§ 1225.4 Adoption of 0.08 BAC per se law.

In order to avoid the withholding of funds as specified in §1225.8 of this part, and to qualify for an incentive grant under §1225.5 of this part, a State must demonstrate that it has enacted and is enforcing a law that provides that any person with a blood or breath 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. The law must:

(a) Apply to all persons;

(b) Set a BAC of not higher than 0.08 percent as the legal limit;

(c) Make operating a motor vehicle by an individual at or above the legal limit a per se offense;

(d) Provide for primary enforcement;

(e) Apply the 0.08 BAC legal limit to the State’s criminal code and, if the State has an administrative license suspension or revocation (ALR) law, to its ALR law; and

(f) Be deemed to be or be equivalent to the standard driving while intoxicated offense in the State.

§ 1225.5 General requirements for incentive grant program.

(a) Certification requirements. (1) To qualify for a first-year grant under 23 U.S.C. 163, a State must submit a certification by 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 §1225.4 of this part and that the funds will be used for eligible projects and programs.

(i) If the State’s 0.08 BAC per se law is currently in effect and is being enforced, the certification shall be worded as follows:

(Name of certifying official), (position title), of the (State or Commonwealth) of _______ has enacted and is enforcing a 0.08 BAC per se law that conforms to 23 U.S.C. 163 and 23 CFR 1225.4, (citations to State law), and that the funds received by the (State or Commonwealth) of _______ under 23 U.S.C. 163 will be used for projects eligible for assistance under title 23 of the United States Code, which include highway construction as well as highway safety projects and programs.

(ii) If the State’s 0.08 BAC per se law is not currently in effect, but will become effective and be enforced before the end of the current fiscal year, the certification shall be worded as follows:

(Name of certifying official), (position title), of the (State or Commonwealth) of _______ do hereby certify that the (State or Commonwealth) of _______ has enacted a 0.08 BAC per se law, which conforms to 23 U.S.C. 163 and 23 CFR 1225.4, (citations to State law), and that the funds received by the (State or Commonwealth) of _______ under 23 U.S.C. 163 will be used for projects eligible for assistance under title 23 of the United States Code, which include highway construction as well as highway safety projects and programs.

(2) To qualify for a subsequent-year grant under 23 U.S.C. 163, a State must submit a certification by an appropriate State official.

(i) If the State’s 0.08 BAC per se law has not changed since the State last qualified for grant funds under this program, the certification shall be worded as follows:

(Name of certifying official), (position title), of the (State or Commonwealth) of _______ do hereby certify that the (State or Commonwealth) of _______ has not changed and is enforcing a 0.08 BAC per se law, which conforms to 23 U.S.C. 163 and 23 CFR 1225.4, and that the funds received by the (State or Commonwealth) of _______ under 23 U.S.C. 163 will be used for projects eligible for assistance under title 23 of the United States Code, which include highway construction as