

TABLE 2.—EFFECTS OF THE 0.08 BAC SANCTION PROGRAM ON NON-COMPLYING STATES

Fiscal year	Withhold (percent)	Lapse
2004	2	
2005	4	
2006	6	
2007	8	
2008	8	2% withheld in FY04.
2009	8	4% withheld in FY05.
2010	8	6% withheld in FY06.
2011	8	8% withheld in FY07.
2012	8	8% withheld in FY08.

Comments

Interested persons are invited to comment on this notice of proposed rulemaking. It is requested, but not required, that two copies be submitted. All comments must be limited to 15 pages in length. Necessary attachments may be appended to those submissions without regard to the 15 page limit. See 49 CFR 553.21. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

You may submit your comments by one of the following methods:

(1) By mail to: Docket Management Facility, Docket No. NHTSA-01-XXXX, DOT, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590;

(2) By hand delivery to: Room PL-401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday;

(3) By fax to the Docket Management Facility at (202) 493-2251; or

(4) By electronic submission: log onto the DMS website at <http://dms.dot.gov> and click on "Help and Information" or "Help/Info" to obtain instructions.

All comments received before the close of business on the comment closing date will be considered and will be available for examination in the docket at the above address before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date. The agencies will continue to file relevant material in the docket as it becomes available after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

You may review submitted comments in person at the Docket Management Facility located at Room PL-401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday

through Friday. You may also review submitted comments on the Internet by taking the following steps:

(1) Go to the DMS web page at <http://dms.dot.gov/search/>.

(2) On that page, click on "search".

(3) On the next page (<http://dms.dot.gov/search/>) type in the four digit docket number shown at the beginning of this notice. Click on "search".

(4) On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may also download the comments. Although the comments are imaged documents, instead of word processing documents, the "pdf" versions of the documents are word searchable.

Those persons who wish to be notified upon receipt of their comments in the docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Regulatory Analyses and Notices

Executive Order 12988 (Civil Justice Reform)

This proposed rule would 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.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order.

The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations or recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The agency has considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures and determined that it is "significant" because it involves the withholding of Federal-aid highway funds to any State that has not enacted and is not enforcing a 0.08 BAC law by FY 2004, a matter of substantial interest to the public and to Congress. Further, there is a possibility that the State withholdings resulting from this proposed rule could total from \$100 million to \$400 million. See NHTSA, Preliminary Regulatory Evaluation, 0.08 Sanction Program 20. Thus, this rulemaking could be economically significant under Executive Order 12866, *i.e.*, have an annual effect on the economy of \$100 million or more. Accordingly, a preliminary regulatory evaluation has been prepared to review costs and benefits imposed on States to enact a 0.08 BAC law. The preliminary regulatory evaluation has been placed in the docket for this proposed rule.

The preamble to this rulemaking indicates that the adoption of 0.08 BAC laws could save 590 lives each year. This "benefit" is based upon a research study published in 1999 that measured the effects of 0.08 BAC laws by reviewing the fatality numbers in States with conforming 0.08 BAC laws at the time this study was conducted (15 States). This study concluded that 0.08 BAC laws might reduce alcohol-related fatalities by approximately 8 percent.

The preliminary regulatory evaluation uses a slightly different measure to determine the "benefit" of adoption of 0.08 BAC laws. As explained in more detail below, the "benefit" was determined in the preliminary regulatory evaluation by measuring the fatality numbers for the States that had not enacted conforming 0.08 BAC laws before the creation of the 0.08 sanction program in October 2000 (32 States), using an estimate that 0.08 BAC laws might reduce alcohol-related fatalities by 7 percent. This estimate was derived from a recent Center for Disease Control (CDC)-sponsored independent task force study, which calculated 7 percent as the median effectiveness percentage for 0.08 BAC laws. Using these measures, the preliminary regulatory evaluation concludes that 616 lives (are being/ could be) saved each year by the adoption of 0.08 BAC laws. See Preliminary Regulatory Evaluation, *supra*, at 1.

A. Benefits

The preliminary regulatory evaluation concludes that changing the level of