Subbasin	Potentially Stressed (mgy) [1]	Withdrawal Limit (mgy)
West Branch Brandywine-Broad Run	2380	3173
West Valley Creek	1673	2231
Lehigh Subbasin		
Upper Reach Saucon Creek	946	1262

[1] mgy means million gallons per year.

(ii) Subject to public notice and hearing, this section may be updated or revised based upon new and evolving information on hydrology and streamflow and ground water monitoring or in accordance with paragraph (i)(2) of this section.

* * * * *

Dated: June 24, 1999.

Susan M. Weisman,

Secretary.

[FR Doc. 99–16786 Filed 6–30–99; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Federal Highway Administration

23 CFR Part 1225

[Docket No. NHTSA–99–5873]

RIN 2127–AH39

Operation of Motor Vehicles by Intoxicated Persons

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

ACTION: Final rule.

SUMMARY: This document announces that the regulations that were published in an interim final rule to implement a new program established by the Transportation Equity Act for the 21st Century (TEA 21) will remain in effect. Under the final rule, States can qualify for incentive grant funds if they enact and enforce a law that provides that any person with a blood alcohol concentration of 0.08 percent or greater while operating a motor vehicle in the State shall be deemed to have committed a *per se* offense of driving while intoxicated or an equivalent *per se* offense. This final rule also modifies the interim requirements with respect to procedural issues, including the date by which certifications are due.

DATES: This final rule becomes effective on July 1, 1999.

FOR FURTHER INFORMATION CONTACT: In NHTSA: Ms. Marlene Markison, Office of State and Community Services, NSC–01, telephone (202) 366–2121; or Ms. Heidi L. Coleman, Office of Chief Counsel, NCC–30, telephone (202) 366–1834.

In FHWA: Byron Dover, Office of Highway Safety Infrastructure, HMHS–1, telephone (202) 366–2161; or Mr. Raymond W. Cuprill, HCC–20, telephone (202) 366–0834.

SUPPLEMENTARY INFORMATION: The Transportation Equity Act for the 21st Century (TEA–21), Pub. L. 105–178, was signed into law on June 9, 1998. Section 1404 of the Act established a new incentive grant program under Section 163 of Title 23, United States Code (Section 163). Under this new program, States may qualify for incentive grant funds by enacting and enforcing laws that provide that ''any person with a blood alcohol concentration (BAC) of 0.08 percent or greater while operating a motor vehicle in the State shall be deemed to have committed a *per se* offense of driving while intoxicated (or an equivalent *per se* offense).''

The new program was put into place to address the issue of impaired driving, which continues to be a serious national problem with tragic consequences. The agencies believe that 0.08 BAC laws will have a significant impact on reducing this problem.

Background

The Problem of Impaired Driving

Injuries caused by motor vehicle traffic crashes are a major health care problem in America and are the leading cause of death for people aged 6 to 27. Each year, the injuries caused by traffic crashes in the United States claim approximately 42,000 lives and cost Americans an estimated $150 billion, including $19 billion in medical and emergency expenses, $42 billion in lost productivity, $52 billion in property damage, and $37 billion in other crash related costs.

In 1997, alcohol was involved in approximately 39 percent of fatal traffic crashes. Every 30 minutes, someone in this country dies in an alcohol-related crash. Each year, alcohol-involved crashes result in $45 billion in economic costs, accounting for 30 percent of all crash costs. Impaired driving is the most frequently committed violent crime in America.

Impaired Driving Laws

States have enacted a number of different types of laws in their efforts to fight the battle against impaired driving. For example, forty-eight States and the District of Columbia have enacted ''illegal *per se*'' laws. Two States and Puerto Rico have not. An illegal *per se* law makes it illegal, in and of itself, to drive with a blood alcohol concentration (BAC) measured at or above the established legal limit.

In 32 of the States with illegal *per se* laws, the legal limit is 0.10 percent blood alcohol concentration (BAC). Sixteen States and the District of Columbia have enacted (and made effective) laws that establish 0.08 BAC as the legal limit. In addition, on May 28, 1999, the State of Texas enacted a 0.08 BAC law. This law is to become effective on September 1, 1999.

The Effectiveness of 0.08 BAC Laws

A number of studies have been conducted to determine the effectiveness of 0.08 BAC laws.

For example, the effect of California's 0.08 law was analyzed in a 1991 NHTSA study. The agency found that 81 percent of the driving population knew that the BAC limit had become stricter (as the result of a successful public education effort). The State experienced a 12 percent reduction in alcohol-related fatalities, although some of the reduction may have resulted from a new administrative license revocation law that was enacted during the same year that the BAC standard was lowered. The State also experienced an increase in the number of impaired driving arrests.

A multi-state analysis of the effect of lowering BAC levels to 0.08 was conducted by Boston University's School of Public Health. The results of that study were reported in the September 1996 issue of the American

Journal of Public Health, a peer-reviewed journal. The Boston University study compared the first five states to lower their BAC limit to 0.08 (California, Maine, Oregon, Utah, and Vermont) with five nearby states that retained the 0.10 BAC limit. The results of this study suggest that 0.08 BAC laws, particularly in combination with administrative license revocation, reduce the proportion of fatal crashes involving drivers and fatally injured drivers at blood alcohol levels of 0.08 percent and higher by 16 percent and those at a BAC of 0.15 percent and greater by 18 percent.

The immediate significance of these findings is that the 0.08 BAC laws, particularly in combination with administrative license revocation, not only reduced the overall incidence of alcohol fatalities, but also reduced fatalities at the higher BAC levels. The effect on the number of extremely impaired drivers was even greater than the overall effect.

The study concluded that if all States lowered their BAC limits to 0.08, alcohol-related highway deaths would decrease nationwide by 500–600 per year, which would result in an economic cost savings of approximately $1.5 billion.

In a 1995 NHTSA analysis of the same five States studied by Boston University, the agency examined six different measures of driver alcohol involvement in fatal crashes and compared the time period before the 0.08 law was passed with the time period after passage of the law for each State. A total of thirty comparisons of the level of driver alcohol involvement were made. Ten of the thirty comparisons (in four of the five States) showed statistically significant decreases. An additional 16 comparisons, while not statistically significant, also showed decreases. None of the comparisons for the rest of the nation (States at 0.10 BAC) showed changes that were statistically significant.

Other studies published on the effects of enacting 0.08 BAC laws, which use various different measures, have all shown significant decreases in alcohol-related fatalities. NHTSA surveys all show that most people would not drive after consuming two or three beers in an hour (the amount of alcohol an average 120-pound woman would have to drink on an empty stomach to reach 0.08 BAC; an average 170-pound man would have to consume 4–5 beers in an hour on an empty stomach to reach that BAC level). In addition, three recent scientific telephone polls indicate that two out of every three Americans think the BAC standard should be lowered to 0.08.

NHTSA recently completed three additional studies of the effects of lowering the illegal BAC limit from 0.10 to 0.08 percent. The most comprehensive study (covering all 50 States) analyzed the effects of both 0.08 and 0.10 illegal per se laws, as well as administrative license revocation (ALR) laws over a 16-year time period. That study estimated that 0.08 BAC laws had an 8 percent effect in reducing fatal crashes involving drivers at both high BAC's and lower BAC's, and resulted in 275 fewer fatalities in the 15 States where they were in effect in 1997. The study also concluded that, if all 50 States had 0.08 BAC laws in effect in 1997, an additional 5 percent of the fatalities would have been prevented.

The second study examined the effects of 0.08 BAC and ALR laws in eleven States. It found that 0.08 BAC laws were associated with reductions in alcohol-related fatalities, alone or in conjunction with ALR laws, in seven of the eleven States studied.

The third study analyzed the effects of a 0.08 BAC law implemented in 1993 in North Carolina, a State which had already been experiencing a sharp decline in alcohol-related fatalities since 1987. The North Carolina study recognized that there was a pre-existing downward trend in measures pertaining to alcohol-related crashes in the State prior to the enactment of the 0.08 BAC law. The results of the study suggested that some portion of the decline in alcohol-related fatalities experienced in the State after the enactment of the 0.08 law may have been associated with the law, but the magnitude of these effects was not sufficient to make this conclusion. The study found no statistically significant change in the pre-existing downward trend as a result of the 0.08 law.

Copies of these three new studies will be placed in the docket for this final rule.

Presidential Support for a National Standard at 0.08 BAC

President Clinton strongly supports the enactment of 0.08 BAC laws by the States. In fact, on March 3, 1998, the President addressed the Nation about his interest in promoting a national illegal per se limit of 0.08 BAC across the country, including on Federal property. During his address, the President called on Congress to pass impaired driving legislation that would establish a national 0.08 BAC per se standard.

On March 4, 1998, the United States Senate passed ''The Safe and Sober Streets Act of 1997,'' which had been introduced by Senator Frank Lautenberg (D–NJ) and Senator Mike DeWine (R–OH). Similar legislation was introduced in the U.S. House of Representatives by Rep. Nita Lowey (D–NY).

The Safe and Sober Streets Act would have required the withholding of certain Federal-aid highway funds from States that do not enact and enforce 0.08 BAC per se laws. To avoid the withholding of funds, States would have been required to enact and enforce 0.08 BAC per se laws by October 1, 2001. This legislation, however, was not enacted into law.

Instead, Congress passed an incentive grant program to encourage State enactment of 0.08 BAC laws. This program was included in TEA–21 (H.R. 2400). On June 9, 1998, President Clinton signed the legislation and remarked, in his signing statement:

> Today I am pleased to sign into law H.R. 2400, the ''Transportation Equity Act for the 21st Century.'' This comprehensive infrastructure measure for our surface transportation programs—highway, highway safety, and transit—retains the core programs and builds on the initiatives established in the landmark Intermodal Surface Transportation Efficiency Act of 1991.
>
> * * * * *
>
> I am deeply disappointed, however, that H.R. 2400 fails to include language that would help to establish 0.08 percent [BAC] as the standard for drunk driving in each of the 50 States. The experience of States that have adopted the 0.08 blood alcohol level shows that this stringent measure against drunk driving has the potential, when applied nationwide, to save hundreds of lives each year. Applying 0.08 nationwide is an important cornerstone of our safety efforts. My Administration will continue to fight for it. In the meantime, H.R. 2400 does establish a new $500 million incentive program encouraging the States to adopt tough 0.08 BAC laws.

TEA–21 Section 163 Program

Section 163 provides that the Secretary of Transportation shall make a grant to any State that has enacted and is enforcing a law that provides that any person with a blood alcohol concentration of 0.08 percent or greater while operating a motor vehicle in the State shall be deemed to have committed a per se offense of driving while intoxicated or an equivalent per se offense.

Interim Final Rule

On September 3, 1998, NHTSA and the FHWA published a joint interim final rule in the **Federal Register** to implement the Section 163 program. The interim final rule explained that, consistent with other grant programs that are administered by the agencies, to qualify for funding under the Section 163 program, States must have a law

that has both passed and been made effective, and the State must have begun to implement the law. In addition, the law must meet certain basic elements.

Compliance Criteria

The interim final rule defined those basic elements, as described below. To qualify for funds under this program, a State must meet all of the basic elements.

1. Any Person

A State must enact and enforce a law that establishes a BAC limit of 0.08 or greater that applies to all persons. The law can provide for no exceptions.

2. Blood Alcohol Concentration (BAC) of 0.08 Percent

A State must set a level of no more than 0.08 percent as the legal limit for blood alcohol concentration, thereby making it an offense for any person to have a BAC of 0.08 or greater while operating a motor vehicle.

3. Per Se Law

A State must consider persons who have a BAC of 0.08 percent or greater while operating a motor vehicle in the State to have committed a per se offense of driving while intoxicated.

In other words, States must establish a 0.08 ''per se'' law, that makes driving with a BAC of 0.08 percent or above, in and of itself, an offense.

4. Primary Enforcement

A State must enact and enforce a 0.08 BAC law that provides for primary enforcement.

Under a primary enforcement law, law enforcement officials have the authority to enforce the law without, for example, the need to show that they had probable cause or had cited the offender for a violation of another offense. Any State with a law that provides for secondary enforcement of its 0.08 BAC provision will not qualify for funds under this program.

5. Both Criminal and ALR Laws

A State must establish a 0.08 BAC per se level under its criminal code. In addition, if the State has an administrative license revocation or suspension (ALR) law, the State must establish an illegal 0.08 BAC per se level under its ALR law, as well.

6. Standard Driving While Intoxicated Offense

The State's 0.08 BAC per se law must be deemed to be or be equivalent to the State's standard driving while intoxicated offense.

In States with multiple drinking and driving provisions, the interim final rule stated that the agencies will consider a number of factors to determine whether the State's 0.08 BAC per se law has been deemed to be or is equivalent to the standard driving while intoxicated offense in the State. These factors will include the treatment of these offenses, their relation to other offenses in the State and the sanctions and other consequences that result when persons violate these offenses.

A more detailed discussion of the six elements described above is contained in the interim final rule (63 FR 46883–84).

Terms Governing the Incentive Grant Funds

The interim final rule indicated that a total of $500 million has been authorized for the Section 163 program over a period of six years, beginning in FY 1998. Specifically, TEA–21 authorized $55 million for fiscal year 1998, $65 million for FY 99, $80 million for FY 2000, $90 million for FY 2001, $100 million for FY 2002 and $110 million for FY 2003.

Available funds will be apportioned in each fiscal year to the States that qualify for grants, according to the Section 402 formula, which is apportioned 75 percent based on the State's population and 25 percent based on the number of public road miles in the State.

In FY 1998, a total of $49,005,000 were distributed under this program to fifteen States. The States were Alabama, California, Florida, Hawaii, Idaho, Illinois, Kansas, Maine, New Hampshire, New Mexico, North Carolina, Oregon, Utah, Vermont and Virginia.

As explained in the interim final rule, funds received by States under the Section 163 program may be used for any project eligible for assistance under Title 23 of the United States Code, which includes highway construction as well as highway safety projects or programs. Since States will be receiving Section 163 funds on the basis on their 0.08 BAC per se laws, a highway safety initiative, the agencies strongly encouraged the States in the interim final rule to consider eligible highway safety projects and programs when they are deciding how they will spend these funds. The recipient States in FY 1998 expended approximately 78 percent of the funds received in the area of highway safety.

Since Section 163 provides that the Federal share of the cost of a project funded under this program shall be 100 percent, the interim final rule provided that there is no State matching requirement for these funds. The interim rule stated also that the funds authorized by Section 163 shall remain available until expended.

Demonstrating Compliance

To demonstrate compliance with the provisions of the statutory and regulatory requirements, the interim final rule provided that each State must submit a certification in each year that it wishes to receive a grant. A more detailed discussion regarding the contents of the certifications is contained in the interim final rule (63 FR 46884).

To be eligible for grant funds in FY 1998, the interim rule provided that States must submit their certifications no later than September 4, 1998. To be eligible for grant funds in a subsequent fiscal year, the interim rule provided that States must submit their certifications no later than July 1 of that fiscal year. Under this requirement, for example, States would be required to submit their certifications no later than July 1, 1999 to be eligible for grant funds in FY 1999. The agencies strongly encouraged States to submit their certifications in advance of the regulatory deadlines.

Request for Comments

The agencies requested comments from interested persons on the interim final rule that was published in September 3, 1998. Comments were due by October 19. The agencies stated in the interim final rule that all comments submitted to the agencies would be considered and that following the close of the comment period, the agencies would publish a document in the **Federal Register** responding to the comments and, if appropriate, would make revisions to the provisions of Part 1225.

Comments Received

The agencies received submissions from four commenters in response to the interim final rule. The commenters included: Earl Havatone, Chairman of the Hualapai Nation; Robert R. McNichols, Superintendent of the Bureau of Indian Affairs (BIA), Truxton Canon Agency, U.S. Department of the Interior; Henry M. Jasny, General Counsel for Advocates for Highway and Auto Safety (Advocates); and Kirk Brown, Secretary of the Illinois Department of Transportation (IDOT).

1. General Comments

In general, the comments in response to the interim final rule were very positive. Secretary Brown of IDOT offered one recommendation regarding the date by which funds should be

distributed, but stated, ''IDOT supports the adoption of this interim final rule as proposed.'' In addition, Mr. Jasny of Advocates stated:

> Advocates is in agreement with [NHTSA] and the [FHWA] with respect to nearly all the parameters set forth in the notice. The agencies establish appropriate compliance criteria with respect to the six items specifically referred to in the notice * * * [Advocates recommends one addition to the regulation. With the exception of this one suggestion,] Advocates concurs with the agencies and supports this interim rule.

2. Comments Regarding Indian Tribes

Mr. Havatone of the Hualapai Nation and Mr. McNichols of BIA submitted almost identical comments. They both urge the agencies to set aside a portion of the funds authorized under this program for ''Indian tribes for incentive grants which are not controlled by the States.'' These commenters point out that ''fatalities occur at higher rates on Indian lands than anywhere else in the country, [but] this funding will do little to help * * * [because] [m]any tribes will not apply to the States for funding because we believe that doing so reduces the sovereignty of the tribe.''

These commenters suggest that establishing such a set aside is supported by a directive that was issued by the President, on April 29, 1994, entitled Government-to-Government Relations with Native American Tribal Governments. A copy of this directive was enclosed with each of these commenters' submissions.

The agencies agree that there is a disproportionate number of fatalities on Indian lands, and actions should be taken to address this serious problem. In addition, the agencies do encourage Tribal governments to enact and enforce 0.08 BAC laws. In fact, when President Clinton directed the Secretary of Transportation to develop a plan to promote the adoption of a .08 BAC legal limit nationwide, he directed that the plan consider ''encouraging Tribal governments to adopt, enforce, and publicize a .08 BAC standard on highways in Indian Country that are subject to their jurisdiction.''

Pursuant to the plan that was developed by the Secretary in response to the President's direction, NHTSA is working jointly with the Indian Health Service (IHS) on a number of initiatives to reduce the problem of impaired driving on Indian lands. For example, IHS is conducting a survey of Indian tribal laws covering impaired driving and other highway safety areas; educational, enforcement and other efforts, such as the ''None for the Road'' campaign, are being conducted on Tribal lands; and Tribal governments are participating in highway safety initiatives, including Buckle Up! America and the Safe Tribal Communities Youth Campaign.

In addition, the Presidential directive on Government-to-Government Relations with Native American Tribal Governments encourages executive departments and agencies to undertake activities affecting Native American tribal rights or trust resources in a knowledgeable, sensitive manner respectful of tribal sovereignty, and to building a more effective day-to-day working relationship reflecting respect for the rights of self-government due the sovereign tribal governments. Specifically, it directs executive departments and agencies, in appropriate circumstances, to consult with tribal governments prior to taking actions that affect them and to design solutions and tailor Federal programs to address specific or unique need of tribal communities.

However, the directive specifically states that it ''is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right * * * or benefit or trust responsibility * * *,'' and the Section 163 program, which was established in TEA–21, does not authorize the agency to set aside any funds for incentive grants for Indian tribes. The statutory language provides, ''The Secretary shall make a grant * * * to any State [with a conforming law] * * *'' Some of the programs that are administered by NHTSA and the FHWA define the term ''State'' in a manner that includes Indian Tribes. (See, for example, Section 2001 of TEA–21, which re-authorized the Section 402 program.) However, the Section 163 program defines the term ''State'' to include only ''any of the 50 States, the District of Columbia or Puerto Rico.''

Accordingly, while Tribal governments can continue to apply for funds from States that receive Section 163 incentive grants, the agencies are not authorized to set aside any Section 163 funds for incentive grants to be given directly to Indian tribes. Therefore, no changes have been made to the regulations in response to these comments.

3. Comments from Advocates

As stated above, Advocates concurred with the agencies' interim final rule, except in one area. Advocates agreed with all six compliance criteria included in the interim rule. However, Advocates stated that the agencies should have ''set criteria for minimum penalties that a state law must impose in order to be eligible under the program.''

Advocates recognized that Congress did not address the issue of penalties in the statute, but stated that ''the agencies have the authority to exercise * * * discretion in this area and are not prohibited from doing so by the wording of the statute.'' Advocates suggested that the agencies could ''evaluate the laws in states that previously adopted 0.08 BAC as the threshold for intoxication violations and use the least stringent penalty provision of the laws already enacted as the minimum criteria for eligibility'' or, alternatively, the agencies could ''establish a series of options, at least one of which would be required for eligibility.''

The agencies do not believe it is necessary to establish a minimum penalty criterion under this program. Rather, we believe the criteria already established in the regulations are sufficient to ensure that States establish meaningful penalties, because they require that the State's 0.08 BAC per se law must be deemed to be or be equivalent to the State's standard driving while intoxicated offense.

As the agencies explained in the interim final rule, most States provide for a single driving while intoxicated offense. However, some States have multiple offenses that relate to drinking and driving. In these States, the most serious offense generally will be the State's ''standard driving while intoxicated'' offense (although it might be called by another name, such as ''driving under the influence''). These States may have a ''less-serious'' offense, which may be a ''lesser-included'' offense of the standard driving while intoxicated offense in the State.

With regard to States with multiple drinking and driving provisions, it was explained in the interim final rule that the agencies will consider a number of factors to determine whether the State's 0.08 BAC per se law has been deemed to be or is equivalent to the standard driving while intoxicated offense in the State. These factors include the treatment of these offenses, their relation to other offenses in the State and the sanctions and other consequences that result when persons violate these offenses.

When the agencies have reviewed laws and proposed legislation from States to determine whether they comply with Section 163 and the interim regulations, we have considered these factors very carefully.

For example, one State that currently has a 0.10 per se law submitted to us for review proposed legislation that would

have created a per se level at 0.08 BAC. However, the proposed legislation would have retained the 0.10 law. It also would have continued to apply to 0.10 offenders the same sanctions that currently apply to such offenders, and an offender of the new 0.08 law would have been subject to a lesser set of sanctions. Based on an examination of these proposed provisions, we concluded that the proposed legislation, if enacted without change, would not have complied with Section 163 and the interim regulations because it would not have established 0.08 BAC as the standard driving while intoxicated offense.

Because the agencies believe the criteria contained in the interim regulations are sufficient to ensure that meaningful penalties will apply to 0.08 offenders, the agencies have decided not to add a new compliance criterion in response to this comment.

4. Timing for Applications and the Distribution of Funds

The interim final rule provided that, to qualify beginning in FY 1999, the agencies must receive from the State a certification no later than July 1 of that fiscal year, and the certification must indicate that the State ''has enacted and is enforcing a 0.08 BAC per se law that conforms to 23 U.S.C. 163 and [the agencies' implementing regulations].''

Upon further consideration of this requirement, the agencies realize that a State could enact a conforming law prior to July 1 of a fiscal year, and the law could become effective prior to the end of that fiscal year, but after July 1 of that year. Accordingly, the agencies have decided to amend the regulations to enable such States to qualify for funding in the year in which the State's new law goes into effect. To qualify for a first-year grant, they may submit certifications that provide that the State has enacted a 0.08 BAC per se law that conforms to 23 U.S.C. 163 and the agencies' implementing regulations and will become effective and be enforced in the current fiscal year.

To provide States with additional time to adjust to this change, and to provide States with additional time to enact conforming legislation each year, the agencies will also extend from July 1 to July 15, the date by which certifications must be received.

The interim final rule did not specify the date by which grant funds would be distributed to the States. In its comments, IDOT recommends an early distribution date (in July), to assist the States in their ability to obligate the funds by September 30. The agencies appreciate IDOT's concerns, and hope to make a distribution this fiscal year during the month of July. Any State that has qualified on the basis of a law that has been enacted, but is not yet effective, however, will not receive its distribution of funds until the law has gone into effect. Should the law fail to become effective, the agency would redistribute the funds to all eligible States.

The interim final rule also did not set forth procedures to ensure the efficient administration of funds. Due to the need to accommodate both Federal-aid Highway and Highway Safety interests, the agencies have added language to the section on Award Procedures, specifying the joint involvement of State Department of Transportation and Highway Safety officials. The officials will provide written notification of their funding decisions to the agencies, identifying the amounts of apportioned funds to be obligated to highway safety activities and to Federal-aid highway activities. This process will permit account entries to be made.

Finally, the interim final rule contained a separate provision regarding the submission of State certifications in FY 1998. Since this provision is now obsolete, it has been removed from the regulations.

Regulatory Analyses and Notices

Executive Order 12778 (Civil Justice Reform)

This final rule will not have any preemptive or retroactive effect. The enabling legislation does not establish a procedure for judicial review of final rules promulgated under its provisions. There is no requirement that individuals submit a petition for reconsideration or other administrative proceedings before they may file suit in court.

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

The agencies have determined that this action is a significant regulatory action within the meaning of Executive Order 12866 and is significant within the meaning of Department of Transportation Regulatory Policies and Procedures. This determination is based on a finding that the rule is likely to have an annual effect on the economy of $100 million or more in FY's 2002 and 2003. A sum of $100 million is authorized for this program in FY 2002 and $110 million is authorized in FY 2003. It is likely that these sums will be awarded to qualifying States under the section 163 program in those fiscal years. Accordingly, an economic assessment has been prepared.

The economic assessment concludes that the costs to the States of obtaining the funding under the Section 163 program, which include the administrative costs of submitting a certification that the State has enacted and is enforcing the law, are minimal. In addition, it finds that the costs to States to enact and publicize new 0.08 BAC *per se* laws will not be significant, and the costs to enforce these laws need not be different than those incurred by States to enforce their current impaired driving laws.

However, the economic assessment notes that it is expected that at least some States will increase enforcement efforts when their new laws become effective, and arrests and prosecutions are likely to increase for drivers with a BAC at 0.08 and above. Since many States have self-sufficient programs supported by fines for the post-conviction phase of their programs, the economic assessment concludes that any additional activity during this phase of their programs, will not result in additional costs to the States.

While it is difficult to isolate the effects that a national 0.08 BAC *per se* standard would have, the economic assessment indicates that a study conducted by the Boston University School of Public Health, which was published in the September 1996 issue of the American Journal of Public Health estimated that 500–600 alcohol-related highway deaths would be prevented each year if all States lowered their BAC limits to 0.08 BAC. Such a reduction in deaths would represent a 4 percent decrease in alcohol-related deaths nationwide and would result in cost savings of approximately $1.5 billion each year. Copies of the economic assessment are available to the public in the docket for this rulemaking action.

The agencies received no comments regarding the economic assessment. Accordingly, no changes to this document are required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the agencies have evaluated the effects of this action on small entities. Studies to date have not shown that 0.08 BAC *per se* laws have affected alcohol consumption in any of the five States analyzed. Thus, there should be no noticeable impact on small businesses that sell and serve alcohol. Since this interim final rule will apparently affect only State governments, it will not have any effect on small businesses. Thus, we certify that this action will not have a

significant impact on a substantial number of small entities and find that the preparation of a Regulatory Flexibility Analysis is unnecessary.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. Chapter 35, as implemented by the Office of Management and Budget (OMB) in 5 CFR Part 1320.

National Environmental Policy Act

The agencies have analyzed this action 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.

The Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires agencies to prepare a written assessment of the costs, benefits and other effects of final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. This interim final rule does not meet the definition of a Federal mandate. It is a voluntary program in which States can choose to participate, solely at their option. The costs to States to qualify for participation in this program are minimal, and will result in annual expenditures that will not exceed the $100 million threshold. Moreover, States that choose to participate in this program will receive Federal incentive grants, which will provide funds for activities that are eligible under Title 23 of the United States Code.

Executive Order 12612 (Federalism Assessment)

This action 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 1225

Alcohol and alcoholic beverages, Grant programs, Transportation, Highway safety.

In consideration of the foregoing, the interim final rule published in the **Federal Register** of September 3, 1998, 63 FR 46886, adding a new Part 1225 to chapter II of Title 23 of the Code of Federal Regulations, is adopted as final, with the following changes:

PART 1225—OPERATION OF MOTOR VEHICLES BY INTOXICATED PERSONS

1. The authority citation for Part 1225 continues to read as follows:

Authority: 23 U.S.C. 163; delegation of authority at 49 CFR 1.48 and 1.50.

2. Section 1225.4 is amended by revising paragraph (a)(1), removing paragraph (a)(6), and revising paragraph (a)(5) to read as follows:

§ 1225.4 General requirements.

(a) * * *

(1) To qualify for a first-year grant under 23 U.S.C. 163, a State must submit a certification by an appropriate State official, that the State has enacted a 0.08 BAC per se law that conforms to 23 U.S.C. 163 and § 1225.5 of this part and will become effective and be enforced in the current fiscal year and that the funds will be used for eligible projects and programs.

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

(Name of certifying official), (position title), of the (State or Commonwealth) of _____, do hereby certify that the (State or Commonwealth) of _____ has enacted and is enforcing a 0.08 BAC per se law that conforms to 23 U.S.C. 163 and 23 CFR 1225.5, (citations to State law), and that the funds received by the (State or Commonwealth) of _____ under 23 U.S.C. 163 will be used for projects eligible for assistance under Title 23 of the United States Code, which include highway construction as well as highway safety projects and programs.

(ii) If the State's 0.08 BAC per se law is not currently in effect, but will become effective and be enforced before the end of the current fiscal year, the certification shall be worded as follows:

(Name of certifying official), (position title), of the (State or Commonwealth) of _____, do hereby certify that the (State or Commonwealth) of _____ has enacted a 0.08 BAC per se law that conforms to 23 U.S.C. 163 and 23 CFR 1225.5, (citations to State law), and will become effective and be enforced as of (effective date of the law), and that the funds received by the (State or Commonwealth) of _____ under 23 U.S.C. 163 will be used for projects eligible for assistance under Title 23 of the United States Code, which include highway construction as well as highway safety projects and programs.

* * * * *

(5) To qualify for grant funds in FY 1999 or in a subsequent fiscal year, certifications must be received by the agencies not later than July 15 of that fiscal year.

* * * * *

3. Section 1225.6 is revised to read as follows:

§ 1225.6 Award procedures.

(a) In each Federal fiscal year, grant funds will be apportioned to eligible States upon submission and approval of the documentation required by § 1225.4(a) and subject to the limitations in § 1225.4(b). The obligation authority associated with these funds is subject to the limitation on obligations pursuant to section 1102 of TEA 21.

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

Issued on: June 25, 1999.

Kenneth R. Wykle,

Administrator, Federal Highway Administration.

Ricardo Martinez,

Administrator, National Highway Traffic Safety Administration.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8826]

RIN 1545–AX23

Qualified Zone Academy Bonds; Obligations of States and Political Subdivisions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations that provide guidance to state and local government issuers of qualified zone academy bonds. These temporary regulations change the method of ascertaining the qualified zone academy bond credit rate and provide reimbursement rules. State and local governments that issue