that was published in the **Federal Register** on July 23, 1998 (63 FR 39497), Airspace Docket No. 98–AGL–32. The final rule modified Class E Airspace at Prairie Du Chien, WI.

EFFECTIVE DATE: 0901 UTC, October 08, 1998.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018, telephone: (847) 294–7477.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 98–19582, Airspace Docket No. 98–AGL–32, published on July 23, 1998 (63 FR 39497) rule modified Class E Airspace at Prairie Du Chien, WI. One error was discovered in the legal description for the Class E airspace for Prairie Du Chien, WI. This action corrects that error.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the legal description for the Class E airspace Prairie Du Chien, WI, as published in the **Federal Register** July 23, 1998 (63 FR 39497), (FR Doc. 98–19582), is corrected as follows:

PART 71—[CORRECTED]

§ 71.1 [Corrected]

AGL WI E5 Prairie Du Chien, WI [Corrected]

On page 39498, Column 1, in the Class E airspace designation for Prairie Du Chien, WI, incorporated by reference in Sec. 71.1, change the coordinates for the Waukon VORTAC to ''(lat. 43°16′48″N, long. 91°32′15″W)''.

Issued in Des Plaines, IL on August 21, 1998.

David B. Johnson,

Acting Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 98–23775 Filed 9–2–98; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–40018A; IC–23200A; File No. S7–25–97]

RIN 3235–AH20

Amendments to Rules on Shareholder Proposals; Corrections

AGENCY: Securities and Exchange Commission.

ACTION: Correction to final rules.

SUMMARY: This document contains corrections to the final regulations which were published on May 28, 1998 [63 FR 29106] relating to amendments to rules on shareholder proposals.

EFFECTIVE DATES: September 3, 1998.

FOR FURTHER INFORMATION CONTACT: Sanjay M. Shirodkar, Division of Corporation Finance, at (202) 942–2900, or Doretha M. VanSlyke, Division of Investment Management, at (202) 942–0721, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission adopted amendments to rules on Shareholder Proposals on May 21, 1998. As published, the rules contain an error with respect to a cross-reference. In this release, this error is being corrected. Accordingly, the publications on May 28, 1998 of the final regulations, which were the subject of FR Doc. 98–14121, is corrected as follows:

On page 29119, in the first column, beginning in the third line, the reference to ''§ 240.14a–8(d)(Question 4)'' is revised to read ''§ 240.14a–8(e)(Question 5)''.

Dated: August 27, 1998.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–23768 Filed 9–2–98; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Federal Highway Administration

23 CFR Part 1225

[Docket No. NHTSA–98–4394]

RIN 2127–AH39

Operation of Motor Vehicles by Intoxicated Persons

AGENCY: National Highway Traffic Safety Administration (NHTSA) and Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Interim final rule; request for comments.

SUMMARY: This interim final rule implements a new program established by the Transportation Equity Act for the 21st Century (TEA 21), under which States can qualify for incentive grant funds if they 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 a *per se* offense of driving while intoxicated or an equivalent *per se* offense. This interim final rule solicits public comments.

DATES: This interim final rule becomes effective on September 3, 1998. Comments must be received by October 19, 1998.

ADDRESSES: Written comments should refer to the docket number of this notice and be submitted (preferably two copies) to: Docket Management, Room PL–401, National Highway Traffic Safety Administration, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590. (Docket hours are Monday-Friday, 10 a.m. to 5 p.m., excluding Federal holidays.)

FOR FURTHER INFORMATION CONTACT: In NHTSA: Ms. Marlene Markison, Office of State and Community Services, NSC–01, telephone (202) 366–2121; or Ms. Heidi L. Coleman, Office of Chief Counsel, NCC–30, telephone (202) 366–1834.

In FHWA: Byron Dover, Office of Highway Safety, HHS–10, telephone (202) 366–2161; or Mr. Raymond W. Cuprill, HCC–20, telephone (202) 366–0834.

SUPPLEMENTARY INFORMATION: The Transportation Equity Act for the 21st Century (TEA 21), Pub. L. 105–178, was signed into law on June 9, 1998. Section 1404 of the Act established a new incentive grant program under Section 163 of Title 23, United States Code (Section 163). Under this new program, States may qualify for incentive grant funds by enacting and enforcing laws that provide that ''any person with a blood 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).''

This new program was put into place to address the issue of impaired driving, which continues to be a serious national problem with tragic consequences. The agencies believe that 0.08 BAC laws will have a significant impact on reducing this problem.

Background

The Problem of Impaired Driving

Injuries caused by motor vehicle traffic crashes are a major health care problem in America and are the leading cause of death for people aged 6 to 27. Each year, the injuries caused by traffic crashes in the United States claim approximately 42,000 lives and cost

Americans an estimated $150 billion, including $19 billion in medical and emergency expenses, $42 billion in lost productivity, $52 billion in property damage, and $37 billion in other crash related costs.

In 1996, alcohol was involved in approximately 41 percent of fatal traffic crashes. Every 30 minutes, someone in this country dies in an alcohol-related crash. In 1994, alcohol-involved crashes resulted in $45 billion in economic costs, accounting for 30 percent of all crash costs. Impaired driving is the most frequently committed violent crime in America.

Impaired Driving Laws

States have enacted a number of different types of laws in their efforts to fight the battle against impaired driving. For example, forty-eight States and the District of Columbia have enacted ''illegal *per se*'' laws. Two States and Puerto Rico have not. An illegal *per se* law makes it illegal, in and of itself, to drive with an alcohol concentration measured at or above the established legal limit.

In 32 of the States with illegal *per se* laws and in the District of Columbia, the legal limit is 0.10 percent blood alcohol concentration (BAC). Sixteen States have enacted laws that establish 0.08 BAC as the legal limit. (Fifteen of these laws are currently in effect. One is due to become effective on January 1, 1999.)

The Effectiveness of 0.08 BAC Laws

A number of studies have been conducted to determine the effectiveness of 0.08 BAC laws.

The effect of California's 0.08 law was analyzed, for example, in a 1991 NHTSA study. The agency found that 81 percent of the driving population knew that the BAC limit had become stricter (as the result of a successful public education effort). The State experienced a 12 percent reduction in alcohol-related fatalities, although some of the reduction may have resulted from a new administrative license revocation law that was enacted during the same year that the BAC standard was lowered. The State also experienced an increase in the number of impaired driving arrests.

A multi-state analysis of the effect of lowering BAC levels to 0.08 was conducted by Boston University's School of Public Health. The results of that study were reported in the September 1996 issue of the American Journal of Public Health, a peer-reviewed journal. The Boston University study compared the first five states to lower their BAC limit to 0.08 (California, Maine, Oregon, Utah and Vermont) with five nearby states that retained the 0.10 BAC limit. The results of this study suggest that 0.08 BAC laws, particularly in combination with administrative license revocation, reduce the proportion of fatal crashes involving drivers and fatally injured drivers at blood alcohol levels of 0.08 percent and higher by 16 percent and those at a BAC of 0.15 percent and greater by 18 percent.

The immediate significance of these findings is that, the 0.08 BAC laws, particularly in combination with administrative license revocation, not only reduced the overall incidence of alcohol fatalities, but they also reduced fatalities at the *higher* BAC levels. The effect on the number of extremely impaired drivers was even greater than the overall effect.

The study concluded that if all States lowered their BAC limits to 0.08, alcohol-related highway deaths would decrease nationwide by 500–600 per year, which would result in an economic cost savings of approximately $1.5 billion.

In a 1995 NHTSA analysis of the same five States studied by Boston University, the agency examined six different measures of driver alcohol involvement in fatal crashes and compared the time period before the 0.08 law was passed with the time period after passage of the law for each State. A total of thirty comparisons of the level of driver alcohol involvement were made. Nine of the thirty comparisons (in four of the five States) showed statistically significant decreases. An additional 16 comparisons, while not statistically significant, also showed decreases. None of the comparisons for the rest of the nation (States at 0.10 BAC) showed changes that were statistically significant.

Other studies published on the effects of enacting 0.08 BAC laws, which use various different measures, have all shown significant decreases in alcohol-related fatalities. NHTSA surveys all show that most people would not drive after consuming two or three drinks in an hour (the amount of alcohol an average 120-pound woman would have to drink on an empty stomach to reach 0.08 BAC; an average 170-pound man would have to consume 4–5 drinks in an hour on an empty stomach to reach that BAC level). In addition, three recent scientific telephone polls indicate that two out of every three Americans think the BAC standard should be lowered to 0.08.

Presidential Support for a National Standard at 0.08 BAC

President Clinton strongly supports the enactment of 0.08 BAC laws by the States. In fact, on March 3, 1998, the President addressed the Nation about his interest in promoting a national illegal *per se* limit of 0.08 BAC across the country, including on Federal property. During his address, the President called on Congress to pass impaired driving legislation that would establish a national 0.08 BAC *per se* standard.

On March 4, 1998, the United States Senate passed ''The Safe and Sober Streets Act of 1997,'' which had been introduced by Senator Frank Lautenberg (D–NJ) and Senator Mike DeWine (R–OH). Similar legislation was introduced in the U.S. House of Representatives by Rep. Nita Lowey (D–NY).

The Safe and Sober Streets Act would have required the withholding of certain Federal-aid highway funds from States that do not enact and enforce 0.08 BAC *per se* laws. To avoid the withholding of funds, States would have been required to enact and enforce 0.08 BAC *per se* laws by October 1, 2001. This legislation, however, was not enacted into law.

Instead, Congress passed an incentive grant program to encourage State enactment of 0.08 BAC laws. This program was included in TEA 21 (H.R. 2400). On June 9, 1998, President Clinton signed the legislation and remarked, in his signing statement:

> Today I am pleased to sign into law H.R. 2400, the ''Transportation Equity Act for the 21st Century.'' This comprehensive infrastructure measure for our surface transportation programs—highway, highway safety, and transit—retains the core programs and builds on the initiatives established in the landmark Intermodal Surface Transportation Efficiency Act of 1991.
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> I am deeply disappointed, however, that H.R. 2400 fails to include language that would help to establish 0.08 percent [BAC] as the standard for drunk driving in each of the 50 States. The experience of States that have adopted the 0.08 blood alcohol level shows that this stringent measure against drunk driving has the potential, when applied nationwide, to save hundreds of lives each year. Applying 0.08 nationwide is an important cornerstone of our safety efforts. My Administration will continue to fight for it. In the meantime, H.R. 2400 does establish a new $500 million incentive program encouraging the States to adopt tough 0.08 BAC laws.

Adoption of 0.08 BAC Law

Section 163 specifically provides that the Secretary of Transportation shall make a grant to any State that has enacted and is enforcing 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 a *per se* offense of driving while intoxicated or an equivalent *per se* offense.

Consistent with other grant programs that are administered by the agencies, a State's law must have been both passed and made effective to permit a State to qualify for funding based on that law. In addition, the State must have begun to implement the law.

Compliance Criteria

To qualify for funding under this program, Section 163 provides that a 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 a *per se* offense of driving while intoxicated or an equivalent *per se* offense.

Section 163 does not define any of these terms, and it does not contain many details about what conforming State laws must provide. For example, it does not specify the penalties that must be imposed on offenders who violate 0.08 BAC *per se* laws. Since Section 163 does not prescribe the penalties that must be imposed on offenders who violate 0.08 BAC laws, the agencies have not specified any minimum penalties in the implementing regulation.

The agencies believe that, while Congress intended to encourage all States to enact and enforce effective 0.08 BAC laws, it also intended to provide States with sufficient flexibility to develop laws that suit their particular conditions. Accordingly, the agencies' implementing regulation prescribes only a limited number of basic elements that State laws must meet to qualify for these incentive grant funds.

This interim final rule defines those basic elements. The elements are described below:

1. Any Person

To qualify for funds under this program, 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

To qualify for funds under this program, 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. If a State were to enact a law that set a lower percentage (such as 0.07 percent) as the legal limit, such a law would also conform to the Federal requirement, since all persons with a BAC of 0.08 or greater would be covered.

3. *Per Se* Law

To qualify for funds under this program, 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 driving with a BAC of 0.08 percent or above, in and of itself, an offense.

The agencies are aware of two States (Massachusetts and South Carolina) that have laws that make it unlawful for a person to drive while under the influence of alcohol, but do not establish a BAC limit at or above which it is illegal *per se* to drive. These laws provide that a BAC of 0.08 percent or above creates an ''inference'' or a ''permissible inference'' that the person committed the offense. However, since these laws do not make the operation of a motor vehicle with a BAC of 0.08 a ''*per se*'' offense, they do not conform to the Federal requirement.

In addition, some States have ''*per se*'' laws at the 0.10 BAC level, and provide that a lower BAC level, such as 0.08 or even lower, creates a presumption or can be used as *prima facie* evidence of a violation of an impaired driving offense. Again, since these States do not have laws that make the operation of a motor vehicle with a BAC of 0.08 a ''*per se*'' offense, they do not conform to the Federal requirement.

4. Primary Enforcement

To qualify for funds under this program, 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

To qualify for funds under this program, 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 establish an illegal 0.08 BAC *per se* level under its *ALR law,* as well.

For example, if a State were to include a 0.08 BAC *per se* provision in its ALR law, but retained a higher BAC (such as 0.10) or a *prima facie* (as opposed to a *per se*) provision in its criminal code, the State would not qualify for funding under this program. If a State were to include a conforming 0.08 BAC *per se* provision in its criminal code, and the State did not have an ALR law, the State could qualify for Federal funding.

6. Standard Driving While Intoxicated Offense

To qualify for funds under this program, the State's 0.08 BAC *per se* law must be deemed to be or equivalent to the State's *standard driving while intoxicated offense.* As explained above, 48 States and the District of Columbia have ''illegal *per se*'' laws, under which it is unlawful, in and of itself, for a person to operate a motor vehicle with a BAC at or above a specified level. All 50 States, plus the District of Columbia and Puerto Rico (each of the jurisdictions that are considered States and therefore are potentially eligible for funding under the Section 163 program) have non-BAC *per se* offenses, under which it is unlawful for a person to operate a motor vehicle while intoxicated. This non-BAC *per se* offense is the standard driving while intoxicated offense in each State.

The agencies recognize that some States do not use the term ''intoxicated'' or ''driving while intoxicated'' in their laws. Some States use other terms, such as ''driving under the influence of alcohol'' to describe this offense. Section 163 does not require that a single term be used. It requires only that operating a motor vehicle with a BAC of 0.08 be deemed to be a *per se* offense and (regardless of the nomenclature used) that it be deemed to be or equivalent to the ''standard'' driving while intoxicated offense in the State.

Most States provide for a single driving while intoxicated offense, but some States have established more than one offense that relates to impaired or intoxicated driving. The most serious offense generally will be the State's ''standard'' driving while intoxicated offense (although it might be called by another name, such as ''driving under the influence''). The State may have a less-serious offense, which generally will be a ''lesser-included'' offense of the standard driving while intoxicated offense. (This ''less-serious'' offense is often referred to as ''driving while impaired.'')

The State of New York, for example, has established a two-tiered system. ''Driving while intoxicated'' is the ''standard'' offense in New York. Persons violate the offense by operating

a vehicle at a BAC of 0.10. They also violate the offense through a non-BAC *per se* provision, by operating a vehicle ''while in an intoxicated condition.'' A person's BAC level is just one piece of evidence that would be used to prove a violation under this provision.

''Driving while ability impaired'' is the ''less-serious'' offense in New York. ''Driving while ability impaired'' is not a BAC *per se* offense in New York. Persons violate that offense by operating a vehicle ''while the person's ability to operate such motor vehicle is impaired by the consumption of alcohol.'' Evidence that a person registered a BAC of more than 0.05 but not more than 0.07 is considered relevant evidence, but is not given *prima facie* effect, in determining whether the person's ability to operate a motor vehicle was impaired. Evidence that a person registered a BAC of more than 0.07 but less than 0.10 is considered *prima facie* evidence that the person's ability to operate a motor vehicle was impaired. Operating at these BAC levels, however, is not a *per se* offense.

Under the agencies' regulation, New York does not presently qualify for Section 163 funding based on its ''driving while intoxicated'' law, because a person does not violate the law unless their BAC is 0.10 or greater. The State's ''driving while ability impaired'' law does not enable the State to qualify for two reasons. First, it is not a *per se* law, and second, it is not the ''standard'' driving while intoxicated offense in the State. To qualify for Section 163 funding, the State would be required to amend its ''driving while intoxicated'' law to cover persons operating a motor vehicle with a BAC of 0.08.

The ''standard'' driving while intoxicated offense, however, will not necessarily be the most serious drinking and driving offense in the State. The agencies recognize, for example, that some States have enacted additional illegal *per se* offenses that apply additional or enhanced sanctions to offenders with ''high BAC's'' (in excess of 0.10, such as at 0.17 or 0.20). In fact, NHTSA's Section 410 program (23 U.S.C. Section 410, as amended by TEA 21), encourages States to enact such laws. These ''high BAC'' laws will not be considered the ''standard'' driving while intoxicated offense of a State for the purpose of the Section 163 program.

In States with multiple drinking and driving provisions, the agency 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 will 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.

Terms Governing the Incentive Grant Funds

A total of $500 million has been authorized for the section 163 program over a period of six years, beginning in FY 1998. Specifically, TEA 21 authorized $55 million for fiscal year 1998, $65 million for FY 99, $80 million for FY 2000, $90 million for FY 2001, $100 million for FY 2002 and $110 million for FY 2003.

Available funds will be apportioned in each fiscal year to the States that qualify for grants, according to the section 402 formula, which is apportioned 75 percent based on the State's population and 25 percent based on the number of public road miles in the State.

Funds received by States under the section 163 program may be used for any project eligible for assistance under Title 23 of the United States Code, which includes highway construction as well as highway safety projects or programs. Since States will be receiving section 163 funds on the basis on their 0.08 BAC *per se* laws, a highway safety initiative, the agencies strongly encourage the States to consider eligible highway safety projects and programs when they are deciding how they will spend these funds.

Since section 163 provides that the Federal share of the cost of a project funded under this program shall be 100 percent, there is no State matching requirement for these funds. In addition, the funds authorized by section 163 shall remain available until expended.

Demonstrating Compliance

Section 163 provides that grants will be awarded to complying States beginning in fiscal year 1998. To demonstrate compliance with the provisions of both the statutory and regulatory requirements, each State must submit a certification in each year that it wishes to receive a grant.

To receive its first grant under this program, 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 § 1225.5 of this Part and that the funds received by the State under this program 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.

To receive subsequent-year grants under this program, a State must submit a certification by an appropriate State official, stating either that the State has amended or has not changed its 0.08 BAC *per se* law and that the State is enforcing the law. The certification must also state that the funds received by the State under this program 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.

First and subsequent-year certifications must include citations to the State's conforming 0.08 BAC *per se* law. These citations must include all applicable provisions of the State's criminal code and, if the State has an ALR law, all applicable provisions of that law, as well.

To be eligible for grant funds in FY 1998, States must submit their certifications no later than September 4, 1998.

To be eligible for grant funds in a subsequent fiscal year, States must submit their certifications no later than July 1 of that fiscal year. For example, to be eligible for grant funds in FY 1999, States must submit their certifications no later than July 1, 1999.

The agencies strongly encourage States to submit their certifications in advance of the regulatory deadlines. The agencies also strongly encourage States that are considering 0.08 BAC *per se* legislation to request preliminary reviews of such legislation from the agencies while the legislation is still pending. The agencies would determine in these preliminary reviews whether the legislation, if enacted, would conform to the new Federal requirements, thereby avoiding a situation in which a State unintentionally enacts non-conforming 0.08 BAC legislation and then is unable to qualify for grant funds. Requests should be submitted through NHTSA's Regional Administrators, who will refer the requests to appropriate NHTSA and FHWA offices for review.

Interim Final Rule

This document is published as an interim final rule. Accordingly, the new regulations in Part 1225 are fully in effect upon the date of the document's publication. No further regulatory action by the agencies is necessary to make these regulations effective.

These regulations have been published as an interim final rule because insufficient time was available to provide for prior notice and opportunity for comment. TEA 21 was signed into law on June 9, 1998. The Act

authorizes that grant funds be apportioned and obligated, beginning in fiscal year 1998, which ends on September 30, 1998. To ensure the award in FY 98 of these grant funds to eligible States, a number of steps must be taken in a period of less than 90 days. The agencies had to promulgate and make effective regulations, States must apply for the funds, the agencies must process those applications and apportion the incentive grant funds and the States must obligate the funds. These circumstances make it necessary to implement the statutory requirements by an interim final rule, rather than by the slower process of notice and comment rulemaking.

In the agencies' view, the States will not be impeded by the use of an interim final rule. The procedures that States must follow to apply for grant funds under this new program are similar to procedures that States have followed in other grant programs administered by NHTSA and/or the FHWA. These procedures were established by rulemaking and were subject to prior notice and the opportunity for comment.

Moreover, the criteria that States must meet to qualify for these funds are derived from the Federal statute and are similar to the criteria that the agencies established in their rulemaking action that implemented 23 U.S.C. Section 161, which established the zero tolerance requirement, under which persons under the age of 21 who operate a vehicle at a BAC of 0.02 or greater are deemed to be driving while intoxicated. The agencies' zero tolerance regulations were subject to prior notice and the opportunity for comment.

For these reasons, the agencies believe that there is good cause for finding that providing notice and comment in connection with this rulemaking action is impracticable, unnecessary, and contrary to the public interest. The agencies also find, for these reasons, that notice and an opportunity for comment are not required under the Department's regulatory policies and procedures and that this rule can be made effective upon publication, pursuant to 5 U.S.C. 808 (P.L. 104–121) (the Congressional review provisions of the Small Business Regulatory Enforcement Fairness Act).

The agencies request written comments on these new regulations. All comments submitted in response to this document will be considered by the agencies. Following the close of the comment period, the agencies will publish a document in the **Federal Register** responding to the comments and, if appropriate, will make revisions to the provisions of Part 1225.

Written Comments

Interested persons are invited to comment on this interim final rule. 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. (49 CFR 553.21.) This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

Written comments to the public docket must be received by November 2, 1998. To expedite the submission of comments, simultaneous with the issuance of this notice, NHTSA and FHWA will mail copies to all Governors' Representatives for Highway Safety and State Departments of Transportation.

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.

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.

Copies of all comments will be placed in Docket 98–4394 in Docket Management, Room PL–401, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590.

Regulatory Analyses and Notices

Executive Order 12778 (Civil Justice Reform)

This interim final rule will not have any preemptive or retroactive effect. The enabling legislation does not establish a procedure for judicial review of final rules promulgated under its provisions. There is no requirement that individuals submit a petition for reconsideration or other administrative proceedings before they may file suit in court.

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

The agencies have determined that this action is a significant regulatory action within the meaning of Executive Order 12866 and is significant within the meaning of Department of Transportation Regulatory Policies and Procedures. This determination is based on a finding that the rule is likely to have an annual effect on the economy of $100 million or more in FY's 2002 and 2003. A sum of $100 million is authorized for this program in FY 2002 and $110 million is authorized in FY 2003. It is likely that these sums will be awarded to qualifying States under the section 163 program in those fiscal years. Accordingly, an economic assessment has been prepared.

The economic assessment concludes that the costs to the States of obtaining the funding under the Section 163 program, which include the administrative costs of submitting a copy of the law and a certification that the State is enforcing the law, are minimal. In addition, it finds that the costs to States to enact and publicize new 0.08 BAC per se laws will not be significant, and the costs to enforce these laws need not be different than those incurred by States to enforce their current impaired driving laws.

However, the economic assessment notes that it is expected that at least some States will increase enforcement efforts when their new laws become effective, and arrests and prosecutions are likely to increase for drivers with a BAC at 0.08 and above. Since many States have self-sufficient programs supported by fines for the post-conviction phase of their programs, the economic assessment concludes that any additional activity during this phase of their programs, will not result in additional costs to the States.

While it is difficult to isolate the effects that a national 0.08 BAC *per se* standard would have, the economic assessment indicates that a study conducted by the Boston University School of Public Health, which was published in the September 1996 issue of the American Journal of Public Health estimated that 500–600 alcohol-related highway deaths would be prevented each year if all States lowered their BAC limits to 0.08 BAC. Such a reduction in deaths would represent a 4 percent decrease in alcohol-related deaths nationwide and would result in cost savings of approximately $1.5 billion each year. Copies of the economic assessment are available to

the public in the docket for this rulemaking action.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the agencies have evaluated the effects of this action on small entities. Studies to date have not shown that 0.08 BAC *per se* laws have affected alcohol consumption in any of the five States analyzed. Thus, there should be no noticeable impact on small businesses that sell and serve alcohol. Since this interim final rule will apparently affect only State governments, it will not have any effect on small businesses. Thus, we certify that this action will not have a significant impact on a substantial number of small entities and find that the preparation of a Regulatory Flexibility Analysis is unnecessary.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. Chapter 35, as implemented by the Office of Management and Budget (OMB) in 5 CFR Part 1320.

National Environmental Policy Act

The agencies have analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and have determined that it will not have any significant impact on the quality of the human environment.

The Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires agencies to prepare a written assessment of the costs, benefits and other affects of final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. This interim final rule does not meet the definition of a Federal mandate. It is a voluntary program in which States can choose to participate, solely at their option. The costs to States to qualify for participation in this program are minimal, and will result in annual expenditures that will not exceed the $100 million threshold. Moreover, States that chose to participate in this program will receive Federal incentive grants, which will provide funds for activities that are eligible under Title 23 of the United States Code.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment. Accordingly, the preparation of a Federalism Assessment is not warranted.

List of Subjects in 23 CFR Part 1225

Alcohol and alcoholic beverages, Grant programs, Transportation, Highway safety.

In accordance with the foregoing, a new Part 1225 is added to chapter II of Title 23 of the Code of Federal Regulations to read as follows:

PART 1225—OPERATION OF MOTOR VEHICLES BY INTOXICATED PERSONS

Sec.

Authority: 23 U.S.C. 163; delegation of authority at 49 CFR 1.48 and 1.50.

§ 1225.1 Scope.

This part prescribes the requirements necessary to implement Section 163 of Title 23, United States Code, which encourages States to enact and enforce 0.08 BAC *per se* laws.

§ 1225.2 Purpose.

The purpose of this part is to specify the steps that States must take to qualify for incentive grant funds in accordance with 23 U.S.C. 163, and to encourage States to enact and enforce 0.08 BAC *per se* laws.

§ 1225.3 Definitions.

As used in this part:

(a) *BAC* means either blood or breath alcohol concentration.

(b) *BAC per se law* means a law that makes it an offense, in and of itself, to operate a motor vehicle with an alcohol concentration at or above a specified level.

(c) *Alcohol concentration* means either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

(d) *Has enacted and is enforcing* means the State's law is in effect and the State has begun to implement the law.

(e) *Operating a motor vehicle* means driving or being in actual physical control of a motor vehicle.

(f) *Standard driving while intoxicated offense* means the non-BAC *per se* driving while intoxicated offense in the State.

(g) *State* means any one of the fifty States, the District of Columbia, or Puerto Rico.

§ 1225.4 General requirements.

(a) Qualification 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 § 1225.5 of this part and that the funds will be used for eligible projects and programs. 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 and is enforcing a 0.08 BAC *per se* law that conforms to 23 U.S.C. 163 and 23 CFR 1225.5, (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 1225.5, (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 has 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 amended and is enforcing a 0.08 BAC *per se* law that conforms to 23 U.S.C. 163 and 23 CFR 1225.5, (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.

(3) An original and four copies of the certification shall be submitted to the appropriate NHTSA Regional Administrator. Each Regional Administrator will forward the certifications it receives to appropriate NHTSA and FHWA offices.

(4) Each State that submits a certification will be informed by the agencies whether or not it qualifies for funds.

(5) To qualify for FY 1998 grant funds, certifications must be received by the agencies not later than September 4, 1998.

(6) To qualify for grant funds in a subsequent fiscal year, certifications must be received by the agencies not later than July 1 of that fiscal year.

(b) Limitation on grants. A State may receive grant funds, subject to the following limitations:

(1) The amount of a grant apportioned to a State under § 1225.5 of this part shall be determined by multiplying:

(i) The amount authorized to carry out section 163 of 23 U.S.C. for the fiscal year; by

(ii) The ratio that the amount of funds apportioned to each such State under section 402 for such fiscal year bears to the total amount of funds apportioned to all such States under section 402 for such fiscal year.

(2) A State may obligate grant funds apportioned under this part for any project eligible for assistance under Title 23 of the United States Code.

(3) The Federal share of the cost of a project funded with grant funds awarded under this part shall be 100 percent.

§ 1225.5 Adoption of 0.08 BAC per se law.

To qualify for an incentive grant under this part, a State must demonstrate that it has enacted and is enforcing a law that provides that any person with a blood 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 blood alcohol concentration 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.

§ 1225.6 Award procedures.

In each Federal fiscal year, grant funds will be apportioned to eligible States upon submission and approval of the documentation required by § 1225.4(a) and subject to the limitations in § 1225.4(b). The obligation authority associated with these funds are subject to the limitation on obligation pursuant to section 1102 of TEA 21.

Issued on: August 31, 1998.

Gloria J. Jeff,

Deputy Administrator, Federal Highway Administration.

Ricardo Martinez,

Administrator, National Highway Traffic Safety Administration.

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DEPARTMENT OF LABOR

Office of Labor-Management Standards

29 CFR Parts 406, 408

RIN 1215–AB22

Technical Amendments of Rules Relating to Labor-Management Standards and Standards of Conduct for Federal Sector Labor Organizations; Correction

AGENCY: Office of Labor-Management Standards, Employment Standards Administration, Labor.

ACTION: Final Rule; correction.

SUMMARY: This document contains corrections to the final rule published on June 19, 1998 (63 FR 33778). That rule, which made a number of technical amendments to the Department of Labor's regulations at Chapter IV of title 29 of the Code of Federal Regulations, inadvertently omitted two necessary amendments.

EFFECTIVE DATE: September 3, 1998.

FOR FURTHER INFORMATION CONTACT: Kay H. Oshel, Chief, Division of Interpretations and Standards, Office of Labor-Management Standards, Employment Standards Administration, U.S. Department of Labor, Room N–5605, Washington, D.C. 20210, (202) 219–7373 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final rule that is the subject of this correction made a number of technical corrections and amendments to the regulations implementing the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA) and the standards of conduct for federal sector labor organizations. Several of these amendments relate to new control numbers assigned by the Office of Management and Budget (OMB) approving the reporting forms required by the LMRDA and the standards of conduct regulations. New numbers were assigned because of a reorganization in the Department of Labor pursuant to Secretary's Order No. 5–96, (February 10, 1997, 62 FR 107). However, the final rule inadvertently omitted amendments to two provisions in which the old control numbers appear.

Need for Correction

As published, the final rule contains errors which are in need of correction.

Publication in Final

The undersigned has determined that this rulemaking need not be published as a proposed rule, as generally required by the Administrative Procedure Act (APA), 5 U.S.C. 553. The portion of this rulemaking that reflects agency organization, procedure, and practice is exempt under section 553(b)(A) of the APA. For the portion of this rulemaking that makes technical amendments and corrections, there is good cause for finding that notice and public procedure is unnecessary and contrary to the public interest, pursuant to section 553(b)(B) of the APA.

Effective Date

The undersigned has determined that good cause exists for waiving the customary requirement for delay in the effective date of a final rule for 30 days following its publication since this rule is technical and nonsubstantive, merely reflects agency organization, practice, and procedure, and makes amendments required by statute and technical amendments and corrections. Therefore, these amendments shall be effective upon publication. See 5 U.S.C. 553(d).

Administrative Requirements

A. Executive Order 12866

The Department of Labor has determined that this rule is not a significant regulatory action as defined in section 3(f) of Executive Order 12866 in that it will not (1) have an annual effect on the economy of $100 million