

**Paperwork Reduction Act**

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

**National Environmental Policy Act**

The agencies have analyzed this rule for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and have determined that it will not have any significant impact on the quality of the human environment.

**Executive Order 12612 (Federalism Assessment)**

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment. Accordingly, the preparation of a Federalism Assessment is not warranted.

**List of Subjects in 23 CFR Part 1206**

Grant programs—transportation, Highway safety.

In accordance with the foregoing, Part 1206 of Title 23 of the Code of Federal Regulations is revised to read as follows:

**PART 1206—RULES OF PROCEDURE FOR INVOKING SANCTIONS UNDER THE HIGHWAY SAFETY ACT OF 1966****Sec.**

- 1206.1 Scope
- 1206.2 Purpose
- 1206.3 Definitions
- 1206.4 Sanctions
- 1206.5 Review process.

Authority: 23 U.S.C. 402; delegation of authority at 49 CFR 1.48 and 1.50.

**§ 1206.1 Scope.**

This part establishes procedures governing determinations to invoke the sanctions applicable to any State that does not comply with the highway safety program requirements in the Highway Safety Act of 1966, as amended (23 U.S.C. 402).

**§ 1206.2 Purpose.**

The purpose of this part is to prescribe procedures for determining whether and the extent to which the 23 U.S.C. 402 sanctions should be invoked, and to ensure that, should sanctions be proposed to be invoked against a State, the State has a full and fair opportunity to be heard on the issues involved.

**§ 1206.3 Definitions.**

As used in this part:

(a) *Administrators* means the Administrators of the Federal Highway Administration and the National Highway Traffic Safety Administration.

(b) *Highway safety program* means an approved program in accordance with 23 U.S.C. 402, which is designed by a State to reduce traffic accidents, and death, injuries and property damage resulting therefrom.

(c) *Implementing* means both having and putting into effect an approved highway safety program.

**§ 1206.4 Sanctions.**

(a) The Administrators shall not apportion any funds under 23 U.S.C. 402 to any State which is not implementing a highway safety program.

(b) If the Administrators have apportioned funds to a State and subsequently determine that the State is not implementing a highway safety program, the Administrators shall reduce the funds apportioned under 23 U.S.C. 402 to the State by amounts equal to not less than 50 per centum, until such time as the Administrators determine that the State is implementing a highway safety program.

(c) The Administrators shall consider the gravity of the State's failure to implement a highway safety program in determining the amount of the reduction.

(d) If the Administrators determine that a State has begun implementing a highway safety program before the end of the fiscal year for which the funds were withheld, they shall promptly apportion to the State the funds withheld from its apportionment.

(e) If the Administrators determine that the State did not correct its failure before the end of the fiscal year for which the funds were withheld, the Administrators shall reapportion the withheld funds to the other States, in accordance with the formula specified in 23 U.S.C. 402(c), not later than 30 days after such determination.

**§ 1206.5 Review process.**

(a) In any fiscal year, if the Administrators determine, based on a preliminary review, that a State is not implementing a highway safety program in accordance with 23 U.S.C. 402, the Administrators shall issue jointly to the State an advance notice, advising the State that the Administrators expect to either withhold funds from apportionment under 23 U.S.C. 402, or reduce the State's apportioned funds under 23 U.S.C. 402. The Administrators shall state the amount of the expected withholding or reduction.

The advance notice will normally be sent not later than ninety days prior to final apportionment.

(b) If the Administrators issue an advance notice to a State, based on a preliminary review, the State may, within 30 days of its receipt of the advance notice, submit documentation demonstrating that it is implementing a highway safety program. Documentation shall be submitted to the Administrator for NHTSA, 400 Seventh Street SW, Washington, D.C. 20590.

(c) If the Administrators decide, after reviewing all relevant information, that a State is not implementing a highway safety program in accordance with 23 U.S.C. 402, they shall issue a final notice, advising the State either of the funds being withheld from apportionment under 23 U.S.C. 402, or of the apportioned funds being reduced under 23 U.S.C. 402 and the amount of the withholding or reduction. The final notice of a withholding will normally be issued on October 1. The final notice of a reduction will be issued at the time of a final decision.

Issued on: May 31, 1996.

Rodney E. Slater,  
*Administrator, Federal Highway Administration.*

Ricardo Martinez,  
*Administrator, National Highway Traffic Safety Administration.*

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**National Highway Traffic Safety Administration****Federal Highway Administration****23 CFR Part 1215**

[Docket No. 92-40; Notice 3]

RIN 2127-AG23

**Use of Safety Belts and Motorcycle Helmets; Compliance and Transfer-of-Funds Procedures**

**AGENCIES:** National Highway Traffic Safety Administration (NHTSA) and Federal Highway Administration (FHWA).

**ACTION:** Final rule.

**SUMMARY:** This rule implements portions of the National Highway System Designation Act of 1995 that changed the transfer-of-funds provisions contained in section 153 of title 23, United States Code. As amended, section 153 subjects a State to a transfer of funds apportioned under its Federal-aid highway programs to its apportionment under the section 402

highway safety program if the State fails to enact safety belt use legislation. There is no longer a requirement that a State also enact motorcycle helmet use legislation in order to avoid the transfer of funds. Maine and New Hampshire are provided alternative compliance criteria to avoid the transfer of funds. This rule amends the existing regulation concerning determinations of compliance and transfers of funds to reflect these statutory changes.

**EFFECTIVE DATE:** June 6, 1996.

**FOR FURTHER INFORMATION CONTACT:** In NHTSA, Gary Butler, Office of State and Community Services, Room 5238, NHTSA, 400 Seventh Street, SW, Washington, D.C., 20590 (202-366-2674) or John Donaldson, Office of the Chief Counsel, Room 5219, NHTSA, 400 Seventh Street, SW, Washington, D.C., 20590 (202-366-1834). In FHWA, Mila Plosky, Office of Highway Safety, Room 3407, FHWA, 400 Seventh Street, SW, Washington, D.C., 20590 (202-366-6902) or Raymond Cuprill, Office of the Chief Counsel, Room 4217, FHWA, 400 Seventh Street, SW, Washington, D.C., 20590 (202-366-0834).

**SUPPLEMENTARY INFORMATION:**

**Background**

On November 28, 1995, Congress enacted the National Highway System Designation Act of 1995 (NHS), Pub. Law 104-59. Section 205(e) of the NHS amended Section 153(h) of title 23, United States Code, changing the circumstances giving rise to a transfer of funds. Prior to the amendment, Section 153(h) provided that a State that failed to put into effect both motorcycle helmet use and safety belt use legislation would be subject to a transfer of certain funds apportioned under the State's Federal-aid highway programs to its apportionment under the Section 402 program. Section 205(e) of the NHS removed the requirement that a State must enact motorcycle helmet use legislation in order to avoid the transfer of funds. As amended, Section 153 continues to require State enactment of safety belt use legislation, and provides for a transfer of funds if a State does not maintain in effect "a law which makes unlawful throughout the State the operation of a passenger vehicle whenever an individual in a front seat of the vehicle (other than a child who is secured in a child restraint system) does not have a safety belt properly fastened about the individual's body."

Section 205(e) of the NHS has an effective date of September 30, 1995. Under 23 U.S.C. 153(h)(2), as amended by section 205(e), the transfer provision remains the same as before, but applies

only in the absence of safety belt use legislation. (A parallel amendment to 23 U.S.C. 153(h)(1) is not treated in this notice as it has no applicability beyond FY 1995.) A State failing to have in effect a safety belt use law throughout a fiscal year will experience a transfer, in the succeeding fiscal year, of three percent of the funds apportioned to the State's Federal-aid highway programs under each of subsections 104(b)(1), (b)(2), and (b)(3) of title 23, United States Code, to the State's highway safety program apportionment under section 402 of that title.

In accordance with the provisions of Section 205(e) of the NHS, today's notice removes all references and requirements concerning motorcycle helmet use legislation from the regulation implementing Section 153. In addition, outdated provisions concerning previous fiscal years are deleted, consistent with the President's direction that the nation's regulatory system be overhauled and streamlined. Other portions of the regulation, including those describing compliance criteria and exemptions (insofar as they apply to safety belt use legislation) and the purposes for which transferred funds may be used remain unchanged.

Section 355 of the NHS created alternative compliance criteria available only to the States of New Hampshire and Maine, by which these States might avoid a transfer of funds due to non-compliance with the provisions of 23 U.S.C. 153. Section 355 provides that New Hampshire and Maine are each to be deemed in compliance with Section 153 upon certification by the Secretary of Transportation that the State has achieved a safety belt use rate "in each of fiscal years 1995 and 1996, of not less than 50 percent" and "in each fiscal year thereafter of not less than the national average safety belt use rate, as determined by the Secretary." Section 355 additionally provides that if New Hampshire or Maine "continues in effect" a safety belt use law within 60 days after the section's enactment, the State is to be treated as if the law were in effect as of September 30, 1995. (Maine has enacted legislation satisfying this timeliness requirement, and will not be subject to the safety belt use rate requirements provided the legislation is continued in effect.) Finally, Section 355 provides for a reservation of funds prior to the transfer. These alternative compliance criteria and procedures are also addressed in today's notice.

**Rulemaking Analyses and Notices**

*(a) Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures*

The agencies have not reviewed this rulemaking document under Executive Order 12866. This action has been determined to be not "significant" under the Department of Transportation's regulatory policies and procedures.

*(b) Regulatory Flexibility Act (Pub. L. 96-354)*

In compliance with the Regulatory Flexibility Act, the agencies have evaluated the effects of this action on small entities, and certify that this action will not have a significant economic impact on a substantial number of small entities. Accordingly, the preparation of a Regulatory Flexibility Analysis is unnecessary.

*(c) Executive Order 12612 (Federalism Assessment)*

The agencies have analyzed this action in accordance with Executive Order 12612, and have determined that it does not have federalism implications warranting the preparation of a federalism assessment. The action implements new legislation which reduces Federal requirements imposed on the States.

*(d) Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.)*

This action does not affect a collection of information requirement, for purposes of the Paperwork Reduction Act.

*(e) National Environmental Policy Act (42 U.S.C. 4321 et seq.)*

The agencies have reviewed this action for purposes of the National Environmental Policy Act, and determined that it will not have a significant effect on the quality of the human environment.

*(f) Executive Order 12778 (Civil Justice Reform)*

This action does not have any preemptive effect, and the only retroactive effect is one that removes a Federal requirement. It imposes no requirements on the States, but rather deletes provisions that are obsolete and removes restrictions on the States that have been rescinded by new legislation. The enabling legislation does not establish a procedure for judicial review of final rules promulgated under its provisions. There is no requirement that individuals pursue administrative remedies prior to filing suit in court.

*(g) Notice and Comment*

The agencies find that prior notice and opportunity for comment are unnecessary under 5 U.S.C. 553(b)(3)(B) because the agencies are not exercising discretion in a way that could be meaningfully affected by public comment. The amendments made by this action merely remove restrictions on the States, as mandated by new legislation, and delete provisions that are obsolete. Therefore, notice and opportunity for comment are not required under the regulatory policies and procedures of the Department of Transportation. In addition, good cause exists to dispense with the 30-day delayed effective date requirement of 5 U.S.C. 553(d) because this final rule "grants or recognizes an exemption or relieves a restriction" in accordance with 5 U.S.C. 553(d)(1).

## List of Subjects in 23 CFR Part 1215

Grant programs—Transportation, Highway safety.

For the reasons set forth in the preamble, Part 1215 of Title 23 of the Code of Federal Regulations is amended to read as follows:

**PART 1215—USE OF SAFETY BELTS AND MOTORCYCLE HELMETS—COMPLIANCE AND TRANSFER-OF-FUNDS PROCEDURES**

1. The authority citation for part 1215 is revised to read as follows:

Authority: 23 U.S.C. 153; Secs. 205(e) and 355, Pub. L. 104-59; delegations of authority at 49 CFR 1.48 and 1.50.

2. The heading to part 1215 is revised to read as follows:

**PART 1215—USE OF SAFETY BELTS—COMPLIANCE AND TRANSFER-OF-FUNDS PROCEDURES**

3. Section 1215.1 is revised to read as follows:

**§ 1215.1 Scope.**

This part establishes criteria, in accordance with 23 U.S.C. 153, as amended, and Section 355 of the National Highway System Designation Act of 1995, for determining compliance with the requirement that States not having safety belt use laws be subject to a transfer of Federal-aid highway apportionments under 23 U.S.C. 104 (b)(1), (b)(2), and (b)(3) to the highway safety program apportionment under 23 U.S.C. 402.

4. Section 1215.2 is revised to read as follows:

**§ 1215.2 Purpose.**

This part clarifies the provisions which a State must incorporate into its

safety belt law to prevent the transfer of a portion of its Federal-aid highway funds to the section 402 highway safety program apportionment, describes notification and transfer procedures, establishes parameters for the use of transferred funds, and provides alternate compliance criteria for New Hampshire and Maine.

5. In § 1215.3, the definition of "motorcycle" is removed and a new definition is added after the definition of "safety belt," to read as follows:

**§ 1215.3 Definitions.**

\* \* \* \* \*

*Secretary* means the Secretary of Transportation.

6. Section 1215.4 is revised to read as follows:

**§ 1215.4 Compliance criteria.**

(a) Except as provided in paragraphs (c) or (d) of this section, in order to avoid the transfer or reservation (as applicable) specified in § 1215.7, a State must have and continue in effect at all times during the fiscal year a law which makes unlawful throughout the State the operation of a passenger vehicle whenever an individual in a front seat of the vehicle (other than a child who is secured in a child restraint system) does not have a safety belt properly fastened about the individual's body.

(b) A State that enacts the law specified in paragraph (a) of this section will be determined to comply with 23 U.S.C. 153, provided that any exemptions are consistent with § 1215.5.

(c) If New Hampshire or Maine enacts a law described in paragraph (a) of this section by January 27, 1996, the State shall be deemed as having that law in effect on September 30, 1995.

(d)(1) If the Secretary certifies in a fiscal year that New Hampshire or Maine has achieved the safety belt use rate specified in paragraph (d)(2) of this section, the State shall be considered as complying with the provisions of paragraph (a) of this section.

(2) The safety belt use rate must be not less than 50 percent in each of fiscal years 1995 and 1996, and not less than the national average as determined by the Secretary in each fiscal year thereafter.

7. Section 1215.5 is revised to read as follows:

**§ 1215.5 Exemptions.**

(a) Safety belt use laws exempting persons with medical excuses, persons in emergency vehicles, persons in the custody of police, persons in public and livery conveyances, persons in parade vehicles, persons in positions not equipped with safety belts, and postal,

utility and other commercial drivers who make frequent stops in the course of their business shall be deemed to comply with 23 U.S.C. 153.

(b) Safety belt use laws exempting vehicles equipped with air bags shall be deemed not to comply with 23 U.S.C. 153.

(c) An exemption not identified in paragraph (a) of this section shall be deemed to comply with 23 U.S.C. 153 only if NHTSA and FHWA determine that it is consistent with the intent of § 1215.4(a), and applies to situations in which the risk to occupants is very low or in which there are exigent justifications.

8. Section 1215.6 is revised to read as follows:

**§ 1215.6 Review and notification of compliance status.**

Review of each State's laws and notification of compliance status shall occur each fiscal year, in accordance with the following procedures:

(a) NHTSA and FHWA will review appropriate State laws for compliance with 23 U.S.C. 153. States initially found to be in non-compliance will be notified of such finding and of funds expected to be transferred or reserved (as applicable) under § 1215.7, through the advance notice of apportionments required under 23 U.S.C. 104(e), normally not later than ninety days prior to final apportionment.

(b) A State notified of non-compliance under paragraph (a) of this section may, within 30 days after its receipt of the advance notice of apportionments, submit documentation showing why it is in compliance to the Associate Administrator for State and Community Services, NHTSA, 400 Seventh Street, SW, Washington, D.C., 20950.

(c) Each fiscal year, States determined to be in non-compliance with 23 U.S.C. 153 will receive notice of the funds being transferred or reserved (as applicable) under § 1215.7, through the certification of apportionments required under 23 U.S.C. 104(e), normally on October 1.

9. Section 1215.7 is revised to read as follows:

**§ 1215.7 Transfer of funds**

(a) Except as provided in paragraph (b) of this section, if at any time in a fiscal year beginning after September 30, 1994, a State does not have in effect a law described in § 1215.4(a), the Secretary shall transfer 3 percent of the funds apportioned to the State for the succeeding fiscal year under 23 U.S.C. 104 (b)(1), (b)(2) and (b)(3) to the apportionment of the State under 23 U.S.C. 402.

(b) For New Hampshire or Maine, except as provided in § 1215.4(c), if at any time in a fiscal year beginning after September 30, 1994, the State does not have in effect a law described in § 1215.4(a), the Secretary shall reserve 3 percent of the funds to be apportioned to the State for the succeeding fiscal year under 23 U.S.C. 104 (b)(1), (b)(2) and (b)(3) if the Secretary has not certified, in accordance with § 1215.4(d), that the State has achieved the applicable safety belt use rate.

(c) If, at the end of a fiscal year in which the funds are reserved for New Hampshire or Maine under paragraph (b) of this section, the Secretary has not certified that the State achieved the applicable safety belt use rate, the Secretary shall transfer the funds reserved from the State to the apportionment of the State under 23 U.S.C. 402.

(d) Any obligation limitation existing on transferred funds prior to the transfer will apply, proportionately, to those funds after transfer.

Issued on: May 31, 1996.

Rodney E. Slater,

*Administrator, Federal Highway Administration.*

Ricardo Martinez,

*Administrator, National Highway Traffic Safety Administration*

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## Federal Highway Administration

### 23 CFR Part 1230

[NHTSA Docket No. 95-83; Notice 1]

RIN 2127-AG10

### Highway Safety Program Standards—Applicability to Federally Administered Areas

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

**ACTION:** Final rule.

**SUMMARY:** This final rule removes Part 1230 from title 23 of the Code of Federal Regulations (CFR). Part 1230 made the uniform highway safety standards, which were promulgated under 23 U.S.C. 402, applicable to federally administered areas where a Federal department or agency controlled the highways or supervised traffic operations. This regulation is being removed because 23 U.S.C. 402 was amended to provide that the Highway Safety Program Standards be changed to

Guidelines. The FHWA and NHTSA will be working with appropriate Federal lands managing agencies to develop procedures and agreements for carrying out the intent of 23 U.S.C. 402, as amended.

**EFFECTIVE DATE:** July 8, 1996.

**FOR FURTHER INFORMATION CONTACT:** In NHTSA: Mr. Gary Butler, Office of State and Community Services, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590, telephone (202) 366-2121; or Ms. Sharon Y. Vaughn, Office of Chief Counsel, Room 5219, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590, telephone (202) 366-1834. In FHWA: Ms. Mila Plosky, Office of Highway Safety, Federal Highway Administration, 400 Seventh Street, S.W., Washington, D.C. 20590, telephone (202) 366-6902; or Mr. Paul Brennan, Office of Chief Counsel, Federal Highway Administration, 400 Seventh Street, S.W., Washington, D.C. 20590, telephone (202) 366-0834.

**SUPPLEMENTARY INFORMATION:** On March 4, 1995, President Clinton directed all Federal Departments and agencies to take four steps to overhaul the nation's regulatory system. The first step was to conduct a page-by-page review of all agency regulations now in force and eliminate or revise those that are outdated or otherwise in need of reform. The review was to include careful consideration of a number of issues, including whether the regulation is obsolete, whether its intended goal can be achieved in more efficient less intrusive ways, or whether States or local governments can do the job (making Federal regulation unnecessary).

NHTSA and FHWA conducted a thorough, page-by-page review of all agency regulations, including those that pertain to State and community highway safety programs.

As a result of these efforts, NHTSA and FHWA have determined that Part 1230 should be removed from title 23 of the Code of Federal Regulations (CFR), because the underlying statutory basis for the requirements, 23 U.S.C. 402, has been amended to provide that the uniform highway standards be changed to uniform highway safety guidelines.

Section 402 of the Highway Safety Act of 1966, 23 U.S.C. 402, was enacted on September 9, 1966. It provided that:

Each State shall have a highway safety program approved by the Secretary, designed to reduce traffic accidents and deaths, injuries and property damage resulting therefrom. Such programs shall be in accordance with uniform standards promulgated by the Secretary.

Section 402 provided further that:

Such standards as are applicable to State highway safety programs shall, to the extent determined appropriate by the Secretary, be applicable to federally administered areas where a Federal department or agency controls the highways or supervises traffic operations.

By 1972, the agencies had promulgated 18 uniform highway safety standards and, on July 13, 1973 (38 FR 18665), the agencies promulgated Part 1230, which made these uniform standards applicable to federally administered areas where a Federal department or agency controlled the highways or supervised traffic operations.

Part 1230 stated that its purpose was to ensure that the uniform standards established to regulate highway safety activities were applied uniformly throughout the United States to those highways and activities that were administered by Federal agencies.

Section 206 of the Surface Transportation and Uniform Relocation Assistance Act of 1987, Public Law 100-17, amended U.S.C. 402 by changing the term "standards" to "guidelines."

However, the statutory amendment, which required that the standards be changed to guidelines in no way diminishes the integrity and significant importance of the national highway safety program.

Pursuant to Section 402, such guidelines as are applicable to State highway safety programs shall, to the extent determined appropriate by the Secretary of Transportation, be applicable to federally administered areas where a Federal department or agency controls the highways or supervises traffic operations.

To ensure the continued operation of this program, the FHWA and NHTSA will meet with representatives of Federal lands managing agencies to develop agreements for carrying out the provisions of 23 U.S.C. 402. This activity will include updating any existing agreements between the U.S. Department of Transportation and the Federal lands managing agencies. In addition, the FHWA and NHTSA have developed the Highway Safety Grant Management Manual which includes a chapter on Uniform Guidelines for State Highway Safety programs. This information will be made available to Federal lands managing agencies.