

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.

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 1979 AMENDMENT

Pub. L. 96–106, § 5(b), Nov. 9, 1979, 93 Stat. 797, provided that: “The amendment made by subsection (a) of this section [amending this section] shall apply to all amounts apportioned under [former] section 104(b)(5)(B) of title 23, United States Code, for the fiscal year 1978 and for subsequent fiscal years.”

USE OF EXCESS FUNDS AND FUNDS FOR INACTIVE PROJECTS

Pub. L. 109–59, title I, § 1603, Aug. 10, 2005, 119 Stat. 1248, provided that:

“(a) DEFINITIONS.—In this section, the following definitions apply:

“(1) ELIGIBLE FUNDS.—

“(A) IN GENERAL.—The term ‘eligible funds’ means excess funds or inactive funds for a specific transportation project or activity that were—

“(i) allocated before fiscal year 1991; and

“(ii) designated in a public law, or a report accompanying a public law, for allocation for the specific surface transportation project or activity.

“(B) INCLUSION.—The term ‘eligible funds’ includes funds described in subparagraph (A) that were allocated and designated for a demonstration project.

“(2) EXCESS FUNDS.—The term ‘excess funds’ means—

“(A) funds obligated for a specific transportation project or activity that remain available for the project or activity after the project or activity has been completed or canceled; or

“(B) an unobligated balance of funds allocated for a transportation project or activity that the State in which the project or activity was to be carried out certifies are no longer needed for the project or activity.

“(3) INACTIVE FUNDS.—The term ‘inactive funds’ means—

“(A) an obligated balance of Federal funds for an eligible transportation project or activity against which no expenditures have been charged during any 1-year period beginning after the date of obligation of the funds; and

“(B) funds that are available to carry out a transportation project or activity in a State, but, as certified by the State, are unlikely to be advanced for the project or activity during the 1-year period beginning on the date of certification.

“(b) AVAILABILITY FOR STP PURPOSES.—Eligible funds shall be—

“(1) made available in accordance with this section to the State that originally received the funds; and

“(2) available for obligation for any eligible purpose under section 133 of title 23, United States Code.

“(c) RETENTION FOR ORIGINAL PURPOSE.—

“(1) IN GENERAL.—The Secretary [of Transportation] may determine that eligible funds identified as inactive funds shall remain available for the purpose for which the funds were initially made available if the applicable State certifies that the funds are necessary for that initial purpose.

“(2) REPORT.—A certification provided by a State under paragraph (1) shall include a report on the status of, and an estimated completion date for, the project that is the subject of the certification.

“(d) AUTHORITY TO OBLIGATE.—Notwithstanding the original source or period of availability of eligible funds, the Secretary [of Transportation] may, on the request by a State—

“(1) obligate the funds for any eligible purpose under section 133 of title 23, United States Code; or

“(2)(A) deobligate the funds; and

“(B) reobligate the funds for any eligible purpose under that section.

“(e) APPLICABILITY.—

“(1) IN GENERAL.—Subject to paragraph (2), this section applies only to eligible funds.

“(2) DISCRETIONARY ALLOCATIONS; SECTION 125 PROJECTS.—This section does not apply to funds that are—

“(A) allocated at the discretion of the Secretary [of Transportation] and for which the Secretary has the authority to withdraw the allocation for use on other projects; or

“(B) made available to carry out projects under section 125 of title 23, United States Code.

“(f) PERIOD OF AVAILABILITY; TITLE 23 REQUIREMENTS.—

“(1) IN GENERAL.—Notwithstanding the original source or period of availability of eligible funds obligated, or deobligated and reobligated, under subsection (d), the eligible funds—

“(A) shall remain available for obligation for a period of 3 fiscal years after the fiscal year in which this Act is enacted; and

“(B) except as provided in paragraph (2), shall be subject to the requirements of title 23, United States Code, that apply to section 133 of that title, including provisions relating to Federal share.

“(2) EXCEPTION.—With respect to eligible funds described in paragraph (1)—

“(A) section 133(d) of title 23, United States Code, shall not apply; and

“(B) the period of availability of the eligible funds shall be determined in accordance with this section.

“(g) REPORT.—Not later than 1 year after the date of enactment of this Act [Aug. 10, 2005], and annually thereafter, the Secretary [of Transportation] shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report describing any action taken by the Secretary under this section.

“(h) SENSE OF CONGRESS REGARDING USE OF ELIGIBLE FUNDS.—It is the sense of Congress that eligible funds made available under this Act [see Tables for classification] or title 23, United States Code, should be available for obligation for transportation projects and activities in the same geographic region for which the eligible funds were initially made available.”

§ 119. National highway performance program

(a) ESTABLISHMENT.—The Secretary shall establish and implement a national highway performance program under this section.

(b) PURPOSES.—The purposes of the national highway performance program shall be—

(1) to provide support for the condition and performance of the National Highway System;

(2) to provide support for the construction of new facilities on the National Highway System; and

(3) to ensure that investments of Federal-aid funds in highway construction are directed to support progress toward the achievement of performance targets established in an asset management plan of a State for the National Highway System.

(c) ELIGIBLE FACILITIES.—Except as provided in subsection (d), to be eligible for funding ap-

portioned under section 104(b)(1) to carry out this section, a facility shall be located on the National Highway System, as defined in section 103.

(d) ELIGIBLE PROJECTS.—Funds apportioned to a State to carry out the national highway performance program may be obligated only for a project on an eligible facility that is—

(1)(A) a project or part of a program of projects supporting progress toward the achievement of national performance goals for improving infrastructure condition, safety, congestion reduction, system reliability, or freight movement on the National Highway System; and

(B) consistent with sections 134 and 135; and (2) for 1 or more of the following purposes:

(A) Construction, reconstruction, resurfacing, restoration, rehabilitation, preservation, or operational improvement of segments of the National Highway System.

(B) Construction, replacement (including replacement with fill material), rehabilitation, preservation, and protection (including scour countermeasures, seismic retrofits, impact protection measures, security countermeasures, and protection against extreme events) of bridges on the National Highway System.

(C) Construction, replacement (including replacement with fill material), rehabilitation, preservation, and protection (including impact protection measures, security countermeasures, and protection against extreme events) of tunnels on the National Highway System.

(D) Inspection and evaluation, as described in section 144, of bridges and tunnels on the National Highway System, and inspection and evaluation of other highway infrastructure assets on the National Highway System, including signs and sign structures, earth retaining walls, and drainage structures.

(E) Training of bridge and tunnel inspectors, as described in section 144.

(F) Construction, rehabilitation, or replacement of existing ferry boats and ferry boat facilities, including approaches, that connect road segments of the National Highway System.

(G) Construction, reconstruction, resurfacing, restoration, rehabilitation, and preservation of, and operational improvements for, a Federal-aid highway not on the National Highway System, and construction of a transit project eligible for assistance under chapter 53 of title 49, if—

(i) the highway project or transit project is in the same corridor as, and in proximity to, a fully access-controlled highway designated as a part of the National Highway System;

(ii) the construction or improvements will reduce delays or produce travel time savings on the fully access-controlled highway described in clause (i) and improve regional traffic flow; and

(iii) the construction or improvements are more cost-effective, as determined by benefit-cost analysis, than an improve-

ment to the fully access-controlled highway described in clause (i).

(H) Bicycle transportation and pedestrian walkways in accordance with section 217.

(I) Highway safety improvements for segments of the National Highway System.

(J) Capital and operating costs for traffic and traveler information monitoring, management, and control facilities and programs.

(K) Development and implementation of a State asset management plan for the National Highway System in accordance with this section, including data collection, maintenance, and integration and the cost associated with obtaining, updating, and licensing software and equipment required for risk-based asset management and performance-based management.

(L) Infrastructure-based intelligent transportation systems capital improvements, including the installation of vehicle-to-infrastructure communication equipment.

(M) Environmental restoration and pollution abatement in accordance with section 328.

(N) Control of noxious weeds and aquatic noxious weeds and establishment of native species in accordance with section 329.

(O) Environmental mitigation efforts related to projects funded under this section, as described in subsection (g).

(P) Construction of publicly owned intracity or intercity bus terminals servicing the National Highway System.

(e) STATE PERFORMANCE MANAGEMENT.—

(1) IN GENERAL.—A State shall develop a risk-based asset management plan for the National Highway System to improve or preserve the condition of the assets and the performance of the system.

(2) PERFORMANCE DRIVEN PLAN.—A State asset management plan shall include strategies leading to a program of projects that would make progress toward achievement of the State targets for asset condition and performance of the National Highway System in accordance with section 150(d) and supporting the progress toward the achievement of the national goals identified in section 150(b).

(3) SCOPE.—In developing a risk-based asset management plan, the Secretary shall encourage States to include all infrastructure assets within the right-of-way corridor in such plan.

(4) PLAN CONTENTS.—A State asset management plan shall, at a minimum, be in a form that the Secretary determines to be appropriate and include—

(A) a summary listing of the pavement and bridge assets on the National Highway System in the State, including a description of the condition of those assets;

(B) asset management objectives and measures;

(C) performance gap identification;

(D) lifecycle cost and risk management analysis;

(E) a financial plan; and

(F) investment strategies.

(5) REQUIREMENT FOR PLAN.—

(A) IN GENERAL.—Notwithstanding section 120, each fiscal year, if the Secretary determines that a State has not developed and implemented a State asset management plan consistent with this section, the Federal share payable on account of any project or activity for which funds are obligated by the State in that fiscal year under this section shall be 65 percent.

(B) DETERMINATION.—The Secretary shall make the determination under subparagraph (A) for a fiscal year not later than the day before the beginning of such fiscal year.

(6) CERTIFICATION OF PLAN DEVELOPMENT PROCESS.—

(A) IN GENERAL.—Not later than 90 days after the date on which a State submits a request for approval of the process used by the State to develop the State asset management plan for the National Highway System, the Secretary shall—

- (i) review the process; and
- (ii) (I) certify that the process meets the requirements established by the Secretary; or
- (II) deny certification and specify actions necessary for the State to take to correct deficiencies in the State process.

(B) RECERTIFICATION.—Not less frequently than once every 4 years, the Secretary shall review and recertify that the process used by a State to develop and maintain the State asset management plan for the National Highway System meets the requirements for the process, as established by the Secretary.

(C) OPPORTUNITY TO CURE.—If the Secretary denies certification under subparagraph (A), the Secretary shall provide the State with—

- (i) not less than 90 days to cure the deficiencies of the plan, during which time period all penalties and other legal impacts of a denial of certification shall be stayed; and
- (ii) a written statement of the specific actions the Secretary determines to be necessary for the State to cure the plan.

(7) PERFORMANCE ACHIEVEMENT.—A State that does not achieve or make significant progress toward achieving the targets of the State for performance measures described in section 150(d) for the National Highway System shall include as part of the performance target report under section 150(e) a description of the actions the State will undertake to achieve the targets.

(8) PROCESS.—Not later than 18 months after the date of enactment of the MAP-21, the Secretary shall, by regulation and in consultation with State departments of transportation, establish the process to develop the State asset management plan described in paragraph (1).

(f) INTERSTATE SYSTEM AND NHS BRIDGE CONDITIONS.—

(1) CONDITION OF INTERSTATE SYSTEM.—

(A) PENALTY.—If a State reports that the condition of the Interstate System, excluding bridges on the Interstate System, has fallen below the minimum condition level

established by the Secretary under section 150(c)(3), the State shall be required, during the following fiscal year—

(i) to obligate, from the amounts apportioned to the State under section 104(b)(1), an amount that is not less than the amount of funds apportioned to the State for fiscal year 2009 under the Interstate maintenance program for the purposes described in this section (as in effect on the day before the date of enactment of the MAP-21), except that for each year after fiscal year 2013, the amount required to be obligated under this clause shall be increased by 2 percent over the amount required to be obligated in the previous fiscal year; and

(ii) to transfer, from the amounts apportioned to the State under section 104(b)(2) (other than amounts suballocated to metropolitan areas and other areas of the State under section 133(d)) to the apportionment of the State under section 104(b)(1), an amount equal to 10 percent of the amount of funds apportioned to the State for fiscal year 2009 under the Interstate maintenance program for the purposes described in this section (as in effect on the day before the date of enactment of the MAP-21).

(B) RESTORATION.—The obligation requirement for the Interstate System in a State required by subparagraph (A) for a fiscal year shall remain in effect for each subsequent fiscal year until such time as the condition of the Interstate System in the State exceeds the minimum condition level established by the Secretary.

(2) CONDITION OF NHS BRIDGES.—

(A) PENALTY.—If the Secretary determines that, for the 3-year-period preceding the date of the determination, more than 10 percent of the total deck area of bridges in the State on the National Highway System is located on bridges that have been classified as structurally deficient, an amount equal to 50 percent of funds apportioned to such State for fiscal year 2009 to carry out section 144 (as in effect the day before enactment of MAP-21) shall be set aside from amounts apportioned to a State for a fiscal year under section 104(b)(1) only for eligible projects on bridges on the National Highway System.

(B) RESTORATION.—The set-aside requirement for bridges on the National Highway System in a State under subparagraph (A) for a fiscal year shall remain in effect for each subsequent fiscal year until such time as less than 10 percent of the total deck area of bridges in the State on the National Highway System is located on bridges that have been classified as structurally deficient, as determined by the Secretary.

(g) ENVIRONMENTAL MITIGATION.—

(1) ELIGIBLE ACTIVITIES.—In accordance with all applicable Federal law (including regulations), environmental mitigation efforts referred to in subsection (d)(2)(O) include participation in natural habitat and wetlands mitigation efforts relating to projects funded under this title, which may include—

(A) participation in mitigation banking or other third-party mitigation arrangements, such as—

- (i) the purchase of credits from commercial mitigation banks;
- (ii) the establishment and management of agency-sponsored mitigation banks; and
- (iii) the purchase of credits or establishment of in-lieu fee mitigation programs;

(B) contributions to statewide and regional efforts to conserve, restore, enhance, and create natural habitats and wetlands; and

(C) the development of statewide and regional environmental protection plans, including natural habitat and wetland conservation and restoration plans.

(2) INCLUSION OF OTHER ACTIVITIES.—The banks, efforts, and plans described in paragraph (1) include any such banks, efforts, and plans developed in accordance with applicable law (including regulations).

(3) TERMS AND CONDITIONS.—The following terms and conditions apply to natural habitat and wetlands mitigation efforts under this subsection:

(A) Contributions to the mitigation effort may—

- (i) take place concurrent with, or in advance of, commitment of funding under this title to a project or projects; and
- (ii) occur in advance of project construction only if the efforts are consistent with all applicable requirements of Federal law (including regulations) and State transportation planning processes.

(B) Credits from any agency-sponsored mitigation bank that are attributable to funding under this section may be used only for projects funded under this title, unless the agency pays to the Secretary an amount equal to the Federal funds attributable to the mitigation bank credits the agency uses for purposes other than mitigation of a project funded under this title.

(4) PREFERENCE.—At the discretion of the project sponsor, preference shall be given, to the maximum extent practicable, to mitigating an environmental impact through the use of a mitigation bank, in-lieu fee, or other third-party mitigation arrangement, if the use of credits from the mitigation bank or in-lieu fee, or the other third-party mitigation arrangement for the project, is approved by the applicable Federal agency.

(h) TIFIA PROGRAM.—Upon Secretarial approval of credit assistance under chapter 6, the Secretary, at the request of a State, may allow the State to use funds apportioned under section 104(b)(1) to pay subsidy and administrative costs necessary to provide an eligible entity Federal credit assistance under chapter 6 with respect to a project eligible for assistance under this section.

(i) ADDITIONAL FUNDING ELIGIBILITY FOR CERTAIN BRIDGES.—

(1) IN GENERAL.—Funds apportioned to a State to carry out the national highway performance program may be obligated for a

project for the reconstruction, resurfacing, restoration, rehabilitation, or preservation of a bridge not on the National Highway System, if the bridge is on a Federal-aid highway.

(2) LIMITATION.—A State required to make obligations under subsection (f) shall ensure such requirements are satisfied in order to use the flexibility under paragraph (1).

(j) CRITICAL INFRASTRUCTURE.—

(1) CRITICAL INFRASTRUCTURE DEFINED.—In this subsection, the term “critical infrastructure” means those facilities the incapacity or failure of which would have a debilitating impact on national or regional economic security, national or regional energy security, national or regional public health or safety, or any combination of those matters.

(2) CONSIDERATION.—The asset management plan of a State may include consideration of critical infrastructure from among those facilities in the State that are eligible under subsection (c).

(3) RISK REDUCTION.—A State may use funds apportioned under this section for projects intended to reduce the risk of failure of critical infrastructure in the State.

(Added Pub. L. 95-599, title I, §116(a), Nov. 6, 1978, 92 Stat. 2698; amended Pub. L. 96-106, §18, Nov. 9, 1979, 93 Stat. 799; Pub. L. 97-134, §§6, 7, Dec. 29, 1981, 95 Stat. 1701; Pub. L. 97-424, title I, §116(a)(1), (2), (b), (c), Jan. 6, 1983, 96 Stat. 2109; Pub. L. 98-229, §8(b), Mar. 9, 1984, 98 Stat. 56; Pub. L. 99-190, §101(e) [title III, §327], Dec. 19, 1985, 99 Stat. 1267, 1289; Pub. L. 100-17, title I, §116(a)-(c)(1), Apr. 2, 1987, 101 Stat. 154, 155; Pub. L. 100-202, §101(l) [title III, §347(b)], Dec. 22, 1987, 101 Stat. 1329-358, 1329-388; Pub. L. 102-240, title I, §1009(a), (b), (e)(1), (3)-(5), Dec. 18, 1991, 105 Stat. 1933, 1934; Pub. L. 105-178, title I, §1107(a), (d), June 9, 1998, 112 Stat. 137; Pub. L. 105-206, title IX, §9002(f), July 22, 1998, 112 Stat. 836; Pub. L. 112-141, div. A, title I, §1106(a), July 6, 2012, 126 Stat. 432; Pub. L. 114-94, div. A, title I, §§1106, 1406(a), 1407(a), 1446(a)(1), Dec. 4, 2015, 129 Stat. 1337, 1410, 1437; Pub. L. 116-94, div. H, title I, §129A, Dec. 20, 2019, 133 Stat. 2953.)

Editorial Notes

REFERENCES IN TEXT

The date of enactment of the MAP-21, referred to in subsecs. (e)(8) and (f)(1)(A), is deemed to be Oct. 1, 2012, see section 3(a), (b) of Pub. L. 112-141, set out as Effective and Termination Dates of 2012 Amendment notes under section 101 of this title.

Section 144 (as in effect the day before enactment of MAP-21), referred to in subsec. (f)(2)(A), means section 144 of this title as in effect the day before the enactment of Pub. L. 112-141, which amended section 144 generally. Prior to amendment by Pub. L. 112-141, section 144 related to the highway bridge program.

PRIOR PROVISIONS

A prior section 119, Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 899, related to administration of Federal aid for highways in Alaska, prior to repeal by Pub. L. 86-70, §21(d)(3), June 25, 1959, 73 Stat. 145, effective July 1, 1959.

AMENDMENTS

2019—Subsec. (e)(5). Pub. L. 116-94 amended par. (5) generally. Prior to amendment, text read as follows:

“Notwithstanding section 120, with respect to the second fiscal year beginning after the date of establishment of the process established in paragraph (8) or any subsequent fiscal year, if the Secretary determines that a State has not developed and implemented a State asset management plan consistent with this section, the Federal share payable on account of any project or activity carried out by the State in that fiscal year under this section shall be 65 percent.”

2015—Subsec. (d)(1)(A). Pub. L. 114-94, §1446(a)(1), substituted “congestion reduction, system reliability,” for “mobility.”

Subsec. (d)(2)(L). Pub. L. 114-94, §1407(a), inserted “, including the installation of vehicle-to-infrastructure communication equipment” after “capital improvements”.

Subsec. (e)(7). Pub. L. 114-94, §1406(a)(1), substituted “shall include as part of the performance target report under section 150(e)” for “for 2 consecutive reports submitted under this paragraph shall include in the next report submitted”.

Subsec. (f)(1)(A). Pub. L. 114-94, §1406(a)(2), substituted “If a State reports that the condition of the Interstate System, excluding bridges on the Interstate System, has fallen” for “If, during 2 consecutive reporting periods, the condition of the Interstate System, excluding bridges on the Interstate System, in a State falls” in introductory provisions.

Subsecs. (h) to (j). Pub. L. 114-94, §1106, added subsecs. (h) to (j).

2012—Pub. L. 112-141 amended section generally. Prior to amendment, section related to interstate maintenance program.

1998—Subsec. (a). Pub. L. 105-178, §1107(a)(1), added subsec. (a) and struck out former subsec. (a) which read as follows: “The Secretary may approve projects for resurfacing, restoring and rehabilitating routes on the Interstate System designated under sections 103 and 139(c) of this title and routes on the Interstate System designated before the date of enactment of this sentence under section 139(a) and (b) of this title; except that the Secretary may only approve a project pursuant to this subsection on a toll road if such road is subject to a Secretarial agreement provided for in subsection (e). Sums authorized to be appropriated for this section shall be out of the Highway Trust Fund and shall be apportioned in accordance with section 104(b)(5)(B) of this title.”

Subsec. (b). Pub. L. 105-178, §1107(d)(1), as added by Pub. L. 105-206, §9002(f), substituted “104(b)(4)” for “104(b)(5)(B)” in first sentence and “104(b)(5)(A) (as in effect on the date before the date of enactment of the Transportation Equity Act for the 21st Century)” for “104(b)(5)(A)” in two places.

Pub. L. 105-178, §1107(a)(2), (3), redesignated subsec. (d) as (b) and struck out former subsec. (b) which read as follows: “Not later than one year after the date of issuance of initial guidelines under section 109(m) of this title each State shall have a program for the Interstate system in accordance with such guidelines. Each State shall certify on January 1st of each year that it has such a program and the Interstate system is maintained in accordance with that program. If a State fails to certify as required or if the Secretary determines a State is not adequately maintaining the Interstate system in accordance with such program then the next apportionment of funds to such State for the Interstate system shall be reduced by amounts equal to 10 per centum of the amount which would otherwise be apportioned to such State under section 104 of this title. If, within one year from the date the apportionment for a State is reduced under this subsection, the Secretary determines that such State is maintaining the Interstate system in accordance with the guidelines the apportionment of such State shall be increased by an amount equal to the reduction. If the Secretary does not make such a determination within such one year period the amount so withheld shall be reapportioned to all other eligible States.”

Subsec. (c). Pub. L. 105-178, §1107(d)(2), as added by Pub. L. 105-206, §9002(f), substituted “104(b)(4)” for “104(b)(5)(B)” wherever appearing.

Pub. L. 105-178, §1107(a)(2), (3), redesignated subsec. (f) as (c) and struck out heading and text of former subsec. (c). Text read as follows: “Activities authorized in subsection (a) may include the reconstruction of bridges, interchanges, and over crossings along existing Interstate routes, including the acquisition of right-of-way where necessary, but shall not include the construction of new travel lanes other than high occupancy vehicle lanes or auxiliary lanes.”

Subsec. (d). Pub. L. 105-178, §1107(a)(3), redesignated subsec. (g) as (d). Former subsec. (d) redesignated (b).

Subsec. (e). Pub. L. 105-178, §1107(a)(2), struck out heading and text of subsec. (e). Text read as follows: “Preventive maintenance activities shall be eligible under this section when a State can demonstrate, through its pavement management system, that such activities are a cost-effective means of extending Interstate pavement life.”

Subsecs. (f), (g). Pub. L. 105-178, §1107(a)(3), redesignated subsecs. (f) and (g) as (c) and (d), respectively.

1991—Pub. L. 102-240, §1009(e)(1), substituted “maintenance program” for “System resurfacing” in section catchline.

Subsec. (a). Pub. L. 102-240, §1009(e)(5)(A), (B), substituted “and rehabilitating” for “, rehabilitating, and reconstructing” and struck out at end “The Federal share for any project under this subsection shall be that set forth in section 120(c) of this title.”

Subsec. (c). Pub. L. 102-240, §1009(e)(3), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “Reconstructing as authorized in subsection (a) of this section may include, but is not limited to, the addition of travel lanes and the construction and reconstruction of interchanges and overcrossings along existing completed interstate routes, including the acquisition of right-of-way where necessary.”

Subsec. (e). Pub. L. 102-240, §1009(e)(4), amended subsec. (e) generally, substituting present provisions for provisions authorizing Secretary to approve projects on toll roads only after reaching agreement with State highway department and public authorities that road will become free upon collection of tolls sufficient to liquidate cost of road and outstanding bonds and cost of maintenance, operation and debt service during period of toll collections, provisions relating to repayment to Federal Treasury, or reduction in apportionment, if road did not become free after collection of sufficient tolls, and provisions requiring pre-existing agreements to be treated as agreements under subsec. (e).

Subsec. (f). Pub. L. 102-240, §1009(e)(5)(C), substituted “Surface Transportation Program” for “Primary System” in heading.

Subsec. (f)(1). Pub. L. 102-240, §1009(b), (e)(5)(D), (E), substituted “or rehabilitating” for “rehabilitating, or reconstructing”, substituted “sections 104(b)(1) and 104(b)(3)” for “section 104(b)(1)”, and inserted “the State is adequately maintaining the Interstate System and” after “routes and”.

Subsec. (f)(2). Pub. L. 102-240, §1009(e)(5)(E), substituted “sections 104(b)(1) and 104(b)(3)” for “section 104(b)(1)” in introductory provisions.

Subsec. (g). Pub. L. 102-240, §1009(a), added subsec. (g). 1987—Subsec. (a). Pub. L. 100-17, §116(c)(1), substituted “subsection (e)” for “section 105 of the Federal-Aid Highway Act of 1978”.

Subsec. (d). Pub. L. 100-17, §116(a), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: “Upon application by a State and approval by the Secretary, the Secretary may authorize the transfer of so much of the amount apportioned to such State for any fiscal year under paragraph (5)(A) of subsection (b) of section 104 of this title, as does not exceed the Federal share of the cost of segments of the Interstate System open to traffic in such State (other than high occupancy vehicle lanes), in the most recent cost estimate, to the apportionment under paragraph (5)(B) of subsection (b) of section 104 of this title, except that not more than 50 per centum of the total apportionment under such paragraph (5)(A) for a fiscal year shall

be transferred under this subsection for such fiscal year. The next cost estimate submitted to Congress under paragraph (5)(A) of subsection (b) of such section 104 of the cost of completing segments of the Interstate System open to traffic in that State (other than high occupancy vehicle lanes) shall be reduced for such State in an amount equal to the amount transferred under this subsection. Notwithstanding any other provision of law, and for the purposes of this subsection, the phrase ‘segments of the interstate system open to traffic’ shall include a proposed four-lane, limited access highway, 6.4 miles in length, the construction of which will relocate to a southern alignment a portion of an existing interstate highway which was originally built without the aid of funds authorized by section 108(b) of the Federal-Aid Highway Act of 1956, as amended, and which connects to the east with an interstate highway on which tolls are charged. The construction of the proposed highway shall include a bridge over the Monongahela River.”

Subsec. (e). Pub. L. 100-17, §116(b), added subsec. (e).
Subsec. (f). Pub. L. 100-202 substituted “amount not to exceed” for “amount equal to” in par. (2)(B).

Pub. L. 100-17, §116(b), added subsec. (f).
1985—Subsec. (d). Pub. L. 99-190 inserted provisions which brought within the phrase “segments of the interstate system open to traffic” a proposed four-lane limited access highway, 6.4 miles in length, the construction of which will relocate to a southern alignment a portion of an existing highway originally built without the aid of Federal funds, connecting to the east with an interstate highway on which tolls are charged, with the proposed highway to include a bridge over the Monongahela River.

1984—Subsec. (a). Pub. L. 98-229 substituted provision authorizing the Secretary to approve projects designated under sections 103 and 139(c) of this title and routes on the Interstate System designated before Mar. 9, 1984, under section 139(a) and (b) of this title for provision authorizing the Secretary, beginning with funds apportioned for the fiscal year 1980, to approve projects under sections 103 and 139(c) of this title and, beginning with funds apportioned for fiscal year 1984, to approve routes or portions thereof on the Interstate System designated before Jan. 6, 1983, under section 139(a) of this title, which routes or portions were so designated in conjunction with the withdrawal of approval of another route or portion on the Interstate System under section 103(e)(4) of this title and provision that the Federal share be that as set forth in section 120(c) of this title for provision that the Federal share be that as set forth in section 120(a) of this title and that effective on or after Dec. 29, 1981, the Federal share be that as set forth in section 120(c) of this title.

1983—Subsec. (a). Pub. L. 97-424, §116(a)(1), inserted provision that, additionally, beginning with funds apportioned for fiscal year 1984, the Secretary may approve projects for resurfacing, restoring, rehabilitating, and reconstructing those routes or portions thereof on the Interstate System designated before Jan. 6, 1983, under section 139(a) of this title (other than routes on toll roads not subject to a Secretarial agreement provided for in section 105 of the Federal-Aid Highway Act of 1978) which routes or portions were so designated in conjunction with the withdrawal of approval of another route or portion thereof on the Interstate System under section 103(e)(4) of this title.

Pub. L. 97-424, §116(a)(2), substituted “under this subsection” for “designated under sections 103 and 139(c) of this title” before “shall be that set forth in section 120(c) of this title”.

Subsecs. (b), (c). Pub. L. 97-424, §116(b), redesignated the second of two sections designated (b) as (c).

Subsec. (d). Pub. L. 97-424, §116(c), added subsec. (d).

1981—Subsec. (a). Pub. L. 97-134, §§6(a), 7, substituted “rehabilitating, and reconstructing routes of the Interstate System designated under sections 103 and 139(c) of this title” for “and rehabilitating those lanes in use for more than five years on the Interstate System”, and inserted provision that effective on and after Dec. 29,

1981, the Federal share for projects financed by funds apportioned under section 104(b)(5)(B) of this title for resurfacing, restoring, rehabilitating, and reconstructing routes of the Interstate System designated under sections 103 and 139(c) of this title shall be that set forth in section 120(c) of this title.

Subsec. (b). Pub. L. 97-134, §6(b), added subsec. (b) providing that reconstruction may include the addition of travel lanes and the construction and reconstruction of interchanges and overcrossings along existing completed interstate routes, including the acquisition of right-of-way where necessary.

1979—Subsec. (b). Pub. L. 96-106 substituted “January 1st” for “October 1st” and “next apportionment of funds to such State” for “funds apportioned to such State for that fiscal year”.

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.

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 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.

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.

TRANSITION PERIOD

Pub. L. 112-141, div. A, title I, §1106(b), July 6, 2012, 126 Stat. 437, provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), until such date as a State has in effect an approved asset management plan and has established performance targets as described in sections 119 and 150 of title 23, United States Code, that will contribute to achieving the national goals for the condition and performance of the National Highway System, but not later than 18 months after the date on which the Secretary [of Transportation] promulgates the final regulation required under section 150(c) of that title, the Secretary shall approve obligations of funds apportioned to a State to carry out the national highway performance program under section 119 of that title, for projects that otherwise meet the requirements of that section.

“(2) EXTENSION.—The Secretary may extend the transition period for a State under paragraph (1) if the Secretary determines that the State has made a good faith effort to establish an asset management plan and performance targets referred to in that paragraph.”

INTERSTATE NEEDS STUDY

Pub. L. 105-178, title I, §1107(c), June 9, 1998, 112 Stat. 138, directed the Secretary, in cooperation with States and metropolitan planning organizations, to conduct a study on the future condition of and needed improve-

ments to the Interstate System and to transmit a report on the study no later than Jan. 1, 2000.

GUIDANCE TO STATES

Pub. L. 102-240, title I, §1009(c), Dec. 18, 1991, 105 Stat. 1933, directed the Secretary to develop guidance to states regarding how much project funding was attributable to expanding Interstate highway or bridge capacity and how to determine adequate maintenance of the Interstate System.

INNOVATIVE TECHNOLOGIES

Pub. L. 97-424, title I, §142, Jan. 6, 1983, 96 Stat. 2128, authorized the Secretary, for fiscal years through Sept. 30, 1985, to increase by 5 percent the Federal share of funding for certain projects using significant amounts of asphalt additives or recycled materials.

§ 120. Federal share payable

(a) INTERSTATE SYSTEM PROJECTS.—

(1) IN GENERAL.—Except as otherwise provided in this chapter, the Federal share payable on account of any project on the Interstate System (including a project to add high occupancy vehicle lanes and a project to add auxiliary lanes but excluding a project to add any other lanes) shall be 90 percent of the total cost thereof, plus a percentage of the remaining 10 percent of such cost in any State containing unappropriated and unreserved public lands and nontaxable Indian lands, individual and tribal, exceeding 5 percent of the total area of all lands therein, equal to the percentage that the area of such lands in such State is of its total area; except that such Federal share payable on any project in any State shall not exceed 95 percent of the total cost of such project.

(2) STATE-DETERMINED LOWER FEDERAL SHARE.—In the case of any project subject to paragraph (1), a State may determine a lower Federal share than the Federal share determined under such paragraph.

(b) OTHER PROJECTS.—Except as otherwise provided in this title, the Federal share payable on account of any project or activity carried out under this title (other than a project subject to subsection (a)) shall be—

(1) 80 percent of the cost thereof, except that in the case of any State containing nontaxable Indian lands, individual and tribal, and public domain lands (both reserved and unreserved) exclusive of national forests and national parks and monuments, exceeding 5 percent of the total area of all lands therein, the Federal share, for purposes of this chapter, shall be increased by a percentage of the remaining cost equal to the percentage that the area of all such lands in such State, is of its total area; or

(2) 80 percent of the cost thereof, except that in the case of any State containing nontaxable Indian lands, individual and tribal, public domain lands (both reserved and unreserved), national forests, and national parks and monuments, the Federal share, for purposes of this chapter, shall be increased by a percentage of the remaining cost equal to the percentage that the area of all such lands in such State is of its total area;

except that the Federal share payable on any project in a State shall not exceed 95 percent of

the total cost of any such project. In any case where a State elects to have the Federal share provided in paragraph (2) of this subsection, the State must enter into an agreement with the Secretary covering a period of not less than 1 year, requiring such State to use solely for purposes eligible for assistance under this title (other than paying its share of projects approved under this title) during the period covered by such agreement the difference between the State's share as provided in paragraph (2) and what its share would be if it elected to pay the share provided in paragraph (1) for all projects subject to such agreement. In the case of any project subject to this subsection, a State may determine a lower Federal share than the Federal share determined under the preceding sentences of this subsection.

(c) INCREASED FEDERAL SHARE.—

(1) CERTAIN SAFETY PROJECTS.—The Federal share payable on account of any project for traffic control signalization, maintaining minimum levels of retroreflectivity of highway signs or pavement markings, traffic circles (also known as "roundabouts"), safety rest areas, pavement marking, shoulder and centerline rumble strips and stripes, commuter carpooling and vanpooling, rail-highway crossing closure, or installation of traffic signs, traffic lights, guardrails, impact attenuators, concrete barrier endtreatments, breakaway utility poles, or priority control systems for emergency vehicles or transit vehicles at signalized intersections may amount to 100 percent of the cost of construction of such projects; except that not more than 10 percent of all sums apportioned for all the Federal-aid programs for any fiscal year in accordance with section 104 of this title shall be used under this subsection. In this subsection, the term "safety rest area" means an area where motor vehicle operators can park their vehicles and rest, where food, fuel, and lodging services are not available, and that is located on a segment of highway with respect to which the Secretary determines there is a shortage of public and private areas at which motor vehicle operators can park their vehicles and rest.

(2) CMAQ PROJECTS.—The Federal share payable on account of a project or program carried out under section 149 with funds obligated in fiscal year 2008 or 2009, or both, shall be not less than 80 percent and, at the discretion of the State, may be up to 100 percent of the cost thereof.

(3) INNOVATIVE PROJECT DELIVERY.—

(A) IN GENERAL.—Except as provided in subparagraph (C), the Federal share payable on account of a project, program, or activity carried out with funds apportioned under paragraph (1), (2), (5)(D), or (6) of section 104(b) may, at the discretion of the State, be up to 100 percent for any such project, program, or activity that the Secretary determines—

(i) contains innovative project delivery methods that improve work zone safety for motorists or workers and the quality of the facility;

(ii) contains innovative technologies, engineering or design approaches, manufac-