

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.