



U.S. Department
of Transportation

**Federal Highway
Administration**

Notice

Subject:

**APPORTIONMENT OF FISCAL YEAR (FY) 2010 FUNDS PURSUANT
TO THE SURFACE TRANSPORTATION EXTENSION ACT OF 2010,
TITLE IV OF PUBLIC LAW 111-147**

Classification Code

Date

Office of Primary Interest

N 4510.723

April 20, 2010

HCFB-1

1. **What is the purpose of this Notice?** This Notice transmits the revised certificate of apportionment for apportioned Federal-aid highway program funds pursuant to the Surface Transportation Extension Act of 2010 (Extension Act), title IV of Public Law (Pub. L.) 111-147. The apportionments are effective immediately.
2. **Does this Notice cancel FHWA Notice 4510.722?** Yes, this Notice cancels FHWA Notice 4510.722, Revised Apportionment of Fiscal Year (FY) 2010 Funds Under a 179-Day Extension of Surface Transportation Programs Pursuant to Public Law 111-68, as Amended by Public Law 111-144. The revision to the apportionment is made pursuant to Pub. L. 111-147, which extends the time period of the extension and changes the calculation methodology.
3. **What is the background information?**
 - a. The Extension Act extends the surface transportation programs, including the highway and highway safety programs, under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. 109-59, through December 31, 2010.
 - b. Section 411(a) of the Extension Act incorporates by reference and continues in effect the requirements, authorities, conditions, eligibilities, limitations, and other provisions authorized under titles I, V, and VI of the SAFETEA-LU; the SAFETEA-LU Technical Corrections Act of 2008; title I and VI of the Intermodal Surface Transportation Efficiency Act of 1991; titles I and V of the Transportation Equity Act for the 21st Century; and title 23, United States Code (U.S.C.) (excluding chapter 4 of that title), which would have otherwise expired or ceased to apply after September 30, 2009, or the date specified in section 106(3) of the Continuing Appropriations Resolution, 2010, Pub. L. 111-68.
 - c. Pursuant to section 411(b)(1) of the Extension Act, except as provided in section 412 for the administrative expenses of the Federal Highway



Administration, there is authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account) for FY 2010, a sum equal to the total amount authorized to be appropriated out of the Highway Trust Fund for programs, projects, and activities for FY 2009 under titles I, V, and VI of the SAFETEA-LU and title 23, U.S.C. (excluding chapter 4 of that title).

- d. Pursuant to section 411(c)(1) of the Extension Act, except as otherwise expressly provided in the Extension Act, the funds authorized to be appropriated for FY 2010 shall be distributed, administered, limited, and made available for obligation in the same manner and at the same level as funds authorized to be appropriated out of the Highway Trust Fund for FY 2009 to carry out programs, projects, activities, eligibilities, and requirements under the SAFETEA-LU; the SAFETEA-LU Technical Corrections Act of 2008; titles I and VI of the Intermodal Surface Transportation Efficiency Act of 1991; titles I and V of the Transportation Equity Act for the 21st Century; and title 23, U.S.C. (excluding chapter 4 of that title).
- e. Pursuant to section 411(c)(3) of the Extension Act, the amounts authorized to be appropriated under the Extension Act are calculated without regard to any rescission or cancellation of funds or contract authority for FY 2009 under the SAFETEA-LU or any other law.

4. What is the availability of these funds?

- a. The funds shall be available for obligation and administered in the same manner as if the funds were apportioned under chapter 1 of title 23, U.S.C.
- b. The funds resulting from this apportionment are available for obligation immediately and will be subject to obligation controls in force at the time of obligation, including a limitation on obligations for Federal-aid highways and highway safety construction programs included in the Department of Transportation Appropriations Act, 2010, division A, title I of Pub. L. 111-117.
- c. The program codes to be used when obligating these funds are similar to those under the SAFETEA-LU, except that the zero at the end of each program code under the SAFETEA-LU is replaced by the letter "E."

5. How were the program-by-program and State-by-State amounts determined?

- a. The base amount of apportioned funds available for each program and distributed to each State for FY 2010 is equal to the amount for each such program and State in FY 2009.

- b. Pursuant to section 411(d)(1) of the Extension Act, the amount that a State received or was authorized to receive for FY 2009 to carry out sections 1301, 1302, 1307, 1702, and 1934 of the SAFETEA-LU, and section 144(f)(1) of title 23, U.S.C., are made available to the State for FY 2010 for the programs apportioned under sections 104(b) and 144 of title 23, U.S.C. The funds are programmatically distributed among the programs apportioned under sections 104(b) and 144 of title 23, U.S.C., in the same proportions that the amount apportioned to the State for each such program for FY 2009 bears to the amount apportioned to the State for FY 2009 for all of the programs apportioned under sections 104(b) and 144 of title 23, U.S.C. The programmatically distributed funds are administered in the same manner and with the same periods of availability as such funding is administered under the programs apportioned under sections 104(b) and 144 of title 23, U.S.C., except that no funds may be used to carry out the project described in section 1307(d)(1) of the SAFETEA-LU.*
- c. Section 411(d)(4) of the Extension Act instructs that no additional funds are to be provided for any project or activity that the Secretary of Transportation determines was sufficiently funded before or during FY 2009 to achieve the authorized purpose of the project or activity. Funds for a project or activity subject to this determination are reserved and distributed to each State in the proportion that the total amount of funds made available for FY 2009 for such projects and activities in the State bears to the total amount of funds made available for FY 2009 for such projects and activities in all States (i.e., the FY 2010 funds are made available to the State for which the funds were available in FY 2009). The funds for each State are for use in carrying out other highway projects and activities and have been programmatically distributed to the programs apportioned under sections 104(b) and 144 of title 23, U.S.C. It has been determined that the funds for the Freight Intermodal Distribution Pilot Grant Program (section 1306 of the SAFETEA-LU), Pavement Marking Systems Demonstration Projects (section 1907 of the SAFETEA-LU), the Road User Fees Study (section 1919 of the SAFETEA-LU), and Multimodal Facility Improvements (section 1962 of the SAFETEA-LU) are subject to this provision.
- d. Table 1 shows the program-by-program, State-by-State apportionment amounts (inclusive of the previously allocated amounts that have been programmatically distributed to the programs apportioned under sections 104(b) and 144 of title 23, U.S.C.) available under the Extension Act.
6. **How will the amounts provided in this extension be reconciled with amounts provided in the previous extensions?** Section 414 of the Extension

* The Federal Highway Administration Nevada Division Office will implement this restriction.

Act instructs the Secretary of Transportation to reduce the amounts apportioned under the Extension Act by amounts apportioned pursuant to extensions under the Continuing Appropriations Resolution, 2010, Pub. L. 111-68.

7. **Are certain States subject to penalty transfer?** Yes. Currently, the States that are listed under the following two requirements are subject to transfer of funds. The funds to be transferred will be transferred to the States' 402 Safety Programs. The penalty transfers under section 164 of title 23, U.S.C., for Montana and Washington are subject to an administrative review by the National Highway Traffic Safety Administration and the Federal Highway Administration; the penalty transfer amount for each of the two States will be withheld and reserved from transfer pending the completion of the administrative review and then either transferred to the State's 402 Safety Program or restored to the State's apportionments depending on the outcome of that process. It should also be noted that the following penalty transfer amounts are subject to change based on enactment of additional extension provisions or enactment of a multiyear law authorizing the Federal-aid highway program.
- a. **Open Container Requirements – 23 U.S.C. 154 – 3 percent**
 Funds subject to be transferred: Interstate Maintenance, National Highway System, and Surface Transportation Program.
Alaska, Arkansas, Connecticut, Delaware, Louisiana, Mississippi, Missouri, Tennessee, Virginia, West Virginia, and Wyoming
- b. **Minimum Penalties for Repeat Offenders for Driving While Intoxicated or Driving Under the Influence – 23 U.S.C. 164 – 3 percent**
 Funds subject to be transferred: Interstate Maintenance, National Highway System, and Surface Transportation Program.
Alaska, California, Louisiana, Minnesota, Montana, New Mexico, Ohio, Oregon, Rhode Island, South Dakota, Vermont, Washington, and Wyoming
8. **How will the funds be transferred?** Funds will be transferred from the Interstate Maintenance, National Highway System, and Surface Transportation Program apportionments (Table 1) to the States' 402 Safety Programs for those States that failed to meet the provisions of section 154 of title 23, U.S.C., the Open Container Requirements (3 percent), and section 164 of title 23, U.S.C., the Minimum Penalties for Repeat Offenders (3 percent). Tables 2 and 3 illustrate the amounts to be transferred subject to a determination by the State under sections 154(c)(5) and 164(b)(5), which allow the States to designate the funds to be transferred.
9. **What other Notices are related to this Notice?** The States will be advised of the restoration of funds rescinded on September 30, 2009, under section 10212 of the SAFETEA-LU in a separate Notice. States will also be notified of the

revised distribution of FY 2010 obligation limitation, which will be recalculated based on the revised apportionment, in a separate Notice.

10. **What action is required?** Division Administrators should ensure that copies of this Notice are provided to the State departments of transportation.

A handwritten signature in blue ink, appearing to read "Victor M. Mendez".

Victor M. Mendez
Administrator

Attachments

**CERTIFICATE OF APPORTIONMENT FROM THE SUM OF \$40,161,992,195
AUTHORIZED TO BE APPROPRIATED FOR APPORTIONED FEDERAL-AID
HIGHWAY PROGRAMS UNDER THE SURFACE TRANSPORTATION EXTENSION
ACT OF 2010, TITLE IV OF PUBLIC LAW 111-147**

TO—

The Secretary of the Treasury of the United States and the State departments of transportation:

Pursuant to section 9503 of the Internal Revenue Code of 1986, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, title 23, United States Code, and the delegation of authority from the Secretary of Transportation to the Federal Highway Administrator, section 1.48 of title 49, Code of Federal Regulations, I certify—

First, that the Secretary of the Treasury has made the estimate required by section 9503(d) of the Internal Revenue Code of 1986 and, based on that estimate, I have determined that the amount that can be apportioned for the Federal-aid highway programs under the Surface Transportation Extension Act of 2010, Public Law 111-147, is \$40,161,992,195, which is 100 percent of the amount authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) for the period ending September 30, 2010.

Second, that except as otherwise expressly provided in the Surface Transportation Extension Act of 2010, the funds authorized to be appropriated for FY 2010 shall be distributed, administered, limited, and made available for obligation in the same manner and at the same level as funds authorized to be appropriated out of the Highway Trust Fund for FY 2009 to carry out programs, projects, activities, eligibilities, and requirements under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users; the SAFETEA-LU Technical Corrections Act of 2008; titles I and VI of the Intermodal Surface Transportation Efficiency Act of 1991; titles I and V of the Transportation Equity Act for the 21st Century; and title 23, United States Code (excluding chapter 4 of that title).

Third, that in compliance with section 154 of title 23, United States Code, the Open Container Requirements, 3 percent of the amount required to be apportioned to the States of Alaska, Arkansas, Connecticut, Delaware, Louisiana, Mississippi, Missouri, Tennessee, Virginia, West Virginia, and Wyoming will be transferred to the States' 402 Safety Programs.

Fourth, that in compliance with section 164 of title 23, United States Code, the Minimum Penalties for Repeat Offenders for Driving While Intoxicated or Driving Under the Influence, 3 percent of the amount required to be apportioned to the States of Alaska, California, Louisiana, Minnesota, Montana, New Mexico, Ohio, Oregon, Rhode Island, South Dakota, Vermont, Washington, and Wyoming will be transferred to the States' 402 Safety Programs (except that the penalty transfer amounts for Montana and

Washington will be withheld and reserved from transfer pending the outcome of the administrative review by the National Highway Traffic Safety Administration and the Federal Highway Administration).

Fifth, that after making the required deductions and transfers, I have computed the apportionments to each State and the District of Columbia of the remainder of the amounts authorized to be appropriated for the apportioned Federal-aid highway programs in the manner provided by law.

Sixth, that subject to the foregoing deductions and transfers, the sums that are hereby apportioned to each State and the District of Columbia, effective immediately, are respectively as follows:

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION

N4510.723 - TABLE 2

TRANSFERS ASSESSED PURSUANT TO TITLE 23 U.S.C. 154 (Open Container Requirements) FOR THE
INTERSTATE MAINTENANCE, NATIONAL HIGHWAY SYSTEM, AND SURFACE TRANSPORTATION PROGRAMS
UNDER THE SURFACE TRANSPORTATION EXTENSION ACT OF 2010, TITLE IV OF PUBLIC LAW 111-147

State	TRANSFERS ASSESSED ON APPORTIONMENTS						TOTAL TRANSFERS ASSESSED PURSUANT TO TITLE 23 U.S.C. 154			
	PURSUANT TO TITLE 23 U.S.C. 104(b)			PURSUANT TO TITLE 23 U.S.C. 105(d)			Interstate Maintenance	National Highway System	Surface Transportation Program	Total
	Interstate Maintenance	National Highway System	Surface Transportation Program	Interstate Maintenance	National Highway System	Surface Transportation Program				
ALABAMA	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
ALASKA	2,143,426	2,527,489	2,179,252	1,047,549	1,235,250	1,065,058	3,190,975	3,762,739	3,244,310	10,198,024
ARIZONA	0	0	0	0	0	0	0	0	0	0
ARKANSAS	2,571,307	3,209,946	3,318,522	563,370	703,295	727,084	3,134,677	3,913,241	4,045,606	11,093,524
CALIFORNIA	0	0	0	0	0	0	0	0	0	0
COLORADO	0	0	0	0	0	0	0	0	0	0
CONNECTICUT	1,781,151	1,642,350	2,096,029	430,232	396,705	506,290	2,211,383	2,039,055	2,602,319	6,852,757
DELAWARE	305,925	1,839,684	1,242,323	39,590	238,075	160,770	345,515	2,077,759	1,403,093	3,826,367
DIST. OF COL.	0	0	0	0	0	0	0	0	0	0
FLORIDA	0	0	0	0	0	0	0	0	0	0
GEORGIA	0	0	0	0	0	0	0	0	0	0
HAWAII	0	0	0	0	0	0	0	0	0	0
IDAHO	0	0	0	0	0	0	0	0	0	0
ILLINOIS	0	0	0	0	0	0	0	0	0	0
INDIANA	0	0	0	0	0	0	0	0	0	0
IOWA	0	0	0	0	0	0	0	0	0	0
KANSAS	0	0	0	0	0	0	0	0	0	0
KENTUCKY	0	0	0	0	0	0	0	0	0	0
LOUISIANA	3,372,119	3,147,974	3,813,808	519,259	484,744	587,273	3,891,378	3,632,718	4,401,081	11,925,177
MAINE	0	0	0	0	0	0	0	0	0	0
MARYLAND	0	0	0	0	0	0	0	0	0	0
MASSACHUSETTS	0	0	0	0	0	0	0	0	0	0
MICHIGAN	0	0	0	0	0	0	0	0	0	0
MINNESOTA	0	0	0	0	0	0	0	0	0	0
MISSISSIPPI	2,396,957	3,504,895	3,410,586	345,960	505,873	492,261	2,742,917	4,010,768	3,902,847	10,656,532
MISSOURI	4,746,222	5,318,831	5,733,785	1,158,702	1,298,494	1,399,797	5,904,924	6,617,325	7,133,582	19,655,831
MONTANA	0	0	0	0	0	0	0	0	0	0
NEBRASKA	0	0	0	0	0	0	0	0	0	0
NEVADA	0	0	0	0	0	0	0	0	0	0
NEW HAMPSHIRE	0	0	0	0	0	0	0	0	0	0
NEW JERSEY	0	0	0	0	0	0	0	0	0	0
NEW MEXICO	0	0	0	0	0	0	0	0	0	0
NEW YORK	0	0	0	0	0	0	0	0	0	0
NORTH CAROLINA	0	0	0	0	0	0	0	0	0	0
NORTH DAKOTA	0	0	0	0	0	0	0	0	0	0
OHIO	0	0	0	0	0	0	0	0	0	0
OKLAHOMA	0	0	0	0	0	0	0	0	0	0
OREGON	0	0	0	0	0	0	0	0	0	0
PENNSYLVANIA	0	0	0	0	0	0	0	0	0	0
RHODE ISLAND	0	0	0	0	0	0	0	0	0	0
SOUTH CAROLINA	0	0	0	0	0	0	0	0	0	0
SOUTH DAKOTA	0	0	0	0	0	0	0	0	0	0
TENNESSEE	4,608,822	4,697,042	5,045,952	1,333,786	1,359,316	1,460,290	5,942,608	6,056,358	6,506,242	18,505,208
TEXAS	0	0	0	0	0	0	0	0	0	0
UTAH	0	0	0	0	0	0	0	0	0	0
VERMONT	0	0	0	0	0	0	0	0	0	0
VIRGINIA	5,008,227	4,897,534	5,998,896	1,392,626	1,361,846	1,668,099	6,400,853	6,259,380	7,666,995	20,327,228
WASHINGTON	0	0	0	0	0	0	0	0	0	0
WEST VIRGINIA	1,748,989	1,762,921	1,907,663	651,869	656,860	710,791	2,400,658	2,419,781	2,618,454	7,438,893
WISCONSIN	0	0	0	0	0	0	0	0	0	0
WYOMING	1,681,758	2,866,016	1,071,694	256,745	437,539	163,610	1,938,503	3,303,555	1,235,304	6,477,362
Total	\$30,364,903	\$35,414,682	\$35,818,510	\$7,739,488	\$8,677,997	\$8,941,323	\$38,104,391	\$44,092,679	\$44,759,833	\$126,956,903

