Prepared by the North Dakota Legislative Council
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DRIVING WHILE UNDER THE INFLUENCE - REQUIREMENTS FOR .08 BLOOD ALCOHOL CONTENT LAW

In October 2000 Congress passed a law that requires each state to have a .08 blood alcohol content law by 2004 or not receive certain highway construction funds. Under 23 U.S.C. 163:

> The Secretary shall make a grant, in accordance with this section, 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).

The federal rules that implement this section, 23 C.F.R. 1225.5, in part state that the .08 law must apply to all persons, apply to criminal and administrative proceedings, and be deemed to be or be equivalent to the standard driving while intoxicated offense in this state.

Under 63 C.F.R. 46881, for a law to be equivalent to "the standard" driving while intoxicated offense, the factors that will be looked at include the treatment of these offenses, the relation to other offenses in the state, and the sanctions and other consequences that result when a person violates these offenses. The rules contemplate comparing the .08 offense to present law and require the .08 offense to be equal to "the standard" driving while under the influence offense. In short, the .08 per se violation must be equal to the criminal driving while under the influence offense, including penalties. The compliance criteria do not address the effect of driving while under the influence on insurance rates or reporting to insurance companies.