

## Federal Highway Administration, DOT

## § 669.15

heavy vehicle use tax are lawfully registered or within 4 months after being lawfully registered if a suspension registration system is implemented.

### § 669.3 Policy.

It is the policy of the FHWA that each state require registrants of heavy trucks as described in 26 CFR part 41 to provide proof of payment of the vehicle use tax either before lawfully registering or within 4 months after lawfully registering such vehicles as provided for under a suspension registration system.

### § 669.5 Objective.

The objective of this regulation is to establish realistic and workable procedures for an annual certification process to provide suitable evidence that an effective program is being conducted by the states and to ensure that the states are not registering vehicles which have not been accounted for under the tax collection procedures instituted by the Internal Revenue Service (IRS).

### § 669.7 Certification requirement.

The Governor of each state, or his or her designee, shall certify to the FHWA before July 1 of each year that it is obtaining proof of payment of the heavy vehicle use tax as a condition of registration in accordance with 23 U.S.C. 141(d). The certification shall cover the 12-month period (8 months for the initial certification period) ending May 31.

### § 669.9 Certification content.

The certification shall consist of the following elements:

(a) A statement by the Governor of the state or a state official designated by the Governor, that evidence of payment of the heavy vehicle use tax is being obtained as a condition of registration for all vehicles subject to such tax. The statement shall include the inclusive dates of the period during which payment of the heavy vehicle use tax was verified as a condition of registration.

(b) The certifying statement required by paragraph (a) of this section shall be worded as follows:

I (name of certifying official), (position, title), of the State of ( ), do hereby certify that evidence of payment of the heavy vehicle use tax pursuant to section 4481 of the Internal Revenue Code of 1954, as amended, is being obtained as a condition of registration for vehicles subject to such tax in accordance with 23 U.S.C. 141(d) and applicable IRS rules. This certification is for the period ( ) to ( ).

(c) For the initial certification, submit a copy of any state law or regulation pertaining to the implementation of 23 U.S.C. 141(d); for subsequent certifications, submit a copy of any new or revised laws and regulations pertaining to the implementation of 23 U.S.C. 141(d).

### § 669.11 Certification submittal.

The Governor or an official designated by the Governor, shall each year submit the certification, including the supporting material specified in § 669.9 to the FHWA Division Administrator prior to July 1.

### § 669.13 Effect of failure to certify or to adequately obtain proof of payment.

Beginning July 1, 1986, if a state fails to certify as required by this regulation or if the Secretary of Transportation determines that a state is not adequately obtaining proof of payment of the heavy vehicle use tax as a condition of registration notwithstanding the state's certification, Federal-aid highway funds apportioned to the state under 23 U.S.C. 104(b)(5) for the next fiscal year shall be reduced in an amount up to 25 percent as determined by the Secretary.

### § 669.15 Procedure for the reduction of funds.

(a) If it appears to the Federal Highway Administrator that a state has not submitted a certification conforming to the requirements of this regulation or that the state is not adequately obtaining proof of payment of the heavy vehicle use tax under 23 U.S.C. 141(d), the Federal Highway Administrator shall make in writing a proposed determination of nonconformity, and shall notify the Governor of the state of the proposed determination by certified mail. The notice shall state the reasons

## § 669.17

## 23 CFR Ch. I (4–1–01 Edition)

for the proposed determination and inform the state that it may, within 30 days from the date of the notice, request a conference to show cause why it should not be found in nonconformity.

(b) The conference will be informal in nature and conducted by the Administrator, or his/her designee. In all instances where the state proceeds on this basis, a transcript will be made and furnished to the state by FHWA. The state may offer any information which it considers helpful to a resolution of the matter, and the scope of review at the conference shall include, but not be limited to, state legislative actions (including those proposed to remedy deficiencies), budgetary considerations, judicial actions, and proposals for specific actions which will be implemented to bring the state into compliance.

(c) The state has the option to request such a conference, or it may submit such information in writing to the Administrator, who will make a determination on the basis of such materials and other available information.

### § 669.17 Compliance finding.

(a) If, following the conference or review of submitted materials described in § 669.15, the Administrator concludes that the state is in compliance, the Administrator shall issue a decision which is the final decision, and the matter shall be concluded.

(b) If, following the conference or review of information submitted under § 669.15, the Administrator, with the concurrence of the Secretary, concludes that the state is in noncompliance, the Administrator shall issue a decision, which is the final decision, and the matter be concluded. The decision will be served on the Governor, or his/her designee.

### § 669.19 Reservation and reapportionment of funds.

(a) The Administrator may reserve from obligation up to 25 percent of a

state's apportionment of funds under 23 U.S.C. 104(b)(5), pending a final determination.

(b) Funds withheld pursuant to a final administrative determination under this regulation shall be reapportioned to all other eligible states pursuant to the formulas of 23 U.S.C. 104(b)(5) and the apportionment factors in effect at the time of the original apportionments, unless the Secretary determines, on the basis of information submitted by the state, that the state has come into conformity with this regulation prior to the final determination. If the Secretary determines that the state has come into conformity, the withheld funds shall be released to the state subject to the availability of such funds under 23 U.S.C. 118(b).

(c) The reapportionment of funds under paragraph (b) of this section shall be stayed during the pendency of any judicial review of the Secretary's final determination of nonconformity.

### § 669.21 Procedure for evaluating state compliance.

The FHWA shall periodically review the state's procedures for complying with 23 U.S.C. 141(d), including an inspection of supporting documentation and records. The state shall retain a copy of the receipted IRS Schedule 1 (Form 2290), or an acceptable substitute prescribed by 26 CFR part 41, § 41.6001–2, for a period of 1 year for purposes of evaluating state compliance with 23 U.S.C. 141(d) by the FHWA. In lieu of retention of Schedule 1, states may make an appropriate entry in an automated file or on registration documents retained by the state or retain a microfilm or microfiche copy of Schedule 1 or of the automated file as evidence that proof of payment has been received before vehicles subject to the Federal heavy vehicle use tax are registered.