U.S.C. 601 *et seq.*) do not apply. Further, these amendments do not meet the criteria for a ''significant regulatory action'' as specified in Executive Order 12866.

Drafting Information

The principal author of this document was Ms. Suzanne Kingsbury, Regulations Branch, Office of Regulations and Rulings, Bureau of Customs and Border Protection. However, personnel from other offices participated in its development.

List of Subjects 19 CFR Part 191

Claims, Commerce, Customs duties and inspection, Drawback, Reporting and recordkeeping requirements.

Amendment to the Regulations

■ For the reasons stated above, the interim rule amending part 191 of the Customs Regulations (19 CFR part 191), which was published at 67 FR 48368–48370 on July 24, 2002, is adopted as a final rule with the change set forth below.

PART 191—DRAWBACK

■ 1. The general authority citation for part 191 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1313, 1624.

* * * * *

■ 2. In § 191.26, the example to paragraph (b)(4) is amended to read as follows:

§ 191.26 Recordkeeping for manufacturing drawback.

* * * * *

(b) *Substitution manufacturing.* * * *

(4) * * *

Example to paragraph (b)(4).

Synthetic rutile that is shown by appropriate analysis in the entry papers to be 91.7% pure titanium dioxide is imported and dutiable at a 5% *ad valorem* duty rate. The amount of imported synthetic rutile is 30,000 pounds with an entered value of $12,000. The total duty paid is $600. Titanium in the synthetic rutile is designated as the basis for a drawback claim under 19 U.S.C. 1313(b). The amount of titanium dioxide in the synthetic rutile is determined by converting the purity percentage (91.7%) to its decimal equivalent (.917) and multiplying the entered amount of synthetic rutile (30,000 pounds) by that decimal equivalent (.917 × 30,000 = 27,510 pounds of titanium dioxide contained in the 30,000 pounds of imported synthetic rutile). The titanium, based on atomic weight, represents 59.93% of the constituents in titanium dioxide. Multiplying that percentage, converted to its decimal equivalent, by the amount of titanium dioxide determines the titanium content of the imported synthetic rutile (.5993 × 27,510 pounds of titanium dioxide = 16,486.7 pounds of titanium contained in the imported synthetic rutile). Therefore, up to 16,486.7 pounds of titanium is available to be designated as the basis for drawback. As the per-unit duty paid on the synthetic rutile is calculated by dividing the duty paid ($600) by the amount of imported synthetic rutile (30,000 pounds), the per-unit duty is two cents of duty per pound of the imported synthetic rutile ($600 ÷ 30,000 = $0.02). The duty on the titanium is calculated by multiplying the amount of titanium contained in the imported synthetic rutile by two cents of duty per pound (16,486.7 × $0.02 = $329.73 duty apportioned to the titanium). The product is then multiplied by 99% to determine the maximum amount of drawback available ($329.73 × .99=$326.44). If an exported titanium alloy ingot weighs 17,000 pounds, in which 16,000 pounds of titanium was used to make the ingot, drawback is determined by multiplying the duty per pound ($0.02) by the weight of the titanium contained in the ingot (16,000 pounds) to calculate the duty available for drawback ($0.02 × 16,000 = $320.00). Because only 99% of the duty can be claimed, drawback is determined by multiplying this available duty amount by 99% (.99 × $320.00 = $316.80). As the oxygen content of the titanium dioxide is 45% of the synthetic rutile, if oxygen is the designated merchandise on another drawback claim, 45% of the duty claimed on the synthetic rutile would be available for drawback based on the substitution of oxygen.

Robert C. Bonner,

Commissioner, Customs and Border Protection.

Approved: August 19, 2003.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 03–21575 Filed 8–21–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Federal Highway Administration

23 CFR Part 1225

[Docket No. NHTSA–2002–13680]

RIN 2127–AI44

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 final rule implements a program enacted by the Department of Transportation and Related Agencies Appropriations Act, 2001 (DOT Appropriations Act of FY 2001), which requires the withholding of Federal-aid highway funds, beginning in fiscal year (FY) 2004, from any State that has not enacted and is not enforcing a law that provides that any person with a blood or breath 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. This final rule defines what constitutes a conforming 0.08 BAC law for purposes of this statute.

DATES: *Effective Date:* This final rule becomes effective on October 21, 2003.

Compliance Date: To meet the requirements of the 0.08 BAC sanction program, States must enact and enforce a conforming Section 163 law on or before September 30, 2003.

FOR FURTHER INFORMATION CONTACT: In NHTSA: Ms. Jo Ann Moore, Office of Injury Control Operations & Resources, NTI–200, telephone (202) 366–2121, fax (202) 366–7394; Ms. Carmen Hayes, Office of Injury Control Operations & Resources, NTI–200, telephone (202) 366–2121; Ms. Tyler Bolden, Office of Chief Counsel, NCC–113, telephone (202) 366–1834, fax (202) 366–3820.

In FHWA: Mr. Rudy Umbs, Office of Safety, HSA–1, telephone (202) 366–2177, fax (202) 366–3222; Mr. Raymond W. Cuprill, Office of Chief Counsel, HCC–30, telephone (202) 366–0791, fax (202) 366–7499; or Mr. Byron E. Dover, Office of Safety, HSA–10, telephone (202) 366–2161, fax (202) 366–2249.

SUPPLEMENTARY INFORMATION:

Table of Contents for Supplementary Information

I. Background

A. TEA–21, Section 163 Incentive Grant Program

On June 9, 1998, the Transportation Equity Act for the 21st Century (TEA–21) was signed into law. Section 1404 of the Act established a $500 million incentive grant program under 23 U.S.C. 163 to encourage States to adopt effective 0.08 BAC laws. Section 163 provided 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 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.

On September 3, 1998, NHTSA and the FHWA (the agencies) published a joint interim final rule, establishing the criteria that States must meet and the procedures they must follow to qualify for an incentive grant. *See* 63 FR 46881. On July 1, 1999, after considering the comments filed in response to the interim final rule, the agencies published a final rule implementing the Section 163 incentive grant program. *See* 64 FR 35568.

B. Effects of Section 163 Incentive Grant Program

Before the Section 163 incentive grant program was signed into law, only 16 States had enacted laws that established 0.08 BAC as their *per se* limit. Between June 1998 and October 2000, only two additional States and the District of Columbia enacted and began enforcing 0.08 BAC laws that met all the Section 163 criteria.

C. DOT Appropriations Act for FY 2001—Sanction Program

In an effort to further reduce impaired driving injuries and fatalities, Congress created a new 0.08 BAC program in the DOT Appropriations Act of FY 2001. *See* Public Law 106–346—Appendix, sec. 351, 114 Stat. 1356A–34, 35. Section 351 of Public Law 106–346–Appendix (Section 351) provides for the withholding of Federal-aid highway funds from any State that has not enacted and is not enforcing a 0.08 BAC law by the beginning of FY 2004. This legislation did not alter the incentive grant program, which was established in TEA–21. That program will continue through FY 2003.

The DOT Appropriations Act of FY 2001 was signed into law on October 23, 2000. Since that date, twenty-six additional States have enacted conforming 0.08 BAC laws. As of August 15, 2003, forty-four States, the District of Columbia and the Commonwealth of Puerto Rico have enacted 0.08 BAC laws that meet all the requirements of Section 163.[1] *See* Table 1.

TABLE 1.—STATES WITH 0.08 BAC LAWS THAT MEET SECTION 163 CRITERIA

[as of August 15, 2003]

State	Enactment date	Effective date
Alabama	07/31/95	10/01/95
Alaska	07/03/01	09/01/01
Arizona	04/11/01	08/31/01
Arkansas	03/06/01	08/13/01
California	1989	01/01/90
Connecticut	07/01/02	07/01/02
District of Columbia	12/01/98	04/13/99
Florida	04/27/93	01/01/94
Georgia	04/16/01	07/01/01
Hawaii	06/30/95	06/30/95
Idaho	03/17/97	07/01/97
Illinois	07/02/97	07/02/97
Indiana	05/09/01	07/01/01
Iowa	04/24/03	07/01/03
Kansas	04/22/93	07/01/93
Kentucky	04/21/00	10/01/00
Louisiana	06/26/01	09/30/03
Maine	04/28/88	08/04/88
Maryland	04/10/01	09/30/01
Massachusetts	06/30/03	06/30/03
Michigan	07/15/03	09/30/03
Mississippi	03/11/02	07/01/02
Missouri	06/12/01	09/29/01
Montana	04/15/03	04/15/03
Nebraska	03/01/01	09/01/01
Nevada	06/10/03	09/23/03
New Hampshire	04/15/93	01/01/94
New Mexico	03/19/93	01/01/94
New York	12/30/02	11/01/03
North Carolina	07/05/93	10/01/93
North Dakota*	04/07/03	08/01/03
Ohio	03/31/03	07/01/03
Oklahoma	06/08/01	07/01/01
Oregon	08/04/83	10/15/83
Puerto Rico	01/10/00	01/10/01
Rhode Island	07/02/03	07/02/03
South Carolina	06/19/03	08/19/03
South Dakota	02/27/02	07/01/02
Tennessee	06/27/02	07/01/03
Texas	05/28/99	09/01/99
Utah	03/19/83	08/01/83
Vermont	06/06/91	07/01/91
Virginia	04/06/94	07/01/94
Washington	03/30/98	01/01/99
Wisconsin	07/03/03	09/30/03
Wyoming	03/11/02	07/01/02

Total: 44 States, plus the District of Columbia and Puerto Rico

* North Dakota's 0.08 BAC law, which was scheduled to go into effect on August 1, 2003, was suspended by submission of a referendum petition, and the future status of this law is currently uncertain.

[1] To date, the following States have not enacted conforming 0.08 BAC laws: Colorado, Delaware, Minnesota, New Jersey, Pennsylvania and West Virginia.

II. Notice of Proposed Rulemaking for the 0.08 BAC Sanction Program

On February 6, 2003, the agencies published a notice of proposed rulemaking (NPRM) in the **Federal Register** to define the criteria to be applied to determine what constitutes a valid 0.08 BAC law for purposes of the statute (68 FR 6091). The statute requires the Secretary to withhold from apportionment a portion of Federal-aid highway funds from any State that does not meet the Section 163 requirements, beginning on October 1, 2003. To avoid such withholding, a State must enact and enforce a law that provides that any person with a 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 Secretary has delegated the authority to define conforming 0.08 BAC laws to NHTSA and the authority to implement the 0.08 BAC sanction program to the FHWA.

As required by statute, if any State has not enacted and is not enforcing a conforming 0.08 BAC law by October 1,

2003, two percent of its FY 2004 Federal-aid highway apportionment under 23 U.S.C. 104(b)(1), 104(b)(3) and 104(b)(4) shall be withheld. These sections relate to the apportionments for the National Highway System, the Surface Transportation Program and the Interstate System (including resurfacing, restoring, rehabilitating and reconstructing the interstate system). The amount withheld would increase by two percent each year, until it reaches eight percent in FY 2007 and thereafter.

A. Compliance Criteria

In the NPRM, the agencies proposed that the same criteria that had been applied since 1998 to determine whether a State had enacted and made effective a conforming 0.08 BAC law under the Section 163 incentive grant program, be applied also to the Section 163 sanction program. *See* 64 FR 35568. To meet the Section 163 criteria, a conforming 0.08 BAC law must contain the following 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 or Breath Alcohol Concentration (BAC) of 0.08 Percent

A State must set a level of no more than 0.08 percent as the *per se* limit for blood or breath 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 operating a motor vehicle 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 meet the requirements of this part.

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 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; that is, the State's non-BAC *per se* driving while intoxicated offense in the State.

A more detailed discussion of the six elements described above is contained in the rulemaking for the incentive grant program. *See* 64 FR at 46883–84.

B. Demonstrating Compliance

To demonstrate compliance with this rulemaking, the agencies proposed that States be required to submit conforming certifications to the appropriate NHTSA Regional Administrator on or before July 15, to receive an incentive grant in FY 2003; and on or before September 30, to avoid the withholding of funds in FY 2004 and subsequent fiscal years.

In addition, the NPRM proposed not to require States in compliance with the Section 163 incentive grant program in FY 2003 to submit additional certifications for FY 2004, unless their law/s had changed in the interim.

Each State initially determined to be in noncompliance would, under the proposal, have until September 30 to rebut the initial determination or to come into compliance. The State would be notified of the agencies' final determination of compliance or noncompliance and the amount of funds to be withheld as part of the final notice of apportionments (which normally is issued on October 1 of each year).

C. Period of Availability of Funds

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

In addition, the NPRM proposed that any State that comes into compliance with the requirements of Section 163 on or before September 30, 2007, would have their withheld funds restored to them. However, if a State is not in compliance with the requirements of Section 163 on October 1, 2007, any funds withheld from apportionment to the State would begin to lapse and would no longer be available for apportionment.

TABLE 2.—EFFECTS OF THE 0.08 BAC SANCTION PROGRAM ON NON-COMPLYING STATES

Fiscal year	Withhold (percent)	Lapse
2004 ...	2	
2005 ...	4	
2006 ...	6	
2007 ...	8	
2008 ...	8	2% withheld in FY04.
2009 ...	8	4% withheld in FY05.
2010 ...	8	6% withheld in FY06.
2011 ...	8	8% withheld in FY07.
2012 ...	8	8% withheld in FY08.

III. Comments

The NPRM was published on February 6, 2003. The agencies received five comments in response to it. Comments were received from two State agencies and three concerned individuals. The State comments were submitted by Judy E. Brown, Chief of the Texas Department of Public Safety (TXDPS), Driver License Division, and Frank J. Busalacchi, Secretary for the Wisconsin Department of Transportation (WIDOT).

A. Federalism

To ensure that States had a full opportunity to raise any Federalism concerns, the agencies conducted an outreach program aimed at eliciting comments on the possible Federalism implications of this rule.

Since the incentive grant program was signed into law, States have had continuous contact with the agencies. States that were considering passing 0.08 BAC legislation were encouraged to submit copies of their proposals to the agencies' regional offices for review and initial comment. These legislative proposals were then forwarded to NHTSA's Office of Chief Counsel (OCC) to determine compliance with the requirements of Section 163. During this review process, OCC staff and staff from the Office of Injury Control Operations and Resources (ICOR) interacted with different State employees and officials by telephone and through electronic mail. These communications, both formal and informal, provided substantial opportunities for State and local officials to discuss and comment

on program compliance and policy issues. Following a full review of all applicable State laws and implementing regulations, OCC notified States of their compliance with Section 163 by letter. Any State found not to be in compliance with Section 163 was notified of the reasoning behind this determination and reminded of the impending sanction program becoming effective in FY 2004.

The agencies also solicited comments in the NPRM, and following its publication, sent letters requesting comments on possible Federalism implications to several National organizations representing State and local officials. The six organizations included: The National Governors Association, National Conference of State Legislatures, International Association of Chiefs of Police, Governors Highway Safety Association, National Sheriff's Association, and the American Association of State Highway and Transportation Officials. NHTSA has not received any indication of concerns about the Federalism implications of this rulemaking from these representatives. In addition, none of these groups submitted comments in response to the NPRM.

In sum, the agencies have considered the impact of this action on State and local agencies. We have concluded that the effects on States and local agencies will be minimal and consist of changes that States make as a matter of course when amending a State law. Furthermore, the agencies received no comments from State or local agencies to indicate otherwise. Accordingly, the agencies do not believe that this final rule raises any Federalism issues and no changes to this document are required.

B. Comments Regarding Compliance Criteria

The agencies received few comments to the NPRM. In particular, the agencies received no comments or objections to the compliance criteria proposed in the NPRM. Accordingly, these portions of the NPRM are being adopted without change.

C. Comments Regarding Procedures

The agencies received some comments and questions regarding procedural aspects of the NPRM. Texas, which has had a conforming 0.08 BAC law since September 1, 1999, commented on the proposed certification process. Specifically, the TXDPS commented favorably on the proposed certification process, stating that the ''proposed certifications will legitimately serve NHTSA's goal of ascertaining state compliance for the purpose of Federal-aid highway and grant funds distribution.'' Accordingly, TXDPS indicated that it has no objections or additional comments regarding the agencies' proposal.

WIDOT requested clarification regarding ''the mechanics and timeline of the process to restore withheld funding.'' Specifically, WIDOT noted that Section 1225.9 of the proposed rule did not specify ''the manner in which withheld funds would be restored to a state that comes into compliance following September 30, 2003.'' In its comments, WIDOT indicated that it presumed that the certification process detailed in Section 1225.7 of the proposed rule would be used for restoration of withheld funds. However, WIDOT noted that the rule did not specify that this would be the case. In addition, it remarked that the NPRM did not indicate ''how quickly the restored funding will be available to a compliant state.''

In response to these comments, the agencies have decided to modify the regulation by adding new provisions to the sections regarding ''Certification requirements for sanction program'' and ''Period of availability of withheld funds.'' The agencies have determined that no other changes to the regulation are needed.

These new provisions specify the certification process that should be followed for States that comply with the requirements of Section 163 in FY 2004 or thereafter. These new provisions also clarify that States that are seeking compliance with Section 163, following a withholding of funds under Section 1225.8, should contact their appropriate NHTSA Regional Administrator and inform them that they have enacted a 0.08 BAC law they believe to be conforming. The new law and subsequent certification of compliance will be reviewed by NHTSA. If NHTSA determines, based on the State's law and its certification, that the State is now in compliance with Section 163 and these implementing regulations, NHTSA will inform the FHWA of its determination and the FHWA will restore all withheld apportionment funds to the State's appropriate apportionment categories as quickly as possible.

Three individuals also commented on the proposal, expressing support and opposition to the federal policy underlying the Congressional mandate and raising concerns about the constitutionality of the proposal and the ability of States to receive incentive grants in FY 2003.

Similar programs, such as the National Minimum Drinking Age and the National Maximum Speed Limit programs, have been found constitutional in the past and we consider this program to fall within the ambit of those judicial rulings. *See, South Dakota* v. *Dole*, 483 U.S. 203 (1987) (upholding the withholding of funds from States without a conforming minimum drinking age act under the spending clause and the Twenty-first Amendment) and *The People* v. *Williams*, 175 Cal. App. 3d Supp. 16 (1985) (finding that the Federal withholding of funds from States without a conforming maximum speed limit was an appropriate exercise of Congress' authority under the spending clause and that the authority was not limited by the Tenth Amendment).

The agencies also note that a commenter from Texas expressed concern about this rulemaking because of ''a potential Procedural Due Process problem.'' She asserted that, ''according to a literal reading of § 1225.5(a)(1), Louisiana's 0.08 BAC law must be enforced (and therefore must also be effective) when Louisiana sends in its certification letter * * * [yet] [t]he last day that Louisiana can send a certification letter is July 15, 2003—a full 2½ months before its 0.08 BAC law will be effective and enforced.''

To address this concern, the commenter suggested certain revisions to the certification statements to allow Louisiana to qualify for an incentive grant fund in FY 2003. Specifically, the commenter suggested that the agencies amend the certification statement contained in Section 1225.5(a)(1) to allow States to submit certifications by July 15, 2003, if the newly enacted laws become effective before the end of the fiscal year.

While it is clear that States have no property interest in receiving TEA–21 funds, the comment raises a legitimate question regarding the manner in which States, such as Louisiana, are to certify that they qualify for an incentive grant if they enact a law prior to July 15 (when certifications are due to be submitted), and their law becomes effective on or before September 30, but after July 15. This issue had already been addressed in the 0.08 incentive grant regulations. *See* 64 FR at 35572.

In particular, the regulations provide that, ''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 1225.4, (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.'' 23 CFR 1225.5(a)(1)(ii).

Since the start of the incentive grant program in 1998, the agencies have received and accepted certifications from a number of States using this type of certification statement. Given that the State of Louisiana enacted a conforming 0.08 BAC *per se* law prior to July 15, 2003, and it will become effective on September 30, 2003, the State should be able to submit this type of certification, in conformance with the current regulation.

The agencies did not propose to change this aspect of the regulation. However, after consideration of the comments received in response to this action, the agencies have decided to modify the certification requirements for the sanction program by adopting a similarly worded certification for States that are seeking to demonstrate conformance with the sanction program based on an enacted law that has not yet become effective.

IV. Regulatory Analyses and Notices

A. Executive Order 12988 (Civil Justice Reform)

This final rule will not have any preemptive or retroactive effect. This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

B. 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 the Department of Transportation Regulatory Policies and Procedures. This determination is based on the fact that the withholding of Federal-aid highway funds under the 0.08 BAC sanction program is a matter of substantial interest to the public and to Congress. Further, there is a possibility that the State withholdings resulting from this action could total from $34 million to over $137 million. Accordingly, a final regulatory evaluation was prepared in conjunction with this rule.

The final regulatory evaluation concludes that, aside from advertising costs, the costs for implementing this rulemaking action are minimal and consist of changes that States make as a matter of course when amending a State law. A complete discussion of the economic impact of this rule is contained in the final regulatory evaluation, which is in the docket.

C. 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. As a sanction program, this rule will have different consequences depending on whether the States enact and enforce a conforming 0.08 BAC law or whether they choose to accept the sanction for not enacting and enforcing a conforming law.

In States that have enacted 0.08 BAC laws, consumption of beer has dropped 3.5 percent on average. By contrast, consumption of wine and spirits do not correlate with the number of drinking drivers in fatal crashes. Thus, if a State passes a 0.08 law, all businesses, large and small, that sell and serve beer are likely to experience a small reduction in sales. However, most businesses sell other products, such as food or other beverages. Therefore, the overall impact on those businesses would be significantly less than 3.5 percent. For some businesses, such as beer distributors (where a small business is defined as 100 employees or less), the decline may approach the 3.5 percent range.

States that do not enact and enforce conforming 0.08 BAC laws will lose Federal-aid highway funds. This loss may impact highway construction firms, where a small business is defined as $28.5 million in annual gross income. The precise number of small businesses that may be affected cannot be determined, since it is assumed that any impact is just as likely to impact businesses of any size. In addition, the penalty affects only Federal highway funds, which make up, on average in the 6 States affected, only 15 percent of all State highway expenditures. Accordingly, even if the sanction were imposed at the highest rate of 8 percent, the maximum reductions in highway expenditures in the relevant States would be within a range of only 1.09 percent (in Minnesota or New Jersey) to 1.93 percent (in Delaware). Further, most of these businesses do not rely totally on highway construction contracts for their revenue.

Based on these considerations, we hereby certify that this action will not have a significant economic impact on a substantial number of small entities.

D. 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. Chapter 35, as implemented by the Office of Management and Budget (OMB) in 5 CFR part 1320.

E. National Environmental Policy Act

The agencies have reviewed this action for the purpose of the National Environmental Policy Act (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.

F. The Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531) requires agencies to prepare a written assessment of the costs, benefits and other effects of 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 $100 million or more (adjusted annually for inflation) in any one year. This final rule does not require an assessment under this law. The costs to States to enact and make effective conforming 0.08 BAC laws will not result in annual expenditures that exceed the $100 million threshold. Moreover, States that enact 0.08 BAC laws will avoid the loss of millions of dollars in Federal-aid highway funds.

G. Executive Order 13132 (Federalism Summary Impact Statement)

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have ''federalism implications,'' agencies are directed to provide ''a description of the extent of the agency's prior consultation with State and local officials; a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation; and a statement of the extent to which the concerns of the State and local officials have been met.''

For the reasons cited earlier in the preamble, the agencies conclude that the effects of this rule on States and local agencies will be minimal and consist of changes that States make as a matter of course when amending a State law. Furthermore, the agencies note that Congress created the 0.08 BAC sanction program in Public Law 106–346–Appendix, and the agencies are required to carry out this program in accordance with the principles established by Congress.

Accordingly, the agencies do not believe that this final rule raises any Federalism issues and no changes to this document are required.

H. Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments)

The agencies have analyzed this action under Executive Order 13175, and believe that this final rule will not have a substantial direct effect on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal law. Therefore, a tribal summary impact statement is not required.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory section listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this section with the Unified Agenda.

List of Subjects in 23 CFR Part 1225

Alcohol and alcoholic beverages, Transportation, Highway safety.

■ In accordance with the foregoing, 23 CFR Part 1225 is revised to read as follows:

PART 1225—OPERATION OF MOTOR VEHICLES BY INTOXICATED PERSONS

Sec.

Authority: 23 U.S.C. 163; sec. 351, Pub. L. 106–346—Appendix, 114 Stat. 1356A–34, 35; delegation of authority at 49 CFR 1.48 and 1.50.

§ 1225.1 Scope.

This part prescribes the requirements necessary to implement 23 U.S.C. 163, which encourages States to enact and enforce 0.08 BAC *per se* laws through the use of incentive grants and Section 351 of Public Law 106–346—Appendix, which requires the withholding of Federal-aid highway funds from any State that has not enacted and is not enforcing a 0.08 BAC *per se* law as described in 23 U.S.C. 163.

§ 1225.2 Purpose.

The purpose of this part is to specify the steps that States must take to qualify for incentive grant funds in accordance with 23 U.S.C. 163; and the steps that States must take to avoid the withholding of funds as required by Section 351 of Public Law 106–346—Appendix.

§ 1225.3 Definitions.

As used in this part:

(a) *Alcohol concentration* means either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

(b) *ALR* means either administrative license revocation or administrative license suspension.

(c) *BAC* means either blood or breath alcohol concentration.

(d) *BAC per se law* means a law that makes it an offense, in and of itself, to operate a motor vehicle with an alcohol concentration at or above a specified level.

(e) *Citations to State law* means citations to all sections of the State's law relied on to demonstrate compliance with 23 U.S.C. 163, including all applicable definitions and provisions of the State's criminal code and, if the State has an ALR law, all applicable provisions of the State's ALR law.

(f) *Has enacted and is enforcing* means the State's law is in effect and the State has begun to implement the law.

(g) *Operating a motor vehicle* means driving or being in actual physical control of a motor vehicle.

(h) *Standard driving while intoxicated offense* means the non-BAC *per se* driving while intoxicated offense in the State.

(i) *State* means any one of the 50 States, the District of Columbia, or Puerto Rico.

§ 1225.4 Adoption of 0.08 BAC per se law.

In order to avoid the withholding of funds as specified in § 1225.8 of this part, and to qualify for an incentive grant under § 1225.5 of this part, a State must demonstrate that it has enacted and is enforcing a law that provides that any person with a blood or breath 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 law must:

(a) Apply to all persons;

(b) Set a BAC of not higher than 0.08 percent as the legal limit;

(c) Make operating a motor vehicle by an individual at or above the legal limit a *per se* offense;

(d) Provide for primary enforcement;

(e) Apply the 0.08 BAC legal limit to the State's criminal code and, if the State has an administrative license suspension or revocation (ALR) law, to its ALR law; and

(f) Be deemed to be or be equivalent to the standard driving while intoxicated offense in the State.

§ 1225.5 General requirements for incentive grant program.

(a) *Certification requirements.* (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 and is enforcing a 0.08 BAC *per se* law that conforms to 23 U.S.C. 163 and § 1225.4 of this part 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 1225.4, (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 1225.4, (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.

(2) To qualify for a subsequent-year grant under 23 U.S.C. 163, a State must submit a certification by an appropriate State official.

(i) If the State's 0.08 BAC *per se* law has not changed since the State last qualified for grant funds under this program, 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 not changed and is enforcing a 0.08 BAC *per se* law, which conforms to 23 U.S.C. 163 and 23 CFR 1225.4, 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 has changed since the State last qualified for grant funds under this program, 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 amended and is enforcing a 0.08 BAC *per se* law that conforms to 23 U.S.C. 163 and 23 CFR 1225.4, (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.

(3) An original and four copies of the certification shall be submitted to the appropriate NHTSA Regional Administrator. Each Regional Administrator will forward the certifications it receives to appropriate NHTSA and FHWA offices.

(4) Each State that submits a certification will be informed by the agencies whether or not it qualifies for funds.

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

(b) Limitation on grants. A State may receive grant funds, subject to the following limitations:

(1) The amount of a grant apportioned to a State under § 1225.4 of this part shall be determined by multiplying:

(i) The amount authorized to carry out section 163 of 23 U.S.C. for the fiscal year; by

(ii) The ratio that the amount of funds apportioned to each such State under section 402 for such fiscal year bears to the total amount of funds apportioned to all such States under section 402 for such fiscal year.

(2) A State may obligate grant funds apportioned under this Part for any project eligible for assistance under title 23 of the United States Code.

(3) The Federal share of the cost of a project funded with grant funds awarded under this part shall be 100 percent.

§ 1225.6 Award procedures for incentive grant program.

(a) In each Federal fiscal year, grant funds will be apportioned to eligible States upon submission and approval of the documentation required by § 1225.5(a) and subject to the limitations in § 1225.5(b). The obligation authority associated with these funds is subject to the limitation on obligation pursuant to section 1102 of the Transportation Equity Act for the 21st Century (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 Transportation for each State that receives an apportionment shall jointly identify, in writing to the appropriate NHTSA Regional Administrator, the amounts of the State's apportionment that will be obligated to highway safety program areas and to Federal-aid highway projects. Each NHTSA Regional Administrator will forward copies of the joint letters to the appropriate NHTSA and FHWA offices.

(c) Apportionments will not be made by the NHTSA and FHWA unless this letter from the State is received.

§ 1225.7 Certification requirements for sanction program.

(a) Beginning with FY 2004, to avoid the withholding of funds, each State shall certify to the Secretary of Transportation, before the last day of the previous fiscal year, that it meets all the requirements of 23 U.S.C. 163 and this part.

(b) The certification shall contain a statement from an appropriate State official that the State has enacted and is enforcing a 0.08 BAC *per se* law that conforms to 23 U.S.C. 163 and 23 CFR part 1225.

(1) 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:

I, (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 the requirements of 23 U.S.C. 163 and 23 CFR 1225.4, (citations to State law).

(2) 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:

I, (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 the requirements of 23 U.S.C. 163 and 23 CFR 1225.4, (citations to State law), and will become effective and be enforced as of (effective date of the law).

(c) An original and four copies of the certification shall be submitted to the appropriate NHTSA Regional Administrator. Each NHTSA Regional Administrator will forward copies of the certifications received to the appropriate NHTSA and FHWA offices.

(d) Once a State has been determined to be in compliance with the requirements of 23 U.S.C. 163 and this part, it is not required to submit additional certifications, except that the State shall promptly submit an amendment or supplement to its certification provided under this section if the State's 0.08 BAC *per se* law changes.

(e) *Certifications submitted in FY 2003.* (1) Any State that submits a certification of compliance under § 1225.5 of this part, in conformance with the requirements of 23 U.S.C. 163, on or before July 15, 2003, will qualify for an incentive grant in FY 2003 and will avoid the withholding of funds in FY 2004. All certifications submitted in conformance with the incentive grant program will meet the certification requirements of the sanction program.

(2) Any State that submits a certification of compliance under this section, in conformance with the requirements of 23 U.S.C. 163, between July 16, 2003 and September 30, 2003, will not qualify for an incentive grant in FY 2003, but will meet the certification requirements of the sanction program, thereby avoiding the withholding of funds in FY 2004.

(f) *Certifications submitted in FY 2004 or thereafter.* Any State that has been in noncompliance with the requirements of 23 U.S.C. 163 and this part, in or after FY 2004, will initially be subject to a withholding of funds in accordance with § 1225.8 of this part. Following the submission of a conforming certification of compliance by such States, all withheld funds will be restored to a States' appropriate apportionment categories in accordance with § 1225.9 of this part.

§ 1225.8 Funds withheld from apportionment.

(a) Beginning in fiscal year 2004, the Secretary shall withhold 2 percent of the amount required to be apportioned for Federal-aid highways to any State under each of paragraphs (1), (3), and (4) of section 104(b) of title 23, United States Code, if a State has not enacted and is not enforcing a law that meets the requirements of 23 U.S.C. 163 and § 1225.4 of this part.

(b) In fiscal year 2005, the Secretary shall withhold 4 percent of the amount required to be apportioned for Federal-aid highways to any State under each of paragraphs (1), (3), and (4) of section 104(b) of title 23, United States Code, if a State has not enacted and is not enforcing a law that meets the requirements of 23 U.S.C. 163 and § 1225.4 of this part.

(c) In fiscal year 2006, the Secretary shall withhold 6 percent of the amount required to be apportioned for Federal-aid highways to any State under each of paragraphs (1), (3), and (4) of section 104(b) of title 23, United States Code, if a State has not enacted and is not enforcing a law that meets the requirements of 23 U.S.C. 163 and § 1225.4 of this part.

(d) In fiscal year 2007, and in each fiscal year thereafter, the Secretary shall withhold 8 percent of the amount required to be apportioned for Federal-aid highways to any State under each of paragraphs (1), (3), and (4) of section 104(b) of title 23, United States Code, if a State has not enacted and is not enforcing a law that meets the requirements of 23 U.S.C. 163 and § 1225.4 of this part.

§ 1225.9 Period of availability of withheld funds.

If a State meets the requirements of 23 U.S.C. 163 and § 1225.4 of this part within 4 years from the date that a State's apportionment is reduced under § 1225.8, the apportionment for such State shall be increased by an amount equal to the reduction, as illustrated by appendix A of this part. The restored apportionment will be available to a State, as quickly as possible, upon a determination by NHTSA that the State is in conformance and notification to the FHWA.

§ 1225.10 Apportionment of withheld funds after compliance.

If a State has not met the requirements of 23 U.S.C. 163 and § 1225.4 of this part by October 1, 2007, the funds withheld under § 1225.8 shall begin to lapse and will no longer be available for apportionment to the State, in accordance with appendix A of this part.

§ 1225.11 Notification of compliance.

(a) Beginning with FY 2004, NHTSA and FHWA will notify States of their compliance or noncompliance with the statutory and regulatory requirements of 23 U.S.C. 163 and this part, based on a review of certifications received. States will be required to submit their certifications on or before September 30, to avoid the withholding of funds in a fiscal year.

(b) This notification of compliance will take place through FHWA's normal certification of apportionments process. If the agencies do not receive a certification from a State, by June 15 of any fiscal year, or if the certification does not conform to the requirements of 23 U.S.C. 163 and this part, the agencies will make an initial determination that the State is not in compliance.

§ 1225.12 Procedures affecting States in noncompliance.

(a) Each fiscal year, each State determined to be in noncompliance with 23 U.S.C. 163 and this part, based on NHTSA and FHWA's preliminary review of its certification, will be advised of the amount of funds expected to be withheld under § 1225.8 from apportionment, as part of the advance notice of apportionments required under 23 U.S.C. 104(e), which is ordinarily issued on July 1 of each fiscal year.

(b) If NHTSA and FHWA determine that any State is not in compliance with 23 U.S.C. 163 and this part, based on the agencies' preliminary review, the State may submit documentation showing why it is in compliance. States will have until September 30 to rebut the initial determination or to come into compliance with 23 U.S.C. and this part. Documentation shall be submitted through NHTSA's Regional Administrators, who will refer the requests to appropriate NHTSA and FHWA offices for review.

(c) Each fiscal year, each State determined not to be in compliance with 23 U.S.C. 163 and this part, based on NHTSA's and FHWA's final determination, will receive notice of the funds being withheld under § 1225.8 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.

Appendix A to Part 1225—Effects of the 0.08 BAC Sanction Program on Non-Complying States

EFFECTS OF THE 0.08 BAC SANCTION PROGRAM ON NON-COMPLYING STATES

Fiscal year	Withhold	Lapse
2004 ...	2%	
2005 ...	4	
2006 ...	6	
2007 ...	8	
2008 ...	8	2% withheld in FY04.
2009 ...	8	4% withheld in FY05.
2010 ...	8	6% withheld in FY06.
2011 ...	8	8% withheld in FY07.
2012 ...	8	8% withheld in FY08.

Issued on: August 18, 2003.

Mary E. Peters,

Administrator, Federal Highway Administration.

Jeffrey W. Runge,

Administrator, National Highway Traffic Safety Administration.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9080]

RIN 1545–BC47

Reduction of Tax Attributes Due to Discharge of Indebtedness; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final and temporary regulations.

SUMMARY: This document contains corrections to final and temporary regulations relating to the reduction of tax attributes under sections 108 and 1017 of the Internal Revenue Code. These temporary regulations affect taxpayers that excluded discharge of under section 108. This document was published in the **Federal Register** on July 18, 2003 (68 FR 42590).

EFFECTIVE DATE: This correction is effective July 18, 2003.

FOR FURTHER INFORMATION CONTACT: Theresa M. Kolish (202) 622–7930 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The proposed regulations that are the subject of these corrections are under