



U.S. Department
of Transportation
**Federal Highway
Administration**

Memorandum

Subject: **INFORMATION**: 23 U.S.C. Section 129 Toll
Agreements – Annual Certification and Audit Requirement

Date: June 7, 2011

In Reply
Refer To: HIPA-10

From: David A. Nicol
Director, Office of Program Administration

To: Division Administrators
Directors of Field Services

The purpose of this memorandum is to provide information in response to a recent inquiry concerning toll agreement requirements under the provisions of 23 U.S.C. 129. Section 129 outlines permissible Federal-aid construction activities on a tolled facility. Under its provisions, a toll agreement must be executed prior to Federal-aid participation in construction. Toll revenues collected on such a facility must be used first for debt service, reasonable return on investment, and costs necessary for the proper operation and maintenance of the toll facility. If the State annually certifies that the toll facility is being adequately maintained, then any toll revenues in excess of those required for the above purposes may be used on other Title 23, United States Code, eligible projects throughout the State.

Most Section 129 toll agreements since ISTEA also provided that the State or an independent auditor will annually audit the records of the toll facility for compliance with the provisions of the toll agreement.

If your State has any active Section 129 toll agreements in place, please ensure that the annual certification and the annual audit requirement, if applicable, are being honored by the State and the applicable toll authority. While these need not be submitted to Headquarters, they should be retained in your files. If you have any questions concerning this request, please contact Mr. Greg Wolf at 202-366-4655.

cc:
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