

NHTSA and FHWA, DOT

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(ii) If the State's 0.08 BAC *per se* law has changed since the State last qualified for grant funds under this program, the certification shall be worded as follows:

(Name of certifying official), (position title), of the (State or Commonwealth) of _____, do hereby certify that the (State or Commonwealth) of _____ has amended and is enforcing a 0.08 BAC *per se* law that conforms to 23 U.S.C. 163 and 23 CFR 1225.4, (citations to State law), and that the funds received by the (State or Commonwealth) of _____ under 23 U.S.C. 163 will be used for projects eligible for assistance under title 23 of the United States Code, which include highway construction as well as highway safety projects and programs.

(3) An original and four copies of the certification shall be submitted to the appropriate NHTSA Regional Administrator. Each Regional Administrator will forward the certifications it receives to appropriate NHTSA and FHWA offices.

(4) Each State that submits a certification will be informed by the agencies whether or not it qualifies for funds.

(5) To qualify for grant funds in a fiscal year, certifications must be received by the agencies not later than July 15 of that fiscal year.

(b) *Limitation on grants.* A State may receive grant funds, subject to the following limitations:

(1) The amount of a grant apportioned to a State under § 1225.4 of this part shall be determined by multiplying:

(i) The amount authorized to carry out section 163 of 23 U.S.C. for the fiscal year; by

(ii) The ratio that the amount of funds apportioned to each such State under section 402 for such fiscal year bears to the total amount of funds apportioned to all such States under section 402 for such fiscal year.

(2) A State may obligate grant funds apportioned under this Part for any project eligible for assistance under title 23 of the United States Code.

(3) The Federal share of the cost of a project funded with grant funds awarded under this part shall be 100 percent.

§ 1225.6 Award procedures for incentive grant program.

(a) In each Federal fiscal year, grant funds will be apportioned to eligible

States upon submission and approval of the documentation required by § 1225.5(a) and subject to the limitations in § 1225.5(b). The obligation authority associated with these funds is subject to the limitation on obligation pursuant to section 1102 of the Transportation Equity Act for the 21st Century (TEA-21).

(b) As soon as practicable after the apportionment in a fiscal year, but in no event later than September 30 of the fiscal year, the Governor's Representative for Highway Safety and the Secretary of the State's Department of Transportation for each State that receives an apportionment shall jointly identify, in writing to the appropriate NHTSA Regional Administrator, the amounts of the State's apportionment that will be obligated to highway safety program areas and to Federal-aid highway projects. Each NHTSA Regional Administrator will forward copies of the joint letters to the appropriate NHTSA and FHWA offices.

(c) Apportionments will not be made by the NHTSA and FHWA unless this letter from the State is received.

§ 1225.7 Certification requirements for sanction program.

(a) Beginning with FY 2004, to avoid the withholding of funds, each State shall certify to the Secretary of Transportation, before the last day of the previous fiscal year, that it meets all the requirements of 23 U.S.C. 163 and this part.

(b) The certification shall contain a statement from an appropriate State official that the State has enacted and is enforcing a 0.08 BAC *per se* law that conforms to 23 U.S.C. 163 and 23 CFR part 1225.

(1) If the State's 0.08 BAC *per se* law is currently in effect and is being enforced, the certification shall be worded as follows:

I, (name of certifying official), (position title), of the (State or Commonwealth) of _____, do hereby certify that the (State or Commonwealth) of _____, has enacted and is enforcing a 0.08 BAC *per se* law that conforms to the requirements of 23 U.S.C. 163 and 23 CFR 1225.4, (citations to State law).

(2) If the State's 0.08 BAC *per se* law is not currently in effect, but will become effective and be enforced before

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the end of the current fiscal year, the certification shall be worded as follows:

I, (name of certifying official), (position title), of the (State or Commonwealth) of _____, do hereby certify that the (State or Commonwealth) of _____, has enacted a 0.08 BAC *per se* law that conforms to the requirements of 23 U.S.C. 163 and 23 CFR 1225.4, (citations to State law), and will become effective and be enforced as of (effective date of the law).

(c) An original and four copies of the certification shall be submitted to the appropriate NHTSA Regional Administrator. Each NHTSA Regional Administrator will forward copies of the certifications received to the appropriate NHTSA and FHWA offices.

(d) Once a State has been determined to be in compliance with the requirements of 23 U.S.C. 163 and this part, it is not required to submit additional certifications, except that the State shall promptly submit an amendment or supplement to its certification provided under this section if the State's 0.08 BAC *per se* law changes.

(e) *Certifications submitted in FY 2003.*

(1) Any State that submits a certification of compliance under §1225.5 of this part, in conformance with the requirements of 23 U.S.C. 163, on or before July 15, 2003, will qualify for an incentive grant in FY 2003 and will avoid the withholding of funds in FY 2004. All certifications submitted in conformance with the incentive grant program will meet the certification requirements of the sanction program.

(2) Any State that submits a certification of compliance under this section, in conformance with the requirements of 23 U.S.C. 163, between July 16, 2003 and September 30, 2003, will not qualify for an incentive grant in FY 2003, but will meet the certification requirements of the sanction program, thereby avoiding the withholding of funds in FY 2004.

(f) *Certifications submitted in FY 2004 or thereafter.* Any State that has been in noncompliance with the requirements of 23 U.S.C. 163 and this part, in or after FY 2004, will initially be subject to a withholding of funds in accordance with §1225.8 of this part. Following the submission of a conforming certification of compliance by such

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States, all withheld funds will be restored to a States' appropriate apportionment categories in accordance with §1225.9 of this part.

§1225.8 Funds withheld from apportionment.

(a) Beginning in fiscal year 2004, the Secretary shall withhold 2 percent of the amount required to be apportioned for Federal-aid highways to any State under each of paragraphs (1), (3), and (4) of section 104(b) of title 23, United States Code, if a State has not enacted and is not enforcing a law that meets the requirements of 23 U.S.C. 163 and §1225.4 of this part.

(b) In fiscal year 2005, the Secretary shall withhold 4 percent of the amount required to be apportioned for Federal-aid highways to any State under each of paragraphs (1), (3), and (4) of section 104(b) of title 23, United States Code, if a State has not enacted and is not enforcing a law that meets the requirements of 23 U.S.C. 163 and §1225.4 of this part.

(c) In fiscal year 2006, the Secretary shall withhold 6 percent of the amount required to be apportioned for Federal-aid highways to any State under each of paragraphs (1), (3), and (4) of section 104(b) of title 23, United States Code, if a State has not enacted and is not enforcing a law that meets the requirements of 23 U.S.C. 163 and §1225.4 of this part.

(d) In fiscal year 2007, and in each fiscal year thereafter, the Secretary shall withhold 8 percent of the amount required to be apportioned for Federal-aid highways to any State under each of paragraphs (1), (3), and (4) of section 104(b) of title 23, United States Code, if a State has not enacted and is not enforcing a law that meets the requirements of 23 U.S.C. 163 and §1225.4 of this part.

§1225.9 Period of availability of withheld funds.

If a State meets the requirements of 23 U.S.C. 163 and §1225.4 of this part within 4 years from the date that a State's apportionment is reduced under §1225.8, the apportionment for such State shall be increased by an amount equal to the reduction, as illustrated