

**TITLE 23 - HIGHWAYS****CHAPTER 1 - FEDERAL-AID HIGHWAYS****§ 133. Surface transportation program**

(a) **Establishment.**— The Secretary shall establish a surface transportation program in accordance with this section.

(b) **Eligible Projects.**— A State may obligate funds apportioned to it under section 104 (b)(3) for the surface transportation program only for the following:

(1) Construction, reconstruction, rehabilitation, resurfacing, restoration, and operational improvements for highways (including Interstate highways) and bridges (including bridges on public roads of all functional classifications), including any such construction or reconstruction necessary to accommodate other transportation modes, and including the seismic retrofit and painting of and application of calcium magnesium acetate, sodium acetate/formate, or other environmentally acceptable, minimally corrosive anti-icing and de-icing compositions on bridges and approaches thereto and other elevated structures, mitigation of damage to wildlife, habitat, and ecosystems caused by a transportation project funded under this title.

(2) Capital costs for transit projects eligible for assistance under chapter 53 of title 49, including vehicles and facilities, whether publicly or privately owned, that are used to provide intercity passenger service by bus.

(3) Carpool projects, fringe and corridor parking facilities and programs, bicycle transportation and pedestrian walkways in accordance with section 217, and the modification of public sidewalks to comply with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).

(4) Highway and transit safety infrastructure improvements and programs, hazard eliminations, projects to mitigate hazards caused by wildlife, and railway-highway grade crossings.

(5) Highway and transit research and development and technology transfer programs.

(6) Capital and operating costs for traffic monitoring, management, and control facilities and programs, including advanced truck stop electrification systems.

(7) Surface transportation planning programs.

(8) Transportation enhancement activities.

(9) Transportation control measures listed in section 108 (f)(1)(A) (other than clause (xvi)) of the Clean Air Act (42 U.S.C. 7408 (f)(1)(A)).

(10) Development and establishment of management systems under section 303.

(11) In accordance with all applicable Federal law and regulations, participation in natural habitat and wetlands mitigation efforts related to projects funded under this title, which may include participation in natural habitat and wetlands mitigation banks; contributions to statewide and regional efforts to conserve, restore, enhance, and create natural habitats and wetlands; and development of statewide and regional natural habitat and wetlands conservation and mitigation plans, including any such banks, efforts, and plans authorized pursuant to the Water Resources Development Act of 1990 (including crediting provisions). Contributions to such mitigation efforts may take place concurrent with or in advance of project construction. Contributions toward these efforts may occur in advance of project construction only if such efforts are consistent with all applicable requirements of Federal law and regulations and State transportation planning processes. With respect to participation in a natural habitat or wetland mitigation effort related to a project funded under this title that has an impact that occurs within the service area of a mitigation bank, preference shall be given, to the maximum extent practicable, to the use of the mitigation bank if the bank contains sufficient available credits to offset the impact and the bank is approved in accordance with the Federal Guidance for the Establishment, Use and Operation of Mitigation Banks (60 Fed. Reg. 58605 (November 28, 1995)) or other applicable Federal law (including regulations).

- (12) Projects relating to intersections that—
- (A) have disproportionately high accident rates;
  - (B) have high levels of congestion, as evidenced by—
    - (i) interrupted traffic flow at the intersection; and
    - (ii) a level of service rating that is not better than “F” during peak travel hours, calculated in accordance with the Highway Capacity Manual issued by the Transportation Research Board; and
  - (C) are located on a Federal-aid highway.
- (13) Infrastructure-based intelligent transportation systems capital improvements.
- (14) Environmental restoration and pollution abatement in accordance with section 328.
- (15) Control of noxious weeds and aquatic noxious weeds and establishment of native species in accordance with section 329.
- (c) **Location of Projects.**— Except as provided in subsection (b)(1), surface transportation program projects (other than those described in subsections (b)(3) and (4)) may not be undertaken on roads functionally classified as local or rural minor collectors, unless such roads are on a Federal-aid highway system on January 1, 1991, and except as approved by the Secretary.
- (d) **Allocations of Apportioned Funds.**—
- [(1) Repealed. Pub. L. 109–59, title I, § 1113(b)(1), Aug. 10, 2005, 119 Stat. 1172.]
- (2) **For transportation enhancement activities.**— In a fiscal year, the greater of 10 percent of the funds apportioned to a State under section 104 (b)(3) for such fiscal year, or the amount set aside under this paragraph with respect to the State for fiscal year 2005, shall only be available for transportation enhancement activities.
- (3) **Division between urbanized areas of over 200,000 population and other areas.**—
- (A) **General rule.**— Except as provided in subparagraph (C), 62.5 percent of the remaining 90 percent of the funds apportioned to a State under section 104 (b)(3) for a fiscal year shall be obligated under this section—
    - (i) in urbanized areas of the State with an urbanized area population of over 200,000, and
    - (ii) in other areas of the State,
 in proportion to their relative share of the State’s population. The remaining 37.5 percent may be obligated in any area of the State. Funds attributed to an urbanized area under clause (i) may be obligated in the metropolitan area established under section 134 which encompasses the urbanized area.
  - (B) **Special rule for areas of less than 5,000 population.**— Of the amounts required to be obligated under subparagraph (A)(ii), the State shall obligate in areas of the State (other than urban areas with a population greater than 5,000) an amount which is not less than 110 percent of the amount of funds apportioned to the State for the Federal-aid secondary system for fiscal year 1991.
  - (C) **Noncontiguous states exemption.**— Subparagraph (A) shall not apply to Hawaii and Alaska.
  - (D) **Distribution between urbanized areas of over 200,000 population.**— The amount of funds which a State is required to obligate under subparagraph (A)(i) shall be obligated in urbanized areas described in subparagraph (A)(i) based on the relative population of such areas; except that the State may obligate such funds based on other factors if the State and the relevant metropolitan planning organizations jointly apply to the Secretary for the permission to do so and the Secretary grants the request.
- (4) **Applicability of planning requirements.**— Programming and expenditure of funds for projects under this section shall be consistent with the requirements of sections 134 and 135 of this title.

**(5) Applicability of certain requirements to third party sellers.—**

**(A) In general.—** Except as provided in subparagraphs (B) and (C), in the case of a transportation enhancement activity funded from the allocation required under paragraph (2), if real property or an interest in real property is to be acquired from a qualified organization exclusively for conservation purposes (as determined under section 170(h) of the Internal Revenue Code of 1986), the organization shall be considered to be the owner of the property for the purpose of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.).

**(B) Federal approval prior to involvement of qualified organization.—** If Federal approval of the acquisition of the real property or interest predates the involvement of a qualified organization described in subparagraph (A) in the acquisition of the property, the organization shall be considered to be an acquiring agency or person as described in section 24.101(a)(2) of title 49, Code of Federal Regulations, for the purpose of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

**(C) Acquisitions on behalf of recipients of federal funds.—** If a qualified organization described in subparagraph (A) has contracted with a State transportation department or other recipient of Federal funds to acquire the real property or interest on behalf of the recipient, the organization shall be considered to be an agent of the recipient for the purpose of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

**(e) Administration.—**

**(1) Noncompliance.—** If the Secretary determines that a State or local government has failed to comply substantially with any provision of this section, the Secretary shall notify the State that, if the State fails to take corrective action within 60 days from the date of receipt of the notification, the Secretary will withhold future apportionments under section 104 (b)(3) until the Secretary is satisfied that appropriate corrective action has been taken.

**(2) Program approval.—**

**(A) Submission of project agreement.—** For each fiscal year, each State shall submit a project agreement that—

- (i) certifies that the State will meet all the requirements of this section; and
- (ii) notifies the Secretary of the amount of obligations needed to carry out the program under this section.

**(B) Request for adjustments of amounts.—** Each State shall request from the Secretary such adjustments to the amount of obligations referred to in subparagraph (A)(ii) as the State determines to be necessary.

**(C) Effect of approval by the secretary.—** Approval by the Secretary of a project agreement under subparagraph (A) shall be deemed a contractual obligation of the United States to pay surface transportation program funds made available under this title.

**(3) Payments.—**

**(A) In general.—** Except as provided in subparagraph (B), the Secretary shall make payments to a State of costs incurred by the State for the surface transportation program in accordance with procedures to be established by the Secretary.

**(B) Advance payment option for transportation enhancement activities.—**

- (i) **In general.—** The Secretary may advance funds to the State for transportation enhancement activities funded from the allocation required by subsection (d)(2) for a fiscal year.
- (ii) **Limitation on amounts.—** Amounts advanced under this subparagraph shall be limited to such amounts as are necessary to make prompt payments for project costs.
- (iii) **Effect on other requirements.—** This subparagraph shall not exempt a State from other requirements of this title relating to the surface transportation program.

**(4) Population determinations.**— The Secretary shall use estimates prepared by the Secretary of Commerce when determining population figures for purposes of this section.

**(5) Transportation enhancement activities.**—

**(A) Categorical exclusions.**— To the extent appropriate, the Secretary shall develop categorical exclusions from the requirement that an environmental assessment or an environmental impact statement under section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) be prepared for transportation enhancement activities funded from the allocation required by subsection (d)(2).

**(B) Nationwide programmatic agreement.**— The Secretary, in consultation with the National Conference of State Historic Preservation Officers and the Advisory Council on Historic Preservation established under title II of the National Historic Preservation Act (16 U.S.C. 470i et seq.), shall develop a nationwide programmatic agreement governing the review of transportation enhancement activities funded from the allocation required by subsection (d)(2), in accordance with—

- (i) section 106 of such Act (16 U.S.C. 470f); and
- (ii) the regulations of the Advisory Council on Historic Preservation.

**(C) Cost sharing.**—

**(i) Required aggregate non-federal share.**— The average annual non-Federal share of the total cost of all projects to carry out transportation enhancement activities in a State for a fiscal year shall be not less than the non-Federal share authorized for the State under section 120 (b).

**(ii) Innovative financing.**— Subject to clause (i), notwithstanding section 120—

- (I)** funds from other Federal agencies and the value of other contributions (as determined by the Secretary) may be credited toward the non-Federal share of the costs of a project to carry out a transportation enhancement activity;
- (II)** the non-Federal share for such a project may be calculated on a project, multiple-project, or program basis; and
- (III)** the Federal share of the cost of an individual project to which subclause (I) or (II) applies may be up to 100 percent.

**(f) Obligation Authority.**—

**(1) In general.**— A State that is required to obligate in an urbanized area with an urbanized area population of over 200,000 individuals under subsection (d) funds apportioned to the State under section 104 (b)(3) shall make available during the period of fiscal years 2004 through 2006 and the period of fiscal years 2007 through 2009 an amount of obligation authority distributed to the State for Federal-aid highways and highway safety construction programs for use in the area that is equal to the amount obtained by multiplying—

**(A)** the aggregate amount of funds that the State is required to obligate in the area under subsection (d) during the period; and

**(B)** the ratio that—

- (i)** the aggregate amount of obligation authority distributed to the State for Federal-aid highways and highway safety construction programs during the period; bears to
- (ii)** the total of the sums apportioned to the State for Federal-aid highways and highway safety construction programs (excluding sums not subject to an obligation limitation) during the period.

**(2) Joint responsibility.**— Each State, each affected metropolitan planning organization, and the Secretary shall jointly ensure compliance with paragraph (1).

*NB: This unofficial compilation of the U.S. Code is current as of Jan. 4, 2010 (see <http://www.law.cornell.edu/uscode/uscp.html>).*

587; Pub. L. 105–178, title I, §§ 1108(a)–(e), 1212(a)(2)(A)(i), June 9, 1998, 112 Stat. 138–140, 193; Pub. L. 109–59, title I, § 1113(a)–(b)(2), (c)–(e), title VI, § 6006(a)(2), Aug. 10, 2005, 119 Stat. 1171, 1172, 1872.)

## References in Text

The Americans with Disabilities Act of 1990, referred to in subsec. (b)(3), is Pub. L. 101–336, July 26, 1990, 104 Stat. 327, as amended, which is classified principally to chapter 126 (§ 12101 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 12101 of Title 42 and Tables.

The Water Resources Development Act of 1990, referred to in subsec. (b)(11), is Pub. L. 101–640, Nov. 28, 1990, 104 Stat. 4604. For complete classification of this Act to the Code, see Short Title of 1990 Amendment note set out under section 2201 of Title 33, Navigation and Navigable Waters, and Tables.

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, referred to in subsec. (d)(5), is Pub. L. 91–646, Jan. 2, 1971, 84 Stat. 1894, as amended, which is classified generally 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.

Section 170(h) of the Internal Revenue Code of 1986, referred to in subsec. (d)(5)(A), is classified to section 170 (h) of Title 26, Internal Revenue Code.

The National Historic Preservation Act, referred to in subsec. (e)(5)(B), is Pub. L. 89–665, Oct. 15, 1966, 80 Stat. 915, as amended. Title II of the Act is classified generally to part B (§ 470i et seq.) of subchapter II of chapter 1A of Title 16, Conservation. For complete classification of this Act to the Code, see section 470 of Title 16 and Tables.

## Prior Provisions

A prior section 133, Pub. L. 87–866, § 5(a), Oct. 23, 1962, 76 Stat. 1146, provided for relocation assistance for persons displaced by Federal-aid highway construction, prior to repeal by Pub. L. 90–495, § 37, Aug. 23, 1968, 82 Stat. 836, effective July 1, 1970. See section 501 et seq. of this title.

## Amendments

2005—Subsec. (b)(6). Pub. L. 109–59, § 1113(a)(1), inserted “, including advanced truck stop electrification systems” before period at end.

Subsec. (b)(12). Pub. L. 109–59, § 1113(a)(2), added par. (12).

Subsec. (b)(14), (15). Pub. L. 109–59, § 6006(a)(2), added pars. (14) and (15) and struck out former par. (14) which read as follows: “Environmental restoration and pollution abatement projects (including the retrofit or construction of storm water treatment systems) to address water pollution or environmental degradation caused or contributed to by transportation facilities, which projects shall be carried out when the transportation facilities are undergoing reconstruction, rehabilitation, resurfacing, or restoration; except that the expenditure of funds under this section for any such environmental restoration or pollution abatement project shall not exceed 20 percent of the total cost of the reconstruction, rehabilitation, resurfacing, or restoration project.”

Subsec. (d)(1). Pub. L. 109–59, § 1113(b)(1), struck out heading and text of par. (1). Text read as follows: “10 percent of the funds apportioned to a State under section 104 (b)(3) for the surface transportation program for a fiscal year shall only be available for carrying out sections 130 and 152 of this title. Of the funds set aside under the preceding sentence, the State shall reserve in such fiscal year an amount of such funds for carrying out each such section which is not less than the amount of funds apportioned to the State in fiscal year 1991 under such section.”

Subsec. (d)(2). Pub. L. 109–59, § 1113(c), substituted “In a fiscal year, the greater of 10 percent of the funds apportioned to a State under section 104 (b)(3) for such fiscal year, or the amount set aside under this paragraph with respect to the State for fiscal year 2005,” for “10 percent of the funds apportioned to a State under section 104 (b)(3) for a fiscal year”.

Subsec. (d)(3)(A). Pub. L. 109–59, § 1113(b)(2)(A)(ii), substituted “90 percent” for “80 percent” in introductory provisions.

Pub. L. 109–59, § 1113(b)(2)(A)(i), substituted “subparagraph (C)” for “subparagraphs (C) and (D)” in introductory provisions.

Subsec. (d)(3)(B). Pub. L. 109–59, § 1113(b)(2)(B), substituted “to be” for “tobe”.

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Subsec. (d)(3)(C) to (E). Pub. L. 109–59, § 1113(b)(2)(C), redesignated subpar. (D) as (C), inserted period at end, redesignated par. (E) as (D), and struck out former subpar. (C) which related to special rule in the case of a State in which greater than 80 percent of the population of the State was located in 1 or more metropolitan statistical areas, and greater than 80 percent of the land area of such State was owned by the United States.

Subsec. (f). Pub. L. 109–59, § 1113(e), amended directory language of Pub. L. 105–178, § 1108(e). See 1998 Amendment note below.

Subsec. (f)(1). Pub. L. 109–59, § 1113(d), substituted “2004 through 2006” for “1998 through 2000” and “2007 through 2009” for “2001 through 2003” in introductory provisions.

1998—Subsec. (b)(1). Pub. L. 105–178, § 1108(a)(1), inserted “, sodium acetate/formate, or other environmentally acceptable, minimally corrosive anti-icing and de-icing compositions” after “calcium magnesium acetate”.

Subsec. (b)(2). Pub. L. 105–178, § 1108(a)(2), substituted “, including vehicles and facilities, whether publicly or privately owned, that are used to provide intercity passenger service by bus” for “and publicly owned intracity or intercity bus terminals and facilities”.

Subsec. (b)(3). Pub. L. 105–178, § 1108(a)(3), substituted “bicycle” for “and bicycle” and inserted before period at end “, and the modification of public sidewalks to comply with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.)”.

Subsec. (b)(4). Pub. L. 105–178, § 1108(a)(4), substituted “Highway and transit safety infrastructure” for “Highway and transit safety”.

Subsec. (b)(9). Pub. L. 105–178, § 1108(a)(5), substituted “section 108 (f)(1)(A) (other than clause (xvi)) of the Clean Air Act (42 U.S.C. 7408 (f)(1)(A))” for “section 108 (f)(1)(A) (other than clauses (xii) and (xvi)) of the Clean Air Act”.

Subsec. (b)(11). Pub. L. 105–178, § 1108(a)(6), in first sentence, inserted “natural habitat and” after “participation in” in two places and also before “wetlands conservation and mitigation plans” and substituted “enhance, and create natural habitats and wetlands” for “enhance and create wetlands” and inserted at end “With respect to participation in a natural habitat or wetland mitigation effort related to a project funded under this title that has an impact that occurs within the service area of a mitigation bank, preference shall be given, to the maximum extent practicable, to the use of the mitigation bank if the bank contains sufficient available credits to offset the impact and the bank is approved in accordance with the Federal Guidance for the Establishment, Use and Operation of Mitigation Banks (60 Fed. Reg. 58605 (November 28, 1995)) or other applicable Federal law (including regulations).”

Subsec. (b)(13), (14). Pub. L. 105–178, § 1108(a)(7), added pars. (13) and (14).

Subsec. (d)(3)(D). Pub. L. 105–178, § 1108(b)(1), substituted “Hawaii and Alaska” for “any State which is noncontiguous with the continental United States.”

Subsec. (d)(5)(C). Pub. L. 105–178, § 1212(a)(2)(A)(i), substituted “State transportation department” for “State highway department”.

Subsec. (e)(2). Pub. L. 105–178, § 1108(c), added par. (2) and struck out heading and text of former par. (2). Text read as follows: “The Governor of each State shall certify before the beginning of each quarter of a fiscal year that the State will meet all the requirements of this section and shall notify the Secretary of the amount of obligations expected to be incurred for surface transportation program projects during such quarter. A State may request adjustment to the obligation amounts later in each of such quarters. Acceptance of the notification and certification shall be deemed a contractual obligation of the United States for the payment of the surface transportation program funds expected to be obligated by the State in such quarter for projects not subject to review by the Secretary under this chapter.”

Subsec. (e)(3)(A). Pub. L. 105–178, § 1108(d), struck out at end “Payments shall not exceed the Federal share of costs incurred as of the date the State requests payments.”

Subsec. (e)(3)(B)(i). Pub. L. 105–178, § 1108(b)(2)(A), struck out before period at end “if the Secretary certifies for the fiscal year that the State has authorized and uses a process for the selection of transportation enhancement projects that involves representatives of affected public entities, and private citizens, with expertise related to transportation enhancement activities”.

Subsec. (e)(5)(C). Pub. L. 105–178, § 1108(b)(2)(B), added subpar. (C).

Subsec. (f). Pub. L. 105–178, § 1108(e), as amended by Pub. L. 109–59, § 1113(e), amended heading and text of subsec. (f) generally. Prior to amendment, text read as follows: “A State which is required to obligate in an urbanized area with an urbanized area population of over 200,000 under subsection (d) funds apportioned to it under section 104 (b)(3) shall allocate during the 6-fiscal year period 1992 through 1997 an amount of obligation authority distributed to the State for Federal-aid highways and highway safety construction for use in such area determined by multiplying—  
“(1) the aggregate amount of funds which the State is required to obligate in such area under subsection (d) during such period; by

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“(2) the ratio of the aggregate amount of obligation authority distributed to the State for Federal-aid highways and highway safety construction during such period to the total sums apportioned to the State for Federal-aid highways and highway safety construction (excluding sums not subject to an obligation limitation) during such period.”

1995—Subsec. (d)(5). Pub. L. 104–59, § 315, added par. (5).

Subsec. (e)(3). Pub. L. 104–59, § 316(1), designated existing provisions as subpar. (A), inserted subpar. (A) heading, realigned margins, substituted “Except as provided in subparagraph (B), the” for “The”, and added subpar. (B).

Subsec. (e)(5). Pub. L. 104–59, § 316(2), added par. (5).

1994—Subsec. (b)(2). Pub. L. 103–429 substituted “chapter 53 of title 49” for “the Federal Transit Act”.

### **Effective Date of 2005 Amendment**

Pub. L. 109–59, title I, § 1113(b)(3), Aug. 10, 2005, 119 Stat. 1172, provided that: “Paragraph (1) and paragraph (2)(A)(ii) of this subsection [amending this section] shall take effect October 1, 2005.”

Pub. L. 109–59, title I, § 1113(c), Aug. 10, 2005, 119 Stat. 1172, provided that the amendment made by section 1113 (c) is effective Oct. 1, 2005.

Pub. L. 109–59, title I, § 1113(e), Aug. 10, 2005, 119 Stat. 1172, provided that the amendment made by section 1113 (e) is effective June 9, 1998.

### **Effective Date**

Section 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 an Effective Date of 1991 Amendment note under section 104 of this title.

### **Division of STP Funds for Areas of Less Than 5,000 Population**

Pub. L. 105–178, title I, § 1108(f), June 9, 1998, 112 Stat. 141, as amended by Pub. L. 110–244, title I, § 113(a), June 6, 2008, 122 Stat. 1606, provided that:

“(1) Special rule.—Notwithstanding section 133 (c) of title 23, United States Code, and except as provided in paragraph (2), up to 15 percent of the amounts required to be obligated under section 133(d)(3)(B) of such title for each of fiscal years 1998 through 2009 may be obligated on roads functionally classified as minor collectors.

“(2) Suspension.—The Secretary may suspend the application of paragraph (1) if the Secretary determines that paragraph (1) is being used excessively.”

### **Encouragement of Use of Youth Conservation or Service Corps**

Pub. L. 105–178, title I, § 1108(g), June 9, 1998, 112 Stat. 141, provided that: “The Secretary shall encourage the States to enter into contracts and cooperative agreements with qualified youth conservation or service corps to perform appropriate transportation enhancement activities under chapter 1 of title 23, United States Code.”