

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.	
1225.1	Scope.
1225.2	Purpose.
1225.3	Definitions.
1225.4	Adoption of 0.08 BAC <i>per se</i> law.
1225.5	General requirements for incentive grant program.
1225.6	Award procedures for incentive grant program.
1225.7	Certification requirements for sanction program.
1225.8	Funds withheld from apportionment.
1225.9	Period of availability of withheld funds.
1225.10	Apportionment of withheld funds after compliance.
1225.11	Notification of compliance.
1225.12	Procedures affecting States in noncompliance.
Appendix A to Part 1225—Effects of the 0.08 BAC Sanction Program on Non-Complying States	

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.