

Final Rule for Section 164

23 CFC Part 1275

PART 1275--REPEAT INTOXICATED

DRIVER LAWS

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§ 1275.1 Scope.

This part prescribes the requirements necessary to implement Section 164 of Title 23, United States Code, which encourages States to enact and enforce repeat intoxicated driver laws.

§ 1275.2 Purpose.

The purpose of this part is to specify the steps that States must take to avoid the transfer of Federal-aid highway funds for noncompliance with 23 U.S.C. 164.

§ 1275.3 Definitions.

As used in this part:

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

(b) *Driver's motor vehicle* means a motor vehicle with a title or registration on which the repeat intoxicated driver's name appears.

(c) *Driving while intoxicated* means driving or being in actual physical control of a motor vehicle while having an alcohol concentration above the permitted limit as established by each State, or an equivalent non-BAC intoxicated driving offense.

(d) *Driving under the influence* has the same meaning as "driving while intoxicated."

(e) *Enact and enforce* means the State's law is in effect and the State has begun to implement the law.

(f) *Ignition interlock system* means a State-certified system designed to prevent drivers from starting their car when their breath alcohol concentration is at or above a preset level.

(g) *Impoundment or immobilization* means the removal of a motor vehicle from a repeat intoxicated driver's possession or the rendering of a repeat intoxicated driver's motor vehicle inoperable. For the purpose of this regulation, "impoundment or immobilization" also includes the forfeiture or confiscation of a repeat intoxicated driver's motor vehicle or the revocation or suspension of a repeat intoxicated driver's motor vehicle license plate or registration.

(h) *Imprisonment* means confinement in a jail, minimum security facility, community corrections facility, house arrest with electronic monitoring, inpatient rehabilitation or treatment center, or other facility, provided the individual under confinement is in fact being detained.

(i) *License suspension* means a hard suspension of all driving privileges.

(j) *Motor vehicle* means a vehicle driven or drawn by mechanical power and manufactured primarily for use on public highways, but does not include a vehicle operated solely on a rail line or a commercial vehicle.

(k) *Repeat intoxicated driver* means a person who has been convicted of driving while intoxicated or driving under the influence of alcohol more than once in any five-year period.

(l) *Repeat intoxicated driver law* means a State law that imposes the minimum penalties specified in § 1275.4 of this part for all repeat intoxicated drivers.

(m) *State* means any of the 50 States, the District of Columbia or the Commonwealth of Puerto Rico.

§ 1275.4 Compliance criteria.

(a) To avoid the transfer of funds as specified in § 1275.6 of this part, a State must enact and enforce a law that establishes, as a minimum penalty, that all repeat intoxicated drivers shall:

(1) Receive a driver's license suspension of not less than one year;

(2) Be subject to either--

(i) The impoundment of each of the driver's motor vehicles during the one-year license suspension;

(ii) The immobilization of each of the driver's motor vehicles during the one-year license suspension; or

(iii) The installation of a State-approved ignition interlock system on each of the driver's motor vehicles at the conclusion of the one-year license

suspension;

(3) Receive an assessment of their degree of alcohol abuse, and treatment as appropriate; and

(4) Receive a mandatory sentence of--

(i) Not less than five days of imprisonment or 30 days of community service for a second offense; and

(ii) Not less than ten days of imprisonment or 60 days of community service for a third or subsequent offense.

(b) Exceptions.

(1) A State may provide limited exceptions to the impoundment or immobilization requirements contained in paragraphs (a)(2)(i) and (a)(2)(ii) of this section on an individual basis, to avoid undue hardship to any individual who is completely dependent on the motor vehicle for the necessities of life, including any family member of the convicted individual, and any co-owner of the motor vehicle, but not including the offender.

(2) A State may provide limited exceptions to the requirement to install an ignition interlock system on each of the offender's motor vehicles, contained in paragraph (a)(2)(iii) of this section, on an individual basis, to avoid undue financial hardship, provided the State law requires that the offender may not operate a motor vehicle without an ignition interlock system.

(3) Such exceptions may be issued only in accordance with a State law, regulation or binding policy directive establishing the conditions under which vehicles may be released by the State or under Statewide published guidelines and in exceptional circumstances specific to the offender's motor vehicle, and may not result in the unrestricted use of the vehicle by the repeat intoxicated driver.

§ 1275.5 Certification requirements.

(a) Until a State has been determined to be in compliance, or after a State has been determined to be in non-compliance, with the requirements of 23 U.S.C. 164, to avoid the transfer of funds in any fiscal year, beginning with FY 2001, the State shall certify to the Secretary of Transportation, on or before September 30 of the previous fiscal year, that it meets the requirements of 23 U.S.C. 164 and this part.

(b) The certification shall be made by an appropriate State official, and it shall provide that the State has enacted and is enforcing a repeat intoxicated driver law that conforms to 23 U.S.C. 164 and Sec. 1275.4 of this part.

(1) If the State's repeat intoxicated driver 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 _____, do hereby certify that the (State or Commonwealth) of _____, has enacted and is enforcing a repeat intoxicated driver law that conforms to the requirements of 23 U.S.C. 164 and 23 CFR 1275.4, (citations to pertinent State statutes, regulations, case law or other binding legal requirements, including definitions, as needed).

(2) If the State's repeat intoxicated driver law is not currently in effect, but will become effective and be enforced by October 1 of the following 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 repeat intoxicated driver law that conforms to the requirements of 23 U.S.C. 164 and 23 CFR 1275.4, (citations to pertinent State statutes, regulations, case law or other binding legal requirements, including definitions, as needed), and will become effective and be enforced as of (effective date of the law).

(c) An original and four copies of the certification shall be submitted to the appropriate NHTSA Regional Administrator.

Each Regional Administrator will forward the certifications to the appropriate NHTSA and FHWA offices.

(d) Once a State has been determined to be in compliance with the requirements of 23 U.S.C. 164, it is not required to submit additional certifications, except that the State shall promptly submit an amendment or supplement to its certification provided under paragraphs (a) and (b) of this section if the State's repeat intoxicated driver legislation changes or the State ceases to enforce its law.

§ 1275.6 Transfer of funds.

(a) On October 1, 2000, and October 1, 2001, if a State does not have in effect or is not enforcing the law described in § 1275.4, the Secretary shall transfer an amount equal to 1 1/2 percent of the funds apportioned to the State for the fiscal year under each of 23 U.S.C. 104(b)(1), (b)(3), and (b)(4) to the apportionment of the State under 23 U.S.C. 402.

(b) On October 1, 2002, and each October 1 thereafter, if a State does not have in effect or is not enforcing the law described in § 1275.4, the Secretary shall transfer an amount equal to 3 percent of the funds apportioned to the State for the fiscal year under each of 23 U.S.C. 104(b)(1), (b)(3), and (b)(4) to the apportionment of the State under 23 U.S.C. 402.

(c) On October 1, the transfers to section 402 apportionments will be made based on proportionate amounts from each of the apportionments under 23 U.S.C. 104(b)(1), (b)(3) and (b)(4). Then the States will be given until October 30 to notify FHWA, through the appropriate Division Administrator, if they would like to change the distribution among 23 U.S.C. 104(b)(1), (b)(3) and (b)(4).

§ 1275.7 Use of transferred funds.

(a) Any funds transferred under § 1275.6 may:

- (1) Be used for approved projects for alcohol-impaired driving counter-measures;
or
- (2) Be directed to State and local law enforcement agencies for enforcement of laws prohibiting driving while intoxicated or driving under the influence and other related laws (including regulations), including the purchase of equipment, the training of officers, and the use of additional personnel for specific alcohol-impaired driving countermeasures, dedicated to enforcement of the laws (including regulations).

(b) States may elect to use all or a portion of the transferred funds for hazard elimination activities eligible under 23 U.S.C. 152.

(c) The Governor's Representative for Highway Safety and the Secretary of the State's Department of Transportation for each State shall jointly identify, in writing to the appropriate NHTSA Administrator and FHWA Division Administrator, how the funds will be programmed among alcohol-impaired driving programs, hazard elimination programs, and planning and administration costs, no later than 60 days after the funds are transferred.

(d) The Federal share of the cost of any project carried out with the funds transferred under § 1275.6 of this part shall be 100 percent.

(e) The amount to be transferred under § 1275.6 of this Part may be derived from one or more of the following:

- (1) The apportionment of the State under § 104(b)(1);
- (2) The apportionment of the State under § 104(b)(3); or
- (3) The apportionment of the State under § 104(b)(4).

(f)(1) If any funds are transferred under § 1275.6 of this part to the apportionment of a State under Section 402 for a fiscal year, an amount, determined under paragraph (f)(2) of this section, of obligation authority will be distributed for the fiscal year to the State for Federal-aid highways and highway safety construction programs for carrying out projects under Section 402.

(2) The amount of obligation authority referred to in paragraph (f)(1) of this section shall be determined by multiplying:

- (i) The amount of funds transferred under § 1275.6 of this Part to the apportionment of the State under Section 402 for the fiscal year; by
- (ii) The ratio that:
 - (A) The amount of obligation authority distributed for the fiscal year to the State for Federal-aid highways and highway safety construction programs; bears to
 - (B) The total of the sums apportioned to the State for Federal-aid highways and highway safety construction programs (excluding sums not subject to any obligation limitation) for the fiscal year.

(g) Notwithstanding any other provision of law, no limitation on the total obligations for highway safety programs under Section 402 shall apply to funds transferred under § 1275.6 to the apportionment of a State under such section.

§ 1275.8 Procedures affecting States in noncompliance.

(a) Each fiscal year, each State determined to be in noncompliance with 23 U.S.C. 164 and this part, based on NHTSA's and FHWA's preliminary review of its certification, will be advised of the funds expected to be transferred under § 1275.4 from apportionment, as part of the advance notice of apportionments required under 23 U.S.C. 104(e), normally not later than ninety days prior to final apportionment.

(b) If NHTSA and FHWA determine that the State is not in compliance with 23 U.S.C. 164 and this part, based on the agencies' preliminary review, the State may, within 30 days of its receipt of the advance notice of apportionments, submit documentation showing why it is in compliance. Documentation shall be submitted to the appropriate National Highway Traffic Safety Administration Regional office.

(c) Each fiscal year, each State determined not to be in compliance with 23 U.S.C. 164 and this part, based on NHTSA's and FHWA's final determination, will receive notice of the funds being transferred under § 1275.6 from apportionment, as part of the

certification of apportionments required under 23 U.S.C. 104(e), which normally occurs on October 1 of each fiscal year.