal reimbursement is made.

(c) STATE-FUNDED EARLY ACQUISITION OF REAL PROPERTY INTERESTS.—

(1) IN GENERAL.—A State may carry out, at the expense of the State, acquisitions of interests in real property for a project before completion of the review process required for the project under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) without affecting subsequent approvals required for the project by the State or any Federal agency.

(2) ELIGIBILITY FOR REIMBURSEMENT.—Subject to paragraph (3), funds apportioned to a State under this title may be used to participate in the payment of—

(A) costs incurred by the State for acquisition of real property interests, acquired in advance of any Federal approval or authorization, if the real property interests are subsequently incorporated into a project eligible for surface transportation program funds; and

(B) costs incurred by the State for the acquisition of land necessary to preserve environmental and scenic values.

(3) TERMS AND CONDITIONS.—The Federal share payable of the costs described in paragraph (2) shall be eligible for reimbursement out of funds apportioned to a State under this title when the real property interests acquired are incorporated into a project eligible for surface transportation program funds, if the State demonstrates to the Secretary and the Secretary finds that—

(A) any land acquired, and relocation assistance provided, complied with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;

(B) the requirements of title VI of the Civil Rights Act of 1964 have been complied with;

(C) the State has a mandatory comprehensive and coordinated land use, environment, and transportation planning process under State law and the acquisition is certified by the Governor as consistent with the State plans before the acquisition;

(D) the acquisition is determined in advance by the Governor to be consistent with the State transportation planning process pursuant to section 135 of this title;

(E) the alternative for which the real property interest is acquired is selected by the State pursuant to regulations to be issued by the Secretary which provide for the consideration of the environmental impacts of various alternatives;

(F) before the time that the cost incurred by a State is approved for Federal participation, environmental compliance pursuant to the National Environmental Policy Act has been completed for the project for which the real property interest was acquired by the State, and the acquisition has been approved by the Secretary under this Act,¹ and in

¹ See References in Text note below.

compliance with section 303 of title 49, section 7 of the Endangered Species Act, and all other applicable environmental laws shall be identified by the Secretary in regulations; and

(G) before the time that the cost incurred by a State is approved for Federal participation, the Secretary has determined that the property acquired in advance of Federal approval or authorization did not influence the environmental assessment of the project, the decision relative to the need to construct the project, or the selection of the project design or location.

(d) **FEDERALLY FUNDED EARLY ACQUISITION OF REAL PROPERTY INTERESTS.**—

(1) **DEFINITION OF ACQUISITION OF A REAL PROPERTY INTEREST.**—In this subsection, the term “acquisition of a real property interest” includes the acquisition of—

- (A) any interest in land;
- (B) a contractual right to acquire any interest in land; or
- (C) any other similar action to acquire or preserve rights-of-way for a transportation facility.

(2) **AUTHORIZATION.**—The Secretary may authorize the use of funds apportioned to a State under this title for the acquisition of a real property interest by a State.

(3) **STATE CERTIFICATION.**—A State requesting Federal funding for an acquisition of a real property interest shall certify in writing, with concurrence by the Secretary, that—

- (A) the State has authority to acquire the real property interest under State law; and
- (B) the acquisition of the real property interest—
 - (i) is for a transportation purpose;
 - (ii) will not cause any significant adverse environmental impact;
 - (iii) will not limit the choice of reasonable alternatives for the project or otherwise influence the decision of the Secretary on any approval required for the project;
 - (iv) does not prevent the lead agency from making an impartial decision as to whether to accept an alternative that is being considered in the environmental review process;
 - (v) is consistent with the State transportation planning process under section 135;
 - (vi) complies with other applicable Federal laws (including regulations);
 - (vii) will be acquired through negotiation, without the threat of condemnation; and
 - (viii) will not result in a reduction or elimination of benefits or assistance to a displaced person required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.) and title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.).

(4) **ENVIRONMENTAL COMPLIANCE.**—

(A) **IN GENERAL.**—Before authorizing Federal funding for an acquisition of a real property interest, the Secretary shall complete the review process under the National

Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) with respect to the acquisition of the real property interest.

(B) **INDEPENDENT UTILITY.**—The acquisition of a real property interest—

- (i) shall be treated as having independent utility for purposes of the review process under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and
- (ii) shall not limit consideration of alternatives for future transportation improvements with respect to the real property interest.

(5) **PROGRAMMING.**—

(A) **IN GENERAL.**—The acquisition of a real property interest for which Federal funding is requested shall be included as a project in an applicable transportation improvement program under sections 134 and 135 and sections 5303 and 5304 of title 49.

(B) **ACQUISITION PROJECT.**—The acquisition project may consist of the acquisition of a specific parcel, a portion of a transportation corridor, or an entire transportation corridor.

(6) **DEVELOPMENT.**—Real property interests acquired under this subsection may not be developed in anticipation of a project until all required environmental reviews for the project have been completed.

(7) **REIMBURSEMENT.**—If Federal-aid reimbursement is made for real property interests acquired early under this section and the real property interests are not subsequently incorporated into a project eligible for surface transportation funds within the time allowed by subsection (a)(2), the Secretary shall offset the amount reimbursed against funds apportioned to the State.

(8) **OTHER REQUIREMENTS AND CONDITIONS.**—

(A) **APPLICABLE LAW.**—The acquisition of a real property interest shall be carried out in compliance with all requirements applicable to the acquisition of real property interests for federally funded transportation projects.

(B) **ADDITIONAL CONDITIONS.**—The Secretary may establish such other conditions or restrictions on acquisitions under this subsection as the Secretary determines to be appropriate.

(Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 893; Pub. L. 86-35, §1, May 29, 1959, 73 Stat. 62; Pub. L. 90-495, §7(a), (b), Aug. 23, 1968, 82 Stat. 818; Pub. L. 93-87, title I, §113, Aug. 13, 1973, 87 Stat. 257; Pub. L. 94-280, title I, §115, May 5, 1976, 90 Stat. 436; Pub. L. 102-240, title I, §1017(a), (b), Dec. 18, 1991, 105 Stat. 1947; Pub. L. 102-388, title III, §346, Oct. 6, 1992, 106 Stat. 1553; Pub. L. 103-429, §3(2), Oct. 31, 1994, 108 Stat. 4377; Pub. L. 105-178, title I, §§1211(e)(1), 1301(a), June 9, 1998, 112 Stat. 188, 225; Pub. L. 112-141, div. A, title I, §1302, July 6, 2012, 126 Stat. 528.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsecs. (c)(1) and (d)(4)(A), (B)(i), 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 Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, referred to in subsecs. (c)(3)(A) and (d)(3)(B)(viii), is act Jan. 2, 1971, Pub. L. 91-646, 84 Stat. 1894, and which is classified principally to chapter 61 (§4601 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 4601 of Title 42 and Tables.

The Civil Rights Act of 1964, referred to in subsecs. (c)(3)(B) and (d)(3)(B)(viii), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241. Title VI of the Act is classified generally to subchapter V (§2000d et seq.) of chapter 21 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 2000a of Title 42 and Tables.

The National Environmental Policy Act, referred to in subsec. (c)(3)(F), probably means the National Environmental Policy Act of 1969, 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.

This Act, referred to in subsec. (c)(3)(F), probably means Pub. L. 102-240, Dec. 18, 1991, 105 Stat. 1914, known as the Intermodal Surface Transportation Efficiency Act of 1991. For complete classification of this Act to the Code, see Short Title of 1991 Amendment note set out under section 101 of Title 49, Transportation, and Tables.

Section 7 of the Endangered Species Act, referred to in subsec. (c)(3)(F), probably means section 7 of the Endangered Species Act of 1973, which is classified to section 1536 of Title 16, Conservation.

AMENDMENTS

2012—Subsec. (a). Pub. L. 112-141, §1302(a)(1), substituted “real property interests” for “real property” wherever appearing.

Subsec. (b). Pub. L. 112-141, §1302(a)(3), substituted “real property interests” for “rights-of-way”.

Subsec. (c). Pub. L. 112-141, §1302(b)(1), substituted “STATE-FUNDED EARLY ACQUISITION OF REAL PROPERTY INTERESTS” for “EARLY ACQUISITION OF RIGHTS-OF-WAY” in heading.

Pub. L. 112-141, §1302(a)(2), (3), substituted “real property interest” for “right-of-way” and “real property interests” for “rights-of-way” wherever appearing.

Subsec. (c)(1) to (3). Pub. L. 112-141, §1302(b)(2)–(5)(A), added par. (1) and redesignated former pars. (1) and (2) as (2) and (3), respectively; in par. (2), substituted “ELIGIBILITY FOR REIMBURSEMENT” for “GENERAL RULE” in heading and “Subject to paragraph (3)” for “Subject to paragraph (2)” in introductory provisions; and, in par. (3), substituted “in paragraph (2)” for “in paragraph (1)” in introductory provisions.

Subsec. (c)(3)(G). Pub. L. 112-141, §1302(b)(5)(B), substituted “the Secretary has determined” for “both the Secretary and the Administrator of the Environmental Protection Agency have concurred”.

Subsec. (d). Pub. L. 112-141, §1302(c), added subsec. (d). 1998—Pub. L. 105-178, §1301(a), substituted “Advance acquisition of real property” for “Advance acquisition of rights-of-way” in section catchline.

Subsec. (a). Pub. L. 105-178, §1301(a), added subsec. (a) and struck out former subsec. (a) which read as follows: “For the purpose of facilitating the acquisition of rights-of-way on any Federal-aid highway in the most expeditious and economical manner, and recognizing that the acquisition of rights-of-way requires lengthy planning and negotiations if it is to be done at a reasonable cost, the Secretary, upon the request of the State highway department, is authorized to make available the funds apportioned to any State which may be expended on such highway for acquisition of rights-of-way, in anticipation of construction and under such rules and regulations as the Secretary may prescribe. The agreement between the Secretary and the State highway department for the reimbursement of the cost of such rights-of-way shall provide for the

actual construction of a road on such rights-of-way within a period not exceeding 20 years following the fiscal year in which such request is made unless a longer period is determined to be reasonable by the Secretary.”

Subsecs. (c), (d). Pub. L. 105-178, §1211(e)(1), redesignated subsec. (d) as (c) and struck out former subsec. (c) which related to establishment and administration of right-of-way revolving fund.

1994—Subsec. (d)(2)(F). Pub. L. 103-429 substituted “section 303 of title 49” for “section 4(f) of the Department of Transportation Act”.

1992—Subsec. (a). Pub. L. 102-388, §346(1), (2), substituted “Federal-aid highway” for “of the Federal-aid highway systems, including the Interstate System,” and “which may be expended on such highway” for “for expenditure on any of the Federal-aid highway systems, including the Interstate System.”

Subsec. (c)(2). Pub. L. 102-388, §346(3), inserted “and passenger transit facilities”.

Subsec. (c)(3). Pub. L. 102-388, §346(5), which directed the substitution of “of the type funded” for “on the federal-aid system of which such project is to be part,” was executed by making the substitution for “on the Federal-aid system of which such project is to be a part,” to reflect the probable intent of Congress.

Pub. L. 102-388, §346(4), substituted “project” for “highway” after “construction of a” in first and second sentences.

1991—Subsecs. (a), (c)(3). Pub. L. 102-240, §1017(a), substituted “20” for “ten”.

Subsec. (d). Pub. L. 102-240, §1017(b), added subsec. (d).

1976—Subsec. (a). Pub. L. 94-280, §115(b), inserted “unless a longer period is determined to be reasonable by the Secretary” after “request is made” in last sentence.

Subsec. (c)(2). Pub. L. 94-280, §115(a), struck out “made pursuant to section 133 or chapter 5 of this title” after “relocation payments” in last sentence.

Subsec. (c)(3). Pub. L. 94-280, §115(c), inserted “or later” after “earlier” in first sentence.

1973—Subsec. (a). Pub. L. 93-87, §113(a), substituted “ten” for “seven” years in last sentence.

Subsec. (c)(3). Pub. L. 93-87, §113(b), substituted “ten” for “seven” years in first sentence.

1968—Subsec. (b). Pub. L. 90-495, §7(a), substituted “subsection (a) of this section” for “this section”.

Subsec. (c). Pub. L. 90-495, §7(b), added subsec. (c).

1959—Subsec. (a). Pub. L. 86-35 increased from five to seven years the period in which actual construction shall commence on rights-of-way acquired in anticipation of such construction.

EFFECTIVE DATE OF 2012 AMENDMENT

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

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by 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 this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-495 effective Aug. 23, 1968, see section 37 of Pub. L. 90-495, set out as a note under section 101 of this title.

TRANSITION PROVISIONS

Pub. L. 105-178, title I, §1211(e)(2), June 9, 1998, 112 Stat. 188, provided that:

“(A) IN GENERAL.—Funds advanced to a State by the Secretary from the right-of-way revolving fund established by section 108(c) of title 23, United States Code,

prior to the date of enactment of this Act [June 9, 1998] shall remain available to the State for use on the projects for which the funds were advanced for a period of 20 years from the date on which the funds were advanced.

“(B) CREDIT TO HIGHWAY TRUST FUND.—With respect to a project for which funds have been advanced from the right-of-way revolving fund, upon the termination of the 20-year period referred to in subparagraph (A), when actual construction is commenced, or upon approval by the Secretary of the plans, specifications, and estimates for the actual construction of the project on the right-of-way, whichever occurs first—

“(i) the Highway Trust Fund (other than the Mass Transit Account) shall be credited with an amount equal to the Federal share of the funds advanced, as provided in section 120 of title 23, United States Code, out of any Federal-aid highway funds apportioned to the State in which the project is located and available for obligation for projects of the type funded; and

“(ii) the State shall reimburse the Secretary in an amount equal to the non-Federal share of the funds advanced for deposit in, and credit to, the Highway Trust Fund (other than the Mass Transit Account).”

PRESERVATION OF TRANSPORTATION CORRIDORS REPORT

Pub. L. 102-240, title I, §1017(c), Dec. 18, 1991, 105 Stat. 1948, provided that: “The Secretary, in consultation with the States, shall report to Congress within 2 years after the date of the enactment of this Act [Dec. 18, 1991], a national list of the rights-of-way identified by the metropolitan planning organizations and the States (under sections 134 and 135 of title 23, United States Code), including the total mileage involved, an estimate of the total costs, and a strategy for preventing further loss of rights-of-way including the desirability of creating a transportation right-of-way land bank to preserve vital corridors.”

AUTHORIZATION OF APPROPRIATIONS TO RIGHT-OF-WAY REVOLVING FUND; APPORTIONMENT; REVERSION OF AMOUNTS NOT ADVANCED OR OBLIGATED

Pub. L. 90-495, §7(c)-(e), Aug. 23, 1968, 82 Stat. 819, provided that \$100,000,000 for the fiscal year ending June 30, 1970, \$100,000,000 for the fiscal year ending June 30, 1971, and \$100,000,000 for the fiscal year ending June 30, 1972, be transferred from the highway trust fund to the right-of-way revolving fund established by subsec. (c) of this section, authorized the Secretary to apportion these funds and required that funds apportioned to a State remain available for obligation for advances until Oct. 1 of the fiscal year in which the apportionment was made and any funds not advanced or obligated by such date revert to the right-of-way revolving fund for distribution to other States.

STUDY OF ADVANCE ACQUISITION OF RIGHTS-OF-WAY

Pub. L. 89-574, §10, Sept. 13, 1966, 80 Stat. 769, as amended by Pub. L. 97-449, §2(a), Jan. 12, 1983, 96 Stat. 2439, directed the Secretary to make a full and complete investigation and study of the advance acquisition of rights-of-way for future construction of highways on the Federal-aid highway systems, with particular reference to the provision of adequate time for the removal and disposal of improvements located on rights-of-way and the relocation of affected individuals, businesses, institutions, and organizations, the tax status of such property after acquisition and before its use for highway purposes, and the methods for financing advance right-of-way acquisition by both the State governments and the Federal Government, including the possible creation of revolving funds for such purpose. The Secretary was required to submit a report of results of such study to Congress not later than July 1, 1967, together with his recommendations.

INCREASED LIMITATION PERIOD APPLICABLE TO CERTAIN CONTRACTS

Pub. L. 86-35, §2, May 29, 1959, 73 Stat. 63, provided that agreements entered into before May 29, 1959 by the

Secretary of Commerce and a State highway department under authority of section 110(a) of the Federal-Aid Highway Act of 1956, or section 108(a) of title 23 of the United States Code shall be deemed to provide for actual construction of a road on such rights-of-way within a period of seven years following the fiscal year in which such request was made.

§ 109. Standards

(a) IN GENERAL.—The Secretary shall ensure that the plans and specifications for each proposed highway project under this chapter provide for a facility that will—

(1) adequately serve the existing and planned future traffic of the highway in a manner that is conducive to safety, durability, and economy of maintenance; and

(2) be designed and constructed in accordance with criteria best suited to accomplish the objectives described in paragraph (1) and to conform to the particular needs of each locality.

(b) The geometric and construction standards to be adopted for the Interstate System shall be those approved by the Secretary in cooperation with the State transportation departments. Such standards, as applied to each actual construction project, shall be adequate to enable such project to accommodate the types and volumes of traffic anticipated for such project for the twenty-year period commencing on the date of approval by the Secretary, under section 106 of this title, of the plans, specifications, and estimates for actual construction of such project. Such standards shall in all cases provide for at least four lanes of traffic. The right-of-way width of the Interstate System shall be adequate to permit construction of projects on the Interstate System to such standards. The Secretary shall apply such standards uniformly throughout all the States.

(c) DESIGN CRITERIA FOR NATIONAL HIGHWAY SYSTEM.—

(1) IN GENERAL.—A design for new construction, reconstruction, resurfacing (except for maintenance resurfacing), restoration, or rehabilitation of a highway on the National Highway System (other than a highway also on the Interstate System) may take into account, in addition to the criteria described in subsection (a)—

(A) the constructed and natural environment of the area;

(B) the environmental, scenic, aesthetic, historic, community, and preservation impacts of the activity; and

(C) access for other modes of transportation.

(2) DEVELOPMENT OF CRITERIA.—The Secretary, in cooperation with State transportation departments, may develop criteria to implement paragraph (1). In developing criteria under this paragraph, the Secretary shall consider—

(A) the results of the committee process of the American Association of State Highway and Transportation Officials as used in adopting and publishing “A Policy on Geometric Design of Highways and Streets”, including comments submitted by interested parties as part of such process;