

Kentucky and the Commonwealth of Puerto Rico enacted 0.08 BAC laws in 2000, these laws did not become effective until October 1, 2000 and January 10, 2001 respectively. Thus, Kentucky and Puerto Rico were not eligible for Section 163 incentive grant funds until FY 2001. Rhode Island also adopted a 0.08 BAC law in 2000, but its 0.08 BAC law does not conform to all of the requirements of Section 163 and Rhode Island is not eligible to receive an incentive grant. See Table 1.

DOT Appropriations Act for FY 2001—Sanction Program

In an effort to further reduce drunk 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 and will continue through FY 2003.

The DOT Appropriations Act of FY 2001 was signed into law on October 23, 2000. Since that date, fifteen additional States (Alaska, Arizona, Arkansas, Connecticut, Georgia, Indiana, Louisiana, Maryland, Mississippi, Missouri, Nebraska, Oklahoma, South Dakota, Tennessee and Wyoming) have enacted conforming 0.08 BAC laws. By October 2002, thirty-three States, the District of Columbia and the Commonwealth of Puerto Rico had established 0.08 BAC laws that met all of the requirements of Section 163. See Table 1.

Although, Louisiana enacted a 0.08 BAC law in June 2001, this 0.08 BAC law will not become effective until September 30, 2003. Thus, Louisiana will not be eligible to receive an incentive grant under the Section 163 program until FY 2003, but it will avoid the withholding of funds in FY 2004. Similarly, Tennessee enacted a 0.08 BAC law in June 2002, however, this law will not become effective until July 1, 2003. Thus, Tennessee will not be eligible to receive an incentive grant under the Section 163 program until FY 2003, but it will avoid the withholding of funds in FY 2004.

TABLE 1.—STATES WITH 0.08 BAC LAWS THAT MEET SECTION 163 CRITERIA (AS OF OCTOBER 2002)

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
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
Mississippi	03/11/02	07/01/02
Missouri	06/12/01	09/29/01
Nebraska	03/01/01	09/01/01
New Hampshire	04/15/93	01/01/94
New Mexico	03/19/93	01/01/94
North Carolina	07/05/93	10/01/93
Oklahoma	06/08/01	07/01/01
Oregon	08/04/83	10/15/83
Puerto Rico	01/10/00	01/10/01
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
Wyoming	03/11/02	07/01/02
Total: 33 States, plus the District of Columbia and Puerto Rico		

Adoption of 0.08 BAC Law

Section 351 provides that the Secretary must withhold from apportionment a portion of Federal-aid highway funds from any State that does not meet the Section 163 requirements. 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.

Any State that does not enact and enforce a conforming 0.08 BAC law will be subject to the withholding of a portion of its Federal-aid highway funds. In accordance with the 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 on that date. 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.

Compliance Criteria

To avoid the withholding from apportionment of Federal-aid highway funds, a State must enact and enforce a 0.08 BAC law that meets the criteria defined in the implementing regulations for the Section 163 incentive grant program. See 64 FR 35568. To conform to the requirements of Section 163, a 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 Alcohol Concentration (BAC) of 0.08 Percent

A State must set a level of no more than 0.08 percent as the legal limit for blood 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 qualify for funds under this program.

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