

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. Interstate maintenance program

(a) IN GENERAL.—

(1) PROJECTS.—The Secretary may approve projects for resurfacing, restoring, rehabilitating, and reconstructing—

(A) routes on the Interstate System designated under section 103(c)(1) and, in Alaska and Puerto Rico, under section 103(c)(4)(A);

(B) routes on the Interstate System designated before the date of enactment of the Transportation Equity Act for the 21st Century under subsections (a) and (b) of section 139 (as in effect on the day before the date of enactment of such Act); and

(C) any segments that become part of the Interstate System under section 1105(e)(5) of the Intermodal Surface Transportation Efficiency Act of 1991.

(2) TOLL ROADS.—The Secretary may approve a project pursuant to this subsection on a toll road only if such road is subject to a Secretarial agreement provided for in section 129 or continued in effect by section 1012(d) of the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 1939) and not voided by the Secretary under section 120(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (101 Stat. 159).

(3) FUNDING.—Sums authorized to be appropriated to carry out this section shall be out of the Highway Trust Fund and shall be apportioned in accordance with section 104(b)(4).

(b) TRANSFER OF INTERSTATE CONSTRUCTION APPORTIONMENTS.—Upon application by a State (other than the State of Massachusetts) and approval by the Secretary, the Secretary may transfer to the apportionments to such State under section 104(b)(1) or 104(b)(4) any amount of the funds apportioned to such State for any fiscal year under section 104(b)(5)(A) (as in effect on the date before the date of enactment of the Transportation Equity Act for the 21st Century) if such amount does not exceed the Federal share of the costs of construction of segments of the Interstate System open to traffic in such State (other than high occupancy vehicle lanes)

included in the most recent interstate cost estimate. Upon transfer of such amount, the construction on which such amount is based on open-to-traffic segments of the Interstate System in such State as included in the latest interstate cost estimate shall be ineligible and shall not be included in future interstate cost estimates approved or adjusted under section 104(b)(5)(A) (as in effect on the date before the date of enactment of the Transportation Equity Act for the 21st Century).

(c) TRANSFER OF FUNDS FOR SURFACE TRANSPORTATION PROGRAM PROJECTS.—

(1) UPON CERTIFICATION ACCEPTANCE.—If a State certifies to the Secretary that any part of the sums apportioned to the State under section 104(b)(4) of this title are in excess of the needs of the State for resurfacing, restoring, or rehabilitating Interstate System routes and the State is adequately maintaining the Interstate System and the Secretary accepts such certification, the State may transfer such excess part to its apportionment under sections 104(b)(1) and 104(b)(3).

(2) UNCONDITIONAL.—Notwithstanding paragraph (1), a State may transfer to its apportionment under sections 104(b)(1) and 104(b)(3) of this title—

(A) in fiscal year 1987, an amount not to exceed 20 percent of the funds apportioned to the State under section 104(b)(4) which are not obligated at the time of the transfer; and

(B) in any fiscal year thereafter, an amount not to exceed 20 percent of the funds apportioned to the State under section 104(b)(4) for such fiscal year.

(d) LIMITATION ON NEW CAPACITY.—Notwithstanding any other provision of this title, the portion of the cost of any project undertaken pursuant to this section that is attributable to the expansion of the capacity of any Interstate highway or bridge, where such new capacity consists of one or more new travel lanes that are not high-occupancy vehicle lanes or auxiliary lanes, shall not be eligible for funding under this section.

(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(i) [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.)

REFERENCES IN TEXT

The date of enactment of the Transportation Equity Act for the 21st Century, referred to in subsecs. (a)(1)(B) and (b), is the date of enactment of Pub. L. 105-178, which was approved June 9, 1998.

Section 1105(e)(5) of the Intermodal Surface Transportation Efficiency Act of 1991, referred to in subsec. (a)(1)(C), is section 1105(e)(5) of Pub. L. 102-240 (see 109 Stat. 597) which is not classified to the Code.

Section 1012(d) of the Intermodal Surface Transportation Efficiency Act of 1991, referred to in subsec. (a)(2), is section 1012(d) of Pub. L. 102-240, which is set out as a note under section 129 of this title.

Section 120(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987, referred to in subsec. (a)(2), is section 120(c) of Pub. L. 100-17, which is not classified to the Code.

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

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”.

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.

INTERSTATE NEEDS STUDY

Pub. L. 105-178, title I, §1107(c), June 9, 1998, 112 Stat. 138, provided that:

“(1) STUDY.—The Secretary shall conduct, in cooperation with States and affected metropolitan planning organizations, a study to determine—

“(A) the expected condition of the Interstate System over the next 10 years and the needs of States and metropolitan planning organizations to reconstruct and improve the Interstate System;

“(B) the resources necessary to maintain and improve the Interstate System; and

“(C) the means to ensure that the Nation’s surface transportation program can—

“(i) address the needs identified in subparagraph (A); and

“(ii) allow for States to address any extraordinary needs.

“(2) REPORT.—Not later than January 1, 2000, the Secretary shall transmit to Congress a report on the results of the study.”

GUIDANCE TO STATES

Section 1009(c) of Pub. L. 102-240 provided that: “The Secretary shall develop and make available to the States criteria for determining—

“(1) what share of any project funded under section 119 of title 23, United States Code, is attributable to the expansion of the capacity of an Interstate highway or bridge; and

“(2) what constitutes adequate maintenance of the Interstate System for the purposes of section 119(f)(1) of title 23, United States Code.”

INNOVATIVE TECHNOLOGIES

Section 142 of Pub. L. 97-424 provided that:

“(a) The Congress hereby finds and declares that it is in the national interest to encourage and promote utilization by the States of highway and bridge surfacing, resurfacing, or restoration materials which are produced from recycled materials or which contain asphalt additives to strengthen the materials. Such materials conserve energy and reduce the cost of resurfacing or restoring our highways.

“(b) The Secretary of Transportation is hereby authorized for each of the fiscal years through September 30, 1985, to increase the Federal share as provided in sections 119, 120, and 144 of title 23, United States Code, by 5 per centum of any project submitted by the State highway departments which contains in the plans, specifications, and estimates submitted pursuant to section 106, of title 23, United States Code, the use of the materials described in subsection (a). To be eligible for such supplemental Federal assistance, significant amounts of asphalt additives or recycled materials must be used in each project approved by the Secretary.

“(c) The Secretary shall establish a procedure within ninety days of the date of enactment of this Act [Jan. 6, 1983] for increasing the Federal share under this section.”

§ 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, traffic circles (also known as “roundabouts”), safety rest areas, pavement marking, 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 systems 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.

(d) The Secretary may rely on a statement from the Secretary of the Interior as to the area of the lands referred to in subsections (a) and (b) of this section. The Secretary of the Interior is authorized and directed to provide such statement annually.

(e) EMERGENCY RELIEF.—The Federal share payable on account of any repair or reconstruction provided for by funds made available under section 125 of this title on account of any project on a Federal-aid highway, including the Interstate System, shall not exceed the Federal share payable on a project on such highway as provided in subsections (a) and (b) of this section; except that (1) the Federal share payable for eligible emergency repairs to minimize damage, protect facilities, or restore essential traffic accomplished within 180 days after the actual occurrence of the natural disaster or catastrophic failure may amount to 100 percent of the costs thereof; and (2) the Federal share payable on account of any repair or reconstruction of forest highways, forest development roads and trails, park roads and trails, parkways, public lands highways, public lands development roads and trails, and Indian reservation roads may amount to 100 percent of the cost thereof. The total cost of a project may not exceed the cost of repair or reconstruction of a comparable facility. As used in this section with respect to