

responsibility of the States to inform the agencies of any such change in a subsequent fiscal year, by submitting an amendment or supplement to its certification.

#### B. Incentive Grant Program

In this notice, the agencies propose to simplify the certification process for the incentive grant program. States that are receiving their first grant under the incentive grant program, must submit a certification consisting of: (1) 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; (2) a statement that the funds received by the State under this program 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; and (3) citations to the State's conforming 0.08 BAC *per se* law, including all applicable definitions and provisions of the State's criminal code and, if the State has an ALR law, all applicable provisions of that law, as well.

To receive subsequent-year grants under this program, a State must submit a certification consisting of: (1) A statement from an appropriate State official, stating either that the State either has amended or has not changed its 0.08 BAC *per se* law; (2) a statement that the State is enforcing the law; and (3) a statement that the funds received by the State under this program 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. Citations to the States' laws will not be required for subsequent-year certifications.

For all States in compliance with the requirements of Section 163 in FY 2003, certifications submitted for the incentive grant program will apply toward avoiding the withholding of apportionment funds in FY 2004. No further certification is necessary from these States. To qualify for an incentive grant in any fiscal year, the regulations would continue to provide that the certifications must be received by July 15.

#### Certification Requirements

As stated previously, under the agencies' proposal, States would be required to submit a conforming certification on or before July 15, to receive an incentive grant in a fiscal year; and on or before September 30, to avoid the withholding of funds in a fiscal year.

#### Advance Notice of Apportionments Under the Sanction Program

To avoid a sanction beginning in FY 2004, the agencies propose that States would be required to enact and make effective a conforming 0.08 BAC law and submit a conforming certification on or before the last day (September 30) of the previous fiscal year.

However, NHTSA and the FHWA expect that States will want to know well in advance of the September 30 deadline whether their laws meet the requirements of Section 163 and its implementing regulations. Accordingly, the agencies encourage States to submit their laws for review as quickly as they can. More importantly, the agencies encourage States that are considering proposed 0.08 BAC legislation to request reviews from the agencies while the legislation is still pending. The agencies will review the legislation and determine whether it would conform to the Federal requirements if enacted without change, thus avoiding a situation whereby a State unintentionally enacts a non-conforming 0.08 BAC law and then is unable to meet the Section 163 requirements. Requests should be submitted through NHTSA's Regional Administrators, who will refer the requests to appropriate NHTSA and FHWA offices for review.

To ensure that the States are advised of their status under the Section 163 program well in advance of any withholding, the agencies propose to notify States of their compliance or non-compliance with the requirements of Section 163 through FHWA's normal certification of apportionments process. Under this process, States are advised in advance of the amount of funds expected to be withheld from their apportionments in the upcoming fiscal year. The advance notice normally is issued not later than ninety days prior to the date on which the funds are to be apportioned. (Since funds normally are apportioned on October 1 of each year, the advance notice ordinarily is issued on or about July 1 of each year.)

Under the agencies' proposal, if the agencies have not received a law and certification from a State and determined that they conform with the requirements of Section 163 and its implementing regulations before June 15, the agencies would make an initial determination that the State is in non-compliance with Section 163, and the State would be advised in FHWA's advance notice of apportionments of the amount of funds expected to be withheld from the State in the following fiscal year.

Accordingly, if States wish to avoid receiving an advance notice of apportionments, based on an initial determination that the State is in non-compliance with Section 163, the State should submit a conforming law and certification to the agencies well in advance of June 30.

Each State that receives an advance notice of non-compliance with the requirements of Section 163 will have an opportunity to rebut the agencies' initial determination. In addition, these States will be notified of the agencies' final determination of compliance or non-compliance as part of the final notice of apportionments (which normally is issued on October 1 of each year).

#### Period of Availability for Funds

Section 351 provides an incremental approach to the withholding of funds from apportionment for noncompliance. If a State is found to be in noncompliance on October 1, 2003, the State would be subject to a two percent withholding of its FY 2004 apportionment on that date. If a State is found to be in noncompliance on October 1 of any subsequent fiscal year, the withholding percentage would increase by two percent each year, until it reaches eight percent in FY 2007 and thereafter. See Table 2.

In addition, if a State comes into compliance with the requirements of Section 163 on or before September 30, 2007, the funds withheld from apportionment would be restored to the State. Specifically, Section 351 provides that, "If within four years from the date that the apportionment for any State is reduced in accordance with this section the Secretary determines that such State has enacted and is enforcing a provision described in section 163(a) of chapter 1 of title 23, United States Code, the apportionment of such State shall be increased by an amount equal to such reduction."

However, if a State is not in compliance with the requirements of Section 163 on October 1, 2007, any funds withheld from apportionment to the State will begin to lapse and will no longer be available for apportionment. Section 351 provides that, "If at the end of such four-year period, any State has not enacted and is not enforcing a provision described in section 163(a) of title 23, United States Code, any amounts so withheld shall lapse."