

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Federal Highway Administration

23 CFR Part 1225

[Docket No. NHTSA-2002-13680]

RIN 2127-A144

Operation of Motor Vehicles by Intoxicated Persons

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

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: This document proposes to implement a new 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 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 document solicits comments on a proposed regulation to clarify what States must do to avoid the withholding of funds.

DATES: Comments must be received on or before April 7, 2003.

ADDRESSES: Submit written comments to the Docket Management Facility, DOT, 400 Seventh Street, SW., Room PL-401, Washington, DC 20590.

Alternatively, you may submit your comments electronically by logging onto the Docket Management System (DMS) Web site at <http://dms.dot.gov/submit>. Click on "Help & Information" or "Help/Info" to view instructions for

filing your comments electronically. Regardless of how you submit your comments, you should mention the docket number of this proposed rule.

FOR FURTHER INFORMATION CONTACT: In NHTSA: Ms. Marlene Markison, Office of Injury Control Operations & Resources, NTI-200, telephone (202) 366-2121, fax (202) 366-7394; Ms. Heidi Coleman, Office of Chief Counsel, NCC-113, telephone (202) 366-1834, fax (202) 366-3820; or Ms. Tyler Bolden, Office of Chief Counsel, NCC-113, telephone (202) 366-1834, fax (202) 366-3820.

In FHWA: Mr. Randy Umbs, Office of Safety, HSA-1, telephone (202) 366-2177, fax (202) 366-3222; or Mr. Raymond W. Cuprill, Office of Chief Counsel, HCC-30, telephone (202) 366-0791, fax (202) 366-7499.

SUPPLEMENTARY INFORMATION: The DOT Appropriations Act of FY 2001 was signed into law on October 23, 2000. See Public Law 106-346—Appendix, sec. 351, 114 Stat. 1356A-34, 35. Section 351 of Public Law 106-346—Appendix (Section 351) provides that, beginning in FY 2004, the Secretary of Transportation shall withhold certain Federal-aid highway funds from any State that has not enacted and is not enforcing a 0.08 BAC law as described in 23 U.S.C. 163(a) (Section 163). Section 163 provides that 0.08 BAC laws must specify 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.

Background

The Problem of Impaired Driving

In the year 2000, the number of people who were killed in motor vehicle crashes reached 41,821. Alcohol use was linked to 16,653 of these crashes, an average of 1 alcohol-related fatality every 32 minutes. Although only about 8 percent of all motor vehicle crashes involve the use of alcohol, 40 percent of fatal crashes involve alcohol use.

Injuries caused by motor vehicle crashes are the leading cause of death for people aged 4 to 33. Each year, these injuries 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. Alcohol-related crashes account for roughly 30 percent of these costs—more than \$45 billion each year.

While alcohol-related fatalities have dropped significantly, from 22,084 in 1990 to 16,653 in 2000, a 25 percent decrease in ten years, alcohol involvement is still the single greatest factor in motor vehicle deaths and injuries. The 25 percent decrease in alcohol-related fatalities can be attributed to more effective laws, strong enforcement and highly visible public information and education. Four laws that have been proven effective in the fight against impaired driving are: illegal *per se* laws; administrative license revocation (ALR) laws; "zero tolerance" laws and 0.08 BAC laws. Both individually and collectively, these laws have played a crucial role in reducing the number of alcohol-related fatalities in this country. Indeed, it has been estimated that, if every State adopted a 0.08 BAC law, approximately 590 lives could be saved each year.

Support for 0.08 BAC Laws

As we stated in the final rule for the Section 163 Incentive Grant program (64 FR 35568, July 1, 1999), a number of studies sponsored by NHTSA support a legal limit of 0.08 BAC, copies of which have been placed in the docket. For example, the effect of California's 0.08 law was analyzed in a 1991 NHTSA study entitled "The Effects Following the Implementation of an 0.08 BAC Limit and an Administrative Per Se law in California." The study 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 ALR 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.

Another study, "Lowering State Legal Blood Alcohol Limits to 0.08%: The Effect on Fatal Motor Vehicle Crashes," reported in the September 1996 issue of the "American Journal of Public Health," analyzed the effect of lowering BAC levels to 0.08 in multiple states. The study, conducted by Boston University's School of Public Health,