

0.08 BAC SANCTION

- In October 2000, as part of the FY 2001 DOT Appropriations Act, Congress passed, and the President signed into law, a provision making .08 BAC the national standard for impaired driving. States that do not adopt .08 BAC laws by FY 2004 would have certain highway construction funds withheld. A joint NHTSA/FHWA regulation must be published to implement this sanction.
- **CRITERIA:** The Act requires that each state must have a law in effect that complies with the criteria established under Section 163 (Incentive Grant Program for 0.08 BAC), of title 23 of the U.S. Code. Each state must enact and enforce a law that provides that any person with a blood alcohol concentration of 0.08 percent or greater while operating a motor vehicle in the state shall be deemed to have committed the per se offense of driving while intoxicated or an equivalent per se offense.
- According to the regulations that implement Section 163, a complying law must:
 1. Apply to all persons;
 2. Set a blood alcohol concentration of not higher than 0.08 percent as the legal limit;
 3. Make operation of a motor vehicle by an individual at or above the legal limit a per se offense;
 4. Provide for primary enforcement;
 5. Apply the 0.08 BAC legal limit to the state's criminal code and, if the state has an administrative license revocation (ALR) law, to its ALR law; and
 6. Be deemed to be or be equivalent to the standard driving while intoxicated offense in the state.
- **SANCTIONS:** States that do not adopt .08 BAC laws by FY 2004 would have 2% of certain highway construction funds withheld. The penalty increases, by 2% each year, to 8% in FY 2007 and thereafter. States adopting the standard by FY 2007 would have any withheld funds returned.

| Fiscal Year | WITHHOLD | LAPSE |
|-------------|-----------|----------------------------|
| 2004 | 2% | |
| 2005 | 4% | |
| 2006 | 6% | |
| 2007 | 8% | |
| 2008 | 8% | <i>2% withheld in FY04</i> |
| 2009 | 8% | <i>4% withheld in FY05</i> |
| 2010 | 8% | <i>6% withheld in FY06</i> |
| 2011 | 8% | <i>8% withheld in FY07</i> |

| | | |
|------|----|---------------------|
| 2012 | 8% | 8% withheld in FY08 |
|------|----|---------------------|

- To avoid sanction for FY 2004, a state must have a .08 law in effect by October 1, 2003.
- To recover all funds **withheld** in FY 2004(2%), 05 (4%), 06 (6%), & 07 (8%), **the state must have a .08 law in effect by Oct. 1, 2007.**
- Beginning on October 1, 2007 (FY 2008), a state without an .08 law would have funds **lapse** ("lost") each year. A state has 4 years after funds are withheld to get a .08 law in effect and get the withheld funds back; after 4 years the funds **lapse**.
- Keep in mind that in FY 2008, a state without an .08 law has two things going on at the same time - the 8% is being withheld (not accessible for projects) and the 2% that was withheld in FY 2004 is actually being lost, and would not be recoverable. So as a state goes beyond FY 2008, more funds are subject of the withholding and lapsing.