

establish an illegal 0.08 BAC *per se* level under its ALR law, as well.

#### 6. Standard Driving While Intoxicated Offense

The State's 0.08 BAC *per se* law must be deemed to be or be equivalent to the State's standard driving while intoxicated offense. That is the State's non-BAC *per se* driving while intoxicated offense in the State.

In States with multiple drinking and driving provisions, the final rule for the Section 163 incentive grant program stated that the agencies will consider a number of factors to determine whether the State's 0.08 BAC *per se* law has been deemed to be or is equivalent to the standard driving while intoxicated offense in the State. These factors include the treatment of these offenses, their relation to other offenses in the State and the sanctions and other consequences that result when persons violate these offenses. See 64 FR 35568.

A more detailed discussion of the six elements described above is contained in the interim final rule establishing the criteria for the Section 163 incentive grant program. See 63 FR at 46883–84.

During the agency's administration of the Section 163 incentive grant program, we have considered a number of proposed laws to determine whether a State's proposed 0.08 BAC offense was equivalent to the State's standard driving while intoxicated offense. In some reviews, these proposed laws were determined to be equivalent and in others they were determined not to be equivalent. Two examples are described below.

#### A. Rhode Island

Following our review of Rhode Island's new 0.08 BAC law (enacted in 2000), we concluded that the law did not make driving while intoxicated with a BAC of 0.08 the standard driving while intoxicated offense or equivalent to that offense in the State. Moreover, we determined that the Rhode Island law did not apply the 0.08 BAC legal limit to the State's criminal code.

Previously, Rhode Island's law provided that a person convicted of driving while intoxicated (with a BAC of 0.10 or more) had committed a misdemeanor and was subject to a fine of \$100–\$300, 10 to 60 hours of public community restitution and/or imprisonment for up to one year. Such person was subject also to a driver's license suspension of three to six months.

Rhode Island's new law creates a three-tiered penalty scheme that distinguishes between offenders with BACs of: (1) 0.08–0.09; (2) 0.10–0.14

and (3) 0.15 and above. Under the new law, a person convicted of driving while intoxicated with a BAC of 0.08 or 0.09 may receive the following sanctions: a fine of \$100–\$250; 10–60 hours of public community restitution; a special driving course; and suspension of their driver's license up to 45 days. Moreover, the new law treats a first time violation to the 0.08 offense only as a civil violation.

However, under Rhode Island's new law, a person convicted of driving while intoxicated with a BAC of 0.10–0.14 is subject to a fine of \$100–\$300, 10 to 60 hours of public community restitution and/or imprisonment for up to one year, and suspension of their driver's license for 3 to 6 months. Likewise, persons convicted of driving while intoxicated with a BAC level of 0.15 or more, would receive increased penalties of a fine of \$500, 20–60 hours of public community restitution, imprisonment up to one year, and suspension of their driver's license for 3–6 months. Thus, the agency concluded that Rhode Island's new law subjected 0.08 offenders to less severe sanctions than those imposed on 0.10 offenders; and contained sanctions that were permissive, and not mandatory, as required by Section 163 and the agency's implementing regulations. In addition, violations to the 0.08 offense were only civil offenses and violations to the 0.10 offense were criminal. Accordingly, the agency determined that Rhode Island's law did not make driving while intoxicated with a BAC of 0.08 the standard driving while intoxicated offense or an equivalent offense.

#### B. Alaska

Following our review of Alaska's new law (enacted in 2001), the agency concluded that the 0.08 law was equivalent to the standard driving while intoxicated offense in the State.

Previously, Alaska's law provided that a person committed the crime of driving while intoxicated if the person operated or drove a motor vehicle while they were under the influence of intoxicating liquor or if a chemical test revealed a BAC of 0.10 or more (within four hours after the alleged offense). This offense was a Class A misdemeanor and was subject to at least 72 hours of imprisonment and a fine of not less than \$250.

Under Alaska's new law, people commit the crime of driving while intoxicated if they operate or drive a motor vehicle while they are under the influence of intoxicating liquor or if a chemical test reveals a BAC of 0.08 or more (within four hours after the alleged offense). This offense is a Class A

misdemeanor and is subject to not less than 72 hours of imprisonment and a fine of not less than \$250.

In summary, Alaska's new 0.08 law retained the same penalties as those previously imposed on the State's 0.10 law. Indeed, the new law merely changed the State's legal limit from 0.10 to 0.08 BAC. Accordingly, the agency concluded that Alaska's new 0.08 BAC offense was equivalent to the standard driving while intoxicated offense in the State.

#### Demonstrating Compliance

##### A. Sanction Program

Section 351 provides that funds will be withheld from apportionment from noncomplying States beginning in FY 2004. To avoid the withholding, each State would be required by this proposed regulation to submit a certification. Under the agencies' proposal, States would be required to submit their certifications on or before September 30, 2003, to avoid the withholding from apportionment of FY 2004 funds on October 1, 2003. The agencies propose to permit (and strongly encourage) States to submit certifications in advance.

States that are found in noncompliance with these requirements in any fiscal year would be required to submit a certification to avoid the withholding of funds from apportionment in the following fiscal year. To avoid the withholding in that fiscal year, these States would be required to submit a certification demonstrating compliance before the last day (September 30) of the previous fiscal year.

Certifications submitted under this part would provide agencies with the basis for finding States in compliance with the Section 351 requirements. The agencies are proposing that the certification must consist of: (1) A statement from 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 23 CFR Part 1225; and (2) citations to the State's conforming 0.08 BAC *per se* law, including all applicable definitions and provisions of the State's criminal code and, if the State has an ALR law, all applicable provisions of that law, as well.

Once a State is determined by the agencies to be in compliance with the requirements of Section 163, the agencies propose that the State would not be required to submit certifications in subsequent fiscal years, unless the State's law had changed. This proposal specifies that it would be the