

Minimum Conditions for Pavement and Bridges Proposed Application of Penalties

Minimum condition requirements for pavement and bridges

- Pavement [23 U.S.C. 119(f)(1)]
 - Interstate System (excluding bridges)
 - Minimum condition level set by the Secretary through rulemaking (see “Proposed calculation approach” discussion below)
 - Two consecutive calendar years (CY)
 - Penalty requiring that, during the following fiscal year, a State subject to the penalty shall:
 - Obligate NHPP funds in an amount at least equal to the State’s fiscal year [\(FY 2009 Interstate Maintenance \(IM\) apportionment](#) for the [purposes described in the IM Program](#). For each year after FY 2013, the amount required to be obligated shall increase by 2 percent over the amount required to be obligated in the previous fiscal year (*i.e.*, the sum is compounded). (See Illustration below that provides an example showing how this would be calculated.)
 - Transfer Funds from STP (but not from STP amounts suballocated based on population) to NHPP in an amount equal to 10 percent of the amount of the State’s [FY 2009 IM apportionment](#) for the [purposes described in the IM Program](#).
- Bridge [23 U.S.C. 119(f)(2)]
 - National Highway System
 - Minimum condition threshold set by MAP-21: “*If...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...*”
 - Three consecutive reporting years
 - Penalty in following fiscal year:
 - Set aside and obligate NHPP funds in an amount equal to 50 percent of the State’s [FY 2009 Highway Bridge Program apportionment](#) for eligible NHS bridge projects.

Proposed calculation approach

- Pavement
 - Proposed Minimum condition level: Percent of Interstate lane-miles in Poor condition shall not exceed 5.0 percent
 - Data Source: HPMS
 - Computed annually with data available June 15
 - FHWA will notify States of non-compliance by October 1
- Bridge
 - Minimum condition threshold set by MAP-21 (see above)
 - Data Source: NBI
 - Computed annually with data available June 15
 - FHWA will notify States of non-compliance by February 1, 2015 initially and by October 1 thereafter

Example

- Pavement (assuming rule is effective in 2015)

Date	6/15/17	By 10/1/17	6/15/18	By 10/1/18
FHWA Action	Extract CY 2016 data	Notify State DOT	Extract CY 2017 data	Notify State DOT

- Beginning October 1, 2018: If FHWA determined that the State DOT did not comply in both 2016 and 2017, then the penalty is implemented during FY 2019.

- Bridge (assuming structurally deficient definition remains as proposed)

Date	12/31/14	2/1/15	6/15/15	By 10/1/15	6/15/16	By 10/1/16
FHWA Action	Extract data	Notify State DOT	Extract data	Notify State DOT	Extract data	Notify State DOT

- Beginning October 1, 2016: If FHWA determined that the State DOT did not comply based on data conditions reported in 2014, 2015 and 2016, then the penalty is implemented in FY 2017.

Illustration of Calculation for Obligation Component of the Pavement Penalty:

In the following example, the 2009 Interstate Maintenance funds totaled \$200,000. For the row corresponding to the year 2010, the column “2% of Previous FY” lists the value of a 2% increase in \$200,000, the 2009 IM total. The column “NHPP to be obligated” displays the sum, \$204,000, of the 2009 IM total, \$200,000, and the 2% increase, \$4,000. The subsequent rows increase the previous year’s NHPP by 2%.

Year	2009 IM	2% of Prev. FY	NHPP to be Obligated
2009	\$200,000		\$200,000
2010		\$4,000	\$204,000
2011		\$4,080	\$208,080
2012		\$4,161	\$212,241
2013		\$4,244	\$216,486
2014		\$4,329	\$220,816
2015		\$4,416	\$225,232
2016		\$4,504	\$229,737
2017		\$4,594	\$234,331
2018		\$4,686	\$239,018
2019		\$4,780	\$243,798

The amount that would be required to be obligated in 2019 would be \$243,798.