Controls with respect to any miscellaneous payments reported under § 130.10(c).

(b) Supplementary reports must be sent to the Directorate of Defense Trade Controls within 30 days after the payment, offer or agreement reported therein or, when requested by the Directorate of Defense Trade Controls, within 30 days after such request, and must include:

* * * * *

(2) The Directorate of Defense Trade Controls license number, if any, and the Department of Defense contract number, if any, related to the sale.

■ 102. Section 130.12 is amended by revising paragraphs (c), (d)(1) introductory text, and (d)(2) to read as follows:

§ 130.12 Information to be furnished by vendor to applicant or supplier.

* * * * *

(c) If the vendor believes that furnishing information to an applicant or supplier in a requested statement would unreasonably risk injury to the vendor's commercial interests, the vendor may furnish in lieu of the statement an abbreviated statement disclosing only the aggregate amount of all political contributions and the aggregate amount of all fees or commissions which have been paid, or offered or agreed to be paid, or offered or agreed to be paid, by the vendor with respect to the sale. Any abbreviated statement furnished to an applicant or supplier under this paragraph must be accompanied by a certification that the requested information has been reported by the vendor directly to the Directorate of Defense Trade Controls. The vendor must simultaneously report fully to the Directorate of Defense Trade Controls all information which the vendor would otherwise have been required to report to the applicant or supplier under this section. Each such report must clearly identify the sale with respect to which the reported information pertains.

(d)(1) If upon the 25th day after the date of its request to vendor, an applicant or supplier has not received from the vendor the initial statement required by paragraph (a) of this section, the applicant or supplier must submit to the Directorate of Defense Trade Controls a signed statement attesting to:

* * * * *

(2) The failure of a vendor to comply with this section does not relieve any applicant or supplier otherwise required by § 130.9 to submit a report to the Directorate of Defense Trade Controls from submitting such a report.

■ 103. Section 130.17 is amended by revising paragraph (a) to read as follows:

§ 130.17 Utilization of and access to reports and records.

(a) All information reported and records maintained under this part will be made available, upon request for utilization by standing committees of the Congress and subcommittees thereof, and by United States Government agencies, in accordance with § 39(d) of the Arms Export Control Act (22 U.S.C. 2779(d)), and reports based upon such information will be submitted to Congress in accordance with sections 36(a)(7) and 36(b)(1) of that Act (22 U.S.C. 2776(a)(7) and (b)(1)) or any other applicable law.

* * * * *

Dated: March 1, 2006.

Robert G. Joseph,

Under Secretary for Arms Control and International Security, Department of State.

[FR Doc. 06–3500 Filed 4–20–06; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

23 CFR Part 1313

[Docket No. NHTSA–2005–23454]

RIN 2127–AJ73

Amendment To Grant Criteria for Alcohol-Impaired Driving Prevention Programs

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

ACTION: Final rule.

SUMMARY: This final rule amends the regulation that implements 23 U.S.C. 410, under which States can receive incentive grants for alcohol-impaired driving prevention programs. The final rule implements changes that were made to the Section 410 program by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy For Users (SAFETEA–LU).

SAFETEA–LU provides States with two alternative means to qualify for a Section 410 grant. Under the first alternative, States may qualify as a ''low fatality rate State'' if they have an alcohol-related fatality rate of 0.5 or less per 100 million vehicle miles traveled (VMT). Under the second alternative, States may qualify as a ''programmatic State'' if they demonstrate that they meet three of eight grant criteria for fiscal year 2006, four of eight grant criteria for fiscal year 2007, and five of eight grant criteria for fiscal years 2008 and 2009. Qualifying under both alternatives does not entitle the State to receive additional grant funds. SAFETEA–LU also provides for a separate grant to the ten States that are determined to have the highest rates of alcohol-related driving fatalities.

This final rule establishes the criteria States must meet and the procedures they must follow to qualify for Section 410 grants, beginning in FY 2006.

DATES: This final rule becomes effective on June 20, 2006.

FOR FURTHER INFORMATION CONTACT: For programmatic issues: Ms. Carmen Hayes, Highway Safety Specialist, Injury Control Operations & Resources (ICOR), NTI–200, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–2121. For legal issues: Mr. Roland (R.T.) Baumann III, Attorney-Advisor, Legislation and General Law Division, Office of the Chief Counsel, NCC–113, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–1834.

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I. Background

The Alcohol Impaired Driving Countermeasures program was created by the Drunk Driving Prevention Act of 1988 and codified at 23 U.S.C. 410. As originally conceived, States could qualify for basic and supplemental grants under the Section 410 program if they met certain criteria. To qualify for a basic grant, States had to provide for an expedited driver's license suspension or revocation system and a self-sustaining impaired driving prevention program. To qualify for a supplemental grant, States had to be eligible for a basic grant and provide for a mandatory blood alcohol testing program, an underage drinking program, an open container and consumption program, or a suspension of registration and return of license plate program.

During the decade and a half since the inception of the Section 410 program, it has been amended several times to change the grant criteria and grant award amounts. The most recent amendments prior to those leading to this action arose out of the Transportation Equity Act for the 21st Century (TEA–21), Pub. L. 105–178. TEA–21 amended both the grant amounts and the criteria that States had to meet to qualify for both basic and supplemental grants under the Section 410 program. Under TEA–21, States qualified for a ''programmatic'' basic grant by meeting five of the seven following criteria: An administrative driver's license suspension or revocation system; an underage drinking prevention program; a statewide impaired-driving traffic enforcement program; a graduated driver's license system; a program to target drivers with a high blood alcohol concentration (BAC) level; a program to reduce drinking and driving among young adults (between the ages of 21 and 34); and a BAC testing program. In addition, States could qualify for a ''performance'' basic grant by demonstrating that the percentage of fatally injured drivers in the State with a BAC of 0.10 or more had decreased in each of the three previous calendar years and that the percentage of fatally injured drivers with a BAC of 0.10 or more in the State was lower than the average percentage for all States in the same three calendar years. Supplemental grants were also available for States that received a programmatic and/or performance grant and met additional criteria.

On August 10, 2005, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) was enacted (Pub. L. 109–59). Section 2007 of SAFETEA–LU made new amendments to 23 U.S.C. 410. These amendments again modified the grant criteria and the award amounts and made a number of structural changes to streamline the program.

II. Section 410 Statutory Requirements

The SAFETEA–LU amendments, which take effect in FY 2006, retain the basic grant structure of the old Section 410 Program but eliminate all supplemental grants. States may qualify for a grant in one of two ways. A State determined to be a ''low fatality rate State'' by virtue of having an alcohol-related fatality rate of 0.5 or less per 100 million VMT is eligible for a grant. SAFETEA–LU prescribes that fatality rates are to be determined by using data from NHTSA's Fatality Analysis Reporting System (FARS). States may also qualify by meeting certain programmatic requirements. A State may qualify as a ''programmatic State'' by demonstrating compliance with several specified criteria. A State must demonstrate compliance with three of eight alcohol-impaired driving prevention programmatic criteria in FY 2006, four of eight in FY 2007, and five of eight in FY 2008 and FY 2009. These criteria include the following: a high visibility impaired driving enforcement program; a prosecution and adjudication outreach program; a BAC testing program; a high-risk drivers program; an alcohol rehabilitation or DWI court program; an underage drinking prevention program; an administrative driver's license suspension or revocation system; and a self-sustaining impaired driving prevention program. Five of these programmatic criteria are continued from the TEA–21 basic grant criteria with minor modifications. SAFETEA–LU eliminated two programmatic criteria from the TEA–21 basic criteria—the graduated driver's licensing system and the young adult drinking and driving program. These criteria were replaced by a prosecution and adjudication outreach program and the alcohol rehabilitation or DWI court programs—two new programmatic criteria. The eighth programmatic criterion, the self-sustaining impaired driving prevention program, existed under TEA–21 as a supplemental grant criterion and is continued under SAFETEA–LU as the equivalent of a programmatic basic grant criterion under the old Section 410 program.

The SAFETEA–LU amendments include provisions for separate grants to be made to ''high fatality rate States.'' Each of the ten States with the highest alcohol-related fatality rates, based on FARS data, are eligible for a separate grant. High fatality rate States may also qualify for funding as programmatic States.

III. Section 410 Administrative Requirements

Under SAFETEA–LU, a number of administrative requirements apply to the Section 410 program. States that qualify for grants under Section 410 are to receive funds in accordance with the apportionment formula in Section 23 U.S.C. 402(c)—75 percent in the ratio which the population of each State bears to the total population of all qualifying States and 25 percent in the ratio which the public road mileage in each State bears to the total public road mileage of all qualifying States. The funds available each fiscal year for separate grants to the ten States with the highest fatality rates are statutorily limited to not more than 15 percent of the funding for the entire Section 410 program for that fiscal year, with no single State receiving more than 30 percent of that amount. These funds, too, are to be distributed in accordance with the apportionment formula in 23 U.S.C. 402(c).

SAFETEA–LU provides that States may use grant funds for any of the eight identified alcohol-impaired driving prevention programs or to defray the following specified costs:

(1) Labor costs, management costs, and equipment procurement costs for the high visibility, Statewide law enforcement campaigns under subsection (c)(1).

(2) The costs of the training of law enforcement personnel and the procurement of technology and equipment, including video equipment and passive alcohol sensors, to counter directly impaired operation of motor vehicles.

(3) The costs of public awareness, advertising, and educational campaigns that publicize use of sobriety check points or increased law enforcement efforts to counter impaired operation of motor vehicles.

(4) The costs of public awareness, advertising, and educational campaigns that target impaired operation of motor vehicles by persons under 34 years of age.

(5) The costs of the development and implementation of a State impaired operator information system.

(6) The costs of operating programs that result in vehicle forfeiture or impoundment or license plate impoundment.

States are required to match the grant funds they receive. The Federal share may not exceed 75 percent of the cost of the State's activities under the Section 410 program in the first and second fiscal years and 50 percent in the third and fourth fiscal years. States must also maintain aggregate expenditures from all other sources for their alcohol-

impaired driving prevention programs at or above the average level of such expenditures in fiscal years 2004 and 2005.

IV. Notice of Proposed Rulemaking

The agency published a notice of proposed rulemaking (NPRM) on January 3, 2006 (71 FR 29) to implement the new Section 410 program requirements under SAFETEA–LU. The proposal set forth the requirements for grant awards to States that satisfy the statutorily-specified minimum number of programmatic criteria, depending on the grant year. The proposal also set forth the requirements for grant awards to States that qualify as high or low fatality rate States. The proposal specified an annual application deadline of August 1 and required States to certify that they would conduct activities and use funds in accordance with the requirements of the Section 410 program and other applicable laws.

Consistent with the procedures in other highway safety grant programs administered by NHTSA, the proposal provided that, within 30 days after notification of award, States must submit an electronic HS Form 217 obligating the grant funds to alcohol-impaired driving prevention programs. The proposal also required States to identify their proposed use of grant funds in the Highway Safety Plans prepared under the Section 402 Program and to detail program accomplishments in the Annual Report submitted under that program. The proposal explained that these documenting requirements must continue each fiscal year until all grant funds have been expended.

To satisfy the statutory requirement that a State match grant funds, the agency proposed to accept a ''soft'' match in the administration of the Section 410 program, as it has in other grant programs (i.e., States could count other highway safety expenditures in the State, irrespective of whether those expenditures were made for this program). In addition, the agency proposed that States could use up to 10 percent of the total funds received under 23 U.S.C. 410 for planning and administration (P&A) costs. As with the Section 402 program, the proposal limited Federal participation in P&A activities to not more than 50 percent of the total cost of such activities.

V. Comments

The agency received submissions from twenty commenters in response to the NPRM—five from State agencies, thirteen from professional organizations, and two from ignition interlock manufacturers. The State comments were submitted by the Office of Traffic Safety of the Minnesota Department of Public Safety (Minnesota); the Bureau of Transportation Safety of the Wisconsin Department of Transportation, Division of State Patrol (Wisconsin); the West Virginia Highway Safety Program of the West Virginia Department of Transportation, Division of Motor Vehicles (West Virginia); and the Division of Traffic Safety of the Illinois Department of Transportation (Illinois). The Transportation Departments of the States of Idaho, Montana, North Dakota, South Dakota, and Wyoming submitted joint comments through their counsel (the Joint State Commenters). The professional organization comments were submitted by the National Traffic Law Center (NTLC); the Governor's Highway Safety Association (GHSA); Advocates for Highway and Auto Safety (Advocates); Mothers Against Drunk Driving (MADD); the Conference of State Court Administrators (COSCA); the Beer Institute; the Hospitality Resource Panel; the Maryland State Licensed Beverage Association; the New Jersey Licensed Beverage Association, Inc.; Techniques of Alcohol Management/Nevada; the Michigan Licensed Beverage Association; the Alaska Cabaret, Hotel, Restaurant and Retailer's Association; and Techniques of Alcohol Management. The last eight listed organizations submitted a substantially similar comment, and are referred to collectively below as the TAM Commenters when addressing that comment. The ignition interlock manufacturer comments were submitted by National Interlock Systems, Inc. and LifeSafer Interlock, Inc.

A. In General

The agency received a variety of comments in response to the NPRM. Illinois agreed with the proposal and thought that it provided ''an appropriate outline'' for deterring impaired driving in the State. Advocates stated that the agency ''made reasonable decisions as to the requirements that must be met by 'programmatic States.' '' MADD expressed general agreement with the regulation and each of the programmatic criteria.

In contrast, GHSA stated that ''the regulations proposed * * * go beyond the statutory language,'' and expressed concern that ''the requirements will make it difficult for states to qualify for 410 grants, particularly in the last two years of the grant program.'' The Joint State Commenters echoed this concern, asserting that ''[b]ecause of regulatory add-ons, it will become more difficult for States to qualify for Section 410 funds on a programmatic basis. * * *'' The Beer Institute asked the agency to reconsider inclusion of additional regulatory requirements in its proposal, but did not identify any specific requirements. Wisconsin and GHSA viewed the proposal as overly restrictive and believed its operation would not provide enough flexibility to deal with problems inherent to a particular State.

These and other more specific comments related to the requirements that States must meet to qualify for grants are addressed below, under the appropriate heading. The agency received at least one comment concerning each of the eight criteria States must meet to qualify as a programmatic State and the requirements that States must meet to qualify for a grant as a low or high fatality rate State.

B. Comments Regarding Programmatic Criteria

1. High Visibility Impaired Driving Enforcement Program

To qualify for a grant based on this criterion, SAFETEA–LU requires a State to have:

A State program to conduct a series of high visibility, statewide law enforcement campaigns in which law enforcement personnel monitor for impaired driving, either through the use of sobriety check points or saturation patrols, on a nondiscriminatory, lawful basis for the purpose of determining whether the operators of the motor vehicles are driving while under the influence of alcohol—

(A) If the State organizes the campaigns in cooperation with related periodic national campaigns organized by the National Highway Traffic Safety Administration, except that this subparagraph does not preclude a State from initiating sustained high visibility, Statewide law enforcement campaigns independently of the cooperative efforts; and

(B) If, for each fiscal year, the State demonstrates to the Secretary that the State and the political subdivisions of the State that receive funds under this section have increased, in the aggregate, the total number of impaired driving law enforcement activities at high incident locations (or any other similar activity approved by the Secretary) initiated in such State during the preceding fiscal year by a factor that the Secretary determines meaningful for the State over the number of such activities initiated in such State during the preceding fiscal year.

The NPRM proposed that a State would be required to participate in the national impaired driving campaign organized by NHTSA, conduct a series of additional high visibility law enforcement campaigns within the State on a monthly basis throughout the year, and use sobriety checkpoints and/or saturation patrols during these efforts.

To demonstrate compliance under the NPRM, the State would be required to submit a comprehensive plan that included guidelines, policies or procedures governing the Statewide enforcement program; dates and locations of planned law enforcement activities; a list of law enforcement agencies expected to participate (which must include agencies serving at least 50 percent of the State's population or serving geographic subdivisions that account for at least 50 percent of the State's alcohol-related fatalities in the first year, increasing thereafter); and a communications plan that includes a paid media buy plan, if the State buys media, and a description of anticipated earned media activities before, during and after planned enforcement efforts.

GHSA stated that small, rural States would have a difficult time meeting the requirement that participating law enforcement agencies cover either 50 percent of the population or a geographic area that accounts for 50 percent of the State's alcohol-related fatalities. GHSA also expressed concern that States might have to ''enlist the support of every law enforcement agency in the geographic area'' and compliance would be jeopardized if even one law enforcement agency declined to participate.

The proposed 50 percent population-based or fatality-based options for the first year of the new program mirror the requirement that existed in the regulation implementing the predecessor Section 410 program authorized under TEA–21, based on similar statutory language. (TEA–21 and SAFETEA-LU both require States to conduct a ''Statewide'' law enforcement effort.) All 34 States that received Section 410 programmatic grants in FY 2005 under the predecessor program, including several small, rural States, met this requirement. The agency believes that the 50 percent level is a generous interpretation of the statutory requirement for Statewide coverage and an achievable measure by all States.

Moreover, the proposal does not require States to include as participating agencies all law enforcement agencies operating within a certain geographic area for that area to count toward meeting the 50 percent requirement. The agency is mindful that overlapping jurisdictions exist at county and local levels. The State is required to include only a single law enforcement agency operating within a particular jurisdiction for that area (as determined by population or geography) to count toward the 50 percent requirement. The agency has revised the rule to include a definition of law enforcement agency. A law enforcement agency refers to an agency that is identified by the State and included in an enforcement plan for purposes of meeting the coverage requirements of the State during high visibility enforcement campaigns. While this clarifies the minimum requirement, we encourage States to include as many agencies as possible in their Statewide enforcement plans.

Minnesota questioned the agency's requirement that participating law enforcement agencies conduct checkpoints and saturation patrols on at least four nights during the National Campaign. Minnesota viewed the requirement as ''extremely costly'' and believed it would discourage smaller law enforcement organizations from voluntary participation in the program.

The impact of the High Visibility Impaired Driving Program Criterion on traffic safety is dependent on increasing high visibility enforcement efforts in the State. While such efforts are not without cost, the amount of funds available under the Section 410 program has tripled under the current statute, and these funds may be used to cover the costs of Statewide enforcement. Under these circumstances, the agency does not believe that a requirement for participation in enforcement campaigns on only four nights during the National Impaired Driving Crackdown that occurs once a year presents an unreasonable burden.

Moreover, within the proposal's definition of sobriety checkpoint and high saturation patrol, there is tremendous flexibility to accommodate mobile or ''flexible'' checkpoints and task force arrangements that are multi-jurisdictional. For smaller law enforcement agencies that may not be able to commit resources to four activities during the national campaign, States may use partnerships or task force arrangements between law enforcement agencies. Qualifying participation by a smaller law enforcement agency under a task force arrangement would be satisfied by involvement of one officer—a manageable level of effort. For these reasons, we decline to change the requirement for four-night participation.

The Joint State Commenters took issue with the proposed requirement that States conduct additional monthly activities outside the period of the national campaign. In their view, the statute precludes such a requirement and leaves this decision to the discretion of the States.

The agency's proposal that States participate in monthly enforcement activities as well as the national campaign derives from the statutory language directing a State to conduct ''a series of'' high visibility, Statewide law enforcement efforts. The agency believes that limiting State enforcement activities to the period of a single national campaign under this criterion does not meet the statutory requirement or intent for a ''series'' of efforts. Evidence has shown that sustained enforcement programs have produced the largest declines in alcohol-related crashes (e.g., Checkpoint Tennessee)—single short-term enforcement programs targeting impaired driving have not shown similar effects.

The agency recognizes, however, that some largely rural States may have difficulty conducting monthly law enforcement activities aimed at impaired drivers. In these States, it may be impracticable because of weather conditions and rural expanses for all participating law enforcement agencies to conduct an activity every month, placing them at a disadvantage when compared to other States. These concerns have been raised in the past, in response to experience under the predecessor Section 410 program. To address these concerns and increase the parity between States in varying geographic regions, we have revised the rule to require that a State provide at least quarterly law enforcement activities during the year. Under the revision, participating law enforcement agencies will have to conduct activities on four nights during the national campaign and conduct four additional efforts, one during each quarter of the year.

Under SAFETEA–LU, a State's continued compliance with the criterion requires that it increase the amount of impaired driving law enforcement activity over the previous year. The agency's proposal requires that a State submit a plan in each successive year of the program that increases the percent of the population reached by five percent. (The proposal inadvertently did not include language allowing the alternative option of an increase in the geographic area covered. We have amended the rule to provide that option, for consistency and conformity with the requirements at the 50 percent levels.) The increase is measured from the initial requirement that a State must use law enforcement agencies collectively serving at least 50 percent of the State's population or serving geographic areas that account for at least 50 percent of the State's alcohol-related fatalities. This approach mirrors the approach taken under the Strategic Evaluation States program.

The Joint State Commenters took exception to this approach, claiming

that it ignored meaningful increases that occurred below 50 percent, such as an increase in law enforcement coverage from 20 percent to 40 percent. The Joint State Commenters urged the agency to accept such increases and also to consider meaningful any increase in the total number of law enforcement activities conducted in a State.

The comment ignores the threshold statutory requirement that the State conduct a ''statewide'' program. Law enforcement activity that covers only 20 percent or even 40 percent of the State does not satisfy this baseline requirement. The agency believes that a 50 percent floor is already generous in this regard, in view of the statutory language, and has made no change to the rule.

The agency does not believe that an increase in the total number of law enforcement activities conducted is a practicable measure under this criterion. Such an approach relies on State impaired driving law enforcement data, and States are currently experiencing difficulty in obtaining accurate data. Several comments highlighted this problem. Minnesota indicated that ''a State does not fund all impaired driving enforcement activity conducted in the state and can't require a law enforcement agency to report data on an activity that is funded locally.'' According to Minnesota, ''no state would be able to certify that the number they provided was accurate.'' GHSA stated that it is ''extremely difficult for some states to provide such data for agencies that do not receive grants.''

For these reasons, the agency declines to adopt the approach of using an increase in the number of law enforcement activities as a measure. Adding participating law enforcement agencies incrementally ensures an increase in law enforcement activity without the need to rely on data that may be hard for States to collect. States are still encouraged to collect data and make all due effort to record all of the impaired driving law enforcement activity that is conducted in the State in a given year.

West Virginia expressed concern that States with plans that initially cover 65 percent or more of the State's population or geographic areas would find it difficult to achieve an increase beyond that amount in subsequent years in order to maintain compliance. West Virginia requests that the agency consider a decrease in the impaired driving fatality rate as an alternative to the requirement that a State meaningfully increase its law enforcement activities.

Under the agency's proposal, compliance with this provision does not require a State to achieve increases above 65 percent. If a State submits a plan in a grant year that covers 65 percent or more of the State, it is not required to produce plans in subsequent grant years that demonstrate additional increases. This approach is intended to accommodate rural States with diffuse populations that may find it difficult to achieve increases beyond 65 percent. However, we encourage States to include in their enforcement plans as many law enforcement agencies as possible, as studies indicate that increasing the scope of a high visibility enforcement campaign will serve to reduce impaired driving fatalities faster than with a more limited effort. West Virginia's request that the agency consider a decrease in the impaired driving fatality rate as an alternative is inconsistent with the statute, which specifies an increase in the number of law enforcement activities as the measure. However, States that decrease their impaired driving fatality rate to .5 or less per 100,000,000 vehicles miles traveled are eligible to receive a Section 410 grant without the need to meet any programmatic criteria.

MADD requested that the agency define the term ''high-incident locations''. The term is not used in the rule and we decline to do so. The term is used as part of the statutory requirement that States meaningfully increase law enforcement at ''high-incident locations.'' The agency's proposal largely obviates the need for a definition by requiring that a State's enforcement plan use law enforcement agencies that serve geographic areas that account for at least 50 percent of the State's alcohol-related fatalities. In this way, the plan would concentrate efforts on high-incident areas simply as a product of using law enforcement agencies in those areas. The agency is concerned that a set definition may inadvertently eliminate certain areas that could benefit from high visibility law enforcement. We are satisfied that States will naturally focus efforts in areas that have the greatest impact on traffic safety.

GHSA asserted that States could not submit detailed media and enforcement plans until they received notification of grant award. We do not expect a State to buy media in advance of the grant award. Rather, the State need only provide its intended media approach in a general plan. As GHSA recognizes, general plans could include information regarding the relative reach a State would expect to attain with the media buys or the type of audience the messaging would target. In addition to this information, the agency expects to receive information on the areas of the State that would be targeted and how the media approach will reach the intended audience. The agency's proposal is broad enough to accommodate this approach. We do not agree that States will be unable to provide a list of law enforcement agencies expected to participate in the effort. The planning requirement is necessary to ensure that States have created a Statewide plan. The same requirement existed under the predecessor Section 410 program and all States receiving grant funds in FY 2005 were able to provide this information in an application.

2. Prosecution and Adjudication Outreach Program

To qualify for a grant based on this criterion, SAFETEA–LU requires a State to have:

> A State prosecution and adjudication program under which—
>
> (A) The State works to reduce the use of diversion programs by educating and informing prosecutors and judges through various outreach methods about the benefits and merits of prosecuting and adjudicating defendants who repeatedly commit impaired driving offenses;
>
> (B) The courts in a majority of the judicial jurisdictions of the State are monitored on the courts' adjudication of cases of impaired driving offenses; or
>
> (C) Annual statewide outreach is provided for judges and prosecutors on innovative approaches to the prosecution and adjudication of cases of impaired driving offenses that have the potential for significantly improving the prosecution and adjudication of such cases.

Under the agency's proposal, to achieve compliance with this criterion, a State would be required to conduct educational outreach for court professionals that focuses on innovative sentencing techniques in the prosecution and adjudication of impaired drivers; conduct educational outreach that focuses on the negative aspects of using diversion programs; or use a court monitoring program that collects specific information from a majority of State courts.

The agency received several comments related to the prosecution and adjudication outreach programs that a State must conduct. As a general matter, commenters expressed concern about the level of agency review of course content and the perceived requirement to use NHTSA courses. GHSA recommended that NHTSA publish a list of acceptable programs and allow States to select from the list. The Joint State Commenters did not

object to a review of course content by NHTSA, but thought States should have the ''final say on the diversion and innovative approaches materials.'' Wisconsin requested further information on the types of programs that would be acceptable to the agency, including the required frequency of the training courses. Most of these commenters viewed the agency's proposal as reducing the States' flexibility to tailor course content to State needs.

The agency did not intend to impose specific course content requirements on States or to reduce State flexibility to design effective courses, nor did it intend to require States to use NHTSA or other particular training materials. The use of the term ''NHTSA-approved courses'' in the regulatory text was intended to denote State-submitted course material that the agency reviewed during the application process and approved for use under the Section 410 program. Similarly, the certification process was intended to assure that once material is approved for use it will not be changed at a later point in time without the knowledge of the agency.

In view of the confusion expressed by these commenters, the agency has deleted the term ''NHTSA-approved courses'' and replaced it with language that better clarifies this intent. Additionally, to respond to the comment that more guidance on program content be provided, we have revised the rule to provide a list of topics that each educational outreach program must address. The agency's approach ensures that States retain the flexibility to determine the specific course content used. States will not need to submit full course material to the agency for review and approval. Instead, States will submit a course syllabus and a certification that the outreach program covers the course topics listed in the rule.

For an outreach program that provides training on innovative sentencing techniques in the prosecution and adjudication of impaired drivers, the rule provides that the course topics must include: (1) The use of alcohol assessments and treatment; (2) vehicle sanctions (which may include impoundments, plate sanctions, ignition interlock installation use, etc., depending on the status of State law); (3) electronic monitoring and home detention; and (4) information on DWI courts and other types of treatment courts. For an outreach program that focuses on the negative aspects of using diversion programs, the rule provides that the course topics must include: (1) The State's impaired driving statutes and applicable case law; (2) searches, seizures and arrests (an examination of current statutes and case law); (3) admissibility of evidence in impaired driving cases; (4) biochemical and physiological information (covers effects of drugs and alcohol on the human body); and (5) sentencing of impaired drivers.

The agency has stopped short of requiring course materials for each program. However, States that are seeking additional guidance may choose to consult the NHTSA publications and funded training materials, Strategies for Addressing the DWI Offender: 10 Promising Sentencing Practices; Prosecuting the Impaired Driver: DUI/DWI Cases; and The Court's Role in Impaired Driving, for help in developing their own curriculum. The final rule continues to require that the education program be provided on an annual basis, but clarifies that it is to be provided at least once a year and to consist of eight hours of training, in response to Wisconsin's query. States may choose to include the training as part of a Statewide legal conference or grant continuing education credit for attendance.

Wisconsin and COSCA requested that the agency identify certain situations where diversion programs might be considered appropriate or beneficial, and therefore appropriate for inclusion in course content. We decline to do so. The statutory provision governing this criterion requires States to work to ''reduce the use of diversion programs [for] defendants who repeatedly commit impaired driving offenses.'' In view of this specific requirement, it would be inappropriate for the agency to make recommendations that might lead to an increase in the use of diversion programs. As we explained in the NPRM, diversion programs that allow an offender to obtain a reduction or dismissal of an impaired driving charge or removal of an impaired driving offense from a driving record based on participation in an educational course or community service activity are problematic. Repeat offenders escape detection under these types of programs. States are free to discuss other programs that fall outside of the definition and, therefore, are not considered diversion programs under this criterion.

NTLC was concerned that the agency's proposal would create an ''express partnership between judges and prosecutors,'' in contravention of their ethical duties. NTLC also disagreed with the agency's statement in the preamble to the NPRM urging judges and prosecutors to exercise oversight in using diversion programs to ensure that the records of impaired driving remain available for enhancement in the event of recidivism. NTLC views record availability as a legislative matter and not an obligation of a judge or a prosecutor.

Nothing in the agency's proposal requires judges and prosecutors to act in contravention of their ethical duties, and no changes are necessary. Diversion programs, as the agency has defined them in this rule, are programs that result in the removal of an impaired driving charge from a driving record. Although States may have specific laws or policies regarding the treatment of diverted defendants' records, prosecutors present the use of diversion programs and judges approve that use. In this way, prosecutors and judges have control over whether records are available for review in the event of an offender's recidivist behavior.

Commenters raised several issues about the use of a State Judicial Educator (SJE) under the proposal. Wisconsin asked the agency to provide a definition for the position and asked whether the use of a State Judicial Education Office would qualify. GHSA asked the agency to clarify the requirements.

The proposal did provide a definition. The proposal defined the SJE as an individual used by the State to provide support in the form of education and outreach programs and technical assistance to continuously improve personal and professional competence of all persons performing judicial branch functions. The agency agrees that a State Judicial Education Office is an acceptable alternative to the use of an individual to provide judicial education. The agency has revised the definition to allow the use of either an individual or an entity that provides judicial education. In response to GHSA's request for clarification, we believe that the definition is flexible enough to accept as qualifying any individual or office the State designates as responsible for judicial education statewide. The State may determine the type of qualifications and background necessary to carry out that role. Subject to these qualifications, current judges, retired judges, or judges with impaired driving case experience, for example, may serve as a State's SJE.

MADD suggested that the agency amend the proposal to ensure that a State use only full-time Traffic Safety Resource Prosecutors (TSRPs) and SJEs. The agency intended that these positions would be on a full-time basis. We have revised both of the definitions to make this clear.

GHSA stated that highway safety offices would not receive additional funding over the course of SAFETEA–LU that would enable them to fund the SJE or TSRP positions. The agency has set no requirement on how these positions should be funded. However, provided that the positions offer impaired-driving-related educational programs to judges and prosecutors, they may be funded under Section 410, which provides substantially increased funds from previous years. In response to GHSA's comment, the agency has revised the rule to require that the State submit a list of impaired-driving-related educational programs offered by each position to ensure that States may use Section 410 funds for these activities. As almost all States already make use of an SJE position and do so without regard to this criterion, we do not believe that funding impediments are a significant issue.

The agency received a number of comments related to the court monitoring program. GHSA requested that the regulation more clearly define the court monitoring program, and asked whether a State tracking system that recorded the offender's arrest, conviction and disposition of the charges would qualify. COSCA thought that this program lacked explicit and defined performance criteria, and requested that the agency revise the terminology. NTLC was concerned that confusion would result between this criterion and other agency grant programs that involve court monitoring.

A significant goal of the prosecution and adjudication outreach program criterion is to inform States about how their courts treat impaired drivers. With the information collected, States should be able to identify jurisdictions that do not fully prosecute and adjudicate impaired drivers. To comply under the proposal, a State must collect data from at least 50 percent of its courts (consistent with the statutory requirement that a majority of the courts be covered) and the data collected must include the original charges filed against a defendant, the final charges presented by the prosecutor, and the disposition of the charges or the sentence provided. The appropriate method for collecting this information is not detailed in the rule and is left to the discretion of the individual States. The compliance requirements are straightforward and the agency does not believe that additional performance criteria need to be specified. The requirements of this criterion are separate from any other grant program of the agency, and there is no reason to believe that confusion might result.

3. BAC Testing Program

To qualify for a grant based on this criterion, SAFETEA–LU requires a State to have:

> An effective system for increasing from the previous year the rate of blood alcohol concentration testing of motor vehicle drivers involved in fatal crashes.

Under the NPRM, to demonstrate compliance with this criterion, a State would be required to increase its rate of blood alcohol testing from one year to the next. States under the testing average of 50 percent would be required to experience an increase of 5 percent each year and States over this average would be required to experience an increase of 5 percent of the untested drivers in the State. To determine compliance, the agency proposed to use FARS data. The agency did not specify particular elements of an effective system, choosing instead to rely on data as a measure of compliance with this criterion.

The Joint State Commenters asserted that the statute merely requires a State to have a ''system'' for increasing BAC testing, without the need to actually achieve increases, and that even decreases should be acceptable provided a system is in place. Alternatively, The Joint State Commenters took issue with the agency's requirement that States achieve a five percent increase in BAC testing each year to achieve compliance, asserting that the agency was not free to disregard small increases based on the statutory language. The Joint State Commenters requested that the agency count any percentage increase in BAC testing for purposes of compliance.

With respect to the first argument, we disagree. SAFETEA–LU requires a State to implement an ''effective'' system for increasing BAC testing. A system that does not produce increases or that results in decreases is not an ''effective'' system under the statute. We address the assertion that a system for increasing BAC, alone, should be sufficient in more detail in our response to comments from Advocates, below.

With respect to the second argument, we acknowledge that the statute does not specify the amount of increase required. In light of the comment, we have reviewed the FARS data that forms the basis for these calculations and determined that a one percent increase would be acceptable to meet the minimum intent of the statute. Amounts below one percent are not commensurate with a system that is ''effective.'' We have revised and simplified the rule to require that all States, regardless of BAC testing level, achieve a one percent increase in the BAC testing rate over the previous year to be compliant with the criterion. We have also removed from the rule the conversion rate approach that would have required smaller incremental increases for States with BAC testing above 50 percent, in view of the overall decrease in the requirement.

To ensure uniform treatment of all States and consistency in the determination of BAC increases under this revised approach, the agency will make necessary calculations based on the final FARS data, determine each State's compliance, and notify the States each year. To accommodate this, we have made two changes to the proposed rule. First, we have included language indicating that the BAC rate determinations will be made by the agency. Second, we have removed the requirement for a State to certify that it has achieved the required BAC rate to demonstrate compliance, since the agency will make that determination. In its place, we have substituted a requirement for a simple statement that the State intends to apply on the basis of achieving the required BAC testing rate increase.

Wisconsin questioned the agency's requirement that States with BAC testing above the national average achieve additional increases. SAFETEA–LU amended the previous statutory requirement that allowed a State to comply with a testing rate equal to or above the national average. The new statutory language requires States to have systems that increase BAC testing rates over the previous year regardless of whether the rate exceeds the national average.

Minnesota stated that compliance would be much more difficult for states that already had a very high testing percentage, and recommended that any State testing above 85 percent be deemed automatically in compliance. The agency's revised approach under the final rule requires a one percent increase each year regardless of the State's testing average. For States with high testing rates, we agree that further increases may be more difficult to achieve. However, under a one percent increase requirement, States with higher testing levels need only report a small number of additional BAC tests each year. Even in States with the highest testing levels, we believe that this is a manageable requirement. We note that Minnesota's suggestion to cap required increases at 85 percent, which we do not adopt, would not impact any State, based on the most currently available BAC testing data. The highest reported

testing rate for any State is just over 80 percent.

Advocates believe that the agency's regulation should provide system goals for States in addition to the performance requirements. At a minimum, according to Advocates, States should be required to enact and maintain laws that require mandatory BAC testing both for drivers who are killed in a fatal crash and for those who survive a crash in which a fatality occurs.

For the first two years of the Section 410 program under TEA–21, the agency allowed States to achieve compliance with a limited set of system goals. These goals included enacting laws that mandate testing or conducting annual statewide workshops that promote good testing and reporting practices. In spite of this approach, the national average for BAC testing remained relatively constant under TEA–21.

We understand, however, that determining compliance purely on achievement of performance goals may dissuade States from attempting any activities that achieve BAC testing increases. For this reason, in response to Advocates' comment, the agency has revised the proposal to include an alternative requirement (but not a requirement that operates in addition to the performance requirement, as Advocates suggests). A State may achieve compliance in FY 2006 and FY 2007 by submitting a plan for increasing its BAC testing rate. The plan must consist of approaches that the State will take under the grant to achieve an increase in BAC testing that would meet the performance requirements of the criterion. To achieve compliance, the plan must include a description of each approach, including how it will be implemented and the expected outcome as a result of implementation. Approaches may include, as Advocates suggests, the enactment of a law mandating BAC testing. A State may also include approaches that resolve failures in the reporting of BAC test results. Statewide symposiums and workshops may be used as long as they bring together key officials in the State such as law enforcement officials, prosecutors, hospital officials, medical examiners, coroners, physicians, and judges and discuss the medical, ethical and legal impediments to increasing BAC testing.

After FY 2007, a State may no longer use the planning requirement to satisfy this criterion, unless it has a law in place that requires the testing of drivers in all fatal crashes—it must instead meet the performance requirement of this criterion. The planning requirement will be available to States in these later years of the program, in lieu of the performance requirement, only if they also have a law mandating the testing of all drivers in all fatal crashes. A compliant law must require testing in all fatal crashes and may not condition the use of tests on the establishment of probable cause. We have amended the proposal to provide for this alternative. We believe that the performance requirement and the planning requirement alternative, taken together, strike the appropriate balance between the need for actual increases in testing and the recognition that an effective system requires time to affect the testing numbers. We have also amended the rule to require that States complying with the planning requirement in subsequent years must also submit information demonstrating that the plan was effectively implemented and an updated plan for increasing BAC testing.

Wisconsin stated that breath testing is legally equivalent to blood testing and asked whether the agency considered this in its approach. The agency's proposal accommodates Wisconsin's concern. It continues the approach taken in TEA–21 that defines BAC to mean grams of alcohol per deciliter or 100 milliliters of blood or grams of alcohol per 210 liters of breath.

4. High Risk Drivers Program

To qualify for a grant based on this criterion, SAFETEA–LU requires a State to have:

A law that establishes stronger sanctions or additional penalties for individuals convicted of operating a motor vehicle while under the influence of alcohol whose blood alcohol concentration is 0.15 percent or more than for individuals convicted of the same offense but with a lower blood alcohol concentration. For purposes of this paragraph, ''additional penalties'' includes—

(A) A 1-year suspension of a driver's license, but with the individual whose license is suspended becoming eligible after 45 days of such suspension to obtain a provisional driver's license that would permit the individual to drive—

(i) Only to and from the individual's place of employment or school; and

(ii) Only in an automobile equipped with a certified alcohol ignition interlock device; and

(B) A mandatory assessment by a certified substance abuse official of whether the individual has an alcohol abuse problem with possible referral to counseling if the official determines that such a referral is appropriate.

The agency's proposal provides that a State suspend the license of an individual convicted of impaired driving with a blood alcohol concentration of 0.15 or higher for one year. The proposal provides that, after 45 days, the State may allow the individual to receive a restricted license that would permit the use of a vehicle equipped with an ignition interlock. Driving would be restricted to places of employment, school or treatment. A qualifying State must also require that offenders be subject to a mandatory assessment by certified substance abuse officials.

National Interlock Systems, Inc. expressed concern about language in the preamble to the NPRM directing the State's use of ignition interlocks that meet the agency's performance specifications for ignition interlocks (57 FR 11772). National stated that any update to the agency's specifications would impose a significant financial burden on the interlock industry unless they were phased-in over time. The agency's performance specifications are provided as guidance, and States have discretion to adopt the specifications or develop their own. The regulatory language does not impose a requirement to use the agency's specifications. As a matter of sound practice, however, we recommend that States adopt these specifications. The commenter's concerns about phase-in requirements under performance specifications are outside the scope of this action, and should be addressed to efforts under those specifications.

LifeSafer Interlock, Inc. asserted that the requirement that an offender install an ignition interlock in every vehicle owned and every vehicle operated ''will only serve to economically force most offenders to opt out'' of the ignition interlock program and thereby limit overall use of interlocks. The agency explained that its reason for imposing the requirement was to ensure that driving restrictions are not easily circumvented. LifeSafer's own comment acknowledges that ''the majority of the recidivism while an interlock is installed is a result of the use of non-interlock equipped vehicles.'' While there are good and practicable reasons for requiring installation of interlocks in all vehicles, the statutory language identifies the interlock requirement as a sanction that attaches to the individual's license. Accordingly, the agency has revised the proposal to remove the requirement that an offender install interlocks in all vehicles owned and all vehicles operated. We are retaining, without change, the requirement that a State provide a license that restricts the offender to driving only vehicles that are equipped with interlocks.

LifeSafer requests that the agency include an exemption to the interlock requirement for employer-owned vehicles. This request appears to be based on the statutory language that

restricts an offender to an interlocked-equipped vehicle when driving to places of employment. The commenter reasons that the language does not similarly restrict an offender's use of vehicles ''while in the course employment,'' and that therefore the intent of the statute is not to force employers to install ignition interlocks. We agree that the statute does not require employers to install interlocks in their vehicles. However, the statute provides clear language that the offender is permitted to drive ''only in an automobile equipped with a certified alcohol ignition interlock device.'' On this basis, the agency declines to revise the rulemaking to add a specific exemption for employer vehicles.

National and LifeSafer both noted that the agency's rule makes no provision for an offender to drive to an interlock service facility. We agree that travel to an interlock service facility is an inherent part of operating an interlock program, and have revised the proposal to allow for this.

The agency received one comment from one organization regarding the statutory requirement to provide alcohol assessments to high-risk offenders. GHSA recommended that the agency clarify the use of a certified substance abuse official and provide additional information regarding proper certification and training of these individuals. GHSA also requested that the agency provide examples of effective assessment tools.

The agency's proposal requires that a State use a certified substance abuse official to perform an alcohol assessment of a high BAC offender, but does not mandate the education or training background of these individuals or the process by which these individuals receive approval from the State to conduct alcohol assessments. The licensing of professionals is traditionally a function of the State and we see no reason to vary that approach in this rule. Most States already provide alcohol assessments to offenders and have developed the necessary infrastructure to implement these programs. A State is free to define a certification process, if it does not already have one, and to decide what level of education or training background a substance abuse official must have.

Assessment tools form the basis for appropriate treatment sentencing and the reduction of impaired driving recidivism. States have discretion to decide what type of assessment tools to use, and the agency takes no position about the relative value of any assessment method. However, in response to GHSA's query, the Addiction Severity Index (ASI) and the Structured Clinical Interview for Diagnosis (SCID) are two of the more well-known assessment tools. To minimize the effects of deficiencies in any one tool, we advocate the use of a combination of assessment tools.

5. Alcohol Rehabilitation or DWI Court Program

To qualify for a grant based on this criterion, SAFETEA–LU requires a State to demonstrate:

> A program for effective inpatient and outpatient alcohol rehabilitation based on mandatory assessment and appropriate treatment for repeat offenders or a program to refer impaired driving cases to courts that specialize in driving while impaired cases that emphasize the close supervision of high-risk offenders.

Under the agency's proposal, to demonstrate compliance with this criterion, the State would be required to institute either: An effective alcohol rehabilitation program that consists of mandatory assessment and treatment for repeat offenders, a statewide tracking system that monitors the progress of repeat offenders through treatment, and educational opportunities provided to court professionals that cover treatment approaches and sanctioning techniques; or a DWI court that abides by the Ten Guiding Principles of DWI Courts, as established by the National Drug Court Institute, and an increase of one DWI court each subsequent year of the program.

The agency received one comment regarding the proposed components of an effective rehabilitation program. The Joint State Commenters stated that the requirement to provide educational opportunities to court professionals was not referenced in the statute and that such a requirement should not be considered essential for an effective rehabilitation program. The agency believes that treatment sentencing is an important component of rehabilitating repeat offenders. We included the education requirement because court professionals do not always understand how to use the assessment information they are provided to apply the most effective treatment sanction. We acknowledge, however, that the requirement is somewhat redundant of the prosecution and adjudication outreach criterion listed above and that a training program conducted once a year is likely to result in only a marginal increase in the overall ability to use assessments. In view of the comment, we are also concerned that imposing this requirement may dissuade States from attempting compliance with the other more important components of the program. Although States are encouraged to provide educational opportunities to court professionals regarding the use of assessments and treatments, the agency has revised the rule to remove the requirement for an educational component.

The Joint State Commenters asserted that States should be free to set up their own DWI courts without having to meet the Ten Guiding Principles of DWI Courts. These commenters request that, at a minimum, the agency accept State courts that are in ''substantial conformity'' with the principles.

The Ten Guiding Principles of DWI Courts present a basis to understand the operation of DWI courts and to differentiate their use from general docket courts. Under the principles, DWI courts are required to target a population of offenders for the court; provide a clinical assessment and treatment plan for each offender; supervise the offender through treatment; forge partnerships with the agencies and organizations involved; develop case management strategies; address transportation issues; and evaluate outcomes and ensure that the program is sustainable. In addition, a judge takes responsibility for operation of the court. Many of these concepts are inherent to the operation of courts generally (*e.g.*, judicial leadership, cases managed with the involvement of all parties) and present no difficulty for State compliance. Other concepts are essential to operation of a treatment-based court (*e.g.*, providing treatments and assessments and monitoring offenders through treatment). All of them are fundamentally important to the proper operation of the court and none is impracticable or onerous. Consequently, the agency declines to take an approach that would allow a State to select among them. Allowing a court to stray from these principles provides no assurance that offenders will be processed using a treatment-based court.

The Joint State Commenters and GHSA commented that the statute does not support a requirement that a State increase the use of DWI courts each year of the program. GHSA further stated that the agency's proposed increase of one DWI court each year is not tailored to meet the needs of individual States.

For the first time under Section 410, States are eligible to receive grant funds based on using certain treatment methods. DWI courts represent a relatively new approach to sanctioning and treating repeat offenders. Although based on the noted success of drug courts, which are used extensively by

all States, most States have yet to fully embrace the use of DWI courts to combat impaired driving. The agency's proposal intended to foster the development and use of DWI courts and set an achievable standard for all States. The soundness of this approach is confirmed by a recent survey of the National Drug Court Institute, documenting the number of drug courts operating in each State. Drug courts are functionally similar to DWI courts and, as the survey documents, even small States, determined by either geography or population, already make use of four or more of these courts. Specific examples from the survey include the States of Wyoming and Rhode Island, for example, which use 25 and 8 drug courts, respectively.

The commenters are correct that larger States, because of larger offender populations, may require the use of more courts. The agency's proposal in no way prevents a State from establishing more courts than the minimum specified. We do not believe, however, that the agency's proposal disadvantages smaller States at the required compliance levels.

The statute requires the development of a program to process high-risk offenders through DWI courts. Under the agency's proposal, a State achieves initial compliance with the development and implementation of one DWI court. The use of one court provides a minimal level of traffic safety benefit in a State of any size, given the limited amount of offenders that treatment courts process in a year. The requirement is not onerous, and we do not agree that the statutory intent is satisfied by a static effort that allows a State to receive grant funds year after year without further development of a program that uses courts.

In view of the comments, however, the agency has made two revisions to the proposal. In the NPRM, the number of courts required was a fixed number tied to the fiscal year of application (one court in FY 2006, two courts in FY 2007, and one additional court each year thereafter). The agency has revised the rule to allow the use of a minimum one court for initial compliance, regardless of the fiscal year of the application, a minimum of two courts for the second year of compliance, three courts for third year of compliance, and four courts for the fourth year of compliance. The revised approach removes any disincentive for a State that wishes to apply under this requirement, for the first time, in later years of the program. States that have four DWI courts are not required to demonstrate additional increases to remain compliant. We have also broadened the definition of a DWI court to allow a State to count toward compliance the use of hybrid courts that process both drug and high-risk DWI offenders.

6. Underage Drinking Prevention Program

To qualify for a grant based on this criterion, SAFETEA–LU requires a State to demonstrate:

An effective strategy, as determined by the Secretary, for preventing operators of motor vehicles under age 21 from obtaining alcoholic beverages and for preventing persons from making alcoholic beverages available to individuals under age 21. Such a strategy may include—

(A) The issuance of tamper-resistant drivers' licenses to individuals under age 21 that are easily distinguishable in appearance from drivers' licenses issued to individuals age 21 or older; and

(B) A program provided by a nonprofit organization for training point of sale personnel concerning, at a minimum—

(i) The clinical effects of alcohol;

(ii) Methods of preventing second party sales of alcohol;

(iii) Recognizing signs of intoxication;

(iv) Methods to prevent underage drinking; and

(v) Federal, State, and local laws that are relevant to such personnel; and

(C) Having a law in effect that creates a 0.02 percent blood alcohol content limit for drivers under 21 years old.

Under the agency's proposal, to demonstrate compliance with this criterion, the State would be required to issue a tamper-resistant license to persons under the age of 21; conduct training through a nonprofit or public organization for alcohol beverage retailers and servers concerning the clinical effects of alcohol, methods of preventing second-party sales of alcohol, recognizing the signs of intoxication, methods to prevent underage drinking, and the relevant laws that apply to retailers and servers, and provide procedures that ensure program attendance; have a law that creates a blood alcohol limit of no greater than 0.02 percent for drivers under age 21; develop an enforcement plan that focuses on underage drivers' access to alcohol; and develop a communications strategy supporting the enforcement plan and includes media efforts and peer education.

The agency received several comments related to the training program for point-of-sale personnel. Wisconsin asked whether the training requirement applied to convenience stores and whether there is a standard curriculum for the course. Wisconsin also asked for information regarding the programs currently provided in other States. Minnesota stated that it was unclear how a State would be able to demonstrate program attendance for point-of-sale personnel.

Under the agency's proposal, compliant programs must provide training to all alcohol beverage retailers and servers. If a convenience store sells alcohol, then it must be included in the State's training program. The agency has not devised any required standard curriculum that must be used or cataloged the types of programs that States have used to comply with this requirement in the past. In response to Wisconsin's concerns, States wishing to receive more information regarding the practice of a particular State should contact the State directly.

The agency's proposal requires States to have procedures in place that ensure program attendance. Therefore, States must implement procedures that ensure every establishment retailing or serving alcohol receives the proper training. The agency did not intend, in the proposal, to require States to have procedures that track attendance by every individual employee of a retailer or to require proof of attendance in order to comply with the criterion. We have revised the rule to clarify these points. However, the State must provide a copy of the procedures it has put in place to ensure attendance.

The agency received two comments concerning point-of-sale training. The TAM commenters criticized the proposal's inclusion of public organizations as appropriate providers of the training, arguing that the term "public organizations" was omitted intentionally during the drafting of the statute to prevent local governments from establishing programs that might compete with non-profit programs. According to TAM, if public organizations are included, State and local governments will be forced to partner with a nonprofit organization in order to standardize point-of-sale training efforts nationwide. In contrast, Minnesota questioned why the agency's proposal limited point-of-sale training providers to only nonprofit or public organizations.

SAFETEA–LU specifies that the Secretary has discretion to devise the elements of an effective strategy that States adopt to confront the problem of underage drinking. While the statute makes specific reference to non-profit organizations, we disagree with TAM that its failure to reference public organizations precludes their participation. Under the predecessor Section 410 program, public organizations were considered appropriate providers of point-of-sale training. The agency included the term

public organization in its proposal to make clear that a State may maintain compliance with this requirement using its own previously developed programs and training structures. Nothing in the statutory language suggests that Congress intended to dismantle these existing efforts. However, guided by the statutory language, the agency is not adopting Minnesota's suggestion that we further expand this group.

Several commenters questioned the agency's inclusion of peer education as a component of a compliant enforcement and communications strategy. GHSA objected to the requirement on grounds that peer education has not been proven effective and that its impact is questionable. Minnesota commented that it was not aware of any strong research that demonstrates peer education to be effective in altering behavior.

Peer education is a relatively new approach that uses youth-to-youth communication to highlight the problems of underage drinking. While we believe that studies are beginning to demonstrate the effectiveness of this approach, we agree with the commenters that further study and development should take place before making it a requirement of the Section 410 program. The agency has revised the rule to remove the requirement.

The Joint State Commenters argued against including any other program components under this criterion that are not expressly provided for in the statute, stating that they add costs to a criterion that is already expensive to meet and would impede State qualification for grants.

The underage drinking prevention program is not a new criterion under SAFETEA–LU. Elements of the agency's proposal continue requirements that were mandated by the agency under the predecessor Section 410 program. With the removal of the peer education component (discussed above), the program is nearly identical to the program that States complied with to receive a grant in FY 2005. Point-of-sale training, tamper proof licenses for individuals under the age of 21, an enforcement program and communication effort are not new requirements. The only changes from the previous requirements include a zero tolerance law that all 50 States (with the exception of Puerto Rico) already have and a shift in the communications strategy from providing general information on underage drinking to a program that specifically supports the enforcement of underage drinking laws. Thirty-three out of thirty-four States receiving Section 410 grants in FY 2005 complied with the criterion (including Idaho and North Dakota—2 of the 5 Joint State Commenters). (We note that in FY 2004, South Dakota, another of the Joint State Commenters, met the criterion as well). Considering that the amount of funds has greatly increased under SAFETEA–LU and that nearly all States that received awards complied with a substantially similar criterion, we do not agree with the Joint State Commenters that the agency's approach would impose undue costs on the States or impede State qualification for grants.

7. Administrative License Suspension or Revocation System

To qualify for a grant based on this criterion, SAFETEA–LU requires a State to demonstrate:

> An administrative driver's license suspension or revocation system for individuals who operate motor vehicles while under the influence of alcohol that requires that—
>
> (A) In the case of an individual who, in any 5-year period beginning after the date of enactment of the Transportation Equity Act for the 21st Century, is determined on the basis of a chemical test to have been operating a motor vehicle while under the influence of alcohol or is determined to have refused to submit to such a test as proposed by a law enforcement officer, the State agency responsible for administering drivers' licenses, upon receipt of the report of the law enforcement officer—
>
> (i) Suspend the driver's license of such individual for a period of not less than 90 days if such individual is a first offender in such 5-year period; except that under such suspension an individual may operate a motor vehicle, after the 15-day period beginning on the date of the suspension, to and from employment, school, or an alcohol treatment program if an ignition interlock device is installed on each of the motor vehicles owned or operated, or both, by the individual; and
>
> (ii) Suspend the driver's license of such individual for a period of not less than 1 year, or revoke such license, if such individual is a repeat offender in such 5-year period; except that such individual [may be allowed] to operate a motor vehicle, after the 45-day period beginning on the date of the suspension or revocation, to and from employment, school, or an alcohol treatment program if an ignition interlock device is installed on each of the motor vehicles owned or operated, or both, by the individual; and
>
> (B) The suspension and revocation referred to under clause (i) take effect not later than 30 days after the date on which the individual refused to submit to a chemical test or received notice of having been determined to be driving under the influence of alcohol, in accordance with the procedures of the State.

Under the agency's proposal, to demonstrate compliance with this criterion, the State would be required to provide that a BAC test refusal or failure would result in a 90-day license suspension for first offenders and a 1-year license suspension for second or subsequent offenders, and that suspensions would take effect within 30 days. The proposal would have permitted the State to provide limited driving privileges after 15 days to first offenders and after 45 days to second or subsequent offenders, if an ignition interlock device is installed on all vehicles owned and all vehicles operated by the offender and the offender's driving privileges are restricted to places of employment, school or treatment.

The agency received one comment regarding its approach to permit, but not require, States to grant interlock-restricted driving privileges. National Interlock Systems, Inc. commented that the statutory language requires the States to offer interlock restricted driving privileges in conjunction with this criterion. National cites the statutory language providing that an ''individual may operate a motor vehicle * * * if an ignition interlock device is installed'' to support its argument.

We disagree. This statutory language is permissive and allows the State to elect to offer interlocks to reduce the period of a license suspension an offender would otherwise face. Absent an interlock provision, the statute would simply require a full license suspension period to be served. There is no indication that Congress intended to mandate the use of interlocks in order for a State to comply with the criterion. Such an approach would likely render noncompliant many State programs that complied with nearly identical language under TEA–21.

National Interlock Systems, Inc. and LifeSafer Interlock, Inc. asserted that the requirements of this criterion conflict with those of the grant program the agency administers under 23 U.S.C. 164. The Section 410 program requires the State to apply an administrative license sanction to an offender as a result of BAC test refusals or failures. The Section 164 program requires the State to suspend the license of an individual for multiple impaired driving convictions. Because these programs apply to different classes of offenders, there is no conflict that would require a State to trade compliance in one grant program for another. The administrative license sanctions of the Section 410 program will apply up to the point the individual is convicted of impaired driving. The term ''repeat offender'' that appears in each grant program has been

defined differently to make these distinctions clear.

The agency has made two revisions to this criterion. First, based on the discussion under the High-Risk Drivers Program (see Section V.B.4), the agency has revised the rule to remove the requirement that ignition interlocks must be installed in all vehicles owned and all vehicles operated by the offender, because similar statutory language applies to this criterion. The State is required instead to issue a restricted license that limits the offender to operating only interlocked vehicles. Second, the agency has revised the criterion to allow an offender to drive to an interlock service facility as a condition of the restricted license.

8. Self-Sustaining Impaired Driving Prevention Program

To qualify for a grant based on this criterion, SAFETEA–LU requires a State to have:

> A program under which a significant portion of the fines or surcharges collected from individuals who are fined for operating a motor vehicle while under the influence of alcohol are returned to communities for comprehensive programs for the prevention of impaired driving.

The agency's proposal provides that a State may qualify for a grant based on this criterion if it returns at least 90 percent of the fines or surcharges collected to communities for comprehensive impaired driving programs.

GHSA and the Joint State Commenters objected to this requirement. The Joint State Commenters believed that returning 50 percent should be considered a significant amount and the agency should revise the regulation accordingly. GHSA stated that the intent of the requirement is to encourage the development of self-sustaining programs and not to dissuade States from compliance because requirements are set too high. GHSA recommended that the agency significantly lower the level required for a qualifying program or, alternatively, that it continue the approach taken under the predecessor Section 410 program.

As the agency explained in the NPRM, the predecessor Section 410 program required that a State return the ''actual'' fines or surcharges collected in order to achieve compliance. That approach required 100 percent of the amounts collected to be returned to communities for comprehensive programs. The agency's proposal under SAFETEA–LU is more generous, allowing a State to divert 10 percent in order to cover planning and administration costs. We do not believe that additional lowering of the amount returned would encourage more programs to become self-sustaining. It simply would allow more programs to be determined compliant that return less fines or surcharges. Programs that do not return collected amounts to the collecting communities are not self-sustaining. The agency declines to change this requirement.

GHSA's assertion that the agency ''does not fully support this statutory requirement'' is inaccurate. In support of this assertion, GHSA points to the agency's statement in the preamble to the NPRM that some States may not be able to meet the requirement, but that would not necessarily preclude a State from receiving a grant. This statement simply acknowledges that these States may seek to achieve compliance using other criteria. The context for this statement, as noted in the NPRM, is that some States are prohibited either by their Constitution or by State law from having dedicated non-discretionary uses of fines and penalties. With these legal limitations in place, regardless of the percentage selected, a State would be unable to comply with the criterion, but is not precluded from seeking to comply with other criteria.

The agency wishes to make clear that, under the proposal, States may qualify by returning at least 90 percent of the fines or at least 90 percent of surcharges collected from impaired drivers. Compliance does not require that a State base the amount returned on the total of all fines and surcharges levied against an impaired driver. States may establish surcharges in law and return at least 90 percent of the surcharge amount collected in order to comply with the criterion, regardless of other fines or penalties that may apply to an offender.

C. Comments Regarding Low and High Fatality Rate States

The agency received one comment concerning the separate grants available to high fatality rate States. Advocates commented that States in the high fatality rate category should not automatically receive 15 percent of the total amount available each year under the Section 410 program. Advocates further stated that the agency should use its discretion to award less to States that have done a poor job of reducing the impaired driving fatality rate.

SAFETEA–LU provides high fatality rate States with a limited amount of funding to be used to address impaired driving issues. These grants are distinct from the basic incentive funding provided under Section 410 and subject to certain specific requirements. At least 50 percent of the funding must be used to conduct Statewide law enforcement aimed at impaired driving. Additionally, the State must submit and the agency must approve a plan detailing proposed grant expenditures before any funds are provided. To the extent that Advocates' comment suggests that the 15 percent level is too high for States with high fatality rates, we disagree. Rather, the important point is that the funds be used effectively to improve the statistics in these States. The agency intends to review carefully the plans submitted by high fatality rate States to ensure the sound expenditure of funds to address the fatality problems in the State. Funding for these States will be subject to all applicable statutory restrictions. We have restated in the regulation the statutory restriction that no one State is to receive more than 30 percent of the total amount provided for high fatality rate States. Just as with the other grants under this program, the agency will monitor the use of the funds to ensure appropriate use.

The agency received two comments regarding the availability of FARS data to determine high and low fatality rate State status. Minnesota stated that any delay in the publishing of FARS data would create a disincentive for States to seek grants based on performance. GHSA commented that late publication of FARS data would preclude States from receiving performance grants. Both commenters urged the agency to revert to prior year FARS data should there be any delay. Eligibility for performance grants is determined by the most recent final FARS data available at the time of the award. The statutory language does not permit the agency to use older data should more current data become available before award. The agency intends to make the final FARS data available in early June and there is no reason to indicate otherwise at this time. If there is a delay in publicizing particular data, performance grants would not be jeopardized. These grants are determined using the most recently available data at the time of award and would remain available to all qualifying States.

D. Comments Regarding Administrative Issues

The agency received one comment regarding the general administration of the grant program. GHSA objected to the requirement that States submit applications in August for grants in the same fiscal year, stating that such an approach is contrary to the intent of the consolidated application process required in statute and will interfere with State planning processes. The agency believes that setting the

application deadline earlier under the program would interfere with State legislative efforts that may be necessary for compliance. Absent a statutory deadline, the agency is unwilling to decrease the States' flexibility in this regard.

We will continue to work toward the goal of consolidating the agency's grant opportunities into one application. However, under the Section 410 program, an early application deadline is not currently feasible and the agency is continuing the August deadline for applications established under TEA–21.

We received no other comments regarding grant administration issues. Therefore, those provisions of the agency's proposal are adopted without change.

VI. Statutory Basis for This Action

This final rule implements changes to the grant program under 23 U.S.C. 410 as a result of amendments made by Section 2007 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy For Users (SAFETEA–LU) (Pub. L. 109–59).

VII. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is ''significant'' and therefore subject to OMB review and to the requirements of the Executive Order. The Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

We have considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed by the Office of Management and Budget under E.O. 12866, ''Regulatory Planning and Review.'' The rulemaking action is also not considered significant under the Department's Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

For the following reasons, NHTSA concludes that this final rule will not have any quantifiable cost effect. The rulemaking action has no impact on the total amount of grant funds distributed and thus no impact on the national economy. All grant funds provided under Section 410 will be distributed each fiscal year among qualifying States (regardless of the number of States that qualify), using a statutorily-specified formula. The final rule does not alter this approach.

The rulemaking action also does not affect amounts over the significance threshold of $100 million each year. The final rule sets forth application procedures and showings to be made to be eligible for a grant. Under the statute, low fatality rate States will receive grants by direct operation of the statute without the need to formally submit a grant application. The agency estimates that these grants to low fatality rate States will account for more than 35 percent of the Section 410 funding provided annually under SAFETEA–LU. The funds to be distributed under the application procedures provided for in the final rule will therefore be well below the annual threshold of $100 million.

Because the economic effects of this final rule are so minimal, no further regulatory evaluation is necessary.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR Part 121 define a small business, in part, as a business entity ''which operates primarily within the United States.'' (13 CFR 121.105(a)). No regulatory flexibility analysis is required if the head of an agency certifies the rulemaking action will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that an action will not have a significant economic impact on a substantial number of small entities.

NHTSA has considered the effects of this proposal under the Regulatory Flexibility Act. States are the recipients of funds awarded under the Section 410 program and they are not considered to be small entities under the Regulatory Flexibility Act. Therefore, I certify that this rulemaking action will not have a significant economic impact on a substantial number of small entities.

C. Executive Order 13132 (Federalism)

Executive Order 13132, ''Federalism'' (64 FR 43255, August 10, 1999), 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.'' ''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, the 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. The agency also may not issue a regulation with Federalism implications that preempts a State law without consulting with State and local officials.

The agency has analyzed this rulemaking action in accordance with the principles and criteria set forth in Executive Order 13132 and has determined that the final rule does not have sufficient Federalism implications to warrant consultation with State and local officials or the preparation of a Federalism summary impact statement. Moreover, the final rule will not preempt any State law or regulation or affect the ability of States to discharge traditional State government functions.

D. Executive Order 12988 (Civil Justice Reform)

This final rule does not have any preemptive or retroactive effect. 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

There are reporting requirements contained in the final rule that are considered to be information collection requirements, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR Part 1320. Accordingly, these requirements have been submitted previously to and approved by OMB, pursuant to the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*) These requirements have been approved under OMB No. 2127–0501 through June 30, 2006. Although SAFETEA–LU revises the structure of the grant program under Section 410, the revision does not result in an increase in the amount of information States must provide to demonstrate compliance with the criteria.

F. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires federal 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 the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with a base year of 1995 (about $118 million in 2004 dollars)). This rulemaking action does not meet the definition of a Federal mandate, because the resulting annual State expenditures will not exceed the $100 million threshold. The program is voluntary and States that choose to apply and qualify will receive grant funds.

G. National Environmental Policy Act

NHTSA has reviewed this rulemaking action for the purposes of the National Environmental Policy Act (42 U.S.C. 4321, *et seq.*) and has determined that it will not have a significant impact on the quality of the human environment.

H. Executive Order 13175 (Consultation and Coordination With Indian Tribes)

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

I. Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

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

If you have any comments about the Plain Language implications of this final rule, please address them to the person listed under the **FOR FURTHER INFORMATION CONTACT** heading.

J. 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 Regulatory Information Service Center publishes the Unified Agenda in 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.

K. 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 (Volume 65, Number 70; Pages 19477–78), or you may visit *http://dms.dot.gov.*

List of Subjects in 23 CFR Part 1313

Alcohol abuse, Drug abuse, Grant programs—transportation, Highway safety, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, the agency amends title 23 of CFR part 1313 as follows:

PART 1313—INCENTIVE GRANT CRITERIA FOR ALCOHOL-IMPAIRED DRIVING PREVENTION PROGRAMS

■ 1. The citation of authority for part 1313 continues to read as follows:

Authority: 23 U.S.C. 410; delegation of authority at 49 CFR 1.50.

■ 2. Section 1313.3 is amended by removing paragraphs (c) and (g), redesignating paragraphs (d) through (f) as paragraphs (c) through (e) and adding new paragraphs (f) and (g) to read as follows:

§ 1313.3 Definitions.

* * * * *

(f) *Other associated costs permitted by statute* means labor costs, management costs, and equipment procurement costs for the high visibility enforcement campaigns under § 1313.6(a); the costs of training law enforcement personnel and procuring technology and equipment, including video equipment and passive alcohol sensors, to counter directly impaired operation of motor vehicles; the costs of public awareness, advertising, and educational campaigns that publicize use of sobriety check points or increased law enforcement efforts to counter impaired operation of motor vehicles or that target impaired operation of motor vehicles by persons under 34 years of age; the costs of the development and implementation of a State impaired operator information system; and the costs of operating programs that result in vehicle forfeiture or impoundment or license plate impoundment.

(g) *State* means any one of the fifty States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

■ 3. Sections 1313.4 through 1313.8 are revised to read as follows:

§ 1313.4 General requirements.

(a) *Qualification requirements.* To qualify for a grant under 23 U.S.C. 410, a State must, for each fiscal year it seeks to qualify:

(1) Meet the requirements of § 1313.5 or § 1313.7 concerning alcohol-related fatalities, as determined by the agency, and submit written certifications signed by the Governor's Representative for Highway Safety that it will—

(i) Use the funds awarded under 23 U.S.C. 410 only for the implementation and enforcement of alcohol-impaired driving prevention programs in § 1313.6 and other associated costs permitted by statute;

(ii) Administer the funds in accordance with 49 CFR part 18 and OMB Circular A–87; and

(iii) Maintain its aggregate expenditures from all other sources for its alcohol-impaired driving prevention programs at or above the average level of such expenditures in fiscal years

2004 and 2005 (either State or Federal fiscal year 2004 and 2005 can be used); or

(2) By August 1, submit an application to the appropriate NHTSA Regional Office identifying the criteria that it meets under § 1313.6 and including the certifications in paragraph (a)(1)(i) through (a)(1)(iii) of this section and the additional certification that it has an alcohol-impaired driving prevention program that meets the requirements of 23 U.S.C. 410 and 23 CFR part 1313.

(b) *Post-approval requirements*. (1) Within 30 days after notification of award, in no event later than September 12 of each year, a State must submit electronically to the agency a Program Cost Summary (HS Form 217) obligating the funds to the Section 410 program; and

(2) Until all Section 410 grant funds are expended, the State must document how it intends to use the funds in the Highway Safety Plan it submits pursuant to 23 U.S.C. 402 (or in an amendment to that plan) and detail the program activities accomplished in the Annual Report it submits for its highway safety program pursuant to 23 CFR 1200.33.

(c) *Funding requirements and limitations*. A State may receive grants, beginning in FY 2006, in accordance with the apportionment formula under 23 U.S.C. 402 and subject to the following limitations:

(1) The amount available for grants under § 1313.5 or § 1313.6 shall be determined based on the total number of eligible States for these grants and after deduction of the amount necessary to fund grants under § 1313.7.

(2) The amount available for grants under § 1313.7 shall not exceed 15 percent of the total amount made available to States under 23 U.S.C. 410 for the fiscal year, with no State receiving more than 30 percent of this amount.

(3) In the first or second fiscal years a State receives a grant under this part, it shall be reimbursed for up to 75 percent of the cost of its alcohol-impaired driving prevention program adopted pursuant to 23 U.S.C. 410.

(4) In the third and fourth fiscal years a State receives a grant under this part, it shall be reimbursed for up to 50 percent of the cost of its alcohol-impaired driving prevention program adopted pursuant to 23 U.S.C. 410.

§ 1313.5 Requirements for a low fatality rate state.

To qualify for a grant as a low fatality rate State, the State shall have an alcohol related fatality rate of 0.5 or less per 100,000,000 vehicle miles traveled (VMT) as of the date of the grant, as determined by NHTSA using the most recently available final FARS data. The agency plans to make this information available to States by June 1 of each fiscal year.

§ 1313.6 Requirements for a programmatic state.

To qualify for a grant as a programmatic State, a State must adopt and demonstrate compliance with at least three of the following criteria in FY 2006, at least four of the following criteria in FY 2007, and at least five of the following criteria in FY 2008 and FY 2009:

(a) *High Visibility Enforcement Campaign*—(1) *Criterion*. A high visibility impaired driving law enforcement program that includes:

(i) State participation in the annual National impaired driving law enforcement campaign organized by NHTSA;

(ii) Additional high visibility law enforcement campaigns within the State conducted on a quarterly basis at high-risk times throughout the year; and

(iii) Use of sobriety checkpoints and/or saturation patrols at high-risk locations throughout the State, conducted in a highly visible manner and supported by publicity.

(2) *Definitions*. (i) *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 or not the operators of such motor vehicles are driving while impaired by alcohol and/or other drugs.

(ii) *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.

(iii) *Law enforcement agency* means an agency identified by the State and included in an enforcement plan for purposes of meeting coverage and other requirements listed in § 1313.6(a)(3)(i)–(ii).

(3) *Demonstrating compliance*. (i) To demonstrate compliance in the first fiscal year under this criterion, the State shall submit a comprehensive plan for conducting a high visibility impaired driving law enforcement program under which:

(A) State Police and local law enforcement agencies collectively serving at least 50 percent of the State's population or serving geographic subdivisions that account for at least 50 percent of the State's alcohol-related fatalities will participate in the State's high visibility impaired driving law enforcement program;

(B) Each participating law enforcement agency will conduct checkpoints and/or saturation patrols on at least four nights during the annual National impaired driving campaign organized by NHTSA and will conduct checkpoints and/or saturation patrols on at least four occasions throughout the remainder of the year;

(C) The State will coordinate law enforcement activities throughout the State to maximize the frequency and visibility of law enforcement activities at high-risk locations Statewide; and

(D) Paid and/or earned media will publicize law enforcement activities before, during and after they take place, both during the National campaign and on a sustained basis at high risk times throughout the year.

(ii) To demonstrate compliance in subsequent fiscal years, the State shall submit information documenting that the prior year's plan was effectively implemented and an updated plan for conducting a current high visibility impaired driving law enforcement program containing the elements specified in § 1313.6(a)(3)(i) and (a)(3)(iii), except that the level of law enforcement agency participation must reach at least 55 percent of the State's population or cover geographic subdivisions that account for at least 55 percent of the State's alcohol-related fatalities in the second year the State receives a grant based on this criterion, 60 percent of either of these two measures in the third year and 65 percent of either of these two measures in the fourth year.

(iii) For the purposes of paragraph (a) of this section, a comprehensive plan shall include:

(A) Guidelines, policies or procedures governing the Statewide enforcement program;

(B) Approximate dates and locations of planned law enforcement activities;

(C) A list of law enforcement agencies expected to participate; and

(D) A paid media buy plan, if the State buys media, and a description of anticipated earned media activities before, during and after planned enforcement efforts;

(b) *Prosecution and Adjudication Outreach Program*—(1) *Criterion*. A prosecution and adjudication program that provides for either:

(i) A statewide outreach effort that reduces the use of diversion programs through education of prosecutors and

court professionals and includes the following topics—

(A) State impaired driving statutes and applicable case law;

(B) Searches, seizures and arrests;

(C) Admissibility of evidence;

(D) Biochemical and physiological information; and

(E) Sentencing of impaired drivers; or

(ii) A statewide outreach effort that provides information to prosecutors and court professionals on innovative approaches to the prosecution and adjudication of impaired driving cases and includes the following topics—

(A) Alcohol assessments and treatment;

(B) Vehicle sanctioning;

(C) Electronic monitoring and home detention; and

(D) DWI courts; or

(iii) A Statewide tracking system that monitors the adjudication of impaired driving cases that—

(A) Covers a majority of the judicial jurisdictions in the State; and

(B) Collects data on original criminal and traffic-related charge(s) against a defendant, the final charge(s) brought by a prosecutor, and the disposition of the charge(s) or sentence provided.

(2) *Definitions.* (i) *Diversion Program* means a program under which an offender is allowed to obtain a reduction or dismissal of an impaired driving charge or removal of an impaired driving offense from a driving record based on participation in an educational course, community service activity, or treatment program.

(ii) *Traffic Safety Resource Prosecutor* means an individual or entity used by the State on a full-time basis to provide support in the form of education and outreach programs and technical assistance to enhance the capability of prosecutors to effectively prosecute across-the-State traffic safety violations.

(iii) *State Judicial Educator* means an individual or entity used by the State on a full-time basis to enhance the performance of a State's judicial system by providing education and outreach programs and technical assistance to continuously improve personal and professional competence of all persons performing judicial branch functions.

(3) *Demonstrating compliance.* (i) To demonstrate compliance in the first fiscal year under this criterion, the State shall submit:

(A) A course syllabus for a Statewide outreach and education program and a certification that its program is provided on an annual basis (a minimum of once a year and a minimum of eight hours of training) and covers the required topics in either § 1313.6(b)(1)(i) or (b)(1)(ii); or

(B) Information indicating its use of a State sanctioned Traffic Safety Resource Prosecutor and State Judicial Educator and a list of impaired-driving-related educational programs offered by each position; or

(C) The names and locations of the judicial jurisdictions covered by a Statewide tracking system and the type of information collected.

(ii) To demonstrate compliance in a subsequent fiscal year for an outreach and education program, the State must certify that the outreach and education program continues to be conducted on an annual basis and covers the required topics in either § 1313.6(b)(1)(i) or (b)(1)(ii) and provide a new course syllabus if the program has been altered from the previous year.

(iii) To demonstrate compliance in a subsequent fiscal year for use of a Traffic Safety Resource Prosecutor and State Judicial Educator, the State must certify the continued existence of these positions and provide updated information if there has been a change in the status of these positions or the list of impaired-driving-related educational programs offered.

(iv) To demonstrate compliance in a subsequent fiscal year for use of a Statewide tracking system that monitors the adjudication of impaired driving cases, the State must provide an updated list of the courts involved and updated data collection information if there has been a change from the previous year.

(c) *BAC Testing Program*—(1) *Criterion.* An effective system for increasing the percentage of BAC testing among drivers involved in fatal motor vehicle crashes, subject to § 1313.6(c)(3), under which:

(i) The State submits a plan identifying approaches that will be taken during the fiscal year to achieve a BAC testing increase specified under § 1313.6(c)(1)(iii);

(ii) The State's law provides for mandatory BAC testing for drivers involved in fatal motor vehicle crashes and the State submits a plan in accordance with § 1313.6(c)(1)(i); or

(iii) The State's percentage of BAC testing among drivers involved in fatal motor vehicle crashes is greater than the previous year by at least 1 percentage point (1.0, as rounded to the first decimal place), as determined by the agency. The most recently available final FARS data as of the date of the grant will be used to determine a State's BAC testing rate.

(2) *Definition. Drivers involved in fatal motor vehicle crashes* includes both drivers who are fatally injured in motor vehicle crashes and drivers who survive a motor vehicle crash in which someone else is killed.

(3) *Demonstrating compliance.* Subject to the additional requirements of § 1313.6(c)(4), to demonstrate compliance under this criterion, that State shall:

(i) In FY 2006 and FY 2007, submit a plan, as required in § 1313.6(c)(1)(i), that describes approaches that are to be implemented during the fiscal year that will result in an increase in the State's BAC testing rate. The plan must include information on how each approach will be implemented and the expected outcome from implementation, and the plan must be updated each subsequent year it is submitted;

(ii) In FY 2008 and FY 2009, submit a plan, as required in § 1313.6(c)(1)(i), that describes approaches that are to be implemented during the fiscal year that will result in an increase in the State's BAC testing rate and submit a copy of its law as described in § 1313.6(c)(1)(ii). The plan must include information on how each approach will be implemented and the expected outcome from implementation, and the plan must be updated each subsequent year it is submitted; or

(iii) In any fiscal year, submit a statement that it intends to apply on the basis of an increase from the previous year in the percentage of BAC testing among drivers involved in fatal motor vehicle crashes in the State, in accordance with § 1313.6(c)(1)(iii) (the agency will determine compliance with this requirement).

(4) *Implementation of plan.* A State electing to demonstrate compliance under § 1313.6(c)(3)(i) or (c)(3)(ii) shall, in every fiscal year except the first fiscal year it seeks to comply, submit information demonstrating that the prior year's plan was effectively implemented.

(d) *High Risk Drivers Program*—(1) *Criterion.* A law that establishes stronger sanctions or additional penalties for individuals convicted of operating a motor vehicle with a high BAC that requires:

(i) In the case of an individual who, in any five-year period beginning after June 9, 1998, is convicted of operating a motor vehicle with a BAC of 0.15 or more—

(A) A suspension of all driving privileges for a period of not less than one year, or not less than 45 days followed immediately by a period of not less than 320 days of a restricted, provisional or conditional license, if such license restricts the individual to operating only vehicles equipped with an ignition interlock. A restricted, provisional or conditional license may be issued only to permit the offender to operate a motor vehicle to and from

employment, school, an alcohol treatment program or an interlock service facility; and

(B) A mandatory assessment by a certified substance abuse official, with possible referral to counseling if determined appropriate.

(2) *Demonstrating Compliance.* (i) To demonstrate compliance in the first fiscal year under this criterion, the State shall submit a copy of the law that provides for each element of this criterion.

(ii) To demonstrate compliance in subsequent fiscal years, a State shall submit a copy of any changes to the State's law or, if there have been no changes, the State shall submit a statement certifying that there have been no changes in the State's law.

(e) *Alcohol Rehabilitation or DWI Court Program*—(1) *Criterion.* A treatment program for repeat or high-risk offenders in a State that provides for either:

(i) An effective inpatient and outpatient alcohol rehabilitation system for repeat offenders, under which—

(A) A State enacts and enforces a law that provides for mandatory assessment of a repeat offender by a certified substance abuse official and requires referral to appropriate treatment as determined by the assessment; and

(B) A State monitors the treatment progress of repeat offenders through a Statewide tracking system; or

(ii) A DWI Court program, under which a State refers impaired driving cases involving high-risk offenders to a State-sanctioned DWI Court for adjudication.

(2) *Definitions.* (i) *DWI Court* means a court that specializes in driving while impaired cases, or a combination of drug-related and driving while impaired cases, and abides by the Ten Guiding Principles of DWI Courts in effect on the date of the grant, as established by the National Association of Drug Court Professionals.

(ii) *High-risk offender* means a person who meets the definition of a repeat offender or has been convicted of driving while intoxicated or driving under the influence with a BAC level of 0.15 or greater.

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

(3) *Demonstrating Compliance.* (i) To demonstrate compliance in the first fiscal year under this criterion, the State shall submit:

(A) A copy of its law that provides for mandatory assessment and referral to treatment and a copy of its tracking system for monitoring the treatment of repeat offenders; or

(B) A certification that at least one State-sanctioned DWI court is operating in the State, which includes the name and location of the court.

(ii) To demonstrate compliance in subsequent fiscal years, the State shall submit:

(A) Information concerning any changes to the alcohol rehabilitation program that was previously approved by the agency, or if there have been no changes, a statement certifying that there have been no changes to the materials previously submitted; or

(B) A certification, in the second year, that at least two State-sanctioned DWI courts are operating in the State, in the third year, that at least three State-sanctioned DWI courts are operating in the State, and in the fourth year, that at least four State-sanctioned DWI courts are operating in the State, with each certification including the names and locations of all of the courts; or a certification, in any year, that at least four State-sanctioned DWI courts are operating in the State, which includes the names and locations of all of the courts.

(f) *Underage Drinking Prevention Program*—(1) *Criterion.* An effective underage drinking prevention program designed to prevent persons under the age of 21 from obtaining alcoholic beverages and to prevent persons of any age from making alcoholic beverages available to persons under the age of 21, that provides for:

(i) The issuance of a tamper resistant driver's license to persons under age 21 that is easily distinguishable in appearance from a driver's license issued to persons 21 years of age and older;

(ii) A program, conducted by a nonprofit or public organization that provides training to alcoholic beverage retailers and servers concerning the clinical effects of alcohol, methods of preventing second-party sales of alcohol, recognizing signs of intoxication, methods to prevent underage drinking, and relevant laws that apply to retailers and servers and that provides procedures to ensure program attendance by appropriate personnel of alcoholic beverage retailers and servers;

(iii) A law that creates a blood alcohol content limit of no greater than 0.02 percent for drivers under age 21;

(iv) A plan that focuses on underage drivers' access to alcohol by those under age 21 and the enforcement of applicable State law; and

(v) A strategy for communication to support enforcement designed to reach those under age 21 and their parents or other adults and that includes a media campaign.

(2) *Definition. Tamper resistant driver's license* means a driver's license that has one or more of the security features listed in the Appendix.

(3) *Demonstrating Compliance.* (i) To demonstrate compliance in the first fiscal year under this criterion, the State shall submit sample drivers' licenses issued to persons both under and over 21 years of age that demonstrate the distinctive appearance of licenses for drivers under age 21 and the tamper resistance of these licenses. States shall also submit a plan describing a program for educating point-of-sale personnel that covers each element of § 1313.6(f)(1)(ii). States shall submit a copy of their zero tolerance law that complies with 23 U.S.C. 161. In addition, States shall submit a plan that provides for an enforcement program and communications strategy meeting § 1313.6(f)(1)(iv) and (v).

(ii) To demonstrate compliance in subsequent fiscal years, States need only submit information documenting any changes to the State's driver's licenses or underage driving prevention program, or a certification stating there have been no changes since the State's previous year submission.

(g) *Administrative License Suspension or Revocation System*—(1) *Criterion.* An administrative driver's license suspension or revocation system for individuals who operate motor vehicles while under the influence of alcohol that requires that:

(i) In the case of an individual who, in any five-year period beginning after June 9, 1998, is determined on the basis of a chemical test to have been operating a motor vehicle while under the influence of alcohol or is determined to have refused to submit to such a test as proposed by a law enforcement officer, the State entity responsible for administering driver's licenses, upon receipt of the report of the law enforcement officer, shall—

(A) For a first offender, suspend all driving privileges for a period of not less than 90 days, or not less than 15 days followed immediately by a period of not less than 75 days of a restricted, provisional or conditional license, if such license restricts the offender to operating only vehicles equipped with an ignition interlock. A restricted, provisional or conditional license may be issued only to permit the offender to operate a motor vehicle to and from employment, school, an alcohol treatment program or an interlock service facility; and

(B) For a repeat offender, suspend or revoke all driving privileges for a period of not less than one year, or not less than 45 days followed immediately by a period of not less than 320 days of a restricted, provisional or conditional license, if such license restricts the offender to operating only vehicles equipped with an ignition interlock. A restricted, provisional or conditional license may be issued only to permit the offender to operate a motor vehicle to and from employment, school, an alcohol treatment program or an interlock service facility; and

(ii) The suspension or revocation shall take effect not later than 30 days after the day on which the individual refused to submit to a chemical test or received notice of having been determined to be operating a motor vehicle while under the influence of alcohol, in accordance with the procedures of the State.

(2) *Definitions.* (i) *First offender* means an individual who a law enforcement officer has probable cause under State law to believe has committed an alcohol-related traffic offense, and who is determined on the basis of a chemical test to have been operating a motor vehicle while under the influence of alcohol or who refused to submit to such a test, once in any five-year period beginning after June 9, 1998.

(ii) *Repeat offender* means an individual who a law enforcement officer has probable cause under State law to believe has committed an alcohol-related traffic offense, and who is determined on the basis of a chemical test to have been operating a motor vehicle while under the influence of alcohol or who refused to submit to such a test, more than once in any five-year period beginning after June 9, 1998.

(3) *Demonstrating compliance for Law States.* (i) To demonstrate compliance in the first fiscal year under this criterion, a Law State shall submit a copy of the law, regulation or binding policy directive implementing or interpreting the law or regulation that provides for each element of this criterion.

(ii) To demonstrate compliance in subsequent fiscal years, a Law State shall submit a copy of any changes to the State's law, regulation or binding policy directive or, if there have been no changes, a statement certifying that there have been no changes to the State's laws, regulations or binding policy directives.

(iii) For purposes of paragraph (g) of this section, Law State means a State that has a law, regulation or binding policy directive implementing or interpreting an existing law or regulation that provides for each element of this criterion.

(4) *Demonstrating compliance for Data States.* (i) To demonstrate compliance in the first fiscal year under this criterion, a Data State shall submit a copy of the law, regulation or binding policy directive implementing or interpreting the law or regulation that provides for an administrative license suspension or revocation system, and data showing that the State substantially complies with each element of this criterion not specifically provided for in the State's law, regulation or binding policy directive.

(ii) To demonstrate compliance in subsequent fiscal years, a Data State shall submit, in addition to the information identified in § 1313.6(g)(3)(ii), data showing that the State substantially complies with each element of this criterion not specifically provided for in the State's law, regulation or binding policy directive.

(iii) The State can provide the necessary data based on a representative sample, on the average number of days it took to suspend or revoke a driver's license and on the average lengths of suspension or revocation periods, except that data on the average lengths of suspension or revocation periods must not include license suspension periods that exceed the terms actually prescribed by the State, and must reflect terms only to the extent that they are actually completed.

(iv) For purposes of paragraph (g) of this section, *Data State* means a State that has a law, regulation or binding policy directive implementing or interpreting an existing law or regulation that provides for an administrative license suspension or revocation system, but the State's laws, regulations or binding policy directives do not specifically provide for each element of this criterion.

(h) *Self-Sustaining Impaired Driving Prevention Program*—(1) *Criterion.* A self-sustaining impaired driving prevention program under which a significant portion of the fines or surcharges collected from individuals who are fined for operating a motor vehicle while under the influence of alcohol are returned to communities for use in a comprehensive impaired driving prevention program.

(2) *Definitions.* (i) *A comprehensive drunk driving prevention program* means a program that includes, at a minimum, the following components:

(A) Regularly conducted, peak-hour traffic enforcement efforts directed at impaired driving;

(B) Prosecution, adjudication and sanctioning resources that are adequate to handle increased levels of arrests for operating a motor vehicle while under the influence of alcohol;

(C) Programs directed at prevention other than enforcement and adjudication activities, such as school, worksite or community education; server training; or treatment programs;

(D) A public information program designed to make the public aware of the problem of impaired driving through paid and earned media and of the State's efforts to address it.

(ii) *Fines or surcharges collected* means fines, penalties, fees or additional assessments collected.

(iii) *Significant portion* means at least 90 percent of the fines or surcharges collected.

(3) *Demonstrating compliance.* (i) To demonstrate compliance in the first fiscal year under this criterion, a State shall submit:

(A) A copy of the law, regulation or binding policy directive implementing or interpreting the law or regulation that provides—

(*1*) For fines or surcharges to be imposed on individuals apprehended for operating a motor vehicle while under the influence of alcohol; and

(*2*) For such fines or surcharges collected to be returned to communities with comprehensive drunk driving prevention programs; and

(B) Statewide data (or a representative sample) showing—

(*1*) The aggregate amount of fines or surcharges collected;

(*2*) The aggregate amount of revenues returned to communities with Comprehensive drunk driving prevention programs under the State's self-sustaining system; and

(*3*) The aggregate cost of the State's comprehensive drunk driving prevention programs.

(ii) To demonstrate compliance in subsequent fiscal years, the State shall submit, in addition to the data identified in paragraph (h)(3)(i)(B) of this section, a copy of any changes to the State's law, regulation or binding policy directive or, if there have been no changes, a statement certifying that there have been no changes in the State's laws, regulations or binding policy directives.

§ 1313.7 Requirements for a high fatality rate state.

To qualify for a grant as a high fatality rate State, the State shall be among the ten States that have the highest alcohol-related fatality rates, as determined by the agency using the most recently available final FARS data as of the date of the grant. The agency plans to make this information available to States by June 1 of each fiscal year.

(1) *Demonstrating compliance.* To demonstrate compliance in each fiscal year a State qualifies as a high fatality rate State, the State shall submit a plan for grant expenditures that is approved by the agency and that expends funds in accordance with § 1313.4. The plan must allocate at least 50 percent of the funds to conduct a high visibility impaired driving enforcement campaign in accordance with § 1313.6(a) and include information that satisfies the planning requirements of § 1313.6(a)(3)(iii).

§ 1313.8 Award procedures.

In each Federal fiscal year, grants will be made to eligible States that satisfy the requirements of § 1313.4(a), subject to the requirements of § 1313.4(b) and (c). The release of grant funds under this part shall be subject to the availability of funding for that fiscal year.

■ 4. Appendix to part 1313 is being republished to read as follows:

Appendix to Part 1313—Tamper Resistant Driver's License

A tamper resistant driver's license or permit is a driver's license or permit that has one or more of the following security features:

(1) Ghost image.
(2) Ghost graphic.
(3) Hologram.
(4) Optical variable device.
(5) Microline printing.
(6) State seal or a signature which overlaps the individual's photograph or information.
(7) Security laminate.
(8) Background containing color, pattern, line or design.
(9) Rainbow printing.
(10) Guilloche pattern or design.
(11) Opacity mark.
(12) Out of gamut colors (i.e., pastel print).
(13) Optical variable ultra-high-resolution lines.
(14) Block graphics.
(15) Security fonts and graphics with known hidden flaws.
(16) Card stock, layer with colors.
(17) Micro-graphics.
(18) Retroreflective security logos.
(19) Machine readable technologies such as magnetic strips, a 1D bar code or a 2D bar code.

Issued on: April 17, 2006.

Jacqueline Glassman,

Deputy Administrator.

[FR Doc. 06–3781 Filed 4–20–06; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD05–06–040]

RIN 1625–AA–09

Drawbridge Operation Regulations; Potomac River, Between Maryland and Virginia

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the Woodrow Wilson Memorial (I–95) Bridge, mile 103.8, across the Potomac River between Alexandria, Virginia and Oxon Hill, Maryland. This deviation allows the drawbridge to remain closed-to-navigation from 8 p.m. on June 9, 2006, until 5 a.m. on June 12, 2006; and from 8 p.m. on July 14, 2006, until 5 a.m. on July 17, 2006, to facilitate the Outer and Inner Loop shifts of vehicular traffic for the new Woodrow Wilson Bridge construction project.

DATES: This deviation is effective from 8 p.m. on June 9, 2006, until 5 a.m. on July 17, 2006.

ADDRESSES: Materials referred to in this document are available for inspection or copying at Commander (dpb), Fifth Coast Guard District, Federal Building, 1st Floor, 431 Crawford Street, Portsmouth, VA 23704–5004 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (757) 398–6222. Commander (dpb), Fifth Coast Guard District maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Waverly W. Gregory, Jr., Bridge Administrator, Fifth Coast Guard District, at (757) 398–6222.

SUPPLEMENTARY INFORMATION: The existing Woodrow Wilson Memorial (I–95) Bridge has a vertical clearance in the closed position to vessel of 50 feet at mean high water and 52 feet at mean low water.

Coordinators for the construction of the new Woodrow Wilson Bridge Project requested a temporary deviation from the current operating regulation for the existing Woodrow Wilson Memorial (I–95) Bridge set out in 33 CFR 117.255(a). The coordinators requested the temporary deviation to close the existing drawbridge to navigation to accommodate the shifting of vehicular traffic on the Outer and Inner Loops of the Capital Beltway/I–95 North. The Outer and Inner Loops of the Capital Beltway/I–95 North will be reduced from three lanes to only one lane between the Route 1 Interchange and the Wilson Bridge. Project traffic engineers anticipate traffic impacts to peak on Saturday afternoon, with 10 to 15 mile backups and delays of 60 to 90 minutes. Maintaining the existing drawbridge in the closed-to-navigation position from 8 p.m. on Friday, June 9, 2006, through 5 a.m. on Monday, June 12, 2006 and from 8 p.m. on Friday, July 14, 2006, through 5 a.m. on Monday, July 17, 2006, will help reduce the impact to vehicular traffic during these phases of new bridge construction.

The Coast Guard has informed the known users of the waterway of the closure period for the bridge so that these vessels can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: April 13, 2006.

Waverly W. Gregory, Jr.,

Chief, Bridge Administration Branch, Fifth Coast Guard District.

[FR Doc. 06–3783 Filed 4–20–06; 8:45 am]

BILLING CODE 4910–15–P