DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

23 CFR Part 1300

[Docket No. NHTSA–2022–0036]

RIN 2127–AM45

Uniform Procedures for State Highway Safety Grant Programs

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

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes revised uniform procedures implementing State highway safety grant programs, as a result of enactment of the Infrastructure Investment and Jobs Act (IIJA, also referred to as the Bipartisan Infrastructure Law or BIL). It also reorganizes, streamlines and updates some grant requirements. The agency requests comments on the proposed rule.

DATES: Comments in response to this notice of proposed rulemaking must be submitted by October 31, 2022. In compliance with the Paperwork Reduction Act, NHTSA is also seeking comment on a new information collection. See the Paperwork Reduction Act section under Regulatory Analyses and Notices below. Comments concerning the new information collection requirements are due October 31, 2022 to NHTSA and to the Office of Management and Budget (OMB) at the address listed in the **ADDRESSES** section.

ADDRESSES: You may submit written comments, identified by docket number or RIN, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call 202–366–9826 before coming.

Comments on the proposed information collection requirements should be submitted to: Office of Management and Budget at *www.reginfo.gov/public/do/PRAMain.* To find this particular information collection, select ''Currently under Review—Open for Public Comment'' or use the search function. It is requested that comments sent to the OMB also be sent to the NHTSA rulemaking docket identified in the heading of this document.

Instructions: All written submissions must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

For comments on the proposed collection of information, all submissions must include the agency name and docket number for the proposed collection of information. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Docket: For access to the docket go to *http://www.regulations.gov* at any time or to 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590 between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. Telephone: 202–366–9826.

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

FOR FURTHER INFORMATION CONTACT:

For program issues: Barbara Sauers, Acting Associate Administrator, Regional Operations and Program Delivery, National Highway Traffic Safety Administration; Telephone number: (202) 366–0144; Email: *barbara.sauers@dot.gov.*

For legal issues: Megan Brown, Attorney-Advisor, Office of the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590; Telephone number: (202) 366–1834; Email: *megan.brown@dot.gov.*

SUPPLEMENTARY INFORMATION:

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I. Background

We face a crisis on our roadways. NHTSA projects that an estimated 42,915 people died in motor vehicle crashes in 2021.[1] This projection is the largest annual percentage increase in the history of the Fatality Analysis Reporting System. Projections for the first quarter of 2022 are even bleaker; an estimated 9,560 people died in motor vehicle crashes during this period.[2] If these projections are confirmed, this will be the highest number of first-quarter fatalities since 2002. Behind each of these numbers is a life tragically lost, and a family left behind. This crisis is urgent and preventable. NHTSA is redoubling our safety efforts and asking our State partners to join us in this critical pursuit. The programs to be implemented under today's rulemaking are an important part of that effort. Now, more than ever, we all must seize the opportunity to deliver accountable, efficient, and data-driven highway safety programs to save lives and reverse the deadly trend on our Nation's roads.

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

[1] National Center for Statistics and Analysis. (2022, May). Early estimates of motor vehicle traffic fatalities and fatality rate by sub-categories in 2021 (Crash·Stats Brief Statistical Summary. Report No. DOT HS 813 298). National Highway Traffic Safety Administration. *Available at https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/813298.*

[2] National Center for Statistics and Analysis. (2022, August). Early estimate of motor vehicle traffic fatalities for the first quarter of 2022 (Crash·Stats Brief Statistical Summary. Report No. DOT HS 813 337). National Highway Traffic Safety Administration. *Available at https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/813337.*

(HSP), which serves as both a planning and application document, with a triennial HSP and Annual Grant Application, and it codified the annual reporting requirement. The BIL also made the following changes to the Section 405 grant program:

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

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

As in past authorizations, the BIL requires NHTSA to implement the grants pursuant to rulemaking. On April 21, 2022, the agency published a notification of public meeting and request for comments (RFC). 87 FR 23780. In that document, the agency sought comment on several aspects relating to this rulemaking. Today's action proposes regulatory language to implement the BIL provisions and addresses comments received at the public meeting and in response to the RFC.

This Notice of Proposed Rulemaking (NPRM) proposes application, approval, and administrative requirements for all 23 U.S.C. Chapter 4 grants and the Section 1906 grants, consistent with the requirements set forth in the BIL. Section 402, as amended by the BIL, continues to require each State to have an approved highway safety program designed to reduce traffic crashes and the resulting deaths, injuries, and property damage. Section 402 sets forth minimum requirements with which each State's highway safety program must comply. Under new procedures established by the BIL, each State must submit for NHTSA approval a triennial Highway Safety Plan (''triennial HSP'') that identifies highway safety problems, establishes performance measures and targets, describes the State's countermeasure strategies for programming funds to achieve its performance targets, and reports on the State's progress in achieving the targets set in the prior HSP. 23 U.S.C. 402(k). Each State must also submit for NHTSA approval an annual grant application that provides any necessary updates to the triennial HSP, identifies all projects and subrecipients to be funded by the State with highway safety grant funds during the fiscal year, describes how the State's strategy to use grant funds was adjusted based on the State's latest annual report, and includes an application for additional grants available under Chapter 4. (23 U.S.C. 402(l)) The agency proposes to reorganize and rewrite subpart B of part 1300, as well as 23 CFR 1300.35 to implement these changes.

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

While many procedures and requirements continue unchanged by today's action, this NPRM makes limited changes to administrative provisions to address changes due to the triennial framework and changes made by revisions to the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR part 200.

II. Comments From the Public Meeting and Request for Comments

In response to the RFC, the following submitted comments to the public docket on *www.regulations.gov:* Aaron Katz; American Association of State Highway and Transportation Officials (AASHTO); Accident Scene Management, Inc.; Advocates for Highway & Auto Safety (Advocates); Amado Alejandro Baez; American Ambulance Association; American College of Surgeons, Committee on Trauma; Art Martynuska; Brandy Nannini (on behalf of both *Responsibility.org* and National Alliance to Stop Impaired Driving); Brian Maguire, Scot Phelps, Daniel Gerard, Paul Maniscalco, Kathleen Handal, and Barbara O'Neill (Brian Maguire, et al.); California Office of Traffic Safety (CA OTS); Center for Injury Research and Prevention at Children's Hospital of Philadelphia (CIRP); Connecticut Highway Safety Office (CT HSO); Covington County Hospital Ambulance Service; David Harden; Drew Dawson; Emergency Safety Solutions, Inc. (ESS, Inc.); Florida Department of Health, Bureau of Emergency Medical Oversight (FL DOH); Governor's Highway Safety Association (GHSA); Haas Alert; Institute for Municipal and Regional Policy at the University of Connecticut (IMRP); International Association of Emergency Medical Services Chiefs (IAEMSC); International Association of Fire Chiefs (IAFC); Joshua Snider; Kathleen Hancock; League of American Bicyclists; Leigh Anderson; Leon County, Emergency Medical Services; Lorrie Walker; Louis Lombardo; Louisiana Bureau of Emergency Medical Services; Louisiana Highway Safety Commission (LA HSC); Love to Ride;

Mari Lynch; Minnesota Department of Public Safety (MN DPS); National Association of City Transportation Officials (NACTO); National Association of Emergency Medical Technicians (NAEMT); National Association of State 911 Administrators (NASNA); National Association of State Emergency Medical Services Officials (NASEMSO); National Safety Council (NSC); National Sheriffs' Association; New York State Governor's Traffic Safety Committee (NY GTSC); Oregon Department of Transportation Safety Office (OR DOT); Paul Hoffman; Rebecca Sanders; Safe Kids Worldwide; Safe Routes Partnership; SafetyBeltSafe U.S.A.; Saratoga County, NY Emergency Medical Services (Saratoga County); Scott Brody; Pedestrian Safety Solutions; Tom Schwerdt; Transportation Equity Caucus; Vision Zero Network; Washington Traffic Safety Commission (WA TSC); Wisconsin Bureau of Transportation Safety (WI BOTS); Wisconsin Bureau of Transportation Safety, Division of State Patrol (WI BOTS Patrol); joint submission by the Departments of Transportation of Idaho, Montana, North Dakota, South Dakota and Wyoming (5-State DOTs); and three anonymous commenters. Five of these commenters (5-State DOTs; WA TSC; Brandy Nannini; MN DPS; and CT HSO) expressed general support for GHSA's comments. The WA TSC also expressed support for the comments provided by the MN DPS, CA HSO and NY GTSC.

NHTSA received communications directly from three organizations prior to the Request for Comment. (*See* letter from Governor's Highway Safety Association (GHSA); a letter from Mothers Against Drunk Driving (MADD); and a joint letter from Governor's Highway Safety Association, Responsibility Initiatives, National Alliance to Stop Impaired Driving, Mothers Against Drunk Driving, National Safety Council, and Coalition of Ignition Interlock Manufacturers.) Because of the substantive nature of these communications, NHTSA added them to the docket for this rule.

In this preamble, NHTSA addresses all comments and identifies any proposed changes made to the existing regulatory text in part 1300.[3] In addition, NHTSA makes several technical corrections to cross-references and other non-substantive editorial corrections necessitated by proposed changes to the rule. For ease of reference, the preamble identifies in parentheses within each subheading and at appropriate places in the explanatory paragraphs the CFR citation for the corresponding regulatory text.

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

A. Rulemaking Process

Several commenters[4] stated that NHTSA should ensure fidelity to the spirit and letter of Congressional directives, minimize administrative burden on States, and provide great flexibility in use of funds. They explained that unnecessary administrative burdens shift States' focus away from program delivery and discourage subrecipient participation. The 5-State DOTs additionally recommended that NHTSA strive to avoid duplicative planning and reporting burdens between DOT agencies, and to consult with FHWA during the rulemaking process. As will be clear throughout this preamble and in the proposed rule itself, NHTSA's primary goal in this notice of proposed rulemaking is to propose a regulation that will implement the statutory requirements for the highway safety grant program. It is not our intention to impose unnecessary administrative burdens on States or their subrecipients. However, as a grantor agency, we have a responsibility to ensure that Federal grant funds are spent for the purposes Congress specifies and consistent with all legal requirements. Applicable legal requirements include both the Section 402 and 405 statutory text, as well as other Federal grant laws and regulation. Those statutory requirements include the submission of a triennial plan that sets forth how a state will use funds to reduce traffic crashes, fatalities, serious injuries, and economic harm through the use of effective countermeasures.

AASHTO, GHSA and SafetyBeltSafe U.S.A. all submitted comments supporting increased public participation and opportunity to comment in NHTSA's rulemaking process. AASHTO encouraged NHTSA to consider all comments received, which we do in this action and will continue to do throughout the rulemaking process. GHSA expressed support for NHTSA's intention to publish a NPRM rather than publishing an Interim Final Rule, noting that it will provide opportunity for public comment. And SafetyBeltSafe U.S.A. expressed appreciation for the public meetings NHTSA held as part of its RFC, noting that they provided an opportunity to bring different parts of the traffic safety community together. NHTSA appreciates these comments and the comments received in response to the RFC, and we encourage comments responding to this NPRM. We commit to considering all comments carefully and thoughtfully.

GHSA requested that NHTSA complete the rulemaking process quickly in order to facilitate States in their highway safety planning and application processes. GHSA specifically sought first, publication of the final rule by October 2022, and in a later comment, publication by the end of December 2022. NHTSA appreciates the need to finalize the rule with sufficient time for States to rely on the rule in completing their fiscal year (FY) 2024 triennial HSPs and Annual Grant Applications, due July 1 and August 1, 2023, respectively. While it is not possible to complete the full rulemaking process, in accordance with the Administrative Procedure Act (5 U.S.C. 553), within the timeline proposed by GHSA, NHTSA plans to publish a Final Rule with sufficient time for States to rely on the rule for their FY24 grant applications.

GHSA further recommended that NHTSA establish an effective date of Federal fiscal year 2024 for the rule. Consistent with the BIL, the final rule, when published, will be effective for fiscal year 2024 and later grants.

GHSA and the NY GTSC stressed the importance of uniform and consistent guidance so that States can rely on the same interpretations. AASHTO recommended that the agency focus on providing program-level guidance while allowing for effective collaboration and coordination of State programs. GHSA further suggested several specific NHTSA guidance documents that it would like the agency to review or create in light of the statutory changes implemented in the BIL and based on past experience. The agency recognizes that some existing guidance may require modification or recission as a result of changes to the statute and this rule. We intend to begin reviewing existing guidance after this rulemaking is complete and will keep the specific

[3] Fourteen commenters submitted comments that are outside the scope of this rulemaking, including comments related to infrastructure and road design, vehicle and other private technologies, NHTSA's Section 403 authorities, suggestions for NHTSA research and messaging, substantive requirements for data systems, a recommendation that NHTSA mandate cell phone technology, a request that NHTSA publish outside entities' research, and general statements about the importance of traffic safety. As these comments are outside the scope of NHTSA's Section 402 and 405 grant programs, they are beyond the scope of this rulemaking and will not be addressed further in this preamble.

[4] AASHTO, GHSA, MN DPS, NY GTSC, WI BOTS and 5-State DOTs.

suggestions provided by GHSA in mind at that time.

B. Equity

NHTSA received several comments stressing the importance of equity in traffic safety programs. The Transportation Equity Caucus noted that the concept of public safety may be defined differently in different communities and recommended that NHTSA be guided by Executive Order 13985, Advancing Racial Equity and Support for Underserved Communities Through Federal Government. NHTSA strongly supports the policies and commitment to equity laid out in the Executive Order and is committed to fulfilling our responsibilities under the Order and to following its principles. For example, NHTSA's Office of Civil Rights (NCR) recently hired a Division Chief to focus on the enforcement of Title VI of the Civil Rights Act of 1964, which prohibits recipients of Federal financial assistance from discriminating against persons on the basis of race, color, or national origin (including limited English proficiency). NCR is also hiring a Division Chief to serve as principal staff advisor on all activities related to the Americans with Disabilities Act and Section and Section 504 of the Rehabilitation Act of 1973. Additionally, NHTSA's Office of Grants Management and Operations is preparing to hire two program analysts to focus on stakeholder engagement, equity in traffic safety, and the needs of populations that are overrepresented in traffic fatalities and serious injuries.

In addition, NHTSA was guided, in part, by the Order's requirement to increase opportunities for public engagement when we decided to hold three hearings and publish an RFC in advance of drafting this notice of proposed rulemaking. As a result of those hearings and the RFC, NHTSA received numerous comments from groups specifically focused on equity, from representatives of non-profit community groups, and from members of the public. Many commenters emphasized the importance of equity in highway traffic safety, and several made specific recommendations for the agency to consider. Many of the comments touch on different areas of NHTSA's work that have an impact on the grant program, including NHTSA's research and technical assistance activities. A number of the comments relate to NHTSA activities that fall outside the scope of the rulemaking, which is limited to applications and grant management in the highway safety grant program. In recognition of the importance of the topic, and in appreciation for the thoughtful consideration that went into submission of those comments, we will nonetheless summarize and briefly respond to all comments we received relating to equity.

Many commenters submitted comments asking NHTSA to place less emphasis on enforcement as a traffic safety countermeasure [5] or to discontinue funding law enforcement altogether.[6] Relatedly, several commenters expressed concern that NHTSA's grant funds provide support for pretextual stops by law enforcement, with several specifically mentioning NHTSA's support for the Data-Driven Approaches to Crime and Traffic Safety (DDACTS) program.[7] The commenters expressed serious and data-driven concerns about the disparate impacts of policing and the incidence of police violence during traffic stops, especially during pretextual stops. (*See id.*)

NHTSA's partnerships with law enforcement and advocacy communities are an important part of traffic safety work, and equity must be at the forefront in that work. The public must be able to trust that law enforcement will treat all persons fairly, regardless of race, color, sex, age, national origin, religion or disability. NHTSA engages in an ongoing dialog with the Center for Policing Equity regarding advancing equity in traffic safety enforcement. NHTSA is also working to center equity in its ongoing relationship with both the National Sheriffs' Association and the International Association of Chiefs of Police, as the National Sheriffs' Association recommended in its comment.

Equally important are the States' partnerships and relationships of trust with their own law enforcement resources. Fundamentally, recipients of Federal grant funds are prohibited from using the funds in a discriminatory manner. As a result, all State grant recipients must ensure that the law enforcement agencies to which they provide highway safety grant funds have strong equity-based enforcement practices. NHTSA's highway safety grant funds may only be used for permissible traffic safety purposes. Use of NHTSA grant funds for discriminatory practices, including those associated with pretextual policing, violates Federal civil rights laws and NHTSA will seek repayment of any grant funds that are found to be used for such purposes and refer any discriminatory incidents to the Department of Justice.

DDACTS is a law enforcement operational model that integrates location-based traffic-crash and crime data to determine the most effective methods for deploying law enforcement and other resources. It focuses on community collaboration to reinforce the role that partnerships play in improving the quality of life in communities and encourages law enforcement agencies to use effective engagement and new strategies. NHTSA continuously reviews the content of DDACTS training and works to ensure that the training focuses on community engagement and the appropriate application of fair and equitable traffic enforcement strategies. Note, however, that not all DDACTS-related activities are eligible uses of NHTSA's highway traffic safety grant funds. NHTSA's grant funds may only be used for traffic safety activities; any other use of law enforcement is not eligible for funding under the highway traffic safety grants. NHTSA will continue to evaluate DDACTS to ensure that it promotes only enforcement that is implemented fairly and equitably.

Both the Vision Zero Network and Safe Routes Partnerships stressed the importance of meaningful community engagement in designing equitable traffic safety programs. The BIL added a requirement for States to include meaningful public participation and engagement in State highway safety programs. 23 U.S.C. 402(b)(1)(B). In addition, Title VI of the Civil Rights Act of 1964 (Title VI), as implemented through DOT Order 1000.12C, requires that recipients of Federal funding submit a Community Participation Plan to ensure diverse views are heard and considered throughout all stages of the consultation, planning, and decision-making process. NHTSA agrees with the commenters that increased community engagement can help ensure that State highway safety programs are more equitable, and proposes regulatory provisions to implement BIL's requirement along with the Community Participation requirements from Title VI of the Civil Rights Act of 1964.[8] These requirements will be discussed in more detail in the relevant sections of this preamble. *See* 23 CFR 1300.11(b)(2) and 23 CFR 1300.12(b)(2).

The Vision Zero Network recommended several strategies to rethink and expand the ways education and enforcement are utilized in traffic safety. Among other things, it

[5] League of American Bicyclists, NACTO, Safe Routes Partnerships, and Vision Zero Network.

[6] TEC.

[7] League of American Bicyclists, NACTO, Transportation Equity Caucus, and Vision Zero Network.

[8] 42 U.S.C. 2000d *et seq.*

recommended that NHTSA: research equitable education and enforcement strategies; promote alternatives to traditional enforcement strategies, criminalization, and fines; educate key influencers in the safe system approach; promote safe, sustainable mobility options; and support grassroots safety advocacy. NHTSA appreciates these suggestions and is already beginning to implement these strategies, including through a cooperative agreement with the National Safety Council supporting the Road to Zero Coalition's community traffic safety grants. NHTSA encourages States to consider these and other strategies when planning their highway safety programs and will work with States as they develop their triennial Highway Safety Plans. The Vision Zero Network also suggested that NHTSA fund State assessments of equity outcomes of enforcement work and pilot alternative strategies. Some NHTSA grant funds may be used for these purposes. For example, the 1906 grant program provides funding for collecting, maintaining, and evaluating race and ethnicity data on traffic stops, as well as to develop and implement programs to reduce the disparate impacts of traffic stops. In addition, the Section 402 grant program provides broad eligible uses of funds, including demonstration programs. NHTSA encourages States to reach out to their Regional Office to discuss whether a particular pilot program may be an eligible use of NHTSA grant funds as these determinations are often fact-specific. NHTSA will also work with States to share information about best practices and to identify effective and allowable uses of funds for equity outcomes in enforcement work.

The NY GTSC recommended some specific actions that the State has implemented to support the inclusion of equity in its highway safety program, including creation of groups such as the New York State Equity Subcommittee, to ensure programming reaches underserved communities that are overrepresented in traffic crashes. In addition, New York recommended that States expand the data sources they consider, to include census and demographic information, as well as anecdotal information combined with localized crash data in order to conduct outreach efforts. NHTSA appreciates these examples and the efforts that the State already has underway. The agency supports all States looking into additional ways to identify and reach non-traditional highway safety partners and will work to encourage the sharing of effective programs among the States.

The Vision Zero Network recommended that NHTSA take action on the equity-related suggestions in the Federal Highway Administration's report titled ''Integrating the Safe System Approach with the Highway Safety Improvement Program.'' While that report is targeted to FHWA's HSIP program, NHTSA nonetheless agrees with the overarching principles, including the need to include equity considerations throughout all aspects of the highway safety grant program. This proposal supports these efforts through the increased emphasis on public participation in highway safety planning and through explicitly including demographic data as a resource for States to consult during problem identification.

Finally, the League of American Bicyclists recommended that NHTSA consider discriminatory outcomes of countermeasures when promoting our *Countermeasures That Work* guide.[9] It specifically mentioned the costs of discriminatory enforcement and disparate impacts of required fines on low-income people. As noted earlier, discriminatory enforcement has no place in NHTSA's grant programs or under Federal civil rights laws, and NHTSA will take prompt and appropriate action when it becomes aware of any such activity under NHTSA grant programs. NHTSA is currently working on the next edition of the *Countermeasures That Work,* and will explore the considerations raised by the commenter in the course of that undertaking.

C. National Roadway Safety Strategy and the Safe System Approach

NHTSA appreciates the thoughtful feedback from several commenters regarding the Department's implementation of the National Roadway Safety Strategy (NRSS) and the Safe System Approach (SSA). While the substance of the Department's strategy laid out in the NRSS and the SSA is not within the scope of this rulemaking, the activities carried out through the grant program play an important role in implementing the NRSS and the SSA. The objectives of the NRSS/SSA are inherently intertwined with NHTSA's data-driven mission to save lives, prevent injuries, and reduce economic costs due to road traffic crashes through education, research, safety standards, and enforcement. To address the unacceptable increases in fatalities on our nation's roadways, the NRSS/SSA adopts a data-driven, holistic, and comprehensive approach focused on reducing the role that human mistakes play in negative traffic outcomes and in recognizing the vulnerability of humans on the roads. We recognize all the contributing factors involved with a safe system approach: equity, engineering, education, enforcement, and emergency medical services.

Four commenters[10] stated broad support for the principles and promise of the NRSS. Six commenters[11] noted that implementing the NRSS will require NHTSA to afford administrative flexibility to States, which NHTSA intends to provide consistent with the law. AASHTO stressed the need to coordinate behavioral and infrastructure-based traffic safety initiatives. This comment is consistent with Congress' clear intent. Section 402 requires that a State highway safety program must coordinate the highway safety plan, data collection, and information systems with the State strategic highway safety plan (SHSP) under 23 U.S.C. 148(a). NHTSA has long incorporated this requirement into the grant program regulation at 23 CFR 1300.4(c)(11). In addition, since 2016, States have been required to submit and report on identical common performance measures in both the HSP and the SHSP, thus ensuring that State behavioral and infrastructure-based programs collaborate in planning and measuring progress towards those common targets.

The League of American Bicyclists recommended that NHTSA allow States to use highway safety grant funds to provide education on the ways that the built environment can influence safe behaviors. Similarly, Vision Zero Network recommended that NHTSA and States shift the focus from education and enforcement to speed management and roadway design changes. NHTSA notes that while highway safety grant funds may not be used for roadway design, Section 402 grant funds (and in some cases Section 405 grant funds) may be used to fund educational efforts on the interaction between the built environment and behavior, provided such activities are part of a countermeasure strategy for programming funds that is supported by problem ID.

GHSA raised the concern that the SSA framing that people make mistakes will be misunderstood to absolve drivers from responsibility for safe driving

[9] *Available online at https://www.nhtsa.gov/sites/nhtsa.gov/files/2021-09/Countermeasures-10th_080621_v5_tag.pdf.*

[10] CA OTS, ESS, Inc., League of American Bicyclists and WA TSC.

[11] Brandy Nannini, CT HSO, GHSA, MN DPS, WI BTS and 5-State DOTs.

behaviors. Acknowledging that humans make mistakes does not absolve drivers of responsibility; it seeks to understand better how mistakes happen, identify potential solutions and develop redundancies in the system in order to minimize the consequences when any part of the system fails. As the League of American Bicyclists and WA TSC noted, roadway safety is a shared responsibility. The traveling public also has a role to play. Each of us uses our roads almost every day, whether as a motorist, a passenger, or when walking, biking, or rolling. Our actions should prioritize safety first and we should use every effective strategy we can to reduce fatalities and injuries.

Four commenters suggested that NHTSA undertake activities to help States implement the NRSS and the SSA. CA OTS, GHSA, and Vision Zero Network all suggested that NHTSA support State efforts to implement the SSA by undertaking research to identify best practices and then providing guidance to States on those best practices. Vision Zero Network and WA TSC recommended that NHTSA train the State highway safety offices (HSOs) on the SSA and that the HSOs in turn train their subrecipients. In May 2022, as part of NHTSA's ongoing efforts to provide resources to assist states with implementing the NRSS and the SSA, NHTSA announced an expanded safety program technical assistance offered to States. This technical assistance aligns with the priorities and objectives of the NRSS. We will continue to assess States' needs and offer assistance in implementing the NRSS and SSA where possible as States implement their programs.

D. Transparency

The BIL expanded the transparency requirements for Section 402. Specifically, the BIL requires NHTSA to publicly release, on a DOT website, all approved triennial HSPs and annual reports. 23 U.S.C. 402(n)(1). In addition, the website must allow the public to search specific information included in those documents: performance measures, the State's progress towards meeting the performance targets, program areas and expenditures, and a description of any sources of funds other than NHTSA highway safety grant funds that the State proposes to use to carry out the triennial HSP. *Id.* NHTSA will post this information on *NHTSA.gov* consistent with the statutory requirements. While the statutory requirement for NHTSA to release this information does not require regulatory implementation, the information contained in the State documents, and thereafter released online, implicates the substance of the rule. For ease of reading, NHTSA addresses the majority of the requirements for the triennial HSP and annual report in other sections of this rule. However, we will address some of the transparency recommendations that commenters specifically provided here.

Both Advocates and the NSC submitted comments that broadly supported increased transparency, noting that transparency is vital for the public to measure the success of the highway safety grant program. Several commenters provided recommendations for information that they believe would help allow States and stakeholders to compare programs between States. The League of American Bicyclists recommended that NHTSA require States to provide information in the annual application that will show who receives grant funding and what the funding is used for in a manner that allows comparisons between States. NHTSA agrees, and believes that the project information, including subrecipients and information on the eligible use of funds, that BIL and the proposed regulation require for each project will serve this purpose. *See* 23 U.S.C. 402(l)(1)(C)(ii) and 23 CFR 1300.12(b)(2). The NSC recommended that NHTSA require states to submit, and then release publicly, information on how much funding is used for direct programmatic activities, the short- and long-term impacts of State highway safety programs, and discussion about how community engagement informed the State's proposed use of funds. NHTSA proposes to include some of this information in the proposed regulation. Specifically, NHTSA proposes to require that States identify in the annual grant application the amount of costs attributed to planning and administration. *See* 23 CFR 1300.12(b)(2)(viii). In addition, NHTSA proposes to require that States assess progress towards meeting performance targets and provide a description of how the projects that the State implemented were informed by meaningful public participation and engagement. *See* 23 CFR 1300.35(a) and 1300.35(b)(1). NSC further recommended that at a minimum, States be required to report financial data, information on which regulations they complied with, and project data showing progress and community impact. NHTSA notes that financial data are required of all Federal grant recipients by 2 CFR 200.328 and that requirement is incorporated into NHTSA's proposed regulation at 23 CFR 1300.12(b)(2). NHTSA does not believe it is necessary to require States to provide a list of regulations to which they adhere. Federal grant recipients are responsible for, and States certify to, compliance with all applicable Federal laws and regulations, and States may be further subject to State laws and regulations. Many of those applicable laws and regulations are listed in proposed appendix A. Finally, NSC recommended that annual reports should be made available to the public for comment and that States should be required to incorporate those comments into their triennial HSPs. NHTSA already posts State annual reports online at *NHTSA.gov,* as is required by the BIL. *See* 23 U.S.C. 402(n)(2)(B). However, NHTSA does not have authority to impose public comment on State annual reports, nor does NHTSA have authority to require States to incorporate any comments on annual reports that they may receive through other channels. That said, States may do so as part of a public engagement process, if they wish.

GHSA noted that transitioning to an electronic grant management system would enable greater transparency in the use of NHTSA highway safety grant funds by allowing State program information contained in that system to be aggregated, organized, and made available to the public in a user-friendly manner. NHTSA agrees and is currently in the process of working to update our grant management system. We expect that this will facilitate greater cross-state collaboration and data analysis in addition to greater transparency in the use of program funding. In the meantime, NHTSA requests comment on a potential approach to develop a standardized template, codified as an appendix to the regulation, that States could use to provide information in a uniform manner similar to what we hope will be enabled by a future E-grant system. This would also potentially respond to comments from the League of American Bicyclists, Safe Routes Partnership, and Vision Zero Network seeking reports that are easier to read and that enable comparison between States in a useful manner.

E. Emergency Medical Services

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

Eight commenters discussed eligibility for funding under NHTSA's

highway safety grant program. NAEMT and Saratoga County EMS both provided a general statement that funding should be provided to EMS offices and providers via the State highway safety offices. Aaron Katz and the American Ambulance Association both requested that funding be provided to EMS offices regardless of whether the EMS provider is for-profit, a hospital, or a municipal service. The International Association of Fire Chiefs seeks to ensure that even the smaller EMS agencies receive Federal funding. Leon County EMS, Covington County Hospital Ambulance and Brian Maguire, et. al all requested that NHTSA provide funding directly to EMS agencies, rather than going through State highway safety offices. Finally, Brian Maguire, et. al recommended that States be required to report the amount of funding that is provided to EMS agencies and that all grant funds that remain unexpended at the end of the third quarter be reallocated directly to EMS agencies. NHTSA supports the EMS communities' efforts to integrate post-crash care initiatives into State highway safety programs where supported by the data and encourages States to consider funding eligible EMS activities with NHTSA's highway safety grant funds. However, under our grant statute, NHTSA does not have the authority to direct State funding choices or to provide funding directly to EMS agencies.

Eighteen commenters [12] provided recommendations or requests that specified that certain costs be considered allowable uses of NHTSA highway safety grant funds. Identified costs included post-crash care, training, research, development and purchase of equipment and technology, data gathering and access, emergency vehicle outfitting, enhancements to 911 systems and collision notification systems. NASEMSO requested specific clarification that EMS agencies are not required to limit funding requests related to NEMSIS software, personnel, maintenance and training only in proportion to the percentage of NEMSIS entries that are connected to traffic-related incidents. Determinations of allowable use of funds are highly fact-specific and are dependent on many factors, including the funding source to be used (*i.e.,* Section 402 or one of the Section 405 incentive grants) and the details of the activity to be funded. In some cases, projects may be limited to proportional funding, if there is not a sufficient nexus to traffic safety to fund the entirety of the project. In addition, all activities funded by NHTSA highway safety grant funds must be tied to countermeasure strategies for programming funds in the State's triennial HSP, which in turn must be based on a State's problem identification and performance targets. NHTSA strongly encourages all stakeholders, including the EMS community, to work closely with State HSOs to educate them on all available data sources, including NEMSIS, that would assist them with problem identification and the development of countermeasure strategies, as well as to offer ideas for potential activities that may be eligible for NHTSA formula grant funding.

Six commenters [13] provided comments related to the activities of NHTSA's Office of Emergency Medical Services (OEMS). Drew Dawson and NASEMSO both recommended that the grant program coordinate with the Office of EMS to provide guidance on EMS and 911 funding requests. The Office of EMS is a knowledgeable and useful resource to States, EMS agencies, and to NHTSA itself in addressing the post-crash care component of the highway safety grant program. The remaining comments were out of scope of this rulemaking because they relate to NHTSA's activities outside of the highway safety grant program.

F. Other

GHSA requested amendments to appendices A and B, both of which are required components of State's annual grant application submission. Specifically, GHSA asked that NHTSA format the Appendices, which serve as application documents, so that the signature page is separate from the other pages of the document in order to streamline State approval. The Appendices, consisting of the Certifications and Assurances for Highway Safety Grants and the Application Requirements for Section 405 and Section 1906 Grants, serve as official documents for State grant applications. The signature on those documents serves as a formal, legal attestation from the Governor's Representative that the contents of the State's application are accurate and that the State agrees to comply with all applicable laws, regulations, and financial and programmatic requirements. It is therefore necessary that the signatory see the entire document and that the document not be edited after a signature is appended. NHTSA therefore declines to adopt this suggestion.

Separately, GHSA noted that the BIL expanded the eligible use of Section 154 and Section 164 grant funds to include measures to reduce drug-impaired driving, and requested that NHTSA clarify that those changes had immediate effect. NHTSA affirms GHSA's interpretation; the BIL changes to Section 154/164 took effect immediately upon enactment of the BIL.

III. General Provisions (Subpart A)

A. Definitions (23 CFR 1300.3)

This NPRM proposes to add definitions for several terms. Some of these definitions (automated traffic enforcement system (ATES) and Indian country) merely incorporate statutory definitions into NHTSA's regulation. 23 U.S.C. 402(c)(4)(A) and 23 U.S.C. 402(h)(1), respectively. Other definitions (annual grant application, countermeasure strategy for programming funds, and triennial Highway Safety Plan (triennial HSP) were drawn from statutory program requirements. The proposed definition for countermeasure strategy for programming funds was informed by a comment from GHSA asking the agency to clarify its applicability to traffic records programs. Lorrie Walker asked the agency to define ''underserved populations,'' while GHSA recommended that NHTSA allow States to identify ''underserved populations'' on a State by State basis and to articulate their rationale because data sources and populations may vary from State to State. After considering these comments, the agency proposes a broad definition for ''underserved populations'' that is based on the definition used in Executive Order 13985. This high-level definition should provide States with guidance in identifying the specific populations within their jurisdictions, while providing flexibility for different State situations. NHTSA developed definitions for two additional terms to clarify potential sources of confusion for States regarding grant program requirements. The definition of community is intended to build upon the common understanding of the term. The agency developed the definition for political subdivision of a State after consulting definitions codified by other Federal agencies and making adjustments to tailor the definition to the highway safety grant program.

[12] Aaron Katz; Accident Scene Management, Inc.; Amado Alejandro Baez; American Ambulance Association; American College of Surgeons; Art Martynuska; Brian Maguire, et. al; David Harden; FL DOH; IAEMSC; IAFC; Leigh Anderson; LA EMS; Leon County EMS; NASEMSO; NAEMT; NASNA; Saratoga County EMS.

[13] Brian Maguire, et. al; Drew Dawson; IAFC; Louis Lombardo; NASEMSO; Saratoga County EMS.

Today's action also proposes to amend some existing definitions, such as those for performance target, problem identification, and program area, to provide further clarity to States. The definition for project was amended to incorporate the BIL's statutory definition of ''funded project.'' 23 U.S.C. 406(a). The agency proposes to amend the definition for serious injuries to reflect the publication of the 5th Edition of the Model Minimum Uniform Crash Criteria (MMUCC) Guideline.

Finally, this NPRM proposes to delete the definitions for three terms that are not used in the regulatory text: fatality rate, five-year (5 year) rolling average, and number of serious injuries. NHTSA also proposes to delete the definition for ''number of fatalities'' as we believe it is self-explanatory.

B. State Highway Safety Agency (23 CFR 1300.4)

Today's action proposes updates to the authorities and functions of the State Highway Safety Agency, also referred to as the State Highway Safety Office (State HSO or SHSO). The NPRM explicitly adds the requirement that the Governor's Representative (GR) is responsible for coordinating with the Governor and other State agencies, and clarifies that the GR may not be positioned in an entity that would create a conflict of interest with the SHSO; however, these are not new requirements. Section 402 requires that the Governor of the State imbue the State highway safety agency with adequate powers and that it be suitably equipped and organized to carry out the State's highway safety program. 23 U.S.C. 402(b)(1)(A). Recognizing that Governors delegate this responsibility, NHTSA long ago created the requirement for the Governor to designate a GR. In order to carry out the requirements of Section 402, the GR must have the authority to coordinate with the Governor and other State agencies in carrying out the highway safety program. Conflict of interest restrictions are a fundamental component of Federal grant law. *See* 2 CFR 200.112. Consistent with NHTSA's emphasis on equity considerations in highway safety programs and the BIL's emphasis on meaningful public participation and engagement and identification of disparities in traffic enforcement, the agency proposes to add the requirement that State Highway Safety Agencies be authorized to foster such engagement and include demographic data in their highway safety programs.

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

The creation of a new triennial framework is the most significant change that BIL made to the highway safety grant program. In BIL, Congress replaced the annual Highway Safety Plan (HSP), which serves as both a planning and application document under MAP–21 and the FAST Act, with a Triennial HSP and Annual Grant Application. As part of this framework, Congress increased community participation requirements and codified the annual reporting requirement.

Under the new procedures established by BIL, each State must submit for NHTSA approval a triennial Highway Safety Plan (''triennial HSP'' or ''3HSP'') that identifies highway safety problems, establishes performance measures and targets, describes the State's countermeasure strategies for programming funds to achieve its performance targets, and reports on the State's progress in achieving the targets set in the prior HSP. (23 U.S.C. 402(k)) Each State must also submit for NHTSA approval an annual grant application that provides any necessary updates to the triennial HSP, identifies all projects and subrecipients to be funded by the State with highway safety grant funds during the fiscal year, describes how the State's strategy to use grant funds was adjusted by the State's latest annual report, and includes an application for additional grants available under Chapter 4. (23 U.S.C. 402(l)(1)) Finally, each State must submit an annual report that assesses the progress made by the State in achieving the performance targets set out in the triennial HSP and describes how that progress aligns with the triennial HSP, including any plans to adjust the State's countermeasure strategy for programming funds in order to meet those targets. (23 U.S.C. 402(l)(2))

This new framework continues many of the requirements that States previously were required to meet under the annual HSP requirement, but distributes them between the triennial HSP and the annual application. This redistribution requires NHTSA to update language throughout the regulation in order to clarify to which submission a particular requirement applies. References to the HSP have now been updated to refer to either the triennial HSP or, more frequently, the annual grant application. In addition, NHTSA has removed all references to planned activities throughout the regulation. This will address GHSA's comments that the concept of planned activities was burdensome to States. NHTSA had created the concept of planned activities in the final rule implementing the FAST Act in response to comments from States that they did not have project-level information available at the time of drafting the HSP. However, the BIL now explicitly requires project information in the annual grant application, as described in more detail below. As a result, references to planned activities in the HSP have been updated throughout the regulation to refer to projects in the annual grant application. References to ''countermeasure strategies'' now link to the triennial HSP instead of the HSP.

In addition, NHTSA has reorganized subpart B of part 1300 to accommodate the new triennial framework. Where previously subpart B was fully directed at the HSP, the subpart now includes separate sections for the triennial HSP, the annual grant application, and specific requirements for Section 402. Section 1300.10 provides that, in order to apply for any highway safety grant under Chapter 4 and Section 1906, a State must submit both a triennial Highway Safety Plan and an annual grant application. The requirements for the triennial HSP and annual grant application, including deadline, contents, and review and approval procedures, are set out in §§ 1300.11 and 1300.12, respectively. Section 1300.13 lays out the special funding conditions for Section 402 grants, and Section 1300.15 provides the rules for NHTSA's apportionment and obligation of Federal funds under Section 402. The agency reserves § 1300.14. The contents of each section will be discussed in more depth below.

There appears to be some confusion among commenters about the timeframes envisioned by BIL for submissions under this framework. AASHTO and GHSA, supported by many State commenters, recommended that for the first year of each triennial cycle, States only be required to submit a triennial HSP along with appendix B, with no annual grant application. They then agreed that States would submit annual applications in the second and third years. This is inconsistent with the statutory requirement. As laid out in BIL, States must submit both a triennial HSP and an annual application in the first year of a triennial cycle, with only an annual grant application for years two and three. *See* 23 U.S.C. 402. As the many commenters who urged NHTSA to clearly distinguish the two submissions make clear, the triennial HSP and annual grant application fulfill different

purposes. As commenters [14] rightly noted, the triennial HSP provides longer-term, program-level planning spanning a three-year period while the annual grant application implements that plan each year through project-level details.

In addition to the broad comments that the agency ensure fidelity to the law in drafting the regulatory text, GHSA specifically requested that NHTSA refrain from requiring application or reporting requirements beyond those explicitly authorized by law. NHTSA has striven to do so. However, we note that relevant legal requirements are not limited to the BIL. For example, OMB's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR part 200) provide many requirements applicable to the grant program, both for States as award recipients and to NHTSA as the awarding agency. We have included several of those requirements throughout this regulation.

NHTSA believes that the triennial framework created by the BIL, with annual projects tied to longer-range planning based on performance targets and countermeasure strategies, is a valuable tool for States as they and NHTSA work to address the recent increase in traffic fatalities. It has never been more important for States to carry out strong, data-driven and performance-based highway safety programs. While NHTSA has worked to implement the statutory requirements and avoid adding unnecessary burden on States, we are committed to ensuring through our review and approval authority that State triennial HSPs and annual grant applications provide for data-driven and performance based highway safety programs. NHTSA will not approve a triennial HSP that has worsening performance targets or where countermeasure strategies are not sufficient to allow the State to meet its targets or are not supported by evidence that they are effective. NHTSA also will not approve an annual grant application where the projects provided are not sufficient to carry out the countermeasure strategy in an approved triennial HSP.

A. General (23 CFR 1300.10)

NHTSA proposes revisions to 23 CFR 1300.10 to provide, according to the BIL, that in order to apply for a highway safety grant under 23 U.S.C. Chapter 4 and Section 1906, a State must submit both a triennial Highway Safety Plan and an annual grant application.

B. Triennial Highway Safety Plan (23 CFR 1300.11)

The triennial HSP documents the State's planning for a three-year period of the State's highway safety program that is data-driven in establishing performance targets and selecting the countermeasure strategies for programming funds to meet those performance targets. As many commenters noted,[15] the triennial HSP is intended by Congress to focus on program-level information. As discussed below, NHTSA proposes to require States to submit five components in the triennial HSP: (1) the highway safety planning process and problem identification; (2) public participation and engagement; (3) performance plan; (4) countermeasure strategy for programming funds; and (5) performance report.

1. Due Date (23 CFR 1300.11(a))

NHTSA incorporates the July 1 deadline set by the BIL. 23 U.S.C. 402(k)(2).

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

As with previous HSPs submitted annually, the triennial HSP must include the State's problem identification that will serve as the basis for setting performance targets, selecting countermeasure strategies and, later, developing projects. This ensures that the State's highway safety program is data-driven, consistent with 23 U.S.C. 402(b)(1)(B). NHTSA proposes to retain the requirements that the State describe the processes, data sources and information used in its highway safety planning and describe and analyze the State's overall highway safety problems through analysis of data (*i.e.,* problem identification, or problem ID). These requirements are substantively unchanged from the prior regulation except that NHTSA has added sociodemographic data as an example of a data source that the State may wish to consider in conducting problem ID. 23 CFR 1300.11(b)(1)(ii).

The WA TSC commented that NHTSA will need to change the way it evaluates States' problem ID in order to acknowledge factors that shape human behavior outside of raw crash data. NHTSA agrees that data other than crash data are valuable for State's problem ID, but does not agree that NHTSA has limited the types of data States may use to conduct problem ID so strictly. States are encouraged to utilize all data and information sources to conduct problem identification. The WA TSC also stated that raw crash data such as number of crashes and the outcomes of those crashes are outside the control of the SHSO. NHTSA disagrees with this premise. While States may not control all of the factors that contribute to raw crash numbers, such as population or increased VMT, State highway safety programs must be designed to account for those factors and adjust as necessary in order to address the myriad other factors that contribute to increases in traffic fatalities and injuries. As the WA TSC also noted, States can and should submit data in the triennial HSP that demonstrates that the State has conducted a careful analysis of traffic safety problems in the State and then has chosen strategies that are designed to address the specific behaviors that form the root cause of those problems.

NASEMSO and League of American Bicyclists recommended, respectively, that States be required to include consideration of post-crash care issues and perceptions of safety in bicycling and walking as part of their problem identification and, therefore, in their countermeasure strategies. NHTSA encourages States to consider the full constellation of State highway safety problems. However, in order to ensure that States have the needed flexibility to assess data to determine the problems within their borders, the agency declines to specify problem areas for consideration outside those mandated by Congress.

Drew Dawson recommended that NHTSA require States to provide the strategy laying out how the State will continue regular data assessments, including who will perform the analysis, what sources they will consult, and at what intervals. NHTSA does not believe this is necessary because States are already required to submit annual reports that assess their progress in meeting performance targets. 23 CFR 1300.35.

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

In BIL, Congress added a requirement that State highway safety programs result from meaningful public participation and engagement from affected communities, particularly those most significantly impacted by traffic crashes resulting in injuries and fatalities. 23 U.S.C. 402(b)(1)(B). Relatedly, Title VI of the Civil Rights

[14] Brandy Nannini, CA OTS, CT HSO, GHSA, MN DPS, NY GTSC, WA TSC, WI BOTS, and 5-State DOTs.

[15] Brandy Nannini, CA OTS, CT HSO, GHSA, MN DPS, NY GTSC, WA TSC, WI BOTS, and 5-State DOTs.

Act of 1964 (or Title VI) prohibits discrimination on the basis of race, color or national origin in any Federal program, including programs funded with Federal dollars. Title VI requires that all recipients of DOT financial assistance ensure that no person is excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any Federally-funded program or activity nondiscrimination. As implemented through the U.S. Department of Transportation Title VI Program Order (DOT Order 1000.12C), Title VI requires, among other things, that all recipients submit a Community Participation Plan. The purpose of the Community Participation Plan is to facilitate full compliance with Title VI by requiring meaningful public participation and engagement to ensure that applicants and recipients are adequately informed about how programs or activities will potentially impact affected communities, and to ensure that diverse views are heard and considered throughout all stages of the consultation, planning, and decision-making process. Because the public participation and engagement required by BIL and the Community Participation Plan required by Title VI have complementary goals, NHTSA proposes to structure grant requirements so that States can meet both requirements at the same time.

NHTSA proposes to incorporate these statutory requirements into the highway safety grant rule in three ways. First, NHTSA proposes a public participation and engagement section in the triennial HSP that would ensure States meet both requirements through a single submission. 23 CFR 1300.11(b)(2). NHTSA proposes to require that the triennial HSP include a description of the starting goals and a plan for integrating public engagement into the State's planning processes, a description of the activities conducted and the outcomes of those activities, and a plan for continuing public participation and engagement activities throughout the three years covered by the triennial HSP. Second, in order to ensure that the public participation and engagement that the State conducts for the triennial HSP plays a meaningful role in the choice and implementation of projects, not just at the planning stage, NHTSA also proposes to require States to describe in the annual report how the projects that were implemented were informed by the State's public participation and engagement. 23 CFR 1300.35(b)(1)(iii). Finally, in order to ensure that SHSOs have the necessary authority to carry out these requirements, NHTSA proposes to add a requirement that each State Highway Safety agency be authorized to foster meaningful public participation and engagement from affected communities. 23 CFR 1300.4(b)(3).

NHTSA received many comments about the BIL's requirement for meaningful public participation in the States' highway safety grant programs. Because they span multiple sections of the rule, NHTSA will address all engagement-related comments here. MN DPS and GHSA both stated their strong support for the requirement and were joined by Brandy Nannini, CA OTS, and NY GTSC in calling for flexibility and for NHTSA to take a long-term view for States' implementation of the requirement. The NSC signaled support for the requirement by advising NHTSA to encourage States to incorporate viewpoints of multiple stakeholders in identifying key safety needs and countermeasures. GHSA and NY GTSC noted that States are already including public participation as part of their highway safety programs, but that each State is doing so differently because they have different landscapes of communities and differing staffing and funding resources. GHSA and NSC both recommended that NHTSA allow States to carry out the required public participation directly, through partner subrecipients, or as part of a multidisciplinary effort run by the State DOT. The Transportation Equity Caucus recommended that States create models to transfer ownership of highway safety planning processes to communities and neighborhoods. Other commenters recommended that NHTSA require States to spend a specified amount of funds to carry out public participation and engagement in areas with the most need, where a certain percentage of fatalities or injuries take place, or in the communities where safety programs are intended to be implemented. *See* GHSA and anonymous commenter. NHTSA appreciates States' stated commitment to public participation and recognizes that public participation efforts are already underway in many States. With our proposal, we seek to implement these statutory requirements in a manner that reflects the importance of the requirement while recognizing variations between States by focusing on State's public participation planning and the impact of that participation on State programs and projects. In reviewing a State's public participation planning and outreach efforts in the triennial HSP, NHTSA will look to see if the State made a concerted effort to identify and reach out to impacted communities; however, we do not propose to require a specified funding level. A State must use the problem identification process to ensure that its most vulnerable, at-risk populations are identified and set performance targets and countermeasure strategies for programming funds accordingly. As long as a State is able to meet the requirements of the triennial HSP and annual report, it may facilitate public participation in the manner best suited to the needs of the State and its communities.

Commenters also provided input on how to measure State public participation efforts. GHSA cautioned that States cannot compel participation and asked NHTSA not to measure compliance by volume of comments or engagement. Other commenters suggested that States be required to report their public participation efforts, including: how they advertised and facilitated public engagement opportunities, what engagement took place, and the impact of that participation on the State's program. *See* League of American Bicyclists and NSC. NHTSA does not propose to require a specific form of public participation and engagement, nor to require specified outcomes. Instead, as described above, NHTSA proposes to require that the triennial HSP include a description of the starting goals and plan for integrating public engagement into the State's planning processes, a description of the activities conducted and the outcomes of those activities, and a plan for continuing public participation and engagement activities throughout the three years covered by the triennial HSP. While NHTSA does not propose to set a specified required outcome for a State's public participation activities, the agency expects that if a State does not achieve reasonable participation through the participation plan described in the triennial HSP, it will use that experience to inform its efforts for continuing public participation during the period covered by the annual HSPs and into the next triennial HSP. In addition, as described above, the agency proposes to require States to describe in the annual report how their public participation efforts informed the projects they implemented during the grant year.

NHTSA received many comments about the need to provide funding for BIL's increased public engagement requirements. GHSA noted that States would need additional funding in order to carry out the required public engagement efforts, while the National Safety Council recommended that States

be allowed to compensate partners or trusted community organizations to carry out public engagement work on their behalf. Many commenters also observed that States would likely achieve better and more diverse participation if they are able to compensate community members for their participation and attendance costs. *See* League of American Bicyclists, National Safety Council, Rebecca Sanders, and WA TSC. NHTSA acknowledges that increased efforts require more resources from State highway safety offices and that participation in public planning processes may present costs in time and money for participants. Public participation is fundamental to the workings of State governments, as it is for the Federal government. Therefore, we would expect that States have processes and procedures in place for conducting public outreach and participation. The specifics of whether and how NHTSA grant funds may be used to pay for these costs are highly fact specific and implicate many different Federal laws and regulations. In general, Federal grant funds may not be expended on activities required to qualify for the grant. State laws, also, may impact these sorts of expenditures. For example, Washington TSC noted in its comment that Washington State has recently passed laws to remove the historical prohibition against compensating the public for participation in State processes. It is likely that other States still have such prohibitions. Nothing in this proposed rule would dictate a specific determination about whether these sorts of costs may be an allowable use of NHTSA grant funds.

Commenters provided several suggestions for States about how to conduct their public participation efforts. NHTSA encourages States to consider any and all methods when planning their public engagement efforts. Suggestions included: ensuring that online tools are easy to use (Mari Lynch), publicizing the planning process and explaining how the public can provide input (Drew Dawson, League of American Bicyclists), presenting at schools or other community gathering locations (anonymous), widespread use of social media outlets and other communication channels (NASEMSO), regular opportunities for local information gathering (NSC), joining regional public health or EMS authority meetings (Drew Dawson), and elevating the voices of non-profits and representatives of marginalized groups in State committees and advisory groups (NASEMSO). NASEMSO and an anonymous commenter also recommended that States could increase community engagement through disseminating easy to understand and compelling safety data, including correlation of policies to data improvements.

NHTSA received many comments suggesting non-traditional partners that States should consider including in their planning processes. Recommendations spanned from national to State to local and community levels and are summarized below. NHTSA encourages States to consider all of these groups as they plan their public participation and engagement activities and as they implement their programs. NHTSA will work to share effective means of increasing participation with States.

The League of American Bicyclists and National Sheriffs' Association both recommended using national stakeholder organizations to advertise participation opportunities to their local members. The League of American Bicyclists recommended focusing on national organizations focused on equity and transportation safety. The National Sheriffs' Association specifically recommended using themselves and the International Association of Chiefs of Police to filter funding and messaging down to the local level. Drew Dawson recommended that States work with national-level 911 organizations.

State-level partners recommended by commenters included State agencies, such as transportation, public health, EMS, rural health, economic development, and State law enforcement agencies. *See* Drew Dawson, NASEMSO, NSC, Vision Zero Network. Drew Dawson also recommended coordinating with the State agencies responsible for implementing the U.S. Department of Housing and Urban Development's Community Development Block Grants.

The Vision Zero Network recommended that States prioritize local needs, and suggested that they work with local transportation, health, and policy organizations and community leaders. The League of American Bicyclists also emphasized the importance of working collaboratively with local community organizations, recommending that NHTSA require States to get letters of support for work undertaken within local communities. While NHTSA encourages collaboration with local community groups and supports the Share to Local requirement described in more detail later in this notice, it is beyond our authority to impose such a requirement. An anonymous commenter recommended that States work with local governments, which in turn should work with schools, community centers, churches, and non-profits within their jurisdiction in order to reach communities that may have less resources to interact directly with the State government. Drew Dawson identified local Public Safety Answering Points (PSAPs) and local or regional emergency medical organizations as helpful partners. Finally, the NSC recommended that States seek out existing local or regional task forces.

Many commenters recommended that States build relationships with affected communities beyond traditional partners, such as governmental entities and public figures, in order to gain the benefit of lived experiences. *See* League of American Bicyclists. Lorrie Walker and Rebecca Sanders both noted that building capacity within the communities that the highway safety program serves is necessary but that it may take some time to see results. The NSC and Rebecca Sanders both stressed the importance of collecting and considering community-based lived experience in addition to existing traffic safety data. Commenters identified a range of types of community members for States to reach out to, including parish nurses, childcare workers, parent-teacher associations, hospitals, physicians/surgeons, associations of attorneys. *See* Drew Dawson, Lorrie Walker. The Transportation Equity Caucus recommended that States work with community-based organizations, including groups focused on civil rights, racial and social equity, disability justice, mobility justice, public health, social services and other groups led by affected demographics. Specific community groups identified included communities of color, American Indians, teens, and rural communities. The National Safety Council suggested that States research active and trusted community organizations who are part of the safe system of transportation.

NHTSA supports and encourages States to reach out to and seek input from a full and diverse range of traffic safety stakeholders, both traditional and non-traditional. States should use all available resources to engage with new stakeholders and increase community engagement. NHTSA acknowledges that many States have already begun working to increase engagement and build community partnerships, and encourages them to continue those efforts. NHTSA will also work to share best practices and effective strategies to increase community engagement.

The BIL also added a related but separate requirement that States support data-driven traffic safety enforcement programs that foster effective community collaboration to increase public safety. 23 U.S.C. 402(b)(1)(E). This provision is essential to ensuring that highway safety programs carried out by law enforcement agencies are equitable and community-based. NHTSA proposes to implement this statutory provision by requiring States to discuss in the annual report the community collaboration efforts that are part of the States' evidence-based enforcement program. 23 CFR 1300.35(b)(2). GHSA recommended that States be allowed to count their efforts in meeting the separate requirement for meaningful public engagement in their triennial HSP in order to show compliance with the community collaboration requirement for enforcement programs. NHTSA disagrees. Congress created two separate and independent requirements: a requirement for a State to provide for a comprehensive, data-driven traffic safety program that results from meaningful public participation (23 U.S.C. 402(b)(1)(B); and a requirement that the State's highway safety program support data-driven traffic safety enforcement programs that foster effective community collaboration to increase public safety (23 U.S.C. 402(b)(1)(E)(i)). Collapsing the two requirements into the broader meaningful public engagement requirement would undermine Congress' intent that States address these as two separate requirements. As described above, States have broad latitude in how to provide meaningful public participation and engagement in the State traffic safety program. It may be possible, though difficult, that some efforts involved in the broader meaningful engagement may be specific enough to be part of the required community collaboration in enforcement programs. If a State is able to fulfill the requirements for both regulatory provisions with the same activities, it may do so; but NHTSA will evaluate the two statutory requirements separately.

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

States have been using a performance-based planning process in their highway safety plans for many years now. While some States were using performance measures on a voluntary basis already, Congress mandated the use of performance measures for all States in MAP–21 and continued the requirements under the FAST Act. While the BIL separated the planning process and the grant application into the triennial HSP and annual grant application, respectively, it maintained the reliance on performance measures as a fundamental component of State highway safety program planning in the triennial HSP. The BIL maintains the existing structure that requires States to provide documentation of the current safety levels for each performance measure, quantifiable performance targets for each performance measure, and a justification for each performance target. However, the BIL now specifies that performance targets must demonstrate constant or improved performance. 23 U.S.C. 402(d)(4)(A)(ii). Although the BIL makes no other changes to the statutory text specifically related to performance measures, the move from an annual to a triennial HSP presents some practical implications for performance measures as well. NHTSA received many comments on both changes, statutory and practical, and discusses them in more detail below.[16]

As a preliminary matter, instead of the annual performance measures provided in the prior annual HSP, States now must provide performance measures that cover the three-year period covered by the triennial HSP. NHTSA proposes to allow States to set a single three-year target, with informal annual benchmarks provided in the triennial HSP against which they can assess progress in the annual report.

The BIL provides that States must set performance targets that demonstrate constant or improved performance and provide a justification for each performance target that explains why the target is appropriate and evidence-based. 23 U.S.C. 402(k)(4)(A)(ii) and (iii). This is consistent with the NRSS, which sets an ambitious long-term goal of reaching zero roadway fatalities by 2050. Transportation performance management focuses agencies on desired outcomes, outlines how to attain results, and clarifies necessary resources in the near-term. It allows for transparent and open discussions about desired outcomes and the direction an agency should take now. In an era of increasing fatalities, it is vital that performance targets offer realistic expectations that work toward the long-term goal of zero roadway fatalities and provide a greater understanding of how safety issues are being addressed.

Several commenters[17] argued that requiring targets that show constant or improved performance is contrary to the requirement that targets be appropriate and evidence based. The WA TSC stated that States could set targets that demonstrate constant or improved performance, but not for measures that are related to outcomes that are outside the control of the State highway safety office. As an example, WA TSC noted that raw numbers of fatalities and injuries are impacted by changes in population and VMT. NHTSA disagrees that targets should focus only on variables within the control of State highway safety offices. Performance management is intended to refocus attention on national transportation goals, increase the accountability and transparency of the highway safety grant program, and improve program decisionmaking through performance-based planning and programming. Performance targets are inextricably tied to the countermeasure strategies for programming funds that States describe in their triennial HSPs. Targets should be developed to reflect the outcomes that States should expect, based on the evidence available, *after* implementing their planned programs. If, while setting its performance targets, a State determines that its countermeasure strategy for programming funds is not likely to yield constant or improved performance, the State should consider different countermeasure strategies or adjust funding levels.

Other commenters[18] expressed support for the BIL's emphasis on constant and improved performance, exhorting NHTSA to ensure that States do not set performance targets that increase fatalities and injuries. As the League of American Bicyclists points out, under the Safe System Approach, redundancies are meant to ensure that even when one component of a system fails, fatalities and injuries can still be reduced. Rebecca Sanders recommended that NHTSA implement consequences, such as reduced funding or directed spending, for States that do not achieve performance targets. NHTSA does not have the authority to withhold funds or direct State expenditure of funds for failure to achieve a performance target. However, the BIL provides that the State's annual grant application must include a description of the means by which the State's countermeasure strategy for programming funds was adjusted and

[16] Brian Maguire, et. al recommended, in effect, that NHTSA establish a performance-based framework, suggesting that NHTSA require States to provide a link between funding and improvements in safety in order to assess progress over time. As shown here, this is already in effect.

[17] AASHTO, CA OTS, CT HSO, GHSA, MN DPS, NY GTSC, OR DOT, and WI BOTS Patrol.

[18] League of American Bicyclists, NSC, Rebecca Sanders, Vision Zero Network.

informed by the State's assessment of its progress in meeting its targets in the most recent annual report. 23 U.S.C. 402(l)(1)(C)(iii). NHTSA proposes to implement this requirement by requiring that all States include either a narrative description of the means by which the State's countermeasure strategy for programming funds was adjusted and informed by the most recent annual report, or a written explanation of why the State made no adjustments to the strategy for programming funds. If a State determined in its most recent annual report that it was on track to meet its performance targets, it may simply state that fact. If a State determined that it was not on track to achieve its performance targets, it would be required to explain why it is not necessary to adjust the countermeasure strategy for programming funds in order to meet its targets.

AASHTO, CT HSO, GHSA and OR DOT expressed concern that the requirement to set performance measures that demonstrate constant or improved performance will cause States to have to set aggressive performance targets and that States will face penalties if they fail to meet aggressive targets. While Section 402 requires States to assess the progress made in achieving performance targets in the annual report (23 U.S.C. 402(l)(2)), and NHTSA is required to publicly release an evaluation of State achievement of performance targets (23 U.S.C. 402(n)(1)), there are no monetary or programmatic penalties for failure to achieve a performance target in the highway safety grant program. The WA TSC commented that States that set a goal of zero traffic deaths will not be punished with additional administrative burdens. The long-term goal of zero traffic deaths is central to the NRSS and SSA. NHTSA acknowledges and appreciates that many states would like to plan and set targets aimed at that goal. We therefore encourage states to thoughtfully consider targets for their triennial HSPs that keep this long-term goal in mind while using a data-based approach based on achievable targets in the short-term. Finally, AASHTO points out that States may face monetary consequences under FHWA's Highway Safety Improvement Program (HSIP) for failure to achieve a common performance measure. However, as a point of clarification, States do not face a monetary penalty under the FHWA's HSIP; they do, however, lose flexibility to redirect safety funds to other programs. NHTSA does not have discretion to undermine the statutory requirement that all performance measures show constant or improved performance.

Several commenters [19] expressed concern that the new triennial HSP framework created by the BIL will create inconsistencies with the common measures that States also report annually to FHWA for the HSIP.[20] GHSA and the WI BOTS Patrol both recommended that NHTSA require that the common measures be reported annually in the annual application, rather than in the triennial HSP, to maintain alignment with the HSIP. The League of American Bicyclists recommended that NHTSA work with States to ensure the HSP is consistent with the HSIP, including consistent performance measures and countermeasure strategies. The BIL provides that performance measures are submitted with the triennial HSP, so NHTSA does not have discretion to change that. 23 U.S.C. 402(k)(4). However, the BIL also provides that States may submit updates, as necessary, to the triennial HSP in the annual grant application. NHTSA believes it would undermine Congress' intent in providing for more long-term planning and performance management under the highway safety grant program to allow States to frequently adjust performance measures that are intended to be part of a triennial highway safety planning process. Rather, States should adjust their countermeasure strategies for programming funds if they determine that they are not on track to meet their performance measures. However, the agency recognizes the difficulty for States in having measures that are subject to the disparate planning timeframes of the triennial HSP and annual HSIP. Therefore, we propose to allow States to amend the common measures in the annual grant application, but not the other measures. 1300.12(b)(1)(ii). AASHTO stated that the regulation should more clearly vest target establishment authority in the States, arguing that it is inconsistent to require NHTSA approval for performance targets when 23 U.S.C. 150(d)(1) provides States with authority to establish targets for the HSIP without FHWA approval. FHWA previously addressed this comment in its final rule for the National Performance Management Measures: Highway Safety Improvement Program, which set out the parameters of the common performance measures.[21] As the substance of the relevant statutes has not changed, NHTSA incorporates the response FHWA provided at that time. NHTSA *emphasizes* that the statute requires States to coordinate their highway safety plan with the HSIP and that States certify their compliance with this requirement in Appendix A. *See* 23 U.S.C. 402(b)(F)(vi) and Appendix A. Further, NHTSA does not have discretion to override the statutory requirement that NHTSA approve or disapprove triennial HSPs, including the performance measures contained therein. *See* 23 U.S.C. 402(k)(6).

NHTSA received many comments related to the data that States use to set and assess progress towards meeting performance measures. Several commenters noted that States frequently do not have access to up-to-date FARS or other data available when setting targets or at the time of performance reporting and asked that States be allowed to use the latest available data regardless of data source for these purposes. *See* GHSA, Kathleen Hancock, NY GTSC. Though not specifically targeted to the performance measures, the BIL also amended Section 402 to provide that triennial HSPs, including performance measures, be based on the information available on the date of submission. 23 U.S.C. 402(k)(4). In addition, the BIL requires that States provide, in the annual report, an assessment of progress made in achieving the performance targets identified in the triennial HSP based on the most currently available Fatality Analysis Reporting System (FARS) data. 23 U.S.C. 402(l)(2)(A). The OR DOT recommended that NHTSA allow States to use a State data source, rather than FARS, for fatality data reporting. Because the statute requires that States use FARS data for the annual report, NHTSA does not have the authority to allow States to use another data source for the appropriate measures. States may, however, supplement their analysis by using FARS *and* other data sources. However, FARS only provides comprehensive data related to fatal injuries suffered in motor vehicle crashes; it therefore is not an appropriate data source for non-fatality measures. As a result, NHTSA proposes to require that States assess progress in their annual reports using the most currently available data. 23 CFR 1300.35(a)(1). To accurately assess progress, the State must consult the same data source that was used to set the performance target. However, it may also look to other data sources to

[19] AASHTO, GHSA, OR DOT, and WI BOTS Patrol.

[20] Common performance measures are set out in 23 CFR 490.209(1) and 23 CFR 1300.11.

[21] 81 FR 13882, 13901 (Mar. 15, 2016).

provide a fuller picture of current levels. Where a target, such as the common fatality measures, requires the use of FARS data, States must use the most currently available FARS data in the annual reports. Similarly, States may supplement their analysis with non-FARS data, but must at a minimum use the most currently available FARS data. Where targets necessarily are based on other data sources, States must use the most currently available data for that data source, but may supplement with additional data.

Several commenters provided feedback on other aspects of performance measure data. WA TSC noted that since FARS data are provided by NHTSA, States should not be required to report FARS data back to NHTSA. However, the statute and the regulation require not just data reporting, but analysis of the data. *See* 23 U.S.C. 402(l)(2)(A) and 23 CFR 1300.35(a)(1). A State would be unable to assess its progress in meeting FARS-based targets without reporting the FARS data. NASEMSO recommended that States be required to provide historical data covering a 3-to-5-year period prior to the period covered by the triennial HSP. While NHTSA does not explicitly require States to provide baseline data for performance measures, as a general matter, baseline data will be a key part of State's performance target setting and will usually be provided in the triennial HSP as part of the justification for the target set by the State. WI BOTS recommended that NHTSA allow States to set targets based on an average of the prior 4 years of FARS data plus State data in order to set a target percentage as opposed to a hard number. The comment did not provide enough details for NHTSA to be certain which target the commenter is referring to. In general, with the exception of the required common and minimum performance measures, States have flexibility to determine the appropriate performance measure needed for their programs. Safe Kids Worldwide suggested that States look to tangible events and metrics to measure performance, including FARS data. Drew Dawson and NASEMSO recommended that States consider use of NEMSIS and trauma registry data in performance measures. In order to ensure consistency and to facilitate a nationwide view of progress in traffic safety, the common and minimum performance measures specify the type of data source that States should use. However, for the other performance measures that States select, based on problem identification, States may use any available data source that is appropriate, including NEMSIS and trauma registry data.

Many commenters [22] requested that NHTSA and GHSA work together to update the minimum performance measures that were developed in 2008 [23] in accordance with 23 U.S.C. 402(k)(5). In contrast, the 5-State DOTs stated that they do not believe any new performance measures are required. Commenters [24] also provided specific advice and recommendations for measures they believe should be considered, deleted, or amended. The current action does not propose to revise the minimum measures; however, NHTSA agrees with the majority of commenters who believe that the minimum performance measures need to be reconsidered and updated. That said, NHTSA does not believe that it is feasible to undertake the required collaboration to develop new performance measures in time for States to use them in their first triennial HSP. In addition, NHTSA believes that being able to use familiar performance measures will reduce the burden on States as they complete their first triennial HSP cycle under BIL. NHTSA intends to convene meetings with stakeholders and to collaborate with GHSA to update the minimum performance measures well in advance of the FY 2027 triennial HSP submission date. NHTSA will bring all of the comments received under this rulemaking into that effort and will seek further input from these and other groups at that time. As we did previously, NHTSA commits to publish the proposed minimum performance measures in the **Federal Register** for public inspection and comment. For the purposes of the FY 24 triennial HSP, NHTSA would like to note that States are not limited to only the minimum performance measures. States are strongly encouraged to develop additional measures, consistent with 23 CFR 1300.11(b)(3)(iii), for problems identified by the State that are not covered by existing minimum performance measures. Those measures may cover issue areas such as equity, injury data, SHSO output measures, and more.

[22] CA OTS, GHSA, MN DPS, NASEMSO, NY GTSC, and WA TSC.

[23] ''Traffic Safety Performance Measures for States and Federal Agencies'' (DOT HS 811 025) (Aug. 2008).

[24] Brian McGuire, Drew Dawson, IAEMSC, League of American Bicyclists, NASEMSO, NSC, NY GTSC, Rebecca Sanders, Safe Kids Worldwide, Safe Routes Partnership, TEC, Vision Zero Network, and WA TESC.

Finally, OR DOT recommended that NHTSA reconcile its definition for ''vulnerable road user'' with the definition used by FHWA. NHTSA does not provide, nor does it propose, a definition for ''vulnerable road user'' in the regulation. As such, there is no contradiction with any definitions provided by FHWA. For purposes of the highway safety grant program, States have flexibility to define ''vulnerable road users'' based on the highway safety challenges identified by their problem ID.

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

The BIL requires each State to submit, as part of the triennial HSP, a countermeasure strategy for programming funds for projects that will allow the State to meet the performance targets set in the triennial HSP, including data and analysis supporting the effectiveness of the proposed countermeasures and a description of the Federal funds that the State plans to use to carry out the strategy. 23 U.S.C. 402(k)(4)(B–D). NHTSA proposes to incorporate this requirement into the regulation by requiring States to provide, for each countermeasure strategy: identification of the problem ID that the countermeasure strategy addresses and a description of the link between the problem ID and the countermeasure strategy; a list of the countermeasures that the State will implement as part of the countermeasure strategy; identification of the performance targets the countermeasure strategy will address with a description of the link between the countermeasure strategy and the target; a description of the Federal funds the State plans to use; a description of the considerations the State will use to determine what projects to fund to implement the countermeasure strategy; and a description of the manner in which the countermeasure strategy was informed by the uniform guidelines issued by NHTSA in accordance with 23 U.S.C. 402(a)(2).

GHSA recommended that NHTSA amend the definition of countermeasure strategy in order to clarify that it includes innovative countermeasures, and to explain how States can justify the use of innovative countermeasures. While NHTSA has amended the definition of countermeasure strategy for programming funds (see definition section for explanation), that definition does not incorporate the considerations GHSA recommends. Instead, NHTSA proposes to make these suggested clarifications directly in the regulatory

text of this requirement. As a preliminary matter, NHTSA would like to clarify the distinction between a countermeasure and a countermeasure strategy for programming funds, which consists of a combination of countermeasures along with information on how the State plans to implement those countermeasures, such as funding amounts, subrecipient types, locations, etc. Specifically, NHTSA proposes to require that, for each countermeasure that a State plans to implement as part of a countermeasure strategy, the State provide data and analysis supporting the effectiveness of the countermeasure. NSC recommended that NHTSA require States to provide justification for use of established countermeasures in order to reflect evolving knowledge. However, NHTSA believes that requiring States to provide independent justification for all countermeasures, even ones that have been proven over time, is burdensome without any added gain. Therefore, the agency proposes that for countermeasures that are rated 3 or more stars in *Countermeasures That Work,* the State need only provide a citation to the countermeasure in the most recent edition of that document. For all other countermeasures including innovative countermeasures, States must provide justification supporting the potential of the countermeasure strategy, which may include research, evaluation, or substantive anecdotal evidence. *See* 23 CFR 1300.11(b)(4)(ii). The WA TSC suggests that NHTSA accept the SSA principles as a justification for choosing countermeasure strategies in the triennial HSP. While NHTSA agrees that the SSA principles are great guiding principles for a State to use in selecting countermeasures, NHTSA notes that principles do not qualify as data and the data analysis required to justify the use of a countermeasure.

GHSA noted that the BIL removed the previous requirement that States have a traffic safety enforcement program (TESP) (previously 23 U.S.C. 402(b)(1)(E)), and requested that NHTSA remove the related regulatory requirement that the HSP include a specific TSEP section (current 23 CFR 1300.11(d)(5)). Instead, GHSA recommended that States be required only to provide an assurance in Appendix A that the triennial HSP provides for sustained enforcement, and to provide any required information for Section 405 grant applications. NHTSA agrees that it is not necessary to require a dedicated section of the triennial HSP to cover the TSEP. However, we disagree that an assurance is sufficient for States to meet the requirement for States to have a traffic safety enforcement program. The BIL requires that a State program support data-driven traffic safety enforcement programs that foster effective community collaboration to increase public safety. 23 U.S.C. 402(b)(1)(E). NHTSA believes that this statutory requirement represents a step forward in ensuring equitable outcomes in traffic enforcement. While NHTSA agrees that a separate section of the triennial HSP is not required to satisfy this requirement, the agency will not approve a triennial HSP that does not include such a traffic safety enforcement program as part of its countermeasure strategies. The flexibility allowed by removing the separate section requirement will allow States to structure countermeasure strategies that rely on enforcement as only one part of a multi-countermeasure strategy. In recognition that community collaboration efforts may depend on the specific enforcement projects that States implement, NHTSA proposes to require States to discuss the community collaboration efforts that were conducted as part of their evidence-based enforcement programs in the annual report, rather than in the triennial HSP. *See also* the discussion about the annual report, below.

GHSA also pointed out that the BIL removed the requirement to describe non-Federal funds that the State intends to use to carry out countermeasure strategies in the triennial HSP. NHTSA has drafted proposed text accordingly.

WA TSC recommended that NHTSA adopt a model of behavior change for State countermeasure strategies, by requiring States to create a theory of change for each countermeasure submitted, including a clear statement of assumptions and a description of how the chosen strategy will influence public behavior. The League of American Bicyclists recommended that NHTSA use the triennial HSP to implement the Safe Systems Approach by promoting the use of the rubric presented by GHSA in its report titled ''Putting the Pieces Together: Addressing the Role of Behavioral Safety in the Safe System Approach.'' While NHTSA does not endorse any specific strategies over others, the agency supports States thinking outside of the box and encourages States to work together to identify opportunities to learn from each other and share new or innovative ideas. NHTSA will also work with states to identify strategies that incorporate the Safe Systems Approach and to facilitate the sharing of innovative strategies among states.

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

The BIL requires that the triennial HSP include a report on the State's success in meeting its safety goals and performance targets set forth in the most recently submitted highway safety plan. NHTSA has incorporated this statutory requirement into the proposed regulatory text, adding that the report must contain the level of detail provided in the annual report. *See* 23 CFR 1300.11(b)(5). The agency's intent in doing so is to foster connection between the triennial HSP and the annual reports. We also believe that this will reduce burdens on States by enabling them to import relevant analysis from the annual reports into the triennial HSP and vice versa. So, for example, the FY27 triennial HSP (due July 1, 2026) would be able to incorporate the assessment from the FY24 and FY25 annual reports that were submitted in January 2025 and 2026, respectively, and would include a partial assessment for FY26. NHTSA recognizes that the triennial HSP is due prior to the end of the last fiscal year covered by the prior triennial HSP and will therefore not expect the assessment for the final fiscal year to cover the entire year. The State could then use the partial assessment provided in the FY27 HSP as a starting point to develop its assessment in the FY26 annual report (due January 2027). For the FY24 triennial HSP, NHTSA only expects analysis of the State's progress towards meeting the targets set in the FY23 HSP.

7. Review and Approval Procedures (23 CFR 1300.11(c))

The BIL provides that NHTSA must review and approve or disapprove a State's triennial HSP within no more than 60 days. It further provides that NHTSA may request a State to provide additional information needed for review of the triennial HSP and may extend the deadline for approval by no more than an additional 90 days as a result. The BIL further sets out a requirement that States respond to any requests for additional information within 7 business days of receiving the request. NHTSA proposes to adopt this language in the regulation at 23 CFR 1300.11(c). This is consistent with GHSA's request that NHTSA do so.

The BIL retained the previous statutory approval and disapproval requirements. NHTSA proposes to retain the regulatory provisions incorporating those requirements with only one amendment. In order to meet the approval deadline, NHTSA proposes to require that where NHTSA

disapproves a triennial HSP, States must resubmit a triennial HSP with any necessary modifications within 30 days from the date of disapproval. 23 CFR 1300.11(c)(4).

C. Annual Grant Application (23 CFR 1300.12)

The annual grant application provides project level information about the State's highway safety program and demonstrates alignment with the most recent triennial HSP. NHTSA proposes to require the following 4 components be provided in the State's annual grant application: (1) updates to the triennial HSP (for the second and third year annual grant applications); (2) project and subrecipient information; (3) grant application for section 405 and 1906 grant programs; and (4) certifications and assurances.

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

The BIL allows NHTSA to set the due date for the annual grant application, subject to the requirement that the deadline must enable NHTSA to provide the grants early in the fiscal year. *See* 23 U.S.C. 402(l)(1)(B) and 23 U.S.C. 406(d)(2). Additionally, the statute provides that NHTSA must review and approve or disapprove annual grant applications within 60 days. 23 U.S.C. 402(l)(1)(D). GHSA recommended that the due date for the annual grant application be different than the July 1 deadline for the triennial HSP, noting that many States do not have project information by July 1. GHSA recommended that NHTSA set a due date of August 31 in order to align with the due date for HSIP annual reports. NHTSA agrees that there should be separate deadlines for the annual grant application and the triennial HSP, in part to lessen the burden on States during the years when both submissions are required. However, NHTSA would not be able to complete approval or disapproval of applications submitted on August 31 until October 30, which does not allow NHTSA to meet the statutory requirement to provide grant funds as early in the fiscal year as possible. NHTSA therefore proposes a deadline of August 1 for States' annual grant applications. 23 CFR 1300.12(a)

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

The BIL provides that States must include, in their annual grant applications, any updates necessary to any analysis in the State's triennial HSP. 23 U.S.C. 402(l)(1)(C)(i). Separately, the BIL requires States to include a description of the means by which the strategy of the State to use grant funds was adjusted and informed by the previous annual report. 23 U.S.C. 402(l)(1)(C)(iii). Because the countermeasure strategy referred to here is part of the triennial HSP, NHTSA proposes to group these two statutory requirements into one requirement. Accordingly, NHTSA proposes that, at a minimum, States must provide a description of the means by which the strategy for programming funds was adjusted and informed by the most recent annual report, or an explanation of why the State made no adjustments. Where a State determined, in its annual report, that it was on track to meet all performance targets, it need merely briefly state that fact. However, in order to give weight to Congress' intent, NHTSA will require any State that is not on track to meet all performance targets to either explain how it will adjust the strategy for programming funds or explain why it is not doing so.

In addition, NHTSA proposes to specify allowable updates related to performance measures. As described more fully in the performance measures section, above, as a general rule, performance measures must be set in the triennial HSP and remain the same throughout the three years covered by the HSP. States can then adjust their countermeasure strategy for programming funds in order to ensure that they remain on track to meet those performance measures. However, NHTSA recognizes that in some cases, a State may identify new highway safety problems during the triennial cycle. In that case, a State may wish to update its analysis to provide new problem ID, with a new performance target and corresponding countermeasure strategy for programming funds. The need for new (or annual) performance targets may additionally arise as a result of the State's application for a motorcyclist safety grant under Section 1300.25. For these reasons, NHTSA proposes to allow States to add new performance measures. Additionally, as described above, NHTSA recognizes the difficulty for States in setting common performance measures with the three year performance measures required for NHTSA's triennial HSP and the annual performance measures required for FHWA's HSIP. As a result, NHTSA proposes to allow States to amend common performance measures. States may not amend any other performance measures, but instead, should consider adjustments to countermeasure strategies for programming funds to meet the targets set.

GHSA stated that the statute provides that the State, not NHTSA, determines what additional analysis might be necessary. NHTSA disagrees with GHSA's interpretation. The statute is silent as to who determines what additional analysis is necessary. Further, the statute requires NHTSA to approve or disapprove of a State's annual grant application in part on the basis of whether it demonstrates alignment with the approved triennial HSP. 23 U.S.C. 402(l)(1)(A)(i). NHTSA will not approve an annual grant application that is inconsistent with the approved triennial HSP.

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

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

GHSA and WI BOTS Patrol both requested that NHTSA commit to not performing granular review of projects on the merits. GHSA stated that States have expressed frustration in the past with NHTSA approving programs or planned activities in the HSP and then later disapproving projects after the project agreement has been signed. They argued that States should be able to rely on NHTSA's regulatory decisions. GHSA argued that NHTSA should use the project level information provided in the annual grant application for financial management, transparency, or program analysis, not for administratively burdensome preapproval. GHSA further stated that, rather than a front-end burden to preapprove State projects, NHTSA should allow States more flexibility to implement compliant activities and that States should face consequences for non-compliance. When approving the annual grant application, NHTSA is looking to see whether the State's submitted projects are sufficient to reasonably carry out the countermeasure strategies in the State's triennial HSP, as well as checking for high-level regulatory compliance issues such as proper funding source. NHTSA review and approval of annual grant applications, similar to our current approval of annual HSPs, does not equate to approval of all projects or activities listed in the application. GHSA is correct in stating that NHTSA approval of the annual grant application should not and does not conflate with specific approval of projects. States have an independent obligation to expend

grant funds in accordance with Federal grant requirements. And, because NHTSA does not review and approve all projects, NHTSA may find during grant program oversight that a project that is listed in an approved annual grant application is not allowable in full or in part. That said, if a reviewer notes an obviously unallowable or questionable project, the reviewer may raise that issue to the State at that time in order to avoid the State continuing with a project that may later be disallowed.

NHTSA proposes to require States to submit the following information in order to satisfy the statutory requirement to identify projects and subrecipients: project name and description, project agreement number, subrecipient(s), Federal funding source(s), amount of Federal funds, eligible use of funds, identification of P & A costs, identification of costs subject to Section 1300.41(b), and the countermeasure strategy that the project supports. 23 CFR 1300.12(2) These proposed requirements are intended to ensure that NHTSA is able to understand whether the identified projects are sufficient for the State to carry out the countermeasure strategies in the triennial HSP, to identify projects against later submitted vouchers, and to meet statutory transparency requirements. GHSA recommended that NHTSA be guided, and limited by, the project information required for project agreements in the OMB Uniform Administrative Requirements at 2 CFR 200.332(a)(1). GHSA specifically recommended a list of signed project agreements with subrecipient identification, program area classification, project agreement number, amount of federal funds by funding source, and eligible use of funds. NHTSA agrees that the Uniform Administrative Requirements are a valuable source for identifying useful information and proposes to include all of the information suggested by GHSA. The WA TSC recommended providing a link to the countermeasure strategy that the project supports. NHTSA agrees and proposes to include that in the proposed regulation.

The WA TSC also advised NHTSA not to use zip codes as a measure for identifying high priority areas. The WA TSC stated that it would be challenging to account for zip codes for efforts conducted by statewide entities. NHTSA believes that zip codes and other identifying location information are a valuable part of a project description and help ensure that States are implementing programs in the areas that are identified by the State's problem ID. However, NHTSA recognizes that there are many grant-funded activities that are Statewide or, like data system projects, have no physical location. Therefore, NHTSA proposes to include zip codes as an example of information that may be provided as part of a project description, but does not require it for all projects. *See* 23 CFR 1300.12(b)(2)(i).

Brian Maguire, et. al recommended that NHTSA require States to provide the dollar amount of funding dedicated to each of the five objectives of the NRSS, particularly post-crash care. NHTSA believes that such a parsing would be too burdensome and would not provide sufficient benefit as dollar value, alone, does not align with safety improvements.

The Transportation Equity Council recommended that, in order to facilitate comparison, NHTSA provide a sample list of organization and use of fund types that States should include as project information. NHTSA agrees that such a list is useful. Currently, States use categories provided in the Grants Tracking System to identify eligible use of funds. NHTSA also proposes examples of subrecipient types to be provided in 23 CFR 1300.12(b)(2)(iii).

Finally, GHSA notes that the statute allows states to provide project information throughout the grant year. As noted in 23 CFR 1300.12(d), NHTSA intends to implement this at 23 CFR 1300.32 and will discuss the amendment process and comments in more detail there.

4. Section 405 and Section 1906 Racial Profiling Data Collection Grant Applications (23 CFR 1300.12(b)(3) and Appendix B)

The BIL requires States to provide the application for the Section 405 and Section 1906 grants as part of the annual grant application. 23 U.S.C. 402(l)(1)(C)(iv). As in the past, NHTSA incorporates the requirements for the Section 405 and Section 1906 grants in subpart C and appendix B of part 1300. *See* 23 CFR 1300.12(b)(3). The specific requirements and comments for the national priority safety program and racial profiling data collection grants are discussed in more detail in the relevant sections, below.

5. Certifications and Assurances (23 CFR 1300.12(b)(4) and Appendix A)

As under MAP–21 and the FAST Act, NHTSA continues the requirement for States to submit certifications and assurances for all 23 U.S.C. Chapter 4 and Section 1906 grants, signed by the Governor's Representative for Highway Safety, certifying the annual grant application contents and providing assurances that the State will comply with applicable laws and regulations, financial and programmatic requirements and any special funding conditions. 23 CFR 1300.12(b)(4). The certifications and assurances are provided in appendix A to part 1300. NHTSA has proposed general updates to the certifications and assurances in appendix A to reflect current Federal requirements. Specifically, NHTSA has updated the Nondiscrimination certifications to reflect DOT Order 1050.2A, ''DOT Standard Title VI Assurances and Non-Discrimination Provisions.'' NHTSA also added a certification on conflict of interest, consistent with the requirement in 2 CFR 200.112. Neither certification creates a new requirement for States; instead, the certifications merely make clear the existing requirements that apply.

Finally, NHTSA proposes updates to the Section 402 requirements consistent with statutory changes in the BIL. NHTSA deletes the requirement that political subdivisions of the State be formally authorized to carry out local highway safety programs, consistent with the BIL's removal of that requirement at former 23 U.S.C. 402(b)(1)(B). However, as described below, this does not remove the requirement for political subdivision participation, which remains an important focus. NHTSA updates the certification regarding the traffic safety enforcement program to reflect the new statutory requirements at 23 U.S.C. 402(b)(1)(E). NHTSA adds the requirement that States (with the exception of American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the United States Virgin Islands) participate in the FARS. 23 U.S.C. 402(b)(1)(F)(vi). Finally, NHTSA amends the certification regarding automated traffic enforcement systems to reflect the changes in 23 U.C.S. 402(c)(4).

6. Review and Approval Procedures (23 CFR 1300.12(c))

The BIL provides that NHTSA must review and approve or disapprove an annual grant application within 60 days. 23 U.S.C. 402(l)(D). NHTSA proposes to implement this deadline and additionally proposes to provide procedures for NHTSA to request additional information from States if necessary for review. GHSA is correct in noting that the BIL has language specifically allowing the agency to request additional information in order to review the triennial HSP, but no similar language concerning the annual application. GHSA argued that requests

for additional information raise the risk of micromanagement. While NHTSA recognizes that the statute sets out a process, with timelines, for the agency to request additional information in the triennial HSP, it does not prohibit such inquiry in connection with the annual application, and we have a long-standing practice of seeking clarifications during review of State grant applications. These clarifications are necessary to ensure that the agency has sufficient information to approve State grant applications. The intent of these requests for clarification is not to micromanage State programs. Rather, without these clarifications States are more likely to be denied a grant or portion of a grant that, with the necessary clarification, would be approved. We therefore propose to provide for clarification in the annual grant application as well, though without the same strict time frames set out by statute for the triennial HSP. *See* 23 CFR 1300.12(c)(1).

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

While Section 402 provides broad flexibility for States to use grant funds to conduct approved highway safety programs, it has long included some specific requirements related to use of funds. NHTSA's grant regulation previously included some, but not all, of these requirements in various parts of the regulation. In addition, the BIL added two new requirements regarding specific uses of grant funds. With this action, we propose to consolidate the statutory funding conditions for Section 402 grant funds into 23 CFR 1300.13 so that State recipients may see these statutory requirements in one place. As part of this effort, NHTSA proposes to delete Appendices C and D and to move those provisions (participation by political subdivisions and P & A costs, respectively) into the main body of the regulatory text. (23 CFR 1300.13(a) and (b)). In addition, NHTSA has added regulatory provisions to incorporate the statutory requirements related to use of grant funds for reducing marijuana-impaired driving, an unattended passengers program, use of funds to check for motorcycle helmet usage, a teen traffic safety program, and the prohibition on the use of grant funds for automated traffic enforcement systems. *See* 23 CFR 1300.13(c–g). States should note, however, that expenditures are still subject to all other relevant Federal funding requirements, including the requirements and cost principles contained in 2 CFR part 200 that all Federal grantees must follow.

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

In moving Appendix D (Planning and Administration (P & A) costs), into 23 CFR 1300.13(a), NHTSA has streamlined the regulatory language by removing duplicative language. The substance of the provision remains the same. Three commenters (GHSA, MN DPS, and WI BOTS) requested that NHTSA increase the percentage of funds that can be allocated to Planning and Administration (P & A) costs from 15% to 18% in order to cover increased costs due to the increase in grant funding provided by BIL, inflation, technological demands, and expenses associated with remote work. NHTSA notes that the significant increase in 402 funding provided by BIL provides a proportional increase in the total dollar value that is eligible to be used for P & A activities. We do not believe that an increase in the percentage of funds that can be used for non-programmatic activities is warranted at this time. However, if commenters provide additional data in support of this request, we will take it into consideration for the final rule.

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

NHTSA's highway safety grant program has included a statutory requirement that 40 percent of Section 402 grant funds apportioned to a State be expended by the State's political subdivisions to carry out approved local highway safety programs since the inception of the program with the passage of the Highway Safety Act of 1966.[25] Except for the addition in 1998 of the requirement that 95 percent of funds apportioned to the Secretary of the Interior be expended by Indian tribes,[26] the statutory requirement has been largely unchanged since that time. NHTSA incorporated the requirement into its regulations via regulatory text that has also remained largely unchanged since 1976.[27] NHTSA's regulatory construction of the requirement provided that States could meet the 40 percent required expenditure by political subdivisions either through direct expenditures by political subdivisions or through demonstration that the political subdivision had an active voice in the initiation, development and implementation of approved local highway safety programs. Appendix C to part 1300.

The BIL amended the statutory requirement underlying this provision by removing the requirement that the local highway safety programs funded with these funds be approved by the Governor. The existing grant regulation provides four avenues for States to demonstrate participation by political subdivisions: (1) direct expenditure, (2) active voice participation by the specific political subdivision, (3) active voice participation by other political subdivisions that is incorporated by request of a different political subdivision; and (4) request by a political subdivision as part of an approved local highway safety program. The statutory change would nullify the fourth avenue, significantly altering the construction of the requirement. In addition, NHTSA also received comments from both GHSA and the League of American Bicyclists related to this requirement. GHSA's comments focused on the difficulty States face in documenting active voice participation by political subdivisions in the expenditure of grant funds due to the large number of local subrecipients. It suggested that NHTSA allow States to meet this requirement through documentation at levels above the individual subrecipient level. It also requested that State-sponsored communication efforts, including those related to HVE campaigns, be allowed to count towards the 40 percent requirement. NHTSA recognizes that States face a large task in coordinating with so many political subdivisions; however, it was clearly the intent of Congress, sustained over decades, that State highway safety programs ensure that Federal funds make their way into the hands (and decision-making authority) of political subdivisions. The statutory requirement is focused on the expenditure of funds, which is not consistent with GHSA's recommendation to allow compliance with this requirement above the subrecipient level. Similarly, a State-sponsored communication effort, tied to a State HVE campaign, by definition, does not meet the condition that the funds be expended by political subdivisions. However, NHTSA recognizes that the existing regulatory requirement to demonstrate ''active voice'' participation may be unclear or confusing for States and political subdivisions. As described in more detail below, NHTSA is proposing a

[25] Public Law 89–564, 101 (Sept. 9, 1966), codified at 23 U.S.C. 402(b)(1)(B & C).

[26] *See* Public Law 105–178, 2001(d) (June 9, 1998).

[27] *See* ''Political Subdivision Participation in State Highway Safety Programs'' (41 FR 23949 (June 14, 1976)) which codified a previously uncodified directive, and, for the current regulatory text, appendix C to part 1300.

new framework for compliance with this local expenditure requirement.

Offering a different perspective, the League of American Bicyclists recommended that NHTSA require additional reporting from States on how they meet the local expenditure requirement, including demonstration of community support for the work performed and proof of coordination. While NHTSA agrees that States must provide evidence that political subdivisions directed the expenditure of funds to qualify under this requirement, requiring additional demonstration of community support in order to qualify for this requirement exceeds NHTSA's statutory authority and could impose an unnecessary burden on the communities it is intended to support.

As a result of the BIL's amendments to this requirement, the new triennial framework for highway safety programs, NHTSA's experience administering this requirement, and comments received through the RFC (addressed below), NHTSA proposes a new conceptualization of this statutory requirement. Under the proposed rule, States would show compliance with the statutory local expenditure requirement either through direct expenditure by political subdivisions (*i.e.,* the political subdivision is a subrecipient of grant funds) or through expenditures by the State on behalf of the political subdivision. Where a State relies on State expenditures to meet this requirement, it would have to show evidence that the political subdivision was involved in identifying its traffic safety needs and provided input into the implementation of the activity.

While the statute provides that 40 percent of funds must be expended by the political subdivisions (or 95 percent, in the case of tribal governments), NHTSA recognizes that in some cases it may be advantageous for both the State and the political subdivisions to allow States to expend grant funds on behalf of the political subdivisions. This would enable smaller political subdivisions that may have fewer resources to direct grant funds towards their highway traffic safety needs and would also allow political subdivisions to benefit from the economies of scale that a State-run program can provide. In order to provide the most flexibility for political subdivisions and States, consistent with the statutory limitations, NHTSA proposes to allow expenditures by States to count towards the 40 percent local expenditure requirement so long as there is adequate evidence of the political subdivision's role in the process leading to implementation of the activity. States may demonstrate that expenditures meet this requirement in two ways.

First, the State may provide evidence that the political subdivision was involved in the State's highway safety program planning processes. States can incorporate this into existing processes, such as the public participation component of the triennial HSP, the planning process to determine projects for annual applications, or during the State's ongoing program planning processes. The State would then enter into projects based on the identification of need and implementation notes by the political subdivision during the planning process. Finally, to ensure that the activities implemented do meet the needs of the specific political subdivision, the State must obtain written acceptance by that political subdivision for the project that the State is implementing.

Second, the State may demonstrate that a political subdivision directed the expenditure of funds through a documented request by the political subdivision for an activity to be carried out on its behalf. The request need not be a formal application, but must contain a description of the political subdivision's problem identification and a description of how or where the activity should be deployed within the political subdivision.

During NHTSA's administration of this requirement over time, many States and subrecipients have expressed confusion about which entities qualify as political subdivisions. To resolve this confusion, NHTSA proposes to add a definition of political subdivision to the definitions at 1300.3. In drafting this definition, NHTSA consulted regulatory definitions by other Federal agencies and made adjustments to tailor the definition to the highway traffic safety program.

In order to streamline the regulation, NHTSA proposes to move the Participation by Political Subdivisions regulatory text out of the Appendices and into the body of the regulation at 23 CFR 1300.13(b), along with the other funding conditions for Section 402 grants.

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

The BIL provides new and amended specified uses of Section 402 grant funds. First, the BIL requires States that have legalized medicinal or recreational marijuana to consider implementing programs to educate drivers and reduce injuries and deaths resulting from marijuana-impaired driving. 23 U.S.C. 402(a)(3). Second, the BIL requires each State to use a portion of Section 402 grant funds to carry out a program to educate the public about the risks of leaving a child or passenger unattended in a vehicle. 23 U.S.C. 402(o). Finally, as explained further below, the BIL amended the prohibition on funding automated traffic enforcement systems. 23 U.S.C. 402(c)(4).

GHSA submitted comments regarding the new requirements related to funding programs related to marijuana-impaired driving and unattended passengers. GHSA noted that all States currently have efforts underway related to drug-impaired driving, so it should not be difficult for them to comply with the new requirement. GHSA asked that NHTSA not specify a required minimum amount that States must expend on unattended passenger awareness because such activities may be tied into larger safety campaigns, so long as States can show that they are implementing a sound countermeasure strategy. NHTSA agrees and does not propose to require a specific monetary amount or specific activities that States must implement to satisfy this requirement. However, States will need to clearly state in their triennial HSPs and annual grant applications which countermeasure strategies and projects address this requirement.

GHSA requested that NHTSA reconsider the decision, formalized in a memo from the Chief Counsel on June 26, 2018, that NHTSA's statutory authority under Section 4007 of the FAST Act prohibits the use of NHTSA grant funds to conduct motorcycle helmet use surveys. As the legislative prohibition has not been rescinded, NHTSA does not have authority to allow NHTSA funds to be used for statutorily-prohibited uses.

The FAST Act prohibited States from expending Section 402 grant funds on automated traffic enforcement systems (ATES) and required each State to either certify that ATES were not used on any public roads within the State or to conduct a biennial ATES survey. The BIL provides a new exception to the prohibition on ATES, allowing States to use Section 402 grant funds to carry out a program to purchase, operate, or maintain an ATES in a work zone or school zone, consistent with guidelines established by the Secretary. The BIL also removed the certification and biennial survey requirement. This action proposes to incorporate these statutory changes. Three commenters (GHSA, Vision Zero Network, and NACTO) requested simplified and updated guidance for the use of ATES. FHWA publishes ATES guidelines in

coordination with NHTSA.[28] The agencies are currently in the process of revising the Speed Enforcement Camera Systems Operational Guidelines to reflect the latest automated speed enforcement technologies and operating practices. NHTSA notes that BIL limits the eligible use of ATES to school zones and work zones and State or local laws may provide further clarifications and/or restrictions on their use. NHTSA notes that while the statute sets location restrictions on ATES use associated with school and work zones, it does not condition their use in other ways such as by establishing a specific time or month of use. NHTSA looks forward to seeing how States might strategically employ ATES to support and improve programs, and will work with States that seek to implement these programs in an effective and equitable manner.

While one commenter suggested that pedestrians and bicyclists receive a share of all funding at least equal to the proportion of fatalities on the network (Rebecca Sanders), NHTSA does not have the authority to require this type of funding directive. States determine grant fund expenditures on various highway safety problems within their borders based on data. However, the BIL does designate that seven percent of the National Priority Safety Programs be expended on nonmotorized safety grants, and today's proposal incorporates this requirement.

E. Information and Data for Consideration

The BIL further provides that in order to be approved, a State highway safety program must support data collection and analysis to ensure transparency, identify disparities in law enforcement, and inform traffic enforcement policies, procedures, and activities. 23 U.S.C. 402(b)(1)(E). As an anonymous commenter noted, better records and data are important to efforts to increase safety. NHTSA received many comments relating to data sources that States should be required to consult or report to NHTSA. Some commenters specified particular documents, while most recommended the same data be included in each submission to NHTSA or did not specify. Many commenters tied their suggestions to improved transparency. In addition, many commenters recommended that NHTSA initiate or require States to work toward improved consistency in their data systems. As these comments appear to be broadly focused, we address them here as a group, in the context of the triennial framework as a whole.[29]

GHSA, WI BTS, 5-State DOTs; MN DPS all recommended that NHTSA provide flexibility as to which data sources States are required to consult in order to meet their planning, application and reporting requirements for NHTSA highway safety grant funds. These commenters explained that data system resources and capabilities, including the specific data captured and how it is shared, vary from State to State and that State Highway Safety Offices have limited control over most, if not all, of the data systems involved in assessing highway safety problems. They specifically noted that States are at varying levels of readiness to meet any potential requirement for universal traffic stop data, particularly because it depends on getting buy-in from law enforcement agencies at all levels of government, not just at the State level. (*See* id.) These commenters recommended that, instead of setting specific requirements on data sources and data points that States must submit, NHTSA should provide flexibility to States to use the data that are available to them and to allow States to continue efforts to improve data collection and data systems.

Two groups, NACTO and NASEMSO, appear to acknowledge that State data capabilities are not yet at a level to provide all the data that they would like to see reported in State applications and annual reports. NACTO recommended that States work to enhance data collection and reporting procedures, including through requiring all State and local law enforcement agencies to collect and publicly report data for all stops in order to ensure that enforcement actions have a demonstrable public safety impact. Similarly, NASEMSO recommended that States identify the steps that they are taking in preparation for a forthcoming universally unique identifier (UUIS) that would link EMS patient care reports and trauma registry records to crash records. As noted below, NHTSA cannot require States to do so, but these may be eligible uses of grant funds.

NASEMSO recommended that NHTSA require States to provide baseline data from traditional sources such as State crash, vehicle, driver, roadway, and citation & adjudication databases in order to ensure projects are funded in the areas of most need. This is the underlying rationale for the requirement for States to conduct data-driven problem identification in the triennial HSP (see 23 CFR 1300.11(b)(1)). NHTSA notes, however, as described below, that States should consider not only traditional highway safety data sources, but also other data that may provide useful information.

In general, NHTSA seeks to balance the need for data and other information that will help the States and the public understand how and where NHTSA grant funds are being used and the outcomes of the highway safety grant programs being carried out with Federal funds with the need to minimize administrative burdens on both States and their subrecipients so that they can focus efforts on implementing needed highway safety programs. As is described more fully in the sections of this preamble that discuss the proposed requirements for the triennial HSP, annual grant application, and annual report, the information that NHTSA is proposing that States submit in those documents is based on statutory requirements from Section 402 and Section 405, administrative grant requirements in the OMB's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, and, in limited instances, the agency's experience with fielding requests for information from Congress and auditors. *See* 23 CFR 1300.11, 1300.12, and 1300.35. Except for limited circumstances, including the common performance measures that require the use of FARS data, NHTSA does not prescribe specific data sources that States must provide or consult. Instead, NHTSA proposes that States use the best data available to them to conduct problem ID, set performance targets, and assess their progress in meeting those targets. States are also encouraged to think critically about how all available data can and should be used to analyze their programs beyond the data that is specifically required. Further, NHTSA encourages States to consider ways to improve State data systems in order to increase the data that are available to them in conducting

[28] Speed Enforcement Camera Systems Operational Guidelines (DOT HS 810 916) (2008), *available at https://safety.fhwa.dot.gov/speedmgt/ref_mats/fhwasa1304/resources/Speed%20Camera%20Guidelines.pdf* and Red Light Camera Systems Operational Guidelines (FHWA–SA–05–002) (2005c), *available at https://safety.fhwa.dot.gov/intersection/signal/fhwasa05002.pdf.*

[29] A couple of commenters suggested actions that NHTSA could take to improve data availability. For example, the Center for Injury Research and Prevention suggested that NHTSA should use grant funds to incentivize States to provide access to State data to researchers. NHTSA does not have statutory authority to provide such an incentive. Two other commenters suggested areas of study that NHTSA could undertake—applied research and guidelines to expand use of NEMSIS (Drew Dawson) and a national study on the State of data collection and analysis across the country (TEC). As this rule is targeted toward the grant program requirements for States, not NHTSA's research, these comments are out of scope of the rule.

problem ID and setting performance targets. NHTSA encourages States to take full advantage of the State traffic safety information system improvements grants (23 U.S.C. 405(c) and 23 CFR 1300.22) and the racial profiling data collections grants (Section 1906 and 23 CFR 1300.29), which are intended to support those efforts.

Numerous commenters provided specific recommendations for data that NHTSA should require States to submit or otherwise share with the public. While NHTSA proposes to allow States flexibility to use the data sources that will best inform their highway safety work, NHTSA will relay the recommendations of the commenters below so that States may have the advantage of these diverse suggestions.

The League of American Bicyclists and the TEC both recommended that States should collect and report demographic data in order to identify disparities in traffic safety and in the application of countermeasures, including law enforcement. Both groups recommended that States consult demographic data on traffic stops and citations. The TEC further recommended that States consult a variety of data sources, including traffic stops, citation and adjudication systems, and crash records, aggregated by race, income, geography and other relevant factors in order to inform the State's problem identification and to identify traffic safety disparities. The OR DOT similarly recommended that States add human characteristics to existing crash data by including demographic data, such as income and race, in States' problem identification and program planning. Safe Kids Worldwide and Rebecca Sanders recommended that States include age and race in assessments of fatality and injury numbers. NHTSA agrees that demographic information is invaluable to State highway safety problem identification and program planning. We encourage States to think expansively and seek out all available data sources. However, given the broad reach of the highway safety programs, NHTSA does not propose to require States to provide demographic information for all projects, such as a Statewide paid media campaign, though we do encourage States to provide demographic information as part of a project description where it is relevant. (*See* 23 CFR 1300.12(b)(2))

Other commenters stressed the importance of including data elements relating to the built environment in order to better understand traffic safety needs. The League of American Bicyclists and Rebecca Sanders both recommended that States look at road design, road speed, and the presence of ped/bike facilities. Rebecca Sanders further recommended that States break down crash data by mode (*i.e.,* driving, bicycling, pedestrian) and severity of injury along with demographic information. The League of American Bicyclists suggested more granularity for assessing data for fatalities and injuries of vulnerable road users; specifically, looking at the percentages of fatalities and injuries that are represented by vulnerable road users and taking note of the presence of ped/bike facilities and lighting. NHTSA agrees that data elements related to the roadways on which crashes occur are a valuable part of State problem identification and program planning, and encourages States to consider all available data to better understand the specific traffic safety problems in the State.

Several commenters recommended that States either consider or be required to use a combination of data from law enforcement crash records, NEMSIS and the State trauma registry, both in recognition of the role that post-crash care plays in State highway traffic safety and to provide a better understanding of all parts of the system that play a role in State fatality and serious injury rates. (*See* Brian Maguire, et. al, Drew Dawson, NASEMSO, and an anonymous commenter.) NHTSA agrees that NEMSIS is a valuable resource and encourages States to make use of it.

NASEMSO submitted several recommendations for detailed project-related data that it believes NHTSA should require States to provide. This includes information on trainings funded by the grant, including number of enrollments, number of participants who completed the course, and a delta that shows the knowledge change for participants. NASEMSO also recommended that NHTSA require measures that show the penetration of State programs, such as the percentage of all target organizations that are eligible to apply for grants, the percentage of organizations that actually applied, the percentage of applicants who received a grant, and the percent of awardees who completed their grant activities. Further, NASEMSO recommended that NHTSA seek equipment availability and usage rate information, including the percentage of vehicles or shifts for which equipment was used and the type and frequency of use for all equipment used to link EMS, trauma and crash records data. Brian Maguire, et. al recommended that NHTSA require States to provide data regarding EMS professionals in the annual report. NHTSA agrees that much of this information could be informative for States and their subrecipients in implementing and supporting their programs or projects, and some of this information (such as equipment use) may be required to support allowability of certain uses of funds during the life of the grant. However, NHTSA believes that requiring this level of information in application or annual report documents would unduly burden States and their subrecipients. NHTSA is especially concerned that this level of reporting would severely discourage smaller or less resourced, often community-led groups, including many EMS organizations, from seeking highway safety grant funds from States. We therefore decline to require this level of information in the proposed regulation.

Finally, Rebecca Sanders recommended that States provide information on community outreach and feedback, including use of community perception surveys. States may consider gathering and using this sort of information.

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

The Section 405 and Section 1906 grant programs provide incentive grants that focus on National priority safety areas identified by Congress. Under this heading, we describe the requirements proposed in today's action for the grants under Section 405—Occupant Protection, State Traffic Safety Information System Improvements, Impaired Driving Countermeasures, Distracted Driving, Motorcyclist Safety, Nonmotorized Safety, Preventing Roadside Deaths, and Driver and Officer Safety Education, and the Section 1906 grant—Racial Profiling Data Collection. The subheadings and explanatory paragraphs contain references to the relevant sections of this NPRM where a procedure or requirement is implemented, as appropriate.

NHTSA received several comments that apply to all Section 405 and Section 1906 grants. GHSA suggested that, in order to decrease burden, NHTSA allow States to certify compliance with Section 405 eligibility requirements that remain static rather than restating information from prior years. NHTSA declines to do so. Congress authorized the Section 405 grants as annual grants with an annual grant application and annual qualification. NHTSA therefore must review full applications for the Section 405 grants every fiscal year. Where specific Section 405 grants allow for a specific criterion to serve as a qualifying criterion in multiple years of

grant applications, NHTSA has noted so specifically in that section and laid out what the State must provide to incorporate a prior year response. Most of the Section 405 grant applications, however, require updated information based on current data, updated program plans, or evidence of recent progress.

GHSA urged NHTSA to create a complete qualification checklist for each Section 405 grant program in order to assist States in developing and providing the required information. Appendix B is formatted to serve as the application framework for States and provides a list of application requirements at a high, checklist-style level. However, for full details on application criteria and requirements, NHTSA stresses that States must read the relevant statutory and regulatory text, which provide all application criteria. In rare occasions, the preamble may provide additional clarification, but NHTSA has striven to ensure that the regulation is an easy-to-read, one-stop resource for States to consult in developing and submitting grant applications.

GHSA requested that appendix B be amended to provide States with a checklist of potential reasons for not applying for a grant under Section 405 so that that information can be captured in the grant determination chart that NHTSA publishes online consistent with Section 4010(2) of the FAST Act, as amended by the BIL.[30] The statute requires that NHTSA publish a list of States that were awarded grants, States that applied but did not receive a grant, and States that did not apply for a grant under each section of Section 405. It further requires that NHTSA publish a list of all deficiencies that made a State ineligible for a grant for which it applied. It is not possible for NHTSA to create a list of every reason a State may not apply, nor does the statute require it. We therefore decline to make this change.

Advocates recommended that NHTSA provide States with a full explanation when they fail to qualify for a grant and to provide guidance on how to meet qualifying criteria. As explained above, NHTSA is required to publish a list of all deficiencies that caused a State to fail to qualify for a grant. In addition, NHTSA has been and remains willing to provide technical assistance to States who seek to resolve any deficiencies identified for future grant cycles.

ESS encouraged NHTSA to express the importance of fully investing Section 405 funds for the Congressionally expressed purposes and to streamline and make efficient the administration of the Section 405 grants. Congress authorized the Section 405 grant programs in response to identified National highway safety priority areas and prescribed allowed uses of funds that address those areas. NHTSA encourages States to use all Section 405 grant funds available.

A. General (23 CFR 1300.20)

Some common provisions apply to most or all of the grants authorized under Sections 405 and 1906. The agency proposes changes to only two paragraphs of this section.

1. Definitions (23 CFR 1300.20(b))

The agency proposes to move the definition of personal wireless communications device to 23 CFR 1300.24—distracted driving grants—for ease of reference.

2. Transfer of Funds (23 CFR 1300.20(e))

As described in more detail in the relevant grant programs, below, new grant programs and amendments to existing grant programs have led to more diversity in the statutory formulas that NHTSA applies for award determinations under Section 405 and Section 1906. As a result, NHTSA proposes to add provisions setting out the statutory award determination information in each grant program, as opposed to in this section. Therefore, the agency proposes to retitle this paragraph as Transfer of Funds and to delete paragraphs 1 and 2.

The 5-State DOTs requested that NHTSA continue to transfer any remaining Section 405 grant funds to Section 402. NHTSA will continue to do so consistent with statute. 23 U.S.C. 405(a)(10) and 23 CFR 1300.20(e). Currently, the regulation provides that NHTSA shall distribute remaining funds in proportion to the amount each State received under Section 402 for fiscal year 2009. In this action, NHTSA proposes to update the regulation to require distribution in proportion to the amount each State received under Section 402 for fiscal year 2022. This will ensure that distribution is based on more current population and public road mileage and matches the distribution basis that Congress provided in the new grant programs. *See* 23 U.S.C. 405(h & i).

As in previous authorizations, in the event that all grant funds authorized for Section 1906 grants are not distributed, the BIL does not authorize NHTSA to reallocate unawarded Section 1906 funds to other State grant programs. Rather, any such funds will be returned for use under 23 U.S.C. 403, and do not fall within the scope of this proposal.

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

Under the FAST Act, States were required to provide an assurance that they would maintain their aggregate State-level expenditures (Maintenance of Effort, or MOE). The BIL removed this requirement and with this action, the agency proposes to remove the requirement from the regulatory text as well. This would resolve the comment from the 5-State DOTs requesting that NHTSA remove the MOE requirement.

GHSA requested that NHTSA provide clarity on how the FAST Act's MOE requirement applies to oversight of existing grant funds. Since the BIL amendments take effect for the FY24 grant cycle, FAST Act requirements (including MOE) will continue to apply to FY22 and FY23 grant funds.[31] NHTSA waived the MOE requirement for FY20 and FY21 grant funds consistent with our authority under the CARES Act (Pub. L. 116–136, Division B, 22005(a)).[32]

C. Occupant Protection Grants (23 CFR 1300.21)

The BIL continues the MAP–21 and FAST Act Occupant Protection Grants with three substantive amendments. The BIL removed the maintenance of effort requirement that was in effect under the FAST Act, extended the period of time between occupant protection assessments for the assessment criterion for lower seat belt use states, and expanded the allowable uses of funds under this grant program. This NPRM proposes amendments to the existing regulatory language to implement those changes and to update existing requirements to align with the new triennial HSP and annual application framework.

NHTSA received comments related to the Occupant Protection Grants from four commenters.[33] Several comments related to general program administration. CIRP expressed support

[30] Codified as a note to 23 U.S.C. 405.

[31] Appropriations restrictions in FY 22 prohibit NHTSA from spending appropriated funds to enforce the maintenance of efforts requirements set forth in 23 U.S.C. 405(a)(9); however, those requirements still apply to States and may be identified by other auditors. See Consolidated Appropriations Act, 2022, Public Law 117–103, tit. I, div. L, 142, 136 Stat. 49, 709 (Mar. 15, 2022).

[32] *See* NHTSA's waiver notices, dated April 9, 2020 and April 29, 2021, respectively for the waivers related to FY20 and FY21 grant funds. *Available at https://www.nhtsa.gov/coronavirus-resources-nhtsa.*

[33] GHSA, Center for Injury Research and Prevention at Children's Hospital of Philadelphia (CIRP), SafetyBeltSafe U.S.A., and Safe Kids Worldwide.

for prioritization of child traffic safety through evidence-based interventions. SafetyBeltSafe U.S.A. provided several suggestions for NHTSA's child occupant protection program, including a recommendation that NHTSA increase age and weight limits for child safety seats. NHTSA's Child Car Safety Campaign emphasizes the importance of children riding in a seat appropriate for their age and size and encourages parents to maximize the safety benefits of each seat by having their child remain in each seat up to the manufacturers' maximum weight or height limits. SafetyBeltSafe U.S.A. stated that passenger safety advocates' experience is that 90 percent of families have inadvertent errors in child restraint use, and asked NHTSA to adjust the agency's messaging to reflect this rate rather than the 46 percent rate of misuse currently cited by NHTSA. In 2015, NHTSA conducted the National Child Restraint Use Special Study, a nationally representative survey that applied a consistent definition of ''misuse'' to find the 46 percent misuse rate.[34] Current data from the National Digital Car Seat Check Form, a free and publicly available resource, finds a 59 percent rate of misuse.[35] NHTSA agrees that families need to be made aware of the frequency of unknowing child restraint misuse, and provides extensive support for child passenger safety programs, including through the Occupant Protection Grant Program and through NHTSA's Child Car Safety Campaign. SafetyBeltSafe U.S.A. also recommended that the agency allow a two-year grant in order to allow more opportunity for community engagement in the occupant protection program. While the NHTSA grant program is, by statute, an annual grant program, States may enter into multi-year agreements with subrecipients subject to the proviso that later year funding is contingent on availability of funds.

1. Qualification Criteria for a High Seat Belt Use Rate State (23 CFR 1300.21(d))

To qualify for an Occupant Protection grant, all States must meet several requirements. As a result of the new triennial HSP framework created by the BIL, NHTSA made some conforming amendments to these requirements. In addition to replacing ''planned activities'' with ''projects,'' as described in more detail above, NHTSA also proposes to clarify that the State's occupant protection plan must be updated annually. The Section 405 grants are annual grants, so NHTSA interprets all application requirements to be annual requirements. That said, not all components of the occupant protection plan must be updated annually. A State could rely on the problem ID, performance measures, targets, and countermeasure strategies laid out in its triennial HSP for the period covered by the triennial HSP. In that case, it would only be required to update the projects component of the occupant protection plan on an annual basis.

2. Qualification Criteria for a Lower Seat Belt Use Rate State (23 CFR 1300.21(e))

To qualify for an Occupant Protection Grant, all States must meet several requirements, as noted above. In addition to meeting the requirements applicable to all States, States with a seat belt use rate below 90 percent must meet at least three of six criteria to qualify for grant funds. The BIL amended one of those criteria, the requirement to complete an assessment of the State's occupant protection program by expanding the time period between assessments from three to five years. In this action, the agency proposes to amend the regulatory requirement to reflect this statutory change.

3. Award Amounts (23 CFR 1300.21(f)

As mentioned above, NHTSA proposes to move the award amount provisions from 23 CFR 1300.20 into each individual grant program. NHTSA proposes to incorporate the statutory award allocation provision without change.

4. Use of Grant Funds (23 CFR 1300.21(g))

The BIL made amendments to increase the emphasis on child passenger safety programs aimed at serving low-income and underserved populations. It did so by requiring that all States, including high belt use States, spend at least 10 percent of grant funds to carry out child passenger safety program activities aimed at serving low-income and underserved populations and adding eligible uses for such programs.

Specifically, all States are now required to use at least 10 percent of their occupant protection funds to carry out specified activities related to child passenger safety programs aimed at serving low-income and underserved populations. High belt use rate States may continue to use the remaining 90 percent of their occupant protection funds for any project or activity eligible for funding under section 402. Low belt use rate States must use the remaining 90 percent of their occupant protection funds for eligible occupant protection activities.

GHSA recommended that NHTSA not set out a strict definition of ''low-income and underserved populations'', but instead allow States to articulate their rationale for their own definition because data sources and populations may vary from State to State. While NHTSA agrees that data sources and populations vary from State to State, the agency proposes to provide a high-level definition that will provide States with guidance in identifying the specific populations within their jurisdiction.

SafetyBeltSafe U.S.A. and Safe Kids Worldwide submitted comments expressing support for BIL's emphasis on underserved populations and encouraged broader community engagement in child occupant protection. Both commenters suggested increased use of community members as CPS technicians in order to better engage communities, including low-income and underserved populations, in child passenger safety. Safe Kids Worldwide suggested the agency and States work with stakeholders to expand virtual child passenger safety checks. NHTSA encourages States to consider these recommendations when planning their child passenger safety program activities.

SafetyBeltSafe U.S.A. commented that the agency should avoid ''siloing'' interconnected safety issues such as occupant protection and impaired driving and that occupant protection programs should consider more categories of affected populations, such as pregnant people. NHTSA agrees that traffic safety issues may intersect or be interconnected and that countermeasure strategies may need to go beyond strict program boundaries. Occupant Protection grant funds may be used only for the specified occupant protection uses laid out in statute and should consider all relevant aspects of the State's occupant protection problem ID, including, where applicable, any contributing factors.[36] If the specified uses of Section 405(b) grant funds are too narrow to cover a specific project, States should consider whether Section 402 grant funds may be used.

[34] *See https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/812157.*

[35] *See https://carseatcheckform.org/national-dashboard.*

[36] However, high belt use rate States may, consistent with statute, use up to 90 percent of Occupant Protection Grant funds on Section 402 uses. 23 U.S.C. 405(b)(4)(b).

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

The BIL continues, with some changes, the traffic safety information system improvements grant program originally authorized under SAFETEA–LU and extended through MAP–21 and the FAST Act. The purpose of this program remains to support State efforts to improve the data systems needed to help identify priorities for Federal, State and local highway and traffic safety programs and to evaluate the effectiveness of such efforts, to link intra-State data systems, to improve the compatibility and interoperability of State data systems with national data systems and the data systems of other States, and to enhance the ability to observe and analyze national trends in crash occurrences, rates, outcomes, and circumstances. (23 CFR 1300.22(a)).

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

Finally, while not addressed in the regulatory text of this NPRM, the BIL also provided authorization for NHTSA to provide technical assistance to States with respect to improving the program attributes of State safety data. States are encouraged to reach out to their Regional Office for more information on the types of assistance available and how to request that assistance.

In response to the agency's RFC, commenters generally expressed support for fully implementing and encouraging BIL's expansion of allowable costs under this grant program. Those comments are addressed under the relevant heading below.

1. Certification (23 CFR 1300.22(b)(1))

The role of the TRCC in the State Traffic Safety Information System Improvements Grant program under this NRPM remains the same as it was under the FAST Act, but the application requirements have been streamlined. The BIL streamlined the application requirements by allowing States to submit certifications relating to the structure and responsibilities of the State traffic records coordinating committee (TRCC) and the contents of the State traffic record strategic plan. NHTSA proposes to adopt those changes in this NPRM. While States are still responsible for ensuring that the TRCC and strategic plan meet grant eligibility requirements, and these requirements may be subject to NHTSA oversight activities, States are no longer required to provide NHTSA with supporting documentation at the time of application.

State must still have a traffic records strategic plan that has been approved by the TRCC and describes specific quantifiable and measurable anticipated improvements in the State's core safety databases. Previously, States requested guidance from NHTSA on traffic records strategic planning. In response, NHTSA developed a practical guide titled ''State Traffic Records Coordinating Committee Strategic Planning Guide'' (DOT HS 812 773a) [37] that States are encouraged to consult for practical, replicable processes for developing and implementing effective strategic plans.

2. Quantitative Improvement (23 CFR 1300.22(b)(2))

The BIL retained the requirement that States demonstrate quantitative progress in a significant data program attribute of a core highway safety database. This NPRM proposes no substantive changes to this application criteria. However, based on prior questions from States, NHTSA would like to clarify that a State need only submit required documentation demonstrating quantitative improvement in a single data attribute of a core highway safety database.

NHTSA continues to strongly encourage States to submit one or more voluntary interim progress reports to their Regional office prior to the application due date documenting performance measures and supporting data that demonstrate quantitative progress in relation to one or more of the six significant data program attributes. However, Regional office review of an interim progress report does not constitute pre-approval of the performance measure for the grant application.

[37] The guide is *available at https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/812773A.*

5. Award Amounts (23 CFR 1300.22(c))

As mentioned above, NHTSA proposes to move the award amount provisions from 23 CFR 1300.20 into each individual grant program. NHTSA proposes to incorporate the statutory award allocation provision without change.

6. Use of Grant Funds (23 CFR 1300.22(d))

Four commenters addressed the use of Section 405(c) grant funds. GHSA expressed support for the expanded use of funds and specifically noted the new provisions allowing purchase of equipment for use by law enforcement for near-real time electronic reporting of crash data. WI BOTS similarly encouraged use of Section 405(c) grant funds to improve citation and crash reporting. GHSA also requested that NHTSA revise the guidance it previously issued on expenditures under the Section 405(c) grant program. The agency will review whether it needs to rescind or revise the guidance after this rule is finalized. Two commenters (FL DOH and NASEMSO) emphasized the importance of BIL's addition of the National Emergency Medical Services Information System (NEMSIS) into the Section 405(c) grant statute and encouraged use of Section 405(c) grant funds to make data quality improvements, expand access, and support applied research using NEMSIS data. The IAFC encouraged NHTSA to promote greater direct access to NEMSIS data by EMS practitioners. The regulation mirrors the BIL's inclusion of NEMSIS as a traffic safety data system.

As the commenters noted, the BIL expanded the allowable uses of grant funds awarded under this paragraph by specifying several additional allowable uses of funds. This NPRM proposes to incorporate the allowable uses of funds directly from the statute. States should note that the statute, as well as this NPRM, provides that these specified allowable uses are only allowable to the extent that they make data program improvements to core highway safety databases (including crash, citation and adjudication, driver, EMS or injury surveillance system, roadway and vehicle databases) in one of the significant data program attributes (*i.e.,* accuracy, completeness, timeliness, uniformity, accessibility or integration). For example, while the statute provides that States may use grant funds to purchase technology for use by law enforcement for near-real time, electronic reporting of crash data, those purchases must be tied to quantifiable, measurable progress in a program

attribute (*e.g.,* timeliness) of a core highway safety database (*e.g.,* State crash data system).

E. Impaired Driving Countermeasures Grants (23 CFR 1300.23)

The impaired driving countermeasures grant program was created by the Drunk Driving Prevention Act of 1988 and codified at 23 U.S.C. 410. As originally conceived, States could qualify for basic and supplemental grants under this program. Since the inception of the Section 410 program, it has been amended several times to change the grant criteria and grant award amounts. With MAP–21, the impaired driving countermeasures grant program was consolidated into one grant program with other traffic safety grants and codified at 23 U.S.C. 405. The FAST Act made only targeted amendments to the existing grant program under MAP–21, adding flexibility to a separate grant program for States with mandatory ignition interlock laws and creating a new grant program for States with 24–7 sobriety programs.

With the recent passage of the BIL, additional targeted amendments were made to the program with the most significant changes occurring to the interlock grant program that include additional means of compliance and a use of funds section that adds several additional funding categories.

The average impaired driving fatality rate, the basis for most grant awards under this section, refers to the number of fatalities in motor vehicle crashes in a State that involve a driver with a blood alcohol concentration of at least 0.08 percent for every 100,000,000 vehicle miles traveled (VMT). Rate determinations based on FARS data from the most recently reported three calendar years for a State are then averaged to determine a final rate. These determinations are used to identify States as either low-, mid- or high-range States in accordance with the BIL requirements. The agency expects to make rate information available to the States by January each year. If there is any delay in the availability of FARS data in a given year such that it may have an effect on the awarding of grants, the agency may consider allowing the use of rate calculations from the preceding year.

The BIL continues to use the same definitions for low-, mid-, and high-range States. As the agency has noted previously, the agency will not round any rates for the purposes of determining how a State should be classified among these ranges.

1. Definitions (23 CFR 1300.23(b))

The agency proposes to slightly amend the definition of a 24–7 sobriety program to note that State or local courts can carry out a program, consistent with the BIL. 23 U.S.C. 405(d)(7)(A). The agency also proposes to delete the definitions for alcohol and drugs. These definitions were carried over from prior authorizations and are not applicable to these grant requirements. As a basis for the use of grant funds under this section, the agency has deferred to the applicable State law definitions and how the State applies the terms to define various offenses for many years. No changes to any other definitions are proposed for this section.

2. Qualification Criteria for a Low-Range State (23 CFR 1300.23(d)

States that have an average impaired driving fatality rate of 0.30 or lower are considered low-range States. As noted above, the agency will inform each State that qualifies for a grant as a low-range State. These States are not required to provide any additional information in order to receive grant funds. However, States will continue to be required to provide an assurance that they will use grants funds awarded under this section only for the implementation and enforcement of programs authorized under the statute.

The above requirements that apply to low-range States are the minimum requirements that apply to all States that receive a grant under this section.

3. Qualification Criteria for a Mid-Range State (23 CFR 1300.23(e))

States that have an average impaired driving fatality rate that is higher than 0.30 and lower than 0.60 are considered mid-range States. In accordance with the statutory requirements, States qualifying as mid-range States are required to submit a statewide impaired driving plan that addresses the problem of impaired driving. The plan must have been developed by a statewide impaired driving task force within the three years prior to the application due date. If the State has not developed and submitted a plan that meets the requirements at the time of the application deadline, then it must provide an assurance that one will be developed and submitted to NHTSA by August 1 of the grant year. Consistent with the statute, this assurance-based method of compliance is only available during the first year of the grant, covering fiscal year 2024 grants only. No assurance-based compliance is available after the first year, regardless of circumstance. If the State fails to submit the plan related to the first-year grant, the agency will seek the return of any grant funds that the State qualified for based on its assurance that it would submit the plan by the deadline, and will redistribute the grant funds to other qualifying States under this section.

In accordance with the BIL, the agency has reviewed the requirements associated with the impaired driving task force and statewide impaired driving plan and determined that some changes are necessary. The proposed changes recognize the continuing serious problem of impaired driving on our nation's roadways and the need to ensure that the approaches taken to combat the problem are sufficiently comprehensive.

For the statewide impaired driving plan, the plan continues to be organized in accordance with the general areas laid out in NHTSA's Uniform Guidelines for State Highway Safety Programs No. 8—Impaired Driving. The proposed changes to the plan requirements make clear that program management and strategic direction, as well as community engagement, are specific requirements. Although these components are features of the existing Uniform Guideline and some States have included specific related sections in their existing statewide plans, the agency seeks to reinforce the importance of these areas to the development of a comprehensive approach to the problem of impaired driving. Program management and strategic direction, in part, cover things like the development of management policies and procedures that ensure program activities are equitably and effectively undertaken and that the activities pursued have maximum value to the public. These policies also focus on identifying needs in the State to ensure sufficient funding and staffing exist to support the impaired driving activities identified. In addition, the proposal adds community engagement as a specific part of the prevention section. Although this approach follows the Uniform Guideline, States are free to identify community engagement as a separate section in their plan. A plan that provides for community engagement and seek community-supported enforcement stands a better chance of overall success. It also reinforces the BIL's requirement that States support data-driven traffic safety enforcement programs that foster effective community collaboration. 23 U.S.C. 402(b)(E)(i). Similarly, the activities should strive to include all demographics and engage prevention strategies through a variety of means.

Community engagement, for example, should involve groups like schools, businesses, medical professionals, community organizers and coalitions as part of an impaired driving activity.

All qualifying plans also must be developed by a statewide impaired driving task force. As part of a more comprehensive strategy for addressing impaired driving, the proposal increases the number of required members of the task force. In addition to key stakeholders from the State highway safety office, State and local law enforcement, and representatives of the criminal justice system, public health officials, experts in drug-impaired driving countermeasures (such as a DRE coordinator), and specialists in communications and community engagement must be included. Public health officials and experts in drug-impaired countermeasures recognize the increasing prevalence of drug intoxication in impaired driving offenses, while communications and community engagement specialists add expertise on means to ensure that activities are understood and supported at local levels.

NHTSA continues the streamlined approach it took under prior authorizations for the application, only requiring the submission of one document (in addition to any required assurances and certifications)—a Statewide impaired driving plan—to demonstrate compliance with the statute. The plan document should be self-contained, including all required information without the need for appendices or references to information unless it is already contained elsewhere in the impaired driving countermeasures grant application. Within the plan document, there should be three separate sections.

The first section requires the State to provide a narrative statement that explains the authority of the task force to operate and describes the process used by the task force to develop and approve the plan. The State must also identify the date of approval of the plan. The information will help the agency to determine compliance with the requirement that the impaired driving plan be developed by a task force within three years prior to the application due date.

In comments submitted to the agency, GHSA indicated that States must include a ''statutory authority'' to convene the impaired driving task force and recommended that NHTSA provide a means to allow States to use a ''non-statutorily established impaired driving task force.'' As with the prior regulation, the agency's proposal continues the requirement that a State simply identify the authority and basis for operation of the task force. This requirement does not specify that a task force have a statutory basis and only seeks a narrative statement that explains the authority. For example, if the authority is derived from the Governor's executive powers as opposed to a State law, the narrative statement can describe this basis. The critical aspect is that the State provide a reasonably clear explanation of its authority to operate and the basis to provide guidance to State and local officials on addressing impaired driving issues in the State.

The second section requires a list of task force members that includes names, titles and organizations for each person. The information must allow the agency to determine that the task force includes key stakeholders from the identified areas. The State may include other individuals on the task force, as determined appropriate, from areas such as 24–7 sobriety programs, driver licensing, data and traffic records, ignition interlock, treatment and rehabilitation, and alcohol beverage control. The goal is that the State has identified individuals from different backgrounds that will bring varying perspectives to impaired driving countermeasure activities such that a comprehensive treatment of the problem is assured.

GHSA commented on the requirement to include a list of task force members, indicating that States should be allowed to certify to the list in their HSPs if the information is already included in the impaired driving plan submission. While the agency does not have an issue with an approach where a State provides a cross-reference in one section to identical information found elsewhere in its application, we are not familiar with a specific requirement to provide the task force member information in the HSP. Without more information about the concern, we cannot fully address it in this proposal. The agency notes that with HSPs moving to a triennial requirement, the need to provide similar information in various parts of the application is lessened.

The final section requires the State to provide its statewide plan to reduce and prevent impaired driving. As noted above, the plan is required to be organized in accordance with the Highway Safety Program Guideline No 8—Impaired Driving, and cover the specified areas. Each area is defined within the guideline. Plans that do not cover the required areas are not eligible to receive a grant. States may cover other areas in their plans provided the areas meet the qualifying uses of funds (as identified in the BIL).

4. Qualification Criteria for a High-Range States (23 CFR 1300.23(f))

States that have an average impaired driving fatality rate that is 0.60 or higher are considered high-range States. In accordance with the statutory requirements, a State qualifying as high-range State is required to have conducted a NHTSA-facilitated assessment of its impaired driving program within the three years prior to the application due date or provide an assurance that it will conduct an assessment during the first grant year.

High-range States are also required to submit a statewide impaired driving plan that addresses the problem of impaired driving. The plan must have been developed by a statewide impaired driving task force (both the task force and plan requirements are described in the preceding section under mid-range States). If the State has not developed and submitted a plan that meets the requirements at the time of the application deadline, then similar to a mid-range State, the State must provide an assurance that one will be developed and submitted to NHTSA by August 1 of the grant year in order to receive a grant. Consistent with the statute, these assurances for high-range States are only available during the first year of the grant, covering fiscal year 2024 grants. No assurance-based compliance is available after the first year, regardless of circumstance. If the State fails to submit the plan, the agency will seek the return of any grant funds that it qualified for based on its assurance, and will redistribute the grant funds to other qualifying States under this section.

In addition to meeting the requirements associated with developing a statewide impaired driving plan, the plan also must address any recommendations from the required assessment. The plan also must include a detailed strategy for spending grant funds and include a description of how such spending supports the statewide impaired driving programs and will contribute to the State meeting its impaired driving program performance targets.

High-range States must update the plan in each subsequent year of the grant and then submit the updated statewide plan for NHTSA's review.

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

Under the BIL, a separate grant for States with alcohol-ignition interlock laws has been extended. The BIL made

no changes to the provisions that existed in prior authorizations that provided grants to States that adopted and enforced mandatory alcohol-ignition interlock laws for all individuals convicted of a DUI offense. The statute also continues three exemptions from these mandatory interlock requirements. Specifically, a State's law may include exceptions from mandatory interlock use if—(1) an individual is required to drive an employer's motor vehicle in the course and scope of employment, provided the business entity that owns the vehicle is not owned or controlled by the individual; (2) an individual is certified in writing by a physician as being unable to provide a deep lung breath sample for analysis by an ignition interlock device; or (3) a State-certified ignition interlock provider is not available within 100 miles of the individual's residence. The agency's proposal makes no changes to these requirements and the current implementation that mandatory interlock use apply for not less than 6 months (or 180 days).

Under the BIL, two additional bases for compliance have been added to the grant. A State can receive a grant if it restricts driving privileges of individuals convicted of driving under the influence of alcohol or of driving while intoxicated until the individual installs on each motor vehicle registered, owned, or leased an ignition interlock for a period of not less than 180 days. 23 U.S.C. 405(d)(6)(ii). Separately, a State can receive a grant by requiring individuals that refuse a test to determine the presence or concentration of an intoxicating substance to install an interlock for a period of not less than 180 days. 23 U.S.C. 405(d)(6)(iii). This grant criterion also requires the State to have a compliance-based removal program that requires an individual convicted of a DUI to have an interlock installed for not less than 180 days and to serve a minimum period of interlock use without program violations before removal of the interlock. *Id.* The proposed regulation makes some edits to these additional grant criteria, but these are not intended to be substantive changes. The agency intends to implement the statutory language in as clear a way as possible in regulation so that States understand the basis for compliance.

The agency received several comments on the new grant criteria. Brandy Nannini expressed general support for the increased number of grant criteria and the potential that more States might receive awards. A joint comment submitted by GHSA, Responsibility Initiatives, National Alliance to Stop Impaired Driving, Mothers Against Drunk Driving, National Safety Council, and Council of Ignition Interlock Manufacturers (hereinafter ''group commenters'') noted the two additional methods of compliance. The group commenters also encouraged NHTSA ''to utilize . . . funding to the fullest extent possible.'' The proposal would incorporate into the regulation the statutory language of the additional grant criteria with only clarifying changes. The agency plans to provide grant awards to all States that demonstrate compliance.

The group commenters also provided comments on the first new criterion that requires an offender to meet an installation requirement of not less than 180 days before receiving licensing privileges. The group commenters noted that the requirement does not apply to all offenders but simply to ''an individual required to show proof of installation of an interlock after conviction. . . .'' As noted above, NHTSA proposes to use the statutory language as the basis for compliance determinations. To the degree the group commenters are noting the statutory basis for compliance and urging its use as the basis for determinations, the agency agrees with such an approach. Accordingly, the agency's proposal only applies the requirement to those offenders that are required to use an interlock as a result of their conviction for driving under the influence.

The agency also received comments on the second new criterion. As a general matter, the group commenters noted that the criterion ''components are to be read together'' and the State must satisfy both requirements to qualify for a grant. The agency agrees that the structure of the criterion has three distinct requirements, and the State must demonstrate compliance with each to receive a grant. The group commenters also noted that the statute is clear ''that the State law only requires a sanction be imposed'' and that criminal convictions are not necessary. The agency agrees with the observation that the criterion covers more than just the individuals convicted of a refusal and that the installation requirement also covers those administratively sanctioned for test refusal. In order to meet this component, in accordance with the statute, State law must show that for each type of offender required to install an interlock, the interlock period must be for not less than 180 days.

For the compliance-based removal program, the agency received comments from the group commenters and, individually, from GHSA. The group commenters touted the compliance-based removal process as something that ''will better ensure that individuals who are at risk of recidivism remain on the ignition interlock until behavior has changed to better ensure public safety.'' The group commenters also noted that ''this criterion is met if an individual is required to meet a States' compliance based removal standard rather than the requirement that it is mandatory for all individuals who install an ignition interlock.'' In accordance with the statute, the agency's proposal does not apply to all individuals who install interlocks, but only to those convicted of the specified offenses *and* also ordered to use an interlock. State law will need to apply the compliance-based program requirements to those offenders. Under the requirement, the group commenters also requested that ''NHTSA should show flexibility and should work with states to define what constitutes a program violation.'' GHSA went further in a separate comment to request that NHTSA not limit eligibility for what qualifies as compliance-based removal. GHSA noted that ''States have established a range of typical program violations [and] . . . may consider additional violations and future new best practices. . . .'' Accordingly, GHSA urges ''NHTSA not to limit State eligibility with a restriction that may be difficult to update.'' In general, we agree with the approach and do not believe it is necessary to define specifically what constitutes a program use violation under the grant. Accordingly, the agency will defer to the States on program violations. In the application, States must still identify compliance-based removal information, specifying the period of the installation requirement and separate information indicating the completion of a minimum consecutive period of not less than 40 percent of the required period of ignition interlock installation (immediately preceding the date of release of the individual without a confirmed violation of the program use requirements).

6. Grants to States With a 24–7 Sobriety Program (23 CFR 1300.23(h))

The agency's proposal continues a separate grant for States with 24–7 sobriety programs consistent with the statutory requirement. Although the definition of a 24–7 sobriety program has been slightly amended to note that State or local courts can carry out a program, this does not affect the qualifying basis for a grant. 23 CFR 1300.23(b).

The first requirement mandates that a State enact and enforce a law that requires all individuals convicted of driving under the influence of alcohol or of driving while intoxicated to receive a restriction on driving privileges for at least 30 days. The second requirement mandates that a State provide a 24–7 sobriety program. States should continue to submit information identifying a State law or program that authorizes a 24–7 sobriety program in line with the statutory requirement.

GHSA commented that States should qualify on the basis of identifying a State statute authorizing ''local 24/7 sobriety programs.'' The basis for compliance is a determination of whether the State law or program meets the definition of a 24–7 sobriety program. The entities that carry out the State law or program are not part of the evaluation. A State law could be submitted that authorizes local courts to carry out a 24–7 sobriety program, for example. Provided the State law meets the statutory definition of a 24–7 sobriety program it would be eligible for a grant.

7. Award Amounts (23 CFR 1300.23(i))

As in the explanation for 23 CFR 1300.20, above, in today's action, the agency proposes to move award allocation provisions from the general section of the rule into the specific grant programs. We propose to incorporate the statutory allocation provisions without substantive change.

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

The BIL specifies the eligible uses of the grant funds, and the agency's proposal codifies those uses without change. With the exceptions discussed below, grant funds may be distributed among any of the uses identified in the BIL. The agency has adopted in its proposal the statutory basis for using grant funds depending on whether the State has qualified as a low-, med- or high-range State or is receiving separate grant funds as a State with either alcohol-ignition interlock laws or 24–7 sobriety programs. No changes have been made to these requirements.

The agency received comments related to the specific uses of grant funds that were added in the BIL. Brandy Nannini submitted a comment that expressed support for some of these new grant uses as being important to state success. The comment specifically mentioned the ability to use funds to backfill officers during drug recognition expert (DRE) training and, separately, to purchase new screening and testing technologies. In a related comment, GHSA urged that NHTSA should ''allow the use of [grant] funding to temporarily replace officers in DRE training or serving as a DRE instructor'' to include ''funding for compensation for officers who are not involved in grant-eligible activities.'' Under the BIL, a new provision allows grant funding to be used to provide compensation for a law enforcement officer to carry out safety grant activities while another law enforcement officer involved in safety grant activities is away receiving drug recognition expert training or participating as an instructor in drug recognition expert training. This backfill provision allows police agencies to send officers to training without sacrificing overall levels of service. By its terms, however, the statutory provision limits compensation to law enforcement officers that carry out *safety grant activities.* 23 U.S.C. 405(d)(4)(B)(iii). Regardless of whether ''safeguards'' could be deployed to limit potential abuse of GHSA's desired approach, the statutory language is clear and does not support compensation for other than safety grant activities. Where the language is unambiguous, the agency must follow the statute as written.

GHSA also provided a comment indicating that ''States have expressed a sense of ambiguity whether they can spend federal funds in support of oral fluid testing programs and other leading technological applications to address impaired driving that may often not yet be considered 'proven effective countermeasures.' '' GHSA recommends that NHTSA allow funds to be used to test and implement new allowable initiatives. Under the BIL, a new provision allows funds to be used for ''testing and implementing programs, and purchasing technologies, to better identify, monitor, or treat impaired drivers, including . . . oral fluid-screening technologies.'' 23 U.S.C. 405(4)(xi). On that basis, States are allowed to use funds for such expenditures. However, all requirements associated with grant expenditures under this regulation and 2 CFR part 200 would apply to such uses. Because such expenditures have the potential to result in wasteful uses of Federal taxpayer funds, States should expect NHTSA to apply the uniform administration requirements to such activities, including such general concepts as reasonableness, allowability, and allocability of any proposed funding. In addition, States are reminded that equipment only purchases are not permitted and any such purchases would need to be carried out as part of an approved traffic safety activity that meets all associated requirements. Further, the statute explicitly states that these technologies are eligible as part of ''developing and implementing *programs.*'' Accordingly, the agency will not approve the purchase of any technologies that are not part of a State's activities to develop and implement an eligible program.

The National Sheriffs' Association recommended that NHTSA consider funding to encourage State legislation related to stricter penalties for impaired driving. NHTSA notes that this is not a specified allowable use of funds under the BIL and that Federal grant funds may not be spent on lobbying.

F. Distracted Driving Grants (23 CFR 1300.24)

MAP–21 established a new program authorizing incentive grants to States that enact and enforce laws prohibiting distracted driving. Few States qualified for a distracted driving grant under the statutory requirements of MAP–21. The FAST Act amended the qualification criteria for a distracted driving grant, revising the requirements for a Comprehensive Distracted Driving Grant and providing for Special Distracted Driving Grants for States that do not qualify for a Comprehensive Distracted Driving Grant. While more States qualified for grants under the FAST Act, the criteria remained difficult for States to meet.

The BIL resets the distracted driving incentive grant program by significantly amending the statutory compliance criteria. The statute establishes two types of distracted driving grants—distracted driving awareness on the driver's license examination and distracted driving laws. A State may qualify for both types of distracted driving grants. At least 50 percent of the Section 405(e) funds are available to States that include distracted driving awareness as part of the driver's license examination, and not more than 50 percent of the Section 405(e) funds are available to States for distracted driving laws.[38]

1. Distracted Driving Awareness Grant (23 CFR 1300.24(c))

The basis for a Distracted Driving Awareness Grant (''Awareness Grant'') is the requirement that the State test for distracted driving awareness as part of the State driver's license examination.

[38] One commenter, Paul Hoffman, submitted a comment requesting that NHTSA enforce the hands-free cell phone use prohibition in Monsey, NY. NHTSA does not have authority to enforce requirements in local jurisdictions; that comment is therefore outside the scope of this rulemaking.

23 U.S.C. 405(e)(2). Typically States have a battery of questions that are randomly assigned to an examinee in a ''regular'' or ''normal'' driver's license examination. If distracted driving awareness is included as part of the battery of random questions, the State may be eligible for an Awareness Grant. To demonstrate this requirement, NHTSA proposes that the State submit at least one sample distracted driving question from its driver's license examination as part of its application.

In a letter to NHTSA, GHSA interpreted the changes in the BIL as automatically distributing 50 percent of the section 405(e) funds to all States but limiting State expenditure to the authorized uses under Section 405(e)(8). This interpretation is not supported by the statutory language. The Section 405(e)(2) *Grant Program* specifies that NHTSA ''shall provide a grant . . . to any State that includes distracted driving awareness as part of the driver's license examination of the State.'' This provision would have no meaning under GHSA's interpretation of automatic distribution of the distracted driving grant funds. For this reason, NHTSA believes that that at least 50 percent of the distracted driving grant funds are to be allocated to States that include distracted driving awareness as part of the State's driver's license examination.

2. Distracted Driving Law Grant (23 CFR 1300.24(d))

The BIL sets out three different types of laws for which a State may qualify for a Distracted Driving Law Grant (''Law Grant''): (1) prohibition on texting while driving; (2) prohibition on handheld phone use while driving; and (3) prohibition on youth cell phone use while driving. 23 U.S.C. 405(e)(3)(B). In its letter, GHSA interpreted the changes in the BIL as allocating the ''remaining 50%'' among States with a qualifying distracted driving law for banning texting, banning handheld use, or banning teen cell phone use. GHSA further claimed that States are eligible for an ''extra 25% of their apportionment'' if the State prohibits a driver from viewing a device while driving. NHTSA agrees with GHSA that a State can qualify for a grant under Section 405(e) with a either law banning texting while driving, handheld use while driving, OR youth cell phone use while driving. However, the agency does not agree that States are eligible for an extra 25 percent for prohibiting viewing while driving. Such an interpretation is not supported by the language of the statute. Section 405(e)(3)(B)(iv) states that ''the allocation under this subparagraph to a State that enacts and enforces a law that prohibits a driver from viewing a personal wireless communications device (except for purposes of navigation) *shall be 25 percent of the amount* calculated to be allocated to the State under clause (i)(I).'' This language does not provide an additional or extra allocation. A further point against such an interpretation is that it might not be executable. For example, if all States qualified for a primary distracted driving law grant, each State would receive 100 percent of the allocated amount, and no additional funds would be available to distribute an extra 25 percent to States that also prohibit viewing while driving.

While this statutory language is not without ambiguity,[39] the agency believes that in order to give meaning to all provisions in Section 405(e)(3), a State may be eligible for 25 percent of the State's allocation if the State law prohibits viewing a personal wireless communications device and does not meet the criteria for a law banning texting while driving, handheld use while driving, OR a youth cell phone use while driving. The BIL appears to set out a structure to incentivize States with higher grant awards to enact and enforce stricter distracted driving laws, *e.g.,* 100 percent for primary texting compared to 50 percent for secondary texting. By allocating grant funds to a State with a law that only prohibits viewing while driving, the statute limits that allocation to the smallest amount, *i.e.,* 25 percent. As a result, a State may qualify for 100 percent for a primary texting, handheld or youth law; 50 percent for a secondary texting, handheld or youth law; or 25 percent for a law prohibiting the viewing of a personal wireless communications device.

Accordingly, the agency proposes making a grant to a State for a conforming law that prohibits one of the following: (1) texting while driving; (2) handheld phone use while driving; (3) youth cell phone use while driving; or (4) viewing while driving. The agency further proposes that a State that is able to meet more than one of these eligibility requirements would be approved for the award that results in the highest grant amount. The statute prescribes in detail the criteria for a conforming law, including definitions and exceptions. As discussed below, the agency proposes to adopt the criteria, including definitions and exceptions, without change.

i. Definitions (23 CFR 1300.24(b))

The statute defines the terms driving, personal wireless communications device, text, and text message.[40] While the definition of driving remains unchanged, the BIL changed the definition of personal wireless communications device adding the following to the existing definition: ''a mobile telephone or other portable electronic communication device with which a user engages in a call or writes, sends, or reads a text message using at least 1 hand.'' 23 U.S.C. 405(e)(1)(B). It is the agency's understanding that this language captures a subset of devices that is already covered under the existing language (*i.e.,* a device through which personal wireless services are transmitted). Therefore, this amendment would not substantively change the devices covered by the existing definition. The BIL also changed the FAST Act's term for ''texting'' to ''text'' and also added ''manually to enter, send, or retrieve a text message to communicate with another individual or device'' to the essentially unchanged definition. 23 U.S.C. 405(e)(1)(E). Similarly, the added language includes a smaller subset of behaviors that were already included under the original language (*i.e.,* to read from, or manually to enter data into, a personal wireless communications device); and this addition would not substantively change the definition of ''text''. Finally, the BIL added a new definition for ''text message.'' 23 U.S.C. 405(e)(1). NHTSA proposes to adopt these statutory definitions without change.

ii. Prohibition on Texting While Driving (23 CFR 1300.24(d)(1))

The BIL retained much of the FAST Act requirements for a conforming law prohibiting texting while driving. In order to qualify, the statute provides that the State law must prohibit a driver from texting through a personal wireless communications device while driving; must establish a fine for a violation of the law; and must not provide for an exemption that specifically allows a driver to use a personal wireless communications device for texting while stopped in traffic. The BIL changed the FAST Act requirement for a minimum fine by striking ''minimum.'' To implement this change, the agency deletes the existing

[39] The Bipartisan Infrastructure Law does not have any legislative history on the distracted driving grant to help explain the intent of this provision.

[40] The statute also defines primary offense and public road. Those definitions are applicable to other section 405 grants. For consistency, those terms are defined in 23 CFR 1300.20(b).

requirement for a minimum fine of $25, which the agency implemented in the MAP–21 and FAST Act rulemakings. NHTSA proposes to adopt the statutory language without change. Finally, the agency notes that the BIL removes primary enforcement of the texting law from the qualification requirements, and as discussed above, allows the State to receive 100 percent of its allocation if the State's conforming law is enforced as a primary offense.

iii. Prohibition on Handheld Phone Use While Driving (23 CFR 1300.24(d)(2))

The prohibition on handheld phone use while driving is new under the BIL. The statutory language is clear that the State law must prohibit a driver from holding a personal wireless communications device while driving in order to satisfy this component for a conforming law prohibiting handheld phone use while driving. The State law must also satisfy two additional components for a qualifying law, the same as those for a prohibition on texting while driving law—establish a fine for a violation of the law and not provide an exemption that specifically allows a driver to use a personal wireless communications device for texting while stopped in traffic. NHTSA proposes to adopt these provisions without change.

iv. Prohibition on Youth Cell Phone Use While Driving or Stopped in Traffic (23 CFR 1300.24(d)(3))

As with the prohibition on texting while driving law, the BIL retained much of the FAST Act requirements for a conforming law prohibiting youth cell phone use while driving. However, the BIL amended the requirement for a youth law by striking the reference to the State Graduated Driver Licensing Incentive Grant, which was repealed. Instead, the State law must now prohibit a driver from using a personal wireless communications device while driving if the driver is under 18 years of age or in the State's learner's permit or intermediate license stage in order to qualify for a grant. Graduated driver licensing, also known as a multi-stage licensing process, is a three-phase system for beginning drivers consisting of a learner's permit, an intermediate or provisional license, and a full license. A learner's permit allows driving only while supervised by a fully licensed driver. An intermediate or provisional license allows unsupervised driving under certain restrictions, such as nighttime or passenger restrictions. While the graduated driver licensing program differs from State to State, the agency does not intend to define any specific requirements for the learner's permit or intermediate license stages. In order to satisfy this component, the State law must prohibit a younger driver in the State's learner's permit or intermediate license stage from any use of a personal wireless communications device while driving. Note that the State law must not provide an exemption for hands-free use. Similar to the texting law discussed above, the BIL also strikes ''minimum'' from the fine requirement and removes primary enforcement from the qualification requirements, and the agency proposes to adopt these changes without change.

v. Prohibition on Viewing a Personal Wireless Communications Device While Driving (23 CFR 1300.24(d)(4))

As discussed above, the statute is not specific regarding the allocation for a State that enacts and enforces a law that ''prohibits a driver from viewing a personal wireless communications device (except for purposes of navigation).'' The BIL incentivizes States to enact and enforce three different types of laws (prohibition on texting while driving, handheld phone use while driving, and youth cell phone use while driving), with higher grant amounts for the strictest of these laws, *e.g.,* States with primary enforcement laws receive 100 percent of their allocation and States with secondary enforcement laws receive 50 percent of their allocation. The agency believes that by awarding a still smaller percentage of the State's allocation (25 percent) for a law that prohibits a driver from viewing a personal wireless communications device, Congress intended that lower threshold to result in an award only when a State could not meet the higher threshold of any one of the other three laws identified in the statute. For this reason, the agency proposes that a State law that simply prohibits viewing a personal wireless communications device (except for navigation purposes) would meet the requirements for this grant. The agency proposes that no other elements, *e.g.,* fine, restricted exceptions, applicable to the other distracted driving laws would apply for this grant.

3. Award Amounts (23 CFR 1300.24(e))

For both grants, the BIL specifies how grant funds are allocated among the States—based on the proportion that the apportionment of the State under section 402 for fiscal year 2009 bears to the apportionment of all States under section 402 for that fiscal year. 23 U.S.C. 405(e)(3). In determining the grant award under each distracted driving grant, NHTSA proposes to apply the section 402 apportionment formula for fiscal year 2009 as if all States qualified for grants and then make awards to qualifying States based on the application of the formula.

4. Use of Funds (23 CFR 1300.24(f))

The BIL made no changes to the use of funds for a distracted driving grant. However, NHTSA proposes to amend the language for demonstrating conformance with MMUCC. In 2020, NHTSA mapped States' conformance with the most recent MMUCC. Instead of requiring States to complete the NHTSA-developed MMUCC Mapping spreadsheet within 30 days, NHTSA proposes to require States to submit its most recent crash report with the distracted driving data element(s) within 30 days of award. NHTSA can then confirm whether the State's distracted driving data element(s) conform(s) to the most recent MMUCC.

G. Motorcyclist Safety Grants (23 CFR 1300.25)

In 2005, Congress enacted SAFETEA–LU, which authorized the Motorcyclist Safety Grants under section 2010. This grant program has largely remained unchanged since it was established, despite several revisions to the National Priority Safety Programs (23 U.S.C. 405).

Under BIL, Congress amended the Motorcyclist Safety Grants by increasing the number of criteria available for a state to qualify for a grant to seven from six and made a minor terminology change to ''crash'' from accident in two paragraphs. A State is eligible under the new criterion if a State has a helmet law that requires the use of a helmet for each motorcycle rider under the age of 18. 23 U.S.C. 405(f)(3)(C). With the addition of this criterion, States qualify for a grant by meeting two of the following seven grant criteria: Motorcycle Rider Training Course; Motorcyclists Awareness Program; Helmet Law; Reduction of Fatalities and Crashes Involving Motorcycles; Impaired Driving Program; Reduction of Fatalities and Crashes Involving Impaired Motorcyclists; and Use of Fees Collected from Motorcyclists for Motorcycle Programs. The BIL made no additional amendments to the Motorcyclist Safety Grants. Today the agency proposes amendments to 1300.25 to incorporate these changes and to update references to planned activities in the annual HSP for the new triennial framework. We discuss the new Helmet Law criterion in further detail below. NHTSA received no comments related to the Motorcycle Safety Grants.

1. Helmet Law Criterion (23 CFR 1300.25(c))

To be eligible for a Motorcyclist Safety Grant under this criterion, the BIL requires that a ''State shall have a law requiring the use of a helmet for each motorcycle rider under the age of 18.'' *See* Public Law 117–58, section 24105(a)(6). We interpret this to require a mandatory helmet law for all riders under 18 years of age with no exceptions. This view is based upon language of the statute and the existing definition ''motorcycle'' in § 1300.25. The express language of the statute requires a State that seeks to qualify under this criterion to have a mandatory helmet law for all individuals under 18 that ride on a motorcycle. Under § 1300.25, a motorcycle means ''a motor vehicle with motive power having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground.'' 23.CFR 1300.25(b). Under today's proposed action, a State law that exempts any individual under age 18 or any vehicle meeting the definition of a motorcycle, such as a moped or a low speed vehicle, from its helmet law would not qualify under the criterion. To demonstrate compliance with this criterion, a State will have to submit, in accordance with part 7 of appendix B, the citation to the State law that requires the use of a helmet for each motorcycle rider under the age of 18.

2. Award Amounts (23 CFR 1300.25(l))

As described above, NHTSA proposes to address award amounts in the grant-specific sections. NHTSA therefore proposes to incorporate the statutory award distribution formula and limitation for the motorcyclist safety grant in the regulatory text at 23 CFR 1300.25(l).

H. Nonmotorized Safety Grants (23 CFR 1300.26)

The FAST Act introduced the nonmotorized safety grant as part of the National Priority Safety Programs, recognizing the need for a stand-alone safety grant for roadway users outside the motor vehicle. The BIL changed the nonmotorized safety grant to help address the recent exponential rise in pedestrian and bicyclist fatalities and the growing use of low-powered or nonmotorized personal transportation devices such as e-scooters and electric bicycles (which it defines as non-motorized). Pedestrian and bicyclist fatalities have continued to rise, from 14 percent of total motor-vehicle-related traffic fatalities in 2009 to approximately 19 percent today. Further, micromobility, which includes such vehicles as e-scooters, e-bikes and other low-speed personal transporters, is a mode of transportation that both holds promise for users with physical challenges and offers more affordable mobility. However, micromobility is changing rapidly and growing in use, and States are struggling to keep pace with these emerging modes of transportation and their safety implications.

Research-driven and innovative countermeasures and strategies that address safety and accessibility problems can significantly differ for pedestrians, bicyclists, or micromobility users. States often make significant roadway infrastructure improvements, such as raised crosswalks, narrowing lanes, separated bike lanes, or pedestrian refuge islands, to create safe, accessible and equitable transportation for nonmotorized users. However, behavioral safety countermeasures, such as outreach, education, community engagement, enforcement, and data analysis are essential for a comprehensive approach to nonmotorized road user safety. The Section 405(g) grant aims to address the unique needs of nonmotorized roadway users with non-infrastructure investments.

1. Eligibility Determination (23 CFR 1300.26(b))

Similar to the grant under the FAST Act, States are eligible for a nonmotorized safety grant under the BIL if the State's nonmotorized road user fatalities in the State exceed 15 percent of the total annual crash fatalities in the State, based on the most recent final FARS data. However, while the FAST Act specified combined pedestrian and bicyclist fatalities, the BIL expands the definition of nonmotorized road user to a pedestrian; an individual using a nonmotorized mode of transportation, including a bicycle, scooter, or personal conveyance; and an individual using a low-speed or low-horse powered motorized vehicle, including an electric bicycle, electric scooter, personal mobility assistance device, personal transporter, or all-terrain vehicle. NHTSA plans to adopt this definition without change. Using FARS data, NHTSA proposes to calculate the percentage of each State's annual nonmotorized road user fatalities in relation to the State's annual total crash fatalities, using Statistical Analysis System (SAS) software and truncating the calculation. Consistent with the statute, all States that exceed 15 percent will be eligible for a grant.

The agency proposes to inform each State that is eligible for a grant prior to the application due date.

2. Qualification Criteria (23 CFR 1300.26(c))

To qualify for a grant under this section, NHTSA proposes to change the self-certification as the application for a nonmotorized safety grant under the previous regulation and require States to submit a list of project(s) and subrecipient(s) information the State plans to conduct in the fiscal year of the grant consistent with § 1300.12(b)(2). NHTSA believes that this aligns the application requirements for the nonmotorized safety grants with the other highway safety grants.

3. Use of Funds (23 CFR 1300.26(d))

The BIL makes significant amendments to the use of funds for the nonmotorized safety grant program. Under the FAST Act, the statute limited the use of funds to activities related to *State* traffic laws on pedestrian and bicycle safety, such as law enforcement training, mobilizations and campaigns, and public education and awareness programs. This not only presented challenges to the States in terms of identifying narrowly defined projects in communities where the greatest need exists, but also failed to address the unique needs of each community's nonmotorized crash problem. As noted by several commenters, the BIL expands the eligible uses to the safety of nonmotorized road users, as defined by the statute. *See* GHSA; League of American Bicyclists. Activities related to State traffic laws on nonmotorized road user safety continue as allowable uses under the statute, but the broadened eligible use of funds will provide States with the flexibility to use behavioral safety countermeasures that will best address the nonmotorized road user problem, both at the State level and at the local level.

The Safe System Approach intentionally broadens the focus of addressing highway safety problems, such as nonmotorized road user safety, to more systemic, community-level strategies. Using the Safe System Approach and a comprehensive problem identification process as guiding principles, each community's nonmotorized safety grant project within each State's highway safety program will likely be unique.[41] State

[41] Communities are strongly encouraged to adopt a Safe System Approach (see *https://safety.fhwa.dot.gov/zerodeaths/docs/FHWA_SafeSystem_Brochure_V9_508_200717.pdf*) in applying non-motorized safety grant funds to their

highway safety offices are well-positioned to ensure nonmotorized safety grant funds are directed to the communities most overrepresented in crashes from their State-level data analysis. However, pedestrian, bicycle and micromobility safety programs cannot be developed as a one-size-fits-all approach. In order to be effective, States should customize their approach to meet each community's specific needs, based on problem identification that involves not only crash and exposure data, but also demographic analysis, observational surveys and community assessments. Depending on the specific community's problem identification, for instance, States may use grant funds for expanded eligible uses, such as Walking Safety Assessments, nonmotorized community traffic safety programs, costs related to outreach, and staffing a pop-up bicycle lane.

Several organizations and members of the public commented on the use of funds for the nonmotorized safety grant. One commenter, Tom Schwerdt, recommended that designs need to be changed to get cyclists and pedestrians out of the roadway. The BIL specifies eligible uses for the nonmotorized grant funds, and the statute does not allow them to be used for infrastructure designs. However, States may use grant funds to raise public awareness and provide education to inform road users of infrastructure designed to improve nonmotorized road user safety. *See* League of American Bicyclists. The League of American Bicyclists also commented that NHTSA and States should engage community groups to build support for infrastructure safety improvements that will influence road user behavior and address systemic racism that has led to disparities and roadway fatalities, including to nonmotorized road users. Under the expanded eligible use of funds for nonmotorized grants, States may use grant funds for the safety of nonmotorized road users, including engaging with community groups. In addition, NHTSA is engaging with other Department of Transportation modal administrations and outside stakeholders on ways to influence road user behavior and address disparities in roadway fatalities. While Love to Ride suggested that the agency list specific eligible uses of funds, NHTSA does not believe that such an approach would serve the interests of the flexibility afforded by the statute, and proposes instead to adopt the broad statutory language. NHTSA notes that many of these uses, such as training (virtually or in-person), are allowable uses of funds under the nonmotorized grant program and Section 402 grants.

I. Preventing Roadside Deaths Grants (23 CFR 1300.27)

The BIL created a new Preventing Roadside Death grant program, authorizing grants to prevent death and injury from crashes involving motor vehicles striking other vehicles and individuals stopped at the roadside. The purpose of the new grant program is to support State efforts to decrease roadside deaths involving vehicles and pedestrians on the side of the road. NHTSA proposes a new § 1300.27 to implement the Preventing Roadside Death grant program.

The agency received several comments that acknowledge the safety risk posed by disabled vehicles and supported the Preventing Roadside Death grant program for both first responders and civilians.[42] ESS submitted comments that underscore the prevalence of deaths and injuries and the increased harm that results to individuals and first responders when a vehicle is disabled on the side of the road. It demonstrated that roadside crashes disproportionately affect low-income and African American communities.

1. Definitions (23 CFR 1300.27(b))

The BIL did not define terms in section 23 U.S.C. 405(h). In order to provide clarity, today's proposal includes definitions for digital alert technology, optical visibility, and public information campaign. The agency developed these definitions based on what we consider common understanding of the terms. We seek comment on these proposed definitions.

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

As directed by the BIL, a State is eligible for a Preventing Roadside Death grant if it submits a plan that describes the method by which the State will use grant funds according to the eligible uses identified in the statute. 23 U.S.C. 405(h). Consistent with the BIL, NHTSA proposes that States submit a plan that requires information familiar to States and is consistent with the type of information States provide in other plans provided to NHTSA. Accordingly, we propose that the State's plan, at a minimum, list the eligible use(s) selected, identify the specific safety problems to be addressed, and specify the performance measures and targets, and the countermeasure strategies and projects that implement those strategies, that the State will use to address those problems. We seek comments on the proposed criteria to be included in the State's plan and whether additional information should be included in the plan.

3. Award Amounts (23 CFR 1300.27(d))

The agency incorporates the statutory award allocation provision into the regulation.

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

The BIL specifies with particularity how States may use Preventing Roadside Death grant funds. 23 U.S.C. 405(h)(4). Today, we propose to adopt the BIL language without change.

NHTSA received several comments related to use of funds under this grant program. ESS notes that the statute authorizes the use of funds to ''pilot and incentivize measures, including optical visibility measures, to increase the visibility of stopped and disabled vehicles'' (23 U.S.C. 405(h)(4)(E)) and encourages the agency to promote the grant to address the disabled vehicle safety issue. Another vendor, Haas Alert, encourages NHTSA to address impediments that exist for a State to apply for a grant such as contract administration costs and the inability of private industry to subcontract with States. Meanwhile, Paul Hoffman encourages the agency to promote enforcement and educational activities under the Preventing Roadside Death grant. The International Association of Fire Chiefs also encourages driver education to improve first responder safety. The use of grant funds authorized by Congress in BIL, and incorporated by the agency into the proposed rule, covers all of the activities (and also supports data collection activities) that were raised by commenters. As is typical of all Federal grants, States must adhere to 2 CFR part 200 requirements when administering grant funds awarded under the Preventing Roadside Deaths grant. These requirements apply to all Federal grantees and address contract administration and subrecipient requirements. NHTSA notes that Federal rules do not prohibit States from contracting with private entities.

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

The BIL created a new driver and officer safety education grant program, authorizing incentive grants to States

larger pedestrian/bicycle/micromobility safety projects.

[42] Emergency Safety Solutions, Inc. (ESS), Haas Alert, Paul Hoffman.

that enact and enforce laws or adopt and implement programs that include certain information on law enforcement practices during traffic stops in driver education and driving safety courses or peace officer training programs. 23 U.S.C. 405(i). As described below, States may also qualify for a grant under this section if they can demonstrate that they have taken meaningful steps toward full implementation of such programs.

1. Definitions (23 CFR 1300.28(b)

This NPRM proposes to adopt the definition of ''peace officer'' directly from the statute. 23 U.S.C. 405(i)(1). NHTSA also provides a definition for driver education and driving safety course to clarify the types of courses/programs that can qualify for the grant.

2. Qualification Criteria (23 CFR 1300.28(c))

The BIL provides that States may qualify for a driver and officer safety education grant in one of two ways: (a) a current law or program that requires specified information to be provided in either driver education and driving safety courses or peace officer training programs; or, (b) for a period not to exceed 5 years, by providing proof that the State is taking meaningful steps towards establishing such a law or program. 23 U.S.C. 405(i)(4). We discuss these qualification criteria in more detail below.

i. Driver and Officer Safety Law or Program (23 CFR 1300.28(d))

The BIL provides that one way a State may qualify for a grant under this section is with a law or program requiring that driver education and driver safety courses provided by educational and motor vehicle agencies of the State include instruction and testing materials relating to law enforcement practicing during traffic stops, covering the role of law enforcement, duties and responsibilities of peace officers, the legal rights of individuals, best practices for civilians and peace officers during interactions, consequences for failure to comply with the law or program, and information regarding how to file complaints or compliments relating to a police officer. 23 U.S.C. 405(i)(4)(A). NHTSA incorporates the requirements for the State's law or program directly from the statute. NHTSA proposes regulatory text to provide clarity to States regarding how to demonstrate compliance with the requirements, whether applying with a legal citation or with documentation, including a certification from the GR and course materials demonstrating that the State is implementing a compliant program.

ii. Peace Officer Training Programs (23 CFR 1300.28(d)(2)

The BIL provides that another way a State may qualify for a grant under this section is by having either a law or program requiring that the State develop and implement a training program for peace officers and reserve law enforcement officers with respect to proper interaction with civilians during traffic stops. 23 U.S.C. 405(i)(4)(B). NHTSA proposes to incorporate those requirements without change. NHTSA proposes regulatory text to provide clarity to States regarding how to demonstrate compliance with the requirements, whether applying with a legal citation or with documentation, including a certification from the GR and course materials demonstrating that the State is implementing a compliant training program.

iii. Qualifying State (23 CFR 1300.28(e))

If a State is unable to apply for a grant under the two options described above, the BIL provides a third, though time-limited way, for a State to qualify for a grant under this section. The BIL allows a State that has not fully enacted or adopted a compliant law or program to qualify for a grant if it can demonstrate that it has taken meaningful steps toward full implementation of such a law or program, including establishment of a timetable for implementation. 23 U.S.C. 405(i)(7). States may only receive a grant under this section for 5 years. *Id.* In this NPRM, NHTSA proposes that States applying under this criterion provide, at a minimum, either (1) a proposed bill that has been introduced, but not yet enacted into law, or (2) official planning or strategy document(s) that identify the actions the State has taken and still plans to take to develop and implement a qualifying law or program. States must also provide a timetable demonstrating that the State will implement the law or program within 5 years of first applying as a qualifying State.

3. Matching (23 CFR 1300.28(f))

The BIL provides that the Federal share of the cost of carrying out an activity funded through a grant under this program may not exceed 80 percent. 23 U.S.C. 405(i)(3). NHTSA proposes to implement this requirement without change.

4. Award Amounts (23 CFR 1300.28(g))

The BIL specifies that grant funds under this section shall be allocated in proportion to the apportionment of that State under Section 402 in fiscal year 2022. 23 U.S.C. 405(i)(6). The BIL further specifies, however, that NHTSA shall withhold 50 percent of grant funds that would be allocated under that formula from States that qualify as a ''qualifying State'' (*i.e.,* that are not yet implementing a qualifying law or program). 23 U.S.C. 405(i)(7)(B). It further provides that the withheld funds must be distributed to the States that qualified with fully implemented laws or programs. *Id.* NHTSA proposes to adopt this allocation structure without substantive change.

5. Use of Grant Funds (23 CFR 1300.28(h))

The BIL laid out specific allowable uses of grant funds under this grant program. Specifically, BIL provides that States may use driver and officer safety education grant funds for the production of educational materials and training of staff and for the implementation of a qualifying law or program. 23 U.S.C. 405(i)(5). This NPRM proposes to incorporate the uses of funds directly from the statute without change.

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

Section 1906 of SAFETEA–LU established an incentive grant program to prohibit racial profiling. The BIL continues the intent of the Section 1906 grant program, which is to encourage States to enact and enforce laws that prohibit the use of racial profiling in traffic law enforcement and to maintain and allow public inspection of statistical information regarding the race and ethnicity of the driver for each motor vehicle stop in the State. BIL revised several aspects of the Section 1906 Program.[43]

1. Award Amounts (23 CFR 1300.29(c))

For Section 1906, the BIL, like the FAST Act, does not specify how the grant awards are to be allocated. Under the FAST Act, NHTSA allocated Section 1906 grant awards in the same manner as the Section 405 grants. However, as described elsewhere in this preamble, the BIL diversified the allocation formulas for the Section 405 grants so that there is no longer a default formula. In order to ensure the most up-to-date distribution of funds, NHTSA proposes to apply the same formula that Congress developed for the two new Section 405

[43] Unlike the amendments to Section 402 requirements (which are effective beginning with the FY24 grants), amendments to the Section 1906 grant program were effective immediately upon passage of the BIL. States used the amended statutory text for their FY23 grant applications.

grants under BIL (Section 405(h) and 405(i)) to the Section 1906 grants. Accordingly, NHTSA proposes to allocate grant funds in proportion to the apportionment of the State under Section 402 for FY 2022.

The FAST Act placed two limitations on States' ability to receive grant funds under Section 1906. The BIL removed the limitation that provided that a State may not receive a grant by providing assurances for more than 2 fiscal years. The BIL amended the other limitation, which provided a 5 percent maximum amount limitation on a State's total grant award. Specifically, the BIL specified that the total amount provided to a State that qualifies using official documentation may not exceed 10 percent of the amount made available to carry out this section in that fiscal year; and that the total amount provided to a State that qualifies by providing assurances may not exceed 5 percent of the amount made available to carry out this section in that fiscal year. The agency proposes to incorporate these revisions into the regulatory text.

2. Use of Grant Funds (23 CFR 1300.29(d))

The BIL extended the allowable uses of the grant funds awarded under the Section 1906 Program by allowing States to expend grant funds to develop and implement programs, public outreach, and training to reduce the impact of traffic stops. This NPRM proposes to incorporate those uses directly from the statutes. States should note the specific allowable uses of the grant funds are only allowed to the extent that they carry out the intent of the grant program, which is to reduce the disparate impact of racial profiling during traffic stops and to encourage States to maintain and allow public inspection of statistical information on the race and ethnicity of the driver for all motor vehicle stops on Federal-Aid Highways. For example, States may conduct outreach to law enforcement agencies that is geared toward data collection, evaluation of data reports, and implementation of changes to address issues found in data reports.

Several commenters (Institute for Municipal and Regional Policy (IMRP), GHSA, and TEC) expressed broad support for the 1906 grant program and the expanded use of funds authorized by the BIL. Specifically, both IMRP and the Vision Zero Network submitted comments recommending the use of 1906 grant funds for efforts beyond data collection and analysis, such as police training programs, community outreach and engagement, collection and analysis of pedestrian data. The League of American Bicyclists called for NHTSA to encourage States to apply the 1906 Program not just to traffic stops of motor vehicle drivers, but to traffic stops of pedestrians and bicyclists. As stated above, NHTSA proposes to incorporate the new statutorily allowed use of funds provision that allows use of funds to develop and implement programs to reduce the impact of racial profiling during traffic stops. Traffic stops of nonmotorized road users, including pedestrians and bicyclists, may potentially be included in the data collection as they are a component of traffic safety. However, States should be aware that statutory use of funds provision is limited to traffic stops, so any stop of a nonmotorized road user that is covered by the program would have to occur in that context.

Multiple commenters [44] expressed strong support for the BIL's provision that ten percent of the amount available to carry out Section 1906 may be used by NHTSA to provide technical assistance to States. IMRP recommended that NHTSA hire a technical consultant to help more States develop a meaningful program under the 1906 guidelines. Similarly, the League of American Bicyclists suggested that NHTSA identify a third party to actively promote the Section 1906 Program to States that qualify and requested that NHTSA highlight best practices for 1906 programs. NHTSA intends to provide needed technical assistance and will take these comments into consideration as it determines what technical assistance would be most useful to States.

Finally, the IMRP called for the data collected under the 1906 Grant Program to be submitted to a national data repository to help NHTSA and other Federal and State partners access data to continue furthering research on practices to achieve a safe, fair, and equitable traffic enforcement system. While NHTSA appreciates the value such a repository would provide, the BIL does not provide NHTSA with the authority to require States to submit such data and no such national data repository currently exists.

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

Subparts D, E and F provide post-award requirements for NHTSA's highway traffic safety grant program. This includes rules governing the administration and closeout of the grants, as well as consequences for non-compliance with grant requirements.

A. Nonsubstantive Changes

With the exception of the sections discussed below, NHTSA proposes only nonsubstantive changes to the regulatory requirements in subparts D, E, and F. The nonsubstantive changes are limited to updating references to the annual HSP to adjust for the new triennial framework and providing updated citations resulting from OMB's revisions to the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, 2 CFR part 200.

B. Updated Administrative Procedures of Note

The agency is responsible for overseeing and monitoring implementation of the grant programs to help ensure that recipients are meeting program and accountability requirements. Oversight procedures for monitoring the recipients' use of awarded funds can help the agency determine whether recipients are operating efficiently and effectively. Effective oversight procedures based on internal control standards for monitoring recipients' use of awarded funds are key to ensuring that program funds are being spent in a manner consistent with statute and regulation. In order to improve oversight of grantee activities and management of Federal funds and to implement requirements of the BIL, this NPRM proposes updates to the following procedures for administering the highway safety grant programs.

1. Equipment (23 CFR 1300.31)

NHTSA proposes to add a sentence to make clear that equipment may only be purchased if necessary to perform eligible grant activities or if specifically authorized as an allowable use of funds. 23 CFR 1300.32(b). This is not a new requirement; the proposed addition merely incorporates and makes clearer a long-standing requirement into NHTSA's grant rule.[45]

2. Amendments to the Highway Safety Plans (23 CFR 1300.32)

Under the FAST Act, NHTSA provided a regulatory procedure for States to submit amendments to the annual HSP. Under the BIL, States must, at a minimum, be allowed to amend the

[44] IMRP, League of American Bicyclists, and TEC.

[45] The requirement is based on both NHTSA's existing regulatory requirements relating to use of equipment (23 CFR 1300.31) and OMB's Uniform Administrative Requirements related to equipment (2 CFR 200.313) and allowability of costs (2 CFR 200.403).

annual grant application to provide updated project and subrecipient information. *See* 23 U.S.C. 402(l)(1)(C)(ii). In addition, although the annual grant application allows an opportunity for States to update the triennial HSP once a year, NHTSA recognizes that States may need to provide updates to the triennial HSP more frequently. *See* GHSA. For instance, a State might identify a new traffic safety problem or a change in conditions, such as a natural disaster, could occur such that a State's planned countermeasure strategy needs to be adjusted mid-grant-year. As a result, States may have a need to submit amendments to either the triennial HSP or the annual grant application or both. However, because the annual grant application includes a section that provides for updates to the triennial HSP, NHTSA proposes that a State may amend either the annual grant application or the triennial HSP through an amendment to the annual grant application. With this action, NHTSA proposes to provide procedures for amendments to annual grant applications at 23 CFR 1300.32.

GHSA commented that NHTSA should maintain the current HSP amendment process for annual grant applications, but should also allow HSP amendments to be submitted between application submissions. As noted above, NHTSA agrees. GHSA specified that NHTSA should not require States to provide formal quarterly submissions of HSP amendments, but should continue to require States to amend the annual grant application prior to beginning project performance. NHTSA agrees. The agency proposes very limited revisions to the existing regulatory text in order to update the text for the BIL's triennial framework. We replace all but one reference to the HSP (*see* § 1300.32(c)) with annual grant application to clarify that all amendments, even amendments updating the triennial HSP will be submitted as amendments to the annual grant application. Historically, most amendments relate to project-level details. We update § 1300.32(b) to require States to provide complete and updated project and subrecipient information prior to beginning project performance. NHTSA also proposes to add language to remind States that approval of an amendment to the annual grant application does not constitute approval of the project; States remain independently responsible to ensure that projects constitute an appropriate use of highway safety grant funds.

The CT HSO and GHSA both expressed concern about the amount of time it currently takes NHTSA to approve amendments, with GHSA recommending that NHTSA respond to HSP amendments within 5 business days and resolve amendments within 30 days. NHTSA appreciates the feedback and strives and will continue to strive to respond promptly to States. However, some amendments present novel issues or complexities, and NHTSA's ability to resolve amendments is dependent on receiving all information required to adequately assess the request.

WI BOTS requested clarification regarding the types of substantive changes to the triennial HSP and annual grant application that would require amendments. States are required to provide project and subrecipient information for all projects funded during the grant year; the BIL provides that States may submit this information throughout the grant year as the information becomes available. *See* 23 U.S.C. 402(l)(1)(C)(ii). States must, therefore, provide updated project information as it becomes available, and at a minimum prior to beginning project performance. NHTSA will not approve a voucher for payment if the voucher is inconsistent with project and subrecipient information in the annual grant application. In addition, if a State adds a new project to the annual grant application, but that project cannot be linked to an existing countermeasure strategy for programming funds in the triennial HSP, the State will have to submit an amendment updating the triennial HSP to provide the required information to support the countermeasure strategy.

3. Vouchers and Project Agreements (23 CFR 1300.33)

NHTSA proposes two limited changes to the requirements relating to vouchers and project agreements. First, NHTSA proposes that, in addition to the information currently required to be in a voucher, States also provide the eligible use(s) of funds that the voucher covers. 23 CFR 1300.33(b)(3). This addition is to ensure that NHTSA has the information necessary to understand the costs that are being vouchered for prior to approving reimbursements and to assist subsequent audits and reviews.

In addition, NHTSA proposes to extend the deadline for States to submit a final voucher from 90 days to 120 days, consistent with the extension for closeout provided in 2 CFR 200.344.

4. Program Income (23 CFR 1300.34)

The agency deleted the regulatory provision on program income in the last rulemaking, opting instead to rely on the OMB Uniform Administrative Requirements to address program income. However, in the years since finalizing the last rule, NHTSA has found that the removal increased confusion for grantees about which rules relating to program income apply to NHTSA grant funds. Accordingly, NHTSA now proposes to reinstate the regulatory language on program income, targeted at the use of program income within NHTSA's grant programs. The proposed language is modelled on the prior regulatory language, but has been updated to reflect updates to 2 CFR 200.307 and 2 CFR 1201.80.

5. Annual Report (23 CFR 1300.35)

The most significant change to the administrative requirements for NHTSA's grant program is the BIL's codification of the annual report. Consistent with OMB rules that apply to all Federal grants,[46] NHTSA has long required each State to submit an annual report providing performance and financial information on the State's activities during the grant year at 23 CFR 1300.35. The BIL codified the requirement and specified that the annual report must include an assessment of the State's progress in achieving performance targets identified in the triennial HSP and a description of the extent to which that progress is aligned with the State's triennial HSP. The BIL also provides that the State must describe any plans to adjust the strategy for programming funds in order to achieve performance targets, if applicable. *See* 23 U.S.C. 402(l)(2).

The NSC commented that States should be required to provide regular annual information on programs, including participants, use of funds, and updates on tracked performance measures. NHTSA notes that the annual report fulfills these functions. NASEMSO suggested that NHTSA require annual report content to be provided in a well-structured format, including qualitative explanations related to obstacles and successes in order to assist with future planning in the State and to serve as a resource to other States. NHTSA agrees that a well-structured format will make annual reports more accessible to stakeholders, the public, and other States in terms of allowing ease of reading and comparison between State reports. The agency has therefore proposed a structure for the report that provides for two sections: a performance report and an activity report. In the past, NHTSA has provided States with a voluntary

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

template for reporting. NHTSA seeks comment on whether States find this helpful and whether they would support NHTSA creating a mandatory template. If yes, NHTSA also seeks comments on the substance of the template.

GHSA noted that the BIL provides 120 days for States to submit an annual report after the end of the fiscal year and requested that NHTSA implement that provision. NHTSA has done so. In addition, GHSA noted that the BIL's codification of the annual report is limited to performance reporting and requested that NHTSA remove all aspects of the prior annual report that are not explicitly required by the BIL. GHSA opined, however, that NHTSA could retain the requirement to report HVE activities because it places a low burden on States who already collect that information.

NHTSA notes that the annual report serves many purposes for NHTSA's grant program. As provided in the BIL, it serves as the State's required annual performance report, consistent with 2 CFR 200.329. In order to satisfy the requirements of 2 CFR 200.329, NHTSA proposes to also require States to describe how the projects funded under the grant contributed to meeting the States' performance targets. States are also required, as a condition of receiving Federal grant funds, to submit annual financial reports. *See* 2 CFR 200.328.[47] Because the BIL requires States to update project information provided in the annual grant application throughout the year, NHTSA believes that the updated project information in the annual grant application provides the information that is required financial reporting and therefore does not propose to require duplicative information in the annual report. However, as a result it is vital that States provide updated project information in the annual grant application no later than 120 days after the close of the fiscal year, to match the deadline for the annual report.

Additionally, because NHTSA has implemented several grant requirements through certifications and assurances, it is important for grant oversight that NHTSA get year-end information to ensure that States have met those assurances. As a result, NHTSA proposes the activity report section of the annual report. As part of the annual activity report, NHTSA proposes to require States to provide a description of all projects and activities funded and implemented for each countermeasure strategy, including the total amount of Federal funds expended and the zip codes in which projects were performed (or identification as a State-wide project), an explanation of reasons for projects that were planned but not implemented, and a description of how the projects were informed by the meaningful public participation and engagement described in the State's triennial HSP. The intent of the requirement to provide location information via zip code is for NHTSA to understand where the funding is being utilized compared with the State's problem ID and performance targets. The agency seeks comment on whether there is a better metric to achieve this same goal. The agency requires an explanation as to why projects were not implemented in order to understand why the State has veered from the projects it identified to apply for the grant. The agency proposes to require the State to provide a description of how projects were informed by meaningful public participation and engagement in order to ensure that the public participation and engagement described in the State's planning process in the triennial HSP impacted the State's highway safety program in implementation, not just planning. *See* 23 U.S.C. 402(b)(1)(B). *See also* the discussion about Meaningful Public Engagement, above. NHTSA also proposes to require the State to describe the evidence-based enforcement program activities, including discussion of the community collaboration efforts and data collection and analysis required by the BIL. *See* 23 U.S.C. 402(b)(1)(E). Finally, NHTSA proposes to retain the requirement that States submit information regarding mobilization participation.

6. Appeals of Written Decision by the Regional Administrator (23 CFR 1300.36)

GHSA requested two amendments to the regulatory appeal process at 23 CFR 1300.36 that provides the process for formal appeals of the written decisions of NHTSA Regional Administrators to the NHTSA Associate Administrator, Regional Operations and Program Delivery. GHSA requested a requirement that NHTSA responses to State appeals be made in writing, not via an informal email or in a phone call. NHTSA agrees. A formal written appeal that meets the requirements of section 1300.36 is entitled to the same level of response as required of the appeal. We propose regulatory text to clarify that NHTSA must reply in writing. Second, GHSA requested that NHTSA amend the regulation to allow States to appeal decisions of the Associate Administrator to the Administrator. The agency declines to accept this recommendation. The Associate Administrator is delegated authority to exercise the powers and perform the duties of the Administrator with respect to the grants to States under chapter 4 of title 23. *See* 49 CFR 501.8(i). As such, the Associate Administrator has the authority to issue determinations on grant appeals on behalf of the agency.

7. Disposition of Unexpended Balances (23 CFR 1300.41)

NHTSA proposes to extend the deadline for submitting a final voucher from 90 days to 120 days in order to align with the timeframe for closeout in 2 CFR 200.344. GHSA requested that NHTSA ensure that notifications regarding unexpended funds under 23 CFR 1300.41(b)(2) be sent to the State highway safety office director, not solely to the Governor's Representative. NHTSA notes that the GR is required to be responsible for the State's highway safety program and must therefore maintain communication with the SHSO director. That said, NHTSA will be mindful to include all appropriate contacts in communications with the State.

VII. Request for Comments

Historically, NHTSA was unable to request comments on regulations implementing these grant programs in connection with new authorizations due to lead-time constraints. As BIL afforded the necessary lead-time, the agency was pleased to issue the earlier RFC and associated public meetings as the first step in this process, and the comments we received informed today's notice. NHTSA is equally pleased to now request comments on all aspects of this NPRM from all interested stakeholders. This section describes how you can participate in the process.

How do I prepare and submit comments?

Your comments must be written in English.[48] To ensure that your comments are correctly filed in the docket, please include the docket number NHTSA–2022–0036 in your comment. Your comments must not be more than 15 pages long.[49] NHTSA established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments, and there is no limit

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

[48] 29 CFR 553.21.

[49] *Id.*

on the length of the attachments. If you are submitting comments electronically as a PDF (Adobe) file, we ask that the documents please be scanned using the Optical Character Recognition (OCR) process, thus allowing NHTSA to search and copy certain portions of your submissions.[50] Please note that pursuant to the Data Quality Act, in order for substantive data to be relied upon and used by the agency, it must meet the information quality standards set forth in the OMB and DOT Data Quality Act guidelines. Accordingly, we encourage you to consult the guidelines in preparing your comments. OMB's guidelines may be accessed at *https://www.gpo.gov/fdsys/pkg/FR-2002-02-22/pdf/R2-59.pdf*. DOT's guidelines may be accessed at *https://www.transportation.gov/dotinformation-dissemination-qualityguidelines*.

Tips for Preparing Your Comments

When submitting comments, please remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Explain why you agree or disagree, suggest alternatives, and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified in the **DATES** section above.

How can I be sure that my comments were received?

If you submit your comments to NHTSA's docket by mail and wish DOT Docket Management to notify you upon receipt of your comments, please enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

[50] Optical character recognition (OCR) is the process of converting an image of text, such as a scanned paper document or electronic fax file, into computer-editable text.

How do I submit confidential business information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. When you send a comment containing confidential business information, you should include a cover letter setting forth the information specified in 49 CFR part 512.

In addition, you should submit a copy from which you have deleted the claimed confidential business information to the Docket by one of the methods set forth above.

Will NHTSA consider late comments?

NHTSA will consider all comments received before the close of business on the comment closing date indicated above under **DATES**. To the extent practicable, we will also consider comments received after that date. If interested persons believe that any information that the agency places in the docket after the issuance of the NPRM affects their comments, they may submit comments after the closing date concerning how the agency should consider that information for the final rule. However, the agency's ability to consider any such late comments in this rulemaking will be limited due to the time frame for issuing a final rule. If a comment is received too late for us to practicably consider in developing a final rule, we will consider that comment as an informal suggestion for future rulemaking action.

How can I read the comments submitted by other people?

You may read the materials placed in the dockets for this document (*e.g.,* the comments submitted in response to this document by other interested persons) at any time by going to *https://www.regulations.gov*. Follow the online instructions for accessing the dockets. You may also read the materials at the DOT Docket Management Facility by going to the street address given above under **ADDRESSES**.

IX. Regulatory Analyses and Notices

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

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

B. Regulatory Flexibility Act

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

This NPRM is a rulemaking that will establish revised uniform procedures implementing State highway safety grant programs, as a result of enactment of the Infrastructure Investment and Jobs Act (IIJA, also referred to as the Bipartisan Infrastructure Law or BIL). Under these grant programs, States will receive funds if they meet the application and qualification requirements. These grant programs will affect only State governments, which are not considered to be small entities as that term is defined by the RFA. Therefore, I certify that this action will not have a significant impact on a substantial number of small entities and find that the preparation of a Regulatory Flexibility Analysis is unnecessary.

C. Executive Order 13132 (Federalism)

Executive Order 13132 on ''Federalism'' requires NHTSA to develop an accountable process to

ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' 64 FR 43255 (August 10, 1999). ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, an agency may not issue a regulation with Federalism implications that imposes substantial direct compliance costs and that is not required by statute unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments or the agency consults with State and local governments in the process of developing the proposed regulation. An agency also may not issue a regulation with Federalism implications that preempts a State law without consulting with State and local officials.

The agency has analyzed this rulemaking action in accordance with the principles and criteria set forth in Executive Order 13132. First, we note that the regulation implementing these grant programs is required by statute. Moreover, the agency has determined that this NPRM would not have sufficient Federalism implications as defined in the order to warrant formal consultation with State and local officials or the preparation of a federalism summary impact statement. Nevertheless, NHTSA notes that it has consulted with States representatives through public meetings, continues to engage with State representatives regarding general implementation of the BIL, including these grant programs, and expects to continue these informal dialogues.

D. Executive Order 12988 (Civil Justice Reform)

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

E. Paperwork Reduction Act

Under the procedures established by the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the OMB for each collection of information they conduct, sponsor, or require through regulations. A person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. The Information Collection Request (ICR) described below has been forwarded to OMB for review and comment. In compliance with these requirements, NHTSA asks for public comments on the following proposed collection of information for which the agency is seeking approval from OMB.

Agency: National Highway Traffic Safety Administration (NHTSA).

Title: State Highway Safety Grant Programs.

Type of Request: New collection.

OMB Control Number: Not assigned.

Form Number: N/A (Highway Safety Plan and Annual Plan).

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

Summary of Collection of Information: On November 15, 2021, the President signed into law the ''Infrastructure Investment and Jobs Act'' (the Bipartisan Infrastructure Act, or BIL), Public Law 117–58, which reauthorized highway safety grant programs administered by NHTSA. Specifically, these grant programs include the Highway Safety Program grants (23 U.S.C. 402 or Section 402), the National Priority Safety Program grants (23 U.S.C. 405 or Section 405), and a separate grant on racial profiling restored (with some changes) from a previous authorization (Sec. 1906, Pub. L. 109–59, as amended by Sec. 4011, Pub. L. 114–94, or Section 1906). The BIL requires NHTSA to award these grants to States pursuant to a rulemaking.

The BIL alters the structure of the Section 402 grant program, replacing the current annual Highway Safety Plan (HSP), which serves as both a planning and application document, with a triennial HSP and an annual grant application. The BIL also removes one grant program and adds two new grant programs (preventing roadside deaths and driver and officer safety education), but otherwise does not significantly change the structure of the Section 405 grants. The statute provides that States must submit two documents to apply for Section 402, Section 405 and Section 1906 grants: a triennial Highway Safety Plan (HSP), which serves as a planning document, and an annual grant application. It further codifies an annual report that States must submit at the end of the grant year.

The information collected under this proposed rulemaking is to include a triennial HSP consisting of information on the highway safety planning process, public participation, performance plan, countermeasure strategies, and a performance report. *See* 23 CFR 1300.11. It also includes an annual grant application consisting of updates to the triennial HSP, project and subrecipient information, applications for Section 405 and Section 1906 grans, and certifications and assurances. *See* 23 CFR 1300.12. After award of grant funds, States are required to update the project and subrecipient information (*see* 23 CFR 1300.12 and 23 CFR 1300.32) and to submit an annual report, assessing performance and verifying compliance with assurances provided in the grant application. *See* 23 CFR 1300.35. In addition, as part of the statutory criteria for certain Section 405 grants (occupant protection and impaired driving countermeasures),[51] States may be required to receive assessments of their State programs in order to receive a grant. As part of the assessment process, States must provide information and respond to questions.

Description of the Need for the Information and Use of the Information: As noted above, the statute provides that the triennial Highway Safety Plan and annual grant application are the basis for State applications for the grants identified each fiscal year. This information is necessary to determine whether a State satisfies the criteria for grant awards. The annual report tracks progress in achieving the aims of the grant program. The information is necessary to verify performance under the grants and to provide a basis for improvement.

Description of the Likely Respondents: This collection impacts the 57 governmental entities that are eligible to apply for grants under the NHTSA

[51] Under occupant protection grants, one criterion that a State with a lower belt use rate may use to receive a grant is to complete an assessment of its occupant protection program once every five years (23 U.S.C. 405(b)(3)(B)(ii)(VI)); and another criterion is a comprehensive occupant protection program that includes a program assessment conducted every five years as one of its elements (23 U.S.C. 405(b)(3)(B)(ii)(V)). Under impaired driving countermeasure grants, a State with high average impaired driving fatality rates must have an assessment of its impaired driving program once every 3 years in order to receive a grant. (23 U.S.C. 405(d)(3)(C)(i)(I)).

Highway Safety Grant Program (the 50 States, the District of Columbia, Puerto Rico, American Samoa, Guam, the Northern Mariana Islands, the U.S. Virgin Islands, and the Bureau of Indian Affairs on behalf of Indian tribes). These respondents will hereafter be referred to as ''State respondents.'' This collection also impacts the subject matter experts and administrative assistants who are involved in performing assessments for the grant program. NHTSA estimates that there will be approximately 260 assessor respondents per year.

Frequency: The triennial Highway Safety Plan (HSP) is a planning document for a State's entire traffic safety program and outlines the performance targets and countermeasure strategies for key program areas as identified by State and Federal data and problem identification. The annual grant application provides project level information and applications for the Section 405 and Section 1906 grants. By statute, States must submit, and NHTSA must approve, the triennial HSP and annual grant application as a condition of providing Section 402 grant funds. States also are required to submit their Section 405 and Section 1906 grant applications as part of the annual grant application. States must submit the triennial HSP once every three years and an annual grant application every fiscal year in order to qualify for grant funds. As described above, assessments may be required for a State to apply for certain Section 405 grant programs and are submitted once every five years. In addition, States provide an annual report evaluating their progress under the programs.

Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting from the Collection of Information: NHTSA calculates the estimated burden hours for all State applicant respondents and for the non-State subject matter experts and administrative assistants who conduct assessments for the States.

The estimated burden hours for the collection of information for State applicants are based on all eligible respondents for each of the grants:

- Section 402 grants: 57 (fifty States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Secretary of the Interior);
- Section 405 Grants (except Motorcyclist Safety Grants) and Section 1906 Grant: 56 (fifty States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands); and
- Section 405, Motorcyclist Safety Grants: 52 (fifty States, the District of Columbia, and Puerto Rico).

We estimate that it will take each State respondent approximately 320 hours in the first year of a triennial cycle and 100 hours per year for the second and third years of the triennial cycle to collect, review and submit the required information to NHTSA for the Section 402 program. We estimate that it will take each respondent approximately 270 hours to collect, review and submit the required information to NHTSA for the Section 405 and Section 1906 program every year. We estimate that it will take each respondent approximately 88 hours per assessment to collect, review and submit the required information for the Section 405 assessments.[52] We further estimate that it will take each respondent approximately 80 hours to collect, review and submit the required information to NHTSA for the annual reports every year.

Based on the above information, the total estimated annual burden hours averaged over the triennial cycle for all State respondents is 30,704 hours annually. The total estimated annual burden hours for all respondents in the first year is 39,064 hours; and the total estimated burden hours for all respondents in the second and third years of the cycle is 26,524 per year.

The estimated annual burden hours averaged over the triennial cycle for each State respondent is 523.3 hours, with no more than 176 additional hours if the respondent submits two assessments in a given year. The estimated annual burden hours for each respondent in the first year of the triennial cycle is 670 hours and the estimated annual burden hours for each respondent in the second and third years of the cycle is 450 hours per year. To estimate annual burden hours for each respondent, the agency has added the burden hours for the Section 402 Program, the Section 405 and Section 1906 Program and the annual reports. For each Section 405 assessment submitted by a respondent (no more than 2 assessments in a five-year period), an additional 88 hours should be added.[53]

Assuming the average salary of individuals responsible for submitting the information is $55.17 per hour,[54] the estimated cost averaged over the triennial cycle for each respondent is $28,870.461, with up to an additional $9,709.92 if the respondent submits two Section 405 assessments); the estimated total cost averaged over the triennial cycle for all State respondents is $1,693,939.68 per year.

These estimates are based on every eligible respondent submitting the required information for every available grant every year. However, not all States apply for and receive a grant each year under each of these programs. Similarly, under Section 405 grants, some requirements allow States to submit a criterion covering multiple years, allowing States to simply recertify or resubmit existing materials in subsequent years. Considering the agency's steps to streamline the submission process, these estimates represent the highest possible burden hours and amounts for States submitting the required information.

In addition to State applicant respondents, NHTSA estimates that there will be a total of 78 additional subject matter expert and administrative assistant respondents per year. These respondents (65 subject matter experts and 13 administrative assistants) conduct the Section 405 assessments for States and are recruited by NHTSA or the State and paid for their time. As stated above, NHTSA estimates that there will be a total of 13 assessments conducted in a year (9 assessments for Section 405 occupant protection grants, and 4 assessments for Section 405 impaired driving countermeasures grant). For these assessments, NHTSA estimates that the subject matter expert assessors spend 80 hours of time on each assessment and that the administrative assistants spend 46 hours on each assessment. Therefore, NHTSA estimates the total annual burden for the subject matter experts and administrative assistants who conduct State assessments to be 6,032 hours per year.

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[52] NHTSA estimates that there will be 9 assessments for Section 405 occupant protection grants and 4 assessments for the Section 405 impaired driving grants each year. This yields total estimated annual burden hours for all respondents of 1,144 hours per year. No individual State will have more than 2 assessments over a three year period; many States may complete only one or no assessments in a three year period.

[53] The total estimated burden hours for assessments is based on the average number of State asssesments carried out each year in each covered grant area.

[54] NHTSA used the estimated average wage for State and local government ''Management Analysts,'' Occupation Code 13–1111, which the Bureau of Labor Statistics estimates to be $34.15. *See* May 2021 National Industry-Specific Occupational Employment and Wage Estimates, NAICS 336100—Motor Vehicle Manufacturing, available at *https://www.bls.gov/oes/current/naics4_999200.htm.* The Bureau of Labor Statistics estimates that wages for State and local government workers represent 61.9% of total compensation costs. *See* Table 1. Employer Costs for Employee Compensation by ownership, available at *https://www.bls.gov/news.release/ecec.t01.htm.*

To calculate the estimated cost associated with the subject matter expert assessors and administrative assistants, NHTSA uses the amounts paid for these services. For assessments, the State pays each subject matter expert a flat rate of $2,700, and each administrative assistant a flat rate of $2,100. The total estimated costs associated with burden hours for all assessment respondents is $202,800.

Total Estimated Burden: Accordingly, NHTSA estimates the total annual burden hours, averaged over a triennial cycle, for all respondents to be 36,736 hours and the associated estimated total cost averaged over a triennial cycle for all respondents to be $1,896,739.68.

Comments are invited on:

- Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Whether the agency's estimate for the burden of the information collection is accurate.
- Ways to enhance the quality, utility, and clarity of the information to be collected.
- Ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Please submit any comments, identified by the docket number in the heading of this document, by any of the methods described in the **ADDRESSES** section of this document. Comments are due by October 31, 2022.

F. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in expenditures by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted annually for inflation with base year of 1995). This NPRM would not meet the definition of a Federal mandate because the resulting annual State expenditures would not exceed the minimum threshold. The program is voluntary and States that choose to apply and qualify would receive grant funds.

G. National Environmental Policy Act

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

H. Executive Order 13211

Executive Order 13211 (66 FR 28355, May 18, 2001) applies to any rulemaking that: (1) is determined to be economically significant as defined under Executive Order 12866, and is likely to have a significantly adverse effect on the supply of, distribution of, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. This rulemaking is not likely to have a significantly adverse effect on the supply of, distribution of, or use of energy. This rulemaking has not been designated as a significant energy action. Accordingly, this rulemaking is not subject to Executive Order 13211.

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

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

L. Plain Language

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

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

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

M. Regulatory Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The BIL requires NHTSA to award highway safety grants pursuant to rulemaking. (Section 24101(d), BIL; and 23 U.S.C. 406). The Regulatory Information Service Center publishes the Unified Agenda in or about April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

N. Privacy Act

Please note that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR19477) or you may visit *http://dms.dot.gov.*

List of Subjects in 23 CFR Part 1300

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

■ For the reasons discussed in the preamble, under the authority of 23 U.S.C. 401 *et seq.,* the National Highway Traffic Safety Administration proposes to amend 23 CFR chapter III by revising part 1300 to read as follows:

PART 1300—UNIFORM PROCEDURES FOR STATE HIGHWAY SAFETY GRANT PROGRAMS

Subpart A—General

Sec.

Subpart B—Triennial Highway Safety Plan and Annual Grant Application

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

Authority: 3 U.S.C. 402; 23 U.S.C. 405; Sec. 1906, Pub. L. 109–59, 119 Stat. 1468, as amended by Sec. 4011, Pub. L. 114–94, 129 Stat. 1512; delegation of authority at 49 CFR 1.95.

Subpart A—General

§ 1300.1 Purpose.

This part establishes uniform procedures for State highway safety programs authorized under 23 U.S.C. Chapter 4 and Sec. 1906, Public Law 109–59, as amended by Sec. 4011, Public Law 114–94.

§ 1300.2 [Reserved].

§ 1300.3 Definitions.

As used in this part—

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

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

Automated traffic enforcement system (ATES) means any camera which captures an image of a vehicle for the purposes only of red light and speed enforcement, and does not include hand held radar and other devices operated by law enforcement officers to make an on-the-scene traffic stop, issue a traffic citation, or other enforcement action at the time of the violation.

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

Community means populations sharing a particular characteristic or geographic location.

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

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

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

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

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

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

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

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

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

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

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

NHTSA means the National Highway Traffic Safety Administration.

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

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

Political subdivision of a State means a separate legal entity of a State that usually has specific governmental functions, and includes Indian tribal governments. Political subdivision includes, but is not limited to, local governments and any agencies or

instrumentalities thereof, school districts, intrastate districts, associations comprised of representatives from political subdivisions acting in their official capacities (including State or regional conferences of mayors or associations of chiefs of police), local court systems, and any other regional or interstate government entity.

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

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

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

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

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

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

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

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

Section 1906 means section 1906, Public Law 109–59, as amended by section 4011, Public Law114–94.

Serious injuries means, until April 15, 2019, injuries classified as ''A'' on the KABCO scale through the use of the conversion tables developed by NHTSA, and thereafter, ''suspected serious injury (A)'' as defined in the Model Minimum Uniform Crash Criteria (MMUCC) Guideline, 5th Edition.

State means, except as provided in § 1300.25(b), any of the fifty States of the United States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or, for the application of this part to Indian Country as provided in 23 U.S.C. 402(h), the Secretary of the Interior.

State highway safety improvement program (HSIP) means the program defined in 23 U.S.C. 148(a)(10).

State strategic highway safety plan (SHSP) means the plan defined in 23 U.S.C. 148(a)(11).

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

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

§ 1300.4 State Highway Safety Agency—authority and functions.

(a) *In general.* In order for a State to receive grant funds under this part, the Governor shall exercise responsibility for the highway safety program by appointing a Governor's Representative for Highway Safety who shall be responsible for a State Highway Safety Agency that has adequate powers and is suitably equipped and organized to carry out the State's highway safety program and for coordinating with the Governor and other State agencies. To avoid a potential conflict of interest, the Governor's Representative for Highway Safety may not be employed by a subrecipient of the State Highway Safety Agency.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) Review, approve, and evaluate the implementation and effectiveness of State and local highway safety programs and projects from all funding sources that the State plans to use under the triennial HSP and annual grant application, and approve and monitor the expenditure of grant funds awarded under 23 U.S.C. Chapter 4 and Section 1906;

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

(8) Ensure that the State highway safety program meets the requirements of 23 U.S.C. Chapter 4, Section 1906, and applicable Federal and State laws, including but not limited to the standards for financial management

systems required under 2 CFR 200.302 and internal controls required under 2 CFR 200.303;

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

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

(11) Coordinate the triennial HSP, annual grant application, and highway safety data collection and information systems activities with other federally and non-federally supported programs relating to or affecting highway safety, including the State SHSP as defined in 23 U.S.C. 148(a); and

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

§ 1300.5 Due dates—interpretation.

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

Subpart B—Triennial Highway Safety Plan and Annual Grant Application

§ 1300.10 General.

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

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

(b) An annual grant application.

§ 1300.11 Triennial Highway Safety Plan.

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

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

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

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

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

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

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

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

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

(ii) The results of the State's engagement efforts, including, as applicable—

(A) A list of the engagement opportunities conducted, including type of engagement (*e.g.,* stakeholder or community meetings, town hall events, focus groups, surveys and online engagement), location(s) (*e.g.,* virtual, city/town), date(s), summary of issues covered; and

(B) Identification of the actual participants (*e.g.,* specific community and constituent groups, first responders, highway safety committees, program stakeholders, governmental stakeholders, and political subdivisions, particularly those representing the most significantly impacted by traffic crashes resulting in injuries and fatalities) and their roles in the State's highway safety planning process;

(iii) A description of the public participation and engagement efforts the State plans to undertake during the three-year period covered by the triennial HSP, at the level of detail required in paragraph (b)(2)(i) of this section.

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

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

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

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

(1) Quantifiable performance targets culminating in the final year covered by the triennial HSP, with annual benchmarks to assist States in tracking progress; and

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

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

(iii) Additional performance measures not included under paragraph (b)(3)(ii) of this section. For program areas identified by the State where performance measures have not been jointly developed (*e.g.,* risky drivers, vulnerable road users, etc.) and for which States are using highway safety

grant program funds, the State shall develop its own performance measures and performance targets that are data-driven, and shall provide the same information as required under paragraph (b)(3)(ii) of this section.

(4) *Countermeasure strategy for programming funds.* For each program area identified by the State during the planning process conducted under paragraph (b)(1) of this section, a description of the countermeasure strategies that will guide the State's program implementation and annual project selection in order to achieve specific performance targets described in paragraph (b)(3) of this section, including, at a minimum—

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

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

(A) For countermeasures rated 3 or more stars in *Countermeasures That Work,* citation to the countermeasure in the most recent edition of *Countermeasures That Work;* or

(B) For State-developed countermeasure strategies, justification supporting the countermeasure strategy, including data, data analysis, research, evaluation and/or substantive anecdotal evidence, that supports the effectiveness of the proposed countermeasure strategy;

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

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

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

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

(5) *Performance report.* A report on the State's progress towards meeting State performance targets from the most recently submitted triennial HSP, at the level of detail in § 1300.35.

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

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

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

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

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

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

§ 1300.12 Annual grant application.

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

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

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

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

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

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

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

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

(i) Project name and description (*e.g.,* purpose, activities, zip codes where project will be implemented, affected communities, etc.);

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

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

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

(v) Amount of Federal funds;

(vi) Eligible use of funds;

(vii) Whether the costs are P & A costs pursuant to § 1300.13(a) and the amount;

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

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

triennial HSP submitted under § 1300.12(b)(1) that the project supports.

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

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

(c) *Review and approval procedures*—(1) *General.* Upon receipt and initial review of the annual grant application, NHTSA may request additional information from a State to ensure compliance with the requirements of this part. Failure to respond promptly to a request for additional information concerning the Section 402 grant application may result in delayed approval and funding of a State's Section 402 grant. Failure to respond promptly to a request for additional information concerning a Section 405 or Section 1906 grant application may result in a State's disqualification from consideration for a Section 405 or Section 1906 grant to avoid a delay in awarding grants to all States. NHTSA will not approve a grant application that does not meet the requirements of this section.

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

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

§ 1300.13 Special funding conditions for Section 402 Grants.

The State's highway safety program under Section 402 shall be subject to the following conditions, and approval under § 1300.12 shall be deemed to incorporate these conditions:

(a) *Planning and administration (P & A) costs.* (1)(i) *Planning and administration (P & A) costs* are those direct and indirect costs that are attributable to the management of the Highway Safety Agency. Such costs could include salaries, related personnel benefits, travel expenses, and rental costs specific to the Highway Safety Agency. The salary of an accountant on the State Highway Safety Agency staff is an example of a direct cost attributable to P & A. Centralized support services such as personnel, procurement, and budgeting would be indirect costs.

(ii) *Program management costs* are those costs attributable to a program area (*e.g.,* salary and travel expenses of an impaired driving program manager/coordinator of a State Highway Safety Agency). Compensation for activity hours of a DWI (Driving While Intoxicated) enforcement officer is an example of a direct cost attributable to a project.

(2) Federal participation in P & A activities shall not exceed 50 percent of the total cost of such activities, or the applicable sliding scale rate in accordance with 23 U.S.C. 120. The Federal contribution for P & A activities shall not exceed 15 percent of the total funds the State receives under Section 402. In accordance with 23 U.S.C. 120(i), the Federal share payable for projects in the U.S. Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands shall be 100 percent. The Indian Country is exempt from the provisions of P & A requirements. NHTSA funds shall be used only to fund P & A activities attributable to NHTSA programs.

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

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

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

(ii) If the employee works performing program management activities in one or more program areas, the total salary and related costs may be charged directly to the appropriate area(s); or

(iii) If an employee works on a combination of P & A and program management activities, the total salary and related costs may be charged to P & A and the appropriate program area(s) based on the actual time worked under each area. If the State Highway Safety Agency elects to allocate costs based on actual time spent on an activity, the State Highway Safety Agency must keep accurate time records showing the work activities for each employee.

(b) *Participation by political subdivisions (local expenditure requirement)*—(1) *Determining local expenditure.* In determining whether a State meets the requirement that 40 percent (or 95 percent for Indian tribes) of Section 402 funds be expended by political subdivisions (also referred to as the local expenditure requirement) in a fiscal year, NHTSA will apply the requirement sequentially to each fiscal year's apportionments, treating all apportionments made from a single fiscal year's authorizations as a single amount for this purpose. Therefore, at least 40 percent of each State's apportionments (or at least 95 percent of the apportionment to the Secretary of the Interior) from each year's authorizations must be used in the highway safety programs of its political subdivisions prior to the end of the fiscal year.

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

(3) *Expenditures by State on behalf of a political subdivision.* Federal funds apportioned under 23 U.S.C. 402 that are expended by a State on behalf of a specific political subdivision (either through direct performance of projects or by entering into contracts or subawards with other entities) may qualify as part of the required local expenditure, provided there is evidence of the political subdivision's involvement in identifying its traffic safety need(s) and input into implementation of the activity within its jurisdiction. A State may not arbitrarily ascribe State agency expenditures as ''on behalf of a local government.'' Such expenditures qualify if—

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

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

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

(5) *Waivers.* While the requirement for participation by political subdivisions may be waived in whole or in part by the NHTSA Administrator, it is expected that each State program will generate and maintain political subdivision participation at the level specified in the Federal statute so that requests for waivers are minimized. Where a waiver is requested, however, the State shall submit a written request describing the extraordinary circumstances that necessitate a waiver, or providing a conclusive showing of the absence of legal authority over highway safety activities at the political subdivision levels of the State, and must recommend the appropriate percentage participation to be applied in lieu of the required 40 percent or 95 percent (for Indian tribes) local expenditure.

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

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

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

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

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

(f) *Prohibition on use of grant funds to check for helmet usage.* Grant funds under this part shall not be used for programs to check helmet usage or to create checkpoints that specifically target motorcyclists.

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

§ 1300.14 [Reserved].

§ 1300.15 Apportionment and obligation of Federal funds.

(a) Except as provided in paragraph (b) of this section, on October 1 of each fiscal year, or soon thereafter, the NHTSA Administrator shall, in writing, distribute funds available for obligation under 23 U.S.C. Chapter 4 and Section 1906 to the States and specify any conditions or limitations imposed by law on the use of the funds.

(b) In the event that authorizations exist but no applicable appropriation act has been enacted by October 1 of a fiscal year, the NHTSA Administrator may, in writing, distribute a part of the funds authorized under 23 U.S.C. Chapter 4 and Section 1906 contract authority to the States to ensure program continuity, and in that event shall specify any conditions or limitations imposed by law on the use of the funds. Upon appropriation of grant funds, the NHTSA Administrator shall, in writing, promptly adjust the obligation limitation and specify any conditions or limitations imposed by law on the use of the funds.

(c) Funds distributed under paragraph (a) or (b) of this section shall be available for expenditure by the States to satisfy the Federal share of expenses under the approved annual grant application, and shall constitute a contractual obligation of the Federal Government, subject to any conditions or limitations identified in the distributing document. Such funds shall be available for expenditure by the States as provided in § 1300.41(b), after which the funds shall lapse.

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

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

§ 1300.20 General.

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

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

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

Majority means greater than 50 percent.

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

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

(c) *Eligibility and application*—(1) *Eligibility.* Except as provided in

§ 1300.25(c), the 50 States, the District of Columbia, Puerto Rico, American Samoa, the Commonwealth of the Northern Mariana Islands, Guam and the U.S. Virgin Islands are each eligible to apply for grants identified under this subpart.

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

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

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

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

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

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

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

§ 1300.21 Occupant protection grants.

(a) *Purpose.* This section establishes criteria, in accordance with 23 U.S.C. 405(b), for awarding grants to States that adopt and implement effective occupant protection programs to reduce highway deaths and injuries resulting from individuals riding unrestrained or improperly restrained in motor vehicles.

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

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

High seat belt use rate State means a State that has an observed seat belt use rate of 90.0 percent or higher (not rounded) based on validated data from the State survey of seat belt use conducted during the previous calendar year, in accordance with the Uniform Criteria for State Observational Surveys of Seat Belt Use, 23 CFR part 1340 (*e.g.,* for a grant application submitted on August 1, 2023, the ''previous calendar year'' would be 2022).

Lower seat belt use rate State means a State that has an observed seat belt use rate below 90.0 percent (not rounded) based on validated data from the State survey of seat belt use conducted during the previous calendar year, in accordance with the Uniform Criteria for State Observational Surveys of Seat Belt Use, 23 CFR part 1340 (*e.g.,* for a grant application submitted on August 1, 2023, the ''previous calendar year'' would be 2022).

Low-income and underserved populations means

(i) Populations meeting a threshold income level that is at least as inclusive as the U.S. Department of Health and Human Services Poverty Guidelines [1] identified by the State, or

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

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

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

(d) *Qualification criteria for a high seat belt use rate State.* To qualify for an Occupant Protection Grant in a fiscal year, a high seat belt use rate State (as determined by NHTSA) shall submit as part of its annual grant application the following documentation, in accordance with part 1 of appendix B to this part:

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

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

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

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

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

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

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

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

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

(e) *Qualification criteria for a lower seat belt use rate State.* To qualify for an Occupant Protection Grant in a fiscal year, a lower seat belt use rate State (as determined by NHTSA) shall satisfy all the requirements of paragraph (d) of this section, and submit as part of its annual grant application documentation demonstrating that it meets at least three

[1] *Available online at https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines/prior-hhs-poverty-guidelines-federal-register-references/2021-poverty-guidelines.*

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

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

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

(i) Require—

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

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

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

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

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

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

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

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

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

(F) Passengers in public and livery conveyances.

(3) *Seat belt enforcement.* The State shall identify the projects, at the level of detail required under § 1300.12(b)(2), and provide a description demonstrating that the State conducts sustained enforcement (*i.e.,* a program of recurring efforts throughout the fiscal year of the grant to promote seat belt and child restraint enforcement), and that based on the State's problem identification, involves law enforcement agencies responsible for seat belt enforcement in geographic areas in which at least 70 percent of either the State's unrestrained passenger vehicle occupant fatalities occurred or combined fatalities and serious injuries occurred.

(4) *High risk population countermeasure programs.* The State shall identify the projects, at the level of detail required under § 1300.12(b)(2), demonstrating that the State will implement data-driven programs to improve seat belt and child restraint use for at least two of the following at-risk populations:

(i) Drivers on rural roadways;

(ii) Unrestrained nighttime drivers;

(iii) Teenage drivers;

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

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

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

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

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

(B) *Countermeasure strategies* (such as enforcement, education, communication, policies/legislation, partnerships/outreach) designed to achieve the performance targets of the strategic plan, at the level of detail required under § 1300.11(b)(4), which must include an enforcement strategy that includes activities such as encouraging seat belt use policies for law enforcement agencies, vigorous enforcement of seat belt and child safety seat statutes, and accurate reporting of occupant protection system information on police crash report forms; and

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

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

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

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

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

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

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

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

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

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

(v) To implement programs—

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

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

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

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

child passenger safety and occupant protection surveys.

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

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

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

§ 1300.22 State Traffic safety information system improvements grants.

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

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

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

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

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

(iii) Established a State traffic records strategic plan, updated annually, that has been approved by the TRCC and describes specific, quantifiable and measurable improvements anticipated in the State's core safety databases, including crash, citation or adjudication, driver, emergency medical services or injury surveillance system, roadway, and vehicle databases; and

(2) *Quantitative improvement.* The State shall demonstrate quantitative improvement in the data attribute of accuracy, completeness, timeliness, uniformity, accessibility or integration of a core database by providing—

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

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

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

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

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

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

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

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

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

(6) Hiring traffic records professionals for the purpose of improving traffic information systems (including a State Fatal Accident Reporting System (FARS) liaison);

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

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

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

(ii) Advanced technologies present on motor vehicles; and

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

§ 1300.23 Impaired driving countermeasures grants.

(a) *Purpose.* This section establishes criteria, in accordance with 23 U.S.C. 405(d), for awarding grants to States that adopt and implement effective programs to reduce traffic safety problems resulting from individuals driving motor vehicles while under the influence of alcohol, drugs, or a combination of alcohol and drugs; that enact alcohol-ignition interlock laws; or that implement 24–7 sobriety programs.

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

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

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

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

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

Average impaired driving fatality rate means the number of fatalities in motor vehicle crashes involving a driver with

a blood alcohol concentration of at least 0.08 percent for every 100,000,000 vehicle miles traveled, based on the most recently reported three calendar years of final data from the FARS.

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

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

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

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

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

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

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

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

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

Standard offense for driving under the influence of alcohol or drugs means the offense described in a State's statute that makes it a criminal offense to operate a motor vehicle while under the influence of alcohol or drugs, but does not require a measurement of alcohol or drug content.

(c) *Eligibility determination.* A State is eligible to apply for a grant under this section as a low-range State, a mid-range State or a high-range State, in accordance with paragraph (d), (e), or (f) of this section, as applicable. Independent of qualification on the basis of range, a State may also qualify for separate grants under this section as a State with an alcohol-ignition interlock law, as provided in paragraph (g) of this section, or as a State with a 24–7 sobriety program, as provided in paragraph (h) of this section.

(d) *Qualification criteria for a low-range State.* To qualify for an Impaired Driving Countermeasures Grant in a fiscal year, a low-range State (as determined by NHTSA) shall submit as part of its annual grant application the assurances in Part 3 of Appendix B that the State will use the funds awarded under 23 U.S.C. 405(d)(1) only for the implementation and enforcement of programs authorized in paragraph (j) of this section.

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

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

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

(A) State Highway Safety Office;

(B) State and local law enforcement;

(C) Criminal justice system (*e.g.,* prosecution, adjudication, and probation);

(D) Public health;

(E) Drug-impaired driving countermeasure expert (*e.g.,* DRE coordinator); and

(F) Communications and community engagement specialist.

(iii) Strategic plan based on the most recent version of Highway Safety Program Guideline No. 8—Impaired Driving, which, at a minimum, covers the following:

(A) Program management and strategic planning;

(B) Prevention, including community engagement and coalitions;

(C) Criminal justice systems;

(D) Communications programs;

(E) Alcohol and other drug misuse, including screening, treatment, assessment and rehabilitation; and

(F) Program evaluation and data.

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

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

(f) *Qualification criteria for a high-range State.* (1) *General requirements.* To qualify for an Impaired Driving Countermeasures Grant in a fiscal year, a high-range State (as determined by NHTSA) shall submit as part of its annual grant application the assurance required in paragraph (d) of this section, the date of a NHTSA-facilitated assessment of the State's impaired driving program conducted within three years prior to the application due date, a copy of a Statewide impaired driving plan that contains the information required in paragraphs (e)(1)(i) through (iii) of this section and that includes the following additional information, in accordance with part 3 of appendix B to this part:

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

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

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

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

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

(g) *Grants to States with alcohol-ignition interlock laws.* (1) To qualify for an alcohol-ignition interlock law grant, a State shall submit legal citation(s) or program information (for paragraph (g)(1)(iii)(B) of this section only), in accordance with part 4 of appendix B to this part, that demonstrates that—

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

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

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

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

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

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

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

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

(ii) The individual is certified in writing by a physician as being unable to provide a deep lung breath sample for analysis by an ignition interlock device; or

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

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

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

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

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

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

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

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

(i) High-visibility enforcement efforts;

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

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

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

(B) Training and education of those professionals to assist the professionals in preventing impaired driving and handling impaired driving cases, including by providing compensation to a law enforcement officer to carry out

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

(C) Establishing driving while intoxicated courts;

(iv) Alcohol ignition interlock programs;

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

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

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

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

(ix) Developing impaired driving information systems;

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

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

(A) Oral fluid-screening technologies;

(B) Electronic warrant programs;

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

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

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

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

(i) Grant funds awarded under 23 U.S.C. 405(d) for programs designed to reduce impaired driving based on problem identification, in accordance with § 1300.11; and

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

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

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

(i) High-visibility enforcement efforts; and

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

(5) *Special rule—reporting and impaired driving measures.* Notwithstanding paragraph (j)(1) of this section, a State may use grant funds awarded under 23 U.S.C. 405(d) for any expenditure relating to—

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

(ii) Researching or evaluating impaired driving countermeasures.

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

§ 1300.24 Distracted driving grants.

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

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

Driving means operating a motor vehicle on a public road, and does not include operating a motor vehicle when the vehicle has pulled over to the side of, or off, an active roadway and has stopped in a location where it can safely remain stationary.

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

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

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

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

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

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

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

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

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

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

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

(ii) Establishes a fine for a violation of that law; and

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

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

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

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

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

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

(5) *Permitted exceptions.* For State statutes under paragraphs (d)(1) through (3) of this section, a State statute providing for the following exceptions, and no others, shall not be deemed out of compliance with the requirements of this paragraph (d):

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

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

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

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

(v) except for a law described in paragraph (d)(3) of this section (prohibition on youth cell phone use while driving), the use of a personal wireless communications device in a hands-free manner, with a hands-free accessory, or with the activation or deactivation of a feature or function of the personal wireless communications device with the motion of a single swipe or tap of the finger of the driver.

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

(ii) A State may be eligible for a distracted driving awareness grant under paragraph (c) of this section and for one additional distracted driving law grant under paragraph (d) of this section.

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

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

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

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

(C) A State that qualifies for a prohibition on viewing devices while driving law grant under paragraph (d)(4) of this section shall receive 25 percent of the amount under paragraph (e)(2)(ii) of this section.

(f) *Use of funds*—(1) *Eligible uses.* Except as provided in paragraphs (f)(2) and (3) of this section, a State may use grant funds awarded under 23 U.S.C. 405(e) only to educate the public through advertising that contains information about the dangers of texting or using a cell phone while driving, for traffic signs that notify drivers about the distracted driving law of the State, or for law enforcement costs related to the enforcement of the distracted driving law.

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

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

§ 1300.25 Motorcyclist safety grants.

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

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

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

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

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

training and safety programs and no statute or regulation diverting any of those fees.

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

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

(c) *Eligibility.* The 50 States, the District of Columbia and Puerto Rico are eligible to apply for a Motorcyclist Safety Grant.

(d) *Qualification criteria.* To qualify for a Motorcyclist Safety Grant in a fiscal year, a State shall submit as part of its annual grant application documentation demonstrating compliance with at least two of the criteria in paragraphs (e) through (k) of this section.

(e) *Motorcycle rider training course.* A State shall have an effective motorcycle rider training course that is offered throughout the State and that provides a formal program of instruction in crash avoidance and other safety-oriented operational skills to motorcyclists. To demonstrate compliance with this criterion, the State shall submit, in accordance with part 7 of appendix B to this part—

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

(i) Motorcycle Safety Foundation Basic Rider Course;

(ii) TEAM OREGON Basic Rider Training;

(iii) Idaho STAR Basic I;

(iv) California Motorcyclist Safety Program Motorcyclist Training Course;

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

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

(f) *Motorcyclist awareness program.* A State shall have an effective Statewide program to enhance motorist awareness of the presence of motorcyclists on or near roadways and safe driving practices that avoid injuries to motorcyclists. To demonstrate compliance with this criterion, the State shall submit, in accordance with part 7 of appendix B to this part—

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

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

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

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

(h) *Reduction of fatalities and crashes involving motorcycles.* A State shall demonstrate a reduction for the preceding calendar year in the number of motorcyclist fatalities and in the rate of motor vehicle crashes involving motorcycles in the State (expressed as a function of 10,000 registered motorcycle registrations), as computed by NHTSA. To demonstrate compliance a State shall, in accordance with part 7 of appendix B to this part—

(1) Submit State data and a description of the State's methods for collecting and analyzing the data, showing the total number of motor vehicle crashes involving motorcycles in the State for the most recent calendar year for which final State crash data are available, but data no older than three calendar years prior to the application due date and the same type of data for the calendar year immediately prior to that calendar year (*e.g.,* for a grant application submitted on August 1, 2023, the State shall submit calendar year 2022 data and 2021 data, if both data are available, and may not provide data older than calendar year 2020 and 2019, to determine the rate);

(2) Experience a reduction of at least one in the number of motorcyclist fatalities for the most recent calendar year for which final FARS data are available as compared to the final FARS data for the calendar year immediately prior to that year; and

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

(i) *Impaired motorcycle driving program.* A State shall implement a Statewide program to reduce impaired driving, including specific measures to reduce impaired motorcycle operation. The State shall submit, in accordance with part 7 of appendix B to this part—

(1) One or more performance measures and corresponding

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

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

(j) *Reduction of fatalities and crashes involving impaired motorcyclists.* A State shall demonstrate a reduction for the preceding calendar year in the number of fatalities and in the rate of reported crashes involving alcohol-impaired and drug-impaired motorcycle operators (expressed as a function of 10,000 motorcycle registrations), as computed by NHTSA. The State shall, in accordance with part 7 of appendix B to this part—

(1) Submit State data and a description of the State's methods for collecting and analyzing the data, showing the total number of reported crashes involving alcohol-and drug-impaired motorcycle operators in the State for the most recent calendar year for which final State crash data are available, but data no older than three calendar years prior to the application due date and the same type of data for the calendar year immediately prior to that year (*e.g.,* for a grant application submitted on August 1, 2023, the State shall submit calendar year 2022 data and 2021 data, if both data are available, and may not provide data older than calendar year 2020 and 2019, to determine the rate);

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

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

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

(1) To demonstrate compliance as a Law State, the State shall submit, in accordance with part 7 of appendix B to this part, the legal citation to the statutes or regulations requiring that all fees collected by the State from motorcyclists for the purposes of funding motorcycle training and safety programs are to be used for motorcycle training and safety programs and the legal citations to the State's current fiscal year appropriation (or preceding fiscal year appropriation, if the State has not enacted a law at the time of the State's application) appropriating all such fees to motorcycle training and safety programs.

(2) To demonstrate compliance as a Data State, the State shall submit, in accordance with part 7 of appendix B to this part, data or documentation from official records from the previous State fiscal year showing that all fees collected by the State from motorcyclists for the purposes of funding motorcycle training and safety programs were, in fact, used for motorcycle training and safety programs. Such data or documentation shall show that revenues collected for the purposes of funding motorcycle training and safety programs were placed into a distinct account and expended only for motorcycle training and safety programs.

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

(m) *Use of grant funds*—(1) *Eligible uses.* Except as provided in paragraph (m)(2) of this section, a State may use grant funds awarded under 23 U.S.C. 405(f) only for motorcyclist safety training and motorcyclist awareness programs, including—

(i) Improvements to motorcyclist safety training curricula;

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

(A) Procurement or repair of practice motorcycles;

(B) Instructional materials;

(C) Mobile training units; and

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

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

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

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

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

§ 1300.26 Nonmotorized safety grants.

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

(b) *Eligibility determination.* (1) A State is eligible for a grant under this section if the State's annual combined nonmotorized road user fatalities exceed 15 percent of the State's total annual crash fatalities based on the most recent

calendar year for which final FARS data are available, as determined by NHTSA.

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

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

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

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

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

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

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

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

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

(iii) State traffic laws applicable to nonmotorized road user safety, including the responsibilities of motorists with respect to nonmotorized road users; and

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

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

§ 1300.27 Preventing roadside deaths grants.

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

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

Digital alert technology means an electronic system to alert drivers to the location of first responder vehicles on the roadside using traveler information systems *e.g.,* navigation providers, smartphone apps, or a connected vehicle on-board unit.

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

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

(c) *Qualification criteria.* To qualify for a grant under this section in a fiscal year, a State shall submit a plan that describes the method by which the State will use grant funds in accordance with paragraph (e) of this section. At a minimum, the plan shall state the eligible use(s) selected, consistent with paragraph (e) of this section, and include an identification of the specific safety problems to be addressed, performance measures and targets, the countermeasure strategies at the level of detail required by § 1300.11(b)(1), (3), and (4) and projects at the level of detail required by § 1300.12(b)(2) that implement those strategies the State will implement to address those problems.

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

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

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

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

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

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

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

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

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

§ 1300.28 Driver and officer safety education grants.

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

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

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

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

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

(d) *Driver and officer safety law or program.* A law or program that requires 1 or more of the following:

(1) *Driver education and driving safety courses*—(i) *General.* A State must provide either a legal citation to a law or supporting documentation that demonstrates that driver education and

driver safety courses provided to individuals by educational and motor vehicle agencies of the State include instruction and testing relating to law enforcement practices during traffic stops, including, at a minimum, information relating to—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 1300.29 Racial profiling data collection grants.

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

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

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

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

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

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

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

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

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

(1) Collecting and maintaining data on traffic stops;

(2) Evaluating the results of the data; and

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

Subpart D—Administration of the Highway Safety Grants

§ 1300.30 General.

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

§ 1300.31 Equipment.

(a) *Title.* Except as provided in paragraphs (e) and (f) of this section, title to equipment acquired under 23 U.S.C. Chapter 4 and Section 1906 will vest upon acquisition in the State or its subrecipient, as appropriate, subject to the conditions in paragraphs (b) through (d) of this section.

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

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

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

(1) Purchases shall receive prior written approval from the Regional Administrator;

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

(e) *Right to transfer title.* The Regional Administrator may reserve the right to transfer title to equipment acquired under this part to the Federal Government or to a third party when such third party is eligible under Federal statute. Any such transfer shall be subject to the following requirements:

(1) The equipment shall be identified in the grant or otherwise made known to the State in writing;

(2) The Regional Administrator shall issue disposition instructions within 120 calendar days after the equipment is determined to be no longer needed for highway safety purposes, in the absence of which the State shall follow the applicable procedures in 2 CFR parts 200 and 1201.

(f) *Federally-owned equipment.* In the event a State or its subrecipient is provided federally-owned equipment—

(1) Title shall remain vested in the Federal Government;

(2) Management shall be in accordance with Federal rules and procedures, and an annual inventory listing shall be submitted by the State;

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

§ 1300.32 Amendments to Annual Grant Applications—approval by the Regional Administrator.

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

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

(c) Amendments and changes to the annual grant application are subject to approval by the Regional Administrator before approval of vouchers for payment. Regional Administrators will disapprove changes and projects that are inconsistent with the triennial HSP, as updated, or that do not constitute an appropriate use of highway safety grant funds. States are independently responsible to ensure that projects constitute an appropriate use of highway safety grant funds.

§ 1300.33 Vouchers and project agreements.

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

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

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

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

(3) Eligible use of funds;

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

(5) Matching rate (or special matching writeoff used, *i.e.,* sliding scale rate authorized under 23 U.S.C. 120).

(c) *Project agreements.* Copies of each project agreement for which expenses are being claimed under the voucher (and supporting documentation for the vouchers) shall be made promptly available for review by the Regional Administrator upon request. Each project agreement shall bear the project agreement number to allow the Regional Administrator to match the voucher to the corresponding project.

(d) *Submission requirements.* At a minimum, vouchers shall be submitted to the Regional Administrator on a quarterly basis, no later than 15 working days after the end of each quarter, except that where a State receives funds by electronic transfer at an annualized rate of one million dollars or more, vouchers shall be submitted on a monthly basis, no later than 15 working days after the end of each month. A final voucher for the fiscal year shall be submitted to the Regional Administrator no later than 120 days after the end of the fiscal year, and all unexpended balances shall be carried forward to the next fiscal year unless they have lapsed in accordance with § 1300.41.

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

(2) Vouchers that request payment for projects whose project agreement numbers or amounts claimed do not match the projects or exceed the estimated amount of Federal funds provided under § 1300.12 (b)(2) shall be rejected, in whole or in part, until an amended project and/or estimated amount of Federal funds is submitted to and approved by the Regional Administrator in accordance with § 1300.32.

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

§ 1300.34 Program income.

(a) *Definition.* Program income means gross income earned by the State or a subrecipient that is directly generated

by a supported activity or earned as a result of the Federal award during the period of performance.

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

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

(d) *Use of program income*—(1) *Addition.* Program income shall ordinarily be added to the funds committed to the Federal award (*i.e.,* Section 402, Section 405(b), etc.) under which it was generated. Such program income shall be used to further the objectives of the program area under which it was generated.

(2) *Cost sharing or matching.* Program income may be used to meet cost sharing or matching requirements only upon written approval of the Approving Official. Such use shall not increase the commitment of Federal funds.

§ 1300.35 Annual report.

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

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

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

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

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

(b) *Activity report.* (1) For each countermeasure strategy, a description of the projects and activities funded and implemented under the prior year annual grant application, including:

(i) The amount of Federal funds expended and the zip code(s) in which the projects were performed, or, if the project is State-wide, identification as such;

(ii) An explanation of reasons for projects that were not implemented; and

(iii) A description of how the projects were informed by meaningful public participation and engagement in the planning processes described in the State's triennial HSP.

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

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

§ 1300.36 Appeal of written decision by a Regional Administrator.

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

Subpart E—Annual Reconciliation.

§ 1300.40 Expiration of the Annual Grant Application.

(a) The State's annual grant application for a fiscal year and the State's authority to incur costs under that application shall expire on the last day of the fiscal year.

(b) Except as provided in paragraph (c) of this section, each State shall submit a final voucher which satisfies the requirements of § 1300.33(b) within 120 days after the expiration of the annual grant application. The final voucher constitutes the final financial reconciliation for each fiscal year.

(c) The Regional Administrator may extend the time period for no more than 30 days to submit a final voucher only in extraordinary circumstances, consistent with 2 CFR 200.344 and 200.345. States shall submit a written request for an extension describing the extraordinary circumstances that necessitate an extension. The approval of any such request for extension shall be in writing, shall specify the new deadline for submitting the final voucher, and shall be signed by the Regional Administrator.

§ 1300.41 Disposition of unexpended balances.

(a) *Carry-forward balances.* Except as provided in paragraph (b) of this section, grant funds that remain unexpended at the end of a fiscal year and the expiration of an annual grant application shall be credited to the State's highway safety account for the new fiscal year and made immediately available for use by the State, provided the State's new annual grant application has been approved by the Regional Administrator pursuant to § 1300.12(c), including any amendments to the annual grant application pursuant to § 1300.32.

(b) *Deobligation of funds.* (1) Except as provided in paragraph (b)(2) of this section, unexpended grant funds shall not be available for expenditure beyond the period of three years after the last day of the fiscal year of apportionment or allocation.

(2) NHTSA shall notify States of any such unexpended grant funds no later than 180 days prior to the end of the period of availability specified in paragraph (b)(1) of this section and inform States of the deadline for commitment. States may commit such unexpended grant funds to a specific project by the specified deadline, and shall provide documentary evidence of that commitment, including a copy of an executed project agreement, to the Regional Administrator.

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

(4) NHTSA shall deobligate unexpended balances at the end of the time period in paragraph (b)(1) or (3) of this section, whichever is applicable, and the funds shall lapse.

§ 1300.42 Post-grant adjustments.

The expiration of an annual grant application does not affect the ability of NHTSA to disallow costs and recover funds on the basis of a later audit or

other review or the State's obligation to return any funds due as a result of later refunds, corrections, or other transactions.

§ 1300.43 Continuing requirements.

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

Subpart F—Non-Compliance.

§ 1300.50 General.

Where a State is found to be in non-compliance with the requirements of the grant programs authorized under 23 U.S.C. Chapter 4 or Section 1906, or with other applicable law, the sanctions in §§ 1300.51 and 1300.52, and any other sanctions or remedies permitted under Federal law, including the specific conditions of 2 CFR 200.208 and 200.339, may be applied as appropriate.

§ 1300.51 Sanctions—reduction of apportionment.

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

(2) If the Administrator has apportioned funds under Section 402 to a State and subsequently determines that the State is not implementing an approved highway safety program, the Administrator shall reduce the apportionment by an amount equal to not less than 20 percent until such time as the Administrator determines that the State is implementing an approved highway safety program. The Administrator shall consider the gravity of the State's failure to implement an approved highway safety program in determining the amount of the reduction.

(i) When the Administrator determines that a State is not implementing an approved highway safety program, the Administrator shall issue to the State an advance notice, advising the State that the Administrator expects to withhold funds from apportionment or reduce the State's apportionment under Section 402. The Administrator shall state the amount of the expected withholding or reduction.

(ii) The State may, within 30 days after its receipt of the advance notice, submit documentation demonstrating that it is implementing an approved highway safety program. Documentation shall be submitted to the NHTSA Administrator, 1200 New Jersey Avenue SE, Washington, DC 20590.

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

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

(ii) The Administrator shall reapportion the withheld funds to the other States, in accordance with the formula specified in 23 U.S.C. 402(c), not later than the last day of the fiscal year.

§ 1300.52 Sanctions—risk assessment and non-compliance.

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

(i) Financial stability;

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

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

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

(v) The State's ability to effectively implement statutory, regulatory, and other requirements imposed on non-Federal entities.

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

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

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

[*Each fiscal year, the Governor's Representative for Highway Safety must sign these Certifications and Assurances affirming that the State complies with all requirements, including applicable Federal statutes and regulations, that are in effect during the grant period. Requirements that also apply to subrecipients are noted under the applicable caption.*]

State: _____

Fiscal Year: _____

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

GENERAL REQUIREMENTS

The State will comply with applicable statutes and regulations, including but not limited to:

- 23 U.S.C. Chapter 4—Highway Safety Act of 1966, as amended
- Sec. 1906, Pub. L. 109–59, as amended by Sec. 25024, Pub. L. 117–58
- 23 CFR part 1300—Uniform Procedures for State Highway Safety Grant Programs
- 2 CFR part 200—Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- 2 CFR part 1201—Department of Transportation, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

INTERGOVERNMENTAL REVIEW OF FEDERAL PROGRAMS

The State has submitted appropriate documentation for review to the single point of contact designated by the Governor to review Federal programs, as required by Executive Order 12372 (Intergovernmental Review of Federal Programs).

FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA)

The State will comply with FFATA guidance, *OMB Guidance on FFATA Subaward and Executive Compensation Reporting,* August 27, 2010, (*https://www.fsrs.gov/documents/OMB_Guidance_on_FFATA_Subaward_and_Executive_Compensation_Reporting_08272010.pdf*) by reporting to *FSRS.gov* for each sub-grant awarded:

- Name of the entity receiving the award;

- Amount of the award;
- Information on the award including transaction type, funding agency, the North American Industry Classification System code or Catalog of Federal Domestic Assistance number (where applicable), program source;
- Location of the entity receiving the award and the primary location of performance under the award, including the city, State, congressional district, and country; and an award title descriptive of the purpose of each funding action;
- Unique entity identifier (generated by *SAM.gov*);
- The names and total compensation of the five most highly compensated officers of the entity if:

(i) the entity in the preceding fiscal year received—

(I) 80 percent or more of its annual gross revenues in Federal awards;

(II) $25,000,000 or more in annual gross revenues from Federal awards; and

(ii) the public does not have access to information about the compensation of the senior executives of the entity through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986;

- Other relevant information specified by OMB guidance.

NONDISCRIMINATION

(applies to subrecipients as well as States)

The State highway safety agency [and its subrecipients] will comply with all Federal statutes and implementing regulations relating to nondiscrimination (''Federal Nondiscrimination Authorities''). These include but are not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.,* 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (entitled *Non-discrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964*);
- 28 CFR 50.3 (U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. 324 *et seq.*), and Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681–1683 and 1685–1686) (prohibit discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability) and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. 6101 *et seq.*), (prohibits discrimination on the basis of age);
- The Civil Rights Restoration Act of 1987, (Pub. L. 100–209), (broadens scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms ''programs or activities'' to include all of the programs or activities of the Federal aid recipients, subrecipients and contractors, whether such programs or activities are Federally-funded or not);
- Titles II and III of the Americans with Disabilities Act (42 U.S.C. 12131–12189) (prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing) and 49 CFR parts 37 and 38;
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (preventing discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations);
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency (requiring that recipients of Federal financial assistance provide meaningful access for applicants and beneficiaries who have limited English proficiency (LEP));
- Executive Order 13985, Advancing Racial Equity and Support for Underserved Communities through the Federal Government (advancing equity across the Federal government); and
- Executive Order 13988, Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation (clarifying that sex discrimination includes discrimination on the grounds of gender identity or sexual orientation).

The preceding statutory and regulatory cites hereinafter are referred to as the ''Acts'' and ''Regulations,'' respectively.

General Assurances

In accordance with the Acts, the Regulations, and other pertinent directives, circulars, policy, memoranda, and/or guidance, the Recipient hereby gives assurance that it will promptly take any measures necessary to ensure that:

''*No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity, for which the Recipient receives Federal financial assistance from DOT, including NHTSA.*''

The Civil Rights Restoration Act of 1987 clarified the original intent of Congress, with respect to Title VI of the Civil Rights Act of 1964 and other non-discrimination requirements (the Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973), by restoring the broad, institutional-wide scope and coverage of these nondiscrimination statutes and requirements to include all programs and activities of the Recipient, so long as any portion of the program is Federally assisted.

Specific Assurances

More specifically, and without limiting the above general Assurance, the Recipient agrees with and gives the following Assurances with respect to its Federally assisted Highway Safety Grant Program:

1. The Recipient agrees that each ''activity,'' ''facility,'' or ''program,'' as defined in § 21.23(b) and (e) of 49 CFR part 21 will be (with regard to an ''activity'') facilitated, or will be (with regard to a ''facility'') operated, or will be (with regard to a ''program'') conducted in compliance with all requirements imposed by, or pursuant to the Acts and the Regulations.

2. The Recipient will insert the following notification in all solicitations for bids, Requests For Proposals for work, or material subject to the Acts and the Regulations made in connection with all Highway Safety Grant Programs and, in adapted form, in all proposals for negotiated agreements regardless of funding source:

''*The [name of Recipient], in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C 2000d to 2000d–4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.*''

3. The Recipient will insert the clauses of Appendix A and E of this Assurance (also referred to as DOT Order 1050.2A) [2] in every contract or agreement subject to the Acts and the Regulations.

4. The Recipient will insert the clauses of Appendix B of DOT Order 1050.2A, as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a Recipient.

5. That where the Recipient receives Federal financial assistance to construct a facility, or part of a facility, the Assurance will extend to the entire facility and facilities operated in connection therewith.

6. That where the Recipient receives Federal financial assistance in the form of, or for the acquisition of, real property or an interest in real property, the Assurance will extend to rights to space on, over, or under such property.

7. That the Recipient will include the clauses set forth in Appendix C and Appendix D of this DOT Order 1050.2A, as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the Recipient with other parties:

a. for the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and

b. for the construction or use of, or access to, space on, over, or under real property

[2] Available at *https://www.faa.gov/about/office_org/headquarters_offices/acr/com_civ_support/non_disc_pr/media/dot_order_1050_2A_standard_dot_title_vi_assurances.pdf.*

acquired or improved under the applicable activity, project, or program.

8. That this Assurance obligates the Recipient for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the Assurance obligates the Recipient, or any transferee for the longer of the following periods:

a. the period during which the property is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or

b. the period during which the Recipient retains ownership or possession of the property.

9. The Recipient will provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he/she delegates specific authority to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Acts, the Regulations, and this Assurance.

10. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Acts, the Regulations, and this Assurance.

By signing this ASSURANCE, the State highway safety agency also agrees to comply (and require any sub-recipients, sub-grantees, contractors, successors, transferees, and/or assignees to comply) with all applicable provisions governing NHTSA's access to records, accounts, documents, information, facilities, and staff. You also recognize that you must comply with any program or compliance reviews, and/or complaint investigations conducted by NHTSA. You must keep records, reports, and submit the material for review upon request to NHTSA, or its designee in a timely, complete, and accurate way. Additionally, you must comply with all other reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.

The State highway safety agency gives this ASSURANCE in consideration of and for obtaining any Federal grants, loans, contracts, agreements, property, and/or discounts, or other Federal-aid and Federal financial assistance extended after the date hereof to the recipients by the U.S. Department of Transportation under the Highway Safety Grant Program. This ASSURANCE is binding on the State highway safety agency, other recipients, sub-recipients, sub-grantees, contractors, subcontractors and their subcontractors', transferees, successors in interest, and any other participants in the Highway Safety Grant Program. The person(s) signing below is/are authorized to sign this ASSURANCE on behalf of the Recipient.

THE DRUG-FREE WORKPLACE ACT OF 1988 (41 U.S.C. 8103)

The State will provide a drug-free workplace by:

a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace, and specifying the actions that will be taken against employees for violation of such prohibition;

b. Establishing a drug-free awareness program to inform employees about:

1. The dangers of drug abuse in the workplace;

2. The grantee's policy of maintaining a drug-free workplace;

3. Any available drug counseling, rehabilitation, and employee assistance programs;

4. The penalties that may be imposed upon employees for drug violations occurring in the workplace;

5. Making it a requirement that each employee engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

c. Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

1. Abide by the terms of the statement;

2. Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

d. Notifying the agency within ten days after receiving notice under subparagraph (c)(2) from an employee or otherwise receiving actual notice of such conviction;

e. Taking one of the following actions, within 30 days of receiving notice under subparagraph (c)(2), with respect to any employee who is so convicted—

1. Taking appropriate personnel action against such an employee, up to and including termination;

2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

f. Making a good faith effort to continue to maintain a drug-free workplace through implementation of all of the paragraphs above.

POLITICAL ACTIVITY (HATCH ACT)

(applies to subrecipients as well as States)

The State will comply with provisions of the Hatch Act (5 U.S.C. 1501–1508), which limits the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

CERTIFICATION REGARDING FEDERAL LOBBYING

(applies to subrecipients as well as States)

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions;

3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grant, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

RESTRICTION ON STATE LOBBYING

(applies to subrecipients as well as States)

None of the funds under this program will be used for any activity specifically designed to urge or influence a State or local legislator to favor or oppose the adoption of any specific legislative proposal pending before any State or local legislative body. Such activities include both direct and indirect (*e.g.,* ''grassroots'') lobbying activities, with one exception. This does not preclude a State official whose salary is supported with NHTSA funds from engaging in direct communications with State or local legislative officials, in accordance with customary State practice, even if such communications urge legislative officials to favor or oppose the adoption of a specific pending legislative proposal.

CERTIFICATION REGARDING DEBARMENT AND SUSPENSION

(applies to subrecipients as well as States)

Instructions for Primary Tier Participant Certification (States)

1. By signing and submitting this proposal, the prospective primary tier participant is providing the certification set out below and

agrees to comply with the requirements of 2 CFR parts 180 and 1200.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective primary tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary tier participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default or may pursue suspension or debarment.

4. The prospective primary tier participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary tier participant learns its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms *covered transaction, civil judgment, debarment, suspension, ineligible, participant, person, principal, and voluntarily excluded,* as used in this clause, are defined in 2 CFR parts 180 and 1200. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary tier participant further agrees by submitting this proposal that it will include the clause titled ''Instructions for Lower Tier Participant Certification'' including the ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction,'' provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions and will require lower tier participants to comply with 2 CFR parts 180 and 1200.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any prospective lower tier participants, each participant may, but is not required to, check the System for Award Management Exclusions website (*https://www.sam.gov/*).

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal government, the department or agency may terminate the transaction for cause or default.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters-Primary Tier Covered Transactions

(1) The prospective primary tier participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

(2) Where the prospective primary tier participant is unable to certify to any of the Statements in this certification, such prospective participant shall attach an explanation to this proposal.

Instructions for Lower Tier Participant Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below and agrees to comply with the requirements of 2 CFR parts 180 and 1200.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms *covered transaction, civil judgment, debarment, suspension, ineligible, participant, person, principal, and voluntarily excluded,* as used in this clause, are defined in 2 CFR parts 180 and 1200. You may contact the person to whom this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled ''Instructions for Lower Tier Participant Certification'' including the ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction,'' without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions and will require lower tier participants to comply with 2 CFR parts 180 and 1200.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any prospective lower tier participants, each participant may, but is not required to, check

the System for Award Management Exclusions website (*https://www.sam.gov/*).

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

BUY AMERICA ACT

(applies to subrecipients as well as States)

The State and each subrecipient will comply with the Buy America requirement (23 U.S.C. 313) when purchasing items using Federal funds. Buy America requires a State, or subrecipient, to purchase with Federal funds only steel, iron and manufactured products produced in the United States, unless the Secretary of Transportation determines that such domestically produced items would be inconsistent with the public interest, that such materials are not reasonably available and of a satisfactory quality, or that inclusion of domestic materials will increase the cost of the overall project contract by more than 25 percent. In order to use Federal funds to purchase foreign produced items, the State must submit a waiver request that provides an adequate basis and justification for approval by the Secretary of Transportation.

CERTIFICATION ON CONFLICT OF INTEREST

(applies to subrecipients as well as States)

General Requirements

No employee, officer or agent of a State or its subrecipient who is authorized in an official capacity to negotiate, make, accept or approve, or to take part in negotiating, making, accepting or approving any subaward, including contracts or subcontracts, in connection with this grant shall have, directly or indirectly, any financial or personal interest in any such subaward. Such a financial or personal interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or personal interest in or a tangible personal benefit from an entity considered for a subaward. Based on this policy:

1. The recipient shall maintain a written code or standards of conduct that provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents.

a. The code or standards shall provide that the recipient's officers, employees, or agents may neither solicit nor accept gratuities, favors, or anything of monetary value from present or potential subawardees, including contractors or parties to subcontracts.

b. The code or standards shall establish penalties, sanctions or other disciplinary actions for violations, as permitted by State or local law or regulations.

2. The recipient shall maintain responsibility to enforce the requirements of the written code or standards of conduct.

Disclosure Requirements

No State or its subrecipient, including its officers, employees or agents, shall perform or continue to perform under a grant or cooperative agreement, whose objectivity may be impaired because of any related past, present, or currently planned interest, financial or otherwise, in organizations regulated by NHTSA or in organizations whose interests may be substantially affected by NHTSA activities. Based on this policy:

1. The recipient shall disclose any conflict of interest identified as soon as reasonably possible, making an immediate and full disclosure in writing to NHTSA. The disclosure shall include a description of the action which the recipient has taken or proposes to take to avoid or mitigate such conflict.

2. NHTSA will review the disclosure and may require additional relevant information from the recipient. If a conflict of interest is found to exist, NHTSA may (a) terminate the award, or (b) determine that it is otherwise in the best interest of NHTSA to continue the award and include appropriate provisions to mitigate or avoid such conflict.

3. Conflicts of interest that require disclosure include all past, present or currently planned organizational, financial, contractual or other interest(s) with an organization regulated by NHTSA or with an organization whose interests may be substantially affected by NHTSA activities, and which are related to this award. The interest(s) that require disclosure include those of any recipient, affiliate, proposed consultant, proposed subcontractor and key personnel of any of the above. Past interest shall be limited to within one year of the date of award. Key personnel shall include any person owning more than a 20 percent interest in a recipient, and the officers, employees or agents of a recipient who are responsible for making a decision or taking an action under an award where the decision or action can have an economic or other impact on the interests of a regulated or affected organization.

PROHIBITION ON USING GRANT FUNDS TO CHECK FOR HELMET USAGE

(applies to subrecipients as well as States)

The State and each subrecipient will not use 23 U.S.C. Chapter 4 grant funds for programs to check helmet usage or to create checkpoints that specifically target motorcyclists.

POLICY ON SEAT BELT USE

In accordance with Executive Order 13043, Increasing Seat Belt Use in the United States, dated April 16, 1997, the Grantee is encouraged to adopt and enforce on-the-job seat belt use policies and programs for its employees when operating company-owned, rented, or personally-owned vehicles. The National Highway Traffic Safety Administration (NHTSA) is responsible for providing leadership and guidance in support of this Presidential initiative. For information and resources on traffic safety programs and policies for employers, please contact the Network of Employers for Traffic Safety (NETS), a public-private partnership dedicated to improving the traffic safety practices of employers and employees. You can download information on seat belt programs, costs of motor vehicle crashes to employers, and other traffic safety initiatives at *www.trafficsafety.org.* The NHTSA website (*www.nhtsa.gov*) also provides information on statistics, campaigns, and program evaluations and references.

POLICY ON BANNING TEXT MESSAGING WHILE DRIVING

In accordance with Executive Order 13513, Federal Leadership On Reducing Text Messaging While Driving, and DOT Order 3902.10, Text Messaging While Driving, States are encouraged to adopt and enforce workplace safety policies to decrease crashes caused by distracted driving, including policies to ban text messaging while driving company-owned or rented vehicles, Government-owned, leased or rented vehicles, or privately-owned vehicles when on official Government business or when performing any work on or behalf of the Government. States are also encouraged to conduct workplace safety initiatives in a manner commensurate with the size of the business, such as establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving, and education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

SECTION 402 REQUIREMENTS

1. To the best of my personal knowledge, the information submitted in the annual grant application in support of the State's application for a grant under 23 U.S.C. 402 is accurate and complete.

2. The Governor is the responsible official for the administration of the State highway safety program, by appointing a Governor's Representative for Highway Safety who shall

be responsible for a State highway safety agency that has adequate powers and is suitably equipped and organized (as evidenced by appropriate oversight procedures governing such areas as procurement, financial administration, and the use, management, and disposition of equipment) to carry out the program. (23 U.S.C. 402(b)(1)(A))

3. At least 40 percent of all Federal funds apportioned to this State under 23 U.S.C. 402 for this fiscal year will be expended by or for the benefit of political subdivisions of the State in carrying out local highway safety programs (23 U.S.C. 402(b)(1)(C)) or 95 percent by and for the benefit of Indian tribes (23 U.S.C. 402(h)(2)), unless this requirement is waived in writing. (This provision is not applicable to the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.)

4. The State's highway safety program provides adequate and reasonable access for the safe and convenient movement of physically handicapped persons, including those in wheelchairs, across curbs constructed or replaced on or after July 1, 1976, at all pedestrian crosswalks. (23 U.S.C. 402(b)(1)(D))

5. As part of a comprehensive program, the State will support a data-based traffic safety enforcement program that fosters effective community collaboration to increase public safety, and data collection and analysis to ensure transparency, identify disparities in traffic enforcement, and inform traffic enforcement policies, procedures, and activities. (23 U.S.C. 402(b)(1)(E))

6. The State will implement activities in support of national highway safety goals to reduce motor vehicle related fatalities that also reflect the primary data-related crash factors within the State, as identified by the State highway safety planning process, including:

- Participation in the National high-visibility law enforcement mobilizations as identified annually in the NHTSA Communications Calendar, including not less than 3 mobilization campaigns in each fiscal year to—
  - Reduce alcohol-impaired or drug-impaired operation of motor vehicles; and
  - Increase use of seat belts by occupants of motor vehicles;
- Submission of information regarding mobilization participation into the HVE Database;
- Sustained enforcement of statutes addressing impaired driving, occupant protection, and driving in excess of posted speed limits;
- An annual Statewide seat belt use survey in accordance with 23 CFR part 1340 for the measurement of State seat belt use rates, except for the Secretary of Interior on behalf of Indian tribes;
- Development of Statewide data systems to provide timely and effective data analysis to support allocation of highway safety resources;
- Coordination of Highway Safety Plan, data collection, and information systems with the State strategic highway safety plan, as defined in 23 U.S.C. 148(a); and
- Participation in the Fatality Analysis Reporting System (FARS), except for American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, or the United States Virgin Islands. (23 U.S.C. 402(b)(1)(F))

7. The State will actively encourage all relevant law enforcement agencies in the State to follow the guidelines established for vehicular pursuits issued by the International Association of Chiefs of Police that are currently in effect. (23 U.S.C. 402(j))

8. The State will not expend Section 402 funds to carry out a program to purchase, operate, or maintain an automated traffic enforcement system, except in a work zone or school zone. (23 U.S.C. 402(c)(4))

I understand that my statements in support of the State's application for Federal grant funds are statements upon which the Federal Government will rely in determining qualification for grant funds, and that knowing misstatements may be subject to civil or criminal penalties under 18 U.S.C. 1001. I sign these Certifications and Assurances based on personal knowledge, and after appropriate inquiry.

Signature Governor's Representative for Highway Safety

Date

Printed name of Governor's Representative for Highway Safety

Appendix B to Part 1300—Application Requirements for Section 405 and Section 1906 Grants

BILLING CODE 4910–59–P

[*Each fiscal year, to apply for a grant under 23 U.S.C. 405 or Section 1906, Pub. L. 109-59, as amended by Section 4011, Pub. L. 114-94, the State must complete and submit all required information in this appendix, and the Governor's Representative for Highway Safety must sign the Certifications and Assurances.*]

State: _____ Fiscal Year: _____

Instructions: Check the box for each part for which the State is applying for a grant, fill in relevant blanks, and identify the attachment number or page numbers where the requested information appears in the triennial HSP or annual grant application. Attachments may be submitted electronically.

□ PART 1: OCCUPANT PROTECTION GRANTS (23 CFR 1300.21)

[*Check the box above **only** if applying for this grant.*]

All States:

[*Fill in **all** blanks below.*]

- The State's occupant protection program area plan for the upcoming fiscal year is provided in the annual grant application at _____ (location).

- The State will participate in the Click it or Ticket national mobilization in the fiscal year of the grant. The description of the State's planned participation is provided in the annual grant application at _____ (location).

- Projects demonstrating the State's active network of child restraint inspection stations are provided in the annual grant application at _____ (location). Such description includes estimates for: (1) the total number of planned inspection stations and events during the upcoming fiscal year; and (2) within that total, the number of planned inspection stations and events serving each of the following population categories: urban, rural, and at-risk. The planned inspection stations/events provided in the annual grant application are staffed with at least one current nationally Certified Child Passenger Safety Technician.

- Projects, as provided in the annual grant application at _____ (location), that include estimates of the total number of classes and total number of technicians to be trained in the upcoming fiscal year to ensure coverage of child passenger safety inspection stations and inspection events by nationally Certified Child Passenger Safety Technicians.

Lower Seat Belt Use States Only:

[*Check **at least 3 boxes** below and fill in **all** blanks under those checked boxes.*]

□ The State's **primary seat belt use law**, requiring all occupants riding in a passenger motor vehicle to be restrained in a seat belt or a child restraint, was enacted on _____ (date) and last amended on _____ (date), is in effect, and will be enforced during the fiscal year of the grant.

Legal citation(s): _____

_____.

□ The State's **occupant protection law**, requiring occupants to be secured in a seat belt or age-appropriate child restraint while in a passenger motor vehicle and a minimum fine of $25, was enacted on _____ (date) and last amended on _____ (date), is in effect, and will be enforced during the fiscal year of the grant.

Legal citations:

- _____ Requirement for all occupants to be secured in

seat belt or age appropriate child restraint;

- _____ Coverage of all passenger motor vehicles;
- _____ Minimum fine of at least $25;
- _____ Exemptions from restraint requirements.

□ Projects demonstrating the State's **seat belt enforcement plan** are provided in the annual grant application at _____ (location).

□ The projects demonstrating the State's **high risk population countermeasure program** are provided in the annual grant application at _____ (location).

□ The State's **comprehensive occupant protection program** is provided as follows:

- Date of NHTSA-facilitated program assessment conducted within 5 years prior to the application date: _____ (date);
- Multi-year strategic plan: annual grant application or triennial HSP at _____ (location);
- The name and title of the State's designated occupant protection coordinator is _____ _____.
- List that contains the names, titles and organizations of the Statewide occupant protection task force membership: annual grant application at _____ (location).

□ The State's NHTSA-facilitated **occupant protection program assessment** of all elements of its occupant protection program was conducted on _____ (date) (within 5 years of the application due date);

□ PART 2: STATE TRAFFIC SAFETY INFORMATION SYSTEM IMPROVEMENTS GRANTS (23 CFR 1300.22)

[*Check the box above **only** if applying for this grant.*]

All States:

- The State has a functioning traffic records coordinating committee that meets at least 3 times each year.

- The State has designated a TRCC coordinator.

- The State has established a State traffic records strategic plan, updated annually, that has been approved by the TRCC and describes specific quantifiable and measurable improvements anticipated in the State's core safety databases, including crash, citation or adjudication, driver, emergency medical services or injury surveillance system, roadway, and vehicle databases.

[*Fill in the blank for the bullet below.*]

- Written description of the performance measure(s), and all supporting data, that the State is relying on to demonstrate achievement of the quantitative improvement in the preceding 12 months of the application due date in relation to

one or more of the significant data program attributes is provided in the annual grant application at _____ (location).

□ PART 3: IMPAIRED DRIVING COUNTERMEASURES

(23 CFR 1300.23(D)-(F))

[*Check the box above **only** if applying for this grant.*]

All States:

- The State will use the funds awarded under 23 U.S.C. 405(d) only for the implementation of programs as provided in 23 CFR 1300.23(j).

Mid-Range State Only:

[*Check **one box** below and fill in **all** blanks under that checked box.*]

□ The State submits its Statewide impaired driving plan approved by a Statewide impaired driving task force on _____ (date). Specifically –

- Annual grant application at _____ (location) describes the authority and basis for operation of the Statewide impaired driving task force;

- Annual grant application at _____ (location) contains the list of names, titles and organizations of all task force members;
- Annual grant application at _____ (location) contains the strategic plan based on Highway Safety Guideline No. 8 – Impaired Driving.

□ The State has previously submitted a Statewide impaired driving plan approved by a Statewide impaired driving task force on _____ (date) and continues to use this plan.

[*For fiscal year 2024 grant applications, only*]

□ The State will convene a Statewide impaired driving task force to develop a Statewide impaired driving plan, and will submit that plan by August 1 of the grant year.

High-Range State Only:

[*Check **one box** below and fill in **all** blanks under that checked box.*]

□ The State submits its Statewide impaired driving plan approved by a Statewide impaired driving task force on _____ (date) that includes a review of a NHTSA-facilitated assessment of the State's impaired driving program conducted on _____ (date). Specifically, –

- Annual grant application at _____ (location) describes the authority and basis for operation of the Statewide impaired driving task force;

- Annual grant application at _____ (location) contains the list of names, titles and organizations of all task force members;
- Annual grant application at _____ (location) contains the strategic plan based on Highway Safety Guideline No. 8 – Impaired Driving;
- Annual grant application at_____ (location) addresses any related recommendations from the assessment of the State's impaired driving program;
- Annual grant application at _____ (location) contains the projects, in detail, for spending grant funds;
- Annual grant application at _____ (location) describes how the spending supports the State's impaired driving program and achievement of its performance targets.

□ The State submits an updated Statewide impaired driving plan approved by a Statewide impaired driving task force on _____ (date) and updates its assessment review and spending plan provided in the HSP at _____ (location).

[*For fiscal year 2024 grant applications, only*]

□ The State's NHTSA-facilitated assessment was conducted on _____ (date) (within 3 years of the application due date); OR

□ The State will conduct a NHTSA-facilitated assessment during the grant year; AND

□ The State will convene a Statewide impaired driving task force to develop a Statewide impaired driving plan and will submit that plan by August 1 of the grant year.

□ PART 4: ALCOHOL-IGNITION INTERLOCK LAWS (23 CFR 1300.23(G))

[*Check the box above **only** if applying for this grant.*]

[*Check **one box** below and fill in **all** blanks under that checked box]*

□ The State's **alcohol-ignition interlock law**, requiring all individuals convicted of driving under the influence or of driving while intoxicated to drive only motor vehicles with alcohol-ignition interlocks for a period of not less than 180 days, was enacted on _____ (date) and last amended on _____ (date), is in effect, and will be enforced during the fiscal year of the grant.

Legal citations:

- _____ Requirement for alcohol-ignition interlocks for all DUI offenders for not less than 180 days;
- _____ Identify all alcohol-ignition interlock use exceptions.

□ The State's **alcohol-ignition interlock law**, requiring an individual convicted of driving under the influence of alcohol or of driving while intoxicated, and who has been ordered to use an alcohol-ignition interlock, and does not permit the individual to receive any driving privilege or driver's license unless the individual installs on each motor vehicle registered, owned, or leased by the individual an alcohol-ignition interlock for a period of not less than 180 days, was enacted on _____ (date) and last amended

on _____ (date), is in effect, and will be enforced during the fiscal year of the grant.

Legal citations:

- _____ Requirement for installation of alcohol ignition-interlocks for DUI offenders for not less than 180 days;
- _____ Identify all alcohol-ignition interlock use exceptions.

□ The State's **alcohol-ignition interlock law**, requiring an individual convicted of, or the driving privilege of whom is revoked or denied, for refusing to submit to a chemical or other appropriate test for the purpose of determining the presence or concentration of any intoxicating substance, and who has been ordered to use an alcohol-ignition interlock, requires the individual to install on each motor vehicle to be operated by the individual an alcohol-ignition interlock for a period of not less than 180 days, was enacted on _____ (date) and last amended on _____ (date), is in effect, and will be enforced during the fiscal year of the grant; and

The State's **compliance-based removal program**, requiring an individual convicted of driving under the influence of alcohol or of driving while intoxicated, and who has been ordered to use an alcohol-ignition interlock, requires the individual to install on each motor vehicle to be operated by the individual an alcohol-ignition interlock for a period of not less than 180 days, was enacted (if a law) or implemented (if a program) on _____ (date) and last amended on _____ (date), is in effect, and will be enforced during the fiscal year of the grant; and

The State's **compliance-based removal program**, requiring completion of a minimum consecutive period of not less than 40 percent of the required period of alcohol-ignition interlock installation immediately prior to the end of the individual's installation requirement, without a confirmed violation of the State's alcohol-ignition interlock program use requirements, was enacted (if a law) or implemented (if a program) on _____ (date) and last amended on _____ (date), is in effect, and will be enforced during the fiscal year of the grant .

Legal citations:

- _____ Requirement for installation of alcohol-ignition interlocks for refusal to submit to a test for 180 days;
- _____ Requirement for installation of alcohol ignition-interlocks for DUI offenders for not less than 180 days;
- _____ Requirement for completion of minimum consecutive period of not less than 40 percent of the required period of alcohol-interlock use;
- _____ Identify list of alcohol-ignition interlock program use violations;
- _____ Identify all alcohol-ignition interlock use exceptions.

□ PART 5: 24-7 SOBRIETY PROGRAMS (23 CFR 1300.23(H))

[*Check the box above **only** if applying for this grant.*]

[*Fill in **all** blanks.*]

The State provides citations to a law that requires all individuals convicted of driving under the influence or of driving while intoxicated to receive a restriction on driving privileges that was enacted on _____ (date) and last amended on _____ (date), is in effect, and will be enforced during the fiscal year of the grant. **Legal citation(s):**

_____

_____.

[*Check **at least one of the boxes** below and fill in **all** blanks under that checked box.*]

□ *Law citation.* The State provides citations to a law that authorizes a Statewide 24-7 sobriety program that was enacted on _____ (date) and last amended on _____ (date), is in effect, and will be enforced during the fiscal year of the grant. **Legal citation(s):** _____

_____.

□ *Program information.* The State provides program information that authorizes a Statewide 24-7 sobriety program. The program information is provided in the annual grant application at _____ (location).

□ PART 6: DISTRACTED DRIVING GRANTS (23 CFR 1300.24)

[*Check the box above **only** if applying for this grant and check the box(es) below for each grant for which you wish to apply.*]

□ The State has conformed its distracted driving data to the most recent Model Minimum Uniform Crash Criteria (MMUCC) and will provide supporting data (i.e., the State's most recent crash report with distracted driving data element(s)) within 30 days after notification of award.

□ **Distracted Driving Awareness Grant**

- The State provides sample distracted driving questions from the State's driver's license examination in the annual grant application at _____ (location).

Distracted Driving Law Grants

*[Check at least 1 box below and fill in **all** blanks under that checked box.]*

□ **Prohibition on Texting While Driving**

The State's texting ban statute, prohibiting texting while driving and requiring a fine, was enacted on _____ (date) and last amended on _____ (date), is in effect, and will be enforced during the fiscal year of the grant.

Legal citations:

- _____ Prohibition on texting while driving;
- _____ Definition of covered wireless communication devices;
- _____ Fine for an offense;
- _____ Exemptions from texting ban.

□ **Prohibition on Handheld Phone Use While Driving**

The State's handheld phone use ban statute, prohibiting a driver from holding a personal wireless communications device while driving and requiring a fine for violation of the law, was enacted on _____ (date) and last amended on _____ (date), is in effect, and will be enforced during the fiscal year of the grant.

Legal citations:

- _____ Prohibition on handheld phone use;
- _____ Definition of covered wireless communication devices;
- _____ Fine for an offense;
- _____ Exemptions from handheld phone use ban.

□ **Prohibition on Youth Cell Phone Use While Driving**

The State's youth cell phone use ban statute, prohibiting youth cell phone use while driving, and requiring a fine, was enacted on _____ (date) and last amended on

_____ (date), is in effect, and will be enforced during the fiscal year of the grant.

Legal citations:

- _____ Prohibition on youth cell phone use while driving;
- _____ Definition of covered wireless communication devices;
- _____ Fine for an offense;
- _____ Exemptions from youth cell phone use ban.

□ **Prohibition on Viewing Devices While Driving**

The State's viewing devices ban statute, prohibiting driver's from viewing a device while driving, was enacted on _____ (date) and last amended on _____ (date), is in effect, and will be enforced during the fiscal year of the grant.

Legal citations:

- _____ Prohibition on viewing devices use while driving;
- _____ Definition of covered wireless communication devices;
- _____ Exemptions from device viewing ban.

□ PART 7: MOTORCYCLIST SAFETY GRANTS (23 CFR 1300.25)

[*Check the box above **only** if applying for this grant.*]

[*Check **at least 2 boxes** below and fill in **all** blanks under those checked boxes **only**.*]

□ Motorcycle rider training course:

- The name and organization of the head of the designated State authority over motorcyclist safety issues is _____.

- The head of the designated State authority over motorcyclist safety issues has approved and the State has adopted one of the following introductory rider curricula: [*Check at least one of the following boxes below and fill in any blanks.*]

□ Motorcycle Safety Foundation Basic Rider Course;

□ TEAM OREGON Basic Rider Training;

□ Idaho STAR Basic I;

□ California Motorcyclist Safety Program Motorcyclist Training Course;

□ Other curriculum that meets NHTSA's Model National Standards for Entry-Level Motorcycle Rider Training and that has been approved by NHTSA.

- In the annual grant application at _____ (location), a list of counties or political subdivisions in the State where motorcycle rider training courses will be conducted during the fiscal year of the grant AND number of registered motorcycles in each such county or political subdivision according to official State motor vehicle records.

□ **Motorcyclist awareness program:**

- The name and organization of the head of the designated State authority over motorcyclist safety issues is _____.

- The State's motorcyclist awareness program was developed by or in coordination with the designated State authority having jurisdiction over motorcyclist safety issues.

- In the annual grant application at _____ (location), performance measures and corresponding performance targets developed for motorcycle awareness that identify, using State crash data, the counties or political subdivisions within the State with the highest number of motorcycle crashes involving a motorcycle and another motor vehicle.

- In the annual grant application at _____ (location), the projects demonstrating that the State will implement data-driven programs in a majority of counties or political subdivisions where the incidence of crashes involving a motorcycle and another motor vehicle is highest, and a list that identifies, using

State crash data, the counties or political subdivisions within the State ranked in order of the highest to lowest number of crashes involving a motorcycle and another motor vehicle per county or political subdivision.

□ **Helmet Law:**

The State's motorcycle helmet law, requiring the use of a helmet for each motorcycle rider under the age of 18, was enacted on _____ (date) and last amended on _____ (date), is in effect, and will be enforced during the fiscal year of the grant.

Legal citation(s):_____ _____

_____.

□ **Reduction of fatalities and crashes involving motorcycles:**

- Data showing the total number of motor vehicle crashes involving motorcycles is provided in the annual grant application at _____ (location).

- Description of the State's methods for collecting and analyzing data is provided in the annual grant application at _____ (location).

□ **Impaired motorcycle driving program:**

- In the annual grant application or triennial HSP at _____ (location), performance measures and corresponding performance targets developed to reduce impaired motorcycle operation.

- In the annual grant application at _____ (location), countermeasure strategies and projects demonstrating that the State will implement data-driven programs designed to reach motorcyclists and motorists in those jurisdictions where the incidence of motorcycle crashes involving an impaired operator is highest (i.e., the majority of counties or political subdivisions in the State with the highest numbers of motorcycle crashes involving an impaired operator) based upon State data.

□ **Reduction of fatalities and crashes involving impaired motorcyclists:**

- Data showing the total number of reported crashes involving alcohol-impaired and drug-impaired motorcycle operators are provided in the annual grant application at _____ (location).

- Description of the State's methods for collecting and analyzing data is provided in the annual grant application at _____ (location).

□ **Use of fees collected from motorcyclists for motorcycle programs:**

[*Check **one box only** below and fill in **all** blanks under the checked box **only**.*]

□ Applying as a Law State –

- The State law or regulation requires all fees collected by the State from motorcyclists for the purpose of funding motorcycle training and safety programs are to be used for motorcycle training and safety programs. **Legal citation(s):**_____

_____

_____.

AND

- The State's law appropriating funds for FY ____ demonstrates that all fees collected by the State from motorcyclists for the purpose of funding motorcycle training and safety programs are spent on motorcycle training and safety programs. **Legal citation(s):**_____

_____

_____.

□ Applying as a Data State –

- Data and/or documentation from official State records from the previous fiscal year showing that **all** fees collected by the State from motorcyclists for the purpose of funding motorcycle training and safety programs were used for motorcycle training and safety programs is provided in the annual grant application at _____ (location).

□ PART 8: NONMOTORIZED SAFETY GRANTS (23 CFR 1300.26)

[*Check the box above **only** if applying for this grant and **only** if NHTSA has identified the State as eligible because the State annual combined nonmotorized road user fatalities exceed 15 percent of the State's total annual crash fatalities based on the most recent calendar year final FARS data.*]

[*Fill in **all** applicable blanks below.*]

- The list of **project(s) and subrecipient(s) information** that the State plans to conduct under this program is provided in the annual grant application at _____ (location(s)).

□ PART 9: PREVENTING ROADSIDE DEATHS GRANTS (23 CFR 1300.27)

[*Check the box above **only** if applying for this grant.*]

□ The State's plan describing the method by which the State will use grant funds is provided in the annual grant application at _____ (location(s)).

□ PART 10: DRIVER AND OFFICER SAFETY EDUCATION GRANTS (23 CFR 1300.28)

[*Check the box above **only** if applying for this grant.*]

[*Check one box **only** below and fill in **required** blanks under the checked box **only**.*]

□ Driver Education and Driving Safety Courses:

[*Check **one box only** below and fill in **all** blanks under the checked box **only**.*]

□ Applying as a law State –

The State law requiring that driver education and driver safety courses include instruction and testing related to law enforcement practices during traffic stops was enacted on _____ (date) and last amended on _____ (date), is in effect, and will be enforced during the fiscal year of the grant.

Legal citation(s):_____ _____ _____.

□ Applying as a documentation State –

- The State has developed and is implementing a driver education and driving safety course throughout the State that require driver education

and driver safety courses to include instruction and testing related to law enforcement practices during traffic stops.

- Curriculum or course materials, and citations to grant required topics within, are provided in the annual grant application at _____ (location).

□ **Peace Officer Training Programs:**

[*Check **one box only** below and fill in **all** blanks under the checked box **only**.*]

□ Applying as a law State –

The State law requiring that the State has developed and implemented a training program for peace officers and reserve law enforcement officers with respect to proper interaction with civilians during traffic stops was enacted on _____ (date) and last amended on _____ (date), is in effect, and will be enforced during the fiscal year of the grant.

Legal citation(s):_____ _____

_____.

□ Applying as a documentation State –

- The State has developed and is implementing a training program for peach officers and reserve law enforcement officers with respect to proper interaction with civilians during traffic stops.

- Curriculum or course materials, and citations to grant required topics within, are provided in the annual grant application at _____ (location).

□ **Application as a Qualifying State:**

- A proposed bill or planning or strategy documents that identify **meaningful actions** that the State has taken and plans to take to develop and implement a qualifying law or program is provided in the annual grant application at _____ (location).

- A timetable for implementation of a qualifying law or program within 5 years of initial application for a grant under this section is provided in the annual grant application at _____ (location).

□ PART 11: RACIAL PROFILING DATA COLLECTION GRANTS (23 CFR 1300.29)

[*Check the box above **only** if applying for this grant.*]

[*Check one box **only** below and fill in **all** blanks under the checked box **only**.*]

□ The official document(s) (i.e., a law, regulation, binding policy directive, letter from the Governor or court order) demonstrates that the State maintains and allows public

inspection of statistical information on the race and ethnicity of the driver for each motor vehicle stop made by a law enforcement officer on all public roads except those classified as local or minor rural roads are provided in the annual grant application at _____ (location).

□ The projects that the State will undertake during the fiscal year of the grant to maintain and allow public inspection of statistical information on the race and ethnicity of the driver for each motor vehicle stop made by a law enforcement officer on all public roads except those classified as local or minor rural roads are provided in the annual grant application at _____ (location).

In my capacity as the Governor's Representative for Highway Safety, I hereby provide the following certifications and assurances –

- I have reviewed the above information in support of the State's application for 23 U.S.C. 405 and Section 1906 grants, and based on my review, the information is accurate and complete to the best of my personal knowledge.

- As condition of each grant awarded, the State will use these grant funds in accordance with the specific statutory and regulatory requirements of that grant, and will comply with all applicable laws, regulations, and financial and programmatic requirements for Federal grants.

- I understand and accept that incorrect, incomplete, or untimely information submitted in support of the State's application may result in the denial of a grant award.

I understand that my statements in support of the State's application for Federal grant funds are statements upon which the Federal Government will rely in determining qualification for grant funds, and that knowing misstatements may be subject to civil or criminal penalties under 18 U.S.C. 1001. I sign these Certifications and Assurances based on personal knowledge, and after appropriate inquiry.

_____ _____

Signature Governor's Representative for Highway Safety Date

_____

Printed name of Governor's Representative for Highway Safety

Issued in Washington, DC, under authority delegated in 49 CFR 1.95.

Steven S. Cliff,

Administrator, National Highway Traffic Safety Administration.

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