

DEPARTMENT OF TRANSPORTATION**National Highway Traffic Safety Administration****23 CFR Part 1300**

[Docket No. NHTSA–2022–0036]

RIN 2127–AM45

Uniform Procedures for State Highway Safety Grant Programs

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

ACTION: Final rule.

SUMMARY: This final rule makes changes and clarifications to the revised uniform procedures implementing State highway safety grant programs in response to comments received on the notice of proposed rulemaking published September 15, 2022.

DATES: This final rule is effective on March 8, 2023.

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I. Background

We face a crisis on our roadways. NHTSA projects that an estimated 42,915 people died in motor vehicle crashes in 2021.¹ Estimates for the first

¹ National Center for Statistics and Analysis. (2022, May). Early estimates of motor vehicle traffic fatalities and fatality rate by sub-categories in 2021 (Crash•Stats Brief Statistical Summary. Report No. DOT HS 813 298). National Highway Traffic Safety

three quarters of 2022 are bleak: an estimated 31,785 people died in motor vehicle crashes during this period.² Behind each of these numbers is a life tragically lost, and family and friends left behind. The crisis is both urgent and preventable. The third quarter of 2022 shows promise, representing the second straight quarterly decline in fatalities after seven consecutive quarters of year-to-year increases. We need to build on the declining trends and work to ensure safer roads for everyone.

NHTSA is redoubling our safety efforts and is asking our State and local partners to join us in this critical pursuit. The programs to be implemented under today's rulemaking are an important part of that effort. Now, more than ever, we all must seize the opportunity to deliver accountable, efficient, and data-driven highway safety programs to save lives and reverse the deadly trend on our Nation's roads. The highway safety grants implemented in today's action fit within a broader framework involving many stakeholders working synergistically across many programs. We encourage States to view their triennial Highway Safety Plans in the context of the National Roadway Safety Strategy and the Safe System Approach discussed later in this document in response to comments.

On November 15, 2021, the President signed into law the "Infrastructure Investment and Jobs Act" (known also as the Bipartisan Infrastructure Law, or BIL), Public Law 117–58. The BIL provides for a once-in-a-generation investment in highway safety, including a significant increase in the amount of funding available to States under NHTSA's highway safety grants. It introduced expanded requirements for public and community participation in funding decisions, holding the promise of ensuring better and more equitable use of Federal funds to address highway safety problems in the locations where they occur. The BIL amended the highway safety grant program (23 U.S.C. 402 or Section 402) and the National Priority Safety Program grants (23 U.S.C. 405 or Section 405). The legislation significantly changed the application structure of the grant programs that were in place under prior DOT authorizations, MAP–21 and the FAST

Administration. Available at <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/813298>.

² National Center for Statistics and Analysis. (2022, December). Early estimates of motor vehicle traffic fatalities for the first 9 months (January–September) of 2022 (Crash•Stats Brief Statistical Summary. Report No. DOT HS 813 406). National Highway Traffic Safety Administration. Available at <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/813406>.

Act. The legislation replaced the current annual Highway Safety Plan (HSP), which serves as both a planning and application document, with a triennial HSP and annual grant application and it codified the annual reporting requirement. The BIL also made the following changes to the Section 405 grant program:

- Maintenance of Effort—Removed the maintenance of effort requirement for the Occupant Protection Grants, State Traffic Safety Information System Improvements Grants, and Impaired Driving Countermeasures Grants;
- Occupant Protection Grants—Expanded allowable uses of funds and specified that at least 10 percent of grant funds must be used to implement child occupant protection programs for low-income and underserved populations;
- State Traffic Safety Information System Improvements Grants—Streamlined application requirements (allows certification to several eligibility requirements and removes assessment requirement) and expanded allowable uses of funds;
- Impaired Driving Countermeasures Grants—Expanded allowable uses of funds;
 - Alcohol-Ignition Interlock Law Grants—Added criteria for States to qualify for grants (specifies three ways for a State to qualify) and amended allocation formula;
 - 24–7 Sobriety Programs Grants—Amended program definition and allocation formula;
 - Distracted Driving Grants—Amended definitions, changed allocation formula, and amended requirements for qualifying laws;
 - Motorcyclist Safety Grants—Added an eligibility criterion (helmet law);
 - State Graduated Driver Licensing Incentive Grants—Discontinued grant;
 - Nonmotorized Safety Grants—Amended the definition of nonmotorized road user and expanded allowable uses of funds;
 - Preventing Roadside Deaths Grants—Established new grant; and
 - Driver and Officer Safety Education Grants—Established new grant.

In addition, the BIL amended the racial profiling data collection grant authorized under the "Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users" (SAFETEA–LU), Sec. 1906, Public Law 109–59 (Section 1906), as amended by the FAST Act, to expand the allowable uses of funds and amend the cap on grant award amounts. It also removed the time limit for States to qualify for a grant using assurances.

As in past authorizations, the BIL requires NHTSA to implement the grants pursuant to rulemaking.

II. Summary of the Notice of Proposed Rulemaking

On April 21, 2022, the agency published a notification of public meetings and request for comments (RFC). 87 FR 23780. NHTSA held virtual public meetings on May 2, May 4, and May 5, 2022, and accepted written comments submitted through May 23, 2022. Twenty-three people provided oral comments at the public meetings, and 55 written comments were submitted to the docket at *regulations.gov*. NHTSA also added three letters to the docket that were sent directly to the agency prior to the RFC.

On September 14, 2022, NHTSA published a notice of proposed rulemaking (NPRM), proposing regulatory language to implement the BIL provisions and addressing comments received at the public meetings and in response to the RFC. 87 FR 56756. It set forth the application, approval, and administrative requirements for all 23 U.S.C. Chapter 4 grants and the Section 1906 grants. Section 402, as amended by the BIL, 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 new procedures proposed in the NPRM, each State would submit for NHTSA approval a triennial Highway Safety Plan ("triennial HSP") that identifies highway safety problems, describes the State's public participation and engagement efforts, establishes performance measures and targets, describes the State's countermeasure strategies for programming funds to achieve its performance targets, and reports on the State's progress in achieving the targets set in the prior HSP. 23 U.S.C. 402(k). Each State would also submit for NHTSA approval an annual grant application that provides any necessary updates to the triennial HSP, identifies all projects and subrecipients to be funded by the State with highway safety grant funds during the fiscal year, describes how the State's strategy to use grant funds was adjusted based on the State's latest annual report, and includes an application for additional grants available under Chapter 4. 23 U.S.C. 402(l). The agency proposed to reorganize and rewrite subpart B of part

1300 and 23 CFR 1300.35 to implement these changes.

As noted above, the BIL expanded the allowable uses of funds for many of the National Priority Safety Program grants, amended allocation formulas, added criteria for some grants and streamlined application requirements for others, deleted one grant, and established two new grants. For Section 405 grants with additional flexibility (Occupant Protection Grants, State Traffic Safety Information System Improvements Grants, Impaired Driving Countermeasures Grants, Alcohol-Ignition Interlock Law Grants, Distracted Driving Grants, Motorcyclist Safety Grants, Nonmotorized Safety Grants, and Racial Profiling Data Collection Grants) and for the new grants (Preventing Roadside Deaths Grants and Driver and Officer Safety Education Grants), where the BIL identified specific qualification requirements, the NPRM proposed adopting the statutory language with limited changes. The agency also proposed amendments to align the application requirements for all Section 405 and Section 1906 grants with the new triennial HSP and annual grant application framework.

Finally, the NPRM proposed limited changes to administrative provisions to accommodate the triennial framework and address changes made by revisions to the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR part 200.

III. Public Comments on the Notice of Proposed Rulemaking

In response to the NPRM, the following submitted comments to the public docket on *www.regulations.gov*: American Association of State Highway and Transportation Officials (AASHTO); American Association of Motor Vehicle Administrators (AAMVA); Coalition of Ignition Interlock Manufacturers (CIIM); Connecticut Highway Safety Office (CT HSO); Delaware Office of Highway Safety (DE OHS); Foundation for Advancing Alcohol Responsibility (*Responsibility.org*); Governor's Highway Safety Association (GHSA); Haas Alert; League of American Bicyclists (League); Maine Bureau of Highway Safety (MeBHS); Massachusetts Office of Grants and Research, Highway Safety Division (MA OGR); Missouri Department of Transportation (MoDOT); Mitchell Berger; Minnesota Department of Public Safety (MN DPS); National Association of State 911 Administrators (NASNA); National EMS Management Association (NEMSMA); Nevada Office of Traffic

Safety (NV OTS); Pamela Bertone; Tennessee Highway Safety Office (TN HSO); Wyoming Department of Health, Office of Emergency Medical Services (WY OEMS); joint submission by the Departments of Transportation of Idaho, Montana, North Dakota, South Dakota and Wyoming (5-State DOTs); and two anonymous commenters. Eight of these commenters (5-State DOTs; AASHTO; CT HSO; DE OHS; NV OTS; MeBHS; MoDOT; and MN DPS) expressed general support for GHSA's comments.

In this preamble, NHTSA addresses all comments and identifies any changes made to the NPRM's regulatory text.³ In addition, NHTSA makes several technical corrections to cross-references and other non-substantive editorial corrections necessitated by proposed changes to the rule. For ease of reference, the preamble identifies in parentheses within each subheading and at appropriate places in the explanatory paragraphs the CFR citation for the corresponding regulatory text.

Many commenters provided general input about the rulemaking process or about overarching aspects of highway safety that cannot be tied to a single regulatory provision. Those comments are discussed below.

A. Rulemaking Process

Multiple commenters⁴ expressed appreciation for NHTSA's shared commitment to completing this rulemaking in an expedient manner. They explained that States need time to integrate the new requirements into their highway safety planning for FY24.

Several commenters⁵ repeated their comments from the RFC, broadly reiterating that NHTSA should ensure fidelity to the spirit and letter of Congressional directives, minimize the administrative burden on States, and provide greater flexibility in the use of funds. They explained that unnecessary administrative burdens shift States' focus away from program delivery and discourage subrecipient participation. The CT HSO further argued that burdens imposed by the proposed regulation would deprive governors of their prerogative to set roadway safety policy within their States. HAAS Alert noted that small towns are frequently

³ Two commenters submitted comments that are outside the scope of this rulemaking; these comments covered infrastructure and road design, and a ban on all-terrain vehicles. As these comments are outside the scope of NHTSA's Section 402 and 405 grant programs, they are beyond the scope of this rulemaking and will not be addressed further in this preamble.

⁴ AAMVA, AASHTO, GHSA, MN DPS, and TN HSO.

⁵ AASHTO, AAMVA, DE OHS, GHSA, MN DPS, MoDOT, and 5-State DOTs.

underserved when it comes to receiving transportation funding and encouraged NHTSA to consider the administrative burdens on those areas when determining grant requirements.

It is not our intention to impose unnecessary administrative burdens on States or their subrecipients, and we have amended and streamlined several areas of this rulemaking in response to specific comments received. The agency's task is to promulgate a regulation that will implement the statutory requirements for the highway safety grant program. We address specific comments about burden in the sections that follow but note that, as a Federal awarding agency, we have a responsibility to ensure that Federal grant funds are spent for the purposes Congress specifies and consistent with all legal requirements, including the Section 402 and 405 statutory text and other Federal grant laws and regulations. Our intent is to impose reasonable administrative requirements to ensure that recipients of Federal funds adhere to applicable legal requirements that are consistent with our responsibilities as a steward of taxpayer funds.

Finally, GHSA and the MoDOT requested that NHTSA provide a red-lined or track changes copy of the regulatory text so that States can more easily see the changes made by this rule. NHTSA appreciates the importance of ensuring that States are well-versed on the changes to the rule and that they understand the impacts of those changes and their implications for applications and program management. Ensuring that understanding is, in fact, the precise purpose and goal of this preamble and of the full exposition of the regulatory text that follows. We encourage all States to embrace this document in its entirety. States are responsible for complying with the entire rule—not just with the specific changes made in this rulemaking. In our view, it is important and instructive to read all of the rule anew, as a red-lined version would underemphasize important context necessary to assist in planning and program implementation. For example, in some cases, regulatory text may remain the same but have a different meaning or impact within the new triennial framework or due to other BIL-related nuances. NHTSA is committed to providing States with ongoing training, guidance and technical assistance as they work to implement the changes made in the BIL, as carried out through this regulation.

B. Guidance

NHTSA received several comments stating the importance of and need for clear guidance on various aspects of the highway safety grant program. Some of those comments relate to specific grant programs and will be discussed in the relevant section of the preamble. The DE OHS stressed the importance of consistent guidance so that States can rely on the same information. The League of American Bicyclists encouraged NHTSA to share information about programs and State practices and identified several specific guidance documents published by NHTSA, FHWA and DOT that it would like the agency to review and update. NHTSA recognizes that some existing guidance may require modification or rescission as a result of changes to the statute and this rule. We intend to begin reviewing existing guidance after this rulemaking is complete and will keep the specific suggestions provided by these commenters, as well as the comments received in response to the RFC, in mind at that time.

C. Equity

NHTSA received comments stressing the importance of equity in traffic safety programs. Given the importance of the topic and thoughtfulness of the comments, here we summarize and briefly respond to all comments we received relating to equity.

The League of American Bicyclists expressed appreciation for NHTSA's commitment to and discussions about equity and looked forward to seeing the continued results of these efforts. The League of American Bicyclists also requested that NHTSA provide definitions and examples of "centering equity" and "equitable enforcement." NHTSA strongly supports the policies and commitment to equity laid out in Executive Order 13985, Advancing Racial Equity and Support for Underserved Communities Through Federal Government, and is committed to fulfilling our responsibilities under the Order and to following its principles. The highway safety grant program plays an important role; the meaningful public participation and engagement requirements implemented in this rulemaking form a critical part of State planning to help ensure that equity is centered in the grant program. Under BIL, States are expected to engage affected and potentially affected communities during their triennial HSP planning process and throughout the life of the grant, including through particular emphasis on underserved communities and communities over-

represented in the data. NHTSA will offer technical assistance to States on how to meaningfully engage communities to inform traffic safety programs that promote safe and accessible roadways, all while reducing transportation-related disparities, adverse community impacts, and health effects through their traffic safety programs.

The CT HSO requested that NHTSA allow States to use alternative methods to fund equity partnerships that do not involve reimbursement-based funding arrangements, noting that many potential partners are unable to participate in the highway safety grant program because they do not have sufficient funds available to cover costs prior to reimbursement. NHTSA encourages States to think creatively about ways to support the participation of non-traditional traffic safety partners, including equity partnerships, consistent with Federal grant rules. Federal grant rules allow for advance payments in some situations. NHTSA commits to issuing guidance on advance and reimbursement-based payments in State highway safety grant programs. In addition, as part of our goal to support the inclusion of equity in the highway safety program, NHTSA will work closely with States and national organizations to brainstorm new and creative ways to encourage the involvement of new and diverse groups in the highway safety grant program.

The League of American Bicyclists reiterated its prior comment to the RFC, expressing concern about NHTSA's continued support for the Data-Driven Approaches to Crime and Traffic Safety (DDACTS) program. It noted that DDACTS combines traffic safety and other law enforcement data, making traffic-related activities difficult to separate from ineligible activities because of difficulties in determining whether a traffic stop is traffic-related or merely pretextual. As NHTSA explained in the NPRM, DDACTS is a law enforcement operational model that integrates location-based traffic-crash and crime data to determine the most effective methods for deploying law enforcement and other resources. It focuses on community collaboration to reinforce the role that partnerships play in improving the quality of life in communities and encourages law enforcement agencies to use effective engagement and new strategies. NHTSA continuously reviews the content of DDACTS training and works to ensure that the training focuses on community engagement and the appropriate application of fair and equitable traffic enforcement strategies. NHTSA will

continue to evaluate DDACTS to ensure that it promotes only enforcement that is implemented fairly and equitably.

NHTSA also notes that DDACTS is not part of NHTSA's highway safety grant program, and not all DDACTS-related activities are eligible uses of NHTSA's grant funds. NHTSA's grant funds may only be used for traffic safety activities; any other law enforcement purpose is not eligible. Further, as we stated previously, use of NHTSA grant funds for discriminatory practices, including those associated with pretextual policing, violates Federal civil rights laws, and NHTSA will seek repayment of any grant funds that are found to be used for such purposes and refer any discriminatory incidents to the Department of Justice.

Finally, the League of American Bicyclists thanked NHTSA for responding to its prior comments on the discriminatory outcomes of countermeasures included in NHTSA's *Countermeasures That Work* guide.⁶ It clarified that it was not accusing NHTSA or States of using NHTSA grant funds for discriminatory enforcement, but rather requesting that NHTSA discuss potential or observed disparities in impact from enforcement or other countermeasures within the *Countermeasures That Work*. As an example, it noted that the *Countermeasures That Work* designates mandatory bicycle helmet laws as highly effective and low cost while designating bicycle helmet use promotions as less effective and high cost, and argued that these disparate designations fail to account for several costs and impacts associated with helmet use laws, such as the related to education and enforcement, and the impacts of potentially discouraging bicycle use due to enforcement efforts. GHSA similarly argued that *Countermeasures That Work* over-encourages investment in enforcement-related countermeasures. As we noted in the NPRM, NHTSA is currently working on the next edition of the *Countermeasures That Work* and will explore the considerations raised in these comments in the course of that undertaking.

D. National Roadway Safety Strategy and the Safe System Approach

NHTSA received several comments regarding the implementation of the National Roadway Safety Strategy (NRSS) and the Safe System Approach (SSA). NHTSA is committed to working

with the States to successfully implement the NRSS and the SSA within the formula grant programs and views the grant program as an important part of a much broader strategy involving multiple DOT modes and stakeholders. NHTSA urges states to consider how their triennial Highway Safety Plans fit into a broader SSA, to work collaboratively to consider the ways in which multiple strategies—including grant-funded strategies and other State and local programs—can work synergistically, and to think holistically about using all available tools to reduce roadway fatalities and crashes. For example, in addressing pedestrian safety, a State might consider improvements in infrastructure by providing more crosswalks and better lighting, reductions in speeds in areas with high pedestrian use, and enforcement and education in areas of high pedestrian injuries and fatalities. Even though highway safety grant funding is available for only some of these strategies, SHSOs should work with other entities on holistic solutions to problems identified in their triennial HSPs. States should also consider making recommendations within the Executive Branch about possible changes in State laws that can reduce fatalities and crashes even though SHSOs cannot engage in direct lobbying of their legislatures using highway safety grant funds. NHTSA appreciates the continued support and feedback from commenters on NRSS and SSA implementation, and provides responses below.

The CT HSO repeated its previous comment that implementing the NRSS and the SSA will require NHTSA to afford administrative flexibility to States. As expressed in the NPRM, NHTSA intends to provide such flexibility consistent with applicable law.

AAMVA suggested that, in addition to administrative flexibility, NHTSA provide centralized guidance and support to assist State efforts in implementing the NRSS and the SSA. The League of American Bicyclists reiterated that NHTSA and States should do more to promote the understanding, acceptance, and implementation of the SSA in State transportation agency cultures. NHTSA agrees that the agency should work to ensure that grantees understand and properly implement the NRSS and the SSA. As announced in May 2022, NHTSA offers and will continue to offer expanded safety program technical assistance to States to assist them with understanding and implementing the

NRSS and the SSA, and will continually assess States' needs in this area.

AAMVA stressed the importance of quality data that can be exchanged among stakeholders. NHTSA agrees that the objectives of the NRSS/SSA are inherently intertwined with the agency's data-driven mission to save lives, prevent injuries, and reduce economic costs due to road traffic crashes through education, research, safety standards, and enforcement. To address the unacceptable increases in fatalities on our nation's roadways, the NRSS/SSA adopts a data-driven, holistic, and comprehensive approach focused on reducing the role that human mistakes play in negative traffic outcomes and in recognizing the vulnerability of humans on the road. NHTSA expects States to use the best and most comprehensive data available (extending beyond fatality data) to conduct problem identification, set performance targets, and assess their progress in meeting those targets. States are also encouraged to think critically about how available data can and should be used to analyze their highway safety programs beyond the information that is specifically required. Further, NHTSA encourages States to consider ways to improve State data systems in order to increase data availability and data-sharing opportunities.

E. Transparency

NHTSA appreciates the League of American Bicyclists' support of NHTSA's proposed approach to satisfy the BIL's expanded transparency requirements, particularly in relation to the information provided in the annual grant application. The League of American Bicyclists expressed broad support for greater transparency and specifically encouraged NHTSA to make publicly available the information provided in the annual report by States about the community collaboration efforts that are part of the State's evidence-based enforcement program. NHTSA notes that this information will be made available, as the BIL requires NHTSA to publicly release, on a DOT website, all approved triennial HSPs and annual reports. 23 U.S.C. 402(n). NHTSA will post this information on *NHTSA.gov*, consistent with the statutory requirements.

The BIL further requires that the website allow the public to search specific information included in the released documents: performance measures, the State's progress towards meeting the performance targets, program areas and expenditures, and a description (if provided) of any sources of funds other than NHTSA highway

⁶ Available online at https://www.nhtsa.gov/sites/nhtsa.gov/files/2021-09/Countermeasures-10th_080621_v5_tag.pdf.

safety grant funds that the State proposes to use to carry out the triennial HSP. 23 U.S.C. 402(n)(2). In response to this statutory requirement, GHSA requested that NHTSA clarify that non-Federal funds are no longer required to be reported by the States. We confirm that the BIL removed the requirement to describe all non-Federal funds that the State intends to use to carry out countermeasure strategies in the triennial HSP. However, States are still required to provide information on matching funds that will be used to meet the non-Federal share of the cost of the program. NHTSA will post information on State matching funds and any other non-Federal funding sources that States choose to provide in their triennial HSPs and annual grant applications. However, for improved accountability and transparency in the highway safety grant program, NHTSA encourages States to continue reporting State, local, or private funds they propose to use. As the League of American Bicyclists noted, having such information publicly available would strengthen understanding of the funding uses.

In response to the RFC, NHTSA received many comments advocating for an electronic grant management (e-grant) system. In contrast, in response to the NPRM, MN DPS recommended that NHTSA not develop a new e-grant system, explaining that it would be too difficult to transition to such a system at the same time as adjusting to the new authorization of the grant program. As stated in the NPRM, an e-grant system would foster greater transparency in the use of NHTSA highway safety grant funds by allowing State program information to be aggregated, organized, and made available to the public in a user-friendly manner. NHTSA has not yet deployed such a system, as the TN HSO pointed out, and the agency does not plan to do so concurrently with the initial deployment of the newly authorized grant programs. Currently, NHTSA is in the exploration stages of developing an e-grant system. The TN HSO requested that States participate in developing the grant management system. We expect that any future e-grant system will facilitate greater cross-state collaboration, data analysis, and transparency in the use of program funds. To facilitate this outcome, NHTSA will actively engage States and other stakeholders in its development.

NHTSA sought comment in the NPRM on whether a standardized template, codified as an appendix to the regulation, would be helpful as an interim measure for States to provide information in a uniform manner

similar to what we hope will be enabled by a future e-grant system. In response, three commenters⁷ recommended against developing a standardized template at this time in favor of waiting for the deployment of the future e-grant system. Accordingly, NHTSA will not develop a standardized template as part of this rulemaking.

F. Emergency Medical Services

Five commenters provided comments related to various aspects of emergency medical services (EMS), post-crash care, and 911 systems. These comments covered three general themes: eligibility for NHTSA grant funds, allowable use of grant funds, and NHTSA's actions related to EMS and 911.

Three commenters discussed eligibility for funding under NHTSA's highway safety grant program. NEMSMA requested that NHTSA ensure that grant funds go to rural EMS providers, including volunteer groups. WY OEMS recommended that NHTSA require States to provide funding to EMS and State or local trauma systems. Pamela Bertone requested that for-profit EMS companies be deemed ineligible for funding and that, if they were to remain eligible, States should be required to look at the financial portfolio and tax returns of the CEO. NHTSA supports the EMS communities' efforts to integrate post-crash care initiatives into State highway safety programs where supported by the data and encourages States to consider funding eligible EMS activities with NHTSA's highway safety grant funds. However, under our grant statute, NHTSA does not have the authority to direct State funding choices or to provide funding directly to EMS agencies. Similarly, NHTSA does not have the authority to prohibit States from entering into grants with for-profit entities; however, Federal grant rules prohibit an entity from earning profits from a Federal award or subaward. See 2 CFR 200.400(g).

Three commenters⁸ provided recommendations that certain costs be considered allowable uses of NHTSA highway safety grant funds. Identified costs included training, Centers of Excellence related to emergency responder highway safety, purchase of safety and personal protective equipment, development of technologies to notify drivers they are approaching a crash scene with responders present, data collection, and enhancements to 911 systems and

collision notification systems. An anonymous commenter argued that grants should provide funding for EMS systems based on a ratio of population and regionalization. As we explained in the NPRM, determinations of allowable use of funds are highly fact-specific and are dependent on many factors, including the funding source to be used (*i.e.*, Section 402 or one of the Section 405 incentive grants) and the details of the activity to be funded. In cases where there is not a sufficient nexus to traffic safety to fund the entirety of the project, projects may be limited to proportional funding. In addition, all activities funded by NHTSA highway safety grant funds must be tied to countermeasure strategies for programming funds in the State's triennial HSP, which in turn must be based on a State's problem identification and performance targets. NHTSA strongly encourages all stakeholders, including the EMS community, to work closely with State HSOs to offer ideas for potential activities that may be eligible for NHTSA formula grant funding.

NEMSMA also provided comments related to many activities of NHTSA's Office of Emergency Medical Services (OEMS). The Office of EMS is a knowledgeable and useful resource to States, EMS agencies, and to NHTSA itself in addressing the post-crash care component of the highway safety grant program. However, those comments were outside the scope of this rulemaking because they relate to NHTSA's activities outside of the highway safety grant program.

G. Other

Pamela Bertone commented that the NPRM seemed to focus more on impaired and distracted driving than it did on speed, which she stated is the most common cause of fatalities, and recommended that NHTSA put more focus on speed. NHTSA emphasizes the importance of speed management as a central component of highway safety programs and works closely with States to combat risky driving behaviors such as speed, including through a recent National safety campaign named "Speed Wrecks Lives," conducted in June 2022. Impaired and distracted driving are also important components of highway safety programs and received comparatively more discussion in the NPRM and in this final rule because those program areas are National priority safety areas identified by Congress for Section 405 incentive grants. Nevertheless, States are encouraged to continue to carry out substantial speed management

⁷ AAMVA, GHSA, and TN HSO.

⁸ Anonymous commenter, NASNA, and NEMSMA.

campaigns using Section 402 grant funds.

IV. General Provisions (Subpart A)

A. Definitions (23 CFR 1300.3)

GHSA commented that the definitions of “program area” and “project (or funded project)” should reference either the annual grant application or the triennial HSP instead of the HSP. Where the NPRM referenced the “HSP,” NHTSA intended it to refer to the “triennial HSP.” Consequently, NHTSA has amended the definitions for clarity to reference the triennial HSP.

In addition, NHTSA made purely technical amendments to several definitions. The agency updated citations within the definitions of “Section 1906,”⁹ “State highway safety improvement program,” and “State strategic highway safety plan.”

Finally, NHTSA removed reference to the KABCO scale in the definition of “serious injuries” as the scale is no longer used for this purpose.

B. State Highway Safety Agency (23 CFR 1300.4)

The CT HSO and GHSA both expressed concern with the proposal that the Governor’s Representative for Highway Safety (GR) may not be employed by a subrecipient of the State highway safety agency (commonly referred to as the State Highway Safety Office, or SHSO). CT HSO explained that the CT HSO is a subcomponent agency of the CT DOT; the GR is employed by the CT DOT, which receives subawards from the CT HSO. GHSA explained that in some States, the GR is an employee of the SHSO and that the SHSO awards grants to itself; or that, as in CT, the GR may be an employee of an overarching State department that receives subawards from the SHSO.

The two examples given do not cause a problem with the regulatory text as proposed in the NPRM, as an agency is never a subrecipient of itself, nor can a parent agency be a subrecipient of a subagency. However, NHTSA recognizes that using the term subrecipient in this context may be confusing, and especially so in light of the many varied configurations of State governments. NHTSA has amended the regulatory text to provide that, in order to carry out the responsibilities required by the GR and to avoid a potential conflict of interest, the GR must have ready access to the Governor and be the head of the SHSO or be in the chain of command between the SHSO and the

Governor. This framework will achieve the goal of the NPRM, while using more direct language that is easier for States to apply. NHTSA notes, however, that this provision serves as a minimum floor to ensure that GRs have the capability to fulfill their required functions in the grant program, as provided in the whole of § 1300.4 and other Federal requirements, such as OMB’s Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR part 200). The GR remains responsible for carrying out those responsibilities.

V. Triennial Highway Safety Plan and Annual Grant Application (Subpart B)

As explained in the NPRM, the BIL created a new triennial framework for the Highway Safety Grant Program, replacing the annual Highway Safety Plan (HSP) with a triennial HSP and annual grant application. As part of this new triennial framework, Congress increased community participation requirements and codified the annual reporting requirement.

In addition to the broader comments urging that the agency ensure fidelity to the law in drafting the regulatory text, CT HSO requested that NHTSA refrain from requiring application or reporting requirements beyond those explicitly authorized by law. As we explained in response to GHSA’s similar comment in the NPRM, NHTSA has striven to do so and to streamline requirements wherever possible. However, relevant legal requirements for these Federal grants are not limited to those in the BIL. For example, OMB’s Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR part 200) provide many requirements applicable to the grant program, both for States as award recipients and for NHTSA as the Federal awarding agency. We have included or referred to several of those requirements throughout this regulation.

AAMVA, the CT HSO, and the MN DPS requested that NHTSA avoid duplication between the three different submissions that make up the triennial framework (the triennial HSP, the annual grant application, and the annual report). NHTSA will discuss specific requirements in more detail in the relevant sections of the preamble, but notes here that the triennial framework created by the BIL was designed to allow the three program documents to build on each other. While the required components of the submissions never overlap completely, they frequently focus on the same types of information captured at different

times throughout the life of the grant, from long-range planning (triennial HSP), to grant year implementation (annual grant application), to end of year oversight and performance reporting (annual report), to triennial performance reporting (triennial HSP). Viewed in this context, these requirements are not duplicative, but rather relate to program information developed at various stages along a timeline. Where information is truly duplicative, we have striven to avoid redundancy, as noted earlier.

AAMVA requested that NHTSA provide front-end support and flexibility to States as they transition to the new triennial framework. NHTSA is committed to providing States with all necessary support during this transition, and continuing onward, as they implement highway safety programs. With the recent increase in traffic fatalities, it is more important than ever that States carry out strong, data-driven, and performance-based highway safety programs. NHTSA believes that the triennial framework created by the BIL, with annual projects tied to longer-range planning based on performance targets and countermeasure strategies, will be a valuable tool for States as they work in partnership with NHTSA to address the recent traffic. NHTSA, including its Office of Regional Operations and Program Delivery and our ten regions, stand ready to assist the States in deploying successful programs under the new authority. While we have worked to implement the statutory requirements without imposing unnecessary burdens on States, we are committed to ensuring through our review and approval authority that State triennial HSPs and annual grant applications provide for data-driven and performance-based highway safety programs. We will provide States with the support necessary to reach these goals, but will look to the States to provide high quality programs that NHTSA is able to approve.

A. First Year Flexibility

Several commenters¹⁰ expressed concern about the States’ ability to comply with the new triennial framework in the first fiscal year of the authorization (FY24). These commenters specifically requested that NHTSA provide States with flexibility with regard to the public engagement requirements for the first triennial HSP, arguing that States would not be able to comply with public engagement requirements in the time between publication of the final rule and the July

⁹NHTSA has similarly made a technical correction to update the citation for Section 1906 throughout the regulatory text.

¹⁰AAMVA, GHSA, MN DPS, and MoDOT.

1, 2023 due date for the first triennial HSP. AAMVA suggested that NHTSA excuse States from meeting any non-descriptive requirements associated with public engagement in the FY24 triennial HSP. The MN DPS and MoDOT requested that NHTSA not strictly enforce the public engagement requirements and instead treat FY24 triennial HSP submissions as a good faith building block for future triennial periods. GHSA, supported by AASHTO, recommended that NHTSA create a one-time allowance for States to submit public participation plans in the FY24 triennial HSP (without the requirement to conduct any public engagement efforts) and report on efforts carried out in the FY25 annual grant application.

NHTSA declines to delay these public engagement requirements, which form one of the seminal requirements of the new BIL grants. In enacting BIL, Congress recognized the need to allow States time to ramp up their efforts in this and other areas of the new grant programs, and so delayed the start of the new requirements for almost two years after enactment. This delay provided the States ample time to prepare for needed adjustments, and NHTSA is not able to waive the statutory directive for “meaningful public participation and engagement from affected communities.” Moreover, in an era of increasing traffic fatalities and disparate outcomes, NHTSA will not compromise on the quality of the approved highway safety programs under the new statutory framework, and that includes the critical component of public engagement. Accordingly, all requirements will take full effect for FY24 grants. The public engagement requirements in this regulation implement important requirements set out in the BIL and in accordance with Title VI of the Civil Rights Act of 1964¹¹ (or Title VI), as well as NHTSA’s own commitment to ensuring that equity is centered in the planning and implementation of the highway safety grant program. They are also of clear importance to the populace within the States.

NHTSA is committed to ensuring that States have the assistance necessary to help in implementing the public engagement requirements. In October 2022, DOT published a guide titled “Promising Practices for Meaningful Public Involvement in Transportation Decision-Making.”¹² NHTSA recently

hired two staff members dedicated to providing technical assistance to States on outreach and engagement efforts and will provide a suite of resources in this area in coordination with NHTSA’s Office of Civil Rights, which provides technical assistance regarding Title VI and other Federal civil rights laws. Shortly after the issuance of this final rule, NHTSA will conduct webinars discussing meaningful public engagement and involvement.

B. Triennial Highway Safety Plan (23 CFR 1300.11)

The triennial HSP documents the State’s planning for a three-year period of the State’s highway safety program that is data-driven in establishing performance targets and selecting the countermeasure strategies for programming funds to meet those performance targets. As the CT HSO reiterated in its comments, the triennial HSP is intended to focus on program-level information. It serves as the long-range planning document for State highway safety programs.

GHSA expressed concern that the descriptive elements of the triennial HSP might lead to subjective consideration during NHTSA’s review and approval or lead to Regional misinterpretation of the requirements. It recommended that NHTSA establish a sense of the parameters for all descriptive elements. NHTSA provided significant clarification regarding some of these elements in the preamble to the NPRM and provides more clarification below. However, it is also NHTSA’s intention to leave flexibility for States to structure their triennial HSPs in the manner that best reflects the data and resources of the State. And, since a State’s triennial HSP is essentially a document customized to its own needs, based on problem identification within its borders, NHTSA is avoiding being overly prescriptive and taking a one-size-fits-all approach to review of these documents.

1. Highway Safety Planning Process and Problem Identification (23 CFR 1300.11(b)(1))

AAMVA expressed support for NHTSA’s decision in the NPRM not to specify problem areas that States must consider in triennial HSP problem identification, but instead to provide States with the flexibility to identify problems based on the data. AAMVA further noted that States will likely explore non-conventional data sources in response to this rulemaking and requested that NHTSA provide support and flexibility to States as they establish and refine these data sources. As noted

in the NPRM, NHTSA encourages States to consider and use non-conventional data sources (e.g., socio-demographic data) and will provide States with assistance upon request.

As explained in more detail in the annual grant application section below, NHTSA has amended the regulatory text to provide that States should consult geospatial data as part of their problem identification process. 23 CFR 1300.11(b)(1)(ii). This could include consulting location-based data sources to provide insight into the selection of specific roadways and/or intersections to conduct enforcement activities where they are most needed.

Finally, AAMVA also supported NHTSA’s view, stated in the NPRM in response to a comment, that it is unnecessary for States to provide a plan for regular data assessments in the triennial HSP, because States are already required to submit annual reports that assess their progress in meeting performance targets.

2. Public Participation and Engagement (23 CFR 1300.11(b)(2))

In BIL, Congress added a requirement that State highway safety programs result from meaningful public participation and engagement from affected communities, particularly those most significantly impacted by traffic crashes resulting in injuries and fatalities. 23 U.S.C. 402(b)(1)(B). AAMVA and the 5-State DOTs expressed broad support for the new emphasis on public engagement.

GHSA reiterated its prior comment that many States already have successful public engagement initiatives underway, but noted that their strategies have not been effectively shared. It offered to collaborate with NHTSA to support States in implementing broader public engagement and in sharing best practices. AAMVA similarly requested that NHTSA provide guidance to States on how to meet public engagement requirements. The League of American Bicyclists requested that NHTSA analyze State activities in this area and publish a report. GHSA and AASHTO recommended that NHTSA refer to FHWA’s experience with the public participation process as it develops its own guidance. NHTSA appreciates this shared commitment to public engagement and looks forward to working with the States and GHSA to share best practices and effective strategies to increase community engagement. As mentioned previously in this document, NHTSA recently hired two staff members dedicated to providing technical assistance to States on outreach and engagement efforts and

¹¹ 42 U.S.C. 2000d et seq., 78 stat. 252.

¹² Available online at <https://www.transportation.gov/priorities/equity/promising-practices-meaningful-public-involvement-transportation-decision-making>.

will provide a suite of resources in this area in coordination with NHTSA's Office of Civil Rights, including webinars that will be conducted shortly after the issuance of this final rule.

As explained in the preamble to the NPRM, NHTSA structured the public engagement section of the triennial HSP so that States can meet both the BIL requirements and the Title VI Community Participation Plan requirements with the same submission. Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, or national origin (including limited English proficiency) in any program or activity receiving Federal financial assistance. As implemented through the U.S. Department of Transportation Title VI Program Order (DOT Order 1000.12C), Title VI requires, among other things,¹³ that all recipients submit a Community Participation Plan. The purpose of the Community Participation Plan is to facilitate full compliance with the community participation requirement of Title VI by requiring meaningful public participation and engagement to ensure that applicants and recipients are adequately informed about how programs or activities will potentially impact affected communities, and to ensure that diverse views are heard and considered throughout all stages of the consultation, planning, and decision-making process. MN DPS supported NHTSA's efforts to combine the two requirements. GHSA sought clarification about whether States must submit or maintain on file a separate file to fulfill the Community Participation Plan requirements from Title VI. NHTSA confirms that the triennial HSP submission is sufficient to satisfy the Community Participation Plan requirements, and no further documentation is needed for that component of Title VI.

GHSA and the MoDOT argued that the BIL limits the requirement for meaningful public participation and engagement to the "program," interpreting that to refer only to the triennial HSP and countermeasure strategy level *planning*, not to *project level implementation*. On a similar note, AASHTO and the 5-State DOTs expressed concern that States would be required to bring public engagement

into all levels of project management, including at the project level. These commenters requested that NHTSA change the proposed regulatory language to make clear that public engagement is only required for program *planning*, not throughout program *implementation and management*. NHTSA disagrees. A State highway safety "program," as described in 23 U.S.C. 402(b), refers to the entire lifespan of the State's highway safety efforts, from planning to project implementation to program evaluation. The public engagement requirements in § 1300.11(b)(2) reflect this, by requiring public participation and engagement not just in the planning processes leading up to the triennial HSP (*see* § 1300.11(b)(2)(i)), but also throughout the life of the grant (*see* § 1300.11(b)(2)(iii)). States must consider community input while planning and implementing projects under the highway safety program, but are not expected to conduct public participation and engagement efforts on a project-by-project basis. For example, a State could conduct public participation and engagement efforts related to its impaired driving program for a fiscal year and then use the input received during those engagement efforts when it implements its impaired driving projects, rather than conducting engagement efforts for each impaired driving project. We have amended the requirement to clarify that the State's statement of starting goals for public engagement needs to include discussion of how the public engagement efforts will contribute to the development of the State's highway safety program as a whole, including countermeasure strategies for programming funds. § 1300.11(b)(2)(i)(A).

Further, § 1300.11(b)(2)(ii)(C) requires the State to discuss how the comments and views received in engagement opportunities conducted for the triennial HSP have been incorporated into the development of the triennial HSP. This also reflects the comprehensive community participation requirements in accordance with Title VI of the Civil Rights Act of 1964 and supports NHTSA's goal of ensuring that the public participation and engagement opportunities that are conducted are meaningful and that equity is a focus throughout all stages of the highway safety grant program. However, NHTSA notes that States will still be able to make management and even programmatic decisions without conducting public engagement opportunities for each decision. The

goal is for a State to provide sufficient opportunities for public engagement so that the State can be informed by the input received during those opportunities as it plans, implements, and manages the highway safety grant program.

In order to clarify the stages of public engagement required, NHTSA has reformatted § 1300.11(b)(2) to better identify the components of the State's public participation and engagement submission: (1) triennial HSP engagement planning; (2) triennial HSP engagement outcomes; and (3) ongoing engagement planning. As explained in more detail later, States will later be required to describe the ongoing engagement efforts that they conduct in each grant year in the annual report. *See* 23 CFR 1300.35(b)(2). Limited, non-substantive changes have been made to the regulatory text to accommodate this reorganization. For clarity, we have also written specific requirements for State plans for ongoing engagement in § 1300.11(b)(2)(iii), rather than relying on an internal citation.

The NV OTS commented that the requirement to provide lists of engagement opportunities conducted, with additional descriptive information, is too burdensome. NV OTS argued that such lists could become too extensive for NHTSA to adequately assess and argued that States should only be required to develop an engagement plan with projected activities, not provide details about engagement conducted. Upon consideration, NHTSA agrees that lists of every engagement opportunity conducted may become too voluminous and may not be useful for NHTSA's approval process or for transparency purposes. However, we disagree that States should be allowed to submit only plans, with no requirement to describe engagement actually conducted as part of the triennial HSP planning process. We have therefore amended the regulatory text to require that States must provide narrative assessments and descriptions of their community engagement efforts instead of a list. 23 CFR 1300.11(b)(2)(ii).

MN DPS argued that being required to identify specific engagement efforts would hinder State efforts that are currently underway by requiring States to reengineer existing public engagement plans. AAMVA noted that it agreed with GHSA's comment to the RFC that the volume of comments received would be an inaccurate and unreliable benchmark for public engagement. We note that, while the regulation requires States to describe the engagement efforts conducted, it does not require specific forms of public

¹³ For example, consistent with Title VI, the DOT Title VI Program Order also requires that NHTSA conduct a pre-award assessment of each applicant for financial assistance and that every grant recipient have on file a Title VI plan. As these requirements are not specifically part of the triennial HSP or annual grant application, the substance of these requirements has not been incorporated into the rulemaking.

participation and engagement, nor require specified outcomes. However, the agency expects that if a State does not achieve reasonable participation through the participation plan described in the triennial HSP, it will use that experience to inform its plans for continuing public participation during the triennial period and into the next triennial HSP. As long as a State is able to meet the requirements of the triennial HSP and annual report, it may facilitate public participation in the manner best suited to the needs of the State and its communities.

In addition to the comments in response to the RFC on the topic, NHTSA received several comments expressing the need for funding for the BIL's increased public engagement requirements. GHSA, MN DPS and MoDOT requested clarification about whether NHTSA grant funds may be used to support public participation and engagement efforts in general. As NHTSA explained in the preamble to the NPRM, the specifics of whether and how NHTSA grant funds may be used to pay for these types of costs are highly fact specific and implicate many different Federal and State laws and regulations. However, as a general matter, States may use NHTSA grant funds for costs associated with public participation and engagement activities, including activities required to plan and conduct public engagement required for submission of the triennial HSP. Any such costs are Planning and Administration costs and are subject to the allowance for such costs, as laid out in 23 CFR 1300.13(a).

The League of American Bicyclists requested that NHTSA compile information on how States use NHTSA grant funds for purposes of compensating community members for their public participation and publish a report on those uses of funds. GHSA did not think it likely that States would consider compensating participants, but nonetheless sought clarification from NHTSA on whether such compensation would be an allowable use of grant funds. As explained above, whether a specific cost is an allowable use of funds is highly fact specific and subject to many different Federal laws and regulations. Differences in State laws and regulations may also affect whether a State may compensate participants in public engagement efforts. That said, these sorts of costs are potentially allowable uses of grant funds and NHTSA will work with States to determine whether any specific participation costs are allowable. Since no States currently use NHTSA grant funds for this purpose and it is

unknown if any States will do so, NHTSA has no plans to publish a report at this time.

3. Performance Plan (23 CFR 1300.11(b)(3))

The BIL continues to rely on performance measures as a fundamental component of State highway safety program planning in the triennial HSP. The BIL maintains the existing structure that requires States to provide documentation of the current safety levels for each performance measure, quantifiable performance targets for each performance measure, and a justification for each performance target.

The BIL provides that States must set performance targets that demonstrate constant or improved performance and provide a justification for each performance target that explains why the target is appropriate and evidence-based. 23 U.S.C. 402(k)(4)(A)(ii) and (iii). As NHTSA explained in the preamble to the NPRM, the requirement for constant or improved performance will facilitate open discussions about desired safety outcomes and how to allocate resources to reach those outcomes. In an era of increasing fatalities, it is vital that performance targets offer realistic expectations that work toward the long-term goal of zero roadway fatalities and provide a greater understanding of how safety issues are being addressed. Roadway deaths are unacceptable and preventable; we must all work toward making the goal of zero roadway fatalities a reality, and performance management is a vital tool for making that happen.

Several commenters¹⁴ reiterated arguments they made in response to the RFC that requiring targets showing constant or improved performance is contrary to the requirement that targets be appropriate and evidence-based, and asked that NHTSA explain how a State can set a data-driven target if the evidence does not demonstrate constant or improved performance. GHSA disagreed with NHTSA's response in the NPRM, which explained that States should consider different countermeasure strategies or adjust funding within a countermeasure strategy in order to achieve constant or improved performance. GHSA argued that States do not have unlimited resources to do so, nor do they have an unlimited menu of acceptable countermeasures. Instead, GHSA requested that, if a State's data analysis shows that an appropriate target would not demonstrate constant or improved performance and the State cannot

allocate additional resources, NHTSA should nonetheless allow that State to adjust the target to be "constant." The agency recognizes that resources are not unlimited, but the BIL greatly expanded highway safety grant funds available to the States, providing a more than 30 percent increase. The traveling public has a right to expect that the nearly 4 billion dollars in highway safety grant funding authorized by the BIL will result in fewer lives lost on our Nation's roadways. With that in mind, lack of resources is not an acceptable justification for failure to demonstrate constant or improved performance, and NHTSA will not label as "constant" any target that demonstrates worsening performance.

NHTSA also disagrees with the implied premise that States lack the ability to influence safety numbers and stands by our prior response; performance targets are inextricably tied to countermeasure strategies for programming funds. Targets should reflect the outcomes that States expect to achieve after implementing their planned programs. If a projected outcome shows worsening safety levels, then the State needs to change its planned program either at or below the countermeasure strategy level. States receive highway safety grant funds in order to achieve important safety outcomes. NHTSA strongly encourages States to consider innovative countermeasure strategies as long as they are consistent with Federal statutes and regulations; we have seen States implement several such strategies successfully in the past.

Some commenters¹⁵ requested that, in order to meet the requirement to set data-driven targets that show constant or improved performance, States be allowed to "reset" targets based on recent data. These comments suggest a belief that States must set ever-lower performance targets every triennial cycle, regardless of the data at the time the triennial HSP is submitted. Such a construction would divorce performance management from the underlying data. NHTSA has therefore added regulatory language to make clear that States must set performance targets that show constant or improved performance compared to the safety levels, based on the most currently available data, not based on the target from the prior triennial HSP. 23 CFR 1300.11(b)(3)(ii)(B). This will serve as a constructive "reset" of performance targets based on documented safety levels for each triennial HSP. This clarification should also resolve the CT

¹⁴ AASHTO, GHSA and MN DPS.

¹⁵ AASHTO, CT HSO, and GHSA.

HSO's concern that States not be penalized for failure to meet measures that were inflated due to being set based on prior targets that don't reflect current safety levels.

Several commenters expressed concern that States will face penalties if they fail to meet aggressive targets. Section 402 requires States to assess in both the triennial HSP (23 U.S.C. 402(k)(4)(E)) and the annual report (23 U.S.C. 402(l)(2)) the progress made in achieving performance targets in the annual grant application the means by which the State's countermeasure strategy for programming funds was adjusted and informed by that assessment (23 U.S.C. 402(l)(1)(C)), and NHTSA is required to publicly release an evaluation of State achievement of performance targets (23 U.S.C. 402(n)(1)). However, there are no monetary or programmatic penalties for failure to achieve a performance target in NHTSA's highway safety grant program. GHSA requested that NHTSA acknowledge that failure to meet performance measures reflects poorly on State programs and that they may face additional administrative steps (the required assessment and adjustment of countermeasure strategies). AASHTO noted that added administrative burdens have cost and resource impacts. The MoDOT argued that performance targets are not performance predictions and requested that NHTSA acknowledge that failure to meet performance targets does not mean that a State's programs are ineffective. NHTSA believes that performance measures bring transparency to the safety outcomes of State programs and can be helpful to States in planning a program designed to help them meet performance targets. NHTSA acknowledges that this transparency may sometimes be uncomfortable for a State, but believes it is vital to ensuring that highway safety programs produce meaningful improvements every year.

As GHSA notes, States are required to describe plans to adjust their countermeasure strategies for programming funds if they are not on track to meet performance measures. However, we disagree with labelling such work a penalty; it is a response designed to address an identified safety problem that has not been resolved and to encourage redirecting the investment of funds to better meet performance targets. NHTSA and the States share the common goal of reducing highway fatalities and injuries. It is our joint responsibility to deploy grant funds squarely toward that end. NHTSA challenges States to think creatively and

critically about ways to improve the safety outcomes of their programs.

NHTSA received many comments specifically related to the common performance measures that States also report annually to FHWA for the State highway safety improvement program (HSIP).¹⁶ AASHTO, the CT HSO, and the MN DPS all recommended that NHTSA collaborate with FHWA, GHSA, and AASHTO to reevaluate how performance measures are established and used and to assist States in complying with both NHTSA and FHWA performance requirements. NHTSA appreciates this suggestion and will continue to work closely with these partners to provide needed technical assistance to States.

Many commenters¹⁷ stated that the common performance measures should focus only on variables within the direct control of the State highway safety office. They explained that common measures, such as total fatalities and injuries, are dependent on many factors and that the SHSO focuses only on behavioral aspects of traffic safety. As stated in the NPRM, NHTSA disagrees that the common performance measures should be so narrowly focused. While we recognize that the common measures are impacted by many variables, the SHSO and its programs are an integral part of those overall safety numbers. The SHSO, under the auspices of the Governor, is expected to coordinate the triennial HSP, annual grant application, and highway safety data collection and information systems activities with other federally and non-federally supported programs in the State relating to or affecting highway safety, including the State strategic highway safety plan (SHSP). 23 CFR 1300.4(c)(11). The common measures show the overall highway safety outcomes in the State, including the programs implemented by the SHSO. For context, we also note that the common measures are only three of many performance measures: there are three common measures, fourteen minimum measures, and States are always encouraged to develop their own additional measures for problems not covered by existing performance measures.¹⁸ The minimum performance

measures created in cooperation with GHSA focus more specifically on areas within the SHSO control.

AASHTO expressed appreciation for NHTSA's proposal that States be allowed to update the targets for the three common performance measures in the annual grant application. See 23 CFR 1300.12(b)(1)(ii). It asked how States should reflect those changes in the triennial HSP. The annual grant application includes a section for updates to the triennial HSP. See 23 CFR 1300.12(b)(1). Upon approval of the annual grant application, any changes that a State makes to the triennial HSP under that provision will be presumed by NHTSA to be incorporated into the triennial HSP and will not require any further efforts on the part of the State to amend the triennial HSP itself.

AAMVA and GHSA requested that NHTSA and GHSA work together to update the minimum performance measures that were developed in 2008¹⁹ in accordance with 23 U.S.C. 402(k)(5). In contrast, the 5-State DOTs reiterated that they do not believe any new performance measures are required. NHTSA intends to convene meetings with stakeholders and to collaborate with GHSA to update the minimum performance measures well in advance of the FY 2027 triennial HSP submission date. NHTSA will draw all of the comments received under this rulemaking into that effort and will seek further input from these and other groups at that time. As we did previously, NHTSA commits to publishing the proposed minimum performance measures in the **Federal Register** for public inspection and comment. For the purposes of the FY24 triennial HSP, States are encouraged to develop additional measures, consistent with 23 CFR 1300.11(b)(3)(iii), for problems identified by the State that are not covered by existing minimum performance measures.

AASHTO reiterated its comment to the RFC, stating that the regulation should more clearly vest target establishment authority in the States, arguing that it is inconsistent to require NHTSA approval for performance targets when 23 U.S.C. 150(d)(1) provides States with authority to establish targets for the HSIP without FHWA approval. AASHTO argued that NHTSA cannot appropriately rely on the reasoning set forth by FHWA in its final rule for the National Performance Management Measures: Highway Safety Improvement Program, which set out

¹⁶ Common performance measures are set out in 23 CFR 490.209(a)(1) and 23 CFR 1300.11.

¹⁷ AASHTO, AAMVA, GHSA, MN DPS, and MoDOT.

¹⁸ In fact, States are required to submit performance measures for any program area for which a minimum performance measure does not already exist (for example, distracted driving), because all projects funded with NHTSA grant funds must be tied to a countermeasure strategy for programming funds that addresses a performance target in the triennial HSP. See 23 CFR 1300.12(b)(2)(ix) and 23 CFR 1300.11(b)(4)(iii).

¹⁹ "Traffic Safety Performance Measures for States and Federal Agencies" (DOT HS 811 025) (Aug. 2008).

the parameters of the common performance measures,²⁰ because the statutes have changed since that time. However, the *relevant* portions of those statutes have not changed. Regardless, as we noted in the NPRM, NHTSA does not have the discretion to override the statutory requirement for approval or disapproval of triennial HSPs, including the performance measures contained therein. *See* 23 U.S.C. 402(k)(6).

4. Countermeasure Strategy for Programming Funds (23 CFR 1300.11(b)(4))

The BIL requires each State to submit, as part of the triennial HSP, a countermeasure strategy for programming funds for projects that will allow the State to meet the performance targets set in the triennial HSP. 23 U.S.C. 402(k)(4)(B–D).

GHSA noted that NHTSA seems to use the terms “countermeasure” and “countermeasure strategy for programming funds” inconsistently throughout the regulation, occasionally using “countermeasure” where GHSA believes it should read “countermeasure strategy for programming funds”. Upon reviewing the regulatory text, NHTSA found one instance where the terms were used in an unclear context and has amended the regulatory text in § 1300.11(b)(4)(ii)(B) to refer to “countermeasures” rather than “countermeasure strategies.” The term “countermeasure” is used singularly in several of the Section 405 grant sections; however, NHTSA confirms that those uses are appropriate based on the statutory text and intent.

For each countermeasure strategy, the State must provide: (1) identification of the problem ID that the countermeasure strategy addresses and a description of the link between the problem ID and the countermeasure strategy; (2) a list of the countermeasures that the State will implement as part of the countermeasure strategy, with justification supporting the countermeasures; (3) identification of the performance targets the countermeasure strategy will address with a description of the link between the countermeasure strategy and the target; (4) a description of the Federal funds the State plans to use; (5) a description of the considerations the State will use to determine what projects to fund to implement the countermeasure strategy; and (6) a description of the manner in which the countermeasure strategy was informed by the uniform guidelines issued by

NHTSA in accordance with 23 U.S.C. 402(a)(2). § 1300.11(b)(4).

NHTSA received many comments related to the requirement to provide justification supporting countermeasures that are included in a countermeasure strategy for programming funds. *See* 23 U.S.C. 402(k)(4)(C) and 23 CFR 1300.11(b)(4)(ii). As a preliminary matter, NHTSA points out that this provision is largely similar in substance to the requirements under the FAST Act, in which States were required to provide justification supporting the potential effectiveness of innovative countermeasures as they relate to the problem identified. NHTSA proposed two changes to the requirement in the NPRM: (1) the agency provided that any countermeasure rated 3 stars or higher in *Countermeasures That Work* are proven effective and do not require justification; and (2) the agency added data and data analysis to the requirements for supporting an innovative countermeasure. The requirement to provide data and data analysis is taken directly from the BIL, which requires States to provide data and data analysis supporting the effectiveness of proposed countermeasures. *See* 23 U.S.C. 402(k)(4)(C).

The CT HSO, DE OHS, GHSA, MN DPS, and MO DOT argued that requiring States to provide justification for countermeasures not identified as 3 stars or above in *Countermeasures That Work* adds an unnecessary burden on states and would stifle innovation. The League of American Bicyclists expressed concern that the requirement would encourage States to focus on countermeasures in *Countermeasures That Work* at the expense of other promising countermeasures. The League of American Bicyclists and GHSA both noted that this could incentivize States to conduct more enforcement. GHSA recommended that NHTSA allow States to cite to the Uniform Guidelines for State Highway Safety Programs²¹ and to recommendations in NHTSA-affiliated program assessment reports. NHTSA reminds commenters that the requirement to justify countermeasures derives from the statute. In exempting countermeasures rated 3 stars and above from the requirement to provide justification of effectiveness, NHTSA sought to limit the burden on States by not requiring each State to provide independent justification for countermeasures that have already been proven over time. To further that goal,

NHTSA has adopted GHSA’s suggestion to also exempt countermeasures included in the Uniform Guidelines and as recommendations in NHTSA-affiliated program assessment supports. § 1300.11(b)(4)(ii)(A). NHTSA encourages innovation and urges States not to rely overly on the same set of countermeasures that have not produced positive programmatic change to date, even if they are rated 3 stars or above. Even though these countermeasures are exempted from the requirement to provide independent justification of effectiveness, as with all countermeasure strategies, States must still describe the link between the problem identification and the countermeasure strategy and the link between the effectiveness of the countermeasure strategy and the performance target. §§ 1300.11(b)(4)(i) and (iii).

The League of American Bicyclists suggested that NHTSA accept the SSA principles as a justification for choosing countermeasure strategies in the triennial HSP. While NHTSA agrees that the SSA principles are great guiding principles for a State to use in selecting countermeasures, NHTSA notes that principles do not qualify as data and data analysis required to justify the use of a countermeasure.

The DE OHS argued that justification of the effectiveness of innovative countermeasure strategies is better suited to be addressed in the annual report than in the triennial HSP. The MoDOT argued that requiring justification of countermeasures is an overreach by NHTSA, reasoning that SHSOs are responsible for identifying and implementing countermeasures and that NHTSA need only ensure the State administers a compliant program. MoDOT further questioned why States should have to justify countermeasures when they will be evaluated on their ability to meet performance measures. NHTSA reminds the States that the BIL specifically requires States to submit data and data analysis supporting the effectiveness of proposed countermeasures in the triennial HSP. *See* 23 U.S.C. 402(k)(4)(C). However, NHTSA also strongly encourages States to evaluate the effectiveness of all innovative countermeasures after implementation and to share those results with NHTSA and with other States. Furthermore, the statute provides that NHTSA has responsibility for reviewing the triennial HSPs submitted by the States and ensuring that the triennial HSPs satisfy the statutory and regulatory requirements prior to approval. *See* 23 U.S.C. 402(k)(6).

²¹ Available online at: <https://www.nhtsa.gov/laws-regulations/guidance-documents#52986>.

²⁰ 81 FR 13882, 13901 (Mar. 15, 2016).

GHSA and DE OHS sought clarification about the level of detail required to justify innovative countermeasures, requesting that NHTSA keep the requirement similar to the existing requirement for innovative countermeasures under the FAST Act. They cautioned that States should not be required to submit detailed research reports. NHTSA confirms that the level of justification required for innovative countermeasures is fundamentally the same as in the regulation implementing the FAST Act. Commenters may be misinterpreting the level of justification required. For example, a State could cite to a countermeasure from a different program area in the *Countermeasures That Work* and briefly explain why it believes that countermeasure would be similarly effective in the relevant program area. Alternatively, a State could provide a citation to a report on a pilot program carried out elsewhere, or to existing research demonstrating the effectiveness of a strategy in a different context, potentially outside of the highway safety context. To clarify that States are not required to submit research reports, NHTSA has amended the regulatory text to require that the justification use *available* data, data analysis, research, evaluation and/or substantive anecdotal evidence. § 1300.11(b)(4)(ii)(B).

5. Performance Report (23 CFR 1300.11(b)(5))

The BIL requires that the triennial HSP include a report on the State's success in meeting its safety goals and performance targets set forth in the most recently submitted highway safety plan. In order to foster a connection between the triennial HSP and annual reports, NHTSA specified that the performance report in the triennial HSP contain the same level of detail as the annual report. Both AAMVA and GHSA expressed confusion over the level of detail expected for the triennial HSP performance report. GHSA noted confusion because the regulation cites to the entirety of § 1300.35, not just the performance report section at § 1300.35(a), and asked whether NHTSA wants States to combine three years of annual report performance reports into a single analysis.

In order to avoid confusion, NHTSA has removed the internal citation and inserted regulatory language specific to the triennial HSP. 23 CFR 1300.11(b)(5). While the language still mirrors the language for the annual performance report, it has been adjusted to reflect the triennial nature of the analysis. For example, while the annual report focuses on activities conducted during a

single grant year, the triennial HSP focuses on countermeasure strategies implemented during the triennial period. NHTSA believes that States will be able to benefit from the yearly analysis they have already conducted in their annual reports when writing their triennial performance reports. As noted in the preamble to the NPRM, for the FY24 triennial HSP, NHTSA expects only analysis of the State's progress towards meeting the targets set in the FY23 HSP.

C. Annual Grant Application (23 CFR 1300.12)

NHTSA received comments on the proposed submission date and components of annual grant applications. We address each of these comments in the respective sections below and make necessary updates to the regulatory language for clarification and simplification.

1. Due Date (23 CFR 1300.12(a))

The MA OGR requested that the due date of August 1 be changed to July 1 and/or that NHTSA reduce the 60-day review period to 30 or 45 days. The MA OGR noted that a due date of August 1, with a 60-day review period, would provide for a September 30 award date, which they argue provides insufficient time for States to award projects starting October 1. The due date of August 1 ensures that both States and NHTSA have adequate time to prepare, submit, and review annual grant applications. As explained in the NPRM, NHTSA proposed a deadline of August 1 to provide States with a due date different from the triennial HSP's July 1 deadline. Requiring both the annual grant application and the triennial HSP to be submitted on July 1 would impose more burden on States during the years when both submissions are required. This approach is informed by comments received in response to the RFC and discussed in more detail in the NPRM. Additionally, the statute affords 60 days for NHTSA to review and approve or disapprove annual grant applications. 23 U.S.C. 402(l)(1)(D). NHTSA notes that our ability to review and ultimately approve applications within the 60-day statutory timeline depends on the quality of the information provided by States. Where possible, we will strive to work with States to expedite the review process.

2. Updates to Triennial HSP (23 CFR 1300.12(b)(1))

As part of annual grant applications, the BIL requires States to provide updates to their triennial HSPs, including a description of the means by

which the strategy for programming funds was adjusted and informed by the most recent annual report. 23 U.S.C. 402(l)(1)(C)(iii). In the NPRM, NHTSA fleshed out this requirement by providing that where a State determined in its annual report that it was not on track to meet all performance targets, it must explain either how it will adjust the strategy for programming funds or why it is not doing so. Otherwise, a State must briefly state that it was on track to meet all performance targets. NHTSA appreciates AAMVA's support for streamlining the requirement for States that are on track to meet their performance targets.

In addition, States may make certain changes related to performance measures in the annual grant application. As explained in the NPRM, States may add new performance measures and amend common performance measures. GHSA requested NHTSA to clarify that States are allowed to amend common performance targets, rather than common performance measures as stated in the NPRM. As GHSA noted, States may amend performance targets associated with the common performance measures (*i.e.*, number of fatalities) rather than the measures themselves (*i.e.*, fatality, fatality rate, and serious injuries). NHTSA has made a conforming change to the language at 23 CFR 1300.12(b)(1)(ii) in accordance with this clarification.

The CT HSO stated that any updated data analysis should be required only in the triennial HSP, not the annual grant application. It is not clear to what data analysis the State is referring; however, NHTSA notes that States provide all updates to the triennial HSP via the annual grant application under the new triennial framework. Functionally, it is the same as updating or amending the triennial HSP itself.

GHSA, joined by the MN DPS, repeated its previous comment that the statute clearly provides that it is the State, not NHTSA, that determines when updates to the triennial HSP are necessary. As explained in the NPRM, NHTSA disagrees with this interpretation. The statute provides that an annual grant application must include any necessary updates to analysis in the State's triennial HSP. 23 U.S.C. 402(l)(1)(C)(i). The statute, however, is silent as to who determines what updates to analysis are necessary. While the statute allows a State to include such updates, it does not limit the determination of whether those updates are sufficient to States. The statute requires NHTSA to approve or disapprove a State's annual grant

application in part on the basis of whether it demonstrates alignment with the approved triennial HSP. 23 U.S.C. 402(l)(1)(A)(i). Updates to analysis in the State's triennial HSP may be necessary in order to demonstrate that the annual grant application aligns with the triennial HSP, as required by the BIL. See 23 U.S.C. 402(l)(A)(i). NHTSA will not approve an annual grant application that is inconsistent with the approved triennial HSP.

3. Project and Subrecipient Information (23 CFR 1300.12(b)(2))

The BIL requires States to submit, as part of their annual grant application, identification of each project and subrecipient to be funded by the State using grants during the fiscal year covered by the application. The statute further provides that States may submit information for additional projects throughout the grant year as that information becomes available. See 23 U.S.C. 402(l)(C)(ii).

To satisfy those statutory requirements, States must submit the following information in their annual grant applications: project name and description, Federal funding source(s), project agreement number, subrecipient(s), amount of Federal funds, eligible use of funds, identification of Planning and Administration costs, identification of costs subject to Section 1300.41(b), and the countermeasure strategy for programming funds that the project supports. 23 CFR 1300.12(b)(2). These requirements ensure that NHTSA is able to understand whether the identified projects are sufficient for the State to carry out the countermeasure strategies in the triennial HSP, to identify projects against later submitted vouchers, and to meet statutory transparency requirements.

GHSA requested clarification about several items to be included in the project and subrecipient information. GHSA asked what NHTSA means by "eligible use of funds" and the level of detail that States will be expected to provide. NHTSA's purpose in including this information in the annual grant application, as well as in State vouchers (see 23 CFR 1300.33(b)(3)), is to facilitate transparency in the use of NHTSA grant funds, to ensure consistency between planned and actual project expenses, and to facilitate verification of allowability of costs within specific program areas. For example, there are six specific eligible uses of Section 405(b) Occupant Protection Grants. See 23 CFR 1300.21(g)(1). One such eligible use is "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". 23 CFR 1300.21(g)(1)(ii). For projects on occupant protection training, States should note this specific eligible use as *Occupant Protection Training* and ensure that the project description includes the nature of the training and the intended audience. This same eligible use notation would apply to projects using Section 402 grant funds for occupant protection training. As another example, there are two eligible uses of Section 402 grant funds for automated traffic enforcement (school zone or work zone). See 23 CFR 1300.13(g). Projects using Section 402 grant funds for automated traffic enforcement in a school zone should note the eligible use as *Automated Traffic Enforcement—school zone* and ensure that the project description includes the appropriate information per 1300.12(b)(2)(i). If a State is uncertain about a specific use of funds, we encourage the State to reach out to the Region for assistance.

Next, GHSA requested that NHTSA clarify the requirement at 23 CFR 1300.12(b)(2)(viii), which requires States to identify whether a project will be used to meet the requirements of § 1300.41(b) (commonly referred to as promised projects). NHTSA confirms GHSA's understanding that States must identify whether the State is committing unexpended grant funds that would otherwise be deobligated and lapsed to a particular project consistent with § 1300.41(b).

GHSA also sought clarification about how States should organize information on the countermeasure strategy that the project supports, and asked for flexibility. States may format their project list by grouping projects based on the countermeasure strategy. It is incumbent on States to ensure that they submit all required information in an organized manner to minimize delays in NHTSA's review and avoid the need for follow-up information.

In the NPRM, NHTSA proposed to include zip codes as an example of information that may be provided as part of a project description. In addition, NHTSA proposed to require States to provide zip codes for all projects in the annual report and sought comment on whether there is a better metric for obtaining relevant location information for projects. In response, the DE OHS, GHSA, and MN DPS expressed concern that providing zip code information in annual grant applications and annual reports would impose an excessive

burden on States and suggested finding a more efficient way to collect location data. NHTSA appreciates the feedback but also emphasizes that it is our responsibility to ensure that project information is consistent with States' triennial HSPs. As noted by the CT HSO, NHTSA's intent in proposing zip code information was to identify the location where a project is taking place, and location information is essential for NHTSA to verify that States are executing projects in the areas identified by the problem identification and/or countermeasure strategies in their triennial HSPs. However, NHTSA agrees that zip code information might not be the most relevant data point or may be cumbersome for States to compile, depending on project type. Accordingly, to avoid an unnecessary burden on States, we have removed specific references to zip codes from both the annual grant application and annual report sections of the regulation. Instead, NHTSA has amended the regulatory text to provide that States must provide information on the location where the project is performed as part of the project description in the annual grant application (which may include zip codes), but leaves it to the State's discretion what form this location information takes. § 1300.12(b)(2)(i).

NHTSA expects that States will provide information at the lowest geographic level applicable to each project. NHTSA notes that, consistent with the Federal Funding Accountability and Transparency Act (FFATA), States are already required to separately report the location of both the entity receiving the subaward and the primary location of performance for all subawards of \$30,000 and above.²² As previously mentioned, in order to ensure that States include location information in their triennial HSP problem identification, NHTSA has amended the data sources that a State should consult for problem identification to include geospatial data. § 1300.11(b)(1)(ii).

Finally, NHTSA has made a technical amendment to rearrange the order of required project information so that Federal funding source(s) is now the second required information item. 23 CFR 1300.12(b)(2)(ii). NHTSA believes this will better reflect the connection States place between project descriptions and the funding source.

²² Public Law 109-282, as amended by section 6202 of Public Law 110-252. Implemented at 2 CFR part 170.

4. Amendments to Project and Subrecipient Information (23 CFR 1300.12(d))

As is explained in more detail in the annual report section, below, NHTSA is amending § 1300.12(d) to provide that all project information in the annual grant application must be complete at the time the State submits the annual report consistent with § 1300.35.

D. Special Funding Conditions for Section 402 Grants (23 CFR 1300.13)

1. Planning and Administration (P & A) Costs (23 CFR 1300.13(a))

Three commenters²³ reiterated comments in response to the RFC requesting that NHTSA increase the percentage of funds that can be allocated to Planning and Administration (P & A) costs from 15% to 18% to cover increased costs due to the new BIL planning requirements, inflation, and the competitive employment market. GHSA further explained that this increase would give States greater flexibility in determining whether to fund staff programmatically or through P & A. NV OTS noted that the increase would help States like Nevada that need to maintain two separate offices for the HSO. In response to these last two points, the agency notes that whether highway safety staff is funded programmatically or through P & A is not dependent on the amount of funds available but rather on specific roles and duties, and NV OTS's maintenance of two separate offices for the HSO is not a requirement imposed by NHTSA. However, after considering these comments in light of new BIL requirements, NHTSA is increasing the States' allowance for P & A costs to 18 percent to help offset rising costs and to ensure that States have sufficient resources to fully implement the planning and public engagement requirements in the BIL. The agency expects that this P & A funding increase will lead to fulsome implementation of the new longer-range planning structure created by the BIL and robust public engagement efforts.

2. Participation by Political Subdivisions (Local Expenditure Requirement) (23 CFR 1300.13(b))

NHTSA is committed to ensuring that local political subdivisions are an integral and valued part of State highway safety programs. Local participants have unique knowledge of the specific safety problems and a close connection to the communities that are ultimately served by the programs

funded by the highway safety grants. It is clear that Congress shares this goal, as evidenced by the longstanding statutory requirement that 40 percent of Section 402 grant funds apportioned to a State be expended by the State's political subdivisions to carry out local highway safety programs. See 23 U.S.C. 402(b)(1)(C). This statutory provision necessarily requires specific administrative effort to ensure that political subdivisions receive their share of Federal highway safety grant funds. The BIL amended the operation of this provision by removing the requirement that the local highway safety programs to be funded be approved by the Governor while retaining the rest of the local expenditure requirement. In response, the NPRM proposed a new framework for this statutory requirement.

GHSA expressed general support for reform of the local expenditure requirement provided it resulted in less burden for States and subrecipients. However, GHSA took issue with NHTSA's view that the BIL amendment nullified one of the existing regulatory avenues for States to demonstrate participation by political subdivisions, stating that political subdivisions should still be allowed to request safety expenditures on their behalf. NHTSA disagrees. The prior construction of the requirement depended on a request by a political subdivision that was connected to an approved local highway safety program. Without that connection, there is no remaining link to demonstrate substantive political subdivision participation. Moreover, the BIL's amendments were not the only impetus for reconceptualizing the regulatory implementation of the local expenditure requirement. As noted in the NPRM, the proposed change was also informed by the new triennial framework for highway safety programs, NHTSA's historical experience administering this requirement, and comments received through the RFC (addressed in the NPRM).

Several commenters²⁴ stated that the new process would increase burdens for States and localities by creating unnecessary administrative requirements. Congress' imposition of a local expenditure requirement necessarily adds procedural responsibilities that States must address. In NHTSA's view, active participation in the selection of projects by the citizenry in local jurisdictions is a desirable objective that should be welcomed in efforts to deploy grants to improving highway safety. NHTSA

recognizes that this requirement poses some challenges, but believes that the proposed procedures are less burdensome than commenters fear. Below, we walk through these procedures.

States have three methods to demonstrate that expenditures qualify as local expenditures: (1) direct expenditure by a political subdivision; (2) expenditure on behalf of a subdivision where the political subdivision is involved in the highway safety planning process; (3) expenditure on behalf of a political subdivision where the political subdivision directs expenditure through a documented request.

The first method—direct expenditures—requires no further explanation because it is well-understood by States and political subdivisions and unquestionably falls within the statutory requirement. However, NHTSA has long recognized that in some cases, it may be advantageous for political subdivisions to allow States to expend grant funds on their behalf. This enables smaller political subdivisions that may have fewer resources to direct grant funds toward their highway safety needs and allows political subdivisions, in general, to benefit from the economies of scale that a State-run program can provide. That said, because the statute provides that funds must be expended by political subdivisions, it is incumbent on NHTSA and the States to ensure that there is adequate documentation that the political subdivision was involved in identifying its traffic safety needs and provided input into the implementation of the activity. Following are examples of how a State can demonstrate that expenditures on behalf of a political subdivision qualify as local expenditures.

Under the second method identified above, the State may provide evidence that the political subdivision was involved in the State's highway safety program planning processes. States can incorporate this into existing processes, such as the public participation component of the triennial HSP, the planning process to determine projects for annual applications, or during the State's ongoing program planning processes. For example, a representative of a local school board might attend a virtual public engagement session for the State's triennial HSP planning process and speak to the need for impaired driving educational programs to be provided to students in that district. The input by the school board at that time could simply consist of a broad statement of need for an

²³ GHSA, MN DPS, and NV OTS.

²⁴ DE OHS, GHSA, MN DPS, and NV OTS.

educational program related to impaired driving in that district. If the State wanted to determine whether other school districts had a similar need, it could plan a specific virtual public engagement on the need for educational programs in schools and invite all school districts in the State or regions of the State to participate. The State would enter into projects based on the identification of need and implementation notes by the school board during the planning process. Finally, to ensure that the activities implemented meet the needs of the specific political subdivision, the State would obtain written confirmation of acceptance by the school board for the project that the State implements.

Under the third method described above, the State may demonstrate that a political subdivision directed the expenditure of funds through a documented request by the political subdivision for an activity to be carried out on its behalf. As noted in the NPRM, the request need not be a formal application, but must contain a description of the political subdivision's problem identification and a description of how or where the activity should be deployed within the political subdivision. For example, a representative of a town's government could submit a request to the SHSO via letter or email showing that the town has increased traffic crashes associated with a large sporting event held in the area and requesting increased enforcement to be conducted by the State's highway patrol during those events. It might also request that the State carry out an accompanying media campaign leading up to and during those times. If the town government has trouble identifying the data to document the problem, the State may offer technical assistance.

The key in all situations where the State is relying on expenditures on behalf of political subdivisions to qualify as a local expenditure is the connection between the need identified and activity requested by the political subdivision and the project that the State, or another entity, carries out on the political subdivision's behalf.

Some comments suggest a misunderstanding of the fundamental premise of the local expenditure requirement. NV OTS argued that it is too difficult for the State to process and for NHTSA to verify documentation that supports the required political subdivision involvement, and argued that NHTSA should allow States to allocate resources based on problem identification without the burden of proving political subdivision

involvement. MoDOT argued that NHTSA should allow statewide programs with local benefit to qualify as local expenditure. However, it was clearly the intent of Congress, sustained over decades, that State highway safety programs ensure that Federal funds make their way into the hands (and decision-making authority) of political subdivisions. The new BIL requirements concerning public input only serve to reaffirm and amplify this interest in greater participation in decision-making, and NHTSA has a responsibility to ensure that this statutory command for local participation is effectively carried out. The statutory requirement is focused on the *expenditure* of funds by political subdivisions, not merely on local benefit.

Several commenters²⁵ argued that many localities do not have sufficient resources to participate in the highway safety planning process or to submit a detailed request for expenditures on their behalf and worried that the new requirements would risk losing local participants in State highway safety programs. The requirement for local participation is not inherently burdensome for local participants, and in any event, is an obligation imposed by statute. The State is simply required to obtain identification of need and a request for activities to be conducted, whether during the State's highway safety planning process or as a direct request from the political subdivision. A State could even solicit requests, and provide a template for requests from political subdivisions. Under the BIL, as before, States have a responsibility to ensure that political subdivisions have the ability to participate in the highway safety program. Whether it is at the planning level, via the meaningful public engagement requirement, or through a request that the State execute a project on behalf of a political subdivision, States have many opportunities to work with localities to support their needs and meet the local expenditure requirement. States can and should conduct outreach and provide assistance to locals throughout the planning and project development such processes, and NHTSA is available to assist States in these efforts.

GHSA requested that NHTA allow groups of localities to request expenditures on their collective behalf. MN DPS explained that in many grants, multiple local agencies partner to conduct activities and that it would be difficult for the State to have each participating political subdivision

participate in the triennial HSP planning process. NHTSA notes that the proposed definition of political subdivision adopted in this rule includes associations comprised of representatives of political subdivisions acting in their official capacities. Similarly, a group of localities may submit a joint request for activities that meets the requirements of § 1300.13(b)(3)(ii), so long as it is signed by each locality or a duly authorized representative of the group.

GHSA also noted that States have found more efficient ways of reaching localities than the local expenditure mechanism by using agreements with non-profit entities. NHTSA notes that a State may use an agreement with a non-profit entity to carry out expenditures on behalf of political subdivisions provided there is sufficient documentation under § 1300.13(b)(3) to demonstrate that the political subdivisions were involved in identifying their traffic safety needs and provided input into the implementation of the activity.

Finally, in response to a comment to the RFC, the NPRM noted that State-sponsored communication efforts tied to high visibility enforcement (HVE) campaigns may never qualify as local expenditures. Several commenters²⁶ expressed strong disagreement with this position, arguing that media campaigns are an integral part of high visibility enforcement whose benefits extend to localities throughout the State. The agency notes that it is possible for some costs under a program to qualify as local expenditures while other costs do not. Local law enforcement participation in HVE campaigns via enforcement subawards qualifies as a direct expenditure by political subdivisions. States, however, are directly responsible for carrying out the associated statewide advertising campaigns, although they may do so via a contract. Contracts for statewide HVE media campaigns, even if made with political subdivision, do not qualify as local expenditures because they are, by definition, an extension of State performance. *See* 2 CFR 200.331. NHTSA has added regulatory text to clarify that direct expenditures for media efforts may be credited to political subdivisions only if those expenditures are made under a subaward from the State. Note that this restriction on media campaigns applies only to *statewide* media efforts associated with HVE campaigns. States are encouraged to enter into subawards with political subdivisions to carry out targeted local media campaigns, and the

²⁵ DE OHS, GHSA, MN DPS, and NV OTS.

²⁶ CT HSO, DE OHS, GHSA, and MN DPS.

costs of such efforts would qualify as local expenditures.

3. Congressionally Specified Uses of Funds (23 CFR 1300.13(c–g))

The BIL amended the prohibition on funding automated traffic enforcement systems. 23 U.S.C. 402(c)(4). Pamela Bertone urged that laws related to speed camera placement be changed, and also recommended using police officers as “mobile cameras” that write digital citations instead of making a traffic stop. Congress and the States—not NHTSA—have the authority to pass laws, and NHTSA lacks the discretion to compel issuance of “digital citations.” NHTSA has incorporated BIL language that specifically defines automated traffic enforcement systems as a camera and specifically excludes devices operated by law enforcement officers. *See* 23 U.S.C. 402(c)(4)(A) and 23 CFR 1300.3.

VI. National Priority Safety Program and Racial Profiling Data Collection (Subpart C)

The Section 405 and Section 1906 grant programs provide incentive grants that focus on National priority safety areas identified by Congress. Under this heading, NHTSA responds to comments related to the grants under Section 405—Occupant Protection, State Traffic Safety Information System Improvements, Impaired Driving Countermeasures, Distracted Driving, Motorcyclist Safety, Nonmotorized Safety, Preventing Roadside Deaths, and Driver and Officer Safety Education, as well as the Section 1906 grant—Racial Profiling Data Collection, as applicable.

GHSA reiterated its request under the RFC that NHTSA create a complete qualification checklist for each Section 405 grant program in order to assist States in developing and providing the required information, and clarified that this checklist could be provided as guidance rather than as part of the final rule. The agency again declines to adopt this request. As noted in the NPRM, appendix B is formatted to serve as the application framework for States and provides a list of application requirements at a high level similar to a checklist. However, States remain responsible for reading and complying with the relevant statutory and regulatory text, which contain the full details of application criteria and qualification requirements. A separate checklist could lead States to overlook important aspects of application requirements.

A. General (23 CFR 1300.20)

The 5-State DOTs noted their support for the NPRM provisions that ensure

that any unawarded Section 405 grant funds are transferred to the Section 402 program and encouraged NHTSA to retain those provisions in the final rule. This is a statutory requirement and NHTSA retains those provisions without change in this final rule.

B. Maintenance of Effort (23 CFR 1300.21, 1300.22 and 1300.23)

The 5-State DOTs acknowledged that NHTSA removed the Maintenance of Effort (MOE) requirement in the NPRM and requested that NHTSA retain that change. The BIL removed this requirement, and therefore NHTSA retains that change.

C. Occupant Protection Grants (23 CFR 1300.21)

The BIL removed the maintenance of effort requirement that was in effect under the FAST Act, extended the period of time between assessments for the assessment criterion for lower seat belt use states, and expanded the allowable uses of funds under this grant program. In the NPRM, NHTSA proposed amendments to the existing regulatory language to implement those changes and to update existing requirements to align with the new triennial HSP and annual application framework. NHTSA received no comments related to the occupant protection grants and therefore proposes no further changes to the regulatory text in this final rule.

D. State Traffic Safety Information System Improvements Grants (23 CFR 1300.22)

The BIL streamlined the application requirements by allowing States to submit a certification regarding the State traffic records coordinating committee (TRCC) and the State traffic records strategic plan and removing the FAST Act requirement that States have an assessment of their highway safety data and traffic records system. States must still submit documentation demonstrating a quantitative improvement in relation to a significant data program attribute of a core highway safety database. The BIL removed the maintenance of effort requirement that was in effect under the FAST Act and expanded the allowable uses of funds under this grant program.

AAMVA expressed general support for this grant program, including the changes made by the BIL and proposed in the NPRM. AAMVA sought clarification regarding how a State can quantify a previously unavailable data element as a contributing element to a program that previously did not use that data, and sought guidance on how to

incorporate new data to augment safety programs. First, NHTSA encourages States to consider making improvements to the completeness or integration of their traffic safety information systems and specifically points States to two NHTSA publications that set forth model minimum data elements in State traffic safety information systems: the Model Minimum Uniform Crash Criteria (MMUCC) and the Model Inventory of Roadway Elements (MIRE). While these publications do not list every single data element that may be useful for a State highway safety program, they provide an important set of data elements for the crash and roadway data systems, respectively, and are a strong tool for greater uniformity between and among State data systems. Second, NHTSA confirms that States may add a new, not previously included, data element to demonstrate the required quantitative improvement for their Section 405(c) applications. Depending on the specific circumstances of the improvement, a State may be able to demonstrate a baseline period consisting of no (or “zero”) data element paired with a performance period showing either full or partial incorporation of that data element into the system. These clarifications do not require amendments to the regulatory text, so NHTSA makes no changes to the proposed language.

E. Impaired Driving Countermeasures Grants (23 CFR 1300.23)

The BIL made targeted amendments to the impaired driving countermeasures grant programs, with the most significant changes occurring to the interlock grant program, including allowing additional means of compliance and a use of funds section that adds several funding categories.

1. Qualification Criteria for Mid-Range and High-Range States (23 CFR 1300.23(e) and 23 CFR 1300.23(f))

In the NPRM, NHTSA explained the basic requirements for States to receive an impaired driving countermeasures grant. The qualifying criteria in the BIL remain focused on the State’s average impaired driving fatality rate and a determination of whether the State qualifies as a low-, mid-, or high-range State. For low-range States, the agency’s proposal provides for the submission of assurances, while States with higher fatality rates are required, at a minimum, to establish an impaired driving task force and develop and submit a statewide impaired driving plan. The agency continues the streamlined aspects of the application process, noting that all that is required

is the submission of a single document—the statewide impaired driving plan (in addition to any required assurances and certifications).

The agency explained in the NPRM that it had reviewed the prior implementation of these terms and determined that some changes were necessary to ensure that States with higher average impaired driving fatality rates continue to take a sufficiently comprehensive approach. For the impaired driving plan, required for mid- and high-range States, the proposal specified that the plan should continue to be organized in accordance with NHTSA's Uniform Guidelines for State Highway Safety Programs No. 8—Impaired Driving.²⁷ The proposal reinforced the concept that overall program management and strategic direction are features of the plan, as well as community engagement and involvement in coalitions. Although States are free to address other related areas, the impaired driving plan must consist of sections covering program management and strategic planning; prevention, including community engagement and coalitions; criminal justice systems; communications programs; alcohol and other drug misuse, including screening, treatment, assessment and rehabilitation; and program evaluation and data. The agency received no comments on the proposed changes to the impaired driving plan.

As part of its proposal, the agency also revised the requirements associated with the statewide impaired driving task force by identifying additional key members, explaining that the fields identified help ensure that the required impaired driving plans remain comprehensive. In addition to key stakeholders from the State highway safety office, State and local law enforcement, and representatives of the criminal justice system, the agency's proposal added stakeholders from the following groups to align with the components of the impaired driving plans: public health, drug-impaired driving countermeasures (such as a DRE coordinator), and communications and community engagement.

In response to these proposed additions, the agency received comments from GHSA, the Coalition of Ignition Interlock Manufacturers, and

Mitchell Berger. GHSA thought the inclusion of the additional groups was “arbitrary” and identified other groups that could be included as part of a comprehensive task force requirement. GHSA also stated that the change to increase the task force membership was not dictated by the statute and that the agency should show more deference to States on task force membership. Generally, the agency's proposal does defer to States on task force membership and the process by which the task force creates the impaired driving plan. NHTSA's intent was to identify broad stakeholder groups, without imposing other requirements such as experience or background for individuals or even the process by which the State identifies a particular individual to a group. In a few areas, the proposal used terms specific to a particular skillset such as an expert or specialist. Since our intent was to identify broad groups only, these terms have been removed in the final rule. § 1300.23(e)(1)(ii)(E) and § 1300.23(e)(1)(ii)(F).

The agency also continues to defer to the States on the process used to create the plan itself. However, as the agency explained, it reviewed the plan and task force requirements under the BIL to make sure they align with each other and keep pace with the evolving nature of impaired driving problems across the nation. The agency is concerned about the increasing number of impaired driving fatalities, including those that are associated with a rise in drug impairment. When the task force requirement was originally implemented nearly 10 years ago, the agency focused mostly on ensuring that members of law enforcement and the criminal justice system were represented. We understand now that other disciplines must be part of the process. As the agency explained in its proposal, the newly identified groups align with a specific part of the required impaired driving plan—*i.e.*, communications and community engagement respond to the plan requirements on communications and prevention; public health aligns with alcohol and drug misuse; and drug impaired driving countermeasures align with alcohol and drug misuse and criminal justice systems. Although the agency identified specific groups as a minimum baseline, States are free to add other groups.

The Coalition of Ignition Interlock Manufacturers requested that their members be considered as a group for inclusion on task forces as opposed to making a more general reference to ignition interlocks. With the exception of the State highway safety office, the

agency has not identified specific groups or organizations for inclusion on task forces under these requirements and we decline to take that approach now. We believe it is more appropriate to maintain flexibility and identify only broad stakeholder areas from which the State are free to select individual members. In addition to the specific areas identified in the requirement, as we have noted in the past, States may consider adding individual members from areas representing 24–7 sobriety programs, driver licensing, data and traffic records, ignition interlock, treatment and rehabilitation, and alcohol beverage control. This is not meant to be an exhaustive list, however, and States retain significant discretion to determine the groups to be represented on the required task force, subject only to ensuring that the specified areas are covered.

Mitchell Berger urged that the task force requirements be revised to include “behavioral health providers,” such as “psychiatrists, child and adolescent psychiatrists, addiction psychiatrists, addiction medicine specialists, psychologists, licensed clinical social workers, licensed professional counselors, and marriage and family therapists.” He stated that this type of expertise is necessary to address the parts of an impaired driving plan that focus on prevention, screening and treatment. In general, NHTSA agrees that a State should consider adding such expertise to its task force, provided the focus of the task force remains on confronting the problems of impaired driving. In recognition of the value of this and similar expertise, the NPRM includes public health as one of the broad groups that must be represented in some way on the task force, while stopping short of prescriptive language to afford flexibility.

GHSA sought clarification about whether the HSP is the appropriate reference for an Appendix B provision that covers high-range States and their responsibility to submit updated information on an annual basis in the HSP. We confirm that the proposal inadvertently retained the reference to the HSP from the prior rule. The agency has revised the reference to indicate that the updated information must be provided in the annual grant application, consistent with the statutory requirement.

2. Grants to States With Alcohol-Ignition Interlock Laws (23 CFR 1300.23(g))

The NPRM explained that the BIL continued a grant from prior authorizations providing grant funds to

²⁷ One commenter provided an out-of-scope comment for this rulemaking requesting that the agency revise Guideline No. 8 to be more inclusive of behavioral health providers with more focus on the treatment of alcohol and substance abuse. The agency notes the information provided and will consider it as part of any effort to revise Guideline No. 8.

States that adopted and enforced mandatory alcohol-ignition interlock laws for all individuals convicted of a DUI offense. In addition to the existing qualification criterion, the BIL added two alternate methods of compliance, allowing a State to receive a grant if it restricts driving privileges of an individual convicted of driving under the influence of alcohol or of driving while intoxicated until the individual installs on each motor vehicle registered, owned, or leased an ignition interlock for a period of not less than 180 days; or, separately, if the State requires an individual that refuses a test to determine the presence or concentration of an intoxicating substance to install an interlock for a period of not less than 180 days. The latter criterion also requires the State to have a compliance-based interlock removal program that requires an individual convicted of a DUI to have an interlock installed for not less than 180 days and to serve a minimum period of interlock use without program violations before removal of the interlock. 23 U.S.C. 405(d)(6)(ii)–(iii). Due to some confusion over preamble language in the NPRM, the Coalition of Ignition Interlock Manufacturers and Responsibility.org sought confirmation that the agency's proposal implements three separate compliance methods for the grant. NHTSA confirms that, consistent with the BIL, the NPRM proposes three ways for a State to achieve compliance. In response to these comments, the agency has reviewed its proposal and determined that no changes to the regulatory text are necessary.

3. Use of Grant Funds (23 CFR 1300.23(j))

As noted in the NPRM, the BIL specified the eligible uses of grant funds and the agency's proposal included them without change. The agency received two comments regarding the use of grant funds. The Coalition of Ignition Interlock Manufacturers stated that "impaired driving enforcement is an activity the agency should aggressively support and fund . . . [and] reject any attempts to redirect funding to other activities." The eligible uses of these grant funds under BIL are broader than impaired driving enforcement. States may use impaired driving countermeasures grant funds for any of the purposes identified in the statute. Consistent with its longstanding approach, the agency declines to prioritize the uses and States may use grant funds for any activities that meet applicable requirements.

In developing its proposal, the agency responded to a comment regarding a new BIL provision that allowed grant funding to be used to provide compensation for a law enforcement officer to carry out safety grant activities while another law enforcement officer is temporarily away receiving drug recognition expert training or participating as an instructor in drug recognition expert training (the "backfill" provision). The comment sought expansion of the provision to compensate officers who are not involved in grant eligible activities. As the agency explained in the NPRM, the backfill provision allows police agencies to send officers to training without sacrificing overall levels of service, but the law expressly limits compensation to law enforcement officers that carry out *highway safety grant activities*. 23 U.S.C. 405(d)(4)(B)(iii).

Responsibility.org opposed the approach of limiting funding to compensating officers carrying out safety grant activities. The commenter urged "NHTSA to reassess the legislative intent authorizing the use of grant funds to allow for backfills to include both safety and non-safety grant activities."

Where the statute is clear, as it is in this case, the agency does not have authority to follow another approach or expand the statutory language, which is what the comment asks the agency to do. Accordingly, we decline to make this change in the final rule. In NHTSA's view, Congress limited the backfill provision to traffic safety activities so that NHTSA grant funds remain connected to their traffic safety purpose. We note that the traffic safety activities that would allow for compensation need not be limited to alcohol impaired driving countermeasure activities under Section 405d; any NHTSA-funded traffic safety activities may be eligible. However, because the statute hinges the ability to backfill on whether the officer to be replaced is out for DRE training or to serve as a DRE instructor, it is likely in the majority of instances that backfill compensation would apply to impaired driving activities.

F. Distracted Driving Grants (23 CFR 1300.24)

As noted in the NPRM, few States qualified for a distracted driving grant under the statutory requirements of MAP-21 and the FAST Act. The BIL resets the distracted driving incentive grant program by significantly amending the statutory compliance criteria. The statute establishes two types of distracted driving grants—distracted driving awareness on the driver's

license examination and distracted driving laws. A State may qualify for both types of distracted driving grants. As proposed in the NPRM, a State may qualify for a distracted driving law with four different types of laws: (1) prohibition on texting while driving; (2) prohibition on handheld phone use while driving; (3) prohibition on youth cell phone use while driving; and (4) prohibition on viewing a personal wireless communications device while driving.

In response to the NPRM, NHTSA received only two comments, both from GHSA regarding technical corrections to Part 6 of appendix B, under the heading "Prohibition on Viewing Devices While Driving". The agency accepts those technical corrections, removing the apostrophe from "driver's" and aligning the legal citation requirement to match the statutory language to read "prohibition on viewing devices while driving". In addition, NHTSA makes an additional technical correction to Part 6 of appendix B—removing the requirement to identify exemptions for State laws banning viewing devices while driving. This correction aligns Part 6 of appendix B with the regulatory text in § 1300.24(d)(4)–(5).

G. Motorcyclist Safety Grants (23 CFR 1300.25)

Under BIL, Congress amended the Motorcyclist Safety Grants by adding a new criterion for a State to qualify for a grant if it has a helmet law that requires the use of a helmet for each motorcycle rider under the age of 18, and made a minor terminology change to "crash" from accident in two paragraphs. The NPRM proposed amendments to incorporate these changes and to update references for the new triennial framework. NHTSA received no comments related to the motorcycle safety grants and therefore proposes no further changes to the regulatory text in this final rule.

H. Nonmotorized Safety Grants (23 CFR 1300.26)

The BIL changed the nonmotorized safety grant program with a revised definition of nonmotorized road user to include, not just pedestrians and bicyclists, but also an individual using a nonmotorized mode of transportation, including a bicycle, scooter, or personal conveyance and an individual using a low-speed or low-horse powered motorized vehicle, including an electric bicycle, electric scooter, personal mobility assistance device, personal transporter, or all-terrain vehicle. In addition, the BIL made significant amendments to the use of funds for the

nonmotorized safety grant program, providing States with additional flexibility to use behavioral safety countermeasures that will best address the nonmotorized road user problem, both at the State level and at the local level.

NHTSA received three comments regarding the nonmotorized safety grants. GHSA and the League of American Bicyclists both commented on the requirement to identify projects and subrecipients in the annual grant application. In the NPRM, the agency proposed changing the self-certification as the application for a nonmotorized safety grant that existed under the previous regulation and requiring States to submit a list of project(s) and subrecipient(s) information in the fiscal year of the grant consistent with § 1300.12(b)(2). NHTSA proposed this change to align the application requirements with the other highway safety grants. The League of American Bicyclists agreed with the proposed change stating that this information would improve understanding of funding uses, facilitate comparisons and best practices, and align with other grant programs. GHSA agreed that the proposal aligned with other application requirements, but requested further justification for the additional burden this would impose on States because there were no changes in the underlying statute.

NHTSA disagrees that there were no changes to the underlying statute. Not only did the statute change the definition of nonmotorized user, the basis for determining eligibility for a grant, but it also significantly expanded the eligible use of grant funds for a nonmotorized safety grant. Previously, the FAST Act limited the use of funds to activities related to *State* traffic laws on pedestrian and bicycle safety, such as law enforcement training, mobilizations and campaigns, and public education and awareness programs. However, BIL's broadened eligible use of funds provide States with the flexibility to use behavioral safety countermeasures that will best address the nonmotorized road user problem, both at the State level and at the local level. In addition to aligning with the other grant application requirements, project-level details allow NHTSA to evaluate whether the submitted projects are sufficient to reasonably carry out the countermeasure strategies in the State's triennial HSP and to check for high-level regulatory compliance issues. This information is also needed to identify projects against later submitted vouchers. Accordingly, NHTSA declines to amend the grant application

requirement set forth in the NPRM in response to GHSA's comment.

The League of American Bicyclists also commented that NHTSA should publish or share information on the use of nonmotorized safety grant funds for educational efforts on the interaction between the built environment and behavior. The BIL requires NHTSA to establish a public website that publishes each State's triennial HSP, performance targets, and evaluation of a State's achievement of performance targets. *See* 23 U.S.C. 402(n)(1). The statute also requires that the public be provided a means to search the public website for "program areas and expenditures". *See* 23 U.S.C. 402(n)(2)(B)(III). Consistent with this requirement, NHTSA expects to publish information about State expenditures supporting the triennial highway safety plan, including grant expenditures from Section 405 grants, on this public website. No changes to the final rule are necessary in response to this comment.

I. Preventing Roadside Deaths Grants (23 CFR 1300.27)

The BIL created a new preventing roadside deaths grant program, authorizing grants to prevent deaths and injuries from crashes involving motor vehicles striking other vehicles and individuals stopped at the roadside.

HAAS Alert expressed concern that countermeasure strategies for 23 U.S.C. 405(h) are not available in NHTSA's *Countermeasures That Work* and noted that it is unclear when the guidance will be updated to include a section related to preventing roadside deaths. It recommended that NHTSA offer guidance on this program or offer amended or separate guidance as soon as possible to guide State applicants. HAAS Alert also noted that, due to the limited guidance on countermeasures, NHTSA should minimize administrative burden to avoid constricting States and permit maximum flexibility.

As with any new traffic safety program, proven and effective countermeasures may be unavailable at the nascent stages. NHTSA encourages States to use data-driven, innovative approaches, and will support a State that seeks to implement a preventing roadside deaths grant. NHTSA's traffic safety grant programs provide flexibility for States to run programs that respond to their problem identification; however, a State should design a new program that is based on the provisions of the authorizing statute and implementing regulations for effective execution and sustained success.

1. Definitions (23 CFR 1300.27(b))

The MN DPS recommended that NHTSA increase flexibility by using broad language and terms for the preventing roadside deaths grants, taking into consideration the continually evolving technology. Similarly, GHSA recommended that the definition of "digital alert technology" be further generalized to better reflect the statute (which does not specify that alerts pertain to vehicles, that the vehicles be stopped at the roadside, or the specific means by which a motorist would receive an alert) and to anticipate future potential technological developments. HAAS Alert suggested that "digital alert technology" be expanded to include "roadside professionals" other than first responders (State-owned, contracted, or funded fleets and roadside workers like roadside assistance/towing providers, construction and work zone crews, school busses, snowplows, etc.). HAAS Alert added that these "roadside professionals" face the same risk as first responders, and drivers must slow down and move over in nearly every State.

NHTSA agrees that the definition of "digital alert technology" should not limit the technology to a specific type or be limited to certain locations. By removing such potential limitations, States will have the flexibility to develop innovative strategies to prevent roadside deaths. Accordingly, NHTSA is amending the definition as follows: "Digital alert technology means a system that provides electronic notification to drivers." Note that the agency removed the term "first responders" since the statutory language specifically addresses the capability of the technology to reach these road users. We decline to expand the definition to include "roadside professionals" as proposed by HAAS Alert, to avoid appearing to single out particular categories of individuals.

GHSA commented that NHTSA does not need a definition of "public information campaign" because it is a commonly understood term similar to other terms NHTSA did not define, such as "educating the public," "paid media," "earned media," "education campaign," "advertising," and "public awareness." In contrast to GHSA, HAAS Alert requested that NHTSA specifically clarify that the definition of "public information campaign" must include digital alert technology, because HAAS Alert contends that the technology is itself a messaging delivery mechanism for traffic safety issues.

After consideration of these comments, NHTSA retains the definition of “public information campaign” as proposed in the NPRM. In our experience, “public information campaign” is not a commonly understood term and does not have a uniform meaning among States. NHTSA believes that a definition will provide a baseline for States that will facilitate the education of motorists when using funds pursuant to paragraph 1300.27(e)(2). We also believe that HAAS Alert’s proposal to compel digital alert technology would limit States’ broad flexibility to educate the public as contemplated by Congress. If NHTSA required a specific mechanism in the deployment of public information campaigns, it would unduly limit options, curtail innovation, and potentially reduce the reach of campaigns to educate the public.

2. Qualification Criteria (23 CFR 1300.27(c))

GHSa commented that the proposal’s detailed requirements for the plan that States would be required to submit are similar to the requirements that States would have to meet under sections 1300.11(b) 1, 3 and 4. GHSa proposes that if a State establishes this information and underpins the basis of a roadside safety program in its triennial HSP, it should be able to refer back to the triennial HSP. GHSa contends this is an approach similar to the approach for other Section 405 grant programs, with the project information included in the annual grant application. The MN DPS echoed these comments.

NHTSA’s proposed approach for a plan that includes minimum requirements separate from the triennial HSP is consistent with the statute and other 405 grant programs. To obtain a preventing roadside deaths grant, a State must submit annually a plan that describes how the State will use the grant funds. See 23 U.S.C. 405(h). Consistent with the statute, NHTSA believes it is appropriate for a State to provide minimum information in the annual grant application, consistent with 23 CFR 1300.12(b)(3), to permit NHTSA to determine whether a State will use the funds appropriately for the fiscal year of the grant. Other 405 grants, such as Occupant Protection, State Traffic Safety Information System Improvement, and Motorcyclist Safety also require the submission of specific performance targets and countermeasure strategies without reference to the triennial HSP. While we have made some minor, non-substantive editorial changes, NHTSA adopts section 1300.27(c) as proposed.

3. Use of Grant Funds (23 CFR 1300.27(e))

NHTSA received three comments related to the use of preventing roadside deaths grant funds from GHSa, the MN DPS and HAAS Alert.

GHSa recommended that NHTSA address whether 1300.27(e)(5) (funding efforts to increase the visibility of stopped and disabled vehicles) authorizes States to purchase equipment or safety items for public distribution as defined in NHTSA’s 2016 Guidance on Use of NHTSA Highway Safety Grant Funds for Certain Purchases,²⁸ such as vehicle reflectivity gear. The MN DPS requested further clarification about the allowable use of funds for all equipment purchases under the grant.

NHTSA declines to address authorization for purchase of specific items of equipment under the preventing roadside deaths grant generally and, specifically, under section 1300.27(e)(5) at this time. As mentioned previously in this preamble, NHTSA recognizes that some existing guidance may require modification or rescission as a result of changes to the statute and this rule. We intend to begin reviewing existing guidance after this rulemaking is complete and will consider the comments from GHSa and MN DPS at that time. Until that time, however, we note that the 2016 guidance provides that States may purchase items whose *sole purpose* is to improve highway safety, provided those items are specifically identified in a project agreement and based on problem ID. All equipment purchases must be necessary for the purpose of a project that is based on problem identification, performance measures and targets, and countermeasure strategies, and must be consistent with the provisions in 2 CFR part 200 and 1201, and 23 CFR 1300.31.

HAAS Alert requested that NHTSA amend or remove three types of eligible use (public education, enforcement efforts, and State records) since they are already eligible for funding under other 402 and 405 programs. HAAS Alert speculates that States will allocate their funding to already-existing efforts instead of innovative life-saving equipment. HAAS Alert also commented that less emphasis should be given to enforcement as a traffic safety countermeasure. NHTSA declines to amend, deemphasize, or remove the three types of eligible uses identified in 1300.27(e)(2)–(4), as those three uses are specifically authorized by the statute.

²⁸ Publicly available on NHTSA’s website at <https://www.nhtsa.gov/laws-regulations/guidance-documents>.

J. Driver and Officer Safety Education Grants (23 CFR 1300.28)

The BIL created a new driver and officer safety education grant program, authorizing incentive grants to States that enact and enforce laws or adopt and implement programs that include certain information on law enforcement practices during traffic stops in driver education and driving safety courses or peace officer training programs, or that have taken meaningful steps to do so. 23 U.S.C. 405(i).

The BIL provides that States may qualify for a driver and officer safety education grant in one of two ways: (a) with a current law or program that requires specified information to be provided in either driver education and driving safety courses or peace officer training programs (*i.e.*, law or program State); or (b) for a period not to exceed 5 years, by providing proof that the State is taking meaningful steps towards establishing such a law or program (*i.e.*, qualifying State). 23 U.S.C. 405(i)(4). In the NPRM, NHTSA identified an incorrect reference within the proposed regulatory text, and has amended § 1300.28(g)(3) to provide that any funds remaining after the funding limitation in § 1300.28(g)(2) is applied to qualifying States will be redistributed to States that qualify for a grant under paragraph (d) (*i.e.*, law or program States).

The League of American Bicyclists requested that NHTSA make available to the public any documentation, including curricula, that States submit as part of their application for a driver and officer safety education grant so that the public can analyze the documents provided. They also requested that NHTSA publish a report about the documents submitted with applications for this grant. NHTSA will evaluate whether to publish these materials. NHTSA does not intend to publish a report on the documentation provided in State’s application materials at this time, but will keep this request in mind as the needs of the program develop.

K. Racial Profiling Data Collection Grants (23 CFR 1300.29)

The BIL continues the intent of the Section 1906 grant program, first established under Section 1906 of SAFETEA–LU, which is to encourage States to enact and enforce laws that prohibit the use of racial profiling in traffic law enforcement and to maintain and allow public inspection of statistical information regarding the race and ethnicity of the driver for each motor vehicle stop in the State. The BIL revised several aspects of the Section 1906 Program, including by removing

the limitation that a State may not receive a grant by providing assurances for more than 2 fiscal years and amending the limitation on the maximum amount of funds a State may receive under the grant.

The BIL also expanded the allowable uses of the grant funds awarded under the Section 1906 Program by allowing States to expend grant funds to develop and implement programs, public outreach, and training to reduce the impact of traffic stops. The League of American Bicyclists expressed appreciation for the expansion of allowable uses of funds and requested that NHTSA provide additional guidance on how States should differentiate between traffic stops and pretextual stops for the purposes of this grant program. NHTSA never condones a pretextual stop or racial profiling and, through the 1906 grant program, works to encourage States to enact and enforce laws that prohibit racial profiling in traffic law enforcement. When it comes to statistical information regarding the race and ethnicity of the driver in motor vehicle stops, the statute does not differentiate between stops that are pretextual in nature and those that are not. Indeed, the purpose of maintaining and allowing public inspection of data gathered about the race and ethnicity of drivers in *all* motor vehicle traffic stops is a step towards better understanding the problem that needs to be solved.

The League of American Bicyclists also suggested that the new, dedicated technical assistance for the Section 1906 grant program be conducted by a third-party, reasoning that it would provide more insight into best practices, barriers to State use of grant funds, or other issues. Annually, the BIL makes available up to 10 percent of Section 1906 grant funds to provide technical assistance to States. NHTSA is committed to providing technical assistance to States as they work to implement traffic safety programs, including Section 1906, and has many years of experience doing so. As part of this effort, NHTSA is currently in the process of procuring contract support, which may include assistance with information exchanges to discuss needs and opportunities, a repository of best practices, and a suite of assistance tools.

VII. Administration of Highway Safety Grants, Annual Reconciliation, and Non-Compliance (Subparts D Through F)

A. Amendments to the Annual Grant Applications (23 CFR 1300.32)

The CT HSO reiterated its prior comment expressing concern about the

amount of time it currently takes NHTSA to approve amendments to the HSP and asked that NHTSA consider changes to requirements for amendments to the annual grant application, such as potentially setting a funding threshold for requiring approval. NHTSA appreciates the feedback and will continue to strive to respond promptly to States. We acknowledge that the new requirement for States to submit project-level information in the annual grant application and to update it throughout the year will likely increase the number of amendments that States need to make and that Regional offices need to approve. In order to reduce this pressure, NHTSA has amended the regulatory language to provide that States may amend certain project level information in the annual grant applications (23 CFR 1300(b)(2)(iii–vii)) without the approval of the Regional Administrator unless prior approval is otherwise required under 2 CFR 200.407. Examples of amendments that require approval under 2 CFR 200.407 are specific costs related to equipment and changes to the amount of Federal funds that are significant enough to change the scope of the effort. The agency will provide further guidance.

With this change, States may amend the project agreement number, subrecipient information, amount of Federal funds, eligible use of funds, and whether the costs are P&A costs. We recognize that details such as these may evolve as a State finalizes implementation of its program, without affecting the fundamental nature and purpose of a project. However, any such changes must be consistent with the project name, purpose, and description, the Federal funding source(s), the countermeasure strategy for programming funds identified for the project, and, as noted earlier, not otherwise require approval under 2 CFR 200.407. NHTSA has also made edits to the title of this regulatory provision and conforming amendments to 23 CFR 1300.23(e)(2) to reflect that not all amendments require approval by the Regional Administrator.

B. Vouchers and Project Agreements (23 CFR 1300.33)

The NPRM proposed that, in addition to the information currently required to be in a voucher, States also provide the eligible use(s) of funds that the voucher covers. 23 CFR 1300.33(b)(3). This addition was intended to ensure that NHTSA has the information necessary to understand the costs that are being vouchered for prior to approving reimbursements and to assist

subsequent audits and reviews. GHSA commented that this addition would create substantial administrative burdens for States because they would need to update internal systems in order to add this information. GHSA also noted that this information is already required for the project information that States must include, and update, in the annual grant application.

Vouchers allow both the State and NHTSA to identify details about the expenditures for which a State is seeking reimbursement and to ensure that the expenditures match the project information provided in the State's annual grant application and meet Federal requirements. A voucher is separate and distinct from the project list in the annual grant application because it is tied to specific expenditures for which the State seeks reimbursement at a point in time, and it serves as the official request for reimbursement of expenses. Moreover, at the time of voucher submission, a State must necessarily be deemed to know, with certainty, the expenses for which it is submitting the voucher to the Federal Government. NHTSA therefore does not agree that it would pose a substantial burden for States to provide such information and declines to remove "eligible use(s)" of funds from the required voucher information. The information is necessary to ensure a proper audit trail.

We also, as explained above, made a minor edit to the regulatory text to reflect that not all amendments require approval by the Regional Administrator. Finally, we made a technical amendment to ensure consistent terminology related to the requirement for local expenditure.

C. Annual Report (23 CFR 1300.35)

As explained in the NPRM, consistent with OMB rules that apply to all Federal grants,²⁹ NHTSA has long required each State to submit an annual report providing performance and financial information on the State's activities during the grant year. 23 CFR 1300.35. The BIL codified the requirement and specified that the annual report must include an assessment of the State's progress in achieving performance targets identified in the triennial HSP and a description of the extent to which that progress is aligned with the State's triennial HSP. The BIL also provided that the State must describe any plans to adjust the strategy for programming funds in order to achieve performance

²⁹ Currently implemented at 2 CFR 200.328 and 200.329 (financial and performance reporting, respectively).

targets, if applicable. See 23 U.S.C. 402(l)(2).

GHSA, supported by the MoDOT, reiterated its prior comment requesting that NHTSA limit the annual report to the components explicitly required by the BIL. As NHTSA explained in the NPRM, the annual report serves many purposes for NHTSA's grant program, including implementing government-wide grant reporting rules issued by OMB. The annual report not only satisfies the requirements of the BIL, but it also serves as the State's required annual performance report, consistent with 2 CFR 200.329. It also satisfies the government-wide requirement that Federal award recipients must submit annual financial reports. See 2 CFR 200.328.³⁰ Finally, the contents of the annual report foster transparency in the results achieved with taxpayer funds.

NHTSA sought comment in the NPRM on whether a mandatory template for the annual report would be helpful for States. GHSA stated that the development of annual reports is a longstanding practice that would not benefit from a mandatory template. MN DPS argued that States should be allowed to continue to use their existing templates for annual reports. Based on these comments, NHTSA will not develop a mandatory template for the annual report, but cautions that, while States are welcome to use their own templates, an existing template based on the annual report requirements under the FAST Act will not satisfy the requirements for an annual report under this regulation and will need to be updated. Similar to other grant program submissions, NHTSA expects that the e-grant system that the agency plans to develop may provide a uniform submission format for this requirement in the future.

GHSA, MN DPS, and MoDOT recommended removing the proposed requirement that the annual report include a description of how the projects funded under the prior year annual grant application contributed to meeting the State's highway safety performance targets, and instead only require reporting of overall statewide performance progress. They argued that there is no legal basis to require a project-by-project analysis and that to do so would be burdensome because States have hundreds of individual project agreements. NHTSA agrees that it is not necessary for States to report progress on each project separately, but

that the State's assessment must nonetheless cover all activities (which may consist of a group of related projects) implemented by the State during the grant year, including projects carried out via subaward(s). We have amended the regulatory text to clarify that the State's performance assessment must include an analysis of all State activities. § 1300.35(a)(1)(ii). While States must assess the how all projects contributed to meeting the State's performance targets, they may do so by grouping related projects together into a single activity for assessment. Government-wide grant rules require that subrecipients submit performance reports to the State within 90 days of the end of the performance period. 2 CFR 200.329(c)(1). This deadline is intentionally set 30 days prior to the 120-day deadline for State performance reporting so that those results may be incorporated into the overall analysis conducted by the State.

GHSA noted that the proposal requires States to provide an explanation in both the annual grant application and the annual report of how the State plans to adjust countermeasure strategies to achieve performance targets if the State has not met or is not on track to meet those targets. It acknowledged that this duplication is based on the requirements of the BIL, but asked that NHTSA minimize duplication by allowing for high-level strategic planning in the annual report, with project-level plans in the annual grant application. As GHSA acknowledged, the BIL requires States to explain plans to adjust countermeasure strategies in both the annual report and annual grant application. NHTSA does not have discretion to ignore either statutory requirement. However, the two requirements are distinguishable as the State is required to provide *plans to adjust* the countermeasure strategy for programming funds in the annual report, but then to explain how the countermeasure strategy for programming funds was *actually adjusted* in the annual grant application. States have the flexibility to change or adjust their plans in the time between the annual report and the annual grant application, and the nature of their reporting in each of these documents should reflect these nuances.

GHSA provided several arguments for condensing or streamlining the activity report section of the annual report. GHSA requested that NHTSA link the triennial HSP, annual grant applications, and annual reports through implementation of an e-grants system, not through duplicative

reporting requirements. Both GHSA and MN DPS requested that NHTSA avoid duplicative reporting requirements and noted that some of the requirements in the activity report duplicate requirements in the annual grant application or vouchers. As explained in more detail below, NHTSA's intent in this rulemaking is to implement the BIL requirements, which include a strong link between the triennial HSP, annual grant applications, and annual reports, while avoiding unnecessary duplication.

GHSA specifically pointed to duplicative project information reporting that it argued is proposed in both 23 CFR 1300.12(b)(2), 23 CFR 1300.33(b) and 23 CFR 1300.35(b)(1)(i), and requested that NHTSA remove the requirement about project information from the annual report and instead require States only to provide an explanation of the projects that were not implemented in the year. NHTSA agrees that it is unnecessary to separately collect project information in both the annual grant application and the annual report, because States are required to maintain updated project information in the annual grant application throughout the course of the grant year. We have therefore removed the proposed requirement for States to provide a description in the annual report of the projects and activities funded and implemented for each countermeasure strategy and will rely on the project information in the annual grant application instead. In order to ensure that the project information is complete, NHTSA has added a statement that project information must be complete in the annual grant application at the time the State submits the annual report. 23 CFR 1300.12(d).

GHSA also pointed to the activity report requirements about the State's ongoing public engagement efforts proposed in the triennial HSP at 23 CFR 1300.12(b)(2) and also proposed in the annual report at 23 CFR 1300.35(b)(2), and requested that NHTSA eliminate this section of the annual report. GHSA stated that the BIL does not require States to link their projects to their engagement activities. NHTSA declines to eliminate the requirement to describe how public engagement efforts informed projects conducted during the grant year. However, we have made revisions to clarify that States need not describe how public participation and engagement efforts informed every individual project. Rather, States must describe the public participation and engagement efforts conducted during the grant year and explain how those efforts generally informed the projects

³⁰ NHTSA has an exemption that allows the agency to use its own financial reporting, instead of commonly used and OMB-approved Federal Financial Report. 2 CFR 1200.327.

implemented under the State's countermeasure strategies. § 1300.35(b)(2). As revised, the provisions in the triennial HSP and the annual report are now distinguishable, as the State is required to provide information on the public participation and engagement efforts that the State *plans* to undertake and how it *plans* to incorporate the comments and views received into State decision-making during the 3-year period in the triennial HSP, but then to provide a description of the public participation and engagement efforts *actually carried out* and how those efforts *actually informed* the State's program during the grant year in the annual report.

GHSA requested that NHTSA remove proposed activity report requirements related to activities covered by the certifications and assurances States provide with the annual grant application, arguing that certifications are designed to be attestations without supporting documentation. NHTSA disagrees with this view and declines to remove activity report requirements. As stated in the preamble to the NPRM, NHTSA implements several threshold grant requirements through certifications and assurances up front, but it is appropriate and important for grant oversight that NHTSA obtain year-end information to ensure that States have met those assurances. While certifications and assurances are front-end attestations at the time of application, States must be ready and able to provide documentation during and after performance that requirements have been met, in support of NHTSA's grant oversight responsibilities. Upon review of the assurances, however, the agency noted that one of the assurances reflects discontinued practice. Accordingly, the agency has removed the assurance that the State will submit information regarding mobilization participation into the HVE Database. As discussed below, that information is now reported by States in the annual report. See 23 CFR 1300.35(b)(4).

GHSA and MN DPS had several comments about the proposed evidence-based enforcement program requirements. The agency's proposal requires States to describe the evidence-based enforcement program activities in the annual report, including discussion of the community collaboration efforts and data collection and analysis required by the BIL. See 23 U.S.C. 402(b)(1)(E). GHSA, supported by MN DPS, recommended that the annual report focus on discussing community collaboration activities and efforts related to the BIL's requirement for evidence-based enforcement program

activities instead of discussing the State's evidence-based enforcement program activities including community collaboration and data collection and analysis. NHTSA believes that a discussion of community collaboration and data collection and analysis activities, without the added context of the full data-based enforcement program, would not sufficiently capture the way in which the community collaboration and data collection and analysis both inform and grow out of the data-based enforcement program. GHSA argued that requiring discussion of the data-based enforcement program is duplicative of the project list in the annual grant application. NHTSA disagrees. The annual report requirement provides narrative context to the activities conducted and links those activities to the State's responsibility to support enforcement programs that foster community collaboration and data collection and analysis. Accordingly, NHTSA makes no changes to the regulatory text proposed in the NPRM.

GHSA and MN DPS requested that NHTSA provide more information about the substance of the proposed requirement that States support data-based enforcement programs that foster effective community collaboration. Because those comments were tied to the annual report requirement to discuss these efforts, we address them here. GHSA argued that the proposed requirement for evidence-based enforcement programs should be limited to State program efforts, or at the countermeasure strategy level, not to individual enforcement programs. GHSA noted that this would be comparable to the public engagement requirements in the triennial HSP. NHTSA disagrees. As noted in the NPRM, the proposed requirement that States support enforcement programs that foster community collaboration is separate, though related, to the proposed requirement that State traffic safety programs result from meaningful public participation and engagement. The proposed community collaboration requirement is specifically placed on enforcement programs, not merely on the State's highway safety program. While States are not required to ensure that every single enforcement agency that receives a subaward undertakes community collaboration efforts related to the grant, States must discuss their efforts to facilitate community collaboration by enforcement agencies and discuss community collaboration efforts that do take place. NHTSA makes

no changes to the NPRM in response to these comments.

GHSA and MN DPS requested that NHTSA afford States flexibility in the manner in which they carry out the required community collaboration efforts. At the same time, MN DPS sought further guidance on what NHTSA expects to see in terms of community collaboration activities. While NHTSA supports flexibility and the regulatory language does not prescribe specific activities to meet the evidence-based enforcement program requirements, we note that States must meet the statutory requirement. The BIL requires that the State highway safety program must support data-driven traffic safety enforcement programs that foster effective community collaboration to increase public safety. See 23 U.S.C. 402(b)(1)(E)(i). As written, this requires the State to support *individual enforcement programs* that foster effective community collaboration. NHTSA expects States to, at a minimum, also discuss actions that enforcement programs in the State have taken to facilitate community collaboration during the grant year. This provision is essential to ensuring that highway safety programs carried out by law enforcement agencies are equitable and community-based. While there certainly are actions that States can undertake or sponsor to facilitate community collaboration in enforcement programs within the State, an annual report discussion focused only on State-level programs or countermeasure strategies would be insufficient to ensure that States are meeting the requirement to facilitate evidence-based enforcement programs that foster community collaboration throughout the State.

Finally, GHSA requested that NHTSA clarify what information States are expected to have on file related to community collaboration during NHTSA oversight activities. While the specific documentation may vary depending on specific circumstances, the documentation on file must demonstrate that the State is satisfying the statutory requirement and must support the narrative description provided in the State's annual reports.

VIII. Regulatory Analyses and Notices

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

NHTSA has considered the impact of this rulemaking action under Executive Order 12866, Executive Order 13563, and the Department of Transportation's

regulatory policies and procedures. This rulemaking document was not reviewed under Executive Order 12866 or Executive Order 13563. This action establishes revised uniform procedures implementing State highway safety grant programs, as a result of enactment of the Infrastructure Investment and Jobs Act (IIJA, also referred to as the Bipartisan Infrastructure Law or BIL). While this final rule would establish minimum criteria for highway safety grants, most of the criteria are based on statute. NHTSA has no discretion over the grant amounts, and its implementation authority is limited and non-controversial. Therefore, this rulemaking has been determined to be not “significant” under the Department of Transportation’s regulatory policies and procedures and the policies of the Office of Management and Budget.

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 final rule establishes revised uniform procedures implementing State highway safety grant programs, as a result of enactment of the Infrastructure Investment and Jobs Act (IIJA, also referred to as the Bipartisan Infrastructure Law or BIL). 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. First, we note that the regulation implementing these grant programs is required by statute. Moreover, the agency has determined that this final rule 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. Nevertheless, NHTSA notes that it has consulted with States representatives through public meetings, continues to engage with State representatives regarding general implementation of the BIL, 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 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. Paperwork Reduction Act

Under the procedures established by the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid Office of Management and Budget (OMB) control number. There are 5 information collections associated with this final rule. NHTSA sought public comment on these information collections in the NPRM that was published on September 15, 2022 and submitted an information collection request (ICR) to OMB for approval.

As OMB deferred review while NHTSA reviewed the comments to the NPRM, NHTSA is resubmitting the ICR for this final rule. NHTSA’s ICR describes the nature of the information collections and their expected burden. As described in the NPRM, the ICR consists of the following information collections: (1) the submission of a triennial Highway Safety Plan (triennial HSP); (2) the submission of an annual grant application; (3) the submission of an annual report; (4) responses provided by States who wish to apply for Section 405(b) occupant protection grant funds using the occupant protection grant assessment criterion; and (5) responses provided by States who wish to apply for Section 405(d) impaired driving grant funds using the impaired driving grant assessment criterion.

NHTSA did not receive any comments in response to the ICR, but received several comments to the rulemaking docket that pertain to the information collections. Those comments are discussed in full in the preamble to this final rule, above. As we explained in the preamble, NHTSA strove to minimize duplication of submissions and to reduce administrative burdens throughout the rulemaking, consistent with legal requirements. For the triennial HSP, NHTSA amended the regulatory text to require States to provide a narrative description of engagement opportunities conducted, rather than provide an exhaustive list (§ 1300.11(b)(2)(ii)) and added two additional resources that States can cite to without further need to justify use of a countermeasure strategy; (§ 1300.11(b)(4)(ii)(A)); and clarified the level of detail required in the triennial HSP performance report (§ 1300.11(b)(5)). For the annual grant application, NHTSA amended the provision relating to amendments to the annual grant application to provide that some amendments do not require approval by the Regional Administrator. § 1300.32. For the annual report,

NHTSA amended the regulatory text to clarify that the performance report must describe how activities, rather than individual projects, contributed to meeting performance targets (§ 1300.35(a)(1)(ii)), and removed the requirement for States to provide a description of projects funded during the grant year in the annual report (§ 1300.35(b)). NHTSA made no changes related to the occupant protection grant assessment or impaired driving grant assessment.

NHTSA is submitting supporting statements to OMB explaining how the final rule's collections of information respond to the comments received from the public. None of the changes made in this final rule affect the estimates in the NPRM of these requirements.

F. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Pub. L. 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 rulemaking 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.

G. 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 rulemaking would not have a significant impact on the quality of the human environment.

H. 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 rulemaking 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. 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. The BIL requires NHTSA to award highway safety grants pursuant to rulemaking. (Section 24101(d), BIL; and 23 U.S.C. 406). 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.

M. 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 FR19477) or you may visit <http://dms.dot.gov>.

List of Subjects in 23 CFR Part 1300

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 III by revising part 1300 to read as follows:

PART 1300—UNIFORM PROCEDURES FOR STATE HIGHWAY SAFETY GRANT PROGRAMS

Subpart A—General

- Sec.
- 1300.1 Purpose.
 - 1300.2 [Reserved]
 - 1300.3 Definitions.
 - 1300.4 State highway safety agency—authority and functions.
 - 1300.5 Due dates—interpretation.

Subpart B—Triennial Highway Safety Plan and Annual Grant Application

- 1300.10 General.
- 1300.11 Triennial Highway Safety Plan.
- 1300.12 Annual grant application.
- 1300.13 Special funding conditions for Section 402 grants.
- 1300.14 [Reserved]
- 1300.15 Apportionment and obligation of Federal funds.

Subpart C—National Priority Safety Program and Racial Profiling Data Collection Grants

- 1300.20 General.
- 1300.21 Occupant Protection Grants.
- 1300.22 State Traffic Safety Information System Improvements Grants.
- 1300.23 Impaired Driving Countermeasures Grants.
- 1300.24 Distracted Driving Grants.
- 1300.25 Motorcyclist Safety Grants.
- 1300.26 Nonmotorized Safety Grants.
- 1300.27 Preventing Roadside Deaths Grants.
- 1300.28 Driver and Officer Safety Education Grants.
- 1300.29 Racial Profiling Data Collection Grants.

Subpart D—Administration of the Highway Safety Grants

- 1300.30 General.
- 1300.31 Equipment.
- 1300.32 Amendments to annual grant applications.
- 1300.33 Vouchers and project agreements.
- 1300.34 Program income.
- 1300.35 Annual report.
- 1300.36 Appeals of written decision by the Regional Administrator.

Subpart E—Annual Reconciliation

- 1300.40 Expiration of the annual grant application.
- 1300.41 Disposition of unexpended balances.
- 1300.42 Post-grant adjustments.
- 1300.43 Continuing requirements.

Subpart F—Non-Compliance

- 1300.50 General.
 - 1300.51 Sanctions—reduction of apportionment.
 - 1300.52 Sanctions—risk assessment and non-compliance.
- Appendix A to Part 1300—Certifications and Assurances for Highway Safety Grants.
Appendix B to Part 1300—Application requirements for Section 405 and Section 1906 Grants.

Authority: 23 U.S.C. 402; 23 U.S.C. 405; Sec. 1906, Pub. L. 109–59, 119 Stat. 1468, as amended by Sec. 25024, Pub. L. 117–58, 135 Stat. 879; delegation of authority at 49 CFR 1.95.

Subpart A—General

§ 1300.1 Purpose.

This part establishes uniform procedures for State highway safety programs authorized under 23 U.S.C. Chapter 4 and Sec. 1906, Public Law 109–59, as amended by section 25024, Public Law 117–58.

§ 1300.2 [Reserved]**§ 1300.3 Definitions.**

As used in this part—

Annual grant application means the document that the State submits each fiscal year as its application for highway safety grants (and amends as necessary), which provides any necessary updates to the State's most recent triennial HSP, identifies all projects the State will implement during the fiscal year to achieve its highway safety performance targets, describes how the State has adjusted its countermeasure strategy for programming funds based on the annual report, and includes the application for grants under Sections 405 and 1906.

Annual Report File (ARF) means FARS data that are published annually, but prior to final FARS data.

Automated traffic enforcement system (ATES) means any camera that 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.

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 within the period of availability, and that are being brought forward and made available for expenditure in a subsequent fiscal year.

Community means populations sharing a particular characteristic or geographic location.

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.

Countermeasure strategy for programming funds (or countermeasure strategy) means a proven effective or innovative countermeasure or group of countermeasures along with information on how the State plans to implement those countermeasures (*i.e.*, funding amounts, subrecipient types, location or community information) that the State proposes to be implemented with grant funds under 23 U.S.C. Chapter 4 or Section 1906 to address identified problems and meet performance targets.

Data-driven means informed by a systematic review and analysis of quality data sources when making decisions related to planning, target

establishment, resource allocation and implementation.

Evidence-based means based on approaches that are proven effective with consistent results when making decisions related to countermeasure strategies and projects.

Fatality Analysis Reporting System (FARS) means the nationwide census providing yearly public data regarding fatal injuries suffered in motor vehicle traffic crashes, as published by NHTSA.

Final FARS means the FARS data that replace the annual report file and contain additional cases or updates that became available after the annual report file was released.

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 (GR) 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 program means the planning, strategies and performance measures, and the general oversight and management of highway safety strategies and projects by the State either directly or through subrecipients to address highway safety problems in the State, as defined in the triennial Highway Safety Plan and the annual grant application, including any amendments.

Indian country means all land within the limits of any Indian reservation under the jurisdiction of the United States, notwithstanding the issuance of any patent and including rights-of-way running through the reservation; all dependent Indian communities within the borders of the United States, whether within the original or subsequently acquired territory thereof and whether within or without the limits of a State; and all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through such allotments.

NHTSA means the National Highway Traffic Safety Administration.

Performance measure means a metric that is used to establish targets and to assess progress toward meeting the established targets.

Performance target means a quantifiable level of performance or a goal, expressed as a value, to be achieved through implementation of countermeasure strategies within a specified time period.

Political subdivision of a State means a separate legal entity of a State that usually has specific governmental functions, and includes Indian tribal governments. Political subdivision includes, but is not limited to, local governments and any agencies or instrumentalities thereof, school districts, intrastate districts, associations comprised of representatives from political subdivisions acting in their official capacities (including State or regional conferences of mayors or associations of chiefs of police), local court systems, and any other regional or interstate government entity.

Problem identification means the data collection and analysis process for identifying areas of the State, types of crashes, types of populations (*e.g.*, high-risk populations), related data systems or other conditions that present specific highway safety challenges within a specific program area.

Program area means any of the national priority safety program areas identified in 23 U.S.C. 405 or a program area identified by a State in the triennial Highway Safety Plan as encompassing a major highway safety or related data problem in the State and for which documented effective countermeasure strategies have been identified or projected by analysis to be effective.

Project (or funded project) means a discrete effort involving identified subrecipients or contractors to be funded, in whole or in part, with grant funds under 23 U.S.C. Chapter 4 or Section 1906 and that addresses countermeasure strategies identified in the triennial Highway Safety Plan.

Project agreement means a written agreement at the State level or between the State and a subrecipient or contractor under which the State agrees to perform a project or to provide Federal funds in exchange for the subrecipient's or contractor's performance of a project that supports the highway safety program.

Project agreement number means a unique State-generated identifier assigned to each project agreement.

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.

Section 1906 means section 1906, Public Law 109–59, as amended by section 25024, Public Law 117–58.

Serious injuries means “suspected serious injury (A)” as defined in the Model Minimum Uniform Crash Criteria (MMUCC) Guideline, 5th Edition, as updated.

State means, except as provided in § 1300.25(b) for the program under 23 U.S.C. 405(f), 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 (HSIP) means the program defined in 23 U.S.C. 148(a)(12).

State strategic highway safety plan (SHSP) means the plan defined in 23 U.S.C. 148(a)(13).

Triennial Highway Safety Plan (triennial HSP) means the document that the State submits once every three fiscal years documenting its highway safety program, including the State’s highway safety planning process and problem identification, public participation and engagement, performance plan, countermeasure strategy for programming funds, and performance report.

Underserved populations means populations sharing a particular characteristic or geographic location that have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life.

§ 1300.4 State highway safety agency—authority and functions.

(a) *In general.* In order for a State to receive grant funds under this part, the Governor shall exercise responsibility for the highway safety program by appointing a Governor’s Representative for Highway Safety who shall be responsible for a State highway safety agency that has adequate powers and is suitably equipped and organized to carry out the State’s highway safety program and for coordinating with the Governor and other State agencies. To effectively carry out these responsibilities and to avoid a potential conflict of interest, the Governor’s Representative for Highway Safety must, at a minimum, have access to the Governor and either be the head of the

State highway safety agency or be in the chain of command between the State highway safety agency and the Governor.

(b) *Authority.* Each State highway safety agency shall be equipped and authorized to—

(1) Develop and execute the triennial Highway Safety Plan, annual grant application, and highway safety program in the State;

(2) Manage Federal grant funds effectively and efficiently and in accordance with all Federal and State requirements;

(3) Foster meaningful public participation and engagement from affected communities;

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

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

(6) 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;

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

(8) Establish and maintain adequate staffing to effectively plan, manage, and provide oversight of projects implemented under the annual grant application and to properly administer the expenditure of Federal grant funds.

(c) *Functions.* Each State highway safety agency shall—

(1) Develop and prepare the triennial HSP and annual grant application based on evaluation of highway safety data, including crash fatalities and injuries, roadway, driver, demographics and other data sources to identify safety problems within the State;

(2) Establish projects to be funded within the State under 23 U.S.C. Chapter 4 based on identified safety problems and priorities and projects under Section 1906;

(3) Conduct risk assessments of subrecipients and monitor subrecipients based on risk, as provided in 2 CFR 200.332;

(4) Provide direction, information and assistance to subrecipients concerning highway safety grants, procedures for participation, development of projects and applicable Federal and State regulations and policies;

(5) Encourage and assist subrecipients to improve their highway safety planning and administration efforts;

(6) Review, 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 triennial HSP and annual grant application, and approve and monitor the expenditure of grant funds awarded under 23 U.S.C. Chapter 4 and Section 1906;

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

(8) Ensure that the State highway safety program meets the requirements of 23 U.S.C. Chapter 4, Section 1906, and applicable Federal and State laws, including but not limited to the standards for financial management systems required under 2 CFR 200.302 and internal controls required under 2 CFR 200.303;

(9) 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;

(10) Track and maintain current knowledge of changes in State statutes or regulations that could affect State qualification for highway safety grants or transfer programs;

(11) Coordinate the triennial HSP, annual grant application, 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 SHSP as defined in 23 U.S.C. 148(a); and

(12) Administer Federal grant funds in accordance with Federal and State requirements, including 2 CFR parts 200 and 1201.

§ 1300.5 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—Triennial Highway Safety Plan and Annual Grant Application

§ 1300.10 General.

To apply for any highway safety grant under 23 U.S.C. Chapter 4 and Section 1906, a State shall submit electronically and according to the due dates in §§ 1300.11 and 1300.12—

(a) A triennial Highway Safety Plan meeting the requirements of this subpart; and

(b) An annual grant application.

§ 1300.11 Triennial Highway Safety Plan.

The State's triennial Highway Safety Plan documents a three-year period of the State's highway safety program that is data-driven in establishing performance targets and selecting the countermeasure strategies for programming funds to meet those performance targets.

(a) *Due date for submission.* A State shall submit its triennial Highway Safety Plan electronically to NHTSA no later than 11:59 p.m. EDT on July 1 preceding the first fiscal year covered by the plan. Failure to meet this deadline may result in delayed approval of the triennial Highway Safety Plan which could impact approval and funding under a State's annual grant application.

(b) *Contents.* In order to be approved, the triennial highway safety plan submitted by the State must cover three fiscal years, beginning with the first fiscal year following submission of the plan, and contain the following components:

(1) *Highway safety planning process and problem identification.* (i) Description of the processes, data sources and information used by the State in its highway safety planning (*i.e.*, problem identification, public participation and engagement, performance measures, and countermeasure strategies); and

(ii) Description and analysis of the State's overall highway safety problems as identified through an analysis of data, including but not limited to fatality, injury, enforcement, judicial, geospatial and sociodemographic data.

(2) *Public participation and engagement—(i) Triennial HSP engagement planning.* Description of the State's public participation and engagement planning efforts in the highway safety planning process and program, including—

(A) A statement of the State's starting goals for the public engagement efforts, including how the public engagement efforts will contribute to the development of the State's highway safety program, including countermeasure strategies for programming funds;

(B) Identification of the affected and potentially affected communities, including particular emphasis on underserved communities and communities overrepresented in the data, (*i.e.*, what communities did the State identify at the outset of the process) and a description of how those communities were identified;

(ii) *Triennial HSP engagement outcomes.* A narrative description of the outcomes of the State's engagement

efforts in the highway safety planning process, including—

(A) The steps taken by the State to produce meaningful engagement with affected communities, including—

(1) Engagement opportunities conducted and a description of how those opportunities were designed to reach the communities identified in paragraph (b)(2)(i)(B) of this section;

(2) Accessibility measures implemented by the State in its outreach efforts and in conducting engagement opportunities;

(B) The results of the engagement opportunities conducted, including—

(1) A description of attendees and participants, and, to the extent feasible, whether those participants are members of the affected communities identified in paragraph (2)(i)(B);

(2) A summary of the issues covered; and

(C) How the affected communities' comments and views have been incorporated into the development of the triennial HSP.

(iii) *Ongoing engagement planning.* A description of the public participation and engagement efforts in the State highway safety program that the State plans to undertake during the three-year period covered by the triennial HSP, including—

(A) A statement of the State's goals for the public engagement efforts;

(B) Identification of the affected and potentially affected communities, including particular emphasis on underserved communities and communities overrepresented in the data (*i.e.*, what communities did the State identify at the outset of the process), and a description of how those communities were identified;

(C) The steps the State plans to take to reach and engage those communities, including accessibility measures implemented by the State in its outreach efforts and in conducting engagement opportunities; and

(D) How the affected communities' comments and views will be incorporated into the decision-making process.

(3) *Performance plan.* (i) List of data-driven, quantifiable and measurable highway safety performance targets, as laid out in paragraphs (b)(3)(ii) and (iii) of this section, that demonstrate constant or improved performance over the three-year period covered by the triennial HSP and based on highway safety program areas identified by the State during the planning process conducted under paragraph (b)(1) of this section.

(ii) All performance measures developed by NHTSA in collaboration

with the Governors Highway Safety Association ("Traffic Safety Performance Measures for States and Federal Agencies" (DOT HS 811 025)), as revised in accordance with 23 U.S.C. 402(k)(5) and published in the **Federal Register**, which must be used as minimum measures in developing the performance targets identified in paragraph (b)(3)(i) of this section, provided that—

(A) At least one performance measure and performance target that is data-driven shall be provided for each program area identified by the State during the planning process conducted under paragraph (b)(1) of this section that enables the State to track progress toward meeting the quantifiable annual target;

(B) For each program area performance measure, the State shall provide—

(1) Documentation of the current safety levels, based on the most currently available data;

(2) Quantifiable performance targets that show constant or improved performance compared to the safety levels provided under paragraph (b)(3)(ii)(B)(1) of this section, and extend through the final year covered by the triennial HSP, with annual benchmarks to assist States in tracking progress; and

(3) Justification for each performance target that explains how the target is data-driven, including a discussion of the factors that influenced the performance target selection; and

(C) State HSP performance targets are identical to the State DOT targets for common performance measures (fatality, fatality rate, and serious injuries) reported in the HSIP annual report, as coordinated through the State SHSP.

(iii) Additional performance measures not included under paragraph (b)(3)(ii) of this section. For program areas identified by the State where performance measures have not been jointly developed (*e.g.*, risky drivers, vulnerable road users, etc.) and for which States are using highway safety program grant funds, the State shall develop its own performance measures and performance targets that are data-driven, and shall provide the same information as required under paragraph (b)(3)(ii) of this section.

(4) *Countermeasure strategy for programming funds.* For each program area identified by the State during the planning process conducted under paragraph (b)(1) of this section, a description of the countermeasure strategies that will guide the State's program implementation and annual

project selection in order to achieve specific performance targets described in paragraph (b)(3) of this section, including, at a minimum—

(i) The problem identified during the planning process described in paragraph (b)(1) of this section that the countermeasure strategy addresses and a description of the link between the problem identification and the countermeasure strategy;

(ii) A list of the countermeasures that the State will implement, including—

(A) For countermeasures rated 3 or more stars in *Countermeasures That Work*, recommended in a NHTSA-facilitated program assessment report, or included in the Uniform Guidelines for State Highway Safety Programs, provide the citation to the countermeasure in the most recent edition of *Countermeasures That Work*; or

(B) For all other countermeasures, provide justification supporting the countermeasure, including available data, data analysis, research, evaluation and/or substantive anecdotal evidence, that supports the effectiveness of the proposed countermeasure strategy;

(iii) Identification of the performance target(s) the countermeasure strategy will address, along with an explanation of the link between the effectiveness of the countermeasure strategy and the performance target;

(iv) A description of any Federal funds that the State plans to use to carry out the countermeasure strategy including, at a minimum, the funding source(s) (e.g., Section 402, Section 405(b), etc.) and an estimated allocation of funds;

(v) A description of considerations the State will use to determine what projects to fund to implement the countermeasure strategy, including, as applicable, public engagement, traffic safety data, affected communities, impacted locations, solicitation of proposals; and

(vi) A description of the manner in which the countermeasure strategy was informed by the uniform guidelines issued in accordance with 23 U.S.C. 402(a)(2) and, if applicable, NHTSA-facilitated programmatic assessments.

(5) *Performance report.* A report on the State's progress towards meeting State performance targets from the most recently submitted triennial HSP, based on the most currently available data, including—

(i) An explanation of the extent to which the State's progress in achieving those targets aligns with the triennial HSP; and

(ii) A description of how the countermeasure strategies implemented during the triennial period contributed

to meeting the State's highway safety performance targets.

(c) *Review and approval procedures—*
(1) *General.* Subject to paragraphs (c)(2) and (4) of this section, the Regional Administrator shall review and approve or disapprove a triennial HSP within 60 days after date of receipt. NHTSA will not approve a triennial HSP that does not meet the requirements of this section.

(2) *Additional information.* NHTSA may request additional information from a State to ensure compliance with the requirements of this part. Upon receipt of the request, the State must submit the requested information within 7 business days. NHTSA may extend the deadline for approval or disapproval of the triennial HSP by no more than 90 additional days, as necessary to facilitate the request.

(3) *Approval or disapproval of triennial Highway Safety Plan.* Within 60 days after receipt of the triennial HSP under this subpart, the Regional Administrator shall issue—

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

(ii) A letter of disapproval to the Governor's Representative for Highway Safety informing the State of the reasons for disapproval and requiring resubmission of the triennial HSP with any modifications necessary for approval.

(4) *Resubmission of disapproved triennial Highway Safety Plan.* The State shall resubmit the triennial HSP with necessary modifications within 30 days after the date of disapproval. The Regional Administrator shall issue a letter of approval or disapproval within 30 days after receipt of a revised triennial HSP resubmitted as provided in paragraph (c)(3)(ii) of this section.

§ 1300.12 Annual grant application.

The State's annual grant application provides project level information on the State's highway safety program and demonstrates alignment with the State's most recent triennial HSP. Each fiscal year, the State shall submit an annual grant application, including appendices A and B to this part, that meets the following requirements:

(a) *Due date for submission.* A State shall submit its annual grant application electronically to NHTSA no later than 11:59 p.m. EDT on August 1 preceding the fiscal year to which the application applies. Failure to meet this deadline may result in delayed approval and funding of a State's Section 402 grant or disqualification from receiving a Section 405 or Section 1906 racial profiling data

collection grant to avoid a delay in awarding grants to all States.

(b) *Contents.* In order to be approved, the annual grant application submitted by the State must contain the following components:

(1) *Updates to triennial HSP.* Any updates, as necessary, to any analysis included in the triennial Highway Safety Plan of the State, at the level of detail required by § 1300.11, including at a minimum:

(i) *Adjustments to countermeasure strategy for programming funds.* (A) If the State adjusts the strategy for programming funds, a narrative description of the means by which the State's strategy for programming funds was adjusted and informed by the most recent annual report submitted under § 1300.35; or

(B) If the State does not adjust the strategy for programming funds, a written explanation of why the State made no adjustments.

(ii) *Changes to performance plan.* The State may add performance measures based on updated traffic safety problem identification or as part of an application for a grant under Section 405 and may amend common performance targets developed under § 1300.11(b)(3)(ii)(C), but may not amend any other existing performance targets.

(2) *Project and subrecipient information.* For each project to be funded by the State using grant funds during the fiscal year covered by the application, the State must provide—

(i) Project name and description, including, at a minimum, a description of activities conducted, location where the project is performed, and affected communities, where applicable;

(ii) Federal funding source(s) (i.e., Section 402, Section 405(b), etc.);

(iii) Project agreement number (which, if necessary, may be provided in a later amendment to the annual grant application);

(iv) Subrecipient(s) (including name and type of organization; e.g., county or city DOT, State or local law enforcement, non-profit, EMS agency, etc.);

(v) Amount of Federal funds;

(vi) Eligible use of funds;

(vii) Whether the costs are Planning and Administration costs pursuant to § 1300.13(a) and the amount;

(viii) Whether the project will be used to meet the requirements of § 1300.41(b); and

(ix) The countermeasure strategy or strategies for programming funds identified in the most recently submitted triennial HSP under § 1300.11(b)(4) or in an update to the

triennial HSP submitted under paragraph (b)(1) of this section that the project supports.

(3) *Section 405 grant and Section 1906 racial profiling data collection grant applications.* Application(s) for any of the national priority safety program grants and the racial profiling data collection grant, in accordance with the requirements of subpart C of this part and as provided in appendix B to this part, signed by the Governor's Representative for Highway Safety.

(4) *Certifications and Assurances.* The Certifications and Assurances for 23 U.S.C. Chapter 4 and Section 1906 grants contained in appendix A, signed by the Governor's Representative for Highway Safety, certifying to the annual grant application contents and providing assurances that the State will comply with applicable laws and financial and programmatic requirements.

(c) *Review and approval procedures—*
(1) *General.* Upon receipt and initial review of the annual grant application, 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 a Section 405 or Section 1906 grant application may result in a State's disqualification from consideration for a Section 405 or Section 1906 grant to avoid a delay in awarding grants to all States. NHTSA will not approve a grant application that does not meet the requirements of this section.

(2) *Approval or disapproval of annual grant application.* Within 60 days after receipt of the annual grant application under this subpart, the NHTSA administrator shall notify States in writing of grant awards and specify any conditions or limitations imposed by law on the use of funds.

(d) *Amendments to project and subrecipient information.* Notwithstanding the requirement in paragraph (b)(2) of this section to provide project and subrecipient information at the time of application, States may amend the annual grant application throughout the fiscal year of the grant to add projects or to update project information for previously submitted projects, consistent with the process set forth in § 1300.32, provided that all required project and subrecipient information must be complete at the time the State submits

the annual report required under § 1300.35.

§ 1300.13 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 § 1300.12 shall be deemed to incorporate these conditions:

(a) *Planning and administration (P & A) costs.* (1)(i) *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. The salary of an accountant on the State highway safety agency staff is an example of a direct cost attributable to P & A. Centralized support services such as personnel, procurement, and budgeting would be indirect costs.

(ii) *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). Compensation for activity hours of a DWI (Driving While Intoxicated) enforcement officer is an example of a direct cost attributable to a project.

(2) 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 18 percent of the total funds the State receives under Section 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 is exempt from the P & A requirements. NHTSA funds shall be used only to fund P & A activities attributable to NHTSA programs.

(3) P & A tasks and related costs shall be described in the P & A module of the State's annual grant application. The State's matching share shall be determined on the basis of the total P & A costs in the module.

(4) A State may allocate salary and related costs of State highway safety agency employees to one of the following, depending on the activities performed:

(i) If an employee works solely performing P & A activities, the total salary and related costs may be programmed to P & A;

(ii) 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); or

(iii) If an employee works 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. 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.

(b) *Participation by political subdivisions (local expenditure requirement)—*(1) *Determining local expenditure.* In determining whether a State meets the requirement that 40 percent (or 95 percent for Indian tribes) of Section 402 funds be expended by political subdivisions (also referred to as the local expenditure 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 amount 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 the Interior) from each year's authorizations must be used in the highway safety programs of its political subdivisions prior to the end of the fiscal year.

(2) *Direct expenditures by political subdivisions.* When Federal funds apportioned under 23 U.S.C. 402 are expended by a political subdivision under a subaward from the State, such expenditures clearly qualify as part of the required local expenditure. A political subdivision may expend funds through direct performance of projects (including planning and administration of eligible highway safety project-related activities) or by entering into contracts or subawards with other entities (including non-profit entities) to carry out projects on its behalf.

(3) *Expenditures by State on behalf of a political subdivision.* Federal funds apportioned under 23 U.S.C. 402 that are expended by a State on behalf of a specific political subdivision (either through direct performance of projects or by entering into contracts or subawards with other entities) may qualify as part of the required local expenditure, provided there is evidence of the political subdivision's involvement in identifying its traffic safety need(s) and input into implementation of the activity within its

jurisdiction. A State may not arbitrarily ascribe State agency expenditures as “on behalf of a local government.” Such expenditures qualify if—

(i) The specific political subdivision is involved in the planning process of the State’s highway safety program (for example, as part of the public participation described in § 1300.11(b)(2), as part of the State’s planning for the annual grant application, or as part of ongoing planning processes), and the State then enters into agreements based on identification of need by the political subdivision and implements the project or activity accordingly. The State must maintain documentation that shows the political subdivision’s participation in the planning processes (*e.g.*, meeting minutes, data submissions, etc.), and also must obtain written acceptance by the political subdivision of the project or activity being provided on its behalf prior to implementation.

(ii) The political subdivision is not involved in the planning process of the State’s highway safety program, but submits a request for the State to implement a project on its behalf. The request does not need to be a formal application but should, at minimum, contain a description of the political subdivision’s problem identification and a description of where and/or how the project or activity should be deployed to have effect within political subdivision (may include: identification of media outlets to run advertising, locations for billboard/sign placement or enforcement activities, schools or other venues to provide educational programming, specific sporting events/venues, etc.).

(4) *Allocation of qualifying costs.* Expenditures qualify as local expenditures only when the expenditures meet the qualification criteria described in paragraphs (b)(2) and (3) of this section. In some cases, only a portion of the expenditures under a given project may meet those requirements. States must allocate funds in proportion to the amount of costs that can be documented to meet the requirements for a specific political subdivision.

(5) *Waivers.* While, in extraordinary circumstances, the requirement for participation by political subdivisions may be waived in whole or in part by the NHTSA Administrator, it is expected that each State program will generate and maintain political subdivision participation at the level specified in the Federal statute so that requests for waivers are minimized. Where a waiver is requested, however, the State shall submit a written request

describing the extraordinary circumstances that necessitate a waiver, or providing 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 required 40 percent or 95 percent (for Indian Tribes) local expenditure.

(c) *Use of grant funds for marijuana-impaired driving.* A State that has legalized medicinal or recreational marijuana shall consider implementing programs to—

(1) Educate drivers regarding the risks associated with marijuana-impaired driving; and

(2) Reduce injuries and deaths resulting from marijuana-impaired driving.

(d) *Use of grant funds for unattended passengers program.* The State must use a portion of grant funds received under Section 402 to carry out a program to educate the public regarding the risks of leaving a child or unattended passenger in a vehicle after the vehicle motor is deactivated by the operator.

(e) *Use of grant funds for teen traffic safety program.* The State may use a portion of the funds received under Section 402 to implement statewide efforts to improve traffic safety for teen drivers.

(f) *Prohibition on use of grant funds to check for helmet usage.* No grant funds under this part may be used for programs to check helmet usage or to create checkpoints that specifically target motorcyclists.

(g) *Prohibition on use of grant funds for automated traffic enforcement systems.* The State may not expend funds apportioned to the State under Section 402 to carry out a program to purchase, operate, or maintain an automated traffic enforcement system except in a work zone or school zone. Any ATES system installed using grant funds under this section must comply with guidelines established by the Secretary, as updated.

§ 1300.14 [Reserved]

§ 1300.15 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 and Section 1906 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 and Section 1906 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 annual grant application, 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 § 1300.41(b), after which the funds shall lapse.

(d) Notwithstanding the provisions of paragraph (c) of this section, payment of State expenses under 23 U.S.C. Chapter 4 or Section 1906 shall be contingent upon the State’s submission of up-to-date information about approved projects in the annual grant application, in accordance with §§ 1300.12(b)(2) and 1300.32.

Subpart C—National Priority Safety Program and Racial Profiling Data Collection Grants

§ 1300.20 General.

(a) *Scope.* This subpart establishes criteria, in accordance with Section 405 for awarding grants to States that adopt and implement programs and statutes to address national priorities for reducing highway deaths and injuries and, in accordance with Section 1906, for awarding grants to States that maintain and allow public inspection of race and ethnicity information on motor vehicle stops.

(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.

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.

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 and application*—(1) *Eligibility*. Except as provided in § 1300.25(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 grants identified under this subpart.

(2) *Application*. For all grants under Section 405 and Section 1906 –

(i) The Governor's Representative for Highway Safety, on behalf of the State, shall sign and submit with the annual grant application, the information required under appendix B to this part.

(ii) If the State is relying on specific elements of the annual grant application or triennial HSP as part of its application materials for grants under this subpart, the State shall identify the specific location where that information is located in the relevant document.

(d) *Qualification based on State statutes*. Whenever a qualifying State statute is the basis for a grant awarded 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) *Transfer of funds*. If it is determined after review of applications that funds for a grant program under Section 405 will not all be awarded and distributed, such funds shall be transferred to Section 402 and shall be distributed in proportion to the amount each State received under Section 402 for fiscal year 2022 to ensure, to the maximum extent practicable, that all funding is distributed.

(f) *Matching*. (1) Except as provided in paragraph (f)(2) of this section, the Federal share of the costs of activities or programs funded with grants awarded under this subpart may not exceed 80 percent.

(2) The Federal share of the costs of activities or programs funded with grants awarded to the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands shall be 100 percent.

§ 1300.21 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 improperly 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 NHTSA 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 August 1, 2023, the “previous calendar year” would be 2022).

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 August 1, 2023, the “previous calendar year” would be 2022).

Low-income and underserved populations means:

(i) Populations meeting a threshold income level identified by the State that falls within or below the most recent U.S. Department of Health and Human Services Poverty Guidelines; or

(ii) Populations sharing a particular characteristic or geographic location that have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life.

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.

(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 as part of its annual grant application the following documentation, in accordance with part 1 of appendix B to this part:

(1) *Occupant protection plan*. State occupant protection program area plan, updated annually, that identifies—

(i) The safety problems to be addressed, performance measures and targets, and the countermeasure strategies the State will implement to address those problems, at the level of detail required under § 1300.11(b); and

(ii) The projects, provided under § 1300.12(b)(2), that the State will implement during the fiscal year to carry out the plan.

(2) *Participation in Click-it-or-Ticket national mobilization*. Description of the State's planned participation in the Click it or Ticket national mobilization, including a list of participating agencies during the fiscal year of the grant;

(3) *Child restraint inspection stations*.

(i) Projects, at the level of detail required under § 1300.12(b)(2), demonstrating an active network of child passenger safety inspection stations and/or inspection events based on the State's problem identification. The description must include estimates for the following requirements in the upcoming fiscal year:

(A) The total number of planned inspection stations and/or events in the State; and

(B) Within the total in paragraph (d)(3)(i)(A) of this section, the number of planned inspection stations and/or inspection events serving each of the following population categories: urban, rural, and at-risk.

(ii) Certification, signed by the Governor's Representative for Highway Safety, that the inspection stations/ events are staffed with at least one current nationally Certified Child Passenger Safety Technician.

(4) *Child passenger safety technicians*. Projects, at the level of detail required under § 1300.12(b)(2), for recruiting, training and maintaining a sufficient number of child passenger safety technicians based on the State's problem identification. The description must include, at a minimum, an estimate of the total number of classes and the estimated total number of technicians to be trained in the upcoming fiscal year to ensure coverage of child passenger safety inspection stations and inspection events by nationally Certified Child Passenger Safety Technicians.

(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 paragraph (d) of this section, and submit as part of its annual grant application documentation demonstrating that it meets at least three

of the following additional criteria, in accordance with part 1 of appendix B to this part:

(1) *Primary enforcement seat belt use statute.* The State shall provide legal citations to the State law demonstrating that the State has enacted and is enforcing occupant protection statutes that make violation of the requirement to be secured in a seat belt or child restraint a primary offense.

(2) *Occupant protection statute.* The State shall provide legal citations to the State law demonstrating that the State has enacted and is enforcing occupant protection statutes that:

(i) Require—

(A) 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;

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

(C) A minimum fine of \$25 per unrestrained occupant for a violation of the occupant protection statutes described in this paragraph (e)(2)(i).

(ii) Notwithstanding paragraph (e)(2)(i) of this section, permit no exception from coverage except for—

(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; or

(F) Passengers in public and livery conveyances.

(3) *Seat belt enforcement.* The State shall identify the projects, at the level of detail required under § 1300.12(b)(2), and provide a description demonstrating that the State conducts sustained enforcement (*i.e.*, a program of recurring efforts throughout the fiscal year of the grant to promote seat belt and child restraint enforcement) that, based on the State's problem

identification, involves law enforcement agencies responsible for seat belt enforcement in geographic areas in which at least 70 percent of either the State's unrestrained passenger vehicle occupant fatalities occurred or combined unrestrained fatalities and serious injuries occurred.

(4) *High risk population countermeasure programs.* The State shall identify the projects, at the level of detail required under § 1300.12(b)(2), demonstrating that the State will implement 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 program area plan required under paragraph (d)(1) of this section.

(5) *Comprehensive occupant protection program.* The State shall submit the following:

(i) Date of NHTSA-facilitated program assessment that was conducted within five years prior to the application due date that evaluates the occupant protection program for elements designed to increase seat belt use in the State;

(ii) Multi-year strategic plan based on input from statewide stakeholders (task force), updated on a triennial basis, under which the State developed—

(A) *Data-driven performance targets* to improve occupant protection in the State, at the level of detail required under § 1300.11(b)(3);

(B) *Countermeasure strategies* (such as enforcement, education, communication, policies/legislation, partnerships/outreach) designed to achieve the performance targets of the strategic plan, at the level of detail required under § 1300.11(b)(4), which must include 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 statutes, and accurate reporting of occupant protection system information on police crash report forms; and

(C) *A program management strategy* that provides leadership and identifies the State official responsible for implementing various aspects of the multi-year strategic plan.

(iii) The name and title of the State's designated occupant protection coordinator responsible for managing the occupant protection program in the State, including developing the occupant protection program area of the triennial HSP and overseeing the

execution of the projects designated in the annual grant application; and

(iv) A list that contains the names, titles and organizations of the statewide occupant protection task force membership that includes agencies and organizations that can help develop, implement, enforce and evaluate occupant protection programs.

(6) *Occupant protection program assessment.* The State shall identify the date of the NHTSA-facilitated assessment of all elements of its occupant protection program, which must have been conducted within five years prior to the application due date.

(f) *Award amounts.* The amount of a grant awarded to a State in a fiscal year under this section shall be in proportion to the amount each State received under Section 402 for fiscal year 2009.

(g) *Use of grant funds—(1) Eligible uses.* Except as provided in paragraph (g)(2) of this section, a State may use grant funds awarded under 23 U.S.C. 405(b) for the following programs or purposes only:

(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 implement programs—

(A) To recruit and train nationally certified child passenger safety technicians among police officers, fire and other first responders, emergency medical personnel, and other individuals or organizations serving low-income and underserved populations;

(B) To educate parents and caregivers in low-income and underserved populations regarding the importance of proper use and correct installation of child restraints on every trip in a motor vehicle;

(C) To purchase and distribute child restraints to low-income and underserved populations; or

(vi) To establish and maintain information systems containing data about occupant protection, including the collection and administration of

child passenger safety and occupant protection surveys.

(2) *Special rule.* Notwithstanding paragraph (g)(1) of this section—

(i) A State that qualifies for grant funds must use not less than 10 percent of grant funds awarded under this section to carry out activities described in paragraph (g)(1)(v) of this section.

(ii) A State that qualifies for grant funds as a high seat belt use rate State may elect to use no more than 90 percent of grant funds awarded under this section for any eligible project or activity under Section 402.

§ 1300.22 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, including the National EMS Information System; and enhance the agency's ability to observe and analyze national trends in crash occurrences, rates, outcomes, and circumstances.

(b) *Qualification criteria.* To qualify for a grant under this section in a fiscal year, a State shall submit as part of its annual grant application the following documentation, in accordance with part 2 of appendix B to this part:

(1) *Certification.* The State shall submit a certification that it has—

(i) A functioning *traffic records coordinating committee (TRCC)* that meets at least three times each year;

(ii) Designated a traffic records coordinating committee coordinator; and

(iii) Established a State traffic records strategic plan, updated annually, that has been approved by the TRCC and 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; and

(2) *Quantitative improvement.* The State shall demonstrate quantitative improvement in the data attribute of accuracy, completeness, timeliness,

uniformity, accessibility or integration of a core database by providing—

(i) A written description of the performance measure(s) that clearly identifies which performance attribute for which core database the State is relying on to demonstrate progress, using the methodology set forth in the "Model Performance Measures for State Traffic Records Systems" (DOT HS 811 441), as updated; and

(ii) Supporting documentation covering a contiguous 12-month performance period starting no earlier than April 1 of the calendar year prior to the application due date, that demonstrates quantitative improvement when compared to the comparable 12-month baseline period.

(c) *Award amounts.* The amount of a grant awarded to a State in a fiscal year under this section shall be in proportion to the amount the State received under Section 402 for fiscal year 2009.

(d) *Use of grant funds.* A State may use grant funds awarded under 23 U.S.C. 405(c) only to make data program improvements to core highway safety databases relating to quantifiable, measurable progress in the accuracy, completeness, timeliness, uniformity, accessibility or integration of data in a core highway safety database, including through—

(1) Software or applications to identify, collect, and report data to State and local government agencies, and enter data into State core highway safety databases, including crash, citation or adjudication, driver, emergency medical services or injury surveillance system, roadway, and vehicle data;

(2) Purchasing equipment to improve a process by which data are identified, collated, and reported to State and local government agencies, including technology for use by law enforcement for near-real time, electronic reporting of crash data;

(3) Improving the compatibility and interoperability of the core highway safety databases of the State with national data systems and data systems of other States, including the National EMS Information System;

(4) Enhancing the ability of a State and the Secretary to observe and analyze local, State, and national trends in crash occurrences, rates, outcomes, and circumstances;

(5) Supporting traffic records improvement training and expenditures for law enforcement, emergency medical, judicial, prosecutorial, and traffic records professionals;

(6) Hiring traffic records professionals for the purpose of improving traffic information systems (including a State

Fatal Accident Reporting System (FARS) liaison);

(7) Adoption of the Model Minimum Uniform Crash Criteria, or providing to the public information regarding why any of those criteria will not be used, if applicable;

(8) Supporting reporting criteria relating to emerging topics, including—

(i) Impaired driving as a result of drug, alcohol, or polysubstance consumption; and

(ii) Advanced technologies present on motor vehicles; and

(9) Conducting research relating to State traffic safety information systems, including developing programs to improve core highway safety databases and processes by which data are identified, collected, reported to State and local government agencies, and entered into State core safety databases.

§ 1300.23 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 a combination of alcohol and drugs; that enact alcohol-ignition interlock laws; or that implement 24–7 sobriety programs.

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

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

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

(ii) Be subject to testing for alcohol or drugs at least twice per day at a testing location, by continuous transdermal alcohol monitoring via an electronic monitoring device, by drug patch, by urinalysis, by ignition interlock monitoring (provided the interlock is able to require tests twice a day without vehicle operation), by other types of electronic monitoring, or by an alternative method approved by NHTSA.

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.

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.

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.

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

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.

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.

Restriction on driving privileges means any type of State-imposed limitation, such as a license revocation or suspension, location restriction, alcohol-ignition interlock device, or alcohol use prohibition.

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 statute 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 paragraph (d), (e), or (f) of this section, as applicable. Independent of qualification on the basis of range, a State may also qualify for separate grants under this section as a State with an alcohol-ignition interlock law, as provided in paragraph (g) of this section, or as a State with a 24–7 sobriety program, as provided in paragraph (h) 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 as part of its annual grant application the assurances in part 3 of appendix B to this part that the State will use the funds awarded under 23 U.S.C. 405(d)(1) only for the implementation and enforcement of programs authorized in paragraph (j) of this section.

(e) *Qualification criteria for a mid-range State—(1) General requirements.* To qualify for an Impaired Driving Countermeasures Grant in a fiscal year, a mid-range State (as determined by NHTSA) shall submit as part of its annual grant application the assurance required in paragraph (d) of this section and a copy of a statewide impaired driving plan that contains the following information, in accordance with part 3 of appendix B to this part:

(i) Section that describes the authority and basis for the operation of the statewide impaired driving task force, including the process used to develop and approve the plan and date of approval;

(ii) List that contains names, titles, and organizations of all task force members, provided that the task force includes stakeholders from the following groups:

- (A) State Highway Safety Office;
- (B) State and local law enforcement;
- (C) Criminal justice system (e.g., prosecution, adjudication, and probation);
- (D) Public health;
- (E) Drug-impaired driving countermeasures (e.g., DRE coordinator); and
- (F) Communications and community engagement.

(iii) Strategic plan based on the most recent version of Highway Safety Program Guideline No. 8—Impaired

Driving, which, at a minimum, covers the following:

- (A) Program management and strategic planning;
- (B) Prevention, including community engagement and coalitions;
- (C) Criminal justice systems;
- (D) Communications programs;
- (E) Alcohol and other drug misuse, including screening, treatment, assessment and rehabilitation; and
- (F) Program evaluation and data.

(2) *Assurance qualification for fiscal year 2024 grants.* For the application due date of August 1, 2023 only, if a mid-range State is not able to meet the requirements of paragraph (e)(1) of this section, the State may submit the assurance required in paragraph (d) of this section and a separate assurance 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 August 1 of the grant year. The agency will require the return of grant funds awarded under this section if the State fails to submit a plan that meets the requirements of paragraph (e)(1) of this section by the deadline and will redistribute any such grant funds in accordance with 23 CFR 1200.20(e) to other qualifying States under this section.

(3) *Previously submitted plan.* A mid-range State that has received a grant for a previously submitted statewide impaired driving plan under paragraph (e)(1) or (f)(1) of this section that was approved after the application due date of August 1, 2023 for a period of three years after the approval occurs may, in lieu of submitting the plan required under paragraph (e)(1) of this section, submit the assurance required in paragraph (d) of this section and a separate assurance that the State continues to use the previously submitted plan.

(f) *Qualification criteria for a high-range State—(1) General requirements.* To qualify for an Impaired Driving Countermeasures Grant in a fiscal year, a high-range State (as determined by NHTSA) shall submit as part of its annual grant application the assurance required in paragraph (d) of this section, the date of a NHTSA-facilitated assessment of the State's impaired driving program conducted within three years prior to the application due date, a copy of a statewide impaired driving plan that contains the information required in paragraphs (e)(1)(i) through (iii) of this section and that includes the following additional information, in

accordance with part 3 of appendix B to this part:

(i) Review that addresses in each plan area any related recommendations from the assessment of the State's impaired driving program;

(ii) Projects implementing impaired driving activities listed in paragraph (j)(4) of this section that must include high-visibility enforcement efforts, at the level of detail required under § 1300.12(b)(2); and

(iii) Description of how the spending supports the State's impaired driving program and achievement of its performance targets.

(2) *Assurance qualification for fiscal year 2024 grants.* For the application due date of August 1, 2023 only, if a high-range State is not able to meet the requirements of paragraph (f)(1) of this section, the State may submit the assurance required in paragraph (d) of this section and separate information that the State has conducted a NHTSA-facilitated assessment within the last three years, or an assurance that the State will conduct a NHTSA-facilitated assessment during the grant year and convene a statewide impaired driving task force to develop a statewide impaired driving plan that meets the requirements of paragraph (f)(1) of this section, and submit the statewide impaired driving plan by August 1 of the grant year. The agency will require the return of grant funds awarded under this section if the State fails to submit a plan that meets the requirements of paragraph (f)(1) of this section by the deadline and will redistribute any such grant funds in accordance with § 1200.20(e) to other qualifying States under this section.

(3) *Previously submitted plans.* A high-range State that has received a grant for a previously submitted statewide impaired driving plan under paragraph (f)(1) of this section that was approved after the application due date of August 1, 2023 for a period of three years after the approval occurs may, in lieu of submitting the plan required under paragraph (f)(1) of this section, submit the assurance required in paragraph (d) of this section and provide updates to its statewide impaired driving plan that meet the requirements of paragraphs (e)(1)(i) through (iii) of this section and updates to its assessment review and spending plan that meet the requirements of paragraphs (f)(1)(i) through (iii) of this section.

(g) *Grants to States with alcohol-ignition interlock laws.* (1) To qualify for an Alcohol-Ignition Interlock Law Grant, a State shall submit legal citation(s) or program information (for

paragraph (g)(1)(iii)(B) of this section only), in accordance with part 4 of appendix B to this part, that demonstrates that—

(i) All individuals who are convicted of driving under the influence of alcohol or of driving while intoxicated are permitted to drive only motor vehicles equipped with alcohol-ignition interlocks for a period of not less than 180 days; or

(ii) All individuals who are convicted of driving under the influence of alcohol or of driving while intoxicated and who are ordered to use an alcohol-ignition interlock are not permitted to receive any driving privilege or driver's license unless each such individual installs on each motor vehicle registered, owned, or leased by the individual an alcohol-ignition interlock for a period of not less than 180 days; or

(iii)(A) All individuals who are convicted of, or whose driving privileges have been revoked or denied for, refusing to submit to a chemical or other appropriate test for the purpose of determining the presence or concentration of any intoxicating substance and who are ordered to use an alcohol-ignition interlock are required to install on each motor vehicle to be operated by each such individual an alcohol-ignition interlock for a period of not less than 180 days; and

(B) All individuals who are convicted of driving under the influence of alcohol or of driving while intoxicated and who are ordered to use an alcohol-ignition interlock must—

(1) Install on each motor vehicle to be operated by each such individual an alcohol-ignition interlock for a period of not less than 180 days; and

(2) Complete a minimum consecutive period of not less than 40 percent of the required period of alcohol-ignition interlock installation immediately prior to the end of each such individual's installation requirement, without a confirmed violation of the State's alcohol-ignition interlock program use requirements.

(2) *Permitted exceptions.* A State statute providing for the following exceptions, and no others, shall not be deemed out of compliance with the requirements of paragraph (g)(1) of this section:

(i) The individual is required to operate an employer's motor vehicle in the course and scope of employment and the business entity that owns the vehicle is not owned or controlled by the individual;

(ii) The individual is certified in writing by a physician as being unable to provide a deep lung breath sample for

analysis by an ignition interlock device; or

(iii) A State-certified ignition interlock provider is not available within 100 miles of the individual's residence.

(h) *Grants to States with a 24–7 sobriety program.* To qualify for a 24–7 Sobriety Program Grant, a State shall submit the following as part of its annual grant application, in accordance with part 5 of appendix B to this part:

(1) Legal citation(s) to State statute demonstrating that the State has enacted and is enforcing a statute that requires all individuals convicted of driving under the influence of alcohol or of driving while intoxicated to receive a restriction on driving privileges, unless an exception in paragraph (g)(2) of this section applies, for a period of not less than 30 days; and

(2) Legal citation(s) to State statute or submission of State program information that authorizes a statewide 24–7 sobriety program.

(i) *Award amounts.* (1) The amount available for grants under paragraphs (d) through (f) of this section shall be determined based on the total amount of eligible States for these grants and after deduction of the amounts necessary to fund grants under 23 U.S.C. 405(d)(6).

(2) The amount available for grants under 23 U.S.C. 405(d)(6)(A) shall not exceed 12 percent of the total amount made available to States under 23 U.S.C. 405(d) for the fiscal year.

(3) The amount available for grants under 23 U.S.C. 405(d)(6)(B) shall not exceed 3 percent of the total amount made available to States under 23 U.S.C. 405(d) for the fiscal year.

(j) *Use of grant funds—*(1) *Eligible uses.* Except as provided in paragraphs (j)(2) through (6) of this section, a State may use grant funds awarded under 23 U.S.C. 405(d) only for the following 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, drugs or the combination of alcohol and drugs;

(iii) Court support of impaired driving prevention efforts, including—

(A) Hiring criminal justice professionals, including law enforcement officers, prosecutors, traffic safety resource prosecutors, judges, judicial outreach liaisons, and probation officers;

(B) Training and education of those professionals to assist the professionals in preventing impaired driving and handling impaired driving cases,

including by providing compensation to a law enforcement officer to carry out safety grant activities to replace a law enforcement officer who is receiving drug recognition expert training or participating as an instructor in that drug recognition expert training; or

(C) Establishing driving while intoxicated courts;

(iv) Alcohol ignition interlock programs;

(v) Improving blood alcohol and drug concentration screening and testing, detection of potentially impairing drugs (including through the use of oral fluid as a specimen), and reporting relating to testing and detection;

(vi) Paid and earned media in support of high-visibility enforcement efforts, conducting initial and continuing standardized field sobriety training, advanced roadside impaired driving evaluation training, law enforcement phlebotomy 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 and drug screening and brief intervention;

(viii) Training for and implementation of impaired driving assessment programs or other tools designed to increase the probability of identifying the recidivism risk of a person convicted of driving under the influence of alcohol, drugs, or a combination of alcohol and drugs and to determine the most effective mental health or substance abuse treatment or sanction that will reduce such risk;

(ix) Developing impaired driving information systems;

(x) Costs associated with a 24–7 sobriety program; or

(xi) Testing and implementing programs, and purchasing technologies, to better identify, monitor, or treat impaired drivers, including—

(A) Oral fluid-screening technologies;

(B) Electronic warrant programs;

(C) Equipment to increase the scope, quantity, quality, and timeliness of forensic toxicology chemical testing;

(D) Case management software to support the management of impaired driving offenders; or

(E) Technology to monitor impaired-driving offenders, and equipment and related expenditures used in connection with impaired-driving enforcement.

(2) *Special rule—low-range States.* Notwithstanding paragraph (j)(1) of this section, a State that qualifies for grant funds as a low-range State may elect to use—

(i) Grant funds awarded under 23 U.S.C. 405(d) for programs designed to

reduce impaired driving based on problem identification, in accordance with § 1300.11; and

(ii) Up to 50 percent of grant funds awarded under 23 U.S.C. 405(d) for any eligible project or activity under Section 402.

(3) *Special rule—mid-range States.* Notwithstanding paragraph (j)(1) of this section, a State that qualifies for grant funds as a mid-range State may elect to use grant funds awarded under 23 U.S.C. 405(d) for programs designed to reduce impaired driving based on problem identification in accordance with § 1300.11, provided the State receives advance approval from NHTSA.

(4) *Special rule—high-range States.* Notwithstanding paragraph (j)(1) of this section, a high-range State may use grant funds awarded under 23 U.S.C. 405(d) only for—

(i) High-visibility enforcement efforts; and

(ii) Any of the eligible uses described in paragraph (j)(1) of this section or programs designed to reduce impaired driving based on problem identification, in accordance with § 1300.11, if all proposed uses are described in a statewide impaired driving plan submitted to and approved by NHTSA in accordance with paragraph (f) of this section.

(5) *Special rule—reporting and impaired driving measures.*

Notwithstanding paragraph (j)(1) of this section, a State may use grant funds awarded under 23 U.S.C. 405(d) for any expenditure relating to—

(i) Increasing the timely and accurate reporting to Federal, State, and local databases of crash information, including electronic crash reporting systems that allow accurate real- or near-real time uploading of crash information, or impaired driving criminal justice information; or

(ii) Researching or evaluating impaired driving countermeasures.

(6) *Special rule—States with alcohol-ignition interlock laws or 24–7 sobriety programs.* Notwithstanding paragraph (j)(1) of this section, a State may elect to use grant funds awarded under 23 U.S.C. 405(d)(6) for any eligible project or activity under Section 402.

§ 1300.24 Distracted Driving Grants.

(a) *Purpose.* This section establishes criteria, in accordance with 23 U.S.C. 405(e), for awarding grants to States that include distracted driving awareness as part of the driver's license examination and enact and enforce a statute prohibiting distracted driving.

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

Driving means operating a motor vehicle on a public road, and 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.

Personal wireless communications device means a device through which personal wireless services are transmitted, and a mobile telephone or other portable electronic communication device with which the user engages in a call or writes, sends, or reads a text message using at least one hand. Personal wireless communications device does not include a global navigation satellite system receiver used for positioning, emergency notification, or navigation purposes.

Text means to read from, or manually enter data into, a personal wireless communications device, including for the purpose of SMS texting, emailing, instant messaging, or any other form of electronic data retrieval or electronic data communication, and manually to enter, send, or retrieve a text message to communicate with another individual or device.

Text message means a text-based message, an instant message, an electronic message, and email, but does not include an emergency alert, traffic alert, weather alert, or a message relating to the operation or navigation of a motor vehicle.

(c) *Qualification criteria for a Distracted Driving Awareness Grant.* To qualify for a Distracted Driving Awareness Grant in a fiscal year, a State shall submit as part of its annual grant application, in accordance with part 6 of appendix B to this part, sample distracted driving questions from the State's driver's license examination.

(d) *Qualification criteria for a Distracted Driving Law Grant.* To qualify for a Distracted Driving Law Grant in a fiscal year, a State shall submit as part of its annual grant application, in accordance with part 6 of appendix B to this part, legal citations to the State statute demonstrating compliance with one of the following requirements:

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

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

(ii) Establish a fine for a violation of the statute; and

(iii) Not provide for an exemption that specifically allows a driver to use a personal wireless communication device for texting while stopped in traffic.

(2) *Prohibition on handheld phone use while driving.* The State statute shall—

(i) Prohibit a driver from holding a personal wireless communications device while driving;

(ii) Establishes a fine for a violation of the statute; and

(iii) Not provide for an exemption that specifically allows a driver to use a personal wireless communications device for texting while stopped in traffic.

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

(i) Prohibit a driver who is younger than 18 years of age or in the learner's permit or intermediate license stage from using a personal wireless communications device while driving;

(ii) Establish a fine for a violation of the statute; and

(iii) Not provide for an exemption that specifically allows a driver to use a personal wireless communication device for texting while stopped in traffic.

(4) *Prohibition on viewing devices while driving.* The State statute shall prohibit a driver from viewing a personal wireless communications device (except for purposes of navigation).

(5) *Permitted exceptions.* A State statute under paragraph (d)(1) through (3) of this section providing for any of the following exceptions (excluding the exception in paragraph (d)(5)(v) of this section for a law under paragraph (d)(3)), and no others, shall not be deemed out of compliance with the requirements of this paragraph (d):

(i) A driver who uses a personal wireless communications device during an emergency to contact emergency services to prevent injury to persons or property;

(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;

(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;

(iv) A driver who uses a personal wireless communications device for navigation;

(v) Except for a law described in paragraph (d)(3) of this section (prohibition on youth cell phone use while driving), the use of a personal

wireless communications device in a hands-free manner, with a hands-free accessory, or with the activation or deactivation of a feature or function of the personal wireless communications device with the motion of a single swipe or tap of the finger of the driver.

(e) *Award amounts*—(1) *In general.* (i) The amount available for Distracted Driving Awareness Grants under paragraph (c) of this section shall not be less than 50 percent of the amounts available under 23 U.S.C. 405(e) for the fiscal year; and the amount available for Distracted Driving Law Grants under paragraph (d) of this section shall not be more than 50 percent of the amounts available under 23 U.S.C. 405(e) for the fiscal year.

(ii) A State may be eligible for a Distracted Driving Awareness Grant under paragraph (c) of this section and for one additional Distracted Driving Law Grant under paragraph (d) of this section.

(2) *Grant amount.*—(i) *Distracted driving awareness.* The amount of a distracted driving awareness grant awarded to a State under paragraph (c) of this section shall be based on the proportion that the apportionment of the State under section 402 for fiscal year 2009 bears to the apportionment of all States under section 402 for that fiscal year.

(ii) *Distracted driving laws.* Subject to paragraph (e)(2)(iii) of this section, the amount of a Distracted Driving Law Grant awarded to a State under paragraph (d) of this section shall be based on the proportion that the apportionment of the State under section 402 for fiscal year 2009 bears to the apportionment of all States under section 402 for that fiscal year.

(iii) *Special rules for distracted driving laws.* (A) A State that qualifies for a Distracted Driving Law Grant under paragraph (d)(1), (2), or (3) of this section and enforces the law as a primary offense shall receive 100 percent of the amount under paragraph (e)(2)(ii) of this section.

(B) A State that qualifies for a Distracted Driving Law Grant under paragraph (d)(1), (2), or (3) of this section and enforces the law as a secondary offense shall receive 50 percent of the amount under paragraph (e)(2)(ii) of this section.

(C) A State that qualifies for a prohibition on viewing Devices While Driving Law Grant under paragraph (d)(4) of this section shall receive 25 percent of the amount under paragraph (e)(2)(ii) of this section.

(f) *Use of funds*—(1) *Eligible uses.* Except as provided in paragraphs (f)(2) and (3) of this section, a State may use

grant funds awarded under 23 U.S.C. 405(e) only to educate the public through advertising that contains 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) *Special rule.* Notwithstanding paragraph (f)(1) of this section, a State may elect to use up to 50 percent of the grant funds awarded under 23 U.S.C. 405(e) for any eligible project or activity under Section 402.

(3) *Special rule—MMUCC conforming States.* Notwithstanding paragraphs (f)(1) and (2) of this section, a State may use up to 75 percent of amounts received under 23 U.S.C. 405(e) for any eligible project or activity under Section 402 if the State has conformed its distracted driving data element(s) to the most recent Model Minimum Uniform Crash Criteria (MMUCC). To demonstrate conformance with MMUCC, the State shall submit, within 30 days after notification of award, the State's most recent crash report with the distracted driving data element(s). NHTSA will notify a State submitting a crash report with the distracted driving data element(s) whether the State's distracted driving data element(s) conform(s) with the most recent MMUCC.

§ 1300.25 Motorcyclist Safety Grants.

(a) *Purpose.* This section establishes criteria, in accordance with 23 U.S.C. 405(f), 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—

Data State means 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.

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.

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 and no statute or regulation diverting any of those fees.

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.

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 as part of its annual grant application documentation demonstrating compliance with at least two of the criteria in paragraphs (e) through (k) of this section.

(e) *Motorcycle rider training course.* 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 crash avoidance and other safety-oriented operational skills to motorcyclists. To demonstrate compliance with this criterion, the State shall submit, in accordance with part 7 of appendix B to this part—

(1) A certification identifying the head of the designated State authority over motorcyclist safety issues and stating that the head of the designated State authority over motorcyclist safety issues has approved and the State has adopted one of the following introductory rider curricula:

(i) Motorcycle Safety Foundation Basic Rider Course;

(ii) TEAM OREGON Basic Rider Training;

(iii) Idaho STAR Basic I;

(iv) California Motorcyclist Safety Program Motorcyclist Training Course;

(v) A curriculum that has been approved by the designated State authority and NHTSA as meeting NHTSA's Model National Standards for Entry-Level Motorcycle Rider Training; and

(2) A list of the counties or political subdivisions in the State where motorcycle rider training courses will be conducted during the fiscal year of the grant and the number of registered motorcycles in each such county or political subdivision according to official State motor vehicle records, provided that the State must offer at

least one motorcycle rider training course in counties or political subdivisions that collectively account for a majority of the State's registered motorcycles.

(f) *Motorcyclist awareness program.* 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. To demonstrate compliance with this criterion, the State shall submit, in accordance with part 7 of appendix B to this part—

(1) A certification identifying the head of the designated State authority over motorcyclist safety issues and stating that the State's motorcyclist awareness program was developed by or in coordination with the designated State authority over motorcyclist safety issues; and

(2) One or more performance measures and corresponding performance targets developed for motorcycle awareness at the level of detail required under § 1300.11(b)(3) that identifies, using State crash data, the counties or political subdivisions within the State with the highest number of motorcycle crashes involving a motorcycle and another motor vehicle. Such data shall be from the most recent calendar year for which final State crash data are available, but must be data no older than three calendar years prior to the application due date (e.g., for a grant application submitted on August 1, 2023, a State shall provide calendar year 2022 data, if available, and may not provide data older than calendar year 2020); and

(3) Projects, at the level of detail required under § 1300.12(b)(2), demonstrating that the State will implement data-driven programs in a majority of counties or political subdivisions where the incidence of crashes involving a motorcycle and another motor vehicle is highest. The State shall submit a list of counties or political subdivisions in the State ranked in order of the highest to lowest number of crashes involving a motorcycle and another motor vehicle per county or political subdivision. Such data shall be from the most recent calendar year for which final State crash data are available, but data must be no older than three calendar years prior to the application due date (e.g., for a grant application submitted on August 1, 2023, a State shall provide calendar year 2022 data, if available, and may not provide data older than calendar year 2020). The State shall select projects implementing those countermeasure strategies to address the State's

motorcycle safety problem areas in order to meet the performance targets identified in paragraph (f)(2) of this section.

(g) *Helmet law.* A State shall have a law requiring the use of a helmet for each motorcycle rider under the age of 18. To demonstrate compliance with this criterion, the State shall submit, in accordance with part 7 of appendix B to this part, the legal citation(s) to the statute(s) requiring the use of a helmet for each motorcycle rider under the age of 18, with no exceptions.

(h) *Reduction of fatalities and crashes involving motorcycles.* 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. To demonstrate compliance a State shall, in accordance with part 7 of appendix B to this part—

(1) Submit State data and a description of the State's methods for collecting and analyzing the 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 are available, but data no older than three calendar years prior to the application due date and the same type of data for the calendar year immediately prior to that calendar year (e.g., for a grant application submitted on August 1, 2023, the State shall submit calendar year 2022 data and 2021 data, if both data are available, and may not provide data older than calendar year 2020 and 2019, to determine the rate);

(2) Experience a reduction of at least one in the number of motorcyclist fatalities for the 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

(3) 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 are available, but data no older than three calendar years prior to the application due date, as compared to the calendar year immediately prior to that year.

(i) *Impaired motorcyclist driving program.* A State shall implement a statewide program to reduce impaired driving, including specific measures to reduce impaired motorcycle operation.

The State shall submit, in accordance with part 7 of appendix B to this part—

(1) One or more performance measures and corresponding performance targets developed to reduce impaired motorcycle operation at the level of detail required under § 1300.11(b)(3). Each performance measure and performance target shall identify the impaired motorcycle operation problem area to be addressed. Problem identification must include an analysis of motorcycle crashes involving an impaired operator by county or political subdivision in the State; and

(2) Projects, at the level of detail required under § 1300.12(b)(2), demonstrating that the State will implement data-driven programs designed to reach motorcyclists 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) based upon State data. Such data shall be from the most recent calendar year for which final State crash data are available, but data no older than three calendar years prior to the application due date (*e.g.*, for a grant application submitted on August 1, 2023, a State shall provide calendar year 2022 data, if available, and may not provide data older than calendar year 2020). Projects and the countermeasure strategies they support shall prioritize the State's impaired motorcycle problem areas to meet the performance targets identified in paragraph (h)(1) of this section.

(j) *Reduction of fatalities and crashes involving impaired motorcyclists.* 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, in accordance with part 7 of appendix B to this part—

(1) Submit State data and a description of the State's methods for collecting and analyzing the 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 are available, but data no older than three 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 August 1, 2023, the State shall submit calendar year 2022 data

and 2021 data, if both data are available, and may not provide data older than calendar year 2020 and 2019, to determine the rate);

(2) Experience a reduction of at least one in the number of fatalities involving alcohol-impaired and drug-impaired motorcycle operators for the 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

(3) 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 are available, but data no older than three calendar years prior to the application due date, as compared to the calendar year immediately prior to that year.

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

(1) To demonstrate compliance as a Law State, the State shall submit, in accordance with part 7 of appendix B to this part, the legal citation(s) to the statute(s) or regulation(s) 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.

(2) To demonstrate compliance as a Data State, the State shall submit, in accordance with part 7 of appendix B to this part, 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.

(l) *Award amounts.* The amount of a grant awarded to a State in a fiscal year under this section shall be in proportion to the amount each State received under Section 402 for fiscal year 2009, except that a grant awarded under 23 U.S.C. 405(f) may not exceed 25 percent of the amount apportioned to the State for fiscal year 2009 under Section 402.

(m) *Use of grant funds—(1) Eligible uses.* Except as provided in paragraph (m)(2) of this section, a State may use grant funds awarded under 23 U.S.C. 405(f) only 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; or

(iv) Public awareness, public service announcements, and other outreach programs to enhance driver awareness of motorcyclists, including “Share-the-Road” safety messages developed using Share-the-Road model language available on NHTSA's website at <http://www.trafficsafetymarketing.gov>.

(2) *Special rule—low fatality States.* Notwithstanding paragraph (m)(1) of this section, a State may elect to use up to 50 percent of grant funds awarded under 23 U.S.C. 405(f) for any eligible project or activity under Section 402 if the State is in the lowest 25 percent of all States for motorcycle deaths per 10,000 motorcycle registrations (using FHWA motorcycle registration data) based on the most recent calendar year for which final FARS data are available, as determined by NHTSA.

(3) *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.

§ 1300.26 Nonmotorized Safety Grants.

(a) *Purpose.* This section establishes criteria, in accordance with 23 U.S.C. 405(g), for awarding grants to States for the purpose of decreasing nonmotorized road user fatalities involving a motor vehicle in transit on a trafficway.

(b) *Eligibility determination.* (1) A State is eligible for a grant under this

section if the State's annual combined nonmotorized road user fatalities exceed 15 percent of the State's total annual crash fatalities based on the most recent calendar year for which final FARS data are available, as determined by NHTSA.

(2) For purposes of this section, a nonmotorized road user means a pedestrian; an individual using a nonmotorized mode of transportation, including a bicycle, a scooter, or a personal conveyance; and an individual using a low-speed or low-horsepower motorized vehicle, including an electric bicycle, electric scooter, personal mobility assistance device, personal transporter, or all-terrain vehicle.

(c) *Qualification criteria.* To qualify for a Nonmotorized Safety Grant in a fiscal year, a State meeting the eligibility requirements of paragraph (b) of this section shall submit as part of its annual grant application a list of project(s) and subrecipient(s) for the fiscal year of the grant, at the level of detail required under § 1300.12(b)(2) for authorized uses identified in paragraph (e) of this section.

(d) *Award amounts.* The amount of a grant awarded to a State in a fiscal year under this section shall be in proportion to the amount each State received under Section 402 for fiscal year 2009.

(e) *Use of grant funds.* A State may use grant funds awarded under 23 U.S.C. 405(g) only for the safety of nonmotorized road users, including—

(1) Training of law enforcement officials relating to nonmotorized road user safety, State laws applicable to nonmotorized road user safety, and infrastructure designed to improve nonmotorized road user safety;

(2) Carrying out a program to support enforcement mobilizations and campaigns designed to enforce State traffic laws applicable to nonmotorized road user safety;

(3) Public education and awareness programs designed to inform motorists and nonmotorized road users regarding—

(i) Nonmotorized road user safety, including information relating to nonmotorized mobility and the importance of speed management to the safety of nonmotorized road users;

(ii) The value of the use of nonmotorized road user safety equipment, including lighting, conspicuity equipment, mirrors, helmets, and other protective equipment, and compliance with any State or local laws requiring the use of that equipment;

(iii) State traffic laws applicable to nonmotorized road user safety, including the responsibilities of

motorists with respect to nonmotorized road users;

(iv) Infrastructure designed to improve nonmotorized road user safety; and

(4) The collection of data, and the establishment and maintenance of data systems, relating to nonmotorized road user traffic fatalities.

§ 1300.27 Preventing Roadside Deaths Grants.

(a) *Purpose.* This section establishes criteria, in accordance with 23 U.S.C. 405(h), for awarding grants to States that adopt and implement effective programs to prevent death and injury from crashes involving motor vehicles striking other vehicles and individuals stopped at the roadside.

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

Digital alert technology means a system that provides electronic notification to drivers.

Optical visibility measure means an action to ensure that items are seen using visible light.

Public information campaign means activities to build awareness with the motoring public of a traffic safety issue through media, messaging, and an organized set of communication tactics that may include but are not limited to advertising in print, internet, social media, radio and television.

(c) *Qualification criteria.* To qualify for a grant under this section in a fiscal year, a State shall submit a plan that describes the method by which the State will use grant funds in accordance with paragraph (e) of this section. At a minimum, the plan shall state the eligible use(s) selected, consistent with paragraph (e) of this section, and include—

(1) Identification of the specific safety problems to be addressed, performance measures and targets, the countermeasure strategies at the level of detail required by § 1300.11(b)(1), (3), and (4); and

(2) Identification of the projects at the level of detail required by § 1300.12(b)(2) that support those strategies the State will implement during the fiscal year to carry out the plan.

(d) *Award amounts.* The amount of a grant awarded to a State in a fiscal year under this section shall be in proportion to the amount each State received under Section 402 for fiscal year 2022.

(e) *Use of grant funds.* A State may only use grant funds awarded under 23 U.S.C. 405(h) as follows:

(1) To purchase and deploy digital alert technology that—

(i) Is capable of receiving alerts regarding nearby first responders; and

(ii) In the case of a motor vehicle that is used for emergency response activities, is capable of sending alerts to civilian drivers to protect first responders on the scene and en route;

(2) To educate the public regarding the safety of vehicles and individuals stopped at the roadside in the State through public information campaigns for the purpose of reducing roadside deaths and injuries;

(3) For law enforcement costs related to enforcing State laws to protect the safety of vehicles and individuals stopped at the roadside;

(4) For programs to identify, collect, and report to State and local government agencies data related to crashes involving vehicles and individuals stopped at the roadside; and

(5) To pilot and incentivize measures, including optical visibility measures, to increase the visibility of stopped and disabled vehicles.

§ 1300.28 Driver and Officer Safety Education Grants.

(a) *Purpose.* This section establishes criteria, in accordance with 23 U.S.C. 405(i), for awarding grants to States that enact and enforce a law or adopt and implement programs that include certain information on law enforcement practices during traffic stops in driver education and training courses or peace officer training programs.

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

Driver education and driving safety course means any programs for novice teen drivers or driver improvement programs sanctioned by the State DMV, which include in-class or virtual instruction and may also include some behind the wheel training.

Peace officer means any individual who is an elected, appointed, or employed agent of a government entity, who has the authority to carry firearms and to make warrantless arrests, and whose duties involve the enforcement of criminal laws of the United States.

(c) *Qualification criteria.* To qualify for a grant under this section in a fiscal year, a State shall submit, as part of its annual grant application, documentation demonstrating compliance with either paragraph (d) or (e) of this section, in accordance with part 8 of appendix B to this part. A State may qualify for a grant under paragraph (e) of this section for a period of not more than 5 years.

(d) *Driver and officer safety law or program.* The State must meet at least one of the following requirements:

(1) *Driver education and driving safety courses—*(i) *General.* A State must provide either a legal citation to a

law, as provided in paragraph (d)(1)(ii) of this section, or supporting documentation, as provided in paragraph (d)(1)(iii) of this section, that demonstrates that driver education and driver safety courses provided to individuals by educational and motor vehicle agencies of the State include instruction and testing relating to law enforcement practices during traffic stops, including, at a minimum, information relating to—

(A) The role of law enforcement and the duties and responsibilities of peace officers;

(B) The legal rights of individuals concerning interactions with peace officers;

(C) Best practices for civilians and peace officers during those interactions;

(D) The consequences for failure of an individual or officer to comply with the law or program; and

(E) How and where to file a complaint against, or a compliment relating to, a peace officer.

(ii) *If applying with a law.* A State shall provide a legal citation to a law that demonstrate compliance with the requirements described in paragraph (d)(1)(i) of this section.

(iii) *If applying with supporting documentation.* A State shall have a driver education and driving safety course that is required throughout the State for licensing or pursuant to a violation. To demonstrate compliance, the State shall submit:

(A) A certification signed by the GR attesting that the State has developed and is implementing a driver education and driving safety course throughout the State that meets the requirements described in paragraph (d)(1)(i) of this section; and

(B) Curriculum or course materials, along with citations to where the requirements described in paragraph (d)(1)(i) of this section are located within the curriculum.

(2) *Peace officer training programs—*
(i) *General.* A State must provide either a legal citation to a law, as provided in paragraph (d)(2)(ii) of this section, or supporting documentation, as provided in paragraph (d)(2)(iii) of this section, that demonstrates that the State has developed and is implementing a training program for peace officers and reserve law enforcement officers (other than officers who have received training in a civilian course described in paragraph (d)(1)) of this section with respect to proper interaction with civilians during traffic stops. Proper interaction means utilizing appropriate industry standards as established through a State Police Officer Standards

and Training Board (POST) or similar association.

(ii) *Applying with a law.* A State shall provide a legal citation to a law that establishes a peace training program that meets the requirements described in paragraph (d)(2)(i) of this section.

(iii) *Applying with supporting documentation.* A State shall have a peace officer training program that is required for employment as a peace officer throughout the State and meets the requirements described in paragraph (d)(2)(i) of this section. To demonstrate compliance, the State shall submit:

(A) A certification signed by the GR attesting that the State has developed and is implementing a peace officer training program throughout the State that meets the requirements described in paragraph (d)(2)(i) of this section; and

(B) Curriculum or course materials, along with citations to where the requirements described in paragraph (d)(2)(i) of this section.

(e) *Qualifying State.* A State that has not fully enacted or adopted a law or program described in paragraph (d) of this section qualifies for a grant under this section if it submits:

(1) Evidence that the State has taken meaningful steps towards the full implementation of such a law or program. To demonstrate compliance with this criterion, the State shall submit one or more of the following—

(i) A proposed bill that has been introduced in the State, but has not yet been enacted into law, that meets the requirements in paragraph (d)(1) or (2) of this section; or

(ii) Planning or strategy document(s) that identify meaningful steps the State has taken as well as actions the State plans to take to develop and implement a law or program that meets the requirements in paragraph (d)(1) or (2) of this section; and

(2) A timetable for implementation of such a law or program within 5 years of first applying as a qualifying State under this paragraph (e).

(f) *Matching.* The Federal share of the cost of carrying out an activity funded through a grant under this subsection may not exceed 80 percent.

(g) *Award amounts—*(1) *In general.* Subject to paragraph (g)(2) of this section, the amount of a grant awarded to a State in a fiscal year under this section shall be in proportion to the amount each State received under Section 402 for fiscal year 2022.

(2) *Limitation.* Notwithstanding paragraph (g)(1) of this section, a State that qualifies for a grant under paragraph (e) of this section shall receive 50 percent of the amount

determined from the calculation under paragraph (g)(1) of this section.

(3) *Redistribution of funds.* Any funds that are not distributed due to the operation of paragraph (g)(2) of this section shall be redistributed to the States that qualify for a grant under paragraph (d) of this section in proportion to the amount each such State received under Section 402 for fiscal year 2022.

(h) *Use of grant funds.* A State may use grant funds awarded under 23 U.S.C. 405(i) only for:

(1) The production of educational materials and training of staff for driver education and driving safety courses and peace officer training described in paragraph (d) of this section; and

(2) The implementation of a law or program described in paragraph (d) of this section.

§ 1300.29 Racial Profiling Data Collection Grants.

(a) *Purpose.* This section establishes criteria, in accordance with Section 1906, for incentive grants to encourage States to maintain and allow public inspection of statistical information on the race and ethnicity of the driver for all motor vehicle stops made on all public roads except those classified as local or minor rural roads.

(b) *Qualification criteria.* To qualify for a Racial Profiling Data Collection Grant in a fiscal year, a State shall submit as part of its annual grant application, in accordance with part 11 of appendix B to this part—

(1) Official documents (*i.e.*, a law, regulation, binding policy directive, letter from the Governor, or court order) that demonstrate that the State maintains and allows public inspection of statistical information on the race and ethnicity of the driver for each motor vehicle stop made by a law enforcement officer on all public roads except those classified as local or minor rural roads; or

(2) Assurances that the State will undertake activities during the fiscal year of the grant to comply with the requirements of paragraph (b)(1) of this section, and projects, at the level of detail required under § 1300.12(b)(2), supporting the assurances.

(c) *Award amounts.* (1) Subject to paragraph (c)(2) of this section, the amount of a grant awarded to a State in a fiscal year under this section shall be in proportion to the amount each State received under Section 402 for fiscal year 2022.

(2) Notwithstanding paragraph (c)(1) of this section, the total amount of a grant awarded to a State under this section in a fiscal year may not exceed—

(i) For a State described in paragraph (b)(1) of this section, 10 percent of the amount made available to carry out this section for the fiscal year; and

(ii) For a State described in paragraph (b)(2) of this section, 5 percent of the amount made available to carry out this section for the fiscal year.

(d) *Use of grant funds.* A State may use grant funds awarded under Section 1906 only for the costs of—

(1) Collecting and maintaining data on traffic stops;

(2) Evaluating the results of the data; and

(3) Developing and implementing programs, public outreach, and training to reduce the impact of traffic stops described in paragraph (a) of this section.

Subpart D—Administration of the Highway Safety Grants

§ 1300.30 General.

Subject to the provisions of this subpart, the requirements of 2 CFR parts 200 and 1201 govern the implementation and management of State highway safety programs and projects carried out under 23 U.S.C. Chapter 4 and Section 1906.

§ 1300.31 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 and Section 1906 will vest upon acquisition in the State or its subrecipient, as appropriate, subject to the conditions in paragraphs (b) through (d) of this section.

(b) *Use.* Equipment may only be purchased if necessary to perform eligible grant activities or if specifically authorized as an allowable use of funds. All equipment shall be used for the originally authorized grant purposes for as long as needed for those purposes, as determined by the Regional Administrator, and neither the State nor any of its subrecipients or contractors shall encumber the title or interest while such need exists.

(c) *Management and disposition.* Subject to the requirements of paragraphs (b), (d), (e), and (f) of this section, States and their subrecipients and contractors shall manage and dispose of equipment acquired under 23 U.S.C. Chapter 4 and Section 1906 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 Regional Administrator;

(2) Dispositions shall receive prior written approval from the Regional Administrator unless the equipment has exceeded its useful life as determined under State law and procedures.

(e) *Right to transfer title.* The Regional Administrator may reserve the right to transfer title to equipment acquired under this part 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 Regional Administrator 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 2 CFR parts 200 and 1201.

(f) *Federally-owned equipment.* In the event a State or its subrecipient 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 by the State;

(3) The State or its subrecipient shall request disposition instructions from the Regional Administrator when the item is no longer needed for highway safety purposes.

§ 1300.32 Amendments to annual grant applications.

(a) During the fiscal year of the grant, States may amend the annual grant application, except performance targets, subsequent to the initial approval under § 1300.12. States shall document changes to the annual grant application electronically.

(b) The State shall amend the annual grant application, prior to beginning project performance, to provide complete and updated information at the level of detail required by § 1300.12(b)(2), about each project agreement it enters into.

(c) Amendments and changes to the annual grant application are subject to approval by the Regional Administrator before approval of vouchers for payment, except that amendments to information submitted under § 1300.12(b)(2)(iii) through (vii) do not require approval unless the amendment requires prior approval under 2 CFR 200.407. Regional Administrators will

disapprove changes and projects that are inconsistent with the triennial HSP, as updated, or that do not constitute an appropriate use of highway safety grant funds. States are independently responsible for ensuring that projects constitute an appropriate use of highway safety grant funds.

§ 1300.33 Vouchers and project agreements.

(a) *General.* Each State shall submit official vouchers for expenses incurred to the Regional Administrator.

(b) *Content of vouchers.* At a minimum, each voucher shall provide the following information, broken down by individual project agreement:

(1) Project agreement number for which work was performed and payment is sought;

(2) Amount of Federal funds sought, up to the amount identified in § 1300.12(b)(2);

(3) Eligible use of funds;

(4) Amount of Federal funds allocated to local expenditure (provided no less than mid-year (by March 31) and with the final voucher); and

(5) 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 Regional Administrator upon request. Each project agreement shall bear the project agreement number to allow the Regional Administrator to match the voucher to the corresponding project.

(d) *Submission requirements.* At a minimum, vouchers shall be submitted to the Regional Administrator 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 for the fiscal year shall be submitted to the Regional Administrator no later than 120 days after the end of the fiscal year, and all unexpended balances shall be carried forward to the next fiscal year unless they have lapsed in accordance with § 1300.41.

(e) *Payment.* (1) Failure to provide the information specified in paragraph (b) of this section shall result in rejection of the voucher.

(2) Vouchers that request payment for projects whose project agreement numbers or amounts claimed do not match the projects or exceed the

estimated amount of Federal funds provided under § 1300.12(b)(2) shall be rejected, in whole or in part, until an amended project and/or estimated amount of Federal funds is submitted and, if required, approved by the Regional Administrator in accordance with § 1300.32.

(3) Failure to meet the deadlines specified in paragraph (d) of this section may result in delayed payment.

§ 1300.34 Program income.

(a) *Definition.* Program income means gross income earned by the State or a subrecipient that is directly generated by a supported activity or earned as a result of the Federal award during the period of performance.

(b) *Inclusions.* Program income includes but is not limited to income from fees for services performed, the use or rental of real or personal property acquired under Federal awards, the sale of commodities or items fabricated under a Federal award, license fees and royalties on patents and copyrights, and principal and interest on loans made with Federal award funds.

(c) *Exclusions.* Program income does not include interest on grant funds, rebates, credits, discounts, taxes, special assessments, levies, and fines raised by a State or a subrecipient, and interest earned on any of them.

(d) *Use of program income—(1) Addition.* Program income shall ordinarily be added to the funds committed to the Federal award (*i.e.*, Section 402, Section 405(b), etc.) under which it was generated. 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 Regional Administrator. Such use shall not increase the commitment of Federal funds.

§ 1300.35 Annual report.

Within 120 days after the end of the fiscal year, each State shall submit electronically an Annual Report providing—

(a) *Performance report.* (1) An assessment of the State's progress in achieving performance targets identified in the most recently submitted triennial HSP, as updated in the annual grant application, based on the most currently available data, including:

(i) An explanation of the extent to which the State's progress in achieving those targets aligns with the triennial HSP (*i.e.*, the State has (not) met or is (not) on track to meet target); and

(ii) A description of how the activities conducted under the prior year annual grant application contributed to meeting the State's highway safety performance targets.

(2) An explanation of how the State plans to adjust the strategy for programming funds to achieve the performance targets, if the State has not met or is not on track to meet its performance targets, or an explanation of why no adjustments are needed to achieve the performance targets.

(b) *Activity report.* (1) An explanation of reasons for projects that were not implemented;

(2) A narrative description of the public participation and engagement efforts carried out and how those efforts informed projects implemented under countermeasure strategies during the grant year;

(3) A description of the State's evidence-based enforcement program activities, including discussion of community collaboration efforts and efforts to support data collection and analysis to ensure transparency, identify disparities in traffic enforcement, and inform traffic enforcement policies, procedures, and activities; and

(4) Submission of information regarding mobilization participation (*e.g.*, participating and reporting agencies, enforcement activity, citation information, paid and earned media information).

§ 1300.36 Appeal of written decision by a Regional Administrator.

The State shall submit an appeal of any written decision by a Regional Administrator regarding the administration of the grants in writing, signed by the Governor's Representative for Highway Safety, to the Regional Administrator. The Regional Administrator shall promptly forward the appeal to the NHTSA Associate Administrator, Regional Operations and Program Delivery. The decision of the NHTSA Associate Administrator shall be final and shall be transmitted in writing to the Governor's Representative for Highway Safety through the Regional Administrator.

Subpart E—Annual Reconciliation.

§ 1300.40 Expiration of the annual grant application.

(a) The State's annual grant application for a fiscal year and the State's authority to incur costs under that application 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 § 1300.33(b) within 120 days after the expiration of the annual grant application. The final voucher constitutes the final financial reconciliation for each fiscal year.

(c) The Regional Administrator may extend the time period by no more than 30 days to submit a final voucher only in extraordinary circumstances, consistent with 2 CFR 200.344 and 200.345. 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 Regional Administrator.

§ 1300.41 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 an annual grant application 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 State's new annual grant application has been approved by the Regional Administrator pursuant to § 1300.12(c), including any amendments to the annual grant application pursuant to § 1300.32.

(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 Regional Administrator.

(3) Grant funds committed to a specific project in accordance with paragraph (b)(2) of this section shall remain committed to that project and must be expended by the end of the succeeding fiscal year. The final voucher for that project shall be submitted within 120 days after the end of that fiscal year.

(4) NHTSA shall deobligate unexpended balances at the end of the time period in paragraph (b)(1) or (3) of

this section, whichever is applicable, and the funds shall lapse.

§ 1300.42 Post-grant adjustments.

The expiration of an annual grant application 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.

§ 1300.43 Continuing requirements.

Notwithstanding the expiration of an annual grant application, the provisions in 2 CFR parts 200 and 1201 and 23 CFR part 1300, including but not limited to equipment and audit, continue to apply to the grant funds authorized under 23 U.S.C. Chapter 4 and Section 1906.

Subpart F—Non-Compliance.

§ 1300.50 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 Section 1906, or with other applicable law, the sanctions in §§ 1300.51 and 1300.52, and any other sanctions or remedies permitted under Federal law, including the specific conditions of 2 CFR 200.208 and 200.339, may be applied as appropriate.

§ 1300.51 Sanctions—reduction of apportionment.

(a) *Determination of sanctions.* (1) The Administrator shall not apportion any funds under Section 402 to any State that does not have or is not implementing an approved highway safety program.

(2) If the Administrator has apportioned funds under Section 402 to a State and subsequently determines that the State is not implementing an approved highway safety program, the Administrator shall reduce the apportionment by an amount equal to not less than 20 percent until such time as the Administrator determines that the State is implementing an approved highway safety program. 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.

(i) When the Administrator determines that a State is not implementing an approved highway safety program, the Administrator shall issue to the State an advance notice, advising the State that the Administrator expects to withhold funds from apportionment or reduce the State's apportionment under Section

402. The Administrator shall state the amount of the expected withholding or reduction.

(ii) The State may, within 30 days after 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.

(b) *Apportionment of withheld funds.* (1) If the Administrator concludes that a State has begun implementing an approved highway safety program, the Administrator shall promptly apportion to the State the funds withheld from its apportionment, but not later than July 31 of the fiscal year for which the funds were withheld.

(2)(i) If the Administrator concludes, after reviewing all relevant documentation submitted by the State or if the State has not responded to the advance notice, that the State did not correct its failure to have or implement an approved highway safety program, the Administrator shall issue a final notice, advising the State of the funds being withheld from apportionment or of the reduction of apportionment under Section 402 by July 31 of the fiscal year for which the funds were withheld.

(ii) 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.

§ 1300.52 Sanctions—risk assessment and non-compliance.

(a) *Risk assessment.* (1) All States receiving funds under the grant programs authorized under 23 U.S.C. Chapter 4 and Section 1906 shall be subject to an assessment of risk by NHTSA. In evaluating risks of a State highway safety program, NHTSA may consider, but is not limited to considering, the following for each State:

(i) Financial stability;

(ii) Quality of management systems and ability to meet management standards prescribed in this part and in 2 CFR part 200;

(iii) History of performance. The applicant's record in managing funds received for grant programs under this part, including findings from Management Reviews;

(iv) Reports and findings from audits performed under 2 CFR part 200, subpart F, or from the reports and findings of any other available audits; and

(v) The State's ability to effectively implement statutory, regulatory, and

other requirements imposed on non-Federal entities.

(2) If a State is determined to pose risk, NHTSA may increase monitoring activities and may impose any of the specific conditions of 2 CFR 200.208, as appropriate.

(b) *Non-compliance.* If at any time a State is found to be in non-compliance with the requirements of the grant programs under this part, the requirements of 2 CFR parts 200 and 1201, or with any other applicable law, the actions permitted under 2 CFR 200.208 and 200.339 may be applied as appropriate.

**Appendix A to Part 1300—
Certifications and Assurances for
Highway Safety Grants**

[Each fiscal year, the Governor's Representative for Highway Safety must sign these Certifications and Assurances affirming that the State 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.]

State: _____

Fiscal Year: _____

By submitting an application for Federal grant funds under 23 U.S.C. Chapter 4 or Section 1906, Public Law 109–59, as amended by Section 25024, Public Law 117–58, the State Highway Safety Office acknowledges and agrees to the following conditions and requirements. In my capacity as the Governor's Representative for Highway Safety, I hereby provide the following Certifications and Assurances:

General Requirements

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;
- Sec. 1906, Public Law 109–59, as amended by Sec. 25024, Public Law 117–58;
- 23 CFR part 1300—Uniform Procedures for State Highway Safety Grant Programs;
- 2 CFR part 200—Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards;
- 2 CFR part 1201—Department of Transportation, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

Intergovernmental Review of Federal 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 Subaward and Executive Compensation*

Reporting, August 27, 2010, (https://www.fsr.gov/documents/OMB_Guidance_on_FFATA_Subaward_and_Executive_Compensation_Reporting_08272010.pdf) by reporting to *FSRS.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;
 - Unique entity identifier (generated by *SAM.gov*);
 - 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 [and its subrecipients] will comply with all Federal statutes and implementing regulations relating to nondiscrimination (“Federal Nondiscrimination Authorities”). These include but are not limited to:

- *Title VI of the Civil Rights Act of 1964* (42 U.S.C. 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- *49 CFR part 21* (entitled *Non-discrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964*);
- *28 CFR 50.3* (U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964);
- *The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970*, (42 U.S.C. 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- *Federal-Aid Highway Act of 1973*, (23 U.S.C. 324 *et seq.*), and *Title IX of the Education Amendments of 1972*, as amended (20 U.S.C. 1681–1683 and 1685–1686) (prohibit discrimination on the basis of sex);
- *Section 504 of the Rehabilitation Act of 1973*, (29 U.S.C. 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability) and *49 CFR part 27*;

- *The Age Discrimination Act of 1975*, as amended, (42 U.S.C. 6101 *et seq.*), (prohibits discrimination on the basis of age);
 - *The Civil Rights Restoration Act of 1987*, (Pub. L. 100–209), (broadens scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal aid recipients, subrecipients and contractors, whether such programs or activities are Federally-funded or not);
 - *Titles II and III of the Americans with Disabilities Act* (42 U.S.C. 12131–12189) (prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing) and *49 CFR parts 37 and 38*;
 - *Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (preventing discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations);
 - *Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency* (requiring that recipients of Federal financial assistance provide meaningful access for applicants and beneficiaries who have limited English proficiency (LEP));
 - *Executive Order 13985, Advancing Racial Equity and Support for Underserved Communities through the Federal Government* (advancing equity across the Federal Government); and
 - *Executive Order 13988, Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation* (clarifying that sex discrimination includes discrimination on the grounds of gender identity or sexual orientation).
- The preceding statutory and regulatory cites hereinafter are referred to as the “Acts” and “Regulations,” respectively.

General Assurances

In accordance with the Acts, the Regulations, and other pertinent directives, circulars, policy, memoranda, and/or guidance, the Recipient hereby gives assurance that it will promptly take any measures necessary to ensure that:

“No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity, for which the Recipient receives Federal financial assistance from DOT, including NHTSA.”

The Civil Rights Restoration Act of 1987 clarified the original intent of Congress, with respect to Title VI of the Civil Rights Act of 1964 and other non-discrimination requirements (the Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973), by restoring the broad, institutional-wide scope and coverage of

these nondiscrimination statutes and requirements to include all programs and activities of the Recipient, so long as any portion of the program is Federally assisted. Specific Assurances

More specifically, and without limiting the above general Assurance, the Recipient agrees with and gives the following Assurances with respect to its Federally assisted Highway Safety Grant Program:

1. The Recipient agrees that each “activity,” “facility,” or “program,” as defined in § 21.23(b) and (e) of 49 CFR part 21 will be (with regard to an “activity”) facilitated, or will be (with regard to a “facility”) operated, or will be (with regard to a “program”) conducted in compliance with all requirements imposed by, or pursuant to the Acts and the Regulations.

2. The Recipient will insert the following notification in all solicitations for bids, Requests For Proposals for work, or material subject to the Acts and the Regulations made in connection with all Highway Safety Grant Programs and, in adapted form, in all proposals for negotiated agreements regardless of funding source:

“The [name of Recipient], in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. 2000d to 2000d–4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.”

3. The Recipient will insert the clauses of appendix A and E of this Assurance (also referred to as DOT Order 1050.2A)¹ in every contract or agreement subject to the Acts and the Regulations.

4. The Recipient will insert the clauses of appendix B of DOT Order 1050.2A, as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a Recipient.

5. That where the Recipient receives Federal financial assistance to construct a facility, or part of a facility, the Assurance will extend to the entire facility and facilities operated in connection therewith.

6. That where the Recipient receives Federal financial assistance in the form of, or for the acquisition of, real property or an interest in real property, the Assurance will extend to rights to space on, over, or under such property.

7. That the Recipient will include the clauses set forth in appendix C and appendix D of this DOT Order 1050.2A, as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the Recipient with other parties:

¹ Available at https://www.faa.gov/about/office_org/headquarters_offices/acr/com_civ_support/non_disc_pr/media/dot_order_1050_2A_standard_dot_title_vi_assurances.pdf.

a. for the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and

b. for the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.

8. That this Assurance obligates the Recipient for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the Assurance obligates the Recipient, or any transferee for the longer of the following periods:

a. the period during which the property is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or

b. the period during which the Recipient retains ownership or possession of the property.

9. The Recipient will provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he/she delegates specific authority to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Acts, the Regulations, and this Assurance.

10. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Acts, the Regulations, and this Assurance.

By signing this ASSURANCE, the State highway safety agency also agrees to comply (and require any sub-recipients, sub-grantees, contractors, successors, transferees, and/or assignees to comply) with all applicable provisions governing NHTSA's access to records, accounts, documents, information, facilities, and staff. You also recognize that you must comply with any program or compliance reviews, and/or complaint investigations conducted by NHTSA. You must keep records, reports, and submit the material for review upon request to NHTSA, or its designee in a timely, complete, and accurate way. Additionally, you must comply with all other reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.

The State highway safety agency gives this ASSURANCE in consideration of and for obtaining any Federal grants, loans, contracts, agreements, property, and/or discounts, or other Federal-aid and Federal financial assistance extended after the date hereof to the recipients by the U.S. Department of Transportation under the Highway Safety Grant Program. This ASSURANCE is binding on the State highway safety agency, other recipients, sub-recipients, sub-grantees, contractors, subcontractors and their subcontractors', transferees, successors in interest, and any other participants in the Highway Safety

Grant Program. The person(s) signing below is/are authorized to sign this ASSURANCE on behalf of the Recipient.

The Drug-Free Workplace Act of 1988 (41 U.S.C. 8103)

The State will provide a drug-free workplace by:

a. 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;

b. Establishing a drug-free awareness program to inform employees about:

1. The dangers of drug abuse in the workplace;

2. The grantee's policy of maintaining a drug-free workplace;

3. Any available drug counseling, rehabilitation, and employee assistance programs;

4. The penalties that may be imposed upon employees for drug violations occurring in the workplace;

5. 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);

c. Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

1. Abide by the terms of the statement;

2. Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

d. Notifying the agency within ten days after receiving notice under subparagraph (c)(2) from an employee or otherwise receiving actual notice of such conviction;

e. Taking one of the following actions, within 30 days of receiving notice under subparagraph (c)(2), with respect to any employee who is so convicted—

1. Taking appropriate personnel action against such an employee, up to and including termination;

2. 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;

f. Making a good faith effort to continue to maintain a drug-free workplace through implementation of all of the paragraphs above.

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-awards 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 Tier Participant Certification (States)

1. By signing and submitting this proposal, the prospective primary tier participant is providing the certification set out below and agrees to comply with the requirements of 2 CFR parts 180 and 1200.

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 primary tier 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 tier 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 tier 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 or may pursue suspension or debarment.

4. The prospective primary tier participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary tier participant learns its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms *covered transaction*, *civil judgment*, *debarment*, *suspension*, *ineligible*, *participant*, *person*, *principal*, and *voluntarily excluded*, as used in this clause, are defined in 2 CFR parts 180 and 1200. 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 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 entering into this transaction.

7. The prospective primary tier participant further agrees by submitting this proposal that it will include the clause titled "Instructions for Lower Tier Participant Certification" including the "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 and will require lower tier participants to comply with 2 CFR parts 180 and 1200.

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 is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any prospective lower tier participants, each participant may, but is not required to, check the System for Award Management Exclusions website (<https://www.sam.gov/>).

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 the transaction for cause or default.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Tier Covered Transactions

(1) The prospective primary tier participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions 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 records, 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 tier 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 Participant Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below and agrees to comply with the requirements of 2 CFR parts 180 and 1200.

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 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*, *civil judgment*, *debarment*, *suspension*, *ineligible*, *participant*, *person*, *principal*, and *voluntarily excluded*, as used in this clause, are defined in 2 CFR parts 180 and 1200. 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 "Instructions for Lower Tier Participant Certification" including the "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 and will require lower tier participants to comply with 2 CFR parts 180 and 1200.

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 is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any prospective lower tier participants, each participant may, but is not required to, check

the System for Award Management Exclusions website (<https://www.sam.gov/>).

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 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 participating in covered transactions 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.

Buy America (Applies to Subrecipients as Well as States)

The State and each subrecipient will comply with the Buy America requirement (23 U.S.C. 313) when purchasing items using Federal funds. Buy America requires a State, or subrecipient, to purchase with Federal funds only steel, iron and manufactured products produced in the United States, unless the Secretary of Transportation determines that such domestically produced items 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. In order to use Federal funds to purchase foreign produced items, the State must submit a waiver request that provides an adequate basis and justification for approval by the Secretary of Transportation.

Certification on Conflict of Interest (Applies to Subrecipients as Well as States)

General Requirements

No employee, officer or agent of a State or its subrecipient who is authorized in an official capacity to negotiate, make, accept or approve, or to take part in negotiating, making, accepting or approving any subaward, including contracts or subcontracts, in connection with this grant

shall have, directly or indirectly, any financial or personal interest in any such subaward. Such a financial or personal interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or personal interest in or a tangible personal benefit from an entity considered for a subaward. Based on this policy:

1. The recipient shall maintain a written code or standards of conduct that provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents.

a. The code or standards shall provide that the recipient's officers, employees, or agents may neither solicit nor accept gratuities, favors, or anything of monetary value from present or potential subawardees, including contractors or parties to subcontracts.

b. The code or standards shall establish penalties, sanctions or other disciplinary actions for violations, as permitted by State or local law or regulations.

2. The recipient shall maintain responsibility to enforce the requirements of the written code or standards of conduct.

Disclosure Requirements

No State or its subrecipient, including its officers, employees or agents, shall perform or continue to perform under a grant or cooperative agreement, whose objectivity may be impaired because of any related past, present, or currently planned interest, financial or otherwise, in organizations regulated by NHTSA or in organizations whose interests may be substantially affected by NHTSA activities. Based on this policy:

1. The recipient shall disclose any conflict of interest identified as soon as reasonably possible, making an immediate and full disclosure in writing to NHTSA. The disclosure shall include a description of the action which the recipient has taken or proposes to take to avoid or mitigate such conflict.

2. NHTSA will review the disclosure and may require additional relevant information from the recipient. If a conflict of interest is found to exist, NHTSA may (a) terminate the award, or (b) determine that it is otherwise in the best interest of NHTSA to continue the award and include appropriate provisions to mitigate or avoid such conflict.

3. Conflicts of interest that require disclosure include all past, present or currently planned organizational, financial, contractual or other interest(s) with an organization regulated by NHTSA or with an organization whose interests may be substantially affected by NHTSA activities, and which are related to this award. The interest(s) that require disclosure include those of any recipient, affiliate, proposed consultant, proposed subcontractor and key personnel of any of the above. Past interest shall be limited to within one year of the date of award. Key personnel shall include any person owning more than a 20 percent interest in a recipient, and the officers, employees or agents of a recipient who are responsible for making a decision or taking

an action under an award where the decision or action can have an economic or other impact on the interests of a regulated or affected organization.

Prohibition on Using Grant Funds To Check for Helmet Usage (Applies to Subrecipients as Well as States)

The State and each subrecipient will not use 23 U.S.C. Chapter 4 grant funds for programs to check helmet usage or to create checkpoints that specifically target motorcyclists.

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 and resources on traffic safety programs and policies for employers, please contact the Network of Employers for Traffic Safety (NETS), a public-private partnership dedicated to improving the traffic safety practices of employers and employees. You can download information on seat belt programs, costs of motor vehicle crashes to employers, and other traffic safety initiatives at www.trafficsafety.org. The NHTSA website (www.nhtsa.gov) also provides information on statistics, campaigns, and program evaluations and references.

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 vehicles 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.

Section 402 Requirements

1. To the best of my personal knowledge, the information submitted in the annual grant application in support of the State's application for a grant under 23 U.S.C. 402 is accurate and complete.

2. The Governor is the responsible official for the administration of the State highway safety program, by appointing a Governor's Representative for Highway Safety who shall be responsible for 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))

3. At least 40 percent of all Federal funds apportioned to this State under 23 U.S.C. 402 for this fiscal year will be expended by or on behalf of political subdivisions of the State in carrying out local highway safety programs (23 U.S.C. 402(b)(1)(C)) or 95 percent by and on behalf of Indian tribes (23 U.S.C. 402(h)(2)), unless this requirement is waived in writing. (This provision is not applicable to the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.)

4. 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))

5. As part of a comprehensive program, the State will support a data-based traffic safety enforcement program that fosters effective community collaboration to increase public safety, and data collection and analysis to ensure transparency, identify disparities in traffic enforcement, and inform traffic enforcement policies, procedures, and activities. (23 U.S.C. 402(b)(1)(E))

6. 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 as identified annually in the NHTSA Communications Calendar, including not less than 3 mobilization campaigns in each fiscal year to—
 - Reduce alcohol-impaired or drug-impaired operation of motor vehicles; and
 - Increase use of seat belts by occupants of motor vehicles;
- 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, except for the Secretary of Interior on behalf of Indian tribes;
- Development of statewide data systems to provide timely and effective data analysis to support allocation of highway safety resources;
- Coordination of triennial Highway Safety Plan, data collection, and information systems with the State strategic highway safety plan, as defined in 23 U.S.C. 148(a); and
- Participation in the Fatality Analysis Reporting System (FARS), except for American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, or the United States Virgin Islands.

(23 U.S.C. 402(b)(1)(F))

7. 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))

8. The State will not expend Section 402 funds to carry out a program to purchase, operate, or maintain an automated traffic enforcement system, except in a work zone or school zone. (23 U.S.C. 402(c)(4))

I understand that my statements in support of the State's application for Federal grant funds are statements upon which the Federal Government will rely in determining qualification for grant funds, and that knowing misstatements may be subject to civil or criminal penalties under 18 U.S.C. 1001. I sign these Certifications and Assurances based on personal knowledge, and after appropriate inquiry.

Signature Governor's Representative for Highway Safety

Date

Printed name of Governor's Representative for Highway Safety

Appendix B to Part 1300—Application Requirements for Section 405 and Section 1906 Grants

[Each fiscal year, to apply for a grant under 23 U.S.C. 405 or Section 1906, Public Law 109-59, as amended by Section 25024, Public Law 117-58, the State must complete and submit all required information in this appendix, and the Governor's Representative for Highway Safety must sign the Certifications and Assurances.]

State: _____

Fiscal Year: _____

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 triennial HSP or annual grant application. Attachments may be submitted electronically.

Part 1: Occupant Protection Grants (23 CFR 1300.21)

[Check the box above only if applying for this grant.]

All States

[Fill in all blanks below.]

- The State's occupant protection program area plan for the upcoming fiscal year is provided in the annual grant application at _____ (location).
- 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 in the annual grant application at _____ (location).
- Projects demonstrating the State's active network of child restraint inspection stations are provided in the annual grant application at _____ (location). Such description includes estimates for: (1) the total number of planned inspection stations and events

during the upcoming fiscal year; and (2) within that total, the number of planned inspection stations and events serving each of the following population categories: urban, rural, and at-risk. The planned inspection stations/events provided in the annual grant application are staffed with at least one current nationally Certified Child Passenger Safety Technician.

- Projects, as provided in the annual grant application at _____ (location), that include estimates of the total number of classes and total number of technicians to be trained in the upcoming fiscal year to ensure coverage of child passenger safety inspection stations and inspection events by nationally Certified Child Passenger Safety Technicians.

Lower Seat Belt Use States Only

[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 _____ (date) and last amended on _____ (date), 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 _____ (date) and last amended on _____ (date), 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.

Projects demonstrating the State's seat belt enforcement plan are provided in the annual grant application at _____ (location).

The projects demonstrating the State's high risk population countermeasure program are provided in the annual grant application at _____ (location).

The State's comprehensive occupant protection program is provided as follows:

- Date of NHTSA-facilitated program assessment conducted within 5 years prior to the application date: _____ (date);
- Multi-year strategic plan: annual grant application or triennial HSP at _____ (location);
- The name and title of the State's designated occupant protection coordinator is _____.
- List that contains the names, titles and organizations of the statewide occupant protection task force membership: annual grant application at _____ (location).

The State's NHTSA-facilitated occupant protection program assessment of all elements of its occupant protection program was conducted on _____ (date) (within 5 years of the application due date);

Part 2: State Traffic Safety Information System Improvements Grants (23 CFR 1300.22)

[Check the box above only if applying for this grant.]

All States

- The State has a functioning traffic records coordinating committee that meets at least 3 times each year.
- The State has designated a TRCC coordinator.
- The State has established a State traffic records strategic plan, updated annually, that has been approved by the TRCC and 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.

[Fill in the blank for the bullet below.]

- Written description of the performance measure(s), 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 is provided in the annual grant application at _____ (location).

Part 3: Impaired Driving Countermeasures (23 CFR 1300.23(D)–(F))

[Check the box above only if applying for this grant.]

All States

- 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 1300.23(j).

Mid-Range State Only

[Check one box below and fill in all blanks under that checked box.]

- The State submits its statewide impaired driving plan approved by a statewide impaired driving task force on _____ (date). Specifically—
- Annual grant application at _____ (location) describes the authority and basis for operation of the statewide impaired driving task force;
 - Annual grant application at _____ (location) contains the list of names, titles and organizations of all task force members;
 - Annual grant application at _____ (location) contains the strategic plan based on Highway Safety Guideline No. 8—Impaired Driving.

- The State has previously submitted a statewide impaired driving plan approved by a statewide impaired driving task force on _____ (date) and continues to use this plan.

[For fiscal year 2024 grant applications only.]

- The State will convene a statewide impaired driving task force to develop a statewide impaired driving plan, and will submit that plan by August 1 of the grant year.

High-Range State Only

[Check one box below and fill in all blanks under that checked box.]

- The State submits its statewide impaired driving plan approved by a statewide impaired driving task force on _____ (date) that includes a review of a NHTSA-facilitated assessment of the State's impaired driving program conducted on _____ (date). Specifically—

- Annual grant application at _____ (location) describes the authority and basis for operation of the statewide impaired driving task force;
- Annual grant application at _____ (location) contains the list of names, titles and organizations of all task force members;
- Annual grant application at _____ (location) contains the strategic plan based on Highway Safety Guideline No. 8—Impaired Driving;
- Annual grant application at _____ (location) addresses any related recommendations from the assessment of the State's impaired driving program;
- Annual grant application at _____ (location) contains the projects, in detail, for spending grant funds;
- Annual grant application at _____ (location) describes how the spending supports the State's impaired driving program and achievement of its performance targets.

- The State submits an updated statewide impaired driving plan approved by a statewide impaired driving task force on _____ (date) and updates its assessment review and spending plan provided in the annual grant application at _____ (location).

[For fiscal year 2024 grant applications only.]

- The State's NHTSA-facilitated assessment was conducted on _____ (date) (within 3 years of the application due date); OR

- The State will conduct a NHTSA-facilitated assessment during the grant year; AND

- The State will convene a statewide impaired driving task force to develop a statewide impaired driving plan and will submit that plan by August 1 of the grant year.

Part 4: Alcohol-Ignition Interlock Laws (23 CFR 1300.23(G))

[Check the box above only if applying for this grant.]

[Check one box below and fill in all blanks under that checked box.]

- The State's alcohol-ignition interlock law, requiring all individuals convicted of driving under the influence or of driving while intoxicated to drive only motor vehicles with alcohol-ignition interlocks for a period of not less than 180 days, was enacted on _____ (date) and last amended on _____ (date), is in effect, and will be enforced during the fiscal year of the grant.

Legal citations:

- _____ Requirement for alcohol-ignition interlocks for all DUI offenders for not less than 180 days;
- _____ Identify all alcohol-ignition interlock use exceptions.

- The State's alcohol-ignition interlock law, requiring an individual convicted of driving under the influence of alcohol or of driving while intoxicated, and who has been

ordered to use an alcohol-ignition interlock, and does not permit the individual to receive any driving privilege or driver's license unless the individual installs on each motor vehicle registered, owned, or leased by the individual an alcohol-ignition interlock for a period of not less than 180 days, was enacted on _____ (date) and last amended on _____ (date), is in effect, and will be enforced during the fiscal year of the grant.

Legal citations:

- _____ Requirement for installation of alcohol ignition-interlocks for DUI offenders for not less than 180 days;
- _____ Identify all alcohol-ignition interlock use exceptions.

The State's alcohol-ignition interlock law, requiring an individual convicted of, or the driving privilege of whom is revoked or denied, for refusing to submit to a chemical or other appropriate test for the purpose of determining the presence or concentration of any intoxicating substance, and who has been ordered to use an alcohol-ignition interlock, requires the individual to install on each motor vehicle to be operated by the individual an alcohol-ignition interlock for a period of not less than 180 days, was enacted on _____ (date) and last amended on _____ (date), is in effect, and will be enforced during the fiscal year of the grant; and

The State's compliance-based removal program, requiring an individual convicted of driving under the influence of alcohol or of driving while intoxicated, and who has been ordered to use an alcohol-ignition interlock, requires the individual to install on each motor vehicle to be operated by the individual an alcohol-ignition interlock for a period of not less than 180 days, was enacted (if a law) or implemented (if a program) on _____ (date) and last amended on _____ (date), is in effect, and will be enforced during the fiscal year of the grant; and

The State's compliance-based removal program, requiring completion of a minimum consecutive period of not less than 40 percent of the required period of alcohol-ignition interlock installation immediately prior to the end of the individual's installation requirement, without a confirmed violation of the State's alcohol-ignition interlock program use requirements, was enacted (if a law) or implemented (if a program) on _____ (date) and last amended on _____ (date), is in effect, and will be enforced during the fiscal year of the grant.

Legal citations:

- _____ Requirement for installation of alcohol-ignition interlocks for refusal to submit to a test for 180 days;
- _____ Requirement for installation of alcohol ignition-interlocks for DUI offenders for not less than 180 days;
- _____ Requirement for completion of minimum consecutive period of not less than 40 percent of the required period of alcohol-interlock use;
- _____ Identify list of alcohol-ignition interlock program use violations;
- _____ Identify all alcohol-ignition interlock use exceptions.

Part 5: 24–7 Sobriety Programs (23 CFR 1300.23(H))

[Check the box above only if applying for this grant.]

[Fill in all blanks.]

The State provides citations to a law that requires all individuals convicted of driving under the influence or of driving while intoxicated to receive a restriction on driving privileges that was enacted on _____ (date) and last amended on _____ (date), is in effect, and will be enforced during the fiscal year of the grant. *Legal citation(s):* _____.

[Check at least one of the boxes below and fill in all blanks under that checked box.]

Law citation. The State provides citations to a law that authorizes a statewide 24–7 sobriety program that was enacted on _____ (date) and last amended on _____ (date), is in effect, and will be enforced during the fiscal year of the grant. *Legal citation(s):* _____.

Program information. The State provides program information that authorizes a statewide 24–7 sobriety program. The program information is provided in the annual grant application at _____ (location).

Part 6: Distracted Driving Grants (23 CFR 1300.24)

[Check the box above only if applying for this grant and check the box(es) below for each grant for which you wish to apply.]

The State has conformed its distracted driving data to the most recent Model Minimum Uniform Crash Criteria (MMUCC) and will provide supporting data (*i.e.*, the State's most recent crash report with distracted driving data element(s)) within 30 days after notification of award.

Distracted Driving Awareness Grant

- The State provides sample distracted driving questions from the State's driver's license examination in the annual grant application at _____ (location).

Distracted Driving Law Grants

[Check at least 1 box below and fill in all blanks under that checked box.]

Prohibition on Texting While Driving

The State's texting ban statute, prohibiting texting while driving and requiring a fine, was enacted on _____ (date) and last amended on _____ (date), 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;
- _____ Fine for an offense;
- _____ Exemptions from texting ban.

Prohibition on Handheld Phone Use While Driving

The State's handheld phone use ban statute, prohibiting a driver from holding a personal wireless communications device while driving and requiring a fine for violation of the law, was enacted on _____ (date) and last amended on _____ (date), is in effect, and will be enforced during the fiscal year of the grant.

Legal citations:

- _____ Prohibition on handheld phone use;

- _____ Definition of covered wireless communication devices;
- _____ Fine for an offense;
- _____ Exemptions from handheld phone use 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, and requiring a fine, was enacted on _____ (date) and last amended on _____ (date), is in effect, and will be enforced during the fiscal year of the grant.

Legal citations:

- _____ Prohibition on youth cell phone use while driving;
- _____ Definition of covered wireless communication devices;
- _____ Fine for an offense;
- _____ Exemptions from youth cell phone use ban.

Prohibition on Viewing Devices While Driving

The State's viewing devices ban statute, prohibiting drivers from viewing a device while driving, was enacted on _____ (date) and last amended on _____ (date), is in effect, and will be enforced during the fiscal year of the grant.

Legal citations:

- _____ Prohibition on viewing devices while driving;
- _____ Definition of covered wireless communication devices;

Part 7: Motorcyclist Safety Grants (23 CFR 1300.25)

[Check the box above only if applying for this grant.]

[Check at least 2 boxes below and fill in all blanks under those checked boxes only.]

Motorcycle Rider Training Course

- The name and organization of the head of the designated State authority over motorcyclist safety issues is _____.

- The head of the designated State authority over motorcyclist safety issues has approved and the State has adopted one of the following introductory rider curricula:

[Check at least one of the following boxes below and fill in any blanks.]

- Motorcycle Safety Foundation Basic Rider Course;
- TEAM OREGON Basic Rider Training;
- Idaho STAR Basic I;
- California Motorcyclist Safety Program Motorcyclist Training Course;
- Other curriculum that meets NHTSA's Model National Standards for Entry-Level Motorcycle Rider Training and that has been approved by NHTSA.

- In the annual grant application at _____ (location), a list of counties or political subdivisions in the State where motorcycle rider training courses will be conducted during the fiscal year of the grant AND number of registered motorcycles in each such county or political subdivision according to official State motor vehicle records.

Motorcyclist Awareness Program

- The name and organization of the head of the designated State authority over motorcyclist safety issues is _____.
- The State's motorcyclist awareness program was developed by or in coordination with the designated State authority having jurisdiction over motorcyclist safety issues.

- In the annual grant application at _____ (location), performance measures and corresponding performance targets developed for motorcycle awareness that identify, using State crash data, the counties or political subdivisions within the State with the highest number of motorcycle crashes involving a motorcycle and another motor vehicle.

- In the annual grant application at _____ (location), the projects demonstrating that the State will implement data-driven programs in a majority of counties or political subdivisions where the incidence of crashes involving a motorcycle and another motor vehicle is highest, and a list that identifies, using State crash data, the counties or political subdivisions within the State ranked in order of the highest to lowest number of crashes involving a motorcycle and another motor vehicle per county or political subdivision.

Helmet Law

The State's motorcycle helmet law, requiring the use of a helmet for each motorcycle rider under the age of 18, was enacted on _____ (date) and last amended on _____ (date), is in effect, and will be enforced during the fiscal year of the grant.

Legal citation(s): _____.

Reduction of Fatalities and Crashes Involving Motorcycles

- Data showing the total number of motor vehicle crashes involving motorcycles is provided in the annual grant application at _____ (location).

- Description of the State's methods for collecting and analyzing data is provided in the annual grant application at _____ (location).

Impaired Motorcycle Driving Program

- In the annual grant application or triennial HSP at _____ (location), performance measures and corresponding performance targets developed to reduce impaired motorcycle operation.

- In the annual grant application at _____ (location), countermeasure strategies and projects demonstrating that the State will implement data-driven programs 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) based upon State data.

Reduction of Fatalities and Crashes Involving Impaired Motorcyclists

- Data showing the total number of reported crashes involving alcohol-impaired and drug-impaired motorcycle operators are

provided in the annual grant application at _____ (location).

- Description of the State's methods for collecting and analyzing data is provided in the annual grant application at _____ (location).

Use of Fees Collected From Motorcyclists for Motorcycle Programs

[Check one box only below and fill in all blanks under the checked box only.]

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 ____ demonstrates that all fees collected by the State from motorcyclists for the purpose of funding motorcycle training and safety programs are 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 in the annual grant application at _____ (location).

Part 8: Nonmotorized Safety Grants (23 CFR 1300.26)

[Check the box above only if applying for this grant and only if NHTSA has identified the State as eligible because the State annual combined nonmotorized road user fatalities exceed 15 percent of the State's total annual crash fatalities based on the most recent calendar year final FARS data, then fill in the blank below.]

- The list of project(s) and subrecipient(s) information that the State plans to conduct under this program is provided in the annual grant application at _____ (location(s)).

Part 9: Preventing Roadside Deaths Grants (23 CFR 1300.27)

[Check the box above only if applying for this grant, then fill in the blank below.]

The State's plan describing the method by which the State will use grant funds is provided in the annual grant application at _____ (location(s)).

Part 10: Driver and Officer Safety Education Grants (23 CFR 1300.28)

[Check the box above only if applying for this grant.]

[Check one box only below and fill in required blanks under the checked box only.]

Driver Education and Driving Safety Courses

[Check one box only below and fill in all blanks under the checked box only.]

Applying as a law State—

The State law requiring that driver education and driver safety courses include instruction and testing related to law enforcement practices during traffic stops was enacted on _____ (date) and last amended on _____ (date), is in effect, and will be enforced during the fiscal year of the grant.

Legal citation(s): _____.

Applying as a documentation State—

- The State has developed and is implementing a driver education and driving safety course throughout the State that require driver education and driver safety courses to include instruction and testing related to law enforcement practices during traffic stops.

- Curriculum or course materials, and citations to grant required topics within, are provided in the annual grant application at _____ (location).

Peace Officer Training Programs

[Check one box only below and fill in all blanks under the checked box only.]

Applying as a law State—

The State law requiring that the State has developed and implemented a training program for peace officers and reserve law enforcement officers with respect to proper interaction with civilians during traffic stops was enacted on _____ (date) and last amended on _____ (date), is in effect, and will be enforced during the fiscal year of the grant.

Legal citation(s): _____.

Applying as a documentation State—

- The State has developed and is implementing a training program for peace officers and reserve law enforcement officers with respect to proper interaction with civilians during traffic stops.

- Curriculum or course materials, and citations to grant required topics within, are provided in the annual grant application at _____ (location).

Applying as a qualifying State—

- A proposed bill or planning or strategy documents that identify meaningful actions that the State has taken and plans to take to develop and implement a qualifying law or program is provided in the annual grant application at _____ (location).

- A timetable for implementation of a qualifying law or program within 5 years of initial application for a grant under this section is provided in the annual grant application at _____ (location).

Part 11: Racial Profiling Data Collection Grants (23 CFR 1300.29)

[Check the box above only if applying for this grant.]

[Check one box only below and fill in all blanks under the checked box only.]

The official document(s) (i.e., a law, regulation, binding policy directive, letter from the Governor or court order) demonstrates that the State maintains and allows public inspection of statistical information on the race and ethnicity of the driver for each motor vehicle stop made by a law enforcement officer on all public roads except those classified as local or minor rural roads are provided in the annual grant application at _____ (location).

The projects that the State will undertake during the fiscal year of the grant to maintain and allow public inspection of statistical information on the race and ethnicity of the driver for each motor vehicle stop made by a law enforcement officer on all public roads except those classified as local or minor rural roads are provided in the annual grant application at _____ (location).

In my capacity as the Governor's Representative for Highway Safety, I hereby provide the following certifications and assurances—

- I have reviewed the above information in support of the State's application for 23 U.S.C. 405 and Section 1906 grants, and based on my review, the information is accurate and complete to the best of my personal knowledge.

- As condition of each grant awarded, the State will use these grant funds in accordance with the specific statutory and regulatory requirements of that grant, and will comply with all applicable laws, regulations, and financial and programmatic requirements for Federal grants.

- I understand and accept that incorrect, incomplete, or untimely information submitted in support of the State's application may result in the denial of a grant award.

I understand that my statements in support of the State's application for Federal grant funds are statements upon which the Federal Government will rely in determining qualification for grant funds, and that knowing misstatements may be subject to civil or criminal penalties under 18 U.S.C. 1001. I sign these Certifications and Assurances based on personal knowledge, and after appropriate inquiry.

Signature Governor's Representative for Highway Safety

Date

Printed name of Governor's Representative for Highway Safety

Issued in Washington, DC, under authority delegated in 49 CFR 1.95.

Ann Carlson,
Acting Administrator.

[FR Doc. 2023-01819 Filed 2-3-23; 8:45 am]

BILLING CODE 4910-59-P