

**SB**

**133**



*Department of Transportation  
and Public Facilities*

# POSITION PAPER

BILL NO: SCR 2

APPROVED:

W. J. Gentan

TITLE: Federal-Aid Hy Funding/Drug  
Enforcement

DATE: March 1, 1993

This bill fulfills an urgent federal mandate, that, if ignored, will result in the loss of millions of dollars in federal highway funding. It is based on Public Law 101-516, Nov. 5, 1990, which directs each state to enact a law which requires the revocation of driving privileges of those persons convicted of any type of drug offense, or alternatively, the state must indicate formal opposition to such a law in a manner defined below.

In responding to this federal mandate (some would say blackmail) the state has three options. First, on or before April 1, 1993 the state may enact legislation requiring the revocation of a person's driving privileges upon conviction for a drug offense. Enactment must be accompanied by enforcement, provided there have been circumstances calling for the law's penalties to be imposed. That is the intent of this bill.

Alternatively, on or before April 1, 1993, if the Governor and both houses of the Legislature indicate by certification and resolutions respectively, that they are opposed to the enactment or enforcement of such a law, then the fiscal sanctions will not be imposed on the state. Several other states have selected this option, in most instances as a symbolic act against federal intrusion into states' sovereignty.

Finally, in the absence of the state taking positive, timely action to either enact and enforce the mandatory license revocation law, or indicating formal opposition, a 5% withholding of highway federal-aid funds will begin in Federal Fiscal Year 1994. The penalty would remain the same in FFY '95. Further, funds withheld in these two years would be returned to the state if prior to September 30, 1995 the state achieves compliance with the federal act.

In subsequent federal fiscal years, the penalty rises to 10% and there is no further restoration provision for withheld funding. The approximate magnitude of these penalties is significant, and would be on the order of \$9.6 million in FFYs '95 & '96, and \$19.2 million thereafter. I would therefore urge favorable action on either approach to comply with Public Law 101-516.

*For Further Information contact Katy McHugh at 465-3900.*

required to send a letter each year, the legislature is not required to pass a resolution. Certification takes place through the normal federal apportionment process in October.

The legislature must act on resolution or bill by April 1, 1993, (by federal regulation to allow time for certification). Many states have opted for the resolution as they resent the federal governments intervention in this issue, or philosophically disagree with driver licensing penalties for any drug conviction. We know of 16 states that have passed the bill, sixteen federal agencies participate in the certification process, and of those that have passed legislation, only 3 have been certified.

5% of ISTEAs if \$212 million total available = \$10.6 million  
10% of ISTEAs if \$212 million total available = \$21.2 million



STATE OF MAINE  
OFFICE OF THE GOVERNOR  
AUGUSTA, MAINE  
04333

JOHN R. MCKERNAN, JR.  
GOVERNOR



August 13, 1991

Samuel I. Skinner, Secretary  
U. S. Department of Transportation  
400 Seventh Street, S.W.  
Washington, D.C. 20590

Dear Mr. Secretary:

I write to you regarding P.L. 101-516 of the FY '91 U.S. DOT Appropriations Act. This section of law concerns revocation or suspension of the driver licenses for individuals convicted of drug offenses. I am opposed to the enactment or enforcement in the State of Maine of such a law described in sub-paragraph (A) of the above cited Section 333.

Further, I take this opportunity to submit this written certification that the 1st Regular Session of the 115th Maine Legislature recently adopted a resolution opposing the same sub-paragraph (A) of Section 333. I have attached a true copy of that resolution which was passed on June 4, 1991 by the 115th Legislature. The session adjourned on July 18, 1991.

I believe that the State of Maine is now in compliance with P.L. 101-516, Section 333. Thank you for your attention to this matter.

Sincerely,

John R. McKernan, Jr.  
Governor

JRM/lba

cc: Dana P. Connors, MDOT  
William D. Richardson, FEWA



## STATE OF MAINE

---

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND NINETY-ONE

---

JOINT RESOLUTION EXPRESSING THE LEGISLATURE'S OPPOSITION  
TO FEDERAL LEGISLATION REQUIRING SUSPENSION OF  
LICENSES FOR INDIVIDUALS CONVICTED OF VIOLATIONS OF  
THE FEDERAL CONTROLLED SUBSTANCES ACT

WHEREAS, the Federal Government has enacted legislation to withhold federal aid to highways in this State unless the Legislature and the Governor consider and act upon state legislation related to the suspension or revocation of the driver's license of any person convicted of drug offenses; and

WHEREAS, the Joint Standing Committee on Legal Affairs has considered proposed legislation consistent with the federal requirement and has voted to recommend that the legislation ought not to pass; and

WHEREAS, the reasons for the negative recommendation include a belief that the granting or withholding of driving privileges is and always has been a prerogative of the states to decide for themselves, not the Federal Government; and

WHEREAS, the federal law provides that a state may avoid loss of federal highway funds "if the legislature enacts a resolution expressing its opposition to such legislation and the governor conveys the governor's disapproval and the legislature's resolution to the United States Secretary of Transportation; now, therefore, be it

RESOLVED: That We, the Members of the One Hundred and Fifteenth Legislature, now assembled in the First Regular Session, express our opposition to the enactment of legislation required by the Federal Government to revoke or suspend the drivers' licenses of individuals convicted of violations of the Controlled Substances Act or any drug offense or to delay the issuance or reinstatement of a driver's license for a person so convicted; and be it further

7  
SEP 29 '92 23:55PM

P.5

RESOLVED: That suitable copies of this resolution, duly authenticated by the Secretary of State, be transmitted to the Honorable John R. McKernan, Jr., Governor, for conveyance to the United States Secretary of Transportation.

830732

HOUSE OF REPRESENTATIVES  
READ AND ADOPTED

JUN 5 1991  
IN CONCURRENCE

*Edwin R. ...*  
CLERK

IN SENATE CHAMBER  
READ AND ADOPTED

JUN 4 1991

J. J. O'BRIEN  
SECRETARY

SENT ESTIN FOR CONCURRENCE

9503W-LR2723(1)

ORIGINAL SIGNED BY  
PRESIDENT AND SPEAKER, 901  
SIGNED BY GOVERNOR 901  
DATE: 2-21-91  
CHAPTER NO: None

ORIGINAL SENATE  
JOINT RESOLUTION  
NO. 0021

ENROLLED JOINT RESOLUTION NO. 5, SENATE  
FIFTY-FIRST LEGISLATURE OF THE STATE OF WYOMING  
1991 GENERAL SESSION

A JOINT RESOLUTION requesting Congress to allow each state the right to determine and impose appropriate sanctions upon the driving privileges of drug offenders within state boundaries.

WHEREAS, Congress has imposed sanctions upon the several states through the withholding of apportioned federal aid highway funds in an attempt to strengthen and encourage state efforts in preventing drug abuse through penalizing drug offenders; and

WHEREAS, while drug abuse remains to be a paramount and priority national problem, the imposition of federal highway fund sanctions upon states does not appropriately address or respond to the problem; and

WHEREAS, state officials are eminently more qualified to regulate and control the privilege of operating motor vehicles on roadways within their respective state jurisdictions.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE LEGISLATURE OF THE STATE OF WYOMING:

Section 1. That the legislature opposes enactment or enforcement in this state of a federally mandated law relating to revocation, suspension, issuance or reinstatement of driver's licenses to convicted drug offenders as described in 23 U.S.C. 104(a)(3)(A).

Section 2. That Congress repeal 23 U.S.C. 104(a)(2) and (3) and allow states the right to determine and impose appropriate sanctions upon driving privileges of drug offenders within state boundaries.

Section 3. That this resolution is intended to satisfy the requirement under 23 U.S.C. 104(a)(3)(B)(ii) which will protect

ORIGINAL SENATE  
JOINT RESOLUTION  
NO. CO21

ENROLLED JOINT RESOLUTION NO. 5, SENATE  
FIFTY-FIRST LEGISLATURE OF THE STATE OF WYOMING  
1991 GENERAL SESSION

the state of Wyoming from the loss of federal highway funds  
under 23 U.S.C. 104(a)(3).

Section 4. That the Secretary of State of Wyoming transmit  
copies of this resolution to the President of the United States,  
to the President of the Senate and the Speaker of the House of  
Representatives of the United States Congress, to the United  
States Secretary of Transportation and to the Wyoming Congres-  
sional Delegation.

(END)

\_\_\_\_\_  
Speaker of the House

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Governor

TIME APPROVED: \_\_\_\_\_

DATE APPROVED: \_\_\_\_\_

(ORIGINAL SIGNED BY  
PRESIDENT AND SPEAK. 2)

SIGNED BY GOVERNOR

DATE: 2-21-91

CHAPTER NO: None



STATE OF UTAH  
OFFICE OF THE GOVERNOR  
SALT LAKE CITY  
84114

NORMAN H. BANGERTER  
GOVERNOR

March 16, 1992

Mr. Andrew H. Card  
Secretary of Transportation  
U.S. Department of Transportation  
400 7th Street, S.W.  
Washington, D.C. 20590

Dear Secretary Card:

Section 333 of the FY-1991 U.S. Department of Transportation Appropriations Act (Public Law 101-516, Sec. 333) requires withholding of certain Federal-aid Highway Funds if certain legislation is not passed by individual states. However, this same act provides for exclusion from the penalties if the State Legislature and Governor certify that they oppose enactment of the specified legislation.

This letter is to inform you that the Utah State Legislature considered legislation which would have required the revocation or suspension of a person's driver's license if convicted on any drug-related offense. The legislation was not passed by either house. The Legislature passed a resolution, in which I concurred, which outlined our opposition to the suggested legislation. A copy is enclosed for your inspection and record.

I would like to point out that our failure to enact the legislation suggested by Congress does not indicate any laxness on our part in fighting drug and alcohol use and their impacts on traffic safety. Utah has some of the most stringent DUI laws in the country and very aggressive enforcement of them. We also have a law which revokes or suspends the driver's license of juveniles convicted of any drug-related offense. We feel that our current laws provide for sufficient deterrence of drug abuse.

Sincerely,

Norman H. Bangarter  
Governor

NHB/ehf

Enclosure

cc: Don Steinke, Federal Highway Administration  
Doug Bodrero, Department of Public Safety

RESOLUTION TO THE SECRETARY OF TRANSPORTATION  
ON REVOCATION OF DRIVER LICENSES  
1992  
GENERAL SESSION

Enrolled Copy

S. C. R. No. 7

By Dix E. McMullin

A CONCURRENT RESOLUTION OF THE LEGISLATURE AND THE GOVERNOR EXPRESSING  
OPPOSITION TO A FEDERAL REQUIREMENT FOR THE STATE TO PASS A LAW  
REQUIRING REVOCATION OR SUSPENSION OF A PERSON'S DRIVER LICENSE FOR  
ANY DRUG-RELATED OFFENSE.

Be it resolved by the Legislature of the state of Utah, the Governor  
concurring therein:

WHEREAS Section 333 of the Fiscal Year 1991 United States Department  
of Transportation Appropriation Act entitled "Revocation or Suspension of  
the Driver's License of Individuals Convicted of Drug Offenses" requires  
states to enact legislation requiring the revocation or suspension of an  
individual's driver license upon conviction of any drug-related offense;

WHEREAS Section 333 requires withholding 5% of certain federal-aid  
highway funds in Fiscal Year 1994 and 1995 and 10% in subsequent years  
from states that fail to enact legislation;

WHEREAS Section 333 provides the following procedure to avoid the  
sanctions without enacting the legislation:

"(3) The Governor of the State --

(i) submits to the Secretary no earlier than the adjournment sine  
die of the first regularly scheduled session of the state's legislature  
which begins after the date of enactment of this section a written  
certification stating that he is opposed to the enactment or enforcement

S. C. R. No. 7

in his state of a law described in subparagraph (A) relating to revocation, suspension, issuance, or reinstatement of driver's licenses to convicted drug offenders; and

(ii) submits to the Secretary a written certification that the legislature (including both Houses where applicable) has adopted a resolution expressing its opposition to a law described in clause (i)";

WHEREAS S.B. 102, "Suspension of Driver License", providing for the revocation or suspension of an individual's driver license upon conviction of any drug-related offense, has been introduced during the 1992 General Session of the Legislature and has failed to pass;

WHEREAS the Federal government should not dictate policy or legislation of this kind for the state; and

WHEREAS the Tenth Amendment to the Constitution of the United States provides that: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people";

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah, the governor concurring therein, certify opposition to the enactment or enforcement in this state of a law requiring the revocation or suspension of an individual's driver license upon conviction of any drug-related offense.

BE IT FURTHER RESOLVED that this resolution be prepared and delivered to the governor of the state of Utah and that the governor submit to the United States Secretary of Transportation;

S. C. 2. No. 7

(1) a written certification that he is opposed to the enactment or enforcement of a law related to revocation of a person's driver license for any drug-related offense; and

(2) a written certification that the legislature has adopted this resolution.

BE IT FURTHER RESOLVED that a copy of this resolution be prepared and delivered to the United States Secretary of Transportation.

---

SEC. 330. (a) **AUXILIARY FLIGHT SERVICE STATION PROGRAM.**—The Administrator of the Federal Aviation Administration shall develop and implement a system of manned auxiliary flight service stations. The auxiliary flight service stations shall supplement the services of the planned consolidation to 61 automated flight service stations under the flight service station modernization program. Auxiliary flight service stations shall be located in areas of unique weather or operational conditions which are critical to the safety of flight. Not later than 180 days after the date of enactment of this Act, the Administrator of the Federal Aviation Administration shall report to Congress with the plan and schedule for implementation of this section.

(b) **NATIONAL WEATHER GRAPHIC SYSTEM.**—None of the funds made available in this Act may be used by the Federal Aviation Administration for a new National Weather Graphics System.

SEC. 331. **NATIONAL 55 MPH SPEED LIMIT ENFORCEMENT PENALTIES.**—Notwithstanding sections 141(a) and 154 of title 23, United States Code, none of the funds in this or any previous or subsequent Act shall be used for the purpose of reducing or reserving any portion of a State's apportionment of Federal-aid highway funds as required by section 154(f) of title 23, United States Code, for reason of noncompliance with the criteria of that subsection during fiscal year 1989. The Secretary shall promptly restore any apportionments which, prior to enactment of this Act, were reduced or reserved from obligation for reason of noncompliance under section 154(f) during said fiscal year.

SEC. 332. Unless specifically provided in this Act, none of the funds in this Act shall be available to initiate multiyear contracts for a program which meets the criteria of a Level I or Level II major system acquisition as defined by Department of Transportation Order 4200.14 if the total value of procurement end items in the contract, including options, exceeds \$100,000,000: *Provided*, That for the purposes of this section, a multiyear contract is defined as one which provides for more than one year's requirements of systems, subsystems, or components within a single contract: *Provided further*, That none of the funds in this Act shall be available to initiate contracts for major systems acquisition which include procurement options where funding for those options is scheduled to be provided prior to delivery to the Federal Government of at least fifty per centum of all units previously ordered under that contract.

SEC. 333. For each fiscal year the Secretary of Transportation shall withhold five per centum of the amount required to be apportioned to any State under each of paragraphs (1), (2), (5), and (6) of section 104(b) on the first day of each fiscal year which begins after the second full calendar year following the date of enactment of this section if the State does not meet the requirements of paragraph (3) on such date.

Subsections (a)(2), (a)(3), (b), and (c) of section 104 of title 23, United States Code, are amended as follows:

"(2) The Secretary shall withhold 10 per centum (including any amounts withheld under paragraph (1)) of the amount required to be apportioned to any State under each of paragraphs (1), (2), (5), and (6) of section 104(b) on the first day of each fiscal year which begins after the fourth full calendar year following the date of enactment of this section if the State does not meet the requirements of paragraph (3) on the first day of such fiscal year.

"(3) A State meets the requirements of this paragraph if—

THE  
FOLLOWING  
DOCUMENTS  
ARE  
POOR  
ORIGINAL  
COPIES

ON PROGRAM.—The  
 tion shall develop  
 (nt service stations.  
 nent the services of  
 nt service stations  
 program. Auxiliary  
 f unique weather or  
 safety of flight. Not  
 nt of this Act, the  
 station shall report  
 nentation of this

None of the funds  
 e Federal Aviation  
 physics System.

ENFORCEMENT PEN-  
 4 of title 23, United  
 vious or subsequent  
 g or reserving any  
 id highway funds as  
 ea Code, for reason  
 section during fiscal  
 any apportionments  
 ad or reserved from  
 section 154(f) during

us Act, none of the  
 multiyear contracts  
 el I or Level II msjor  
 t of Transportation  
 end items in the  
 t: Provided, That for  
 act is defined as one  
 rements of systems,  
 stract: Provided fur-  
 available to initiate  
 nclude procurement  
 dled to be provided  
 of at least fifty per  
 t contract.

y of Transportation  
 required to be appor-  
 (1), (2), (5), and (6) of  
 r which begins after  
 of enactment of this  
 ents of paragraph (3)

tion 104 of title 23.

ctum (including any  
 ount: required to be  
 aphs (1), (2), (5), and  
 al year which begins  
 s date of enactment  
 the requirements of  
 ragraph if—

"(A) the State has enacted and is enforcing a law that re-  
 quires in all circumstances, or requires in the absence of  
 compelling circumstances warranting an exception—

"(i) the revocation, or suspension for at least 6 months, of  
 the driver's license of any individual who is convicted, after  
 the enactment of such law of—

"(I) any violation of the Controlled Substances Act, or  
 "(II) any drug offense, and—

"(ii) a delay in the issuance or reinstatement of a driver's  
 license to such an individual for at least 6 months after the  
 individual applies for the issuance or reinstatement of a  
 driver's license if the individual does not have a driver's  
 license, or the driver's license of the individual is sus-  
 pended, at the time the individual is so convicted, or—

"(B) The Governor of the State—

"(i) submits to the Secretary no earlier than the adjourn-  
 ment sine die of the first regularly scheduled session of the  
 State's legislature which begins after the date of enactment  
 of this section a written certification stating that he is  
 opposed to the enactment or enforcement in his State of a  
 law described in subparagraph (A) relating to the revoca-  
 tion, suspension, issuance, or reinstatement of driver's li-  
 censes to convicted drug offenders; and

"(ii) submits to the Secretary a written certification that  
 the legislature (including both Houses where applicable)  
 has adopted a resolution expressing its opposition to a law  
 described in clause (i).

"(b)(1)(A) Any funds withheld under subsection (a) from appor-  
 tionment to any State on or before September 30, 1996, shall remain  
 available for apportionment to such State as follows:

"(i) If such funds would have been apportioned under section  
 104(b)(5)(A) but for this section, such funds shall remain avail-  
 able until the end of the fiscal year for which such funds are  
 authorized to be appropriated.

"(ii) If such funds would have been apportioned under section  
 104(b)(5)(B) but for this section, such funds shall remain avail-  
 able until the end of the second fiscal year following the fiscal  
 year for which such funds are authorized to be appropriated.

"(iii) If such funds would have been apportioned under para-  
 graph (1), (2), or (6) of section 104(b) but for this section, such  
 funds shall remain available until the end of the third fiscal  
 year following the fiscal year for which such funds are au-  
 thorized to be appropriated.

"(B) No funds withheld under this section from apportionment to  
 any State after September 30, 1995, shall be available for appor-  
 tionment to such State.

"(2) If, before the last day of the period for which funds withheld  
 under subsection (a) from apportionment are to remain available for  
 apportionment to a State under paragraph (1), the State meets the  
 requirements of subsection (a)(3), the Secretary shall, on the first  
 day on which the State meets the requirements of subsection (a)(3),  
 apportion to the State the funds withheld under subsection (a) that  
 remain available for apportionment to the State.

"(3) Any funds apportioned pursuant to paragraph (2) shall  
 remain available for expenditure as follows:

"(A) Funds originally apportioned under section 104(b)(5)(A)  
 shall remain available until the end of the fiscal year succeed-

Will  
 BACUS 366-  
 202-1396  
 170

ing the fiscal year in which such funds are apportioned under paragraph (2).

"(B) Funds originally apportioned under paragraph (1), (2), (5)(B), or (6) of section 104(b) shall remain available until the end of the third fiscal year succeeding the fiscal year in which such funds are so apportioned.

Sums not obligated at the end of such period shall lapse or, in the case of funds apportioned under section 104(b)(5), shall lapse and be made available by the Secretary for projects in accordance with section 118(b).

"(4) If, at the end of the period for which funds withheld under subsection (a) from apportionment are available for apportionment to a State under paragraph (1), the State does not meet the requirements of subsection (a)(3), such funds shall lapse or, in the case of funds withheld from apportionment under section 104(b)(5), such funds shall lapse and be made available by the Secretary for projects in accordance with section 118(b).

"(c) For purposes of this section—

"(1) The term 'driver's license' means a license issued by a State to any individual that authorizes the individual to operate a motor vehicle on highways.

"(2) The term 'drug offense' means any criminal offense which proscribes—

(A) the possession, distribution, manufacture, cultivation, sale, transfer, or the attempt or conspiracy to possess, distribute, manufacture, cultivate, sell, or transfer any substance the possession of which is prohibited under the Controlled Substances Act, or

(B) the operation of a motor vehicle under the influence of such a substance.

"(3) The term 'convicted' includes adjudicated under juvenile proceedings."

(b) The table of contents for chapter 1 of title 23, United States Code, is amended by adding at the end thereof the following new item:

"159. Revocation or suspension of the driver's license of individuals convicted of drug offenses."

Sec. 334. Unobligated funds authorized to be appropriated by section 131(d)(2) of the Highway Improvement Act of 1982, Public Law 97-424, shall be available for obligation for the project described in section 149(a)(88) of the Federal-Aid Highway Act of 1987, Public Law 100-17, in the same manner and to the same extent provided in section 131(d)(3) of the Highway Improvement Act of 1982.

Sec. 335. Notwithstanding section 127 of title 23, United States Code, the State of Wyoming may permit the use of the National System of Interstate and Defense Highways located in Wyoming by vehicles in excess of 80,000 pounds gross weight, but meeting axle and bridge formula specifications in section 127 of title 23, United States Code: ~~Provided~~, That this section shall remain in effect until December 31, 1991.

Sec. 336. 23 U.S.C. 410(e)(1)(C) is hereby amended by striking the words "within the time period specified in subparagraph (F)"; 23 U.S.C. 410(e)(2) is hereby amended by adding the words "a significant portion of:" after the word "which", the first time it appears,

No  
an  
th  
Fe  
sta  
lin  
as  
stu  
Ho  
Tr  
lat  
19  
acc  
inc  
pro  
96  
ma  
ha  
tio  
app  
pro  
poi  
con  
lev  
for  
S  
obi  
tion  
the  
wit  
sup  
suc  
ativ  
(C  
the  
rest  
ind  
date  
aut  
this  
Fed  
pub  
the  
(B  
Act  
min  
fore  
  
for  
fun

apportioned under paragraph (1), (2), and until the end of the year in which such

shall lapse or, in the event it shall lapse and be reauthorized in accordance with

is withheld under or apportionment shall meet the requirements, or, in the case of section 104(b)(5), such Secretary for projects

license issued by a State to an individual to operate

criminal offense

manufacture, cultivation, or conspiracy to possess, or to transfer any substance prohibited under the

under the influence

of a minor or a child

of the United States or the District of Columbia

individuals convicted of

of the Act of 1982, Public Law 97-424, or the project development Act of 1987, to the same extent as the project improvement Act of

of the United States or the District of Columbia, but meeting the requirements of title 23, United States Code, shall remain in effect until

is struck from the Act by striking the words "a significant" and "at times it appears"

and by striking the words "convicted of" and inserting in lieu thereof the words "apprehended and fined for".

Sec. 337. Within 180 days of the effective date of this Act, the Federal Aviation Administration shall undertake and complete a study on the classification of air traffic controllers at level IV limited radar approach facilities which includes airspace complexity as a factor in determining grade classification. The results of this study, along with an implementation plan, shall be provided to the House and Senate Committees on Appropriations.

Sec. 338. Notwithstanding any provision of the Urban Mass Transportation Act of 1964, as amended, the Urban Mass Transportation Administration shall not withhold fiscal year 1989, 1990 or 1991 funds for any section 3 and section 9 operating and capital assistance grants for the City of Phoenix, Arizona, based on the inclusion of a "preference in hiring" provision in the employee protective arrangements developed pursuant to 49 U.S.C. 1609(c).

Sec. 339. Notwithstanding subsection (d) of section 402 of the Surface Transportation Assistance Act of 1982 (Public Law 97-424, 96 Stat. 2155, 2156) for States which have received only a development grant for fiscal year 1989 under such section 402 and which have participated in the Commercial Motor Carrier Safety Inspection and Weighing Demonstration Program, the Secretary shall only approve a plan under such section 402 for fiscal year 1991 which provides that the aggregate expenditure of funds of the State and political subdivisions thereof, exclusive of Federal funds, for commercial motor vehicle safety programs will be maintained at a level which does not fall below the average level of such expenditure for the last two full fiscal years preceding fiscal year 1990.

Sec. 340. (a)(1) None of the funds appropriated by this Act may be obligated or expended to enter into any contract for the construction, alteration, or repair of any public building or public work in the United States or any territory or possession of the United States with any contractor or subcontractor of a foreign country, or any supplier of products of a foreign country, during any period in which such foreign country is listed by the United States Trade Representative under subsection (c) of this section.

(2) The President or the head of a Federal agency administering the funds for the construction, alteration, or repair may waive the restrictions of paragraph (1) of this subsection with respect to an individual contract if the President or the head of such agency determines that such action is necessary for the public interest. The authority of the President or the head of a Federal agency under this paragraph may not be delegated. The President or the head of a Federal agency waiving such restrictions shall, within 10 days, publish a notice thereof in the Federal Register describing in detail the contract involved and the reason for granting the waiver.

(b)(1) Not later than 30 days after the date of enactment of this Act, the United States Trade Representative shall make a determination with respect to each foreign country of whether such foreign country—

- (A) denies fair and equitable market opportunities for products and services of the United States in procurement, or
  - (B) denies fair and equitable market opportunities for products and services of the United States in bidding,
- for construction projects that cost more than \$500,000 and are funded (in whole or in part) by the government of such foreign

proposed to be made, that the insured party has violated or is considered to violate section 213, 228, 227, 1002, 1003, 1007, 1014, 1022, or 1344 of title 18 of the United States Code, or section 1341 or 1343 of such title affecting a federally insured financial institution as defined in title 18 of the United States Code.

(c) In making a determination under paragraph (b) of this section, the appropriate federal banking agency and the Corporation may consider:

(1) Whether, and to what degree, the institution-affiliated party was in a position of managerial or fiduciary responsibility;

(2) The length of time the institution-affiliated party was affiliated with the insured depository institution or depository institution holding company, and the degree to which the proposed payment represents a reasonable payment for services rendered over the period of employment; and

(3) Any other factors or circumstances which would indicate that the proposed payment would be contrary to the intent of section 18(k) of the Act or this part.

(d) Notwithstanding paragraphs (a) and (b) of this section, a depository institution holding company that is a diversified holding company as defined in section 10(a)(1)(F) of the Home Owner's Loan Act (12 U.S.C. 1461 et seq.) may make a golden parachute payment if, and to the extent that, such depository institution holding company determines and can demonstrate that:

(1) The conditions delineated in paragraphs (b) (1), (2), (3) and (4) of this section have been satisfied; and

(2) The institution-affiliated party falls within the definition of "institution-affiliated party" solely because such person is a director, officer, employee or controlling stockholder of a diversified holding company.

#### § 359.3 Indemnification payments prohibited.

No insured depository institution or depository institution holding company shall make or agree to make any indemnification payment, except as provided in § 359.5 of this part.

#### § 359.4 Permissible golden parachute payments.

An insured depository institution or depository institution holding company may agree to make a golden parachute payment if:

(a) Such an agreement is made with respect to an institution-affiliated party who was hired by an insured depository institution or depository institution holding company at a time when that institution or holding company satisfied

any of the criteria set forth in § 359.2(a)(1)(ii) of this part and the institution's appropriate federal banking agency and the Corporation consented in writing to the amount and terms of the golden parachute payment; and

(b) At the time the payment is made, the factors delineated in § 359.2(b) (1), (2), (3), or (4) of this part have been satisfied, and the factors delineated in § 359.2(c)(3) of this part are not present.

#### § 359.5 Permissible indemnification payments.

(a) An insured depository institution or depository institution holding company may make or agree to make reasonable indemnification payments to an institution-affiliated party if:

(1) The institution's or holding company's board of directors, in good faith, determines in writing that the institution-affiliated party has a substantial likelihood of prevailing on the merits;

(2) The institution's or holding company's board of directors, in good faith, determines in writing that the payment of such expenses will not adversely affect the institution's safety and soundness;

(3) At any time the institution's or holding company's board of directors believes, or should reasonably believe, that the conditions of paragraphs (a) (1) and (2) of this section are no longer being met, it ceases making or authorizing such payments;

(4) The indemnification payments are limited to the payment or reimbursement of reasonable legal or other professional expenses incurred in connection with an institution-affiliated party's involvement in an administrative proceeding or civil action instituted by the appropriate federal banking agency; but in no event shall such indemnification pay or reimburse an institution-affiliated party for the amount of, or any cost incurred in connection with, any settlement of any such claim, proceeding or action or any judgment or penalty imposed with respect to any such claim, proceeding or action;

(5) The institution-affiliated party agrees in writing to reimburse the institution for such indemnification payments in the event that the proceeding results in a final order under which the institution-affiliated party:

(i) Is assessed a civil money penalty;

(ii) Is removed from office or prohibited from participating in the conduct of the affairs of the insured depository institution; or

(iii) Is required to cease and desist from or take any affirmative action described in section 8(b) of the Act with respect to such institution; and

(6) The institution or holding company provides the appropriate federal banking agency and the FDIC with prior written notice of its board of directors' authorization of such indemnification.

(b) An institution-affiliated party requesting indemnification payments shall not participate in any way in the board's discussion and approval of such payments; provided, however, that such institution-affiliated party may present his/her request to the board and respond to any inquiries from the board concerning his/her involvement in the circumstances giving rise to the administrative proceeding or civil action.

By order of the Board of Directors, dated at Washington, DC, this 24th day of September, 1991.

Federal Deposit Insurance Corporation  
Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 91-23747 Filed 10-4-91; 8:45 am]

581523 CODE 0714-01-4

## DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Federal Highway Administration

23 CFR Part 1212

[NHTSA Docket No. 91-17; Notice 1]

RIN 2127-AE10

Drug Offender's Driver's License Suspension

AGENCY: National Highway Traffic Safety Administration (NHTSA) and Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

**SUMMARY:** This Notice of Proposed Rulemaking (NPRM) contains a proposal for implementing a new program enacted by the Department of Transportation and Related Agencies Appropriations Act for FY 1991. Section 333 of the Act requires the withholding of certain Federal-aid highway funds from States that do not enact legislation requiring the revocation or suspension of an individual's driver's license upon conviction for any violation of the Controlled Substances Act or any drug offense. This notice proposes the manner in which States would certify that they are not subject to this withholding, and the disposition of funds that are withheld. The agencies

request comments on the proposed regulation discussed in this notice.

**DATES:** Comments must be received by November 21, 1991.

**ADDRESS:** Written comments should refer to the docket number and the number of this notice and be submitted (preferably in ten copies) to: Docket Section, National Highway Traffic Safety Administration, room 5109, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. (Docket hours are from 8 a.m. to 4 p.m.)

**FOR FURTHER INFORMATION CONTACT:** In NHTSA: Mr. William Holden, Office of Alcohol and State Programs, Traffic Safety Programs, room 5130, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, telephone (202) 366-2722; or Ms. Heidi L. Coleman, Office of Chief Counsel, room 5219, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, telephone (202) 366-1834.

In FHWA: Mr. Warren Harper, Office of Highway Safety, Room 3407, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590, telephone (202) 366-2172; or Mr. Wilbert Baccus, Office of Chief Counsel, room 4230, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590, telephone (202) 366-0780.

**SUPPLEMENTARY INFORMATION:** The Department of Transportation and Related Agencies Appropriations Act for FY 1991, Public Law 101-518, was signed into law on November 5, 1990. Section 333 of the Act requires the withholding of certain Federal-aid highway funds from States that do not enact legislation requiring the revocation or suspension of an individual's driver's license upon conviction for any violation of the Controlled Substances Act (Pub. L. 91-513, as amended) or any drug offense. If a State decides not to enact such legislation, the section stipulates a procedure by which the state can avoid the withholding of funds.

This notice proposes the manner in which States would certify that they are not subject to this withholding and the disposition of funds that are withheld.

#### Adoption of Drug Offender's Driver's License Suspension

The legislation specifically provides that the Secretary must withhold a portion of Federal-aid highway funds from any State that does not meet certain statutory requirements. To avoid such withholding, a State must have enacted and be enforcing a law that provides for the revocation or suspension of the driver's license of any

individual who is convicted for any violation of the Controlled Substances Act or any drug offense. Alternatively, a State can avoid the withholding by submitting to the Secretary a written certification stating that the Governor is opposed to the enactment or enforcement of such a law and that the legislature has adopted a resolution expressing its opposition to such a law.

The requirements of the Commercial Motor Vehicle Safety Act of 1988 would remain unaffected by any such resolution. Specifically, a State may not waive the requirement of 49 CFR 383.51 that a person who is convicted of either driving a commercial motor vehicle (CMV) while under the influence of a controlled substance, or using a CMV in the commission of a controlled substance-related felony, be disqualified from operating a CMV for a period of from one year to life, depending on the specific offense(s), without facing a reduction in Federal-aid highway funds.

Any State that does not enact and enforce a law that provides for the revocation or suspension of the driver's license of drug offenders or submit to the Secretary written certification from the Governor that he or she is opposed to the enactment or enforcement of such a law in the State will be subject to withholding of a portion of its Federal-aid highway funds. In accordance with the statute, if a State does not meet the statutory requirements by October 1, 1993, five percent of its FY 1994 Federal-aid highway apportionment under 23 U.S.C. 104(b)(1), 104(b)(2), 104(b)(5) and 104(b)(6) shall be withheld. These sections relate to the apportionments for the primary, secondary, interstate (including inter-state construction and interstate resurfacing, restoration, rehabilitation and reconstruction (4R) funds) and urban highway systems. Five percent will be withheld also in FY 1995 if the State does not meet the requirements by October 1, 1994. If the State does not meet the statutory requirements by October 1 of any subsequent fiscal year (beginning with FY 1996), ten percent of its Federal-aid highway apportionments under these sections will be withheld.

#### Compliance Criteria

To avoid the withholding of Federal-aid highway funds, a State has two alternatives, the first of which is to enact and enforce a law that meets the statutory criteria. Section 333 provides that:

A State meets the requirements of this paragraph if—

(a) The State has enacted and is enforcing a law that requires in all circumstances, or requires in the

absence of compelling circumstances warranting an exception—

(i) The revocation, or suspension for at least 6 months, of the driver's license of any individual who is convicted, after the enactment of such law, of—

(I) Any violation of the Controlled Substances Act, or

(II) Any drug offense, and

(ii) A delay in the issuance or reinstatement of a driver's license to such an individual for at least 6 months after the individual applies for the issuance or reinstatement of a driver's license if the individual does not have a driver's license, or the driver's license of the individual is suspended, at the time the individual is so convicted.

#### 1. Statutory Definitions

The statute defines several terms, and the agencies are proposing to adopt these definitions. Section 333 defines the term "driver's license" to mean "a license issued by a State to any individual that authorizes the individual to operate a motor vehicle on highways." This definition would encompass licenses that permit individuals to operate any type of motor vehicle, including motorcycles and commercial motor vehicles.

The term "drug offense" is also defined in the statute. The term, as defined in the statute, would cover any criminal drug offense including "the possession, distribution, manufacture, cultivation, sale, transfer, or the attempt or conspiracy to possess, distribute, manufacture, cultivate, sell, or transfer any substance the possession of which is prohibited under the Controlled Substances Act, or . . . the operation of a motor vehicle under the influence of such a substance." It should be noted that, while Section 333 requires that States take a driver's licensing action against violators of these drug offenses, the offenses covered by this definition are not limited to moving violations. In fact, to be covered, these offenses need not be motor vehicle-related at all.

The agencies do not believe that the Act requires a State to enact any particular drug offense law. The Act requires only that if a drug offense is proscribed and an individual is convicted for a violation of the offense that the State suspend, revoke or delay that individual's driver's license.

Since the statutory definition of "drug offense" includes manufacturing among the activities that are unlawful, the agencies believe this term should cover not only controlled and counterfeit substances but also listed chemicals, the possession of which was made unlawful by the Chemical Diversion and

*Trafficking Act of 1988, Public Law 100-692, NHTSA and FHWA therefore propose to define the term "substance the possession of which is prohibited under the Controlled Substances Act" to mean "a controlled or counterfeit substance or a listed chemical as those terms are defined in subsections 102(6), (7) & (33) of the Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended (21 U.S.C. 802(6), (7) & (33)). Complete listings of all controlled substances and listed chemicals are contained in 21 CFR 1308.11-15 and 1310.02."*

The statute provides that the term "convicted" includes "adjudicated under juvenile proceedings." In other words, the statute requires that State laws provide that juveniles who are adjudicated for drug offenses outside of criminal proceedings would also be subject to revocation or suspension of their driver's licenses. If these individuals do not have driver's licenses, then the State must delay issuance of driving privileges to them.

Several issues are left unresolved by the statutory language; and the agencies request comments from the public on these issues.

### 2. Compelling Circumstances

Section 333 provides that, to meet the statutory requirements, the State law must require the revocation, suspension or delay in issuance of driver's licenses for drug offenders "in all circumstances" or "in the absence of compelling circumstances warranting an exception." The statute does not specify what circumstances would warrant an exception.

NHTSA and FHWA believe that this language provides States with flexibility to issue restricted licenses to individuals in certain limited circumstances, but the agencies are not proposing to define for the States which circumstances would warrant an exception. When NHTSA originally promulgated its regulation implementing section 408 of the Highway Safety Act of 1968, Incentive Grant Criteria for Alcohol Traffic Safety Programs, the agency defined the particular conditions for which restricted or hardship licenses could be issued to drunk drivers. Over time, however, NHTSA found these conditions to be overly restrictive for the States and amended the regulation accordingly. Based on this experience, the agencies are not proposing to define in this regulation a limited set of conditions under which hardship or restricted licenses may be issued. However, hardship or restricted licenses should be issued only in exceptional circumstances specific to the offender.

### 3. Enforcement

Section 333 requires not only that States enact drug offender's driver's license suspension statutes, but also that they enforce such statutes. The Act does not explain, however, how States are to satisfy this enforcement requirement. The Senate Report for the measure states:

The requirement . . . is satisfied so long as the State is attempting in good faith to enforce the law. If a State resident is convicted of a drug offense in another State, and officials of the State of residence are unaware of the conviction, the failure of the State of residence to revoke or suspend the offender's driver's license would not, by itself, be a sufficient basis to find the State of residence in noncompliance with the bill's requirements. Similarly, if State officials are unaware of the conviction of a resident under the Controlled Substances Act, the failure to revoke or suspend the resident's license is not, by itself, a sufficient basis to find the State in noncompliance. S.Re. 298, 101st Cong., 1st Sess. 5 (1989).

The Senate Report further suggests that a State could show good faith efforts to enforce its law by entering into agreements with other States or with Federal officials to inform each other of drug offense convictions. The report indicates, however, that such agreements are not required by the Act.

The agencies are proposing to require that, in order to comply with the enforcement criterion, States with qualifying laws must submit a description of the steps they are taking to enforce their law. The description would need to include the steps the State is taking to enforce its law with regard to within-State convictions, out-of-State convictions, Federal convictions and juvenile adjudications. We intend to accept good faith efforts, and are not mandating that States meet any particular condition as a prerequisite.

States would be able to show good faith in a number of ways. With regard to out-of-State and Federal convictions, for example, as suggested by the Senate Report, States could show good faith by entering into agreements with Federal officials and with other States to inform each other of drug offense convictions. Such agreements could be modeled after the Driver License Compact, under which States report convictions for major moving violations to a driver's home State.

In addition, States could establish procedures for submitting inquiries to the National Crime Information Center (NCIC) prior to issuing or renewing an individual's driver's license. The NCIC maintains the Interstate Identification Index (III), a nationwide computerized

information system that contains criminal justice information, and includes both State and Federal drug offense conviction information. The agencies are aware that access to the NCIC/III is limited to criminal justice purposes. Because of this limitation, NHTSA and FHWA have requested an interpretation from the Assistant Director/Legal Counsel for the Federal Bureau of Investigation to determine whether State access to this information for the purpose of suspending, revoking or refusing a driver's license to a drug offender would be authorized.

### 4. Suspension, Revocation or Delay

Section 333 requires that States revoke or suspend for at least six months the driver's license of any individual who is convicted of the Controlled Substances Act or any drug offense. The statute is silent as to the effect, if any, a prison term would have on the suspension or revocation. A drug offender, for example, may be sentenced to serve one year in prison. Must that individual be deprived of his or her driver's license for at least six months after the prison term is completed, or could the suspension or revocation period run concurrently with the term of imprisonment imposed?

The Drug Offender's Driving Privileges Suspension Act was enacted to deter drug offenders. If a drug offender serves at least six months in prison, the agencies believe such punishment provides a greater degree of deterrence than would the suspension or revocation of the individual's driver's license. NHTSA and FHWA therefore have tentatively determined that the license suspension or revocation term may run concurrently with any prison term imposed, if the offender serves less than six months in prison, of course, the full six month suspension or revocation would have to be completed.

If the individual does not have a driver's license or if the individual's driver's license is suspended at the time the individual is convicted, Section 333 requires that the State law must provide for a delay in the issuance or reinstatement of the individual's driver's license for at least six months after the individual applies for issuance or reinstatement of his or her driver's license. The statute seems to provide that the six month period would not begin to run until the individual initiates the issuance or reinstatement process by submitting an actual application. The agencies request comments, particularly from the States, regarding whether this would impose unnecessary burdens for driver licensing operations, and if there

is a preferable method for marking the beginning of the six month period within the meaning of the statute. For example, we request comments on whether it would be preferable to require the issuance or reinstatement of the individual's driver's license be preferable to require that issuance or reinstatement of the individual's driver's license be delayed for at least six months after the individual otherwise would have been eligible to have his or her driver's license issued or reinstated. NHTSA and FHWA have tentatively determined that, like the license suspension or revocation term, the period of delay may run concurrently with any prison term imposed.

### 5. Certification

To avoid the withholding of Federal-aid highway funds, each State would be required by this proposed regulation to submit a certification on an annual basis. Under the agencies' proposal, States would be required to submit their certifications by April 1, 1993 to avoid the withholding of funds in fiscal year 1994. Thereafter, States would be required to submit certifications by January 1 of each year (beginning with January 1, 1994) to avoid the withholding of funds in the following fiscal year (beginning with FY 1995). States could submit their certifications along with their Certifications of Speed Limit Enforcement, which are required to be submitted annually in accordance with 23 CFR Part 859.

The certifications submitted under the Part would provide the agencies with the basis for finding States in compliance with the Drug Offender's Driver's License Suspension requirements. Accordingly, until a State has been determined to be in compliance with these requirements, the agencies are proposing that the certification must consist of a certifying statement and also supporting documentation. Once a State has been determined to be in compliance with the Drug Offender's Driver's License Suspension requirements, the State would then be required to submit a certifying statement, but would no longer be required to submit supporting documentation, unless the State's law or enforcement efforts have changed significantly enough so as to warrant an amendment of the State's supporting material.

For example, if a State believes that it has a law that revokes or suspends the driver's license of drug offenders in conformance with the statutory and regulatory requirements, the State would be required to submit a certifying

statement to this effect. With the certification, the State would be required to submit a copy of its conforming law and, as discussed earlier, a description of the steps the State is taking to enforce the law. Once the State is determined to be in compliance, the State would be required to submit only the certifying statement. It would not be required to resubmit its law or describe again its enforcement efforts. If the State's law or its enforcement efforts were to change significantly, the State would be required to amend or supplement the State's original submission.

If a State has not enacted or is not enforcing a conforming law, it can avoid the withholding of funds by submitting, not earlier than the adjournment sine die of the first regularly scheduled session of the State's legislature which begins after November 5, 1990, a written certification signed by the Governor stating that he or she is opposed to the enactment or enforcement in the State of a drug offender's driver's license suspension law. The Governor would also be required to submit written certification that the legislative (including in both Houses where applicable) has adopted a resolution expressing its opposition to such a law and a copy of the resolution. Once the State is determined to be in compliance, the State would be required to submit only the Governor's certifying statement. The State legislature would not be required to pass a resolution each successive year, and the State would not be required to resubmit a copy of the resolution.

### Notification of Compliance

For each fiscal year beginning with FY 1994, NHTSA and FHWA propose to notify States of their compliance or noncompliance with Public Law 101-518, based on a review of certifications received. The agencies propose that this notification will take place through FHWA's normal certification of apportionments process. If the agencies do not receive a certification from a State or if the certification does not conform to Public Law 101-518 and the implementing regulation, the agencies will make an initial determination that the State is in noncompliance. States that are determined to be in noncompliance with Public Law 101-518 will be advised of the amount of funds expected to be withheld through FHWA's advance notice of apportionments, normally not later than ninety days prior to final apportionment.

Each State determined not to comply will have an opportunity to rebut the initial determination. These States will

be notified of the agencies' final determination of compliance or noncompliance as part of the certification of apportionments, which normally occurs on October 1 of each fiscal year.

NHTSA and FHWA recognize that States may want to know as soon as possible whether their laws satisfy the requirements of Public Law 101-518 or they may want assistance in drafting conforming legislation. States are encouraged to request preliminary reviews and assistance from NHTSA's or FHWA's Office of Chief Counsel, 400 Seventh Street, SW, Washington, DC 20590. They are encouraged also to request assistance from NHTSA and FHWA regional offices.

### Period of Availability for Funds

Section 333 provides an incremental approach to the withholding of funds for noncompliance with Public Law 101-518. If a State is found to be in noncompliance in fiscal years 1994 or 1995, the State would be subject to a five percent withholding. If a State is found to be in noncompliance in any subsequent fiscal year, beginning with FY 1996, the State would be subject to a ten percent withholding.

In addition, if a State is found to be in noncompliance in fiscal years 1994 or 1995, the funds withheld from apportionment to the State would remain available for apportionment to that State for a period of time, prescribed in the statute. If a State is found to be in noncompliance in any subsequent fiscal year, the funds withheld from apportionment would no longer be available for apportionment.

Paragraph 104(b)(1)(E) of the Section provides that "No funds withheld under this section from apportionment to any State after September 30, 1995, shall be available for apportionment to such State." The disposition of these funds would be made in accordance with paragraph 104(b)(4) of the section.

Paragraphs 104(b)(1)(A) and (b)(2) of the section identify the period of time during which funds withheld on or before September 30, 1995, remain available for apportionment, and when they are to be restored if the State complies with the Federal requirements before the funds lapse. Paragraph 104(b)(3) establishes the period of time during which these subsequently apportioned funds would remain available to a State for expenditure. If the withheld funds lapse before they are restored, their disposition would be made in accordance with paragraph 104(b)(4) of the section.

These sections are virtually identical to those found in the National Minimum Drinking Age Act, as amended, 23 U.S.C. 158. For a full discussion of how these provisions have been applied in practice, interested parties are encouraged to read the agencies' joint final rule published in the Federal Register on August 18, 1988 (53 FR 31318).

#### Comments

Interested persons are invited to comment on this proposal. All comments must be limited to 15 pages in length. Necessary attachments may be appended to those submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

Written comments to the public docket must be received by November 21, 1991. The agencies have not provided a longer comment period in order to provide States with sufficient time to prepare their agendas for their upcoming legislative sessions. To expedite the submission of comments, simultaneous with the issuance of this notice, NHTSA and FHWA will mail copies to all Governors, Governors' Representatives for Highway Safety and State highway agencies.

All comments received before the close of business on the comment closing date will be considered and will be available for examination in the docket at the above address before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date. The agencies will continue to file relevant material in the docket as it becomes available after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons who wish to be notified upon receipt of their comments in the docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Copies of all comments will be placed in Docket 91-17; Notice 1 of the NHTSA Docket Section in room 5109, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

On April 20, 1991, the State of Alaska submitted some questions to FHWA regarding the agency's interpretation of section 333. FHWA acknowledged receipt of these questions, but declined to answer them since the agencies were in the process of developing this

proposed regulation. We believe the questions raised in Alaska's inquiry have all been addressed in this NPRM. The questions have been placed in the public docket for his rulemaking action, and are available for public examination.

#### Federalism Assessment

This rulemaking action has been analyzed in accordance with the principles and criteria contained in Executive Order 12812, and it has been determined that it would have no federalism implication that warrants the preparation of a federalism assessment. States can choose to enact and enforce a law that requires the suspension or revocation of driver's licenses for drug offenders in conformance with Public Law 101-518, and thereby avoid the withholding of Federal-aid highway funds. Alternatively, States can choose not to enact and enforce this type of law, and still avoid such withholding. To avoid the withholding of funds in such cases, the Governor would submit a certificate that he or she is opposed to the enactment or enforcement in the State of such a law and that the State legislature has adopted a resolution expressing its opposition to such a law. While specific criteria that State laws must meet have been proposed in this NPRM, they are mandated by Public Law 101-518.

#### Economic and Other Effects

NHTSA has analyzed the effect of this action and has determined that it is not "major" within the meaning of Executive Order 12291, but that it is "significant" within the meaning of Department of Transportation regulatory policies and procedures. A preliminary regulatory evaluation of the impacts of this proposal has been prepared and placed in Docket 91-17; Notice 1. This preliminary evaluation provides information regarding the expected costs and benefits of the agencies' proposal and requests information demonstrating that license suspensions or revocations for drugged driving or illegal possession convictions deter drug use or reduce driver's future involvement in crashes. It also requests comments on methods that States could use and the costs to develop systems for providing Federal, out-of-State and juvenile records to State Departments of Motor Vehicles. Any interested person may obtain a copy of this preliminary evaluation by writing to NHTSA's Docket Section, room 5109, 400 Seventh Street, SW., Washington, DC 20590, or by calling the Docket Section at (202) 368-4949. Comments should be submitted to the NHTSA Docket, in

accordance with the procedures described earlier in this notice.

In compliance with the Regulatory Flexibility Act, the agency has evaluated the effects of this proposed rule on small entities. Based on the evaluation, we certify that this rule would not have a significant economic impact on a substantial number of small entities. Any withholding of funds under the regulation would be from States. Accordingly, the preparation of an Initial Regulatory Flexibility Analysis is unnecessary.

The requirements in this proposal that States certify that they conform to the statutory requirements to avoid the withholding of Federal-aid highway funds are considered to be information collection requirements as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1320. Accordingly, the reporting and recordkeeping requirement associated with this rule is being submitted to the Office of Management and Budget for approval in accordance with 44 U.S.C. chapter 35 under DOT No.: 3517; OMB No.: New; Administration: NHTSA. **NEED FOR INFORMATION:** To encourage States to enact and enforce drug offender's driver's license suspension; **PROPOSED USE OF INFORMATION:** To provide procedures to State highway construction grant recipients on how to certify compliance with the provision of Public Law 101-518. The law requires a driver's license suspension, or revocation, for individuals convicted of any drug-related offense; **FREQUENCY:** Annual; **BURDEN ESTIMATE:** 250 hours; **RESPONDENTS:** State/local government; **FORM(S):** None, but Forms HS-52, HS-62A and HS-217 may be used. OMB No. 2127-0003; **AVERAGE BURDEN HOURS PER RESPONDENT:** 5 hours. For further information contact The Information Requirements Division, M-34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 368-4735, or Edward Clarke or Wayne Brough, Office of Management and Budget, New Executive Office Building, room 3223, Washington, DC 20503, (202) 395-7340.

Comments on the proposed information collection requirements should be submitted to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: Desk Officer for NHTSA. It is requested that comments sent to OMB also be sent to the NHTSA rulemaking docket for this proposed action.

The agencies have also analyzed this proposed action for the purpose of the

National Environmental Policy Act. The agencies have determined that this action would not have any effect on the human environment.

#### List of Subjects in 23 CFR Part 1212

Driver licensing, Drugs, Highway safety.

In accordance with the foregoing, the agencies propose to add a new part 1212 to title 23 of the Code of Federal Regulations to read as follows:

### PART 1212—DRUG OFFENDER'S DRIVER'S LICENSE SUSPENSION

#### Sec.

- 1212.1 Scope.  
1212.2 Purpose.  
1212.3 Definitions.  
1212.4 Adoption of Drug Offender's Driver's License Suspension.  
1212.5 Certification Requirements.  
1212.6 Period of Availability of Withheld Funds.  
1212.7 Apportionment of Withheld Funds After Compliance.  
1212.8 Period of Availability of Subsequently Apportioned Funds.  
1212.9 Effect of Noncompliance.  
1212.10 Procedures Affecting States in Noncompliance.

Authority: Public Law 101-516; delegation of authority at 49 CFR 1.48 and 1.50.

#### § 1212.1 Scope.

This part prescribes the requirements necessary to implement section 333 of Public Law 101-516, which encourages States to enact and enforce Drug Offender's Driver's License Suspensions.

#### § 1212.2 Purpose.

The purpose of this part is to specify the steps that States must take in order to avoid the withholding of Federal-aid highway funds for noncompliance with section 333 of Public Law 101-516.

#### § 1212.3 Definitions.

As used in this part:

- (a) Convicted includes adjudicated under juvenile proceedings.  
(b) *Driver's license* means a license issued by a State to any individual that authorizes the individual to operate a motor vehicle on highways.  
(c) *Drug offense* means:  
(1) The possession, distribution, manufacture, cultivation, sale, transfer, or the attempt or conspiracy to possess, distribute, manufacture, cultivate, sell, or transfer any substance the possession of which is prohibited under the Controlled Substances Act, or  
(2) The operation of a motor vehicle under the influence of such a substance.  
(d) *Substance the possession of which is prohibited under the Controlled Substances Act or substance* means a controlled or counterfeit substance or a

listed chemical, as those terms are defined in subsections 102 (A), (7) & (33) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 302 (6), (7) & (33)) and listed in 21 CFR 1308.11-15 and 1310.02.

#### § 1212.4 Adoption of Drug Offender's Driver's License Suspension.

(a) The Secretary shall withhold five percent of the amount required to be apportioned to any State under each of sections 104(b)(1), 104(b)(2), 104(b)(5) and 104(b)(6) of title 23 of the United States Code on the first day of fiscal years 1994 and 1995 if the State does not meet the requirements of this section on that date.

(b) The Secretary shall withhold ten percent of the amount required to be apportioned to any State under each of sections 104(b)(1), 104(b)(2), 104(b)(5) and 104(b)(6) of title 23 of the United States Code on the first day of fiscal year 1996 and any subsequent fiscal year if the State does not meet the requirements of this section on that date.

(c) A State meets the requirements of this section if:

(1) The State has enacted and is enforcing a law that requires in all circumstances, or requires in the absence of compelling circumstances warranting an exception:

(i) The revocation, or suspension for at least 9 months, of the driver's license of any individual who is convicted, after the enactment of such law, of

(A) Any violation of the Controlled Substances Act, or

(B) Any drug offense, and  
(ii) A delay in the issuance or reinstatement of a driver's license to such an individual for at least 8 months after the individual applies for the issuance or reinstatement of a driver's license if the individual does not have a driver's license, or the driver's license of the individual is suspended, at the time the individual is so convicted, or

(2) The Governor of the State:

(i) Submits to the Secretary no earlier than the adjournment sine die of the first regularly scheduled session of the State's legislature which begins after November 5, 1990, a written certification stating that he or she is opposed to the enactment or enforcement in the State of a law described in paragraph (c)(1) of this section relating to the revocation, suspension, issuance, or reinstatement of driver's licenses to convicted drug offenders; and

(ii) Submits to the Secretary a written certification that the legislature (including both Houses where applicable) has adopted a resolution expressing its opposition to a law

described in paragraph (c)(1) of this section.

#### § 1212.5 Certification requirements.

(a) Each State shall certify to the Secretary of Transportation by April 1, 1993 and by January 1 of each subsequent year that it meets the requirements of section 333, Public Law 101-516 and this regulation.

(b) If the State believes it meets the requirements of section 333 of Public Law 101-516 and this regulation on the basis that it has enacted and is enforcing a law that suspends or revokes the driver's license of drug offenders, the certification shall contain:

(1)(i) A statement by the Governor of the State, or an official designated by the Governor, that the State has enacted and is enforcing a Drug Offender's Driver's License Suspension law. The certifying statement 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 enacted and is enforcing a Drug Offender's Driver's License Suspension law.

(ii) If the statement is made by an official other than the Governor, a copy of the document designating the official, signed by the Governor.

(2) Until a State has been determined to be in compliance with the requirements of section 333 of Public Law 101-516 and this regulation, the certification shall include also:

(i) A copy of the State law, regulation, or binding policy directive implementing or interpreting such law or regulation relating to the suspension, revocation, issuance or reinstatement of driver's licenses of drug offenders, and

(ii) A statement describing the steps the State is taking to enforce its law with regard to within State convictions, out-of-State convictions, Federal convictions and juvenile adjudications.

(c) If the State believes it meets the requirements of section 333 of Public Law 101-516 on the basis that it opposes a law that requires the suspension, revocation or delay in issuance or reinstatement of the driver's license of drug offenders, the certification shall contain:

(1)(i) A statement by the Governor of the State, or an official designated by the Governor, that he or she is opposed to the enactment or enforcement of such a law and that the State legislature has adopted a resolution expressing its opposition to such a law. The certifying statement shall be worded as follows:

(Name of certifying official), (position title) of the (State or Commonwealth) of \_\_\_\_\_ do

hereby certify that I am opposed to the enactment or enforcement of such a law and that the legislature of the (State or Commonwealth) of \_\_\_\_\_ has adopted a resolution expressing its opposition to such a law.

(ii) If the statement is made by an official other than the Governor, a copy of the document designating the official, signed by the Governor.

(2) Until a State has been determined to be in compliance with the requirements of section 333 of Public Law 101-518 and this regulation, the certification shall include also a copy of the resolution.

(c) The Governor, or an official designated by the Governor, each year shall submit the original and four copies of the certification to the local FHWA Division Administrator. The FHWA Division Administrator shall retain the original and forward two copies each to the Regional Administrator of NHTSA and FHWA. The Regional Administrators shall each retain one copy and forward one copy of the submission, with any pertinent comments, to their respective Washington Headquarters, attention of the Chief Counsel.

(e) Any changes to the original certification or supplemental information necessitated by the review of the certifications as they are forwarded, State legislative changes or changes in State enforcement activity shall be submitted in the same manner as the original.

**§ 1212.3 Period of availability of withheld funds.**

(a) Funds withheld under § 1212.4 from apportionment to any State on or before September 30, 1995, will remain available for apportionment as follows:

(1) If the funds would have been apportioned under 23 U.S.C. 104(b)(5)(A) but for this section, the funds will remain available until the end of the fiscal year for which the funds are authorized to be appropriated.

(2) If the funds would have been apportioned under 23 U.S.C. 104(b)(5)(B) but for this section, the funds will remain available until the end of the second fiscal year following the fiscal year for which the funds are authorized to be appropriated.

(3) If the funds would have been apportioned under 23 U.S.C. 104(b)(1), 104(b)(2) or 104(b)(6) but for this section, the funds will remain available until the end of the third fiscal year following the fiscal year for which the funds are authorized to be appropriated.

(b) Funds withheld under § 1212.4 from apportionment to any State after

September 30, 1995 will not be available for apportionment to the State.

**§ 1212.7 Apportionment of withheld funds after compliance.**

Funds withheld under § 1212.4 from apportionment, which remain available for apportionment under § 1212.5(a), will be made available to any State that conforms to the requirements of § 1212.4 before the last day of the period of availability as defined in § 1212.5(a).

**§ 1212.5 Period of availability of subsequently apportioned funds.**

(a) Funds apportioned pursuant to § 1212.7 will remain available for expenditure as follows:

(1) Funds originally apportioned under 23 U.S.C. 104(b)(5)(A) will remain available until the end of the fiscal year succeeding the fiscal year in which the funds are apportioned.

(2) Funds originally apportioned under 23 U.S.C. 104(b)(1), 104(b)(2), 104(b)(5)(B), or 104(b)(6) will remain available until the end of the third fiscal year succeeding the fiscal year in which the funds are apportioned.

(b) Sums apportioned to a State pursuant to § 1212.7 and not obligated at the end of the periods defined in § 1212.8(a), shall lapse or, in the case of funds apportioned under 23 U.S.C. 104(b)(5), shall lapse and be made available by the Secretary for projects in accordance with 23 U.S.C. 118(b).

**§ 1212.9 Effect of noncompliance.**

If a State has not met the requirements of section 333 of Public Law 101-518 at the end of the period for which funds withheld under § 1212.4 are available for apportionment to a State under § 1212.9, then such funds shall lapse or, in the case of funds withheld from apportionment under 23 U.S.C. 104(b)(5), shall lapse and be made available by the Secretary for projects in accordance with 23 U.S.C. 118(b).

**§ 1212.10 Procedures affecting states in noncompliance.**

(a) Every fiscal year, each State determined to be in noncompliance with section 333 of Public Law 101-518, based on NHTSA's and FHWA's preliminary review of its statutes, will be advised of the funds expected to be withheld under § 1212.4 from apportionment, as part of the advance notice of apportionments required under 23 U.S.C. 104(e), normally not later than ninety days prior to final apportionment.

(b) If NHTSA and FHWA determine that the State is not in compliance with section 333 of Public Law 101-518 based on the agencies' preliminary review, the State may, within 30 days of its receipt of the advance notice of

apportionments, submit documentation showing why it is in compliance. Documentation shall be submitted to the National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

(c) Every fiscal year, each State determined not to be in compliance with section 333 of Public Law 101-518, based on NHTSA's and FHWA's final determination, will receive notice of the funds being withheld under § 1212.4 from apportionment, as part of the certification of apportionments required under 23 U.S.C. 104(e), which normally occurs on October 1 of each fiscal year.

Issued on: October 1, 1991.

Jerry Ralph Curry,  
Administrator, National Highway Traffic Safety Administration.

Thomas D. Larson,  
Administrator, Federal Highway Administration.

[FR Doc. 91-23991 Filed 10-4-91; 8:45am]  
BILLING CODE 4810-17-01

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

Health Care Financing Administration

42 CFR Part 409

[BPO-625-P]

RIN: 0938-AES4

Medicare Program: "Confined to the Home" Requirements for Home Health Services

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

**SUMMARY:** This proposed rule would revise the current Medicare rules to clarify when a home health patient would be considered "confined to the home" in order to receive home health benefits. It would conform our regulations to changes made by section 4024 of the Omnibus Budget Reconciliation Act of 1987.

**DATES:** Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on December 8, 1991.

**ADDRESSES:** Mail comments to the following address:

Health Care Financing Administration,  
Department of Health and Human Services, Attention: BPO-625-P, P.O. Box 26678, Baltimore, Maryland 21207

If you prefer, you may deliver your comments to one of the following addresses:

FISCAL NOTE

Revision Date:  
Title: Federal-Aid Hy Funding/Drug  
Enforcement  
Sponsor: Transportation  
Requestor:

Department Affected: DOT&PF  
BRU:

Component:  
Component Serial Number:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY94	FY95	FY96	FY97	FY98	FY99
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING:	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE FUND SOURCE	0	0	0	0	0	0
---------------------	---	---	---	---	---	---

FUNDING: (Thousands of Dollars)

1002 FEDERAL RECEIPTS **	0	-9,615,346	-9,615,346	-19,230,692	-19,230,692	-19,230,692
1003 GF MATCH	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/PROGRAM RECEIPTS	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL FUNDING:	0	-9,615,346	-9,615,346	-19,230,692	-19,230,692	-19,230,692

POSITIONS

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year (FY93) impact: \$ \_\_\_\_\_

ANALYSIS: (Attach a separate page if necessary)

\*\* Failure to pass legislation will result in the loss of federal ISTEAF funds.

Prepared by: Katy McHugh

Phone: 465-3902

Division: Office of the Commissioner

Date: March 1, 1993

Approved by Commissioner: 

Phone: 465-3901

Agency: Department of Transportation and Public Facilities

Date: March 1, 1993

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE  
For further information, contact the Legislative Office

# Alaska State Legislature

SENATOR  
**BERT SHARP**  
CHAIRMAN



## FAIRBANKS

DENALI BANK BUILDING  
119 N. CUSHMAN, SUITE 201  
FAIRBANKS, ALASKA 99701  
(907) 452-7883/7886

## SESSION ADDRESS

STATE CAPITOL, ROOM 514  
JUNEAU, ALASKA 99801-1182  
(907) 465-3064/4921

## Senate Transportation Committee

### Drug Offender's Driver's License Suspension

PL 101-516 Department of Transportation and Related Agencies appropriations Act, Sec. 333 requires withholding of certain Federal-Aid highways from states that do not enact legislation requiring revocation of driver licenses for drug offenses. The state can avoid withholding of funds in several ways.

1.) States must have enacted, and be enforcing a law that provided for revocation or suspension of drivers licenses upon any conviction of the Controlled Substances Act, or any drug offense.

(ie. requires driver licensing actions against violators of drug offences not limited to moving violations, not necessarily involving a motor vehicle at all.)

2.) The state shall submit to the Secretary (of Transportation), a certification stating that the Governor is opposed to the enactment or enforcement of such a law and the legislature has adopted a resolution (SCR 2) expressing its opposition to such a law.

(The Hickel Administration will support either approach)

### Penalties

If a state does not meet the statutory requirements by Oct 1, 1993, then 5% of the federal highway apportionment for FY 94 shall be withheld. 5% will be withheld also in FY 95 if requirement not met by Oct 1, 1994, if neither action is taken by Oct 1, 1995, FY96 10% if federal funds will be withheld.

### Annual Certification

If the bill, (SB 133) is passed, states will have to submit certification by April 1, on an annual basis that they are enforcing the law. Once the state has passed the resolution and the resolution has been determined to be in compliance, the Governor is

SPONSOR STATEMENT



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

HOUSE JOINT RESOLUTION //  
40TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1991

INTRODUCED BY

*[Handwritten signature]*  
Daniel L. Silva

A JOINT RESOLUTION

CERTIFYING THE NEW MEXICO LEGISLATURE'S OPPOSITION TO SECTION 333 OF  
THE FEDERAL DEPARTMENT OF TRANSPORTATION AND RELATED AGENCIES  
APPROPRIATIONS ACT FOR FISCAL YEAR 1991.

WHEREAS, Section 333 of the federal Department of Transportation  
and Related Agencies Appropriations Act for Fiscal Year 1991 mandates  
the withholding of certain federal-aid highway funds from states that  
by October 31, 1993, fail to either:

A. enact legislation requiring suspension of an  
individual's driver's license upon conviction of any violation of the  
federal Controlled Substances Act or any drug offense; or

B. certify that the governor is opposed to the enactment  
of such a law and that the legislature has adopted written  
certification expressing its opposition to such a law; and

WHEREAS, failure of this legislature to take either mandated

underscoring material = new  
~~(bracketed material) = deletion~~

HJR 11

1 action will result in the withholding of federal-aid highway funds;  
2 and

3 WHEREAS, the state of New Mexico is concerned with drug abuse by  
4 its citizens and has enacted numerous laws and initiated programs  
5 aimed at reducing both the demand for and supply of illegal drugs;  
6 and

7 WHEREAS, the state of New Mexico currently revokes the driver's  
8 licenses of persons convicted of driving a motor vehicle under the  
9 influence of drugs; and

10 WHEREAS, the revocation of a drug offender's driver's license  
11 has not been shown to deter drug use; and

12 WHEREAS, congress' actions to coerce states into passing  
13 ineffective laws is inappropriate; and

14 WHEREAS, the New Mexico legislature has and will continue to  
15 address illegal drugs in effective and cost beneficial ways;

16 NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE STATE  
17 OF NEW MEXICO that the New Mexico legislature certifies that it is  
18 opposed to revoking the driver's license of any person convicted of a  
19 drug offense if that person is not operating a motor vehicle; and

20 BE IT FURTHER RESOLVED that the New Mexico legislature will  
21 continue its efforts in drug abuse education and enforcement programs  
22 and will commit its limited resources to programs that, based on New  
23 Mexico's experience, have a reasonable chance of reducing drug abuse.

underscoring material = new  
[bracketed material] = deletion

24  
25