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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 |

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

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

[as of August 15, 2003]

| State | Enactment date | Effective date |
|----------------------|----------------|----------------|
| 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.

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,