

**DEPARTMENT OF TRANSPORTATION****National Highway Traffic Safety Administration**

**23 CFR Parts 1200, 1205, 1206, 1250, 1251, 1252, 1313, 1335, 1345, and 1350**

[Docket No. NHTSA–2013–0001]

RIN 2127–AL30; RIN 2127–AL29

**Uniform Procedures for State Highway Safety Grant Programs**

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

**ACTION:** Interim final rule; request for comments.

**SUMMARY:** This action establishes new uniform procedures governing the implementation of State highway safety grant programs as amended by the Moving Ahead for Progress in the 21st Century Act (MAP–21). It also reorganizes and amends existing requirements to implement the provisions of MAP–21.

This document is being issued as an interim final rule to provide timely guidance about the application procedures for national priority safety program grants in fiscal year 2013 and all Chapter 4 highway safety grants beginning in fiscal year 2014. The agency requests comments on the rule. The agency will publish a notice responding to any comments received and, if appropriate, will amend provisions of the regulation.

**DATES:** This interim final rule becomes effective on January 23, 2013. Comments on this interim final rule are due April 23, 2013. In compliance with the Paperwork Reduction Act, NHTSA is also seeking comment on a new information collection. See the Paperwork Reduction Act section under Regulatory Analyses and Notices below. Comments relating to new information collection requirements are due March 25, 2013 to NHTSA and to the Office of Management and Budget (OMB) at the address listed in the **ADDRESSES** section.

**ADDRESSES:** Written comments to NHTSA may be submitted using any one of the following methods:

- *Mail:* Send comments to: Docket Management Facility, M–30, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Room W12–140, Washington, DC 20590.

- *Fax:* Written comments may be faxed to (202) 493–2251.

- *Internet:* To submit comments electronically, go to the US Government regulations Web site at <http://www.regulations.gov>.

[www.regulations.gov](http://www.regulations.gov). Follow the online instructions for submitting comments.

- *Hand Delivery:* If you plan to submit written comments by hand or courier, please do so at 1200 New Jersey Avenue SE., West Building, Ground Floor, Room W12–140, Washington, DC, between 9 a.m. and 5 p.m., Eastern Time, Monday through Friday, except Federal holidays.

Whichever way you submit your comments, please remember to identify the docket number of this document within your correspondence. You may contact the docket by telephone at (202) 366–9324. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

Comments regarding the proposed information collection should be submitted to NHTSA through one of the preceding methods and a copy should also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention: NHTSA Desk Officer.

*Privacy Act:* Please see the Privacy Act heading under Regulatory Analyses and Notices.

*Docket:* All documents in the dockets are listed in the <http://www.regulations.gov> index. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Docket Management Facility, M–30, U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC. The Docket Management Facility is open between 9 a.m. and 5 p.m., Eastern Time, Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** For program issues: Dr. Mary D. Gunnels, Associate Administrator, Regional Operations and Program Delivery, National Highway Traffic Safety Administration, Telephone number: (202) 366–2121; Email: [Maggi.Gunnels@dot.gov](mailto:Maggi.Gunnels@dot.gov).

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**SUPPLEMENTARY INFORMATION:****Table of Contents**

- I. Executive Summary
- II. Section 402 Grant Program
- III. Section 405 Grant Program
- IV. Administration of Highway Safety Grants (Section 402 and 405 Grants)
- V. Immediate Effective Date and Request for Comments

## VI. Regulatory Analyses and Notices

**I. Executive Summary**

On July 6, 2012, the President signed into law the “Moving Ahead for Progress in the 21st Century Act” (MAP–21), Public Law 112–141, which restructured and made various substantive changes to the highway safety grant programs administered by the National Highway Traffic Safety Administration (NHTSA). Specifically, MAP–21 modified the existing formula grant program codified at 23 U.S.C. 402 (Section 402) by requiring States to develop and implement the State highway safety program using performance measures. MAP–21 also rescinded a number of separate incentive grant programs that existed under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), Public Law 109–59, and replaced them with the “National Priority Safety Programs,” codified in a single section of the United States Code (23 U.S.C. 405 (Section 405)). The National Priority Safety Programs include Occupant Protection, State Traffic Safety Information Systems, Impaired Driving Countermeasures, Motorcyclist Safety, and two new grant programs—Distracted Driving and State Graduated Driver Licensing. MAP–21 specifies a single application deadline for all highway safety grants and directs NHTSA to establish a consolidated application process, using the Highway Safety Plan that States have traditionally submitted for the Section 402 program. See Sections 31101(f) and 31102, MAP–21.

MAP–21 provides additional linkages between NHTSA-administered programs and the programs of other DOT agencies coordinated through the State strategic highway safety plan administered by the Federal Highway Administration (FHWA), as defined in 23 U.S.C. 148(a). The Department will harmonize performance measures that are common across programs of DOT agencies (e.g., fatalities and serious injuries) to ensure that the highway safety community is provided uniform measures of progress.

Section 402, as amended by MAP–21, continues to require each State to have an approved highway safety program designed to reduce traffic crashes and the resulting deaths, injuries, and property damage. Section 402 sets forth minimum requirements with which each State’s highway safety program must comply. Under existing procedures, States must submit a Highway Safety Plan (HSP) each year to NHTSA for approval, describing their highway safety program and the

activities they plan to undertake. The HSP is a critical element that illustrates the linkage between highway safety program planning and program performance. NHTSA has worked collaboratively with the Governors Highway Safety Association (GHSA) on improvements to the HSPs and the planning process for many years, and expects that continuous improvement efforts will demonstrate measurable progress in traffic safety. Going forward, HSP coordination with the State strategic highway safety plan as defined in 23 U.S.C. 148(a) will continue that improvement. NHTSA intends to collaborate with other DOT agencies to ensure there are not multiple measures and targets for the performance measures common across the various Federal safety programs.

DOT will continue to analyze the linkage between specific safety investments made by the States and States' safety outcomes to learn more about the associations between the application of resources and safety outcomes. DOT will perform this analysis using data provided by States to build and improve the foundation of evidence to inform future reauthorization proposals. DOT's analysis could inform additional requirements for safety programs and potentially additional data from States.

MAP-21 amended Section 402 to require, among other things, States to submit for fiscal year 2014 and thereafter an HSP with performance measures and targets as a condition of approval of the State's highway safety program. (23 U.S.C. 402(k)(3)) MAP-21 specifies in more detail the contents of the HSP that States must submit, including strategies for programming funds, data supporting those strategies, and a report on the degree of success in meeting the performance measure targets. *Id.* MAP-21 also directs States to include in the HSP their application for all other grants under 23 U.S.C. Chapter 4, and to submit their HSP by July 1 of the fiscal year preceding the fiscal year of the grant. (23 U.S.C. 402(k)(2) and 402(k)(3))

The National Priority Safety Programs created by MAP-21 continue many aspects of previous grants, but also include changes. (23 U.S.C. 405) Specifically, MAP-21 consolidated several previously separate occupant protection grants into a single occupant protection grant under new Section 405(b), updated the requirements for a State traffic safety information system improvements grant under new Section 405(c), revised the impaired driving countermeasures grant under new Section 405(d), including a new grant

for State ignition interlock laws, created a new distracted driving grant under new Section 405(e), extended the motorcyclist safety grant largely unchanged under new Section 405(f), and created a new graduated driver licensing grant under new Section 405(g). None of these grant programs under MAP-21 is identical to a grant program that existed under SAFETEA-LU, but many continue various requirements of the prior grant programs. For each of these grants, MAP-21 specifies the criteria for a grant award (some of which are prescriptive), the mechanism for allocation of grant funds, and the eligible uses of grant funds.

MAP-21 requires NHTSA to award highway safety grants pursuant to rulemaking and separately requires NHTSA to establish minimum requirements for the graduated driver licensing (GDL) grant in accordance with the notice and comment provisions of the Administrative Procedure Act. (Section 31101(d), MAP-21; 23 U.S.C. 405(g)(3)(A)) In order to provide States with as much advance time as practicable to prepare grant applications and to ensure the timely award of all grants in fiscal years 2013 and 2014, the agency is proceeding with an expedited rulemaking. Accordingly, NHTSA is publishing this rulemaking as an interim final rule (IFR), with immediate effectiveness, to implement the application and administrative requirements of the highway safety grant programs. Responding to the notice and comment requirement for the GDL grant program, NHTSA published a notice of proposed rulemaking (NPRM) for that program on October 5, 2012. (77 FR 60956) The comment period for the GDL NPRM closed on October 25, 2012. Today's IFR addresses the comments received and incorporates requirements for the GDL program. *See* Section III.G. below.

This IFR sets forth the application, approval, and administrative requirements for all MAP-21 grant programs. It updates the Uniform Procedures for State Highway Safety Programs to incorporate the new performance measures process and the single application requirement. It adds requirements for the new Section 405 incentive grant programs. Finally, it updates and consolidates into one rule a number of old regulations (State Highway Safety Agency, Political Subdivision Participation in State Highway Safety Programs, State Matching of Planning and Administration Costs, Rules of Procedure for Invoking Sanctions under the Highway Safety Act of 1966) that

remain applicable to the highway safety grants. While many procedures and requirements continue unchanged by today's action, organization and section numbers have changed.

For ease of reference, the preamble identifies in parentheses within each subheading and at appropriate places in the explanatory paragraphs the new CFR citation for the corresponding regulatory text.

## II. Section 402 Grant Program

### A. General

The Highway Safety Act of 1966 (23 U.S.C. 401 *et seq.*) established a formula grant program to improve highway safety in the United States. As a condition of the grant, States must meet certain requirements contained in 23 U.S.C. 402. While MAP-21 reorganized a number of provisions within Section 402, it retained much of the existing requirements of the formula grant program. Section 402(a) continues to require each State to have a highway safety program, approved by the Secretary of Transportation, which is designed to reduce traffic crashes and the resulting deaths, injuries, and property damage from those crashes. Section 402(a) also continues to require State highway safety programs to comply with uniform guidelines promulgated by the Secretary.

MAP-21 amended Section 402(b), which sets forth the minimum requirements with which each State highway safety program must comply, to require the Highway Safety Plan (HSP) to provide for a data-driven traffic safety enforcement program to prevent traffic violations, crashes, and crash fatalities and injuries in areas most at risk for such incidents. As is evident with other amendments to Section 402 discussed below, MAP-21 highlights the importance of strategies supported by data to reduce crashes. While data-driven program development has long been a practice of jurisdictions in the highway safety grant program, requiring States to have a data-driven traffic safety enforcement program and targeted enforcement based on data will promote improved safety outcomes. MAP-21 also amended Section 402(b) to require each State to coordinate its HSP, data collection, and information systems with the State strategic highway safety plan as defined in 23 U.S.C. 148(a). Such a requirement to coordinate these elements into a unified State approach to highway safety promotes comprehensive transportation and safety planning and program efficiency in the States. Coordinating the HSP planning process with the programs of

other DOT agencies where possible will ensure alignment of State performance targets where common measurements exist, such as fatalities and serious injuries. States are encouraged to use data to identify performance measures beyond these consensus performance measures (e.g., distracted driving, bicycles). NHTSA will collaborate with other DOT agencies to promote alignment among performance measures.

MAP-21 also amends the uses of Section 402 grant funds. Section 402(b) prohibits the use of automated traffic enforcement systems. Such systems include red light and speed cameras, but do not include hand held radar or devices that law enforcement officers use to take an enforcement action at the time of a violation. Section 402(c) provides that States may use grant funds in cooperation with neighboring States for highway safety purposes that benefit all participating States. For States that share a common media market, enforcement corridors and program needs, such interstate initiatives recognize the mutual benefits that may be gained by multiple jurisdictions through the sharing of resources. Finally, Section 402(g) provides an exception to the general prohibition against using Section 402 grant funds for activities carried out under 23 U.S.C. 403. States may now use Section 402 funds to supplement demonstration projects carried out under Section 403.

#### *B. Highway Safety Plan Contents*

The most significant changes in the Section 402 grant program are the new performance-based requirements for the HSP and the reporting requirements. Under the old regulation, State HSPs were required to contain a performance plan with (1) a list of objective and measurable highway safety goals, (2) performance measures for each of the safety goals, and (3) a description of the processes used by the State to identify highway safety problems, define highway safety performance measures, and develop projects to address problems and achieve the State's goals. In addition, States were to include descriptions of program strategies they planned to implement to reach highway safety targets. Many of these requirements remain unchanged by today's action. However, based on the new requirements in MAP-21, States will need to provide additional information in the HSP to meet the performance-based, evidence-based requirements of MAP-21. (23 CFR 1200.11)

Under the old regulation, States were required to describe the highway safety

planning process in the HSP. This continues to be required by today's action. However, the agency made some changes to reflect the terms used in MAP-21 (e.g., performance measures and targets, data-based, evidence-based). The IFR also includes a new requirement that the State include a description of the efforts and the outcomes of the effort the State has made to coordinate the highway safety plan, data collection, and information systems with the State strategic highway safety plan, as required by MAP-21. (23 CFR 1200.11(a))

While the most significant change in MAP-21 is the performance-based requirements for the HSP, States have been moving in that direction over the past several years based on a cooperative effort with GHSA and DOT to establish voluntary performance measures for highway safety grant programs. Over the years, NHTSA and GHSA have developed numerous tools and resource documents to enhance the effectiveness of the HSPs and promote linkage to measurable traffic safety improvements that will support requirements under MAP-21. State HSPs must now provide for performance measures and targets that are evidence-based, and this is consistent with the report, "Traffic Safety Performance Measures for States and Federal Agencies" (DOT HS 811 025), that States have been using to develop performance measures since 2010. The agency will regularly review with the States the performance measures and coordinate with other DOT agencies to ensure consistent application. As directed by MAP-21, NHTSA must "coordinate with [GHSA] in making revisions to the set of required performance measures." (23 U.S.C. 402(k)(4)) The Department will harmonize performance measures that are common across programs of DOT agencies (e.g., fatalities and serious injuries) to ensure that the highway safety community is provided uniform measures of progress.

The State process for setting targets in the HSP must be based on an analysis of data trends and a resource allocation assessment. For purposes of the current rulemaking, evidence-based analysis should include States' programming of resources compared to the specific measures in "Traffic Safety Performance Measures for States and Federal Agencies." As required by MAP-21, the HSP must provide documentation of the current safety levels for each performance measure, quantifiable annual performance targets for each performance measure, and a justification for each performance target,

including an explanation of why each target is appropriate and evidence based. Consistent with the Highway Safety Plan for continuous safety improvement, selected targets, should whenever reasonable, represent an improvement from the current status rather than a simple maintenance of the current rate. Targets for each program area should be consistent, compatible and provide sufficient coverage of State geographic areas and road users. When aggregated, strategies should lead logically to overall statewide performance and be linked to the anticipated success of the countermeasures or strategies selected and funded in the HSP. (23 CFR 1200.11(b))

The agency will collaborate regularly with FHWA, Federal Motor Carrier Safety Administration (FMCSA) and other DOT agencies along with the Governor's Highway Safety Association (GHSA) and the State Highway Safety Agencies to ensure the integration of highway safety planning with the broader aspects of Statewide transportation. This broad-based collaboration will assist NHTSA and GHSA to revise, update and improve highway safety program performance measures as necessary, while ensuring a consistent Departmental approach to surface transportation safety.

MAP-21 specifies that for the HSP submitted for fiscal year 2014 grants, the required performance measures are limited to those developed by NHTSA and GHSA in the Traffic Safety Performance Measures report. (23 U.S.C. 402(k)(4)) NHTSA and GHSA agreed on a minimum set of performance measures to be used by States and federal agencies in the development and implementation of behavioral highway safety plans and programs. An expert panel from NHTSA, FHWA, FMCSA, State highway safety offices, academic and research organizations, and other key groups assisted in developing these measures. Fourteen measures—10 core outcome

measures<sup>1</sup>, one core behavior measure<sup>2</sup>, and three activity measures<sup>3</sup>—were established covering the major areas common to State HSPs and using existing data systems. The minimum set of performance measures developed by NHTSA and GHSA addresses most of the national priority safety program areas, but do not address all the possible highway safety problems in a State or all of the National Priority Safety Programs specified in Section 405. For highway safety problems identified by the State, but where performance measures have not been jointly developed (e.g., distracted driving and bicycles), a State must develop its own evidence-based performance measures.

NHTSA will continue to work with States to ensure that annual HSPs identify priority traffic safety problems. For HSPs for subsequent fiscal years, NHTSA will also coordinate with GHSA on an annual basis and with other DOT agencies to identify emerging traffic safety issues and incorporate new national performance measures where feasible. NHTSA will continue to provide ongoing technical assistance to States on emerging priority traffic safety issues and encourage States to use data to identify measures beyond the required consensus performance measures. As the Department promulgates new regulations for programs to improve highway safety, common definitions of performance measures and targets will be adopted.

Under the old regulation, States were required to describe at least one year of

strategies and activities the State planned to implement. As provided in the IFR, Highway Safety Plans must continue to include a description of the countermeasure program area strategies the State plans to implement to reach the performance targets identified by the State in the HSP. In addition, the HSP must also include a description of the projects that make up each program area that will implement the program area strategies. For performance targets that are common across DOT agencies, the projects that will be deployed to achieve those targets may be a combination of those projects contained in the HSP and other State and local plans. As required by MAP-21, the identified program area strategies must also identify funds from other sources, including Federal, State, local and private sector funds, used to carry out the program area strategies. (23 CFR 1200.11(c))

MAP-21 also requires the State to describe its strategy in developing its countermeasure programs and selecting the projects to allow it to meet the highway safety performance targets. In selecting the strategies and projects, States should be guided by the data and data analysis supporting the effectiveness of the proposed countermeasures and, if applicable, the emphasis areas in the State strategic highway safety plan. NHTSA does not intend to discourage innovative countermeasures, especially where few established countermeasures exist, such as in distracted driving. Innovative countermeasures that may not be scientifically proven to work but that contain promise based on limited practical applications are encouraged when a clear data-driven safety need has been identified. As evidence of potential success, justification of new countermeasures can also be based on the prior success of specific elements from other effective countermeasures.

MAP-21 requires that a State must provide assurances that the State will implement activities in support of national high-visibility law enforcement mobilizations coordinated by the Secretary of Transportation. In addition to providing such assurances, the State must also describe in its HSP the State's planned high visibility enforcement strategies to support national mobilizations for the upcoming grant year. (23 CFR 1200.11(c); Appendix A)

As required under MAP-21, the State must also include a description of its evidence-based traffic safety enforcement program to prevent traffic violations, crashes, crash fatalities, and injuries in areas most at risk for crashes. The IFR sets forth the minimum requirements for the traffic safety

enforcement program. (23 CFR 1200.11(c))

MAP-21 also specifies that the HSP must include a report on the State's success in meeting its performance targets from the previous fiscal year's HSP. Unlike the comprehensive, annual performance report required under the old regulation, which is retained by today's action, this performance report is a status report on the core performance measures. (23 CFR 1200.11(d))

Under the old regulation, States submitted as part of their HSP a program cost summary (HS Form 217). This requirement continues under the IFR. States will continue to provide the proposed allocation of funds (including carry-forward funds) by program area. However, under today's action, States must also provide an accompanying list of the projects and an estimated amount of Federal funds for each such project that the State proposes to conduct in the upcoming fiscal year to meet the performance targets identified in the HSP. Prior to and as a condition of reimbursement, the project list must be updated to include identifying project numbers for each project on the list. Several States currently provide this level of information on the HS Form 217, and would not need to provide a separate list. However, States that do not provide this level of detail on the HS Form 217 must either begin doing so or provide a separate list in addition to the HS Form 217. For example, a number of States have grants tracking systems that can generate reports with this information, and such reports would be acceptable even if other information is included. No specific format is required so long as the list includes the projects, project identifier and estimated Federal funding for each project. (23 CFR 1200.11(e); Appendix B)

As under the old regulations, States will continue to submit certifications and assurances, signed by the Governor's Representative for Highway Safety, certifying the HSP application contents and providing assurances that they will comply with applicable laws and regulations, financial and programmatic requirements and any special funding conditions. Only the Governor's Representative for Highway Safety may sign the certifications and assurances required under this IFR. The certifications and assurances will now be included as Appendix A to this part.

MAP-21 provides for a new Teen Traffic Safety Program for statewide efforts to improve traffic safety for teen drivers. States may elect to incorporate such a statewide program as an HSP

<sup>1</sup> States set goals and report progress on the following outcome measures:

1. Number of traffic fatalities (FARS);
2. Number of serious injuries in traffic crashes (State crash data files);
3. Fatalities/VMT (FARS, FHWA);
4. Number of unrestrained passenger vehicle occupant fatalities, all seat positions (FARS);
5. Number of fatalities in crashes involving a driver or motorcycle operator with a BAC of .08 and above (FARS);
6. Number of speeding-related fatalities (FARS);
7. Number of motorcyclist fatalities (FARS);
8. Number of unhelmeted motorcyclist fatalities (FARS);
9. Number of drivers age 20 or younger involved in fatal crashes (FARS);
10. Number of pedestrian fatalities (FARS).

<sup>2</sup> States set goals and report progress on one behavior core measure—observed seat belt use for passenger vehicles, front seat outboard occupants (survey).

<sup>3</sup> States report on the following activity core measures:

1. Number of seat belt citations issued during grant-funded enforcement activities (grant activity reporting);
2. Number of impaired driving arrests made during grant-funded enforcement activities (grant activity reporting);
3. Number of speeding citations issued during grant-funded enforcement activities (grant activity reporting).

program area. If a State chooses to do so, it must include a description of the projects it intends to conduct in the HSP and provide assurances that the program meets certain statutory requirements. The assurances for the Teen Traffic Safety Program are included as an appendix to this part. (23 CFR 1200.11(g); Appendix C)

Finally, as noted above, MAP-21 requires that applications for all grants under 23 U.S.C. Chapter 4 (including any of the six new grants under Section 405) be part of the HSP submitted on July 1 of the fiscal year preceding the fiscal year of the grant. The IFR provides for this new deadline. (23 CFR 1200.12) Beginning with fiscal year 2014 grants, each State must include its application for the Section 405 grants as part of its HSP. (23 CFR 1200.11(h)) Details about the application contents and qualification requirements of Section 405 grants are provided in Section III below.

### C. Review and Approval Procedures

MAP-21 specifies that NHTSA must approve or disapprove the HSP within 60 days after receipt. As has been past practice, NHTSA may request additional information from a State regarding the contents of the HSP to determine whether the HSP meets statutory, regulatory and programmatic requirements. To ensure that HSPs are approved or disapproved within 60 days, States must respond promptly to NHTSA's request for additional information. Failure to respond promptly may delay approval and funding of the State's Section 402 grant. (23 CFR 1200.14(a))

Within 60 days, the Approving Official will approve or disapprove the HSP, and specify any conditions to the approval. If the HSP is disapproved, the Approving Official will specify the reasons for disapproval. The State must resubmit the HSP with the necessary modifications to the Approving Official. The Approving Official will notify the State within 30 days of receipt of the revised HSP whether the HSP is approved or disapproved. (23 CFR 1200.14(b)(1))

NHTSA expects to notify States of Section 405 grant qualification before the start of the fiscal year of the grant, and to notify States of grant award amounts early in the fiscal year. However, because the calculation of Section 405 grant awards depends on the number of States meeting the qualification requirements, States must respond promptly to NHTSA's request for additional information or be disqualified from consideration of a Section 405 grant. The agency does not

intend to delay grant awards to States that comply with grant submission procedures due to the inability of other States to meet submission deadlines.

### D. Apportionment and Obligation of Grant Funds

The requirements of the old regulation regarding the apportionment and obligation of Section 402 funds remain largely unchanged. However, these requirements now apply both to Section 402 and 405 grant funds. For Section 405 grants, each State must also provide an update to the HSP in addition to the updated HS Form 217 for approval to address the grant funds awarded for that fiscal year for each of the Section 405 grant programs for which it is applying. The IFR contains new language clarifying that grant funds are available for expenditure for three years after the last day of the fiscal year of apportionment or allocation. (23 CFR 1200.15) See Section IV below for further discussion of this important clarification.

## III. Section 405 Grant Program

### A. General (§ 1200.20)

Under this heading, we describe the requirements set forth in today's action for each of the six new MAP-21 grant programs under 23 U.S.C. 405 (Occupant Protection, State Traffic Safety Information System Improvements, Impaired Driving Countermeasures, Distracted Driving, Motorcyclist Safety and State Graduated Driver Licensing). The subheadings and explanatory paragraphs contain references to the relevant sections of the IFR where a procedure or requirement is implemented, as appropriate.

MAP-21 contains some provisions that apply in common to most or all of the grants authorized under Section 405, such as definitions. In addition, in some cases the agency has determined that it is appropriate to impose certain requirements consistently across all of these grants. For example, "passenger motor vehicle" is defined in accordance with the agency's statutory jurisdiction to regulate motor vehicles with a gross vehicle weight rating of less than 10,000 pounds. These include passenger cars, minivans, vans, SUVs and pickup trucks. Also, for all but the motorcyclist safety grant program, eligibility under Section 405 is controlled by the definition of "State" under 23 U.S.C. 401, which includes the 50 States, the District of Columbia, Puerto Rico, American Samoa, the Commonwealth of the Northern Mariana Islands, Guam and the U.S. Virgin Islands. (As noted in § 1200.25, the 50 States, the District

of Columbia and Puerto Rico are eligible to apply for motorcyclist safety grants.)

### 1. Qualification for a Grant Based on State Statutes

For most of the grants authorized under 23 U.S.C. 405, States may qualify for a grant based on the existence of a conforming State statute. In order to qualify for a grant on this basis, the State statute must be enacted by the application due date and be in effect and enforced, without interruption, by the beginning of and throughout the fiscal year of the grant award. (23 CFR 1200.20(d))

Historically, NHTSA has interpreted the term "enforce" in other highway safety programs from previous authorizations (e.g., SAFETEA-LU, Section 2005, Pub. L. 109-59) to mean that the enacted law must be in effect, allowing citations and fines to be issued. NHTSA will continue to interpret "enforce" as it has in the past for these Section 405 grant programs. Therefore, a statute that has a future effective date or that includes a provision limiting enforcement (e.g., by imposing written warnings) during a "grace period" after the statute goes into effect would not be deemed in effect or being enforced until the effective date is reached or the grace period ends. A State whose law is either not in effect, contains a "grace period," "warning period" or sunset provision during the grant year will not qualify for a grant for that fiscal year.

### 2. Award Determination and Transfer of Funds

MAP-21 specifies that for three of the Section 405 grant programs (Occupant Protection, State Traffic Safety Information System Improvements and Impaired Driving Countermeasures) grant awards will be allocated in proportion to the State's apportionment under 23 U.S.C. 402 for fiscal year 2009. For two of the grant programs (Distracted Driving and Motorcyclist Safety), MAP-21 does not specify how the grant awards will be allocated. For consistency with the other three Section 405 grant programs, and in accordance with past practice in a number of highway safety grant programs, NHTSA will allocate Distracted Driving and Motorcyclist Safety grant awards in proportion to the State's apportionment under 23 U.S.C. 402 for fiscal year 2009. For Graduated Driver Licensing grants, MAP-21 specifies that grant awards will be allocated in proportion to the State's apportionment under 23 U.S.C. 402 for that fiscal year. In determining the grant award, NHTSA will apply the apportionment formula under 23 U.S.C.

402(c) for fiscal year 2009 or the applicable fiscal year to all qualifying States, in proportion to the amount each such State receives under 23 U.S.C. 402(c), so that all available amounts are distributed to qualifying States to the maximum extent practicable. (23 CFR 1200.20(e)(1)) However, the IFR provides that the amount of an award for each grant program may not exceed 10 percent of the total amount made available for that grant program, except for the motorcyclist safety grant program, which has a different limit imposed by statute. This limitation on grant amounts is necessary to prevent unintended large distributions to a small number of States in the event only a few States qualify for a grant award. (23 CFR 1200.20(e)(2))

In the event that all grant funds authorized for Section 405 grants are not distributed, MAP-21 authorizes NHTSA to reallocate the remaining amounts before the end of the fiscal year for expenditure under the Section 402 program or in any Section 405 program area. (23 U.S.C. 405(a)(1)(G)) In accordance with this provision, NHTSA intends to transfer these remaining grant funds among other programs to ensure that to the maximum extent practicable each State receives the maximum funding for which it qualifies. (23 CFR 1200.20(e)(3))

3. *Matching.* Section 31105 of MAP-21 specifies a Federal share of 80 percent for three of the grant programs (Occupant Protection, State Traffic Safety Information System Improvements and Impaired Driving Countermeasures) in Section 405. For the other three grant programs (Distracted Driving, Motorcyclist Safety and State Graduated Driver Licensing), MAP-21 does not specify Federal share. However, because 23 U.S.C. 120 specifies a Federal share of 80 percent for any project or activity carried out under Title 23, unless otherwise specified, the federal share for all of these other grant programs, which are programs in Title 23, is 80 percent. (23 CFR 1200.20(f))

#### *B. Occupant Protection Grants* (§ 1200.21)

The purpose of this program is to encourage States to adopt and implement occupant protection laws and programs to reduce highway deaths and injuries from individuals riding unrestrained in motor vehicles. NHTSA has administered a State occupant protection incentive grant program since 1998, starting with a program authorized under the Transportation Equity Act for the 21st Century (TEA-21), Public Law 105-178. That program

was reauthorized largely unchanged in 2005 under SAFETEA-LU (formerly codified at 23 U.S.C. 405), along with two additional occupant protection grant programs—Safety Belt Performance Grants (formerly codified at 23 U.S.C. 406) and Child Safety and Child Booster Seat Incentive Grants (Section 2011 of SAFETEA-LU).

MAP-21 consolidated these previously separate occupant protection grants into a single occupant protection grant under new Section 405(b). Under this program, an eligible State can qualify for grant funds as either a high seat belt use rate State or lower seat belt use rate State. A high seat belt use rate State is a State that has an observed seat belt use rate of 90 percent or higher; a lower seat belt use rate State is a State that has an observed seat belt use rate of lower than 90 percent. MAP-21 provides that a high seat belt use rate State may qualify for funds by submitting an occupant protection plan and meeting three programmatic criteria (*Click or Ticket It*, child restraint inspection stations, and child passenger safety technicians). MAP-21 provides that a lower seat belt use rate State must meet these same requirements, and additionally qualify for three of the following six legal or programmatic criteria: primary seat belt use law, occupant protection laws, high risk population countermeasure programs, seat belt enforcement, comprehensive occupant protection program and occupant protection assessment.

1. *Definitions.* MAP-21 defines “child restraint” and “seat belt.” The IFR adopts these definitions without substantive change. In today’s action, the agency also includes definitions for “high seat belt use rate State” and “lower seat belt use rate State” to clarify how the agency will determine the seat belt use rates for States. The agency is also including a definition for “problem identification” to clarify a specific strategy used in developing State occupant protection plans and programs. (See “Eligibility Determinations, below, for more information about these two categories.) (23 CFR 1200.21(b))

#### 2. Eligibility Determination

Under this program, a State is eligible for occupant protection incentive grant funds as either a high seat belt use rate State or a lower seat belt use rate State. The State’s seat belt use rate determines whether a State qualifies for a grant under this section as a high seat belt use rate State or a lower seat belt use rate State. States must follow the procedures set forth in the IFR for submitting seat

belt use rates and documentation to the agency. (23 CFR 1200.21(d))

States conduct annual seat belt use observational surveys each calendar year based on survey designs approved under 23 CFR part 1340, Uniform Criteria for State Observational Surveys of Seat Belt Use. Under the existing procedures, States submit the results of the seat belt use survey March 1 each year. Based on the information submitted by the States, NHTSA will determine which States are eligible for a grant as high seat belt use rate States and which States are eligible as lower seat belt use rate States.

The definition of the terms “high seat belt use rate State” and “lower seat belt use rate State” clarify how these determinations will be made. Specifically, a State’s status will be based on the actual seat belt use rate without rounding and without taking into account the standard deviation. Thus, for example, neither a State with a seat belt use rate of 89.95 nor a State with a rate of 89.95 +/- a 2.5 percent standard error will be considered a high seat belt use rate State. Consistent with current practice, the agency will review the State submitted seat belt use rate derived from the approved statewide seat belt use survey and provide confirmation of the rate or request additional information within 30 days. For fiscal year 2013 grants, the agency will determine eligibility based on the seat belt use rates from the calendar year 2011 statewide seat belt use surveys.

The IFR sets forth how a State may qualify for a grant as a high seat belt use rate State (23 CFR 1200.21(d)) or a lower seat belt use rate State (23 CFR 1200.21(e))

3. *Qualification Requirements for All States.* To qualify for an occupant protection grant under this section, States must meet the following requirements:

#### i. Occupant Protection Plan

For the first fiscal year of the grant program, States must submit an occupant protection plan that describes programs the State will implement for achieving reductions in traffic crashes, fatalities and injuries on public roads. (23 CFR 1200.21(d)(1)) In subsequent fiscal years, States must update the occupant protection plan if there are changes to the programs. States have long included occupant protection plan material in the HSP they submit under Section 402. The agency intends that States continue to be guided by the elements prescribed under Uniform Guidelines for the State Highway Safety No. 20 Occupant Protection Programs, promulgated under 23 U.S.C. 402, in

developing their occupant protection plan.

ii. Click It or Ticket

MAP-21 specifically requires States to participate in the *Click It or Ticket* national mobilization in order to qualify for an occupant protection grant. *Click It or Ticket* is an annual nationwide high visibility enforcement campaign to reduce highway fatalities and injuries by cracking down on seat belt nonuse. To satisfy this criterion, the IFR requires that a State must provide a description of the State's planned participation and an assurance signed by the Governor's Representative for Highway Safety that it will participate in the *Click It or Ticket* national mobilization in the fiscal year of the grant. (23 CFR 1200.21(d)(2))

iii. Child Restraint Inspection Stations

MAP-21 requires States to have "an active network of child restraint inspection stations." Although MAP-21 does not define "active network," the IFR specifies that an "active network" is one where inspection stations are located in areas that service the majority of the State's population and show evidence of outreach to underserved areas. The agency used a version of this population-based approach in the Motorcyclist Safety grant program authorized by SAFETEA-LU. The agency will use population data from the most recent national census (currently 2010) to validate that the stations are representative of a majority of the population.

In addition, today's action specifies that these stations must be staffed with nationally certified CPS technicians during posted working hours. It is permissible for the State to have one technician responsible for more than one inspection station. (23 CFR 1200.21(d)(3))

iv. Child Passenger Safety Technicians

MAP-21 also requires that States must have a plan to recruit, train and maintain a sufficient number of child passenger safety technicians. The IFR specifies that a "sufficient number" means at least one nationally certified CPS technician responsible for coverage of each inspection station and inspection event throughout the State. As noted above, it is permissible for the State to plan to have one technician responsible for more than one inspection station. (23 CFR 1200.21(d)(4))

v. Requirement for Maintenance of Effort

MAP-21 requires the State to maintain its aggregate expenditures from all State and local sources for occupant protection programs at or above the average level of such expenditures in fiscal years 2010 and 2011. The agency has the authority to waive or modify this requirement for not more than one fiscal year. The agency expects that waivers will only be granted under exceptional or uncontrollable circumstances. As a condition of the grant, States will be required to provide assurances that the State will maintain its aggregate expenditures in accordance with this provision. (23 CFR 1200.21(c)(2); Appendix D)

4. *Additional Requirements for Lower Seat Belt Use Rate States.* In addition to meeting the above requirements, States with a seat belt use rate below 90 percent must meet at least three of six legal or programmatic criteria to qualify for grant funds. The legal criteria options are a primary seat belt use law and an occupant protection law. (23 CFR 1200.21(e)(1)–(e)(2)) The programmatic criteria options are a seat belt enforcement plan, high risk population countermeasure programs, a comprehensive occupant protection program and completion of an occupant protection program assessment. (23 CFR 1200.21(e)(3)–(e)(6))

i. Primary Seat Belt Use Law

MAP-21 specifies that a State must enact and enforce a primary enforcement seat belt use law. To qualify for this criterion, the IFR requires that a State have primary enforcement of all seating positions covered under the State's seat belt use law and child restraint law. (23 CFR 1200.21(e)(1)) Thus, for example, if a State seat belt use law requires all front seat passengers to be secured in a seat belt and its child restraint law requires all children under 16 years of age to be secured in a child restraint or seat belt, the State must provide for primary enforcement for all violations of those requirements in order to qualify for this criterion.

ii. Occupant Protection Laws

MAP-21 requires a lower seat belt use rate State to have occupant protection laws requiring front and rear occupant protection use by all occupants in an "age-appropriate restraint." Because MAP-21 requires coverage in an age-appropriate restraint, the agency is continuing the requirements set forth in the predecessor child and booster seat

grant program (Section 2011 of SAFETEA-LU) that were tied to the agency's child restraint performance standards (FMVSS 213). Thus, under today's IFR, to meet this criterion, a State must require each occupant who is under eight years of age, weighs less than 65 pounds and is less than four feet, nine inches in height to be secured in an age-appropriate child restraint. (23 CFR 1200.21(e)(2)(i)) All occupants riding in passenger motor vehicles other than those identified above must be secured in a seat belt or appropriate child restraint. (23 CFR 1200.21(e)(2)(ii)) These provisions require that there be no gaps in coverage in the State occupant protection laws. (23 CFR 1200.21(e)(2)(ii))

The IFR also continues the minimum fine requirements of the predecessor Section 405 program for a violation of the occupant protection law. To qualify under this criterion, the State must provide for the imposition of a minimum fine of not less than \$25 per unrestrained occupant. This provision ensures that the State is enforcing the law in a meaningful manner that can deter violations.

MAP-21 does not specify any permissible exemptions for this criterion. Most, if not all, States have some exemptions in their occupant protection laws. The agency recognizes that the goals of higher seat belt use would not be served by denying grants to States regardless of the nature of the exemption. However, some exemptions would severely undermine the safety considerations underlying the statute. Based on NHTSA's review of seat belt laws under previous authorizations and given the maturity of occupant protection programs, the IFR permits some exemptions, or variations of exemptions, that the agency has accepted by long-standing application in seat belt programs, such as Section 405, 406 and 2011 grant programs under previous authorizations. (23 CFR 1200.21(e)(2)(iv)) The permitted exemptions include the following:

(A) Drivers, but not passengers, of postal, utility, and commercial vehicles that make frequent stops in the course of their business;

(B) Persons who are unable to wear a seat belt or child restraint because of a medical condition, provided there is written documentation from a physician;

(C) Persons who are unable wear a seat belt or child restraint because all other seating positions are occupied by persons properly restrained in seat belts or child restraints;

(D) Emergency vehicle operators and passengers in emergency vehicles during an emergency;

(E) Persons riding in seating positions or vehicles not required by Federal law to be equipped with seat belts;

(F) Passengers in public and livery conveyances;

Many States include exemptions for commercial drivers, such as postal workers and utility workers, who make frequent stops in the course of their business. However, in the IFR the agency limits this exemption to the drivers themselves, and only during the course of their route.

In predecessor grant programs, the agency permitted an exemption for passengers who are unable to wear a seat belt or child restraint because of a medical condition, provided the person has written documentation of the condition from a physician. The agency is aware of several variations of this exemption under State laws. The IFR specifically limits the exemption to a "medical condition" that is "documented" by a "physician."

Provisions that exempt passengers for size, weight or unfitness, for example, are not permissible. Exemptions that do not require "written" documentation and that such documentation be from a "physician," meaning a licensed medical professional, are similarly not permissible. The agency has not found compelling evidence of medical conditions that impair a passenger's ability to wear a seat belt or child restraint, and for this reason, this medical exemption will be interpreted narrowly.

By long-standing practice under predecessor grant programs, the agency has permitted an exemption when all seating positions are occupied by other belted or restrained passengers, or when vehicles are not required to be equipped with seat belts, and the IFR continues to permit these exemptions. However, exemptions of the first kind are not permitted unless all other seating positions in the vehicle are occupied with properly belted or restrained passengers. Exemptions for persons riding in seating positions not required by Federal law to be equipped with seat belts recognize that some older vehicles that are still on the road were originally manufactured without seat belts.

States also include exemptions for emergency situations. The agency understands that passengers and operators of emergency vehicles during an emergency may not be belted or in child restraints due to the circumstances. While it is unlikely that law enforcement personnel would ticket persons in these situations, even with

the exemption, the IFR permits an exemption for emergency vehicles in emergency situations. This exemption is specific to "emergency vehicles."

Exemptions for persons transporting passengers in an emergency situation or attending to the emergency needs of a passenger are impermissibly over broad, because they are subjective in nature, and the IFR does not allow them.

The IFR allows exemptions for passengers in public and livery conveyances, such as taxi cabs. The agency recognizes that many States find it impractical to impose liability in these situations.

Under the predecessor grant program for child safety seats and booster seats, an exemption for children when no combination lap and shoulder belt is available for any seating position was permitted. The IFR continues this exemption, but applies it narrowly. The exemption is permissible only with respect to the use of a booster seat, because booster seats cannot be safely used with a two-point belt. The exemption may not leave the child without a child restraint requirement.

The market for child restraints and booster seats has changed significantly during the last decade. Many child safety seats can be secured with a lap belt only, and many child safety seats are available for children weighing up to 80 pounds. The agency finds no continuing reason why a child should be exempted from all child restraint requirements (leaving the child to be restrained only by a two-point belt) because a combination lap and shoulder belt is not available to accommodate a booster seat. Accordingly, the agency will no longer permit an exemption from a booster seat requirement when no combination lap and shoulder belt is available, unless it requires the use of other age-appropriate child restraints.

Consistent with past practice, NHTSA will review State laws to determine whether all "passenger motor vehicles" are covered by the State occupant protection law. Some State laws omit coverage for vehicles that fall within the definition of passenger motor vehicle. For example, some State laws exempt commercial vehicles or school buses, but define these terms expansively to include passenger cars, SUVs, or minivans used for those purposes. In those circumstances, such laws do not meet the vehicle coverage requirements specified in this IFR. On the other hand, exemptions to occupant protection laws that apply only to vehicles with a GVWR of more than 10,000 pounds do not render the State ineligible for this criterion.

### iii. Seat Belt Enforcement

Under MAP-21, this criterion requires a lower seat belt use rate State to "conduct sustained (on-going and periodic) seat belt enforcement at a defined level of participation during the year." To satisfy this criterion, the IFR specifies that the State must submit a seat belt enforcement plan that documents how law enforcement agencies will participate in the sustained seat belt enforcement to cover at least 70 percent of the State's population as shown by the latest available Federal census or how law enforcement agencies covering geographic areas in which at least 70 percent of the State's unrestrained passenger vehicle occupant fatalities occurred (reported in the HSP) will be responsible for seat belt enforcement. (23 CFR 1200.21(e)(3))

### iv. High Risk Population Countermeasure Programs

MAP-21 requires a lower seat belt use rate State to implement "countermeasure programs for high-risk populations, such as drivers on rural roadways, unrestrained nighttime drivers, or teenage drivers." To qualify under this criterion, the IFR directs the State to provide documentation of its countermeasure programs for at least two of the high-risk populations identified in MAP-21 or other high-risk populations identified by the State in its occupant protection plan. The countermeasure programs must identify strategies for increasing seat belt and child restraint use in these population classes. (23 CFR 1200.21(e)(4))

### v. Comprehensive Occupant Protection Program

Under MAP-21, a lower seat belt use rate State must implement a comprehensive occupant protection program in which the State has conducted a NHTSA-facilitated program assessment, developed a statewide strategic plan, designated an occupant protection coordinator, and established a statewide occupant protection task force. Under this criterion, in addition to submitting the occupant protection plan required of all States, a lower seat belt use rate State must demonstrate that it has a comprehensive program under which it has developed a multi-year strategic plan based on input from statewide stakeholders. (23 CFR 1200.21(e)(5)(ii-iii)) In prescribing the required elements of the multi-year strategic plan, the agency was guided by the NHTSA's Uniform Guidelines for State Highway Safety Programs No. 20—Occupant Protection, promulgated



under 23 U.S.C. 402. The multi-year strategic plan must include a program management strategy, a program evaluation strategy, a communication and education program strategy and an enforcement strategy. MAP-21 also requires under this criterion that the State has designated an occupant protection coordinator and established a statewide occupant protection task force. The comprehensive occupant protection program must also include evidence that the State has conducted a NHTSA-facilitated program assessment that evaluates the program for elements designed to increase seat belt use in the State. (23 CFR 1200.21(e)(5)(i))

#### vi. Occupant Protection Program Assessment

A separate criterion in MAP-21 requires a lower seat belt use rate State to demonstrate that it has completed an assessment of its occupant protection program during the three-year period preceding the grant year or will conduct such an assessment during the first year of the grant. A lower seat belt use rate State must provide evidence that it has conducted a comprehensive NHTSA-facilitated assessment of all elements of its occupant protection program within the three years prior to the application due date. If the State has not conducted such an assessment, it may meet the criterion by providing assurances that it will conduct a NHTSA-facilitated assessment by September 1 of the grant year. (23 CFR 1200.21(e)(6)) If the State fails to conduct a NHTSA-facilitated assessment by September 1, the agency will seek the return of Section 405(b) grant funds that the State qualified for on the basis of the State's assurance that it would conduct such an assessment by the deadline, and the agency will redistribute the grant funds in accordance with § 1200.20(e) to other qualifying States under this section. Seeking the return of grant funds and redistributing the funds to other qualifying States is the most equitable resolution since the State did not meet the conditions of the grant, and those grant funds should properly be awarded to other qualifying States. Further, the failure of a State to conduct this assessment will disqualify the State from the next fiscal year's grant.

5. *Use of Grant Funds.* MAP-21 identifies with particularity how States may use grant funds awarded under this program, but permits high seat belt use rate States to use up to 75 percent for any project or activity eligible for funding under 23 U.S.C. 402. The IFR adopts this language without change in 23 CFR 1200.21(f).

#### C. State Traffic Safety Information System Improvements Grants (§ 1200.22)

MAP-21 continues, with some changes, the traffic safety information system improvements grant program authorized under SAFETEA-LU (formerly codified at 23 U.S.C. 408). The purpose of the new grant program, as under SAFETEA-LU, is to support State efforts to improve the data systems needed to help identify priorities for Federal, State and local highway and traffic safety programs, to link intra-State data systems, and to improve the compatibility and interoperability of these data systems with national data systems and the data systems of other States for highway safety purposes, such as enhancing the ability to analyze national trends in crash occurrences, rates, outcomes and circumstances. (23 CFR 1200.22(a))

##### 1. Traffic Records Coordinating Committee (TRCC) Requirement

The role and function of a TRCC in the State Traffic Safety Information System Improvements grant program is very similar to that of the TRCC in the predecessor data program. Consistent with those requirements (pursuant to which many States already have established the necessary organizational structure for their TRCC), a State's TRCC under this section must have a multidisciplinary membership that includes, among others, owners, operators, collectors and users of traffic records and public health and injury control data systems, highway safety, highway infrastructure, law enforcement and adjudication officials, and public health, emergency medical services (EMS), injury control, driver licensing and motor carrier agencies and organizations. (23 CFR 1200.22(b)(1))

Building on guidance issued under the predecessor data program, this IFR requires that a TRCC have specific review and approval authority with respect to State highway safety data and traffic records systems, technologies used to keep such systems current, TRCC membership, the TRCC coordinator, changes to the State's multi-year Strategic Plan, and performance measures used to demonstrate quantitative progress. It also charges a TRCC with considering, coordinating and representing to outside organizations the views of the State organizations involved in the administration, collection and use of highway safety data and traffic records. (23 CFR 1200.22(b)(2))

##### 2. Strategic Plan Requirement

This IFR, as under the predecessor program, requires a State to have a traffic records strategic plan that has been approved by the TRCC and describes specific quantifiable and measurable anticipated improvements in the State's core safety databases. The data collection and information systems sections of the traffic records strategic plan should be coordinated with the State strategic highway safety plan. Identified performance measures, using the formats set forth in the Model Performance Measures for State Traffic Records Systems (DOT HS 811 441, February 2011), collaboratively developed by NHTSA and GHSA, continue to be critical components of a State's strategic plan, as do recommendations resulting from its most recent highway safety data and traffic records system assessment. (23 CFR 1200.22(c))

##### 3. Quantifiable and Measurable Progress Requirement

Continuing the emphasis on performance measures and measurable progress, this IFR emphasizes that a valid and unequivocal method of demonstrating quantitative improvement in the data attributes of accuracy, completeness, timeliness, uniformity, accessibility, and integration in a core database is by showing an improved consistency within the State's record system or achievement of a higher level of compliance with a national model inventory of data elements, such as the Model Minimum Uniform Crash Criteria (MMUCC), the Model Impaired Driving Records Information System (MIDRIS), the Model Inventory of Roadway Elements (MIRE) or the National Emergency Medical Services Information System (NEMSIS). These model data elements include the measure of *Crash* uniformity (C-U-1, the number of MMUCC-compliant data elements entered into the crash database); the measure of *Roadway* uniformity (R-U-1, the number of MIRE-compliant data elements entered into the roadway database); one of the measures of *Citation/Adjudication* uniformity (C/A-U-1, the number of MIDRIS-compliant data elements entered into the citation database); and both of the measures of *EMS/Injury Surveillance* uniformity (I-U-1 and I-U-2, the percentage and number of records on the State EMS data file that are NEMSIS-compliant). (23 CFR 1200.22(d))

Performance measures must be in the formats set forth in the Model

Performance Measures for State Traffic Records Systems (DOT HS 811 441, February 2011) collaboratively developed by NHTSA and GHSA. To satisfy this progress requirement, the supporting data must demonstrate that the progress was achieved, at least in part, within the preceding 12 months.

Under the predecessor data program, a State had to certify that it had adopted and was using the model data elements or that the grant funds it received under the program would be used toward adopting and using the maximum number of model data elements as soon as practicable. To qualify for a grant under this IFR, States do *not* need to make this same certification. However, the MMUCC, MIRE, MIDRIS and NEMSIS model data sets continue to be central to States' efforts to improve their highway safety data and traffic records systems. For this reason, in order to demonstrate measurable progress, this IFR strongly encourages a State to achieve a higher level of compliance with a national model inventory.

States are strongly encouraged to submit one or more voluntary interim progress reports documenting performance measures and supportive data that demonstrate quantitative progress in relation to one or more of the six significant data program attributes. NHTSA recommends submission of the interim progress reports prior to the application due date to provide time for NHTSA to interact with the State to obtain any additional information that NHTSA may need to verify the State's quantifiable, measurable progress.

#### 4. Requirement To Conduct or Update a Traffic Records System Assessment

This IFR requires that a State certification be based on an assessment that complies with the procedures and methodologies outlined in NHTSA's Traffic Records Highway Safety Program Advisory (DOT HS 811 644). As in the past, NHTSA will continue to conduct State assessments that meet the requirements of this section without charge, subject to the availability of funding. (23 CFR 1200.22(e))

A State that satisfies this certification requirement on the basis of having updated an assessment of its highway safety data and traffic records system during the preceding five years must submit with its application an assessment update report including (1) the date on which the most recent assessment was completed, (2) a listing of all recommendations to the State contained in the assessment report, (3) an explanation of how the State has addressed each recommendation since

the date the assessment was completed, and (4) the date on which the assessment update report was prepared.

#### 5. Requirement for Maintenance of Effort

MAP-21 requires the State to maintain its aggregate expenditures from all State and local sources for State traffic safety information system programs at or above the average level of such expenditures in fiscal years 2010 and 2011. The agency has the authority to waive or modify this requirement for not more than one fiscal year. The agency expects that waivers will be granted only under exceptional circumstances. As a condition of the grant, each State will be required to provide assurances that the State will maintain its aggregate expenditures in accordance with this provision. (23 CFR 1200.22(f); Appendix D)

6. *Use of Grant Funds.* States may use grant funds awarded under this subsection for making data program improvements to core highway safety databases related to quantifiable, measurable progress in any of the significant data program attributes of accuracy, completeness, timeliness, uniformity, accessibility or integration of a core highway safety database.

#### D. Impaired Driving Countermeasures Grants (§ 1200.23)

The impaired driving countermeasures grant program was created by the Drunk Driving Prevention Act of 1988 and codified at 23 U.S.C. 410. As originally conceived, States could qualify for basic and supplemental grants under this program. Since the inception of the Section 410 program, it has been amended several times to change the grant criteria and grant award amounts. The most recent amendments prior to those leading to today's action arose out of the program authorized under SAFETEA-LU. These amendments modified the grant criteria and the award amounts and made a number of structural changes to streamline the program.

Under SAFETEA-LU, States could meet the grant program requirements by qualifying either on the basis of a low alcohol-related fatality rate, based on the agency's Fatality Analysis Reporting System (FARS) data, or by meeting a number of specified programmatic criteria each year of the grant (three in the first fiscal year, four in the following fiscal year, and five in the remaining fiscal years of the program). Specifically, the programmatic requirements included the following criteria: high visibility impaired driving

enforcement program; prosecution and adjudication outreach program; BAC testing program; high risk drivers program; alcohol rehabilitation or DWI court program; underage drinking prevention program; administrative license suspension and revocation program; and self-sustaining impaired driving prevention program. In addition, a separate grant program provided funds to the 10 States with the highest alcohol-related fatality rates.

MAP-21 modified the grant award criteria and the award amounts and included a number of structural changes to the impaired driving countermeasures grant program.

#### 1. Impaired Driving Countermeasures Program Under MAP-21

As directed in MAP-21, States qualify for a grant based on a determination of the State's average impaired driving fatality rate using the most recently available final data from NHTSA's FARS. States are then classified as either low-range, mid-range, or high-range States and are required to meet certain statutory requirements associated with each classification. In addition, under MAP-21, a new grant is created to separately reward States that have mandatory ignition interlock laws applicable to all DUI offenders ("alcohol-ignition interlock State" grants). There are no longer formal programmatic requirements under MAP-21. (23 CFR 1200.23(c))

The average impaired driving fatality rate, the basis for most grant awards under this section, is based on the number of fatalities in motor vehicle crashes in a State that involve a driver with a blood alcohol concentration of at least 0.08 percent for every 100,000,000 vehicle miles traveled (VMT). Rate determinations based on FARS data from the most recently reported three calendar years for a State are then averaged to determine the rate. These determinations will be used to identify States as either low-, mid- or high-range States in accordance with MAP-21 requirements. (23 CFR 1200.23(d)-(f)) Consistent with the predecessor grant program requirements, the agency expects to make rate information available to the States by June 1. This date will allow the agency to use the most recently available final FARS data in its calculations. If there is any delay in the availability of FARS data in a given year, the agency will use the rate calculations from the preceding year. This approach will ensure that any delay in data availability will not affect the awarding of grants under this section.

MAP-21 specifies that low-range States are those with an average impaired driving fatality rate of 0.30 or lower; mid-range States are those with an average impaired driving fatality rate that is higher than 0.30 and lower than 0.60; and high-range States are those that have an average impaired driving fatality rate of 0.60 or higher. The agency will not round any rates for the purposes of determining how a State should be classified among these ranges.

MAP-21 provides for separate grants to be made to "alcohol-ignition interlock States," as further described below. Each State with a law that requires every individual convicted of driving under the influence or driving while intoxicated to be subject to the use of an alcohol-ignition interlock for a minimum of 30 days is eligible for a separate grant. MAP-21 provides that up to 15 percent of the amount available to carry out the impaired driving countermeasures program shall be available for grants to States meeting this criterion. (23 CFR 1200.23(g))

## 2. Low-Range States

Under MAP-21, States that have an average impaired driving fatality rate of 0.30 or lower are considered low-range States. Prior to the start of the application period (on or about June 1 of each fiscal year), the agency will inform each State that qualifies for a grant as a low-range State. These States are not required to provide any additional information in order to receive grant funds. However, these States will be required to submit information that identifies how the grant funds will be used in accordance with the requirements of MAP-21 (see qualifying uses below). (23 CFR 1200.23(d)(1))

In addition, MAP-21 requires the State to maintain its aggregate expenditures from all State and local sources for impaired driving programs at or above the average level of such expenditure in fiscal years 2010 and 2011. (23 CFR 1200.23(d)(2)) As a condition of the grant, each State will be required to provide assurances that the State will maintain its aggregate expenditures in accordance with this provision. (Appendix D) The agency has the authority to waive or modify this requirement for not more than one fiscal year. The agency expects that waivers will only be granted under exceptional circumstances.

The above requirements that apply to low-range States are minimum requirements that apply to all States that receive a grant under Section 405(d).

## 3. Mid-Range States

Under MAP-21, States that have an average impaired driving fatality rate that is higher than 0.30 and lower than 0.60 are considered mid-range States. In accordance with the statutory requirements, States qualifying as mid-range States are required to submit a statewide impaired driving plan that addresses the problem of impaired driving. The plan must have been developed by a statewide impaired driving task force within the three years prior to the application due date. If the State has not developed and submitted a plan that meets the statutory criteria at the time of the application deadline, then it must provide an assurance that one will be developed and submitted to NHTSA by September 1 of the grant year. (23 CFR 1200.23(e)) If the State fails to submit the plan by September 1, the agency will seek the return of Section 405(d) grant funds that the State qualified for based on its assurance that it would submit the plan by the deadline, and will redistribute the grant funds in accordance with § 1200.20(e) to other qualifying States under this section, consistent with the treatment of similarly situated States under Section III.B.4.iv, above.

The purpose of a statewide impaired driving plan is to provide a comprehensive strategy for preventing and reducing impaired driving behavior. The agency is requiring the plan to be organized in accordance with the general areas stated in NHTSA's Uniform Guidelines for State Highway Safety Programs No. 8—Impaired Driving. These general areas provide the basis for a comprehensive approach to addressing problems of impaired driving. States also should consider including sections on data-driven problem identification, strategies for addressing identified problems and target groups, plans for measuring progress and outcomes, and steps to achieve stakeholder input and participation in the plan. (23 CFR 1200.23(e)(1))

In accordance with MAP-21, all qualifying plans must be developed by a statewide impaired driving task force. The IFR requires that the task force include key stakeholders in the State from the State Highway Safety Office and the areas of law enforcement and criminal justice system (e.g., prosecution, adjudication, probation). The IFR also requires that the task force include, as appropriate, stakeholders from the areas of driver licensing, treatment and rehabilitation, ignition interlock programs, data and traffic records, public health, and

communication. The State should include a variety of individuals from different functions or disciplines that bring different perspectives and experiences to the task force. Such an approach ensures that the plan developed by the task force will be a comprehensive treatment of the issues of impaired driving in a State. (23 CFR 1200.23(e)(2)(iii)) States may consider reviewing NHTSA's report entitled, "A Guide for State-wide Impaired Driving Task Forces" in developing a statewide impaired driving task force.

In addition to a list of the members of the task force, the State must provide information that supports the basis for the operation of the task force, including any charter or establishing documents that describe its purpose and operations. The State also must provide the meeting schedule for the task force for the 12 months that preceded the application deadline and include any reports or documents that the task force produced during that period. This information shall be included in the State's application for a grant. (23 CFR 1200.23(e)(2)(i)–(ii))

## 4. High-Range States

Under MAP-21, States that have an average impaired driving fatality rate that is 0.60 or higher are considered high-range States. A State qualifying as a high-range State is required to have conducted a NHTSA-facilitated assessment of the State's impaired driving program within the three years prior to the application due date or provide an assurance that it will conduct an assessment during the first year of the grant year. (23 CFR 1200.23(f)(1)) NHTSA's involvement will ensure a comprehensive treatment of impaired driving issues in the State and consistency in the administration of the assessments. This approach is also consistent with NHTSA's longstanding involvement in conducting assessments of State traffic safety activities and programs.

During the first year of the grant, the State is also required to convene a statewide impaired driving task force to develop a statewide impaired driving plan (both the task force and plan requirements are described in the preceding section under mid-range States). In addition to meeting the requirements associated with developing a statewide impaired driving plan, the plan also must address any recommendations from the required assessment. The plan also must include a detailed strategy for spending grant funds and include a description of how such spending supports the statewide impaired driving programs and will

contribute to the State meeting its impaired driving program performance targets. (23 CFR 1200.23(f)(2)(i))

MAP-21 requires the plan to be submitted to NHTSA during the first year of the grant for review and approval. The IFR requires that such a plan be submitted to NHTSA by September 1 of the grant year. After the first year, MAP-21 requires high-range States to update the plan in each subsequent year of the grant and then submit each updated statewide plan for NHTSA's review. (23 CFR 1200.23(f)(2)(ii))

#### 5. Alcohol-Ignition Interlock States

MAP-21 provides a separate grant to those States that adopt and enforce mandatory alcohol-ignition interlock laws. In order to qualify, the IFR requires that a State must have enacted a law by the application deadline that requires that all individuals convicted of a DUI offense to be limited to driving motor vehicles equipped with an ignition interlock. The IFR further requires the restriction to apply for a mandatory minimum period of 30 days. This length of time is consistent with the relatively short timeframe that a State might use for first-time DUI offenders. A State wishing to receive a grant is required to submit the assurances in Part 3 of Appendix D, signed by the Governor's Representative for Highway Safety, providing legal citation to the State statute demonstrating a compliant law. (23 CFR 1200.23(g))

Up to 15 percent of the total amount available under this section may be used to fund alcohol-ignition interlock grants. The agency believes, however, that in the first years of the program few States may qualify for this grant. To avoid the situation where a small number of States might receive inordinately large grant awards, the agency may adjust the funding made available for these grants. This is consistent with the statute, which specifies that up to "15 percent" may be made available for the grants. (23 CFR 1200.23(h))

#### 6. Use of Grant Funds

With the exceptions discussed below, grant funds may be distributed among any of the uses identified in MAP-21. In the IFR, the agency has included definitions for some of the uses. The definitions are generally consistent with those provided for in MAP-21 or with those developed under the prior regulation for this grant program. (23 CFR 1200.23(b) and (i))

For low-range States and States receiving grants as alcohol-ignition interlock States, funds may be used for

any of the uses identified. Mid-range States may use grants funds for any of the uses identified except programs designed to reduce impaired driving based on problem identification. In accordance with the statute, mid-range States may use funds for these programs only after review and approval by NHTSA.

High-range States may use grants funds for any uses only after submission and NHTSA approval of the statewide impaired driving plan. A high-range State will not be allowed to voucher against these funds until it has submitted its plan and received approval. States receiving alcohol-ignition interlock grants may use grants funds for any of the uses identified and for any eligible activities described under 23 U.S.C. 402.

#### E. Distracted Driving Grants (§ 1200.24)

MAP-21 created a new distracted driving grant program, authorizing incentive grants to States that enact and enforce laws prohibiting distracted driving. Specifically, States must have statutes that prohibit drivers from texting while driving and youths from using cell phones while driving. In order to give States an opportunity to submit applications for the newly authorized distracted driving grants as soon as possible in fiscal year 2013, NHTSA published a notice of funding availability (NOFA) on August 24, 2012 (77 FR 51610). Due to the unavailability of funds for that program under the current interim appropriations, whose enactment post-dated the NOFA, NHTSA published an updated notice on October 5, 2012, extending the due date for application submissions. (77 FR 61048) NHTSA will award distracted driving grants for fiscal year 2013 as provided in the NOFA. For fiscal year 2014 and future years, NHTSA will award distracted driving grants in accordance with the implementing regulations published in this IFR.

1. *Qualification Criteria.* The basis for an award under this grant program is a State statute that complies with the criteria set forth in in MAP-21. Specifically, a State must have a conforming statute that prohibits texting while driving and youth cell phone use while driving.

#### i. Texting Prohibition

MAP-21 provides that the State statute must prohibit drivers from texting through a personal wireless communications device while driving. (23 CFR 1200.24(c)(1)) MAP-21 defines "personal wireless communications device," "texting" and "driving". (23 CFR 1200.20; 23 CFR 1200.24(b)) The

State statute prohibiting texting must be consistent with these definitions. For example, MAP-21 defines texting to include "reading" from personal wireless communications devices. A State statute that does not prohibit reading texts or similar forms of electronic data communications would not enable the State to qualify for a distracted driving grant. Similarly, MAP-21 defines "driving" to include being temporarily stopped because of traffic or at a traffic light. If the State statute does not prohibit texting under these circumstances (e.g., a statute prohibiting texting while the vehicle is in motion), it would not enable the State to qualify for a distracted driving grant.

#### ii. Youth Cell Phone Use Prohibition

MAP-21 requires the State statute to prohibit a driver who is younger than 18 years of age from using a personal wireless communications device while driving. (23 CFR 1200.24(c)(2)) As noted above, MAP-21 defines "personal wireless communications device" and "driving," and a State statute prohibiting youth cell phone use while driving must be consistent with these definitions.

#### iii. Enforcement

MAP-21 requires that the State statute make a violation of both the texting prohibition and the youth cell phone use prohibition a primary offense. (23 CFR 1200.24(c)(1)(i) and 1200.24(c)(2)(ii)). As defined by MAP-21, a primary offense is "an offense for which a law enforcement officer may stop a vehicle solely for the purpose of issuing a citation in the absence of evidence of another offense." (23 CFR 1200.20(b))

#### iv. Fines

MAP-21 requires that the State statute provide for a minimum fine for a first violation and increased fines for repeat violations. In order to meet the minimum fine requirement, the IFR specifies a minimum fine of \$25 for a first violation of the texting and youth cell phone use law. (23 CFR 1200.24(c)(1)(iii)(A) and 1200.24(c)(2)(iv)(A)) This minimum fine amount is consistent with past practice in other highway safety grant programs from previous authorizations. State laws that provide for fines "up to," "not more than," "not to exceed" or similar terms would not satisfy the minimum fine requirement in MAP-21. Such language does not mandate a minimum fine for a violation.

In order to meet the increased fines for repeat violations requirement, the State statute must provide for a fine

greater than the minimum fine for the first violation. (23 CFR 1200.24(c)(1)(iii)(B) and 1200.24(c)(2)(iv)(B)) For State statutes that provide a range of fine amounts for a first violation, the State statute must provide a fine for a repeat violation greater than the maximum fine assessed for a first violation. For example, if the State statute provides that a fine for a first violation is not less than \$25, but not more than \$50, the statute must provide for a fine of more than \$50 for a repeat violation. Further, the IFR requires that violations within five years of the previous violation must be treated as repeat violations. (23 CFR 1200.24(c)(1)(iii)(B) and 1200.24(c)(2)(iv)(B)) This is consistent with past practice in other highway grant programs from previous authorizations.

MAP-21 does not require that fines increase with each subsequent offense. In order to qualify for a distracted driving grant, the State statute need not provide for increasing fine amounts for third and subsequent offenses, beyond the increased fine for a second (or repeat) offense.

#### v. Testing Distracted Driving Issues

MAP-21 provides that the State statute must require distracted driving issues to be tested as part of the State driver's license examination. In order to meet this requirement, the State statute must specifically require distracted driving issues to be tested as part of the State's driver's license examination. To satisfy this requirement, it is not sufficient that a State may, as a matter of current practice, be testing for distracted driving issues—the State statute must require it in statute. (23 CFR 1200.24(c)(2)(iii))

#### vi. Allowable Exceptions

MAP-21 specifies that a State statute may provide for the following exceptions and still meet the qualification requirements for a distracted driving grant: a driver who uses a personal wireless communications device to contact emergency services; emergency services personnel who use a personal wireless communications device while operating an emergency services vehicle and engaged in the performance of their duties as emergency services personnel; and an individual employed as a commercial motor vehicle driver or a school bus driver who uses a personal wireless communications device within the scope of such individual's employment if such use is permitted under the regulations promulgated pursuant to section 31136 of title 49. No

other exceptions are permitted under MAP-21. Accordingly, the IFR does not permit any other exceptions. (23 CFR 1200.24(c)(3))

2. *Use of Grant Funds.* MAP-21 provides that each State that receives a Section 405(e) grant must use at least 50 percent of the grant funds for specific distracted driving related activities and up to 50 percent for any eligible project or activity under 23 U.S.C. 402. The IFR adopts this language without change. (23 CFR 1200.24(d))

#### F. Motorcyclist Safety Grants (§ 1200.25)

Unlike the other Section 405 grant programs authorized by MAP-21, only the 50 States, the District of Columbia and Puerto Rico are eligible to apply for a motorcyclist safety grant. The territories are not eligible. The qualification criteria for these grants remain largely unchanged from those required for Motorcyclist Safety grants under section 2010 of SAFETEA-LU. Under MAP-21 States qualify for a grant by meeting two of six grant criteria: Motorcycle Rider Training Courses; Motorcyclists Awareness Program; Reduction of Fatalities and Crashes Involving Motorcycles; Impaired Driving Program; Reduction of Fatalities and Accidents Involving Impaired Motorcyclists; and Use of Fees Collected from Motorcyclists for Motorcycle Programs. (23 U.S.C. 405(f)(3))

##### 1. Motorcycle Rider Training Courses

To qualify for a grant based on this criterion, MAP-21 requires a State to have "an effective motorcycle rider training course that is offered throughout the State, which (i) provides a formal program of instruction in accident avoidance and other safety-oriented operational skills to motorcyclists and (ii) that may include innovative training opportunities to meet unique regional needs." (23 U.S.C. 405(f)(3)(A)) This remains unchanged from SAFETEA-LU.

To implement this criterion, the IFR sets forth the elements of motorcycle rider training courses that would meet the requirements of MAP-21. (23 CFR 1200.25(e)) In developing these requirements, the agency was guided by the specific language of MAP-21 and by established motorcycle safety programs and practices implemented under SAFETEA-LU. The MAP-21 language is nearly identical to the statutory language in the predecessor program. For this reason, the agency intends to leave in place the familiar practices and programs established under SAFETEA-LU. The motorcyclist training program is well known to the States and provides

significant support for State efforts on motorcyclist training.

In order to provide the formal program of instruction in crash avoidance and other safety-oriented operational skills required by MAP-21, the IFR requires that the State use a curriculum approved by the designated State authority having jurisdiction over motorcyclist safety issues. (23 CFR 1200.25(e)(1)(i)) Although MAP-21 uses the term "motorcycle rider training" for this criterion, it defines the term "motorcyclist safety training" as a "formal program of instruction approved for use in a State by the designated State authority having jurisdiction over motorcyclist safety issues, which may include the State motorcycle safety administrator or motorcycle advisory council appointed by the Governor of the State." (23 U.S.C. 405(f)(5)(C)) NHTSA believes Congress intended the terms to apply synonymously and that Congress defined "motorcyclist safety training" in order to give additional meaning to the motorcycle rider training courses criterion. This is reflected in the IFR. (23 CFR 1200.25(b)).

Additionally, because State motorcycle rider training courses typically include both in-class and on-the-motorcycle training and both are critical to the effectiveness of a motorcycle rider training course, the IFR requires that the curriculum include both types of training. (23 CFR 1200.25(e)(1)(i))

To effectuate the MAP-21 requirement that a State offer its effective motorcycle rider training course throughout the State, NHTSA intends to follow the process it applied in the predecessor program. The IFR requires that a State offer at least one motorcycle rider training course in a majority of the State's counties or political subdivisions or offer at least one motorcycle rider training course in counties or political subdivisions that account for a majority of the State's registered motorcycles. (23 CFR 1200.25(e)(1)(ii)) For the purposes of this criterion, majority means greater than 50 percent, and the IFR recognizes that locations for motorcycle rider training courses may vary widely from State to State. Accordingly, the agency believes this requirement provides flexibility to States seeking to qualify under this criterion. To implement the MAP-21 requirements for "an effective motorcycle rider training course that is offered throughout the State," the IFR requires States to submit information regarding the motorcycle rider training courses offered in the 12 months

preceding the due date of the grant application. (23 CFR 1200.25(e)(2)(iii))

NHTSA continues to believe it is important that training reach motorcyclists in rural areas because about half of all motorcycle-related fatalities occur in rural areas.

Accordingly, consistent with the practice under SAFETEA-LU, in selecting counties or political subdivisions in which to conduct training, NHTSA encourages States to establish training courses and course locations that are accessible to both rural and urban residents. The IFR provides that the State may offer motorcycle rider training courses throughout the State at established training centers, using mobile training units, or any other method defined as effective by the designated State authority having jurisdiction over motorcyclist safety issues. (23 CFR 1200.25(e)(1)(i))

Another requirement is that motorcycle rider training instructors be certified by either the designated State authority having jurisdiction over motorcyclist safety issues or by a nationally recognized motorcycle safety organization with certification capability. (23 CFR 1200.25(e)(1)(iii)) Requiring instructors to attain certification in order to teach a motorcycle rider training course will contribute to the course's effectiveness by ensuring that instructors have obtained an appropriate level of expertise qualifying them to instruct less experienced motorcycle riders.

Finally, the IFR requires that, to qualify for a grant under this criterion, a State must carry out quality control procedures to assess motorcycle rider training courses and instructor training courses conducted in the State. (23 CFR 1200.25(e)(1)(iv)) Quality control procedures promote course effectiveness by encouraging improvements to courses when needed. The IFR does not specify the quality control procedures a State must use. Instead, the IFR requires the State to describe in detail what quality control procedures it uses and the changes the State made to improve courses. (23 CFR 1200.25(e)(2)(v)) At a minimum, a State should gather evaluative information on an ongoing basis (e.g., by conducting site visits or gathering student feedback) and take actions to improve courses based on the information collected.

## 2. Motorcyclist Awareness Program

To satisfy this criterion, MAP-21 requires a State to have "an effective statewide program to enhance motorists' awareness of the presence of motorcyclists on or near roadways and

safe driving practices that avoid injuries to motorcyclists." (23 U.S.C. 405(f)(3)(B)) MAP-21 defines "Motorcyclist Awareness" and "Motorcyclist Awareness Program," and these definitions are adopted by the IFR. (23 CFR 1200.25(b))

To implement this criterion, the IFR sets forth the elements of motorcyclist awareness programs that meet the MAP-21 requirements. (23 CFR 1200.25(f)(1)) In developing these requirements, the agency was guided by the specific language of MAP-21, the history of the motorcyclist awareness criterion implemented under SAFETEA-LU and the highway safety guidelines on motorcycle safety.

First, the definition of "motorcyclist awareness program" in MAP-21 is identical to the definition under SAFETEA-LU and specifies that a program under this criterion be developed by or in coordination with the designated State authority having jurisdiction over motorcyclist safety issues. Before a problem can be effectively addressed, the agency believes that problem identification and prioritization must be performed. Therefore, the IFR requires the State, consistent with practice under SAFETEA-LU, to include as an element under this criterion problem identification and prioritization through the use of State data. (23 CFR 1200.25(f)(1)(ii)) The IFR also requires that a State's motorcyclist awareness program encourage collaboration among agencies and organizations responsible for, or impacted by, motorcycle safety issues. (23 CFR 1200.25(f)(1)(iii))

Additionally, the IFR requires that a State's motorcyclist awareness program incorporate a strategic communications plan to support the overall policy and program because this criterion contemplates an informational or public awareness program to enhance motorist awareness of the presence of motorcyclists and because awareness efforts rely heavily on communication strategies and implementation. To ensure statewide application, the IFR requires that the communications plan be designed to educate motorists in those jurisdictions where the incidence of motorcycle crashes is highest (i.e., the majority of counties or political subdivisions in the State with the highest numbers of motorcycle crashes, using data from the most recent calendar year, but no older than two calendar years prior to the application due date). For the purposes of this criterion, majority means greater than 50 percent. Finally, based on NHTSA's experience with dispersing traffic safety messages, the IFR requires that a

communications plan include marketing and educational efforts and use a variety of communication mechanisms to increase awareness of a problem. (23 CFR 1200.25(f)(1)(iv))

## 3. Reduction of Fatalities and Crashes Involving Motorcycles

To qualify for a grant based on this criterion, MAP-21 requires a State to experience "a reduction for the preceding calendar year in the number of motorcycle fatalities and the rate of motor vehicle crashes involving motorcycles in the State (expressed as a function of 10,000 motorcycle registrations)." (23 U.S.C. 405(f)(3)(C))

To satisfy this criterion, the IFR requires that, based on final Fatality Analysis Reporting System (FARS) data, the State must experience a reduction of at least one in the number of motorcyclist fatalities for most recent calendar year for which final FARS data are available as compared to the final FARS data for the calendar year immediately prior to that year; and based on State crash data expressed as a function of 10,000 motorcycle registrations (using FHWA motorcycle registration data), the State must experience at least a whole number reduction (i.e., at least a 1.0 reduction) in the rate of motor vehicle crashes involving motorcycles for the most recent calendar year for which final State crash data is available, but no older than two calendar years prior to the application due date, as compared to the calendar year immediately prior to that year. (E.g., for a grant application submitted on July 1, 2013, a State must provide data from the most recently available crash data, but no older than calendar 2011 year data, which would be compared to the data from the calendar year immediately prior to that year.) (23 CFR 1200.25(g)(1))

The IFR does not use the term "preceding calendar year" because NHTSA and most States do not have final FARS and State crash data available for the preceding calendar year at the time of the grant application. However, in order to have the most recent data available, the IFR specifies computing the rates required under this criterion using the most recently available FARS data and State crash data. Using the final FARS data, FHWA motorcycle registration data and State crash data, NHTSA will calculate the rates to determine a State's compliance with this criterion.

Consistent with the predecessor program, using the most recent final FARS data will ensure that the most accurate fatality numbers are used to determine each State's compliance with

this criterion. The FARS contains data derived from a census of fatal traffic crashes within the 50 States, the District of Columbia, and Puerto Rico. All FARS data on fatal motor vehicle crashes are gathered from the States' own documents and coded into FARS formats with common standards. Final FARS data provide the most comprehensive and quality-controlled fatality data available to the agency.

NHTSA will use FHWA motorcycle registration data because it contains reliable motorcycle registration data compiled in a single source for all 50 States, the District of Columbia, and Puerto Rico. The FHWA reports and releases motorcycle registration data annually.

Requiring a whole number reduction (i.e., at least a 1.0 reduction) is consistent with MAP-21's requirement that there be a reduction in the number of fatalities and the rate of motor vehicle crashes involving motorcycles in the State. The agency believes that such a reduction remains meaningful when viewed in light of the increase in motorcycle use and registrations in recent years.

Finally, NHTSA data systems for all 50 States, the District of Columbia and Puerto Rico cover only fatal crashes. No national data system currently exists that covers both crashes resulting in injuries and crashes involving property damage. Accordingly, NHTSA will rely on crash data provided by each State for the crash-related portion of this criterion.

#### 4. Impaired Driving Program

To qualify for a grant based on this criterion, MAP-21 requires that a State implement "a statewide program to reduce impaired driving, including specific measures to reduce impaired motorcycle operation." (23 U.S.C. 405(f)(3)(D))

To satisfy this criterion, the IFR requires that a State have an impaired driving program that, at a minimum, uses State data to identify and prioritize the State's impaired driving and impaired motorcycle operation problem areas, and includes specific countermeasures to reduce impaired motorcycle operation with strategies designed to reach motorists in those jurisdictions where the incidence of impaired motorcycle crashes is highest. (23 CFR 1200.25(h)(1)) For the purposes of this criterion, "impaired" will refer to alcohol-or drug-impaired as defined by State law, provided that the State's legal impairment level does not exceed .08 BAC. *Id.*

NHTSA recognizes that the definition of impairment differs from State to

State, but that all States' definitions of alcohol-impaired driving currently include at most a .08 BAC limit. Because of the differences among the States, the IFR allows each State to use its definition of impairment for the purposes of this criterion, provided that the State maintains at most a .08 BAC limit. In order to implement a program to reduce impaired driving, a State would use its own data to perform problem identification and prioritization to reduce impaired driving and impaired motorcycle operation in problem areas in the State.

NHTSA considers a State's program that includes specific countermeasures to reduce impaired motorcycle operation with strategies designed to reach motorists in those jurisdictions where the incidence of motorcycle crashes involving an impaired operator is highest (i.e., the majority of counties or political subdivisions in the State with the highest numbers of motorcycle crashes involving an impaired operator), to be consistent with the MAP-21 requirement that the impaired driving program under this criterion be implemented statewide. For the purposes of this criterion, majority means greater than 50 percent. Finally, as identified in MAP-21, the IFR requires that a State's impaired driving program include specific countermeasures to reduce impaired motorcycle operation. (23 CFR 1200.25(h)(1)(ii))

#### 5. Reduction of Fatalities and Accidents Involving Impaired Motorcyclists

To qualify for a grant based on this criterion, MAP-21 requires that a State must experience "a reduction for the preceding calendar year in the number of fatalities and the rate of reported crashes involving alcohol-impaired or drug-impaired motorcycle operators (expressed as a function of 10,000 motorcycle registrations)." (23 U.S.C. 405(f)(3)(E))

To satisfy this criterion, the IFR requires that, based on final FARS data, the State must experience a reduction of at least one in the number of fatalities involving alcohol-impaired or drug-impaired motorcycle operators for the most recent calendar year for which final FARS data is available, as compared to the final FARS data for the calendar year immediately prior to that year; and based on State crash data expressed as a function of 10,000 motorcycle registrations (using FHWA motorcycle registration data), the State must experience at least a whole number reduction (i.e., at least a 1.0 reduction) in the rate of reported crashes involving alcohol-impaired and

drug-impaired motorcycle operators in the most recent calendar year for which final State crash data is available, but data no older than two calendar years prior to the application due date, as compared to the calendar year immediately prior to that year. (23 CFR 1200.25(i)(1))

As with the criterion for reduction of fatalities and crashes involving motorcycles, the IFR does not use the term "preceding calendar year" because NHTSA and most States do not have final FARS and State crash data available for the preceding calendar year at the time of the grant application. However, in order to have the most recent data available, the IFR requires computing the rates required under this criterion using the most recently available FARS data and State crash data. Using the final FARS data, FHWA motorcycle registration data and State crash data, NHTSA will calculate the rates to determine a State's compliance with this criterion.

As with the impaired driving program criterion, "impaired" refers to alcohol-impaired or drug-impaired as defined by State law, provided that the State's legal alcohol impairment level does not exceed .08 BAC.

The use of FARS data, FHWA motorcycle registration data, and State crash data under this criterion mirror the use of these data under the reduction of fatalities and crashes involving motorcycles, as described above, and the rationale is the same. Additionally, the use of FARS data for this criterion will be particularly helpful because one of the limitations of the State crash data files is unknown alcohol use. In order to calculate alcohol-related crash involvement for a State, NHTSA uses a statistical model based on crash characteristics to impute alcohol involvement in fatal crashes where alcohol use was unknown or not reported.

#### 6. Use of Fees Collected From Motorcyclists for Motorcycle Programs

To qualify for a grant based on this criterion, MAP-21 requires that "all fees collected by the State from motorcyclists for the purposes of funding motorcycle training and safety programs will be used for motorcycle training and safety programs." (23 U.S.C. 405(f)(3)(F)) Under the IFR, a State may qualify for a grant under this criterion as a "Law State" or a "Data State." (23 CFR 1200.25(j)(1)) For the purposes of this criterion, a Law State means a State that has a statute or regulation requiring that all fees collected by the State from motorcyclists for the purposes of

funding motorcycle training and safety programs are to be used for motorcycle training and safety programs. For the purposes of this criterion, a Data State means a State that does not have such a statute or regulation, but in practice uses all fees collected by the State from motorcyclists for the purpose of funding motorcycle training and safety programs. The IFR permits a State to qualify under this criterion as either a Law State or a Data State to provide flexibility to States, and is consistent with the MAP-21 language requiring that all fees collected by a State from motorcyclists for the purposes of funding motorcycle training and safety programs be used for motorcycle training and safety programs.

To qualify for a grant under this criterion as a Law State, the IFR requires that a State have in place the statute or regulation as described above. (23 CFR 1200.25(j)(1)(i)) The State statute or regulation must provide that all fees collected by the State from motorcyclists for the purposes of funding motorcycle training and safety programs are to be used for motorcycle training and safety programs. *Id.* In addition, the current State fiscal year law (or preceding State fiscal year law, if the State has not enacted a law at the time of the State's application) appropriating all such fees to motorcycle training and safety programs must reflect that all such fees are appropriated to motorcycle training and safety programs. (23 CFR 1200.25(j)(2)(i))

To qualify for a grant under this criterion as a Data State, the IFR requires that a State demonstrate that revenues collected for the purposes of funding motorcycle training and safety programs are placed into a distinct account and expended only for motorcycle training and safety programs. (23 CFR 1200.25(j)(1)(ii)) State data and/or documentation from official records from the previous State fiscal year must show that all fees collected by the State from motorcyclists for the purposes of funding motorcycle training and safety programs were, in fact, used for motorcycle training and safety programs. (23 CFR 1200.25(j)(2)(ii)) Such data and/or documentation must show that revenues collected for the purposes of funding motorcycle training and safety programs were placed into a distinct account and expended only for motorcycle training and safety programs.

7. *Uses of Grant Funds.* MAP-21 specifies with particularity how States may use motorcyclist safety grant funds.

The IFR adopts this language without change. (23 CFR 1200.25(l))

#### G. State Graduated Driver Licensing Grant (§ 1200.26)

In general, a graduated driver's licensing system consists of a multi-staged process for issuing driver's licenses to young, novice drivers to ensure that they gain valuable driving experience under controlled circumstances and demonstrate responsible driving behavior and proficiency. Under a previous NHTSA authorization (TEA-21), Congress provided for the adoption of a GDL system as one means that States could use to satisfy the requirements for an alcohol-impaired driving prevention program incentive grant. (formerly codified at 23 U.S.C. 410) The agency issued a rule implementing those GDL provisions. In 2005, Section 2007 of SAFETEA-LU eliminated the GDL option.

MAP-21 reintroduces an incentive grant for States to adopt and implement GDL laws. The minimum qualification criteria set forth for the GDL grant by MAP-21 are prescriptive; few potential applicants currently meet all of the minimum qualification criteria prescribed by MAP-21. Beyond the minimum qualification criteria, MAP-21 provides discretion to the agency to establish additional requirements. This IFR establishes minimum qualification criteria for the GDL Incentive Grant.

MAP-21 requires NHTSA to seek public comment on how to implement the minimum qualification criteria for the GDL program. Accordingly, on October 5, 2012, NHTSA published an NPRM in the **Federal Register** seeking public comment. 77 FR 60956 (Oct. 5, 2012). The agency received comments from the Governors Highway Safety Association (GHSA), the Insurance Institute for Highway Safety (IIHS), the National Transportation Safety Board (NTSB), and from other entities as follows: four from States, seven from interest groups and safety organizations, three from insurance companies, and four from private citizens. Commenters generally expressed support for the GDL State incentive grant and provided specific feedback on particular aspects of the minimum requirements. The IFR addresses these comments under the relevant headings below.

#### 1. Minimum Qualification Criteria

To qualify for a GDL Incentive Grant, the IFR requires a State to submit an application and certain documentation demonstrating compliance with the minimum qualification criteria specifically established by MAP-21 and

with certain other requirements. (23 CFR 1200.26(c)(1)) To receive a grant, MAP-21 requires a State's graduated driver's licensing law to include a learner's permit stage and an intermediate stage meeting the minimum requirements set forth below.

#### 2. Learner's Permit Stage

MAP-21 requires that young, novice drivers complete a GDL program prior to receiving an "unrestricted driver's license". Although MAP-21 uses the phrase "unrestricted driver's license," NHTSA has elected not to use that terminology in the IFR. Driver's licenses commonly contain restrictions, such as requirements that the driver wear corrective lenses while operating the motor vehicle. In order to avoid confusion, the IFR uses and defines "full driver's license" to mean a license to operate a passenger motor vehicle on public roads at all times. Therefore, the learner's permits and intermediate stage licenses required under this program are not considered full driver's licenses, and neither are restricted licenses (such as those permitting operation of a motor vehicle for limited purposes, and therefore not allowing operation of a passenger motor vehicle at all times).

The IFR requires that a State's GDL system begin with a learner's permit stage that applies to any novice driver who is younger than 21 years of age prior to the receipt by such driver from the State of any other permit or license to operate a motor vehicle. (23 CFR 1200.26(c)(2)(i)(A)) To receive a grant, a State may not issue any other motor vehicle permit or license (including a motorcycle permit or license), to a young, novice driver until he or she completes a GDL program. Because the IFR defines a novice driver as a driver who has not been issued an intermediate license or full driver's license by any State (23 CFR 1200.26(b)), the GDL requirements stop short of covering drivers who have been issued such a license in another State but later become residents of a State with a GDL requirement. However, NHTSA encourages States to integrate new residents who possess intermediate licenses into their GDL programs. Drivers younger than 21 years of age who possess only a learner's permit from another State are still considered novice drivers under the IFR and must satisfy all minimum requirements of the applicable stages.

MAP-21 creates limited exceptions for States that enacted a law prior to January 1, 2011, establishing either of the following two classes of permit or license: a permit or license that allows drivers younger than 18 years of age to



operate a motor vehicle in connection with work performed on, or the operation of, a farm owned by family members who are directly related; or a permit or license that is issued because demonstrable hardship would result from its denial to the licensee or applicant. For the second class of permit or license, the IFR clarifies that a demonstration of unique, individualized hardship is required. Although a driver may possess one of these classes of permits or licenses, the IFR does not permit States to provide them any other permit, license or endorsement until they complete the GDL process if they are younger than 21 years of age. (23 CFR 1200.26(c)(4))

Similar to the Section 410 GDL regulations, the IFR requires that the learner's permit stage commence only after an applicant passes vision and knowledge tests, including tests about the rules of the road, signs, and signals. (23 CFR 1200.26(c)(2)(i)(B)) This ensures that novice drivers have a basic level of competency regarding the rules and requirements of driving before being permitted to operate a motor vehicle on public roadways. As required by MAP-21, the learner's permit stage must be at least six months in duration, and it also may not expire until the driver reaches at least 16 years of age. (23 CFR 1200.26(c)(2)(i)(C))

MAP-21 allows the agency discretion to prescribe additional requirements on a learner's permit holder, and it identifies three potential requirements for the agency's consideration: (1) Accompaniment and supervision by a licensed driver who is at least 21 years of age at all times while the learner's permit holder is operating a motor vehicle, (2) receipt by the permit holder of at least 40 hours of behind-the-wheel training with a licensed driver who is at least 21 years of age, and (3) completion by the permit holder of a driver education or training course. The Director of the West Virginia Governor's Highway Safety Program (GHSP) submitted a comment supporting implementation of the first requirement, and GHSA recommended that the supervising adult be required to possess a valid driver's license. In response to these comments, NHTSA has adopted the recommended requirement and has defined "licensed driver" to be "a driver who possess a valid full driver's license." (23 CFR 1200.26(b), 1200.26(c)(2)(i)(D)(1))

Comments regarding a behind-the-wheel training requirement were more varied. GHSA questioned whether there is definitive research on the amount of supervised driving time that is effective for reducing accidents and fatalities,

and suggested that a supervised driving requirement would be "premature." In contrast, several other commenters expressed strong support for minimum requirements for behind-the-wheel training. Nationwide Insurance, Allstate, and Advocates for Highway and Auto Safety expressed support for at least thirty hours of minimum behind-the-wheel training. IIHS, Consumers Union, and the GHSP supported a minimum requirement of forty hours, and State Farm supported a minimum requirement of fifty hours. The IFR adopts the requirement for 40 hours of behind-the-wheel training, consistent with the comments and with the MAP-21 suggested approach. (23 CFR 1200.26(c)(2)(i)(D)(2))

GHSA asked whether behind-the-wheel driver training would be provided by public or private providers, or whether it called for supervised behind-the-wheel driving. One individual commenter noted that some people, such as young drivers with single parents, may be unable to satisfy a supervised driving requirement. The IFR requires "40 hours of behind-the-wheel training with a licensed driver who is at least 21 years of age." It does not specify that the training be provided by a public or private organization; such training may be provided by anyone who possesses a valid unrestricted driver's license and is at least 21 years of age, including individuals or professional driving instructors. The IFR requirements provide significant flexibility, and the agency does not believe that they will result in undue burden.

NHTSA received numerous comments regarding the value or burden of imposing a driver education or training course requirement on learner's permit holders. GHSA stated that there is mixed evidence regarding the effectiveness of driver training courses, which also tend to be expensive for States to provide. IIHS and State Farm expressed concern about studies showing either little effectiveness or increased crash risk resulting from driver training courses. West Virginia noted that, as a rural State, it has many areas where neither schools nor private companies offer driver training, creating a burden on novice drivers without access to those courses. In contrast, AAA recommended that NHTSA include a basic driver education course requirement. The State of New York Department of Motor Vehicles (New York DMV) asked NHTSA to provide guidance on what would qualify as a "driver training course" under the regulations, while both AAA and the NTSB suggested that NHTSA should

base any such guidance on the Novice Teen Driver Education and Training Administrative Standards.

Integrating driver education more thoroughly with GDL systems, strengthening driver testing, involving parents in the driver education process and preparing them to manage risks for their new driver, and extending the duration of young driver training may have significant safety benefits. Driver education is a key part of the comprehensive approach needed to reduce tragic young driver crashes. NHTSA further believes that requiring driver education is not overly burdensome, and States can choose to implement the requirement so as to best manage the associated costs. The IFR adopts the driver education or training course requirement and adds the requirement that the course attended by the permit holder be certified by the State. (23 CFR 1200.26(c)(2)(i)(D)(3)) NHTSA strongly encourages States to consider establishing driver training curriculum standards based on the national standards recommended in the Driver Education Working Group (*Novice Teen Driver Education and Training Administrative Standards. Report from National Conference on Driver Education.* NHTSA, October 2009).

Finally, consistent with the requirements under the regulations for the predecessor GDL program, the IFR requires a learner's permit holder to pass a driving skills test prior to entering the intermediate stage or being issued another permit, license or endorsement. (23 CFR 1200.26(c)(2)(i)(D)(4)) This requirement ensures that all novice drivers who enter the learner's permit stage will be evaluated by the State prior to being permitted to drive unsupervised.

### 3. Intermediate Stage

Under MAP-21, the State must require that all drivers who complete the learner's permit stage and are younger than 18 years of age enter an intermediate stage that commences immediately upon the expiration of the learner's permit stage. The intermediate stage must be in effect for a period of at least six months, but may not expire until the driver reaches at least 18 years of age. The IFR implements these requirements. (23 CFR 1200.26(c)(2)(ii)(A)-(C)) The New York DMV noted that it issues adult licenses to young drivers who turn 18 years old regardless of how long they have had their intermediate license. Under MAP-21, however, this system would not meet the minimum requirements. While the intermediate stage may not expire

prior to the driver turning 18 years of age, the intermediate stage must *also* last a minimum of six months in duration.

The New York DMV also requested that NHTSA include an exemption such that novice drivers who receive driver education or training may receive an unrestricted driver's license prior to reaching 18 years of age. The State expressed concern that, without such an exemption, there would be no incentive for school districts or parents to provide, or young drivers to take, driver education. The State suggests that this could result in the loss of employment and business for numerous traffic safety instructors and driving schools. As a result, New York DMV requested either the exemption or an analysis under the Regulatory Flexibility Act of 1980 ("RFA") to minimize or analyze the potential effects on small businesses and small governmental jurisdictions.

MAP-21 does not provide the authority for the exemption New York DMV requests. The statute explicitly requires that the intermediate stage last until the driver reaches 18 years of age. Furthermore, NHTSA does not believe that there will be any adverse impact on driver education businesses or instructors, and therefore no analysis is required under the RFA. First, these regulations require that all learner's permit holders complete a driver education or training course in order to receive an intermediate or unrestricted driver's license. Second, no RFA analysis is required because these regulations do not affirmatively mandate anything that would have a direct impact on small businesses. Rather, MAP-21 and this IFR create an incentive grant program for States that elect to comply; States are free to structure their driver's licensing systems and associated training as they see fit.

MAP-21 requires that a State's intermediate stage "restricts driving at night," but leaves the details of that requirement to the discretion of the agency. NHTSA received numerous comments on how best to address the most dangerous driving hours for novices. Comments generally assumed that the most effective restriction would be to require that the driver be accompanied and supervised by a licensed driver who is at least 21 years of age during some period of the night. The NTSB proposed that the restriction period start no later than midnight. IIHS, the National Safety Council, Nationwide Insurance, State Farm, Allstate, Consumers Union, AAA, and Advocates for Highway and Auto Safety proposed that the mandatory driving restrictions begin at 10 p.m., with many

proposing that they end at 5 a.m. In addition, most of those commenters emphasized that there should be no exceptions other than for emergencies. The New York DMV and an individual commenter allowed for exceptions, including for driving related to work and education. Finally, AAA proposed that the restrictions last for at least the first six months of independent driving.

NHTSA agrees that the proper restriction for nighttime driving is to require accompaniment and supervision of the intermediate license holder by a licensed driver who is at least 21 years of age. NHTSA also agrees that a 10 p.m. through 5 a.m. restriction would effectively cover the time period when intermediate drivers are most at risk, and the IFR imposes this requirement. While the IFR provides for exceptions in the case of emergency, it does not permit other exceptions during the restricted driving hours. (23 CFR 1200.26(c)(2)(ii)(D)) Such exceptions may be difficult to enforce and could undermine the safety goals of the restriction.

This IFR also adopts the requirement that, during the intermediate stage, drivers must be prohibited from operating a motor vehicle with more than one non-familial passenger younger than 21 years of age unless a licensed driver who is at least 21 years of age is in the motor vehicle. (23 CFR 1200.26(c)(2)(ii)(E)) This restriction is specifically mandated by MAP-21, and the National School Transportation Association commented in support of this requirement.

#### 4. Additional Requirements

MAP-21 requires that, during both the learner's permit and intermediate stages, the driver must be prohibited from using a cellular telephone or any communications device while driving except in case of an emergency. The IFR includes this requirement and specifies that this prohibition be enforced as a primary offense. (23 CFR 1200.26(c)(2)(iii)(A)) The IFR also imposes a requirement that, during both the learner's permit and intermediate stages, the driver must remain conviction-free for a period of not less than six consecutive months immediately prior to the expiration of the current stage. (23 CFR 1200.26(c)(2)(iii)(B)) To remain "conviction-free," a driver cannot be convicted of any offense under State or local law relating to the use or operation of a motor vehicle. The definition provides examples of driving-related offenses. (23 CFR 1200.26(b)) With this requirement, any conviction related to the use or operation of a motor vehicle

would result in "resetting the clock" for the driver's current stage.

The IFR establishes a requirement for license distinguishability similar to the one in the regulations for the predecessor GDL program. Specifically, it requires that the State's learner's permit, intermediate license, and full driver's license be distinguishable from each other. This is necessary to ensure that law enforcement officers are informed about the proper driving restrictions that apply to the driver during a traffic stop. The IFR also clarifies the documentation grant applicants are required to submit in order to prove license distinguishability. (23 CFR 1200.26(c)(3))

#### 5. Grant Awards and Use of Grant Funds

As required by MAP-21, NHTSA will award grants to States that meet the qualification criteria on the basis of the apportionment formula under 23 U.S.C. 402 for that fiscal year. (23 CFR 1200.26(d)(1)) Because it is possible that few States will qualify for grants during the first few years of the GDL incentive grant program, the IFR imposes a cap on awards to prevent any States from receiving an unanticipated and disproportionate share of the available grant funds. The amount of a grant award may not exceed 10 percent of the total amount made available for the grant for that fiscal year. (23 CFR 1200.26(d)(2))

MAP-21 also specifies the permitted uses of grant funds. The IFR implements those limitations and clarifies the permitted uses where necessary. At least 25 percent of the grant funds must be used for expenses connected with a compliant GDL law. (23 CFR 1200.26(e)(1)) If a State has received grant funds but later falls out of compliance with the minimum requirements established by the IFR, the State will not be permitted to use this portion of the grant funds. No more than 75 percent of the grant funds may be used for any eligible project under 23 U.S.C. 402. (23 CFR 1200.26(e)(2))

The NTSB commented that NHTSA should include an evaluation element to the grant process to ensure that States are using the grants effectively to improve their GDL programs. MAP-21 does not provide for performance-based evaluation requirements as a condition of receiving grant funds. Therefore, NHTSA declines to impose this additional burden on the States. NHTSA will continue to conduct and/or evaluate new research regarding the effectiveness of various elements of GDL programs.

#### IV. Administration of Highway Safety Grants (Section 402 and 405 Grants)

NHTSA has administered the Section 402 grant program in accordance with implementing regulations found at 23 CFR parts 1200, 1205, 1206, 1250, 1251 and 1252 for many years. Those regulations, which are amended by today's action, contain detailed procedures governing the HSP and administration of the Section 402 grant program. Today's action rescinds part 1205 and updates and incorporates parts 1206, 1250, 1251 and 1252 into part 1200 to improve clarity and organization. (With that incorporation, parts 1206, 1250, 1251, and 1252 are rescinded.) Many of the older provisions in 23 CFR Chapter II contain outdated references to the FHWA and the Annual Work Plan (AWP). Since NHTSA assumed sole responsibility for the administration of the Section 402 program, these references to FHWA and the AWP no longer apply, and today's action deletes these references. However, NHTSA and FHWA continue to work closely to coordinate respective State highway safety programs.

Finally, as discussed in more detail below, today's action amends portions of part 1200 to clarify existing requirements and to provide for improved accountability of Federal funds, and it specifies that the grant administration provisions apply to all 23 U.S.C. Chapter 4 grants.

##### A. Rescission and Reorganization

Under previous authorizations, the Highway Safety Act required the agency to determine, through a rulemaking process, those programs "most effective" in reducing crashes, injuries and deaths. Previously, the Act provided that only those programs established under the rule as most effective in reducing crashes, injuries and deaths would be eligible for Federal financial assistance under the Section 402 grant program. The rule identifying those "most effective" programs was set forth at 23 CFR part 1205. Under MAP-21, States may use grant funds more broadly in accordance with an HSP approved by the agency. Accordingly, the agency rescinds part 1205 as it no longer applies.

The old regulations for the Section 402 program are contained throughout Chapter II of Title 23, CFR. The IFR reorganizes parts 1250 and 1252, which establish the agency's policies for determining political subdivision participation in State highway safety programs and State matching of planning and administration (P&A) costs, respectively, by moving these

parts into two new appendices to part 1200. (Appendices E and F)

Many of the provisions in § 1200.11, special funding conditions, of the old regulations (for the Section 402 program) identify statutory requirements that States must continue to meet. These conditions are part of the certifications and assurances in Appendix A that States submit as part of the HSP. The IFR retains the non-statutory provisions regarding the P&A costs as special funding conditions in the renumbered § 1200.13. The IFR also increases the State's allowance for P&A costs from 10 percent to 13 percent to help offset the additional costs associated with project-level reporting and oversight of Section 405 grant funds. In addition, as more State highway safety offices transition to implementing e-grant systems to manage their highway safety program, the increased P&A allowance will help with the high start-up costs and regular maintenance costs. (23 CFR 1200.13; Appendix F) No P&A costs are allowed from Section 405 grant funds. Finally, the IFR also adds the new MAP-21 statutory condition that States may not use Section 402 grant funds for automated traffic enforcement systems. (23 CFR 1200.13)

The IFR incorporates part 1251, which describes the authority and functions of the State Highway Safety Agency, into § 1200.4 under subpart A of part 1200. This change clarifies the role of the State Highway Safety Agency in administering the grant programs under Sections 402 and 405. The IFR also updates these provisions to include critical authorities and functions related to the State Highway Safety Agency's responsibility to provide oversight and management of the highway safety program. For example, the State Highway Safety Agency must have the ability to establish and maintain adequate staffing to effectively plan, manage, and provide oversight of highway safety projects. It must also be responsible for monitoring changes in the State statute or regulation that would affect the State's qualification for grants and impact the State's highway safety program. In addition, the State Highway Safety Agency must have ready access to State data systems that are critical to having a data-driven highway safety program. Finally, IFR revises these provisions to reflect applicable laws and regulations and to update language. (23 CFR 1200.4)

Part 1206 under the old regulation provides for the rules of procedure for invoking sanctions under the Highway Safety Act of 1966. The IFR incorporates part 1206, along with old § 1200.26,

non-compliance, under a new subpart F of part 1200. The provisions of this subpart remain largely unchanged and are applicable to the Section 402 and 405 grant programs. (23 CFR 1200.50 and 1200.51)

As a result of the reorganization of 23 CFR Chapter II, a number of sections have been renumbered, such as the section on Definitions (23 CFR 1200.3), Equipment (23 CFR 1200.31), Program Income (23 CFR 1200.34), Annual Report (23 CFR 1200.35), Appeals (23 CFR 1200.36), Post-Grant Adjustments (23 CFR 1200.42) and Continuing Requirements (23 CFR 1200.43). The IFR deletes the old provision regarding improvement plans as the agency currently provides recommendations and technical assistance to States that have had little or no progress towards achieving State performance targets. While new definitions have been added (performance measure, project, project agreement), as mentioned in Section II.B. and discussed in Section IV.B., and existing definitions clarified (Highway Safety Plan, highway safety program, program area), no other substantive changes have been made to these provisions.

A number of other requirements apply to the Section 402 and 405 programs, including such government-wide provisions as the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (49 CFR part 18) and the Office of Management and Budget (OMB) Circulars containing cost principles and audit requirements. These provisions are independent of today's notice, and continue to apply in accordance with their terms.

Several provisions in 23 CFR Chapter III (parts 1313, 1335, 1345 and 1350) pertain to grant programs whose authorizations have expired. Those parts are being rescinded by today's action.

For ease of reference, the provisions that have been reorganized are republished in this notice.

##### B. New Administrative Procedures of Note

The agency is responsible for overseeing and monitoring implementation of the grant programs to help ensure that recipients are meeting program and accountability requirements. Oversight procedures for monitoring the recipients' use of awarded funds can help the agency determine whether recipients are operating efficiently and effectively. Effective oversight procedures based on internal control standards for monitoring the recipients' use of

awarded funds are key to ensuring that program funds are being spent in a manner consistent with statute and regulation. In order to improve oversight of grantee activities and management of federal funds, the IFR makes changes to the procedures for administering the highway safety grant programs.

#### 1. Program Cost Summary

Since the 1980s, States have used HS Form 217 (program cost summary) to provide cost information for the State highway safety program. States will continue to use this form for Section 402 and Section 405 grants. However, States that allocate the grant funds by program area in the HS Form 217 must also provide a list of projects (and project numbers and estimated amount of Federal funds) that will be conducted under each program area. (23 CFR 1200.32; see also 23 CFR 1200.15) The IFR defines project, project agreement and project number in § 1200.3 to provide clarification so that the agency can better track information submitted by the States.

Each State submits this form as part of its HSP and then submits an updated HSP and HS Form 217 within 30 days after the beginning of the fiscal year or date of award. Some States routinely update their HSP and HS Form 217 throughout the fiscal year of the grant. Today's action amends the regulation to clarify that the Approving Official must approve both the amended HSP and amended HS Form 217. This change is intended to help the agency ensure that grant funds are expended for purposes authorized by statute or regulation (e.g., eligibility of use of grant funds, tracking Federal share, local participation). States must also update the list of projects submitted pursuant to § 1200.11(e). As discussed below, reimbursement of vouchers for projects is subject to receipt by NHTSA of an updated list of projects. (23 CFR 1200.32; see also 23 CFR 1200.15)

#### 2. Additional Documentation for Reimbursement of Expenses

While grantees or recipients have primary responsibility to administer, manage, and account for the use of grant funds, the Federal grant-awarding agency also maintains responsibility for oversight in accordance with applicable laws and regulations. Changes to the regulation are necessary to reflect the complexity of current grant programs and to ensure effective oversight. Today's action requires additional documentation from States when submitting vouchers so that the agency has information linking vouchers to expenditures prior to approving

reimbursements and to assist subsequent audits and reviews.

Under the old regulation, States submitted vouchers providing detail only at the program area level. Vouchers will still be submitted at the program area level, but the State must also provide an itemization of project numbers and amount of Federal funds expended for each project for which reimbursement is being sought. This can be provided through the State's summary financial reports. In addition, the project numbers (and amount of Federal funds) for which the State seeks reimbursement must match the list of project numbers (and not exceed the identified amount) submitted to NHTSA pursuant to § 1200.11(e) or amended pursuant to § 1200.32. If there is an inconsistency in either the project number or the amount of Federal funds claimed, the voucher will be rejected, in whole or part, until an amended list of projects and/or estimated amount of Federal funds is submitted to and approved by the Approving Official pursuant to § 1200.32.

As under the old regulation, States must make copies of project agreements and other supporting documentation available for review by the Approving Official. However, the IFR now requires that project agreements bear the project number reported in the list of projects submitted by States pursuant to § 1200.11(e). Supporting documentation must also be retained in a manner that enables the agency to track the expenditures to vouchers and projects. With this change, the agency will be better able to track the State's expenditure of grant funds. (23 CFR 1200.33)

#### 3. Availability of Funds

A fundamental expectation of Congress is that funds made available to States will be used promptly and effectively to address the highway safety problems for which they were authorized. To encourage States to liquidate grant funds in a timely fashion, today's action sets forth the procedures for deobligating grant funds that remain unexpended for long periods. We believe that as States increase the timeliness of their grant fund expenditures, safety outcomes can improve.

Section 402 and 405 grant funds are authorized for apportionment or allocation each fiscal year. Because these funds are made available each fiscal year, it is expected that States will strive to use these grant funds to carry out highway safety programs during the fiscal year of the grant. In the past, expending all of the incentive grant

funds within the fiscal year was impractical in part because such funds were awarded late in the fiscal year. States often carried forward unexpended grant funds into the next fiscal year.

With the enactment of MAP-21, NHTSA expects to apportion or allocate grant funds early in the fiscal year. States should, to the fullest extent possible, expend these funds during the fiscal year to meet the intent of the Congress in funding an annual program. To address the issue of unexpended balances, the IFR provides that grant funds are available for expenditure for three years after the last day of the fiscal year of apportionment or allocation. (23 CFR 1200.41(b)) This is consistent with section 31101 of MAP-21 that provides that 23 U.S.C. Chapter 1 applies to the Chapter 4 grant programs. See 23 U.S.C. 118 (funds in a State shall remain available for obligation in that State for a period of three years after the last day of the fiscal year for which the funds are authorized). During the last year of availability of funds, NHTSA will notify States of unexpended grant funds subject to this requirement no later than 180 days before the end of the period of availability. *Id.* States may commit such unexpended grant funds to a specific project before the end of the period of the availability. Grant funds committed to a specific project must be expended before the end of the succeeding fiscal year and only on that project. At the end of that time period, unexpended grant funds will lapse, and NHTSA will deobligate unexpended balances. *Id.*

#### 4. Reconciliation

Closeout procedures are intended to ensure that recipients have met all financial requirements, provided final reports, and returned any unused funds. NHTSA's grant programs, especially the Section 402 program, are formula grant programs that continue each fiscal year until rescinded by Congress. Each year States submit Highway Safety Plans detailing their highway safety programs. Under the old regulation, with the approval of the Approving Official, States could extend the right to incur costs for up to 90 days and then submit final vouchers. Any funds remaining at the end of the closeout were carried forward to the next fiscal year.

The IFR continues to provide that the HSP expires at the end of the fiscal year. (23 CFR 1200.40) Unlike the old regulation, the IFR provides that States will no longer be permitted to extend the right to incur costs under the old fiscal year's Highway Safety Plan. However, grant funds remaining at the end of the fiscal year are available for

expenditure during the next fiscal year (unless they have lapsed as explained in the previous section), provided the State has a new HSP approved by the Approving Official and the remaining funds are identified and programmed in the HSP, and in an updated and approved HS Form 217. (23 CFR 1200.41(a))

States will still have 90 days after the end of the fiscal year to submit a final voucher against the old fiscal year's Highway Safety Plan. The Approving Official may extend the time period to submit a final voucher against the old fiscal year's Highway Safety Plan only in extraordinary circumstances. This does not constitute an extension of the right to incur costs under the old fiscal year's Highway Safety Plan. (23 CFR 1200.40)

The additional requirement, noted above, is that the funds must not be from a fiscal year earlier than four years prior. The requirement for an annual report evaluating performance on a fiscal year basis is retained. The IFR also allows for extending the due date for submission of the annual report, subject to approval of the Approving Official.

#### C. Special Provisions for Fiscal Year 2013 Grants and Prior Fiscal Year Grants

MAP-21 provides that most of the new requirements in Section 402 apply to fiscal year 2014 grants, whose grant applications are due on July 1, 2013. The IFR clarifies that the codified regulations in place at the time of grant award continue to apply to fiscal year 2013 Section 402 grants. (23 CFR 1200.60)

The IFR provides that, except for fiscal year 2013 distracted driving grants, the remaining Section 405 grants will be administered through the provisions set forth in today's action. The application due date is 60 days from the publication date of the IFR. MAP-21 sets forth a single application due date for fiscal year 2014 grants under Chapter 4. The application (the HSP) for fiscal year 2014 Section 402 and 405 grants is due July 1, 2013. (23 CFR 1200.61)

As noted above, the agency recognizes that States will have unexpended balances of grant funds from grant programs that have been rescinded by MAP-21 (before fiscal year 2013). Those grant funds will be governed by the laws and implementing regulations or guidance that were in effect during those grant years (23 CFR 1200.62), and must be tracked separately.

#### V. Immediate Effective Date and Request for Comments

The Administrative Procedure Act (5 U.S.C. 553(d)) requires that a rule be published 30 days prior to its effective date unless one of three exceptions applies. One of these exceptions is when the agency finds good cause for a shorter period. We have determined that it is in the public interest for this final rule to have an immediate effective date. NHTSA is expediting a rulemaking to provide notice to the States of the new requirements for the HSP required by Section 402 and the criteria for different components of the Section 405 grants. The fiscal year 2013 grant funds must be awarded to States before the end of the fiscal year, and States need the time to complete their fiscal year 2013 grant applications. For fiscal year 2014 grants, the statutory grant application due date is July 1, 2013, and States need time to complete these applications as well. Early publication of the rule setting forth the requirements for State applications for multiple grants that have separate qualification requirements is therefore imperative.

For these reasons, NHTSA is issuing this rulemaking as an interim final rule that will be effective immediately. As an interim final rule, this regulation is fully in effect and binding upon its effective date. No further regulatory action by the agency is necessary to make this rule effective. However, in order to benefit from comments which interested parties and the public may have, the agency is requesting that comments be submitted to the docket for this notice.

Specifically, MAP-21 directs NHTSA to use these existing performance measures from the report, "Traffic Safety Performance Measures for States and Federal Agencies," now, and make revisions to the set of performance measures going forward, in coordination with GHSA. (23 U.S.C. 402(k)(4)) In anticipation of such further coordination by NHTSA and GHSA in revising the performance measures, NHTSA is seeking comment in this IFR on ways to improve data requirements from States, improve performance measures and criteria, possible additional performance measures to be considered, and test and analyze the effectiveness of programs based on these performance measures to help inform the allocation of resources. In particular, we seek public comment on whether the measures are capturing the correct outcomes and whether the measures and the data submitted by the States enable NHTSA and States to test and identify the cost-effectiveness of highway safety grant programs.

Comments received in response to this notice, as well as continued interaction with interested parties and the public during fiscal years 2013 and 2014, will be considered for making future changes to the programs through these rule provisions. Following the close of the comment period, the agency will publish a notice responding to the comments and, if appropriate, the agency will amend the provisions of this rule.

For ease of reference, the IFR sets forth in full the revised part 1200.

#### VI. Regulatory Analyses and Notices

##### A. Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 13563, and DOT Regulatory Policies and Procedures

Executive Order 12866, "Regulatory Planning and Review," provides for making determinations whether a regulatory action is "significant" and therefore subject to the Office of Management and Budget (OMB) review and to the requirements of the Executive Order. Executive Order 13563 supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. In accordance with Executive Orders 12866 and 13563, this rulemaking was reviewed by OMB and designated by OMB as a "significant regulatory action." A "significant regulatory action" is defined as one that is likely to result in a rule that may:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The annual amount authorized by MAP-21 for highway safety grants (\$500 million in FY 2013 and \$507 million in FY 2014) exceeds the \$100 million threshold. However, the annual amount authorized by SAFETEA-LU for highway safety grants was \$564 million in FY 2012. MAP-21 grant programs replace SAFETEA-LU grant programs. The difference in the amount of grant funds authorized for highway safety

grants from the Highway Trust Fund in MAP-21 is less than \$100 million than was authorized under SAFETEA-LU. In addition, MAP-21 authorizes two new grants (distracted driving and graduated driver licensing) that were not available under SAFETEA-LU. These two grants account for less than \$27 million, much less than \$100 million.

MAP-21 highway safety grants are non-discretionary grants directly authorized by Congress. NHTSA's action details grant application procedures and qualification criteria; it does not impact the aggregate amount of grant funds distributed to the States.

That amount is specified by MAP-21, as is the manner of distribution—most of the funds are required by MAP-21 to be awarded to qualifying States through a formula (75 percent in the ratio of the State population to the total population and 25 percent in the ratio of public road mileage in the State to the total road mileage in the United States, with a specified minimum apportionment for the Section 402 program). A minor exception is that, consistent with past practice, the rule applies the statutory formula in two cases where MAP-21 does not mandate its application, affecting less than \$28 million annually.

The statutory distribution formula continued under MAP-21 for State highway safety grants has been in place for decades. MAP-21 directs NHTSA to “ensure, to the maximum extent possible, that all [grant funds] are obligated during [the] fiscal year.” These statutory provisions—the distribution formula and the direction to obligate all grant funds—are prescriptive, and leave little room for discretion. Consequently, the rule does not confer any benefit on the economy that goes beyond what Congress has already specified in law to be distributed in these non-discretionary grants, nor does the rule materially alter the grants' budgetary impacts or the rights or obligations of grant recipients. The rule also does not create an inconsistency or otherwise interfere with an action taken or planned by another agency.

The following information is provided for general information about the benefits of the grants. Based on the statutory formula, FY 2013 grants for States to conduct highway safety programs under the Section 402 grant program (totaling \$235 million) range from \$21.2 million for the State of California to \$1.7 million for 13 States and the District of Columbia (minimum apportionment), and all States receive a distribution. MAP-21 generally prescribes the criteria for the Section 405 grants (totaling \$265 million for six

grants in FY 2013), and NHTSA has limited discretion in this rulemaking to implement these criteria. However, given differing levels of interest among States and competing State priorities, it is possible that the qualification criteria for the Section 405 grants could result in some States failing to apply or to qualify for some of these grants. NHTSA cannot predict the spread of annual Section 405 grant applications and awards with precision, and therefore we cannot assess likely allocation effects, but it remains true that all Section 405 grant funds will be distributed by operation of the statute.

In the aggregate, the highway safety grant funds required to be distributed under MAP-21 are the driving influence behind the traffic safety activities implemented by all the States (including the District of Columbia, Puerto Rico, the four territories, and the Indian Country), as they have been under previous authorizations for many years. From 2006 to 2010, highway fatalities have decreased by 23 percent and highway injuries have decreased by 13 percent. The traditionally most significant areas of highway safety activities under the formula grant program—occupant protection and alcohol programs—have experienced similarly dramatic safety benefits over the same five-year period. Unbelted passenger vehicle occupant fatalities have decreased by 33 percent and alcohol-impaired driving fatalities have decreased by 24 percent.

The central purpose of the rule is to set forth the application procedures for States seeking highway safety grant funds, and also to identify the MAP-21 qualification criteria for receiving grant funds. While complying with the application procedures is a requirement for receiving grant funds, and the requirement for States to submit a “highway safety plan” as part of this application is directed by statute, the rule does not impose any mandate on States to submit an application. However, should a State choose to do so, there are some costs and burdens associated with the application process. The agency is seeking emergency clearance from OMB under the Paperwork Reduction Act (PRA) for FY 2013 grant applications, and elsewhere in this document we detail the estimated costs and burden hours associated with the State application process. Interested persons should consult that information. NHTSA intends to submit a request for PRA clearance for the highway safety grant program under the non-emergency process in the near future. Because MAP-21 introduces a single application

process, enabling States to submit one application for all grants rather than the separate applications for individual grants required under previous authorizations, burdens on State resources are likely to be substantially reduced.

#### *B. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) of 1980 (5 U.S.C. 601 *et seq.*) requires agencies to evaluate the potential effects of their proposed and final rules on small businesses, small organizations, and small governmental jurisdictions. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities. The Small Business Regulatory Enforcement Fairness Act (SBREFA) amended the RFA to require Federal agencies to provide a statement of the factual basis for certifying that an action would not have a significant economic impact on a substantial number of small entities.

This IFR is a rulemaking that will implement new grant programs enacted by Congress in MAP-21. Under these grant programs, States will receive funds if they meet the application and qualification requirements. These grant programs will affect only State governments, which are not considered to be small entities as that term is defined by the RFA. Therefore, I 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.

#### *C. Executive Order 13132 (Federalism)*

Executive Order 13132 on “Federalism” requires NHTSA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” 64 FR 43255 (August 10, 1999). “Policies that have federalism implications” are defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” Under Executive Order 13132, an agency may not issue a regulation with Federalism implications that imposes substantial direct compliance costs and that is not required by statute unless the Federal government provides the funds

necessary to pay the direct compliance costs incurred by State and local governments or the agency consults with State and local governments in the process of developing the proposed regulation. An agency also may not issue a regulation with Federalism implications that preempts a State law without consulting with State and local officials.

The agency has analyzed this rulemaking action in accordance with the principles and criteria set forth in Executive Order 13132, and has determined that this IFR would not have sufficient Federalism implications as defined in the order to warrant formal consultation with State and local officials or the preparation of a federalism summary impact statement. However, NHTSA continues to engage with State representatives regarding general implementation of MAP-21, including these grant programs, and expects to continue these informal dialogues.

#### *D. Executive Order 12988 (Civil Justice Reform)*

Pursuant to Executive Order 12988 (61 FR 4729 (February 7, 1996)), "Civil Justice Reform," the agency has considered whether this proposed rule would have any retroactive effect. I conclude that it would not have any retroactive or preemptive effect, and judicial review of it may be obtained pursuant to 5 U.S.C. 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review. This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### *E. Executive Order 13045 (Protection of Children From Environmental Health Risks and Safety Risks)*

Executive Order 13045, "Protection of Children from Environmental Health and Safety Risks" (62 FR 19855, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental, health, or safety risk that the agency has reason to believe may have a disproportionate effect on children. This rule does not concern an environmental, health, or safety risk that may have a disproportionate effect on children.

#### *F. Paperwork Reduction Act*

Under the Paperwork Reduction Act of 1995 (PRA), as implemented by the Office of Management and Budget

(OMB) in 5 CFR part 1320, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. The grant applications and reporting requirements in this IFR are considered to be a collection of information subject to requirements of the PRA. Because the agency cannot reasonably comply with the submission time periods under the PRA and provide States sufficient time to apply for the grants to be awarded in fiscal year 2013, the agency is seeking emergency clearance for information collection related to the fiscal year 2013 Section 405 grants. The agency is proceeding under the regular PRA clearance process for the collection of information related to grants beginning with fiscal year 2014 grants. Accordingly, in compliance with the PRA, we announce that NHTSA is seeking comment on a new information collection for grant applications and reporting requirements beginning with fiscal year 2014 grants.

*Agency:* National Highway Traffic Safety Administration (NHTSA).

*Title:* State Highway Safety Grant Programs.

*Type of Request:* New collection.

*OMB Control Number:* Not assigned.

*Form Number:* N/A (Highway Safety Plan); HS Form 217.

*Requested Expiration Date of Approval:* Three years from the approval date.

*Summary of Collection of Information:* On July 6, 2012, the President signed into law the "Moving Ahead for Progress in the 21st Century Act" (MAP-21), Public Law 112-141, which restructured and made various substantive changes to the highway safety grant programs administered by the National Highway Traffic Safety Administration (NHTSA). Specifically, MAP-21 modified the existing formula grant program codified at 23 U.S.C. 402 (Section 402) by requiring States to develop and implement the State highway safety program using performance measures.

MAP-21 also rescinded a number of separate incentive grant programs that existed under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Public Law 109-59, and replaced them with the "National Priority Safety Programs," codified in a single section of the United States Code (23 U.S.C. 405 (Section 405)). The National Priority Safety Programs include Occupant Protection, State Traffic Safety Information Systems, Impaired Driving Countermeasures, Motorcyclist Safety,

and two new grant programs—Distracted Driving and State Graduated Driver Licensing. MAP-21 specifies a single application deadline for all highway safety grants and directs NHTSA to establish a consolidated application process, using the Highway Safety Plan that States have traditionally submitted for the Section 402 program. See Sections 31101(f) and 31102, MAP-21.

The statute provides that the Highway Safety Plan is the application for grants under 23 U.S.C. 402 and 405 each fiscal year. The information collected under this rulemaking is to include a Highway Safety Plan consisting of information on the highway safety planning process, performance plan, highway safety strategies and projects, performance report, program cost summary (HS Form 217) and list of projects, certifications and assurances, and application for Section 405 grants. See 23 CFR 1200.10. After award of grant funds, States are required to update the program cost summary (HS Form 217) and the list of projects. See 23 CFR 1200.15.

#### *Description of the Need for the Information and Use of the Information:*

As noted above, the statute provides that the Highway Safety Plan is the application for grants under 23 U.S.C. 402 and 405 each fiscal year. This information is necessary to determine whether a State satisfies the criteria for a grant award under Section 402 and Section 405.

*Description of the Likely Respondents:* 57 (50 States, District of Columbia, Puerto Rico, American Samoa, Guam, the Northern Mariana Islands, the U.S. Virgin Islands, and the Bureau of Indian Affairs on behalf of the Indian Country).

#### *Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting from the Collection of Information:*

The Highway Safety Plan (HSP) is a planning document for a State's entire traffic safety program and outlines the countermeasures, program activities, and funding for key program areas as identified by State and Federal data and problem identification. By statute, States must submit and NHTSA must approve the HSP as a condition of Section 402 grant funds. MAP-21 also requires States to submit its Section 405 grant application as part of the HSP. States must submit the HSP each fiscal year in order to qualify for Section 402 and 405 grant funds.

The estimated burden hours for the collection of information are based on all eligible respondents (i.e., applicants) for each of the grants:

- Section 402 grants: 57 (fifty States, the District of Columbia, Puerto Rico,

U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Secretary of the Interior);

- Section 405(f) grants: 52 (fifty States, the District of Columbia, and Puerto Rico);
- Section 405(a)–(e), (g) grants: 56 (fifty States, the District of Columbia, Puerto Rico, U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands).

We estimate that it will take each respondent approximately 240 hours to collect, review, and submit the reporting information to NHTSA for the Section 402 program. We further estimate that it will take each respondent approximately 180 hours to collect, review, and submit the reporting information to NHTSA for the Section 405 program. During the fiscal year the States prepare a HS Form 217 initially and are required to change the funding category amounts 30 days after Section 402 and 405 funding is received. Each respondent will produce approximately forty HS Form 217s annually. It takes approximately ½ hour or less to complete the document. Therefore, we estimate that it will take each respondent approximately 20 hours to complete the HS Form 217 each year. Based on the above information, the estimated annual burden hours for all respondents are 25,080 hours.

Assuming the average salary of these individuals is \$50.00 per hour, the estimated cost for each respondent is \$22,000; the estimated total cost for all respondents is \$1,254,000.

These estimates present the highest possible burden hours and amounts possible. All States do not apply for and receive a grant each year under each of these programs.

NHTSA notes that under the previous authorization, SAFETEA-LU, States submitted applications separately throughout the fiscal year for various grants (highway safety programs, occupant protection incentive grants, safety belt performance grants, State traffic safety information system improvements, alcohol-impaired driving countermeasures, motorcyclist safety, child safety and child booster seat safety incentive grants). Under the consolidated grant application process, NHTSA estimates that the overall paperwork burden on the States will be reduced by this rulemaking.

Comments are invited on:

- Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility.

- Whether the Department's estimate for the burden of the information collection is accurate.

- Ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. Please submit any comments, identified by the docket number in the heading of this document, by any of the methods described in the **ADDRESSES** section of this document. Comments are due by March 25, 2013.

#### *G. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, (15 U.S.C. 272) directs the agency to evaluate and use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or is otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers. We have determined that no voluntary consensus standards apply to this action.

#### *H. 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 effects of proposed or final rules that include a Federal mandate likely to result in expenditures by State, local or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually (adjusted annually for inflation with base year of 1995). This IFR would not meet the definition of a Federal mandate because the resulting annual State expenditures would not exceed the minimum threshold. The program is voluntary and States that choose to apply and qualify would receive grant funds.

#### *I. National Environmental Policy Act*

NHTSA has considered the impacts of this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that this IFR would not have a significant impact on the quality of the human environment.

#### *J. Executive Order 13211*

Executive Order 13211 (66 FR 28355, May 18, 2001) applies to any rulemaking that: (1) Is determined to be

economically significant as defined under Executive Order 12866, and is likely to have a significantly adverse effect on the supply of, distribution of, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. This rulemaking is not likely to have a significantly adverse effect on the supply of, distribution of, or use of energy. This rulemaking has not been designated as a significant energy action. Accordingly, this rulemaking is not subject to Executive Order 13211.

#### *K. Executive Order 13175 (Consultation and Coordination With Indian Tribes)*

The agency has analyzed this IFR under Executive Order 13175, and has determined that today's action would not have a substantial direct effect on one or more Indian tribes, would not impose substantial direct compliance costs on Indian tribal governments, and would not preempt tribal law. Therefore, a tribal summary impact statement is not required.

#### *L. Plain Language*

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that isn't clear?
  - Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
  - Would more (but shorter) sections be better?
  - Could we improve clarity by adding tables, lists, or diagrams?
  - What else could we do to make the rule easier to understand?

If you have any responses to these questions, please include them in your comments on this IFR.

#### *M. Regulatory Identifier Number (RIN)*

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. MAP–21 requires NHTSA to award highway safety grants pursuant to rulemaking and separately requires NHTSA to establish minimum requirements for the graduated driver licensing (GDL) grant in accordance with the notice and comment provisions



of the Administrative Procedure Act. (Section 31101(d), MAP-21; 23 U.S.C. 405(g)(3)(A)) For this reason, the Department assigned two separate RINs for each regulatory action—GDL and interim final rule. On October 25, 2012, NHTSA published a separate notice of proposed rulemaking for the GDL grant. (77 FR 60956) As stated in NPRM, NHTSA is combining the GDL regulatory action into this interim final rule.

The Regulatory Information Service Center publishes the Unified Agenda in or about April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

#### N. Privacy Act

Please note that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit <http://dms.dot.gov>.

#### List of Subjects in 23 CFR Parts 1200, 1205, 1206, 1250, 1251, 1252, 1313, 1335, 1345, and 1350

Grant programs—Transportation, Highway safety, Intergovernmental relations, Reporting and recordkeeping requirements, Administrative practice and procedure, Alcohol abuse, Drug abuse, Motor vehicles—motorcycles.

For the reasons discussed in the preamble, under the authority of 23 U.S.C. 401 et seq., the National Highway Traffic Safety Administration amends 23 CFR Chapter II and Chapter III as follows:

- 1. Revise part 1200 to read as follows:

#### PART 1200—UNIFORM PROCEDURES FOR STATE HIGHWAY SAFETY GRANT PROGRAMS

Sec.

##### Subpart A—General

- 1200.1 Purpose.
- 1200.2 Applicability.
- 1200.3 Definitions.
- 1200.4 State Highway Safety Agency—Authority and Functions.
- 1200.5 Due Dates—Interpretation.

##### Subpart B—Highway Safety Plan

- 1200.10 General.
- 1200.11 Contents.
- 1200.12 Due Date for Submission.
- 1200.13 Special Funding Conditions for Section 402 Grants.

- 1200.14 Review and Approval Procedures.
- 1200.15 Apportionment and Obligation of Federal Funds.

##### Subpart C—National Priority Safety Program Grants

- 1200.20 General.
- 1200.21 Occupant Protection Grants.
- 1200.22 State Traffic Safety Information System Improvements Grants.
- 1200.23 Impaired Driving Countermeasures Grants.
- 1200.24 Distracted Driving Grants.
- 1200.25 Motorcyclist Safety Grants.
- 1200.26 State Graduated Driver Licensing Grants.

##### Subpart D—Administration of the Highway Safety Grants

- 1200.30 General.
- 1200.31 Equipment.
- 1200.32 Changes—Approval of the Approving Official.
- 1200.33 Vouchers and Project Agreements.
- 1200.34 Program Income.
- 1200.35 Annual Report.
- 1200.36 Appeals of Written Decision by Approving Official.

##### Subpart E—Annual Reconciliation

- 1200.40 Expiration of the Highway Safety Plan.
- 1200.41 Disposition of Unexpended Balances.
- 1200.42 Post-Grant Adjustments.
- 1200.43 Continuing Requirements.

##### Subpart F—Noncompliance

- 1200.50 General.
- 1200.51 Sanctions—Reduction of Apportionment.

##### Subpart G—Special Provisions for Fiscal Year 2013 Highway Safety Grants and Highway Safety Grants Under Prior Authorizations

- 1200.60 Fiscal Year 2013 Section 402 Grants.
- 1200.61 Fiscal Year 2013 Section 405 Grants.
- 1200.62 Pre-2013 Fiscal Year Grants.
- Appendix A to Part 1200—Certification and Assurances for Highway Safety Grants (23 U.S.C. Chapter 4)
- Appendix B to Part 1200—Highway Safety Program Cost Summary (HS-217)
- Appendix C to Part 1200—Assurances for Teen Traffic Safety Program
- Appendix D to Part 1200—Certification and Assurances for National Priority Safety Program Grants (23 U.S.C. 405)
- Appendix E to Part 1200—Participation by Political Subdivisions
- Appendix F to Part 1200—Planning and Administration (P&A) Costs

**Authority:** 23 U.S.C. 402; 23 U.S.C. 405; delegation of authority at 49 CFR 1.95.

##### Subpart A—General

###### § 1200.1 Purpose.

This part establishes uniform procedures for State highway safety programs authorized under Chapter 4, Title 23, United States Code.

###### § 1200.2 Applicability.

The provisions of this part apply to highway safety programs authorized under 23 U.S.C. 402 beginning fiscal year 2014 and, except as specified in § 1200.24(a), to national priority safety programs authorized under 23 U.S.C. 405 beginning fiscal year 2013.

###### § 1200.3 Definitions.

As used in this part—

*Approving Official* means a Regional Administrator of the National Highway Traffic Safety Administration.

*Carry-forward funds* means those funds that a State has not expended on projects in the fiscal year in which they were apportioned or allocated, that are being brought forward and made available for expenditure in a subsequent fiscal year.

*Contract authority* means the statutory language that authorizes an agency to incur an obligation without the need for a prior appropriation or further action from Congress and which, when exercised, creates a binding obligation on the United States for which Congress must make subsequent liquidating appropriations.

*Fiscal year* means the Federal fiscal year, consisting of the 12 months beginning each October 1 and ending the following September 30.

*Governor* means the Governor of any of the fifty States, Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands, the Mayor of the District of Columbia, or, for the application of this part to Indian Country as provided in 23 U.S.C. 402(h), the Secretary of the Interior.

*Governor's Representative for Highway Safety* means the official appointed by the Governor to implement the State's highway safety program or, for the application of this part to Indian Country as provided in 23 U.S.C. 402(h), an official of the Bureau of Indian Affairs or other Department of Interior official who is duly designated by the Secretary of the Interior to implement the Indian highway safety program.

*Highway Safety Plan (HSP)* means the document, coordinated with the State strategic highway safety plan as defined in 23 U.S.C. 148(a), that the State submits each fiscal year as its application for highway safety grants, which describes the strategies and projects the State plans to implement and the resources from all sources it plans to use to achieve its highway safety performance targets.

*Highway safety program* means the planning, strategies and performance measures, and general oversight and

management of highway safety strategies and projects by the State either directly or through sub-recipients to address highway safety problems in the State. A State highway safety program is defined in the annual Highway Safety Plan and any amendments.

*MAP-21 or "Moving Ahead for Progress in the 21st Century Act"* means Public Law 112-141.

*NHTSA* means the National Highway Traffic Safety Administration.

*Program area* means any of the national priority safety program areas identified in 23 U.S.C. 405 or a program area identified by the State in the highway safety plan as encompassing a major highway safety problem in the State and for which documented effective or projected by analysis to be effective countermeasures have been identified.

*Project* means any undertaking or activity proposed or implemented with grant funds under 23 U.S.C. Chapter 4.

*Project agreement* means a written agreement at the State level or between the State and a subgrantee or contractor under which the State agrees to provide 23 U.S.C. Chapter 4 funds in exchange for the subgrantee's or contractor's performance of one or more undertakings or activities supporting the highway safety program.

*Project number* means a unique identifier assigned by a State to each project in the HSP.

*Public road* means any road under the jurisdiction of and maintained by a public authority and open to public travel.

*Section 402* means section 402 of title 23 of the United States Code.

*Section 405* means section 405 of title 23 of the United States Code.

*State* means, except as provided in § 1200.25(b), any of the fifty States of the United States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or, for the application of this part to Indian Country as provided in 23 U.S.C. 402(h), the Secretary of the Interior.

*State highway safety improvement program* means the program defined in section 148(a)(11) of title 23 of the United States Code.

*State strategic highway safety plan* means the plan defined in section 148(a)(12) of title 23, United States Code.

#### **§ 1200.4 State Highway Safety Agency—Authority and Functions.**

(a) *Policy.* In order for a State to receive grant funds under this part, the

Governor shall exercise responsibility for the highway safety program through a State Highway Safety Agency that has adequate powers and is suitably equipped and organized to carry out the State's highway safety program.

(b) *Authority.* Each State Highway Safety Agency shall be authorized to—

(1) Develop and execute the Highway Safety Plan and highway safety program in the State;

(2) Obtain information about programs to improve highway safety and projects administered by other State and local agencies;

(3) Maintain or have ready access to information contained in State highway safety data systems, including crash, citation, adjudication, emergency medical services/injury surveillance, roadway and vehicle record keeping systems, and driver license data;

(4) Periodically review and comment to the Governor on the effectiveness of programs to improve highway safety in the State from all funding sources that the State plans to use for such purposes;

(5) Provide financial and technical assistance to other State agencies and political subdivisions to develop and carry out highway safety strategies and projects; and

(6) Establish and maintain adequate staffing to effectively plan, manage, and provide oversight of highway safety projects approved in the Highway Safety Plan.

(c) *Functions.* Each State Highway Safety Agency shall—

(1) Develop and prepare the Highway Safety Plan based on evaluation of highway safety data, including crash fatalities and injuries, roadway, driver and other data sources to identify safety problems within the State;

(2) Establish highway safety projects to be funded within the State under 23 U.S.C. Chapter 4 based on identified safety problems and priorities;

(3) Provide direction, information and assistance to sub-grantees concerning highway safety grants, procedures for participation, and development of projects;

(4) Encourage and assist sub-grantees to improve their highway safety planning and administration efforts;

(5) Review and approve, and evaluate the implementation and effectiveness of State and local highway safety programs and projects from all funding sources that the State plans to use under the HSP, and approve and monitor the expenditure of grant funds awarded under 23 U.S.C. Chapter 4;

(6) Assess program performance through analysis of highway safety data and data-driven performance measures;

(7) Ensure that the State highway safety program meets the requirements of 23 U.S.C. Chapter 4 and applicable Federal and State laws, including but not limited to the standards for financial management systems required under 49 CFR 18.20;

(8) Ensure that all legally required audits of the financial operations of the State Highway Safety Agency and of the use of highway safety grant funds are conducted;

(9) Track and maintain current knowledge of changes in State statute or regulation that could affect State qualification for highway safety grants or fund transfer programs; and

(10) Coordinate the Highway Safety Plan and highway safety data collection and information systems activities with other federally and non-federally supported programs relating to or affecting highway safety, including the State strategic highway safety plan as defined in 23 U.S.C. 148(a).

#### **§ 1200.5 Due Dates—Interpretation.**

If any deadline or due date in this part falls on a Saturday, Sunday or Federal holiday, the applicable deadline or due date shall be the next business day.

#### **Subpart B—Highway Safety Plan**

##### **§ 1200.10 General.**

Beginning with grants authorized in fiscal year 2014, to apply for any highway safety grant under 23 U.S.C. Chapter 4, a State shall submit a Highway Safety Plan meeting the requirements of this subpart.

##### **§ 1200.11 Contents.**

Each fiscal year, the State's Highway Safety Plan shall consist of the following components:

(a) *Highway safety planning process.*

(1) A brief description of the data sources and processes used by the State to identify its highway safety problems, describe its highway safety performance measures and define its performance targets, develop and select evidence-based countermeasure strategies and projects to address its problems and achieve its performance targets. In describing these data sources and processes, the State shall identify the participants in the processes (e.g., highway safety committees, program stakeholders, community and constituent groups), discuss the strategies for project selection (e.g., constituent outreach, public meetings, solicitation of proposals), and list the information and data sources consulted (e.g., *Countermeasures That Work*, Sixth Edition, 2011).

(2) A description of the efforts to coordinate and the outcomes from the

coordination of the highway safety plan, data collection, and information systems with the State strategic highway safety plan (as defined in 23 U.S.C. 148(a)).

(b) *Performance plan.* A performance plan containing the following elements:

(1) A list of annual quantifiable and measurable highway safety performance targets that is data-driven, consistent with the Uniform Guidelines for Highway Safety Program and based on highway safety problems identified by the State during the planning process conducted under paragraph (a) of this section.

(2) Performance measures developed by DOT in collaboration with the Governor's Highway Safety Association and others, beginning with the MAP-21 directed "Traffic Safety Performance Measures for States and Federal Agencies" (DOT HS 811 025), which are used as a minimum in developing the performance targets identified in paragraph (b)(1) of this section. Beginning with grants awarded after fiscal year 2014, the performance measures common to the State's HSP and the State highway safety improvement program (fatalities, fatality rate, and serious injuries) shall be defined identically, as coordinated through the State strategic highway safety plan. At least one performance measure and performance target that is data driven shall be provided for each program area that enables the State to track progress, from a specific baseline, toward meeting the target (e.g., a target to "increase seat belt use from X percent in Year 1 to Y percent in Year 2," using a performance measure of "percent of restrained occupants in front outboard seating positions in passenger motor vehicles"). For each performance measure, the State shall provide:

(i) Documentation of current safety levels;

(ii) Quantifiable annual performance targets; and

(iii) Justification for each performance target that explains why the target is appropriate and data-driven.

(3) Additional performance measures, not included under paragraph (b)(2) of this section. For program areas where performance measures have not been jointly developed, a State shall develop its own performance measures and performance targets that are data-driven (e.g., distracted driving, bicycles). The State shall provide the same information as required under paragraph (b)(2) of this section.

(c) *Highway safety strategies and projects.* A description of—

(1) Each countermeasure strategy and project the State plans to implement to reach the performance targets identified

in paragraph (b) of this section. At a minimum, the State shall describe one year of Section 402 and 405 countermeasure strategies and projects (which should include countermeasure strategies identified in the State strategic highway safety plan) and shall identify funds from other sources, including Federal, State, local, and private sector funds, that the State plans to use for such projects or use to achieve program area performance targets.

(2) The State's process for selecting the countermeasure strategies and projects described in paragraph (c)(1) of this section to allow the State to meet the highway safety performance targets described in paragraph (b) of this section. At a minimum, the State shall provide an assessment of the overall traffic safety impacts of the strategies chosen and proposed or approved projects to be funded.

(3) The data and data analysis or other documentation supporting the effectiveness of proposed countermeasure strategies described in paragraph (c)(1) of this section (e.g., the State may include information on the cost effectiveness of proposed countermeasure strategies, if such information is available).

(4) The evidence-based traffic safety enforcement program to prevent traffic violations, crashes, and crash fatalities and injuries in areas most at risk for such incidents. At a minimum, the State shall provide for—

(i) An analysis of crashes, crash fatalities, and injuries in areas of highest risk;

(ii) Deployment of resources based on that analysis; and

(iii) Continuous follow-up and adjustment of the enforcement plan.

(5) The planned high visibility enforcement strategies to support national mobilizations.

(d) *Performance report.* A program-area-level report on the State's success in meeting State performance targets from the previous fiscal year's Highway Safety Plan.

(e) *Program cost summary and list of projects.* (1) HS Form 217, meeting the requirements of Appendix B, completed to reflect the State's proposed allocations of funds (including carry-forward funds) by program area. The funding level used shall be an estimate of available funding for the upcoming fiscal year based on amounts authorized for the fiscal year and projected carry-forward funds.

(2) For each program area, an accompanying list of projects that the State proposes to conduct for that fiscal year and an estimated amount of Federal funds for each such project.

(f) *Certifications and assurances.* Appendix A—Certifications and Assurances for Section 402 Grants, signed by the Governor's Representative for Highway Safety, certifying the HSP application contents and providing assurances that the State will comply with applicable laws and regulations, financial and programmatic requirements, and, in accordance with § 1200.13 of this part, the special funding conditions for the Section 402 program.

(g) *Teen Traffic Safety Program.* If the State elects to include the Teen Traffic Safety Program authorized under 23 U.S.C. 402(m), a description of projects that the State will conduct as part of the Teen Traffic Safety Program—a statewide program to improve traffic safety for teen drivers—and the assurances in Appendix C, signed by the Governor's Representative for Highway Safety.

(h) *Section 405 grant application.* Application for any of the national priority safety program grants, in accordance with the requirements of subpart C, including Appendix D—Certifications and Assurances for Section 405 Grants, signed by the Governor's Representative for Highway Safety.

#### § 1200.12 Due Date for Submission.

(a) Except as specified under § 1200.61(a), a State shall submit its Highway Safety Plan electronically to the NHTSA regional office no later than July 1 preceding the fiscal year to which the Highway Safety Plan applies.

(b) Failure to meet this deadline may result in delayed approval and funding of a State's Section 402 grant or disqualification from receiving Section 405 grants.

#### § 1200.13 Special Funding Conditions for Section 402 Grants.

The State's highway safety program under Section 402 shall be subject to the following conditions, and approval under § 1200.14 of this part shall be deemed to incorporate these conditions:

(a) *Planning and administration costs.*

(1) Federal participation in P&A activities shall not exceed 50 percent of the total cost of such activities, or the applicable sliding scale rate in accordance with 23 U.S.C. 120. The Federal contribution for P&A activities shall not exceed 13 percent of the total funds the State receives under 23 U.S.C. 402. In accordance with 23 U.S.C. 120(i), the Federal share payable for projects in the U.S. Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands shall be 100 percent. The Indian

Country, as defined by 23 U.S.C. 402(h), is exempt from the provisions of P&A requirements. NHTSA funds shall be used only to finance P&A activities attributable to NHTSA programs. Determinations of P&A shall be in accordance with the provisions of Appendix F.

(2) P&A tasks and related costs shall be described in the P&A module of the State's Highway Safety Plan. The State's matching share shall be determined on the basis of the total P&A costs in the module.

(b) *Automated traffic enforcement systems prohibition.* The State may not expend funds apportioned to the State under 23 U.S.C. 402 to carry out a program to purchase, operate, or maintain an automated traffic enforcement system. The term "automated traffic enforcement system" includes any camera which captures an image of a vehicle for the purposes only of red light and speed enforcement, and does not include hand held radar and other devices operated by law enforcement officers to make an on-the-scene traffic stop, issue a traffic citation, or other enforcement action at the time of the violation.

#### § 1200.14 Review and Approval Procedures.

(a) *General.* Upon receipt and initial review of the Highway Safety Plan, NHTSA may request additional information from a State to ensure compliance with the requirements of this part. Failure to respond promptly to a request for additional information concerning the Section 402 grant application may result in delayed approval and funding of a State's Section 402 grant. Failure to respond promptly to a request for additional information concerning any of the Section 405 grant applications may result in a State's disqualification from consideration for a Section 405 grant.

(b) *Approval and disapproval of Highway Safety Plan.* Within 60 days after receipt of the Highway Safety Plan under this subpart—

(1) For Section 402 grants, the Approving Official shall issue—

(i) A letter of approval with conditions, if any, to the Governor and the Governor's Representative for Highway Safety; or

(ii)(A) A letter of disapproval to the Governor and the Governor's Representative for Highway Safety informing the State of the reasons for disapproval and requiring resubmission of the Highway Safety Plan with proposed modifications necessary for approval; and

(B) A letter of approval or disapproval upon resubmission of the Highway Safety Plan within 30 days after NHTSA receives the revised Highway Safety Plan.

(2) For Section 405 grants—

(i) The NHTSA Administrator shall notify States in writing of Section 405 grant awards and specify any conditions or limitations imposed by law on the use of funds; or

(ii) The Approving Official shall notify States in writing if a State's application does not meet the qualification requirements for any of the Section 405 grants.

#### § 1200.15 Apportionment and Obligation of Federal Funds.

(a) Except as provided in paragraph (b) of this section, on October 1 of each fiscal year, or soon thereafter, the NHTSA Administrator shall, in writing, distribute funds available for obligation under 23 U.S.C. Chapter 4 to the States and specify any conditions or limitations imposed by law on the use of the funds.

(b) In the event that authorizations exist but no applicable appropriation act has been enacted by October 1 of a fiscal year the NHTSA Administrator may, in writing, distribute a part of the funds authorized under 23 U.S.C. Chapter 4 contract authority to the States to ensure program continuity, and in that event shall specify any conditions or limitations imposed by law on the use of the funds. Upon appropriation of grant funds, the NHTSA Administrator shall, in writing, promptly adjust the obligation limitation, and specify any conditions or limitations imposed by law on the use of the funds.

(c) Funds distributed under paragraph (a) or (b) of this section shall be available for expenditure by the States to satisfy the Federal share of expenses under the approved Highway Safety Plan, and shall constitute a contractual obligation of the Federal Government, subject to any conditions or limitations identified in the distributing document. Such funds shall be available for expenditure by the States as provided in § 1200.41(b), after which the funds shall lapse.

(d) Notwithstanding the provisions of paragraph (c) of this section—

(1) Reimbursement of State expenses for Section 402 grant funds shall be contingent upon the submission of an updated HS Form 217 and an updated project list that includes project numbers for each project within 30 days after the beginning of the fiscal year or the date of the written approval provided under § 1200.14(b)(1) of this part, whichever is later, and approval of

the updated HS Form 217 by the Approving Official.

(2) Reimbursement of State expenses for Section 405 grant funds shall be contingent upon the submission of an updated Highway Safety Plan, HS Form 217, and project list to address the grant funds awarded under subpart C, within 30 days after the beginning of the fiscal year or the date of the grant award notice provided under § 1200.14(b)(2), whichever is later, and approval of the updated Highway Safety Plan and HS Form 217 by the Approving Official. Submitting the updated Highway Safety Plan and HS Form 217 is a precondition to reimbursement of grant expenses.

(3) The updated HS Form 217 required under paragraphs (d)(1) and (d)(2) of this section shall reflect the State's allocation of grant funds made available for expenditure during the fiscal year, including carry-forward funds. Within each program area, the State shall provide a project list to be conducted during the fiscal year.

#### Subpart C—National Priority Safety Program Grants

##### § 1200.20 General.

(a) *Scope.* This subpart establishes criteria, in accordance with 23 U.S.C. 405, for awarding grants to States that adopt and implement programs and laws to address national priorities for reducing highway deaths and injuries.

(b) *Definitions.* As used in this subpart—

*Blood alcohol concentration* or *BAC* means grams of alcohol per deciliter or 100 milliliters blood, or grams of alcohol per 210 liters of breath.

*FARS* means NHTSA's Fatality Analysis Reporting System.

*Majority* means greater than 50 percent.

*Passenger motor vehicle* means a passenger car, pickup truck, van, minivan or sport utility vehicle with a gross vehicle weight rating of less than 10,000 pounds.

*Personal wireless communications device* means a device through which personal wireless services (commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services) are transmitted, but does not include a global navigation satellite system receiver used for positioning, emergency notification, or navigation purposes.

*Primary offense* means an offense for which a law enforcement officer may stop a vehicle and issue a citation in the absence of evidence of another offense.

(c) *Eligibility.* Except as provided in § 1200.25(c), the 50 States, the District of Columbia, Puerto Rico, American

Samoa, the Commonwealth of the Northern Mariana Islands, Guam and the U.S. Virgin Islands are each eligible to apply for national priority safety program grants under this subpart.

(d) *Qualification based on State statutes.* Whenever a State statute is the basis for a grant award under this subpart, such statute shall have been enacted by the application due date and be in effect and enforced, without interruption, by the beginning of and throughout the fiscal year of the grant award.

(e) *Award determinations and transfer of funds.*

(1) Except as in provided § 1200.26(d), the amount of a grant award to a State in a fiscal year under this subpart shall be determined by applying the apportionment formula under 23 U.S.C. 402(c) for fiscal year 2009 to all qualifying States, in proportion to the amount each such State received under 23 U.S.C. 402(c) for fiscal year 2009, so that all available amounts are distributed to qualifying States to the maximum extent practicable.

(2) Notwithstanding paragraph (e)(1) of this section, and except as provided in § 1200.25(k), a grant awarded to a State in a fiscal year under this subpart may not exceed 10 percent of the total amount made available for that section for that fiscal year.

(3) If it is determined after review of applications that funds for a grant program under this subpart will not all be distributed, such funds shall be transferred to other programs authorized under 23 U.S.C. 402 and 405 to ensure, to the maximum extent practicable, that each State receives the maximum funding for which it qualifies.

(f) *Matching.* The Federal share of the costs of activities or programs funded using amounts from grants awarded under this subpart may not exceed 80 percent.

#### **§ 1200.21 Occupant protection grants.**

(a) *Purpose.* This section establishes criteria, in accordance with 23 U.S.C. 405(b), for awarding grants to States that adopt and implement effective occupant protection programs to reduce highway deaths and injuries resulting from individuals riding unrestrained or not properly restrained in motor vehicles.

(b) *Definitions.* As used in this section—

*Child restraint* means any device (including a child safety seat, booster seat used in conjunction with 3-point belts, or harness, but excluding seat belts) that is designed for use in a motor vehicle to restrain, seat, or position a child who weighs 65 pounds (30 kilograms) or less and that meets the

Federal motor vehicle safety standard prescribed by the National Highway Traffic Safety Administration for child restraints.

*High seat belt use rate State* means a State that has an observed seat belt use rate of 90.0 percent or higher (not rounded) based on validated data from the State survey of seat belt use conducted during the previous calendar year, in accordance with the Uniform Criteria for State Observational Surveys of Seat Belt Use, 23 CFR Part 1340 (e.g., for a grant application submitted on July 1, 2014, the “previous calendar year” would be 2013).

*Lower seat belt use rate State* means a State that has an observed seat belt use rate below 90.0 percent (not rounded) based on validated data from the State survey of seat belt use conducted during the previous calendar year, in accordance with the Uniform Criteria for State Observational Surveys of Seat Belt Use, 23 CFR Part 1340 (e.g., for a grant application submitted on July 1, 2014, the “previous calendar year” would be 2013).

*Seat belt* means, with respect to open-body motor vehicles, including convertibles, an occupant restraint system consisting of a lap belt or a lap belt and a detachable shoulder belt, and with respect to other motor vehicles, an occupant restraint system consisting of integrated lap and shoulder belts.

*Problem identification* means the data collection and analysis process for identifying areas of the State, types of crashes, or types of populations (e.g., high-risk populations) that present specific safety or usage challenges in efforts to improve occupant protection.

(c) *Eligibility determination.* A State is eligible to apply for a grant under this section as a high seat belt use rate State or as a lower seat belt use rate State, in accordance with paragraph (d) or (e) of this section, as applicable.

(d) *Qualification criteria for a high seat belt use rate State.* To qualify for an occupant protection grant in a fiscal year, a high seat belt use rate State (as determined by NHTSA) shall submit an executed Part 1 of Appendix D and the following documentation:

(1) *Occupant protection plan.* (i) For a first fiscal year award, a copy of the State occupant protection program area plan to be included in the State HSP that describes the programs the State will implement to achieve reductions in traffic crashes, fatalities, and injuries on public roads.

(ii) For subsequent fiscal year awards, an update of the State’s occupant protection plan provided in paragraph (d)(1)(i) of this section.

(2) *Participation in Click-it-or-Ticket national mobilization.* A description of the State’s planned participation, and the assurance provided in Part 1 of Appendix D, signed by the Governor’s Highway Safety Representative, that the State will participate in the Click it or Ticket national mobilization during the fiscal year of the grant;

(3) *Child restraint inspection stations.* Documentation that the State has an active network of child inspection stations and/or inspection events that are—

(i) Located in areas that service the majority of the State’s population and show evidence of outreach to underserved areas; and

(ii) Staffed with at least one current nationally Certified Child Passenger Safety Technician during official posted hours.

(4) *Child passenger safety technicians.* A copy of the State’s plan to recruit, train and retain nationally Certified Child Passenger Safety Technicians to staff each child inspection station and inspection events located in the State.

(5) *Maintenance of effort.* The assurance provided in Part 1 of Appendix D, signed by the Governor’s Highway Safety Representative, that the State shall maintain its aggregate expenditures from all State and local sources for occupant protection programs at or above the average level of such expenditure in fiscal years 2010 and 2011.

(e) *Qualification criteria for a lower seat belt use rate State.* To qualify for an occupant protection grant in a fiscal year, a lower seat belt use rate State (as determined by NHTSA) shall satisfy all the requirements of and submit all the documentation required under paragraph (d) of this section, and submit documentation demonstrating that it meets at least three of the following additional criteria:

(1) *Primary enforcement seat belt use law.* The assurance provided in Part 1 of Appendix D, signed by the Governor’s Highway Safety Representative, providing legal citations to the State statute or statutes demonstrating that the State has enacted and is enforcing occupant protection laws that make a violation of the requirement to be secured in a seat belt or child restraint a primary offense.

(2) *Occupant protection laws.* The assurance provided in Part 1 of Appendix D, signed by the Governor’s Highway Safety Representative, providing legal citations to State statute or statutes demonstrating that the State has enacted and is enforcing occupant protection laws that require—

(i) Each occupant riding in a passenger motor vehicle who is under eight years of age, weighs less than 65 pounds and is less than four feet, nine inches in height to be secured in an age-appropriate child restraint;

(ii) Each occupant riding in a passenger motor vehicle other than an occupant identified in paragraph (e)(2)(i) of this section to be secured in a seat belt or appropriate child restraint;

(iii) A minimum fine of \$25 per unrestrained occupant for a violation of the occupant protection laws described in paragraphs (e)(2)(i) and (ii) of this section.

(iv) No exemption from coverage, except the following:

(A) Drivers, but not passengers, of postal, utility, and commercial vehicles that make frequent stops in the course of their business;

(B) Persons who are unable to wear a seat belt or child restraint because of a medical condition, provided there is written documentation from a physician;

(C) Persons who are unable to wear a seat belt or child restraint because all other seating positions are occupied by persons properly restrained in seat belts or child restraints;

(D) Emergency vehicle operators and passengers in emergency vehicles during an emergency;

(E) Persons riding in seating positions or vehicles not required by Federal Motor Vehicle Safety Standards to be equipped with seat belts;

(F) Passengers in public and livery conveyances.

(3) *Seat belt enforcement.*

Documentation of the State's plan to conduct ongoing and periodic seat belt and child restraint enforcement during the fiscal year of the grant involving—

(i) At least 70 percent of the State's population as shown by the latest available Federal census; or

(ii) Law enforcement agencies responsible for seat belt enforcement in geographic areas in which at least 70 percent of the State's unrestrained passenger vehicle occupant fatalities occurred (reported in the HSP).

(4) *High risk population countermeasure programs.*

Documentation that the State has implemented data-driven programs to improve seat belt and child restraint use for at least two of the following at-risk populations:

(i) Drivers on rural roadways;

(ii) Unrestrained nighttime drivers;

(iii) Teenage drivers;

(iv) Other high-risk populations identified in the occupant protection plan required under paragraph (d)(1) of this section.

(5) *Comprehensive occupant protection program.* Documentation demonstrating that the State has—

(i) Conducted a NHTSA-facilitated program assessment that evaluates the program for elements designed to increase seat belt usage in the State;

(ii) Developed a multi-year strategic plan based on input from statewide stakeholders (task force) under which the State developed—

(A) A *program management* strategy that provides leadership, training and technical assistance to other State agencies and local occupant protection programs and projects;

(B) A *program evaluation* strategy that assesses performance in achieving the State's measurable goals and objectives for increasing seat belt and child restraint usage for adults and children;

(C) A *communication and education program* strategy that has as its cornerstone the high visibility enforcement model that combines use of media, both paid and earned, and education to support enforcement efforts at the State and community level aimed at increasing seat belt use and correct usage of age appropriate child restraint systems; and

(D) An *enforcement* strategy that includes activities such as encouraging seat belt use policies for law enforcement agencies, vigorous enforcement of seat belt and child safety seat laws, and accurate reporting of occupant protection system information on police accident report forms.

(iii) designated an occupant protection coordinator; and

(iv) established a statewide occupant protection task force that includes agencies and organizations that can help develop, implement, enforce and evaluate occupant protection programs.

(6) *Occupant protection program assessment.*

(i) A NHTSA-facilitated assessment of all elements of its occupant protection program within the three years prior to October 1 of the grant year; or

(ii) For the first year of the grant, the assurance provided in Part 1 of Appendix D, signed by the Governor's Representative for Highway Safety, that the State will conduct a NHTSA-facilitated assessment by September 1 of the grant year. The agency will require the return of grant funds awarded under this section if the State fails to conduct such an assessment by the deadline and will redistribute any such grant funds in accordance with § 1200.20(e) to other qualifying States under this section.

(f) *Use of grant funds.*

(1) *Eligible uses.* Except as provided in paragraph (f)(2) of this section, use of grant funds awarded under this section

shall be limited to the following programs or purposes:

(i) To support high-visibility enforcement mobilizations, including paid media that emphasizes publicity for the program, and law enforcement;

(ii) To train occupant protection safety professionals, police officers, fire and emergency medical personnel, educators, and parents concerning all aspects of the use of child restraints and occupant protection;

(iii) To educate the public concerning the proper use and installation of child restraints, including related equipment and information systems;

(iv) To provide community child passenger safety services, including programs about proper seating positions for children and how to reduce the improper use of child restraints;

(v) To establish and maintain information systems containing data concerning occupant protection, including the collection and administration of child passenger safety and occupant protection surveys; and

(vi) To purchase and distribute child restraints to low-income families, provided that not more than five percent of the funds received in a fiscal year are used for such purpose.

(2) *Eligible uses for high seat belt use rate States.* Notwithstanding paragraph (f)(1) of this section, a State that qualifies for grant funds as a high seat belt use rate State may use up to 75 percent of such funds for any project or activity eligible for funding under 23 U.S.C. 402.

**§ 1200.22 State traffic safety information system improvements grants.**

(a) *Purpose.* This section establishes criteria, in accordance with 23 U.S.C. 405(c), for grants to States to develop and implement effective programs that improve the timeliness, accuracy, completeness, uniformity, integration, and accessibility of State safety data needed to identify priorities for Federal, State, and local highway and traffic safety programs, evaluate the effectiveness of such efforts, link State data systems, including traffic records and systems that contain medical, roadway, and economic data, improve the compatibility and interoperability of State data systems with national data systems and the data systems of other States, and enhance the agency's ability to observe and analyze national trends in crash occurrences, rates, outcomes, and circumstances.

(b) *Requirement for traffic records coordinating committee (TRCC).*

(1) *Structure and composition.* The State shall have a traffic records coordinating committee that—

(i) Is chartered or legally mandated;  
 (ii) Meets at least three times annually;  
 (iii) Has a multidisciplinary membership that includes owners, operators, collectors and users of traffic records and public health and injury control data systems, highway safety, highway infrastructure, law enforcement and adjudication officials, and public health, emergency medical services, injury control, driver licensing, and motor carrier agencies and organizations; and  
 (iv) Has a designated TRCC coordinator.

(2) *Functions.* The traffic records coordinating committee shall—

(i) Have authority to review any of the State's highway safety data and traffic records systems and any changes to such systems before the changes are implemented;

(ii) Consider and coordinate the views of organizations in the State that are involved in the collection, administration, and use of highway safety data and traffic records systems, and represent those views to outside organizations;

(iii) Review and evaluate new technologies to keep the highway safety data and traffic records system current; and

(iv) Approve annually the membership of the TRCC, the TRCC coordinator, any change to the State's multi-year Strategic Plan required under paragraph (c) of this section, and performance measures to be used to demonstrate quantitative progress in the accuracy, completeness, timeliness, uniformity, accessibility or integration of a core highway safety database.

(c) *Requirement for a state traffic records strategic plan.* The State shall have a Strategic Plan, approved by the TRCC, that—

(1) Describes specific, quantifiable and measurable improvements anticipated in the State's core safety databases, including crash, citation or adjudication, driver, emergency medical services or injury surveillance system, roadway, and vehicle databases;

(2) For any identified performance measure, uses the formats set forth in the Model Performance Measures for State Traffic Records Systems collaboratively developed by NHTSA and the Governors Highway Safety Association (GHSA);

(3) Includes a list of all recommendations from its most recent highway safety data and traffic records system assessment;

(4) Identifies which such recommendations the State intends to implement and the performance

measures to be used to demonstrate quantifiable and measurable progress; and

(5) For recommendations that the State does not intend to implement, provides an explanation.

(d) *Requirement for quantitative improvement.* A State shall demonstrate quantitative improvement in the data attributes of accuracy, completeness, timeliness, uniformity, accessibility and integration in a core database by demonstrating an improved consistency within the State's record system or by achieving a higher level of compliance with a national model inventory of data elements, such as the Model Minimum Uniform Crash Criteria (MMUCC), the Model Impaired Driving Records Information System (MIDRIS), the Model Inventory of Roadway Elements (MIRE) or the National Emergency Medical Services Information System (NEMSIS).

(e) *Requirement for assessment.* The State shall have conducted or updated, within the five years prior to the application due date, an in-depth, formal assessment of its highway safety data and traffic records system accurately performed by a group knowledgeable about highway safety data and traffic records systems that complies with the procedures and methodologies outlined in NHTSA's Traffic Records Highway Safety Program Advisory (DOT HS 811 644).

(f) *Requirement for maintenance of effort.* The State shall maintain its aggregate expenditures from all State and local sources for State traffic safety information system programs at or above the average level of such expenditure in fiscal years 2010 and 2011, as provided in Part 2 of Appendix D, signed by the Governor's Highway Safety Representative.

(g) *Qualification criteria.* To qualify for a grant under this section in a fiscal year, a State shall submit an executed Part 2 of Appendix D and the following documentation:

(1) Either the TRCC charter or legal citation(s) to the statute or regulation legally mandating a TRCC with the functions required by paragraph (b)(2) of this section;

(2) Meeting schedule, all reports and data system improvement and policy guidance documents promulgated by the TRCC during the 12 months immediately preceding the grant application due date;

(3) A list of the TRCC membership and the organizations and functions they represent;

(4) The name and title of the State's Traffic Records Coordinator.

(5) A copy of the Strategic Plan required under paragraph (c) of this section, including any updates to the Strategic Plan.

(6) Either a written description of the performance measures, and all supporting data, that the State is relying on to demonstrate quantitative improvement in the preceding 12 months of the grant application due date in one or more of the significant data program attributes or the location where this information is detailed in the Strategic Plan.

(7) The certification provided in Part 2 of Appendix D, signed by the Governor's Representative for Highway Safety, that an assessment of the State's highway safety data and traffic records system was conducted or updated within the five years prior to the application due date as provided in paragraph (e) of this section.

(h) *Use of grant funds.* Grant funds awarded under this section shall be used to make quantifiable, measureable progress improvements in the accuracy, completeness, timeliness, uniformity, accessibility or integration of data in a core highway safety database.

#### **§ 1200.23 Impaired driving countermeasures grants.**

(a) *Purpose.* This section establishes criteria, in accordance with 23 U.S.C. 405(d), for awarding grants to States that adopt and implement effective programs to reduce traffic safety problems resulting from individuals driving motor vehicles while under the influence of alcohol, drugs, or the combination of alcohol and drugs or that enact alcohol ignition interlock laws.

(b) *Definitions.* As used in this section—

*24–7 sobriety program* means a State law or program that authorizes a State court or a State agency, as a condition of sentence, probation, parole, or work permit, to require an individual who pleads guilty to or was convicted of driving under the influence of alcohol or drugs to—

(1) Abstain totally from alcohol or drugs for a period of time; and

(2) Be subject to testing for alcohol or drugs at least twice per day by continuous transdermal alcohol monitoring via an electronic monitoring device, or by an alternative method approved by NHTSA.

*Alcohol* means wine, beer and distilled spirits.

*Average impaired driving fatality rate* means the number of fatalities in motor vehicle crashes involving a driver with a blood alcohol concentration of at least 0.08 percent for every 100,000,000 vehicle miles traveled, based on the

most recently reported three calendar years of final data from the FARS.

*Assessment* means a NHTSA-facilitated process that employs a team of subject matter experts to conduct a comprehensive review of a specific highway safety program in a State.

*Driving under the influence of alcohol, drugs, or a combination of alcohol and drugs* means operating a vehicle while the alcohol and/or drug concentration in the blood or breath, as determined by chemical or other tests, equals or exceeds the level established by the State or is equivalent to the standard offense for driving under the influence of alcohol or drugs in the State.

*Driving While Intoxicated (DWI) Court* means a court that specializes in cases involving driving while intoxicated and abides by the Ten Guiding Principles of DWI Courts in effect on the date of the grant, as established by the National Center for DWI Courts.

*Drugs* means controlled substances as that term is defined under section 102(6) of the Controlled Substances Act, 21 U.S.C. 802(6).

*High visibility enforcement efforts* means participation in national impaired driving law enforcement campaigns organized by NHTSA, participation in impaired driving law enforcement campaigns organized by the State, or the use of sobriety checkpoints and/or saturation patrols, conducted in a highly visible manner and supported by publicity through paid or earned media.

*High-range State* means a State that has an average impaired driving fatality rate of 0.60 or higher.

*Low-range State* means a State that has an average impaired driving fatality rate of 0.30 or lower.

*Mid-range State* means a State that has an average impaired driving fatality rate that is higher than 0.30 and lower than 0.60.

*Saturation patrol* means a law enforcement activity during which enhanced levels of law enforcement are conducted in a concentrated geographic area (or areas) for the purpose of detecting drivers operating motor vehicles while impaired by alcohol and/or other drugs.

*Sobriety checkpoint* means a law enforcement activity during which law enforcement officials stop motor vehicles on a non-discriminatory, lawful basis for the purpose of determining whether the operators of such motor vehicles are driving while impaired by alcohol and/or other drugs.

*Standard offense for driving under the influence of alcohol or drugs* means the offense described in a State's law that

makes it a criminal offense to operate a motor vehicle while under the influence of alcohol or drugs, but does not require a measurement of alcohol or drug content.

(c) *Eligibility determination.* A State is eligible to apply for a grant under this section as a low-range State, a mid-range State or a high-range State, in accordance with paragraphs (d), (e) or (f) of this section, as applicable. Independent of this range determination, a State may also qualify for a separate grant under this section as an ignition interlock State, as provided in paragraph (g) of this section.

(d) *Qualification criteria for a low-range State.* To qualify for an impaired driving countermeasures grant in a fiscal year, a low-range State (as determined by NHTSA) shall submit an executed Part 3 of Appendix D providing assurances, signed by the Governor's Representative for Highway Safety, that the State will—

(1) Use the funds awarded under 23 U.S.C. 405(d)(1) only for the implementation and enforcement of programs authorized in paragraph (i) of this section; and

(2) Maintain its aggregate expenditures from all State and local sources for impaired driving programs at or above the average level of such expenditure in fiscal years 2010 and 2011, as provided in Part 3 of Appendix D.

(e) *Qualification criteria for a mid-range State.* To qualify for an impaired driving countermeasures grant in a fiscal year, a mid-range State (as determined by NHTSA) shall submit the information required in paragraph (d) of this section and the following additional documentation:

(1) *Statewide impaired driving plan.* If the State has not received a grant under this section for a previously submitted statewide impaired driving plan, the State shall submit a copy of a statewide impaired driving plan that—

(i) Has been developed within the three years prior to the application due date;

(ii) Has been approved by a statewide impaired driving task force that meets the requirements of paragraph (e)(2) of this section;

(iii) Provides a comprehensive strategy that uses data and problem identification to identify measurable goals and objectives for preventing and reducing impaired driving behavior and impaired driving crashes; and

(iv) Covers general areas that include program management and strategic planning, prevention, the criminal justice system, communication programs, alcohol and other drug

misuse, and program evaluation and data.

(2) *Statewide impaired driving task force.* The State shall submit a copy of information describing its statewide impaired driving task force that—

(i) Provides the basis for the operation of the task force, including any charter or establishing documents;

(ii) Includes a schedule of all meetings held in the 12 months preceding the application due date and any reports or documents produced during that time period; and

(iii) Includes a list of membership and the organizations and functions represented and includes, at a minimum, key stakeholders from the State Highway Safety Office and the areas of law enforcement and criminal justice system (e.g., prosecution, adjudication, probation), and, as appropriate, stakeholders from the areas of driver licensing, treatment and rehabilitation, ignition interlock programs, data and traffic records, public health, and communication.

(3) *Assurances.* For the first year of the grant as a mid-range State, if the State is not able to meet the requirements of paragraph (e)(1) of this section, the State may provide the assurances provided in Part 3 of Appendix D, signed by the Governor's Representative for Highway Safety, that the State will convene a statewide impaired driving task force to develop a statewide impaired driving plan that meets the requirements of paragraph (e)(1) of this section and submit the statewide impaired driving plan by September 1 of the grant year. The agency will require the return of grant funds awarded under this section if the State fails to submit the plan by the deadline and will redistribute any such grant funds in accordance with § 1200.20(e) to other qualifying States under this section.

(f) *Qualification criteria for a high-range State.* To qualify for an impaired driving countermeasures grant in a fiscal year, a high-range State (as determined by NHTSA) shall submit the information required in paragraph (d) of this section and the following additional documentation:

(1) *Impaired driving program assessment.* (i) The assurances provided in Part 3 of Appendix D, signed by the Governor's Representative for Highway Safety, providing the date of the NHTSA-facilitated assessment of the State's impaired driving program conducted within the three years prior to the application due date; or

(ii) For the first year of the grant as a high-range State, the assurances provided in Part 3 of Appendix D,



signed by the Governor's Representative for Highway Safety, that the State will conduct a NHTSA-facilitated assessment by September 1 of the grant year.

(2) *Statewide impaired driving plan.*

(i) *First year compliance.* For the first year of the grant as a high-range State, the assurances provided in Part 3 of Appendix D, signed by the Governor's Representative for Highway Safety, that the State will convene a statewide impaired driving task force to develop a statewide impaired driving plan, which will be submitted to NHTSA for review and approval by September 1 of the grant year that—

(A) Meets the requirements of paragraph (e)(1) of this section;

(B) Addresses any recommendations from the assessment of the State's impaired driving program required in paragraph (f)(1) of this section;

(C) Includes a detailed plan for spending any grant funds provided for high visibility enforcement efforts; and

(D) Describes how the spending supports the State's impaired driving program and achievement of its performance goals and targets;

(ii) *Subsequent year compliance.* For subsequent years of the grant as a high-range State, the State shall submit for NHTSA review and comment a statewide impaired driving plan that meets the requirements of paragraph (f)(2)(i)(A) through (D) of this section or an update to its statewide impaired driving plan, as part of its application for a grant.

(g) *Ignition interlock State.* To qualify for a separate grant as an ignition interlock State in a fiscal year, a State shall submit the assurances in Part 3 of Appendix D, signed by the Governor's Representative for Highway Safety, providing legal citation(s) to the State statute demonstrating that the State has enacted and is enforcing a law that requires all individuals convicted of driving under the influence of alcohol or of driving while intoxicated to drive only vehicles with alcohol ignition interlocks for a period of not less than 30 days.

(h) *Award.* (1) The amount available for grants under paragraphs (d), (e) and (f) of this section shall be determined based on the total amount of eligible States for these grants and after deduction of the amount necessary to fund grants under paragraph (g) of this section.

(2) The amount available for grants under paragraph (g) of this section shall not exceed 15 percent of the total amount made available to States under this section for the fiscal year.

(i) *Use of grant funds.* (1) *Low-range States* may use grant funds awarded under this section for the following authorized programs:

(i) High visibility enforcement efforts;

(ii) Hiring a full-time or part-time impaired driving coordinator of the State's activities to address the enforcement and adjudication of laws regarding driving while impaired by alcohol;

(iii) Court support of high visibility enforcement efforts, training and education of criminal justice professionals (including law enforcement, prosecutors, judges, and probation officers) to assist such professionals in handling impaired driving cases, hiring traffic safety resource prosecutors, hiring judicial outreach liaisons, and establishing driving while intoxicated courts;

(iv) Alcohol ignition interlock programs;

(v) Improving blood-alcohol concentration testing and reporting;

(vi) Paid and earned media in support of high visibility enforcement of impaired driving laws, and conducting standardized field sobriety training, advanced roadside impaired driving evaluation training, and drug recognition expert training for law enforcement, and equipment and related expenditures used in connection with impaired driving enforcement;

(vii) Training on the use of alcohol screening and brief intervention;

(viii) Developing impaired driving information systems; and

(ix) Costs associated with a 24–7 sobriety program.

(x) Programs designed to reduce impaired driving based on problem identification.

(2) *Mid-range States* may use grant funds awarded under this section for any of the authorized uses described in paragraph (i)(1) of this section, provided that use of grant funds for programs described in paragraph (i)(1)(x) of this section requires advance approval from NHTSA.

(3) *High-range States* may use grant funds awarded under this section for high visibility enforcement efforts and any of the authorized uses described in paragraph (i)(1) of this section, provided the proposed uses are described in a statewide impaired driving plan submitted to and approved by NHTSA in accordance with paragraph (f)(2) of this section and subject to the conditions in paragraph (j) of this section.

(4) *Ignition interlock States* may use grant funds awarded under this section for any of the authorized uses described under paragraph (i)(1) of this section

and for eligible activities under 23 U.S.C. 402.

(j) *Special conditions for use of funds by high-range States.* No expenses incurred or vouchers submitted by a high-range State shall be approved for reimbursement until such State submits for NHTSA review and approval a statewide impaired driving plan as provided in paragraph (f)(2) of this section. If a high-range State fails to timely provide the statewide impaired driving plan required under paragraph (f)(2) of this section, the agency will redistribute any grant funds in accordance with § 1200.20(e) to other qualifying States under this section.

**§ 1200.24 Distracted driving grants.**

(a) *Purpose.* This section establishes criteria, in accordance with 23 U.S.C. 405(e), for awarding grants to States that enact and enforce laws prohibiting distracted driving, beginning with fiscal year 2014 grants.

(b) *Definitions.* As used in this section—

*Driving* means operating a motor vehicle on a public road, including operation while temporarily stationary because of traffic, a traffic light or stop sign, or otherwise, but does not include operating a motor vehicle when the vehicle has pulled over to the side of, or off, an active roadway and has stopped in a location where it can safely remain stationary.

*Texting* means reading from or manually entering data into a personal wireless communications device, including doing so for the purpose of SMS texting, emailing, instant messaging, or engaging in any other form of electronic data retrieval or electronic data communication.

(c) *Qualification criteria.* To qualify for a distracted driving grant in a fiscal year, a State shall submit the assurances in Part 4 of Appendix D, signed by the Governor's Representative for Highway Safety, providing legal citations to the State statute or statutes demonstrating compliance with the following requirements:

(1) *Prohibition on texting while driving.* The statute shall—

(i) Prohibit drivers from texting through a personal wireless communications device while driving;

(ii) Make a violation of the law a primary offense; and

(iii) Establish—

(A) A minimum fine of \$25 for a first violation of the law; and

(B) Increased fines for repeat violations within five years of the previous violation.

(2) *Prohibition on youth cell phone use while driving.* The statute shall—

(i) Prohibit a driver who is younger than 18 years of age from using a personal wireless communications device while driving;

(ii) Make a violation of the law a primary offense;

(iii) Require distracted driving issues to be tested as part of the State's driver's license examination; and

(iv) Establish—

(A) A minimum fine of \$25 for a first violation of the law; and

(B) Increased fines for repeat violations within five years of the previous violation.

(3) *Permitted exceptions.* A State statute providing for the following exceptions, and no others, shall not be deemed out of compliance with the requirements of this section:

(i) A driver who uses a personal wireless communications device to contact emergency services;

(ii) Emergency services personnel who use a personal wireless communications device while operating an emergency services vehicle and engaged in the performance of their duties as emergency services personnel; and

(iii) An individual employed as a commercial motor vehicle driver or a school bus driver who uses a personal wireless communications device within the scope of such individual's employment if such use is permitted under the regulations promulgated pursuant to 49 U.S.C. 31136.

(d) *Use of grant funds.* (1) At least 50 percent of the grant funds awarded under this section shall be used to educate the public through advertising containing information about the dangers of texting or using a cell phone while driving, for traffic signs that notify drivers about the distracted driving law of the State, or for law enforcement costs related to the enforcement of the distracted driving law;

(2) Not more than 50 percent of the grant funds awarded under this section may be used for any eligible project or activity under 23 U.S.C. 402.

#### § 1200.25 Motorcyclist safety grants.

(a) *Purpose.* This section establishes criteria, in accordance with 23 U.S.C. 405(b), for awarding grants to States that adopt and implement effective programs to reduce the number of single-vehicle and multiple-vehicle crashes involving motorcyclists.

(b) *Definitions.* As used in this section—

*Impaired* means alcohol-impaired or drug-impaired as defined by State law, provided that the State's legal alcohol-impairment level does not exceed .08 BAC.

*Motorcycle* means a motor vehicle with motive power having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground.

*Motorcyclist awareness* means individual or collective awareness of the presence of motorcycles on or near roadways and of safe driving practices that avoid injury to motorcyclists.

*Motorcyclist awareness program* means an informational or public awareness or education program designed to enhance motorcyclist awareness that is developed by or in coordination with the designated State authority having jurisdiction over motorcyclist safety issues, which may include the State motorcycle safety administrator or a motorcycle advisory council appointed by the Governor of the State.

*Motorcyclist safety training or Motorcycle rider training* means a formal program of instruction that is approved for use in a State by the designated State authority having jurisdiction over motorcyclist safety issues, which may include the State motorcycle safety administrator or a motorcycle advisory council appointed by the governor of the State.

*State* means any of the 50 States, the District of Columbia, and Puerto Rico.

(c) *Eligibility.* The 50 States, the District of Columbia and Puerto Rico are eligible to apply for a motorcyclist safety grant.

(d) *Qualification criteria.* To qualify for a motorcyclist safety grant in a fiscal year, a State shall submit an executed Part 5 of Appendix D, signed by the Governor's Representative for Highway Safety, and submit documentation demonstrating compliance with at least two of the criteria in paragraphs (e) through (j) of this section.

(e) *Motorcycle rider training course.* (1) To satisfy this criterion, a State shall have an effective motorcycle rider training course that is offered throughout the State and that provides a formal program of instruction in accident avoidance and other safety-oriented operational skills to motorcyclists. The program shall—

(i) Use a training curriculum that—

(A) Is approved by the designated State authority having jurisdiction over motorcyclist safety issues;

(B) Includes a formal program of instruction in crash avoidance and other safety-oriented operational skills for both in-class and on-the-motorcycle training to motorcyclists; and

(C) May include innovative training opportunities to meet unique regional needs;

(ii) Offer at least one motorcycle rider training course either—

(A) In a majority of the State's counties or political subdivisions; or

(B) In counties or political subdivisions that account for a majority of the State's registered motorcycles;

(iii) Use motorcycle rider training instructors to teach the curriculum who are certified by the designated State authority having jurisdiction over motorcyclist safety issues or by a nationally recognized motorcycle safety organization with certification capability; and

(iv) Use quality control procedures to assess motorcycle rider training courses and instructor training courses conducted in the State.

(2) To demonstrate compliance with this criterion, the State shall submit—

(i) A copy of the official State document (e.g., law, regulation, binding policy directive, letter from the Governor) identifying the designated State authority over motorcyclist safety issues;

(ii) Document(s) demonstrating that the training curriculum is approved by the designated State authority having jurisdiction over motorcyclist safety issues and includes a formal program of instruction in crash avoidance and other safety-oriented operational skills for both in-class and on-the-motorcycle training to motorcyclists;

(iii) Either:

(A) A list of the counties or political subdivisions in the State, noting in which counties or political subdivisions and when motorcycle rider training courses were offered in the 12 months preceding the due date of the grant application, if the State seeks to qualify under this criterion by showing that it offers at least one motorcycle rider training course in a majority of counties or political subdivisions in the State; or

(B) A list of the counties or political subdivisions in the State, noting in which counties or political subdivisions and when motorcycle rider training courses were offered in the 12 months preceding the due date of the grant application and the corresponding number of registered motorcycles in each county or political subdivision according to official State motor vehicle records, if the State seeks to qualify under this criterion by showing that it offers at least one motorcycle rider training course in counties or political subdivisions that account for a majority of the State's registered motorcycles;

(iv) Document(s) demonstrating that the State uses motorcycle rider training instructors to teach the curriculum who are certified by the designated State authority having jurisdiction over

motorcyclist safety issues or by a nationally recognized motorcycle safety organization with certification capability; and

(v) A brief description of the quality control procedures to assess motorcycle rider training courses and instructor training courses used in the State (e.g., conducting site visits, gathering student feedback) and the actions taken to improve the courses based on the information collected.

(f) *Motorcyclist awareness program.*

(1) To satisfy this criterion, a State shall have an effective statewide program to enhance motorist awareness of the presence of motorcyclists on or near roadways and safe driving practices that avoid injuries to motorcyclists. The program shall—

(i) Be developed by, or in coordination with, the designated State authority having jurisdiction over motorcyclist safety issues;

(ii) Use State data to identify and prioritize the State's motorcyclist awareness problem areas;

(iii) Encourage collaboration among agencies and organizations responsible for, or impacted by, motorcycle safety issues; and

(iv) Incorporate a strategic communications plan that—

(A) Supports the State's overall safety policy and countermeasure program;

(B) Is designed, at a minimum, to educate motorists in those jurisdictions where the incidence of motorcycle crashes is highest or in those jurisdictions that account for a majority of the State's registered motorcycles;

(C) Includes marketing and educational efforts to enhance motorcyclist awareness; and

(D) Uses a mix of communication mechanisms to draw attention to the problem.

(2) To demonstrate compliance with this criterion, the State shall submit—

(i) A copy of the State document identifying the designated State authority having jurisdiction over motorcyclist safety issues;

(ii) A letter from the Governor's Highway Safety Representative stating that the State's motorcyclist awareness program was developed by or in coordination with the designated State authority having jurisdiction over motorcyclist safety issues;

(iii) Data used to identify and prioritize the State's motorcycle safety problem areas, including either—

(A) A list of counties or political subdivisions in the State ranked in order of the highest to lowest number of motorcycle crashes per county or political subdivision, if the State seeks to qualify under this criterion by

showing that it identifies and prioritizes the State's motorcycle safety problem areas based on motorcycle crashes. Such data shall be from the most recent calendar year for which final State crash data is available, but data no older than two calendar years prior to the application due date (e.g., for a grant application submitted on July 1, 2013, a State shall provide calendar year 2012 data, if available, and may not provide data older than calendar year 2011); or

(B) A list of counties or political subdivisions in the State and the corresponding number of registered motorcycles for each county or political subdivision according to official State motor vehicle records, if the State seeks to qualify under this criterion by showing that it identifies and prioritizes the State's motorcycle safety problem areas based on motorcycle registrations;

(iv) A brief description of how the State has achieved collaboration among agencies and organizations responsible for, or impacted by, motorcycle safety issues; and

(v) A copy of the strategic communications plan showing that it—

(A) Supports the State's overall safety policy and countermeasure program;

(B) Is designed to educate motorists in those jurisdictions where the incidence of motorcycle crashes is highest (i.e., the majority of counties or political subdivisions in the State with the highest numbers of motorcycle crashes) or is designed to educate motorists in those jurisdictions that account for a majority of the State's registered motorcycles (i.e., the counties or political subdivisions that account for a majority of the State's registered motorcycles as evidenced by State motor vehicle records);

(C) Includes marketing and educational efforts to enhance motorcyclist awareness; and

(D) Uses a mix of communication mechanisms to draw attention to the problem (e.g., newspapers, billboard advertisements, email, posters, flyers, mini-planners, or instructor-led training sessions).

(g) *Reduction of fatalities and crashes involving motorcycles.* (1) To satisfy this criterion, a State shall demonstrate a reduction for the preceding calendar year in the number of motorcyclist fatalities and in the rate of motor vehicle crashes involving motorcycles in the State (expressed as a function of 10,000 registered motorcycle registrations), as computed by NHTSA. The State shall—

(i) Experience a reduction of at least one in the number of motorcyclist fatalities for the most recent calendar year for which final FARS data is available as compared to the final FARS

data for the calendar year immediately prior to that year; and

(ii) Based on State crash data expressed as a function of 10,000 motorcycle registrations (using FHWA motorcycle registration data), experience at least a whole number reduction in the rate of crashes involving motorcycles for the most recent calendar year for which final State crash data is available, but data no older than two calendar years prior to the application due date, as compared to the calendar year immediately prior to that year.

(2) To demonstrate compliance with this criterion, the State shall submit—

(i) State data showing the total number of motor vehicle crashes involving motorcycles in the State for the most recent calendar year for which final State crash data is available, but data no older than two calendar years prior to the application due date and the same type of data for the calendar year immediately prior to that year (e.g., for a grant application submitted on July 1, 2013, the State shall submit calendar year 2012 data and 2011 data, if both data are available, and may not provide data older than calendar year 2011 and 2010, to determine the rate); and

(ii) A description of the State's methods for collecting and analyzing data submitted in paragraph (g)(2)(i) of this section, including a description of the State's efforts to make reporting of motor vehicle crashes involving motorcycles as complete as possible.

(h) *Impaired driving program.* (1) To satisfy this criterion, a State shall implement a statewide program to reduce impaired driving, including specific measures to reduce impaired motorcycle operation. The program shall—

(i) Use State data to identify and prioritize the State's impaired driving and impaired motorcycle operation problem areas; and

(ii) Include specific countermeasures to reduce impaired motorcycle operation with strategies designed to reach motorcyclists and motorists in those jurisdictions where the incidence of motorcycle crashes involving an impaired operator is highest.

(2) To demonstrate compliance with this criterion, the State shall submit—

(i) State data used to identify and prioritize the State's impaired driving and impaired motorcycle operation problem areas, including a list of counties or political subdivisions in the State ranked in order of the highest to lowest number of motorcycle crashes involving an impaired operator per county or political subdivision. Such data shall be from the most recent

calendar year for which final State crash data is available, but data no older than two calendar years prior to the application due date (e.g., for a grant application submitted on July 1, 2013, a State shall provide calendar year 2012 data, if available, and may not provide data older than calendar year 2011);

(ii) A detailed description of the State's impaired driving program as implemented, including a description of each countermeasure established and proposed by the State to reduce impaired motorcycle operation, the amount of funds allotted or proposed for each countermeasure and a description of its specific strategies that are designed to reach motorcyclists and motorists in those jurisdictions where the incidence of motorcycle crashes involving an impaired operator is highest (i.e., the majority of counties or political subdivisions in the State with the highest numbers of motorcycle crashes involving an impaired operator); and

(iii) The legal citation(s) to the State statute or regulation defining impairment. (A State is not eligible for a grant under this criterion if its legal alcohol-impairment level exceeds .08 BAC.)

(i) *Reduction of fatalities and accidents involving impaired motorcyclists.* (1) To satisfy this criterion, a State shall demonstrate a reduction for the preceding calendar year in the number of fatalities and in the rate of reported crashes involving alcohol-impaired and drug-impaired motorcycle operators (expressed as a function of 10,000 motorcycle registrations), as computed by NHTSA. The State shall—

(i) Experience a reduction of at least one in the number of fatalities involving alcohol-and drug-impaired motorcycle operators for the most recent calendar year for which final FARS data is available as compared to the final FARS data for the calendar year immediately prior to that year; and

(ii) Based on State crash data expressed as a function of 10,000 motorcycle registrations (using FHWA motorcycle registration data), experience at least a whole number reduction in the rate of reported crashes involving alcohol-and drug-impaired motorcycle operators for the most recent calendar year for which final State crash data is available, but data no older than two calendar years prior to the application due date, as compared to the calendar year immediately prior to that year.

(2) To demonstrate compliance with this criterion, the State shall submit—

(i) State data showing the total number of reported crashes involving alcohol- and drug-impaired motorcycle operators in the State for the most recent calendar year for which final State crash data is available, but data no older than two calendar years prior to the application due date and the same type of data for the calendar year immediately prior to that year (e.g., for a grant application submitted on July 1, 2013, the State shall submit calendar year 2012 and 2011 data, if both data are available, and may not provide data older than calendar year 2011 and 2010, to determine the rate); and

(ii) A description of the State's methods for collecting and analyzing data submitted in paragraph (i)(2)(i) of this section, including a description of the State's efforts to make reporting of crashes involving alcohol-impaired and drug-impaired motorcycle operators as complete as possible; and

(iii) The legal citation(s) to the State statute or regulation defining alcohol-impaired and drug-impairment. (A State is not eligible for a grant under this criterion if its legal alcohol-impairment level exceeds .08 BAC.)

(j) *Use of fees collected from motorcyclists for motorcycle programs.*

(1) To satisfy this criterion, a State shall have a process under which all fees collected by the State from motorcyclists for the purposes of funding motorcycle training and safety programs are used for motorcycle training and safety programs. A State may qualify under this criterion as either a Law State or a Data State.

(i) A Law State is a State that has a statute or regulation requiring that all fees collected by the State from motorcyclists for the purposes of funding motorcycle training and safety programs are to be used for motorcycle training and safety programs.

(ii) A Data State is a State that does not have a statute or regulation requiring that all fees collected by the State from motorcyclists for the purposes of funding motorcycle training and safety programs are to be used for motorcycle training and safety programs but can show through data and/or documentation from official records that all fees collected by the State from motorcyclists for the purposes of funding motorcycle training and safety programs were, in fact, used for motorcycle training and safety programs, without diversion.

(2)(i) To demonstrate compliance as a Law State, the State shall submit the legal citation(s) to the statute or regulation requiring that all fees collected by the State from motorcyclists for the purposes of

funding motorcycle training and safety programs are to be used for motorcycle training and safety programs and the legal citation(s) to the State's current fiscal year appropriation (or preceding fiscal year appropriation, if the State has not enacted a law at the time of the State's application) appropriating all such fees to motorcycle training and safety programs.

(ii) To demonstrate compliance as a Data State, a State shall submit data or documentation from official records from the previous State fiscal year showing that all fees collected by the State from motorcyclists for the purposes of funding motorcycle training and safety programs were, in fact, used for motorcycle training and safety programs. Such data or documentation shall show that revenues collected for the purposes of funding motorcycle training and safety programs were placed into a distinct account and expended only for motorcycle training and safety programs.

(k) *Award limitation.* A grant awarded under the procedures described in § 1200.20(e)(1) may not exceed the amount of a grant made to State for fiscal year 2003 under 23 U.S.C. 402.

(l) *Use of grant funds.* (1) *Eligible uses.* A State may use grant funds awarded under this section for motorcyclist safety training and motorcyclist awareness programs, including—

(i) Improvements to motorcyclist safety training curricula;

(ii) Improvements in program delivery of motorcycle training to both urban and rural areas, including—

(A) Procurement or repair of practice motorcycles;

(B) Instructional materials;

(C) Mobile training units; and

(D) Leasing or purchasing facilities for closed-course motorcycle skill training;

(iii) Measures designed to increase the recruitment or retention of motorcyclist safety training instructors; and

(iv) Public awareness, public service announcements, and other outreach programs to enhance driver awareness of motorcyclists, such as the "share-the-road" safety messages developed using Share-the-Road model language available on NHTSA's Web site at <http://www.trafficsafetymarketing.gov>.

(2) *Suballocation of funds.* A State that receives a grant under this section may suballocate funds from the grant to a nonprofit organization incorporated in that State to carry out grant activities under this section.

#### § 1200.26 State graduated driver licensing incentive grants.

(a) *Purpose.* This section establishes criteria, in accordance with 23 U.S.C.

405(g), for awarding grants to States that adopt and implement graduated driver's licensing laws that require novice drivers younger than 21 years of age to comply with a 2-stage licensing process prior to receiving a full driver's license.

(b) *Definitions.* As used in this section—

*Conviction-free* means that, during the term of the permit or license covered by the program, the driver has not been convicted of any offense under State or local law relating to the use or operation of a motor vehicle, including but not limited to driving while intoxicated, reckless driving, driving without wearing a seat belt, speeding, prohibited use of a personal wireless communications device, and violation of the driving-related restrictions applicable to the stages of the graduated driver's licensing process set forth in paragraph (c) of this section, as well as misrepresentation of a driver's true age.

*Driving*, for purposes of paragraph (c)(2)(iii) of this section, means operating a motor vehicle on a public road, including operation while temporarily stationary because of traffic, a traffic light or stop sign, or otherwise, but does not include operating a motor vehicle when the vehicle has pulled over to the side of, or off, an active roadway and has stopped in a location where it can safely remain stationary.

*Full driver's license* means a license to operate a passenger motor vehicle on public roads at all times.

*Licensed driver* means a driver who possesses a valid full driver's license.

*Novice driver* means a driver who has not been issued by a State an intermediate license or full driver's license.

(c) *Qualification criteria.* (1) *General.* To qualify for a grant under this section, a State shall submit the assurances in Part 6 of Appendix D, signed by the Governor's Representative for Highway Safety, providing legal citations to the State statute or statutes demonstrating compliance with the requirements of paragraph (c)(2) of this section, and provide legal citation(s) to the statute or regulation or provide documentation demonstrating compliance with the requirements of paragraph (c)(3) of this section.

(2) *Graduated driver's licensing law.* A State's graduated driver's licensing law shall include a learner's permit stage and an intermediate stage meeting the following minimum requirements:

(i) The learner's permit stage shall—

(A) Apply to any novice driver who is younger than 21 years of age prior to the receipt by such driver from the State of any other permit or license to operate a motor vehicle;

(B) Commence only after an applicant for a learner's permit passes vision and knowledge tests, including tests about the rules of the road, signs, and signals;

(C) Subject to paragraph (c)(2)(iii)(B), be in effect for a period of at least six months, but may not expire until the driver reaches at least 16 years of age; and

(D) Require the learner's permit holder to—

(1) Be accompanied and supervised by a licensed driver who is at least 21 years of age at all times while the learner's permit holder is operating a motor vehicle;

(2) Receive not less than 40 hours of behind-the-wheel training with a licensed driver who is at least 21 years of age;

(3) Complete a driver education or training course that has been certified by the State; and

(4) Pass a driving skills test prior to entering the intermediate stage or being issued another permit, license or endorsement.

(ii) The intermediate stage shall—

(A) Apply to any driver who has completed the learner's permit stage and who is younger than 18 years of age;

(B) Commence immediately after the expiration of the learner's permit stage;

(C) Subject to paragraph (c)(2)(iii)(B), be in effect for a period of at least six months, but may not expire until the driver reaches at least 18 years of age;

(D) Require the intermediate license holder to be accompanied and supervised by a licensed driver who is at least 21 years of age during the period of time between the hours of 10:00 p.m. and 5:00 a.m., except in case of emergency; and

(E) Prohibit the intermediate license holder from operating a motor vehicle with more than one nonfamilial passenger younger than 21 years of age unless a licensed driver who is at least 21 years of age is in the motor vehicle.

(iii) During both the learner's permit and intermediate stages, the State shall—

(A) Impose a prohibition enforced as a primary offense on use of a cellular telephone or any communications device by the driver while driving, except in case of emergency; and

(B) Require that the driver who possesses a learner's permit or intermediate license remain conviction-free for a period of not less than six consecutive months immediately prior to the expiration of that stage.

(3) *Requirement for license distinguishability.* The State learner's permit, intermediate license, and full driver's license shall be distinguishable from each other. A State may satisfy this requirement by submitting—

(i) Legal citations to the State statute or regulation requiring that the State learner's permit, intermediate license, and full driver's license be visually distinguishable;

(ii) Sample permits and licenses that contain visual features that would enable a law enforcement officer to distinguish between the State learner's permit, intermediate license, and full driver's license; or

(iii) A description of the State's system that enables law enforcement officers in the State during traffic stops to distinguish between the State learner's permit, intermediate license, and full driver's license.

(4) *Exceptions.* A State that otherwise meets the minimum requirements set forth in paragraph (c)(2) of this section will not be deemed ineligible for a grant under this section if—

(i) The State enacted a law prior to January 1, 2011, establishing a class of permit or license that allows drivers younger than 18 years of age to operate a motor vehicle—

(A) In connection with work performed on, or for the operation of, a farm owned by family members who are directly related to the applicant or licensee; or

(B) If demonstrable hardship would result from the denial of a license to the licensees or applicants, provided that the State requires the applicant or licensee to affirmatively and adequately demonstrate unique undue hardship to the individual; and

(ii) Drivers who possess only the permit or license permitted under paragraph (c)(4)(i) of this section are treated as novice drivers subject to the graduated driver's licensing requirements of paragraph (c)(2) of this section as a pre-condition of receiving any other permit, license or endorsement.

(d) *Award.* (1) *Grant Amount.* Subject to paragraph (d)(2) of this section, grant funds for a fiscal year under this section shall be allocated among States that meet the qualification criteria on the basis of the apportionment formula under 23 U.S.C. 402 for that fiscal year.

(2) *Limitation.* Amount of grant award to a State under this section may not exceed 10 percent of the total amount made available for Section 405(g) for that fiscal year.

(e) *Use of grant funds.* A State may use grant funds awarded under this section as follows:

(1) At least 25 percent of the grant funds shall be used, in connection with the State's graduated driver's licensing law that complies with the minimum requirements set forth in paragraph (c) of this section, to:

- (i) Enforce the graduated driver's licensing process;
  - (ii) Provide training for law enforcement personnel and other relevant State agency personnel relating to the enforcement of the graduated driver's licensing process;
  - (iii) Publish relevant educational materials that pertain directly or indirectly to the State graduated driver's licensing law;
  - (iv) Carry out administrative activities to implement the State's graduated driver's licensing process; or
  - (v) Carry out a teen traffic safety program described in 23 U.S.C. 402(m);
- (2) No more than 75 percent may be used for any eligible project or activity under 23 U.S.C. 402.

#### Subpart D—Administration of the Highway Safety Grants

##### § 1200.30 General.

Subject to the provisions of this subpart, the requirements of 49 CFR part 18 and applicable cost principles govern the implementation and management of State highway safety programs and projects carried out under 23 U.S.C. Chapter 4. Cost principles include those referenced in 49 CFR 18.22.

##### § 1200.31 Equipment.

(a) *Title.* Except as provided in paragraphs (e) and (f) of this section, title to equipment acquired under 23 U.S.C. Chapter 4 will vest upon acquisition in the State or its subgrantee, as appropriate.

(b) *Use.* All equipment shall be used for the originally authorized grant purposes for as long as needed for those purposes, as determined by the Approving Official, and neither the State nor any of its subgrantees or contractors shall encumber the title or interest while such need exists.

(c) *Management and disposition.* Subject to the requirement of paragraphs (b), (d), (e) and (f) of this section, States and their subgrantees and contractors shall manage and dispose of equipment acquired under 23 U.S.C. Chapter 4 in accordance with State laws and procedures.

(d) *Major purchases and dispositions.* Equipment with a useful life of more than one year and an acquisition cost of \$5,000 or more shall be subject to the following requirements—

- (1) Purchases shall receive prior written approval from the Approving Official;
- (2) Dispositions shall receive prior written approval from the Approving Official unless the age of the equipment has exceeded its useful life as determined under State law and procedures.

(e) *Right to transfer title.* The Approving Official may reserve the right to transfer title to equipment acquired under 23 U.S.C. Chapter 4 to the Federal Government or to a third party when such third party is eligible under Federal statute. Any such transfer shall be subject to the following requirements:

- (1) The equipment shall be identified in the grant or otherwise made known to the State in writing;
- (2) The Approving Official shall issue disposition instructions within 120 calendar days after the equipment is determined to be no longer needed for highway safety purposes, in the absence of which the State shall follow the applicable procedures in 49 CFR part 18.

(f) *Federally-owned equipment.* In the event a State or its subgrantee is provided Federally-owned equipment:

- (1) Title shall remain vested in the Federal Government;
- (2) Management shall be in accordance with Federal rules and procedures, and an annual inventory listing shall be submitted;
- (3) The State or its subgrantee shall request disposition instructions from the Approving Official when the item is no longer needed for highway safety purposes.

##### § 1200.32 Changes—Approval of the Approving Official.

States shall provide documentary evidence of any reallocation of funds between program areas by submitting to the NHTSA regional office an amended HS Form 217, reflecting the changed allocation of funds and updated list of projects under each program area, as provided in § 1200.11(e), within 30 days of implementing the change. The amended HS Form 217 and list of projects is subject to the approval of the Approving Official.

##### § 1200.33 Vouchers and Project Agreements.

(a) *General.* Each State shall submit official vouchers for expenses incurred to the Approving Official.

(b) *Content of vouchers.* At a minimum, each voucher shall provide the following information for expenses claimed in each program area:

- (1) Program Area for which expenses were incurred and an itemization of project numbers and amount of Federal funds expended for each project for which reimbursement is being sought;
- (2) Federal funds obligated;
- (3) Amount of Federal funds allocated to local benefit (provided no less than mid-year (by March 31) and with the final voucher);

- (4) Cumulative Total Cost to Date;
  - (5) Cumulative Federal Funds Expended;
  - (6) Previous Amount Claimed;
  - (7) Amount Claimed this Period;
  - (8) Matching rate (or special matching writeoff used, i.e., sliding scale rate authorized under 23 U.S.C. 120).
- (c) *Project agreements.* Copies of each project agreement for which expenses are being claimed under the voucher (and supporting documentation for the vouchers) shall be made promptly available for review by the Approving Official upon request. Each project agreement shall bear the project number to allow the Approving Official to match the voucher to the corresponding activity.

(d) *Submission requirements.* At a minimum, vouchers shall be submitted to the Approving Official on a quarterly basis, no later than 15 working days after the end of each quarter, except that where a State receives funds by electronic transfer at an annualized rate of one million dollars or more, vouchers shall be submitted on a monthly basis, no later than 15 working days after the end of each month. A final voucher shall be submitted to the Approving Official no later than 90 days after the end of the fiscal year, and all unexpended balances shall be carried forward to the current fiscal year.

(e) *Reimbursement.* (1) Failure to provide the information specified in paragraph (b) of this section shall result in rejection of the voucher.

(2) Failure to meet the deadlines specified in paragraph (d) of this section may result in delayed reimbursement.

(3) Vouchers that request reimbursement for projects whose project numbers or amounts claimed do not match the list of projects or exceed the estimated amount of Federal funds provided under § 1200.11(e), or exceed the allocation of funds to a program area in the HS Form 217, shall be rejected, in whole or in part, until an amended list of projects and/or estimated amount of Federal funds and an amended HS Form 217 is submitted to and approved by the Approving Official in accordance with § 1200.32.

##### § 1200.34 Program Income.

(a) *Definition.* Program income means gross income received by the grantee or subgrantee directly generated by a program supported activity, or earned only as a result of the grant agreement during the period of time between the effective date of the grant award and the expiration date of the grant award.

(b) *Inclusions.* Program income includes income from fees for services performed, from the use or rental of real

or personal property acquired with grant funds, from the sale of commodities or items fabricated under the grant agreement, and from payments of principal and interest on loans made with grant funds.

(c) *Exclusions.* Program income does not include interest on grant funds, rebates, credits, discounts, refunds, taxes, special assessments, levies, fines, proceeds from the sale of real property or equipment, income from royalties and license fees for copyrighted material, patents, and inventions, or interest on any of these.

(d) *Use of program income.* (1) *Addition.* Program income shall ordinarily be added to the funds committed to the Highway Safety Plan. Such program income shall be used to further the objectives of the program area under which it was generated.

(2) *Cost sharing or matching.* Program income may be used to meet cost sharing or matching requirements only upon written approval of the Approving Official. Such use shall not increase the commitment of Federal funds.

#### § 1200.35 Annual Report.

Within 90 days after the end of the fiscal year, each State shall submit an Annual Report describing—

(a) A general assessment of the State's progress in achieving highway safety performance measure targets identified in the Highway Safety Plan;

(b) A general description of the projects and activities funded and implemented under the Highway Safety Plan;

(c) The amount of Federal funds expended on projects from the Highway Safety Plan; and

(d) How the projects funded during the fiscal year contributed to meeting the State's highway safety targets. Where data becomes available, a State should report progress from prior year projects that have contributed to meeting current State highway safety targets.

#### § 1200.36 Appeals of Written Decision by Approving Official.

Review of any written decision regarding the administration of the grants by an Approving Official under this subpart may be obtained by submitting a written appeal of such decision, signed by the Governor's Representative for Highway Safety, to the Approving Official. Such appeal shall be forwarded promptly to the NHTSA Associate Administrator, Regional Operations and Program Delivery. The decision of the NHTSA Associate Administrator shall be final and shall be transmitted to the

Governor's Representative for Highway Safety through the cognizant Approving Official.

### Subpart E—Annual Reconciliation

#### § 1200.40 Expiration of the Highway Safety Plan.

(a) The State's Highway Safety Plan for a fiscal year and the State's authority to incur costs under that Highway Safety Plan shall expire on the last day of the fiscal year.

(b) Except as provided in paragraph (c) of this section, each State shall submit a final voucher which satisfies the requirements of § 1200.33 within 90 days after the expiration of the State's Highway Safety Plan as provided in paragraph (a) of this section. The final voucher constitutes the final financial reconciliation for each fiscal year.

(c) The Approving Official may extend the time period to submit a final voucher only in extraordinary circumstances. States shall submit a written request for an extension describing the extraordinary circumstances that necessitate an extension. The approval of any such request for extension shall be in writing, shall specify the new deadline for submitting the final voucher, and shall be signed by the Approving Official.

#### § 1200.41 Disposition of Unexpended Balances.

(a) *Carry-forward balances.* Except as provided in paragraph (b) of this section, grant funds that remain unexpended at the end of a fiscal year and the expiration of a Highway Safety Plan shall be credited to the State's highway safety account for the new fiscal year, and made immediately available for use by the State, provided the following requirements are met:

(1) The State's new Highway Safety Plan has been approved by the Approving Official pursuant to § 1200.14 of this part;

(2) The State has identified Section 402 carry-forward funds by the program area from which they are removed and identified by program area the manner in which the carry-forward funds will be used under the new Highway Safety Plan.

(3) The State has identified Section 405 carry-forward funds by the national priority safety program under which they were awarded (i.e., occupant protection, state traffic safety information system improvements, impaired driving, ignition interlock, distracted driving, motorcyclist safety or graduated driver licensing). These funds shall not be used for any other program.

(4) The State has submitted for approval an updated HS Form 217 for

funds identified in paragraph (a)(2) or (a)(3) of this section. Reimbursement of costs is contingent upon the approval of updated Highway Safety Plan and HS Form 217.

(5) Funds carried forward from grant programs rescinded by MAP-21 shall be separately identified and shall be subject to the statutory and regulatory requirements that were in force at the time of award.

(b) *Deobligation of funds.* (1) Except as provided in paragraph (b)(2) of this section, unexpended grant funds shall not be available for expenditure beyond the period of three years after the last day of the fiscal year of apportionment or allocation.

(2) NHTSA shall notify States of any such unexpended grant funds no later than 180 days prior to the end of the period of availability specified in paragraph (b)(1) of this section and inform States of the deadline for commitment. States may commit such unexpended grant funds to a specific project by the specified deadline, and shall provide documentary evidence of that commitment, including a copy of an executed project agreement, to the Approving Official.

(3) Grant funds committed to a specific project in accordance with paragraph (b)(2) of this section shall remain committed to that project and be expended by the end of the succeeding fiscal year. The final voucher for that project shall be submitted within 90 days of the end of that fiscal year.

(4) NHTSA shall deobligate unexpended balances at the end of the time period in paragraph (b)(1) or (b)(3) of this section, whichever is applicable, and the funds shall lapse.

#### § 1200.42 Post-Grant Adjustments.

The expiration of a Highway Safety Plan does not affect the ability of NHTSA to disallow costs and recover funds on the basis of a later audit or other review or the State's obligation to return any funds due as a result of later refunds, corrections, or other transactions.

#### § 1200.43 Continuing Requirements.

Notwithstanding the expiration of a Highway Safety Plan, the provisions for post-award requirements in 49 CFR part 18, including but not limited to equipment and audit, continue to apply to the grant funds authorized under 23 U.S.C. Chapter 4.

### Subpart F—Non-Compliance

#### § 1200.50 General.

Where a State is found to be in non-compliance with the requirements of the

grant programs authorized under 23 U.S.C. Chapter 4 or with applicable law, the special conditions for high-risk grantees and the enforcement procedures of 49 CFR part 18, the sanctions procedures in § 1200.51, and any other sanctions or remedies permitted under Federal law may be applied as appropriate.

**§ 1200.51 Sanctions—Reduction of Apportionment.**

(a) *Determination of sanctions.* (1) The Administrator shall not apportion any funds under 23 U.S.C. 402 to any State which is not implementing an approved highway safety program.

(2) If the Administrator has apportioned funds to a State and subsequently determines that the State is not implementing an approved highway safety program, the Administrator shall reduce the funds apportioned under 23 U.S.C. 402 to the State by amounts equal to not less than 20 percent, until such time as the Administrator determines that the State is implementing an approved highway safety program.

(3) The Administrator shall consider the gravity of the State's failure to implement an approved highway safety program in determining the amount of the reduction.

(4) If the Administrator determines that a State has begun implementing an approved highway safety program not later than July 31 of the fiscal year for which the funds were withheld, the Administrator shall promptly apportion to the State the funds withheld from its apportionment.

(5) If the Administrator determines that the State did not correct its failure by July 31 of the fiscal year for which the funds were withheld, the Administrator shall reapportion the withheld funds to the other States, in accordance with the formula specified in 23 U.S.C. 402(c), not later than the last day of the fiscal year.

(b) *Reconsideration of sanctions determination.* (1) In any fiscal year, if the Administrator determines that a State is not implementing an approved highway safety program in accordance with 23 U.S.C. 402 and other applicable Federal law, the Administrator shall issue to the State an advance notice, advising the State that the Administrator expects to either withhold funds from apportionment under 23 U.S.C. 402, or reduce the State's apportioned funds under 23 U.S.C. 402. The Administrator shall state the amount of the expected withholding or reduction. The advance notice will normally be sent not later

than 60 days prior to final apportionment.

(2) If the Administrator issues an advance notice to a State, under paragraph (b)(1) of this section, the State may, within 30 days of its receipt of the advance notice, submit documentation demonstrating that it is implementing an approved highway safety program. Documentation shall be submitted to the NHTSA Administrator, 1200 New Jersey Avenue SE., Washington, DC 20590.

(3) If the Administrator decides, after reviewing all relevant information submitted, that the State is not implementing an approved highway safety program in accordance with 23 U.S.C. 402, the Administrator shall issue a final notice, advising the State either of the funds being withheld from apportionment under 23 U.S.C. 402, or of the amount of funds reduced from the apportionment under 23 U.S.C. 402. The final notice will normally be issued no later than September 30. The final notice of a reduction will be issued at the time of a final decision.

**Subpart G—Special Provisions for Fiscal Year 2013 Highway Safety Grants and Highway Safety Grants Under Prior Authorizations**

**§ 1200.60 Fiscal Year 2013 Section 402 Grants.**

Highway safety grants apportioned under 23 U.S.C. 402 for fiscal year 2013 shall be governed by the applicable implementing regulations at the time of grant award.

**§ 1200.61 Fiscal Year 2013 Section 405 Grants.**

(a) For fiscal year 2013 grants authorized under 23 U.S.C. 405(b), (c), (d), (f) and (g), a State shall submit electronically its application as provided in § 1200.11(h) to [NHTSAGrants@dot.gov](mailto:NHTSAGrants@dot.gov) no later than March 25, 2013.

(b) If a State's application contains incomplete information, NHTSA may request additional information from the State prior to making a determination of award for each component of the Section 405 grant program. Failure to respond promptly for request of additional information may result in a State's disqualification from one or more Section 405 grants for fiscal year 2013.

(c) After reviewing applications and making award determinations, NHTSA shall, in writing, distribute funds available for obligation under Section 405 to qualifying States and specify any conditions or limitations imposed by law on the use of the funds.

(d) Grant awards are subject to the availability of funds. If there are

insufficient funds to award full grant amounts to qualifying States, NHTSA may release interim amounts and release the remainder, up to the State's proportionate share of available funds, when it becomes available in the fiscal year.

(e) The administration, reconciliation and noncompliance provisions of subparts D through F of this part apply to fiscal year 2013 grants awarded to qualifying States.

**§ 1200.62 Pre-2013 Fiscal Year Grants.**

Highway safety grants rescinded by MAP-21 are governed by the applicable implementing regulations at the time of grant award.

**APPENDIX A TO PART 1200— CERTIFICATION AND ASSURANCES FOR HIGHWAY SAFETY GRANTS (23 U.S.C. CHAPTER 4)**

State: \_\_\_\_\_

Fiscal Year: \_\_\_\_\_

Each fiscal year the State must sign these Certifications and Assurances that it complies with all requirements including applicable Federal statutes and regulations that are in effect during the grant period. (Requirements that also apply to subrecipients are noted under the applicable caption.)

In my capacity as the Governor's Representative for Highway Safety, I hereby provide the following certifications and assurances:

**GENERAL REQUIREMENTS**

To the best of my personal knowledge, the information submitted in the Highway Safety Plan in support of the State's application for Section 402 and Section 405 grants is accurate and complete. (Incomplete or incorrect information may result in the disapproval of the Highway Safety Plan.)

The Governor is the responsible official for the administration of the State highway safety program through a State highway safety agency that has adequate powers and is suitably equipped and organized (as evidenced by appropriate oversight procedures governing such areas as procurement, financial administration, and the use, management, and disposition of equipment) to carry out the program. (23 U.S.C. 402(b)(1)(A))

The State will comply with applicable statutes and regulations, including but not limited to:

- 23 U.S.C. Chapter 4—Highway Safety Act of 1966, as amended
- 49 CFR Part 18—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments
- 23 CFR Part 1200—Uniform Procedures for State Highway Safety Grant Programs

The State has submitted appropriate documentation for review to the single point of contact designated by the Governor to review Federal programs, as required by Executive Order 12372 (Intergovernmental Review of Federal Programs).



## FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA)

The State will comply with FFATA guidance, *OMB Guidance on FFATA Subward and Executive Compensation Reporting*, August 27, 2010, ([https://www.frs.gov/documents/OMB\\_Guidance\\_on\\_FFATA\\_Subward\\_and\\_Executive\\_Compensation\\_Reporting\\_08272010.pdf](https://www.frs.gov/documents/OMB_Guidance_on_FFATA_Subward_and_Executive_Compensation_Reporting_08272010.pdf)) by reporting to FRS.gov for each sub-grant awarded:

- Name of the entity receiving the award;
- Amount of the award;
- Information on the award including transaction type, funding agency, the North American Industry Classification System code or Catalog of Federal Domestic Assistance number (where applicable), program source;
  - Location of the entity receiving the award and the primary location of performance under the award, including the city, State, congressional district, and country; and an award title descriptive of the purpose of each funding action;
  - A unique identifier (DUNS);
  - The names and total compensation of the five most highly compensated officers of the entity if:

(i) the entity in the preceding fiscal year received—

(I) 80 percent or more of its annual gross revenues in Federal awards;

(II) \$25,000,000 or more in annual gross revenues from Federal awards; and

(ii) the public does not have access to information about the compensation of the senior executives of the entity through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986;

- Other relevant information specified by OMB guidance.

## NONDISCRIMINATION

### (applies to subrecipients as well as States)

The State highway safety agency will comply with all Federal statutes and implementing regulations relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (Pub. L. 88–352), which prohibits discrimination on the basis of race, color or national origin (and 49 CFR Part 21); (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681–1683 and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and the Americans with Disabilities Act of 1990 (Pub. L. 101–336), as amended (42 U.S.C. 12101, et seq.), which prohibits discrimination on the basis of disabilities (and 49 CFR Part 27); (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101–6107), which prohibits discrimination on the basis of age; (e) the Civil Rights Restoration Act of 1987 (Pub. L. 100–259), which requires Federal-aid recipients and all subrecipients to prevent discrimination and ensure nondiscrimination in all of their programs and activities; (f) the Drug Abuse Office and Treatment Act of 1972 (Pub. L. 92–255), as amended, relating to

nondiscrimination on the basis of drug abuse; (g) the comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (Pub. L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (h) Sections 523 and 527 of the Public Health Service Act of 1912, as amended (42 U.S.C. 290dd–3 and 290ee–3), relating to confidentiality of alcohol and drug abuse patient records; (i) Title VIII of the Civil Rights Act of 1968, as amended (42 U.S.C. 3601, et seq.), relating to nondiscrimination in the sale, rental or financing of housing; (j) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (k) the requirements of any other nondiscrimination statute(s) which may apply to the application.

## THE DRUG-FREE WORKPLACE ACT OF 1988 (41 U.S.C. 8103)

The State will provide a drug-free workplace by:

- Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

• Establishing a drug-free awareness program to inform employees about:

- The dangers of drug abuse in the workplace.
- The grantee's policy of maintaining a drug-free workplace.
- Any available drug counseling, rehabilitation, and employee assistance programs.

• The penalties that may be imposed upon employees for drug violations occurring in the workplace.

○ Making it a requirement that each employee engaged in the performance of the grant be given a copy of the statement required by paragraph (a).

• Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

- Abide by the terms of the statement.
- Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction.

• Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction.

• Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

- Taking appropriate personnel action against such an employee, up to and including termination.
- Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.

• Making a good faith effort to continue to maintain a drug-free workplace through

implementation of all of the paragraphs above.

## BUY AMERICA ACT

### (applies to subrecipients as well as States)

The State will comply with the provisions of the Buy America Act (49 U.S.C. 5323(j)), which contains the following requirements:

Only steel, iron and manufactured products produced in the United States may be purchased with Federal funds unless the Secretary of Transportation determines that such domestic purchases would be inconsistent with the public interest, that such materials are not reasonably available and of a satisfactory quality, or that inclusion of domestic materials will increase the cost of the overall project contract by more than 25 percent. Clear justification for the purchase of non-domestic items must be in the form of a waiver request submitted to and approved by the Secretary of Transportation.

## POLITICAL ACTIVITY (HATCH ACT)

### (applies to subrecipients as well as States)

The State will comply with provisions of the Hatch Act (5 U.S.C. 1501–1508) which limits the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

## CERTIFICATION REGARDING FEDERAL LOBBYING

### (applies to subrecipients as well as States)

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all sub-award at all tiers (including subcontracts, subgrants, and contracts under grant, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance

was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

#### RESTRICTION ON STATE LOBBYING

##### (applies to subrecipients as well as States)

None of the funds under this program will be used for any activity specifically designed to urge or influence a State or local legislator to favor or oppose the adoption of any specific legislative proposal pending before any State or local legislative body. Such activities include both direct and indirect (e.g., "grassroots") lobbying activities, with one exception. This does not preclude a State official whose salary is supported with NHTSA funds from engaging in direct communications with State or local legislative officials, in accordance with customary State practice, even if such communications urge legislative officials to favor or oppose the adoption of a specific pending legislative proposal.

#### CERTIFICATION REGARDING DEBARMENT AND SUSPENSION

##### (applies to subrecipients as well as States)

###### Instructions for Primary Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms *covered transaction*, *debarred*, *suspended*, *ineligible*, *lower tier covered transaction*, *participant*, *person*, *primary covered transaction*, *principal*, *proposal*, and *voluntarily excluded*, as used in this clause,

have the meaning set out in the Definitions and coverage sections of 49 CFR Part 29. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR Part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR Part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the list of Parties Excluded from Federal Procurement and Non-procurement Programs.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR Part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

###### *Certification Regarding Debarment, Suspension, and Other Responsibility Matters-Primary Covered Transactions*

(1) The prospective primary participant certifies to the best of its knowledge and belief, that its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of record, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or Local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the Statements in this certification, such prospective participant shall attach an explanation to this proposal.

###### Instructions for Lower Tier Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms *covered transaction*, *debarred*, *suspended*, *ineligible*, *lower tier covered transaction*, *participant*, *person*, *primary covered transaction*, *principal*, *proposal*, and *voluntarily excluded*, as used in this clause, have the meanings set out in the Definition and Coverage sections of 49 CFR Part 29. You may contact the person to whom this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR Part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled

“Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction,” without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions. (See below)

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR Part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR Part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

*Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions:*

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

#### **POLICY ON SEAT BELT USE**

In accordance with Executive Order 13043, Increasing Seat Belt Use in the United States, dated April 16, 1997, the Grantee is encouraged to adopt and enforce on-the-job seat belt use policies and programs for its employees when operating company-owned, rented, or personally-owned vehicles. The National Highway Traffic Safety Administration (NHTSA) is responsible for providing leadership and guidance in support of this Presidential initiative. For information on how to implement such a program, or statistics on the potential

benefits and cost-savings to your company or organization, please visit the Buckle Up America section on NHTSA's Web site at [www.nhtsa.dot.gov](http://www.nhtsa.dot.gov). Additional resources are available from the Network of Employers for Traffic Safety (NETS), a public-private partnership headquartered in the Washington, DC metropolitan area, and dedicated to improving the traffic safety practices of employers and employees. NETS is prepared to provide technical assistance, a simple, user-friendly program kit, and an award for achieving the President's goal of 90 percent seat belt use. NETS can be contacted at 1 (888) 221-0045 or visit its Web site at [www.trafficsafety.org](http://www.trafficsafety.org).

#### **POLICY ON BANNING TEXT MESSAGING WHILE DRIVING**

In accordance with Executive Order 13513, Federal Leadership On Reducing Text Messaging While Driving, and DOT Order 3902.10, Text Messaging While Driving, States are encouraged to adopt and enforce workplace safety policies to decrease crashes caused by distracted driving, including policies to ban text messaging while driving company-owned or -rented vehicles, Government-owned, leased or rented vehicles, or privately-owned when on official Government business or when performing any work on or behalf of the Government. States are also encouraged to conduct workplace safety initiatives in a manner commensurate with the size of the business, such as establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving, and education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

#### **ENVIRONMENTAL IMPACT**

The Governor's Representative for Highway Safety has reviewed the State's Fiscal Year highway safety planning document and hereby declares that no significant environmental impact will result from implementing this Highway Safety Plan. If, under a future revision, this Plan is modified in a manner that could result in a significant environmental impact and trigger the need for an environmental review, this office is prepared to take the action necessary to comply with the National Environmental Policy Act of 1969 (42 U.S.C. 4321, et seq.) and the implementing regulations of the Council on Environmental Quality (40 CFR Parts 1500-1517).

#### **SECTION 402 REQUIREMENTS**

The political subdivisions of this State are authorized, as part of the State highway safety program, to carry out within their jurisdictions local highway safety programs which have been approved by the Governor and are in accordance with the uniform guidelines promulgated by the Secretary of Transportation. (23 U.S.C. 402(b)(1)(B))

At least 40 percent (or 95 percent, as applicable) of all Federal funds apportioned to this State under 23 U.S.C. 402 for this fiscal year will be expended by or for the benefit of the political subdivision of the State in carrying out local highway safety programs (23 U.S.C. 402(b)(1)(C), 402(h)(2)), unless this requirement is waived in writing.

The State's highway safety program provides adequate and reasonable access for the safe and convenient movement of physically handicapped persons, including those in wheelchairs, across curbs constructed or replaced on or after July 1, 1976, at all pedestrian crosswalks. (23 U.S.C. 402(b)(1)(D))

The State will provide for an evidenced-based traffic safety enforcement program to prevent traffic violations, crashes, and crash fatalities and injuries in areas most at risk for such incidents. (23 U.S.C. 402(b)(1)(E))

The State will implement activities in support of national highway safety goals to reduce motor vehicle related fatalities that also reflect the primary data-related crash factors within the State as identified by the State highway safety planning process, including:

- Participation in the National high-visibility law enforcement mobilizations;
- Sustained enforcement of statutes addressing impaired driving, occupant protection, and driving in excess of posted speed limits;
- An annual statewide seat belt use survey in accordance with 23 CFR Part 1340 for the measurement of State seat belt use rates;
- Development of statewide data systems to provide timely and effective data analysis to support allocation of highway safety resources;

- Coordination of Highway Safety Plan, data collection, and information systems with the State strategic highway safety plan, as defined in 23 U.S.C. 148(a). (23 U.S.C. 402(b)(1)(F))

The State will actively encourage all relevant law enforcement agencies in the State to follow the guidelines established for vehicular pursuits issued by the International Association of Chiefs of Police that are currently in effect. (23 U.S.C. 402(j))

The State will not expend Section 402 funds to carry out a program to purchase, operate, or maintain an automated traffic enforcement system. (23 U.S.C. 402(c)(4))

I understand that failure to comply with applicable Federal statutes and regulations may subject State officials to civil or criminal penalties and/or place the State in a high risk grantee status in accordance with 49 CFR 18.12.

I sign these Certifications and Assurances based on personal knowledge, after appropriate inquiry, and I understand that the Government will rely on these representations in awarding grant funds.

Signature Governor's Representative for Highway Safety Date

Date

Printed name of Governor's Representative for Highway Safety

#### **APPENDIX B TO PART 1200—HIGHWAY SAFETY PROGRAM COST SUMMARY (HS-217)**

State \_\_\_\_\_  
Number \_\_\_\_\_  
Date \_\_\_\_\_

Program area	Approved program costs	State/local funds	Federally funded programs			Federal share to local
			Previous balance	Increase/(Decrease)	Current Balance	
Total NHTSA						
Total FHWA						
Total NHTSA & FHWA						

**State Official Authorized Signature:**

Name:  
Title:  
Date:

**Federal Official Authorized Signature:**

NHTSA Name:  
Title:  
Date:  
Effective Date:

This form is to be used to provide funding documentation for grant programs under Title 23, United States Code. A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is \_\_\_\_\_. Public reporting for this collection of information is estimated to be approximately 30 minutes per response, including the time for reviewing instructions and completing the form. All responses to this collection of information are required to obtain or retain benefits. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Information Collection Clearance Officer, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington DC 20590.

**INSTRUCTIONS FOR PROGRAM COST SUMMARY**

State—The State submitting the HS Form-217

Number—Each HS-217 will be in sequential order by fiscal year (e.g., 99-01, 99-02, etc.)

Date—The date of occurrence of the accounting action(s) described.

Program Area—The code designating a program area (e.g., PT-99, where PT represents the Police Traffic Services and 99 represents the Federal fiscal year). Funds should be entered only at the program area level, not at the task level or lower.

Approved Program Costs—The current balance of Federal funds approved (but not obligated) under the HSP or under any portion of or amendment to the HSP.

State/local Funds—Those funds which the State and its political subdivisions are contributing to the program, including both hard and soft match.

Previous Balance—The balance of Federal funds obligated and available for expenditure by the State in the current fiscal year, as of the last Federally-approved transaction. The total of this column may not exceed the sum of the State's current year obligation

limitation and prior year funds carried forward. (The column is left blank on the updated Cost Summary required to be submitted under 23 CFR 1200.11(e). For subsequent submissions, the amounts in this column are obtained from the "Current Balance" column of the immediately preceding Cost Summary.)

Increase/(Decrease)—The amount of change in Federal funding, by program area, from the funding reflected under the "Previous Balance".

Current Balance—The net total of the "Previous Balance" and the "Increase/(Decrease)" amounts. The total of this column may not exceed the sum of the State's current year obligation limitation and prior year funds carried forward.

**APPENDIX C TO PART 1200— ASSURANCES FOR TEEN TRAFFIC SAFETY PROGRAM**

State: \_\_\_\_\_  
Fiscal Year: \_\_\_\_\_

The State has elected to implement a Teen Traffic Safety Program—a statewide program to improve traffic safety for teen drivers—in accordance with 23 U.S.C. 402(m).

In my capacity as the Governor's Representative for Highway Safety, I have verified that—

- The Teen Traffic Safety Program is a separately described Program Area in the Highway Safety Plan, including a specific description of the strategies and projects, and appears in HSP page number(s) \_\_\_\_\_.

- as required under 23 U.S.C. 402(m), the statewide efforts described in the pages identified above include peer-to-peer education and prevention strategies the State will use in schools and communities that are designed to—

- increase seat belt use;
- reduce speeding;
- reduce impaired and distracted driving;
- reduce underage drinking; and
- reduce other behaviors by teen drivers that lead to injuries and fatalities.

Signature Governor's Representative for Highway Safety  
Date \_\_\_\_\_

Printed name of Governor's Representative for Highway Safety

**APPENDIX D TO PART 1200— CERTIFICATIONS AND ASSURANCES FOR NATIONAL PRIORITY SAFETY PROGRAM GRANTS (23 U.S.C. 405)**

State: \_\_\_\_\_  
Fiscal Year: \_\_\_\_\_

Each fiscal year the State must sign these Certifications and Assurances that it complies with all requirements, including applicable Federal statutes and regulations that are in effect during the grant period.

In my capacity as the Governor's Representative for Highway Safety, I:

- certify that, to the best of my personal knowledge, the information submitted to the National Highway Traffic Safety Administration in support of the State's application for Section 405 grants below is accurate and complete.

- understand that incorrect, incomplete, or untimely information submitted in support of the State's application may result in the denial of an award under Section 405.

- agree that, as condition of the grant, the State will use these grant funds in accordance with the specific requirements of Section 405(b), (c), (d), (e), (f) and (g), as applicable.

- agree that, as a condition of the grant, the State will comply with all applicable laws and regulations and financial and programmatic requirements for Federal grants.

Signature Governor's Representative for Highway Safety

Date \_\_\_\_\_

Printed name of Governor's Representative for Highway Safety

Instructions: Check the box for each part for which the State is applying for a grant, fill in relevant blanks, and identify the attachment number or page numbers where the requested information appears in the HSP. Attachments may be submitted electronically.

**Part 1: Occupant Protection (23 CFR 1200.21)**

All States: [Fill in all blanks below.]

- The State will maintain its aggregate expenditures from all State and local sources for occupant protection programs at or above the average level of such expenditures in fiscal years 2010 and 2011. (23 U.S.C. 405(a)(1)(H))

- The State will participate in the Click it or Ticket national mobilization in the fiscal year of the grant. The description of the State's planned participation is provided as HSP attachment or page # \_\_\_\_\_.

- The State's occupant protection plan for the upcoming fiscal year is provided as HSP attachment or page # \_\_\_\_\_.

- Documentation of the State's active network of child restraint inspection stations is provided as HSP attachment or page # \_\_\_\_\_.

• The State's plan for child passenger safety technicians is provided as HSP attachment or page # \_\_\_\_\_.

Lower Seat belt Use States: [Check at least 3 boxes below and fill in all blanks under those checked boxes.]

The State's primary seat belt use law, requiring all occupants riding in a passenger motor vehicle to be restrained in a seat belt or a child restraint, was enacted on \_\_\_\_/\_\_\_\_/\_\_\_\_ and last amended on \_\_\_\_/\_\_\_\_/\_\_\_\_, is in effect, and will be enforced during the fiscal year of the grant.  
Legal citation(s): \_\_\_\_\_

The State's occupant protection law, requiring occupants to be secured in a seat belt or age-appropriate child restraint while in a passenger motor vehicle and a minimum fine of \$25, was enacted on \_\_\_\_/\_\_\_\_/\_\_\_\_ and last amended on \_\_\_\_/\_\_\_\_/\_\_\_\_, is in effect, and will be enforced during the fiscal year of the grant.

Legal citations:

- \_\_\_\_\_ Requirement for all occupants to be secured in seat belt or age appropriate child restraint
- \_\_\_\_\_ Coverage of all passenger motor vehicles
- \_\_\_\_\_ Minimum fine of at least \$25
- \_\_\_\_\_ Exemptions from restraint requirements

The State's seat belt enforcement plan is provided as HSP attachment or page # \_\_\_\_\_.

The State's comprehensive occupant protection program is provided as HSP attachment # \_\_\_\_\_.

[Check one box below and fill in any blanks under that checked box.]

The State's NHTSA-facilitated occupant protection program assessment was conducted on \_\_\_\_/\_\_\_\_/\_\_\_\_;

OR

The State agrees to conduct a NHTSA-facilitated occupant protection program assessment by September 1 of the fiscal year of the grant. (This option is available only for fiscal year 2013 grants.)

**Part 2: State Traffic Safety Information System Improvements (23 CFR 1200.22)**

- The State will maintain its aggregate expenditures from all State and local sources for traffic safety information system programs at or above the average level of such expenditures in fiscal years 2010 and 2011.

[Fill in at least one blank for each bullet below.]

- A copy of [check one box only] the  TRCC charter or the  statute legally mandating a State TRCC is provided as HSP attachment # \_\_\_\_\_ or submitted electronically through the TRIPRS database on \_\_\_\_/\_\_\_\_/\_\_\_\_.

- A copy of meeting schedule and all reports and other documents promulgated by the TRCC during the 12 months preceding the application due date is provided as HSP attachment # \_\_\_\_\_ or submitted electronically through the TRIPRS database on \_\_\_\_/\_\_\_\_/\_\_\_\_.

- A list of the TRCC membership and the organization and function they represent is provided as HSP attachment # \_\_\_\_\_ or

submitted electronically through the TRIPRS database on \_\_\_\_/\_\_\_\_/\_\_\_\_.

- The name and title of the State's Traffic Records Coordinator is \_\_\_\_\_

- A copy of the State Strategic Plan, including any updates, is provided as HSP attachment # \_\_\_\_\_ or submitted electronically through the TRIPRS database on \_\_\_\_/\_\_\_\_/\_\_\_\_.

[Check one box below and fill in any blanks under that checked box.]

The following pages in the State's Strategic Plan provides a written description of the performance measures, and all supporting data, that the State is relying on to demonstrate achievement of the quantitative improvement in the preceding 12 months of the application due date in relation to one or more of the significant data program attributes: pages \_\_\_\_\_.

OR

If not detailed in the State's Strategic Plan, the written description is provided as HSP attachment # \_\_\_\_\_.

- The State's most recent assessment or update of its highway safety data and traffic records system was completed on \_\_\_\_/\_\_\_\_/\_\_\_\_.

**Part 3: Impaired Driving Countermeasures (23 CFR 1200.23)**

All States:

- The State will maintain its aggregate expenditures from all State and local sources for impaired driving programs at or above the average level of such expenditures in fiscal years 2010 and 2011.

- The State will use the funds awarded under 23 U.S.C. 405(d) only for the implementation of programs as provided in 23 CFR 1200.23(i) in the fiscal year of the grant.

Mid-Range State:

- [Check one box below and fill in any blanks under that checked box.]

The statewide impaired driving plan approved by a statewide impaired driving task force was issued on \_\_\_\_/\_\_\_\_/\_\_\_\_ and is provided as HSP attachment # \_\_\_\_\_.

OR

For this first year of the grant as a mid-range State, the State agrees to convene a statewide impaired driving task force to develop a statewide impaired driving plan and submit a copy of the plan to NHTSA by September 1 of the fiscal year of the grant.

- A copy of information describing the statewide impaired driving task force is provided as HSP attachment # \_\_\_\_\_.

High-Range State:

[Check one box below and fill in any blanks under that checked box.]

A NHTSA-facilitated assessment of the State's impaired driving program was conducted on \_\_\_\_/\_\_\_\_/\_\_\_\_;

OR

For the first year of the grant as a high-range State, the State agrees to conduct a NHTSA-facilitated assessment by September 1 of the fiscal year of the grant;

- [Check one box below and fill in any blanks under that checked box.]

For the first year of the grant as a high-range State, the State agrees to convene a

statewide impaired driving task force to develop a statewide impaired driving plan addressing those recommendations from the assessment and submit the plan to NHTSA for review and approval by September 1 of the fiscal year of the grant;

OR

For subsequent years of the grant as a high-range State, the statewide impaired driving plan developed or updated on \_\_\_\_/\_\_\_\_/\_\_\_\_ is provided as HSP attachment # \_\_\_\_\_.

- A copy of the information describing the statewide impaired driving task force is provided as HSP attachment # \_\_\_\_\_.

Ignition Interlock Law: [Fill in all blanks below.]

- The State's ignition interlock law was enacted on \_\_\_\_/\_\_\_\_/\_\_\_\_ and last amended on \_\_\_\_/\_\_\_\_/\_\_\_\_, is in effect, and will be enforced during the fiscal year of the grant.

Legal citation(s): \_\_\_\_\_

**Part 4: Distracted Driving (23 CFR 1200.24)**

[Fill in all blanks below.]

Prohibition on Texting While Driving  
The State's texting ban statute, prohibiting texting while driving, a minimum fine of at least \$25, and increased fines for repeat offenses, was enacted on \_\_\_\_/\_\_\_\_/\_\_\_\_ and last amended on \_\_\_\_/\_\_\_\_/\_\_\_\_, is in effect, and will be enforced during the fiscal year of the grant.

Legal citations:

- \_\_\_\_\_ Prohibition on texting while driving
- \_\_\_\_\_ Definition of covered wireless communication devices
- \_\_\_\_\_ Minimum fine of at least \$25 for first offense
- \_\_\_\_\_ Increased fines for repeat offenses
- \_\_\_\_\_ Exemptions from texting ban

**Prohibition on Youth Cell Phone Use While Driving**

The State's youth cell phone use ban statute, prohibiting youth cell phone use while driving, driver license testing of distracted driving issues, a minimum fine of at least \$25, increased fines for repeat offenses, was enacted on \_\_\_\_/\_\_\_\_/\_\_\_\_ and last amended on \_\_\_\_/\_\_\_\_/\_\_\_\_, is in effect, and will be enforced during the fiscal year of the grant.

Legal citations:

- \_\_\_\_\_ Prohibition on youth cell phone use while driving
- \_\_\_\_\_ Driver license testing of distracted driving issues
- \_\_\_\_\_ Minimum fine of at least \$25 for first offense
- \_\_\_\_\_ Increased fines for repeat offenses
- \_\_\_\_\_ Exemptions from youth cell phone use ban

**Part 5: Motorcyclist Safety (23 CFR 1200.25)**

[Check at least 2 boxes below and fill in any blanks under those checked boxes.]

Motorcycle riding training course:

- Copy of official State document (e.g., law, regulation, binding policy directive,

letter from the Governor) identifying the designated State authority over motorcyclist safety issues is provided as HSP attachment # \_\_\_\_\_.

• Document(s) showing the designated State authority approving the training curriculum that includes instruction in crash avoidance and other safety-oriented operational skills for both in-class and on-the-motorcycle is provided as HSP attachment # \_\_\_\_\_.

• Document(s) regarding locations of the motorcycle rider \_\_\_\_\_.

• Document showing that certified motorcycle rider training instructors teach the motorcycle riding training course is provided as HSP attachment # \_\_\_\_\_.

• Description of the quality control procedures to assess motorcycle rider training courses and instructor training courses and actions taken to improve courses is provided as HSP attachment # \_\_\_\_\_.

Motorcyclist awareness program:

• Copy of official State document (e.g., law, regulation, binding policy directive, letter from the Governor) identifying the designated State authority over motorcyclist safety issues is provided as HSP attachment # \_\_\_\_\_.

• Letter from the Governor's Representative for Highway Safety regarding the development of the motorcyclist awareness program is provided as HSP attachment # \_\_\_\_\_.

• Data used to identify and prioritize the State's motorcyclist safety program areas is provided as HSP attachment or page # \_\_\_\_\_.

• Description of how the State achieved collaboration among agencies and organizations regarding motorcycle safety issues is provided as HSP attachment # or page # \_\_\_\_\_.

• Copy of the State strategic communications plan is provided as HSP attachment # \_\_\_\_\_.

Reduction of fatalities and crashes involving motorcycles:

• Data showing the total number of motor vehicle crashes involving motorcycles is provided as HSP attachment or page # \_\_\_\_\_.

• Description of the State's methods for collecting and analyzing data is provided as HSP attachment or page # \_\_\_\_\_.

Impaired driving program:

• Data used to identify and prioritize the State's impaired driving and impaired motorcycle operation problem areas is provided as HSP attachment or page # \_\_\_\_\_.

• Detailed description of the State's impaired driving program is provided as HSP attachment or page # \_\_\_\_\_.

• The State law or regulation defines impairment. Legal citation(s):

Reduction of fatalities and accidents involving impaired motorcyclists:

• Data showing the total number of reported crashes involving alcohol-impaired and drug-impaired motorcycle operators is provided as HSP attachment or page # \_\_\_\_\_.

• Description of the State's methods for collecting and analyzing data is provided as HSP attachment or page # \_\_\_\_\_.

• The State law or regulation defines impairment. Legal citation(s):

Use of fees collected from motorcyclists for motorcycle programs: [*Check one box below and fill in any blanks under the checked box.*]

Applying as a Law State—

• The State law or regulation requires all fees collected by the State from motorcyclists for the purpose of funding motorcycle training and safety programs are to be used for motorcycle training and safety programs. Legal citation(s):

AND

• The State's law appropriating funds for FY \_\_\_\_\_ requires all fees collected by the State from motorcyclists for the purpose of funding motorcycle training and safety programs be spent on motorcycle training and safety programs. Legal citation(s):

Applying as a Data State—

• Data and/or documentation from official State records from the previous fiscal year showing that *all* fees collected by the State from motorcyclists for the purpose of funding motorcycle training and safety programs were used for motorcycle training and safety programs is provided as HSP attachment # \_\_\_\_\_.

**Part 6: State Graduated Driver Licensing Laws (23 CFR 1200.26)**

[*Fill in all applicable blanks below.*]

The State's graduated driver licensing statute, requiring both a learner's permit stage and intermediate stage prior to receiving a full driver's license, was enacted on \_\_\_\_/\_\_\_\_/\_\_\_\_ and last amended on \_\_\_\_/\_\_\_\_/\_\_\_\_, is in effect, and will be enforced during the fiscal year of the grant.

Learner's Permit Stage—requires testing and education, driving restrictions, minimum duration, and applicability to novice drivers younger than 21 years of age.

Legal citations:

• \_\_\_\_\_ Testing and education requirements

• \_\_\_\_\_ Driving restrictions

• \_\_\_\_\_ Minimum duration

• \_\_\_\_\_ Applicability to notice drivers younger than 21 years of age

• \_\_\_\_\_ Exemptions from graduated driver licensing law

Intermediate Stage—requires driving restrictions, minimum duration, and applicability to any driver who has completed the learner's permit stage and who is younger than 18 years of age.

Legal citations:

• \_\_\_\_\_ Driving restrictions

• \_\_\_\_\_ Minimum duration

• \_\_\_\_\_ Applicability to any driver who has completed the learner's permit stage and is younger than 18 years of age

• \_\_\_\_\_ Exemptions from graduated driver licensing law

**Additional Requirements During Both Learner's Permit and Intermediate Stages**

Prohibition enforced as a primary offense on use of a cellular telephone or any

communications device by the driver while driving, except in case of emergency. Legal citation(s):

Requirement that the driver who possesses a learner's permit or intermediate license remain conviction-free for a period of not less than six consecutive months immediately prior to the expiration of that stage. Legal citation(s):

License Distinguishability [*Check one box below and fill in any blanks under that checked box.*]

Requirement that the State learner's permit, intermediate license, and full driver's license are visually distinguishable. Legal citation(s):

OR

Sample permits and licenses containing visual features that would enable a law enforcement officer to distinguish between the State learner's permit, intermediate license, and full driver's license, are provided as HSP attachment # \_\_\_\_\_.

OR

Description of the State's system that enables law enforcement officers in the State during traffic stops to distinguish between the State learner's permit, intermediate license, and full driver's license, are provided as HSP attachment # \_\_\_\_\_.

## APPENDIX E TO PART 1200— PARTICIPATION BY POLITICAL SUBDIVISIONS

(a) Policy. To ensure compliance with the provisions of 23 U.S.C. 402(b)(1)(C) and 23 U.S.C. 402(h)(2), which require that at least 40 percent or 95 percent of all Federal funds apportioned under Section 402 to the State or the Secretary of Interior, respectively, will be expended by political subdivisions of the State, including Indian tribal governments, in carrying out local highway safety programs, the NHTSA Approving Official will determine if the political subdivisions had an active voice in the initiation, development and implementation of the programs for which funds apportioned under 23 U.S.C. 402 are expended.

(b) Terms.

*Local participation* refers to the minimum 40 percent or 95 percent (Indian Nations) that must be expended by or for the benefit of political subdivisions.

*Political subdivision* includes Indian tribes, for purpose and application to the apportionment to the Secretary of Interior.

(c) Determining local share.

(1) In determining whether a State meets the local share requirement in a fiscal year, NHTSA will apply the requirement sequentially to each fiscal year's apportionments, treating all apportionments made from a single fiscal year's authorizations as a single entity for this purpose. Therefore, at least 40 percent of each State's apportionments (or at least 95 percent of the apportionment to the Secretary of Interior) from each year's authorizations must be used in the highway safety programs of its political subdivisions prior to the period when funds would normally lapse.

The local participation requirement is applicable to the State's total federally funded safety program irrespective of Standard designation or Agency responsibility.

(2) When Federal funds apportioned under 23 U.S.C. 402 are expended by a political subdivision, such expenditures are clearly part of the local share. Local highway safety-project-related expenditures and associated indirect costs, which are reimbursable to the grantee local governments, are classifiable as local share. Illustrations of such expenditures are the costs incurred by a local government in planning and administration of highway safety project-related activities, such as occupant protection, traffic records system improvements, emergency medical services, pedestrian and bicycle safety activities, police traffic services, alcohol and other drug countermeasures, motorcycle safety, and speed control.

(3) When Federal funds apportioned under 23 U.S.C. 402 are expended by a State agency for the benefit of a political subdivision, such funds may be considered as part of the local share, provided that the political subdivision has had an active voice in the initiation, development, and implementation of the programs for which such funds are expended. A State may not arbitrarily ascribe State agency expenditures as "benefitting local government." Where political subdivisions have had an active voice in the initiation, development, and implementation of a particular program or activity, and a political subdivision which has not had such active voice agrees in advance of implementation to accept the benefits of the program, the Federal share of the cost of such benefits may be credited toward meeting the local participation requirement. Where no political subdivisions have had an active voice in the initiation, development, and implementation of a particular program, but a political subdivision requests the benefits of the program as part of the local government's highway safety program, the Federal share of the cost of such benefits may be credited toward meeting the local participation requirement. Evidence of consent and acceptance of the work, goods or services on behalf of the local government must be established and maintained on file by the State until all funds authorized for a specific year are expended and audits completed.

(4) State agency expenditures which are generally not classified as local are within such areas as vehicle inspection, vehicle registration and driver licensing. However, where these areas provide funding for services such as driver improvement tasks administered by traffic courts, or where they furnish computer support for local government requests for traffic record searches, these expenditures are classifiable as benefitting local programs.

(d) Waivers. While the local participation requirement may be waived in whole or in part by the NHTSA Administrator, it is expected that each State program will generate political subdivision participation to the extent required by the Act so that requests for waivers will be minimized. Where a waiver is requested, however, it

must be documented at least by a conclusive showing of the absence of legal authority over highway safety activities at the political subdivision levels of the State and must recommend the appropriate percentage participation to be applied in lieu of the local share.

#### **APPENDIX F TO PART 1200— PLANNING AND ADMINISTRATION (P&A) COSTS**

(a) Policy. Federal participation in P&A activities shall not exceed 50 percent of the total cost of such activities, or the applicable sliding scale rate in accordance with 23 U.S.C. 120. The Federal contribution for P&A activities shall not exceed 13 percent of the total funds the State receives under 23 U.S.C. 402. In accordance with 23 U.S.C. 120(i), the Federal share payable for projects in the U.S. Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands shall be 100 percent. The Indian country, as defined by 23 U.S.C. 402(h), is exempt from these provisions. NHTSA funds shall be used only to finance P&A activities attributable to NHTSA programs.

(b) Terms.

*Direct costs* are those costs identified specifically with a particular planning and administration activity or project. The salary of an accountant on the State Highway Safety Agency staff is an example of a direct cost attributable to P&A. The salary of a DWI (Driving While Intoxicated) enforcement officer is an example of direct cost attributable to a project.

*Indirect costs* are those costs (1) incurred for a common or joint purpose benefitting more than one cost objective within a governmental unit and (2) not readily assignable to the project specifically benefited. For example, centralized support services such as personnel, procurement, and budgeting would be indirect costs.

*Planning and administration (P&A) costs* are those direct and indirect costs that are attributable to the management of the Highway Safety Agency. Such costs could include salaries, related personnel benefits, travel expenses, and rental costs specific to the Highway Safety Agency.

*Program management costs* are those costs attributable to a program area (e.g., salary and travel expenses of an impaired driving program manager/coordinator of a State Highway Safety Agency).

(c) Procedures. (1) P&A activities and related costs shall be described in the P&A module of the State's Highway Safety Plan. The State's matching share shall be determined on the basis of the total P&A costs in the module. Federal participation shall not exceed 50 percent (or the applicable sliding scale) of the total P&A costs. A State shall not use NHTSA funds to pay more than 50 percent of the P&A costs attributable to NHTSA programs. In addition, the Federal contribution for P&A activities shall not exceed 13 percent of the total funds in the State received under 23 U.S.C. 402 each fiscal year.

(2) A State at its option may allocate salary and related costs of State highway safety agency employees to one of the following:

(i) P&A;

(ii) Program management of one or more program areas contained in the HSP; or

(iii) Combination of P&A activities and the program management activities in one or more program areas.

(3) If an employee works solely performing P&A activities, the total salary and related costs may be programmed to P&A. If the employee works performing program management activities in one or more program areas, the total salary and related costs may be charged directly to the appropriate area(s). If an employee is working time on a combination of P&A and program management activities, the total salary and related costs may be charged to P&A and the appropriate program area(s) based on the actual time worked under each area(s). If the State Highway Safety Agency elects to allocate costs based on actual time spent on an activity, the State Highway Safety Agency must keep accurate time records showing the work activities for each employee. The State's recordkeeping system must be approved by the appropriate NHTSA Approving Official.

#### **PART 1205—[Removed and Reserved]**

■ 2. Remove and reserve part 1205.

#### **PART 1206—[REMOVED AND RESERVED]**

■ 3. Remove and reserve part 1206.

#### **PART 1250—[REMOVED AND RESERVED]**

■ 4. Remove and reserve part 1250.

#### **PART 1251—[REMOVED AND RESERVED]**

■ 5. Remove and reserve part 1251.

#### **PART 1252—[REMOVED AND RESERVED]**

■ 6. Remove and reserve part 1252.

#### **PART 1313—[REMOVED AND RESERVED]**

■ 7. Remove and reserve part 1313.

#### **PART 1335—[REMOVED AND RESERVED]**

■ 8. Remove and reserve part 1335.

#### **PART 1345—[REMOVED AND RESERVED]**

■ 9. Remove and reserve part 1345.

#### **PART 1350—[REMOVED AND RESERVED]**

■ 10. Remove and reserve part 1350.

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