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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

23 CFR Part 1313

[Docket No. NHTSA-00-7476]
RIN 2127-AH42

Incentive Grants for Alcohol-Impaired Driving Prevention Programs

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

ACTION: Final rule.

SUMMARY: This document announces that the amendments to the regulations that were published in an interim final rule to reflect changes made to the Section 410 program by the Transportation Equity Act for the 21st Century (TEA-21) will remain in effect with minor changes. Under the final rule, States have two alternative means for qualifying for a Section 410 basic grant.

States may qualify for a ``programmatic basic grant'' if they submit materials demonstrating that they meet five out of seven grant criteria. Alternatively, States may qualify for a ``performance basic grant'' by submitting data demonstrating that the State has successively reduced the percentage of alcohol-impaired fatally injured drivers in the State over a three-year period. States that qualify under both sets of requirements may receive both programmatic and performance basic grants. In addition, States that are eligible for one or both of the basic grants may qualify also for a supplemental grant.

This final rule establishes the criteria States must meet and the procedures they must follow to qualify for Section 410 incentive grants, beginning in FY 2000. This final rule also modifies some features of the interim regulations that relate to the graduated driver's licensing system criterion and the young adult drinking and driving program criterion.

DATES: This final rule becomes effective on July 28, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Glenn Karr, Office of State and Community Services, NSC-10, National Highway Traffic Safety Administration, 400 Seventh Street S.W., Washington, DC 20590 telephone (202) 366-2121; or Mr. Christopher A. Cook, Office of Chief Counsel, NCC-30, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, DC 20590, telephone (202) 366-1834.

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I. Background

The Section 410 program was created by the Drunk Driving Prevention Act of 1988 and codified in 23 U.S.C. 410. As originally conceived, States could qualify for basic and supplemental grants under the Section 410 program if they met certain criteria. To qualify for a basic grant, States had

to provide for an expedited driver's license suspension or revocation system and a self-sustaining drunk driving prevention program. To qualify for a supplemental grant, States had to be eligible for a basic grant and provide for a mandatory blood alcohol testing program, an underage drinking program, an open

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container and consumption program, or a suspension of registration and return of license plate program.

A number of technical corrections contained in the 1991 Appropriations Act for the Department of Transportation and Related Agencies, enacted on January 12, 1990, led to changes in the basic grant requirements, but did not add any new criteria to the program.

A number of modifications were made to the Section 410 program in 1991 by the enactment of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA). In addition to modifying award amounts and procedures, ISTEA changed the criteria that States were required to meet to qualify for basic and supplemental grant funds. To qualify for a basic grant under the amended program, States were required to provide for four out of the following five criteria: an expedited administrative driver's license suspension or revocation system; a per se law at 0.10 BAC (during the first three fiscal years in which a basic grant was received based on this criterion and a per se law at 0.08 BAC in each subsequent fiscal year); a statewide program for stopping motor vehicles; a self-sustaining drunk driving prevention program; and a minimum drinking age prevention program.

States eligible for basic grants could qualify also for supplemental grants if they provided for one or more of the following: a per se law at 0.02 BAC for persons under age 21; an open container and consumption law; a suspension of registration and return of license plate program; a mandatory blood alcohol concentration testing program; a drugged driving prevention program; a per se law at 0.08 BAC (during the first three fiscal years in which a basic grant was received); and a video equipment program.

In 1992, the Section 410 program was modified again. The Department of Transportation and Related Agencies Appropriations Act for FY 1993, which was signed into law on October 6, 1992, essentially repealed the modifications to Section 410 relating to award amounts and procedures that were enacted by ISTEA. The Act also added a sixth basic grant criterion, and provided that to be eligible for a basic grant, a State must meet five out of the six basic grant criteria. The new criterion required States to show that they impose certain mandatory sentences on repeat offenders.

The National Highway System Designation Act of 1995 led to further amendments to the Section 410 program. The criterion for a statewide program for stopping motor vehicles was modified to accommodate States in which roadblocks were unconstitutional. In addition, the per se law at 0.02 BAC for persons under age 21 requirement was eliminated as a supplemental grant criterion, and became instead a basic grant criterion (thereby increasing the total number of basic grant criteria from six to seven). With this change, States could qualify for a basic grant by meeting five out of seven criteria.

On June 9, 1998, the Transportation Equity Act for the 21st Century (TEA-21) was enacted into law (P.L. 105-178). Section 2004 of TEA-21 contained a new set of amendments to 23 U.S.C. 410. These amendments modified both the grant amounts to be awarded and the criteria that States must meet to qualify for both basic and supplemental grant funds under the Section 410 program.

The TEA-21 amendments, which took effect in FY 1999, establish two separate basic grants, plus six supplemental grant criteria. The statute provides that the amount of each basic grant shall equal up to 25 percent of the amount apportioned to the qualifying State for fiscal year 1997 under 23 U.S.C. 402, and that up to 10 percent of the amounts available to carry out the Section 410

program shall be available for making Section 410 supplemental grants.

Under the TEA-21 amendments, a State can qualify for one of the basic grants (named a ``Programmatic Basic Grant'' in the interim regulation) by demonstrating that the State meets five out of the following seven criteria: An administrative driver's license suspension or revocation system; an underage drinking prevention program; a statewide traffic enforcement program; a graduated driver's licensing system; a program to target drivers with high BAC; a program to reduce drinking and driving among young adults (between the ages of 21 and 34); and a BAC testing program. A State can qualify for the other basic grant (named a ``Performance Basic Grant'' in the interim regulation) by demonstrating that the percentage of fatally injured drivers in the State with a blood alcohol concentration (BAC) of 0.10 or more has decreased in each of the three most recent calendar years for which statistics are available and that the percentage of fatally injured drivers with a BAC of 0.10 or more in the State has been lower than the average percentage for all States in each of the same three calendar years.

To qualify for supplemental grant funds under Section 410, as amended by TEA-21, a State must receive a Programmatic and/or a Performance Basic Grant, and must provide for one or more of the following six criteria: a video equipment program; a self-sustaining drunk driving prevention program; a program to reduce driving with a suspended driver's license; a passive alcohol sensor program; an effective DWI tracking system; or other innovative programs to reduce traffic safety problems that result from individuals who drive while under the influence of alcohol or controlled substances. A detailed discussion of the criteria described above is contained in the interim final rule.

II. Administrative Issues

A. Qualification Requirements

Under the interim final rule, the agency's Section 410 implementing regulation continues to outline, in the qualification requirements section, 23 CFR 1313.4(a), certain procedural steps that must be followed when States wish to apply for a grant under this program.

State applications must be received by the agency no later than August 1 of the fiscal year in which the States are applying for funds. The application must contain certifications stating that: (1) The State has an alcohol-impaired driving prevention program that meets the grant requirements; (2) it will use funds awarded only for the implementation and enforcement of alcohol-impaired driving prevention programs; (3) it will administer the funds in accordance with relevant regulations and OMB Circulars; and (4) the State will maintain its aggregate expenditures from all other sources for its alcohol-impaired driving prevention programs at or above the average level of such expenditures in fiscal years 1996 and 1997. The regulation provides that either State or Federal fiscal year may be used.

Consistent with current procedures being followed in other highway safety grant programs being administered by NHTSA, once a State has been informed that it is eligible for a grant, the State must include documentation in the State's Highway Safety Plan, prepared under Section 402, that indicates how it intends to use the grant funds. The documentation must include a Program Cost Summary (HS Form 217) obligating the Section 410 funds to alcohol-impaired driving prevention programs.

Upon receipt and subsequent approval of a State's application, NHTSA will award grant funds to the State and will authorize the State to incur costs after receipt of an HS Form 217. Vouchers must be submitted to the appropriate NHTSA Regional

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Administrator and reimbursement will be made to States for authorized expenditures. The funding

guidelines applicable to the Section 402 Highway Safety Program will be used to determine reimbursable expenditures under the Section 410 program.

B. Limitation on Grants

Under the Section 410 program, as amended by TEA-21, States are eligible to receive Section 410 grants for up to six fiscal years, beginning in FY 1998. A total of $219.5 million is authorized for the program over a six-year period. Specifically, TEA-21 authorized $34.5 million for FY 1998, $35 million for FY 1999, $36 million for FY 2000, $36 million for FY 2001, $38 million for FY 2002 and $40 million for FY 2003.

TEA-21 created two separate basic grants, which were designated in the agency's interim final rule as programmatic and performance basic grants. Beginning in FY 1999, a State that qualifies for either a programmatic or a performance basic grant shall receive grant funds in an amount equal to 25 percent of the State's Section 402 apportionment for FY 1997, subject to the availability of funds. However, States are at liberty to apply for both basic grants. A State that qualifies for both basic grants shall receive basic grant funds in an amount equal to 50 percent of the State's FY 1997 Section 402 apportionment, subject to the availability of funds.

Section 410, as amended by TEA-21, limits the funds that will be available each fiscal year for supplemental grants to 10 percent of the funding for the entire Section 410 program for that fiscal year. TEA-21 does not specify how each State's supplemental grant is to be calculated.

The interim final rule provided that supplemental grants will be calculated by multiplying the number of supplemental grant criteria a State meets by five percent of the State's Section 402 apportionment for FY 1997. This is the maximum supplemental grant funding the State may receive, subject to the ten percent cap and availability of funds. We received no comments in response to the interim rule regarding this issue. The agency continues to believe that such a calculation takes into account, in an appropriate way, the size of the State in terms of population and highway mileage (in accordance with the formula used under Section 402) and the accomplishments the State has demonstrated in its alcohol-impaired driving prevention program. This final rule makes no changes to this aspect of the interim regulation.

States continue to be required to match the grant funds they receive. Under the matching requirements, the Federal share may not exceed 75 percent of the cost of the program adopted under Section 410 in the first and second fiscal year the State receives funds, 50 percent in the third and fourth fiscal year the State receives funds and 25 percent in the fifth and sixth fiscal year. For those States that received Section 410 grants in FY 1998, that year will be considered the State's first fiscal year for matching purposes.

The agency will continue to accept a ``soft'' match in Section 410's administration. By this, NHTSA means the State's share may be satisfied by the use of either allowable costs incurred by the State or the value of in-kind contributions applicable to the period to which the matching requirement applies. A State could not, however, use any Federal funds, such as its Section 402 funds or Department of Justice funds, to satisfy the matching requirements. In addition, a State can use each non-Federal expenditure only once for matching purposes.

C. Award Procedures

As the agency explained in the interim final rule, the release of the full grant amounts under Section 410 shall be subject to the availability of funding for that fiscal year.

If there are expected to be insufficient funds to award full grant amounts to all eligible States in any fiscal year, NHTSA stated in the interim final rule that it may release less than the full grant amounts upon initial approval of the State's application and documentation, and the remainder of the full grant amounts up to the State's proportionate share of available funds, before the end of that fiscal year.

However, based on the agency's experience administering this grant program in fiscal year 1999, as well as the other grant programs that were authorized under TEA-21, NHTSA has determined that it is not necessary to release funds in two stages. Accordingly, beginning in FY 2000, all Section 410 funds will be released at the same time. Since applications for Section 410 funds are due each fiscal year by August 1, the funds will be awarded near the end of each fiscal year (no later than September 30).

If there are insufficient funds to award the full grant amounts to all eligible States in any fiscal year, NHTSA will award each State its proportionate share of available funds. As stated in the interim final rule, project approval, and the contractual obligation of the Federal government to provide grant funds, shall be limited to the amount of funds released.

As explained in the interim final rule, if any funds remain available under 23 U.S.C. Sections 405, 410 and 411 at the end of a fiscal year, the Secretary may transfer these funds to the amounts made available under any other of these programs to ensure, to the maximum extent possible, that each State receives the maximum incentive funding for which it is eligible.

III. Interim Final Rule

These regulations were published in an interim final rule on December 29, 1998 (63 FR 71688). The interim regulations became effective on January 28, 1999, and grants were awarded under the provisions of the interim regulations in FY 1999. Thirty-four States submitted grant applications under the interim regulations in FY 1999. Thirty-two States received a total of $33,250,000 in both basic and supplemental Section 410 grants in FY 1999 under the interim final rule. Of the thirty-two States that received grants, a total of thirty States qualified for a grant under the programmatic basic criterion and, of these thirty States, three States qualified for both a programmatic basic grant and a performance basic grant. In addition, two States qualified for a performance basic grant only.

IV. Written Comments

In the interim final rule published on December 29, 1998, the agency requested written comments on the changes to the regulations. The agency stated that all comments submitted would be considered by the agency and that, following the close of the comment period, the agency would publish a document in the Federal Register responding to the comments and, if appropriate, would make further amendments to the provisions of Part 1313.

A. Comments Received

The agency received submissions from eight commenters in response to the interim final rule. The commenters included the National Association of Governors' Highway Safety Representatives (NAGHSR) and seven State representatives. K. Craig Allred, Director of the Utah Highway Safety Office, commented in his capacity as the Chair of the National Association of Governors' Highway Safety Representatives (NAGHSR). The State comments were submitted by Kirk Brown, Secretary of the Illinois Department of Transportation (Illinois); Ronald D. Lipps, Highway Safety Coordinator, Maryland State Highway

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Administration (Maryland); Betty J. Mercer, Division Director of the Office of Highway Safety Planning, Michigan Department of State Police (Michigan); Dawn Olson, Program Manager, North Dakota Department of Transportation, Drivers License and Traffic Safety (North Dakota);

Troy E. Costales, Governor's Highway Safety Representative and the Transportation Safety Division Manager of the Oregon Department of Transportation (Oregon); John M. Moffat, Governor's Highway Safety Representative and Director of the Washington Traffic Safety Commission (Washington); and Charles H. Thompson, Secretary of the Wisconsin Department of Transportation (Wisconsin).

B. General Comments

In general, the comments in response to the interim final rule were very positive. Washington recommended that the ``rule be adopted as written'' and complimented the agency ``on a clearly written rule.'' NAGHSR supported the interim regulations and stated that it ``believes that they are consistent with statutory intent.''

Many sections of the interim rule generated no comments. For example, no comments were received regarding Sec. 1313.1 Scope, Sec. 1313.2 Purpose, Sec. 1313.3 Definitions, Sec. 1313.4 General Requirements and Sec. 1313.8 Award Procedures. We also received no comments regarding Sec. 1313.7, which contained the requirements for a supplemental grant. These sections of the interim rule have been adopted in this final rule without change.

One commenter (the State of Oregon) noted that ``the level of detail for some of the requirements was extensive'' and the interim rule included what the commenter considered ``excessive detail'' that was ``prescriptive, leaving little flexibility for some States.'' We note, however, that Oregon objected to only two particular criteria, the graduated driver's licensing system and the program for drivers with high BAC. The State indicated that it considered all of the other established criteria to be acceptable.

Most comments related to the requirements that States must meet to qualify for a programmatic grant based on the administrative license suspension or revocation system, underage drinking prevention program, statewide traffic enforcement program, graduated driver licensing system, program for drivers with high BAC and young adult drinking and driving program criteria. Comments were received also regarding the requirements that States must meet to qualify for a performance grant. These comments and the agency's responses thereto are discussed in greater detail below. Also discussed below are certain changes that the agency decided to make in this final rule regarding issues that were raised while the agency reviewed State applications for Section 410 funds during FY 1999, the first year that the Section 410 program operated under the interim regulations.

C. Comments Regarding the Grant Criteria

1. Administrative License Suspension or Revocation System TEA-21 provides that, to qualify for a grant based on this criterion, a State must demonstrate:

An administrative driver's license suspension or revocation system for individuals who operate motor vehicles while under the influence of alcohol that requires that--

(i) In the case of an individual who, * * * is determined on the basis of a chemical test to have been operating a motor vehicle while under the influence of alcohol or is determined to have refused to submit to such a test as proposed by a law enforcement officer, the State agency responsible for administering drivers' licenses, upon receipt of the report of the law enforcement officer--

(I) Shall suspend the driver's license of such individual for a period of not less than 90 days if such individual is a first offender in such 5-year period; and

(II) Shall suspend the driver's license of such individual for a period of not less than 1 year, or revoke such license, if such individual is a repeat offender in such 5-year period; and

(ii) The suspension and revocation referred to * * * shall take effect not later than 30 days after

the day on which the individual refused to submit to a chemical test or received notice of having been determined to be driving under the influence of alcohol, in accordance with the procedures of the State. With regard to the requirement under this criterion that the driver's license of repeat offenders must be suspended or revoked for a period of not less than one year, the interim final rule requires that States must impose a ``hard'' one-year suspension term (i.e., that all driving privileges of repeat offenders must be suspended or revoked for at least one year) on any offender who fails or refuses to submit to a chemical test more than once within a five-year period.

Mr. Allred of Utah, commenting for NAGHSR, strongly objected to this one-year hard suspension requirement. He asserted that ``a one- year hard suspension would be very problematic, particularly for rural residents who have no other means of transportation'' and he urged instead that ``the regulatory language allow for a short (e.g. 60- or 90-day) hard suspension period followed by a period in which the driver is allowed to drive with a restricted license.''

As the agency explained in the preamble to its Section 410 interim final rule, a license suspension system has been a basic grant criterion under the Section 410 program since the program's inception in 1988, and a one-year hard suspension period has always been an element of this criterion.

Prior to the enactment of TEA-21, this criterion contained a number of detailed procedural requirements, and TEA-21 streamlined this criterion by eliminating some of these requirements. Only selected elements were retained, but the one-year suspension period was one of those elements. TEA-21 continued to require that first offenders must be subject to a 90-day suspension or revocation, that repeat offenders must be subject to a one-year suspension or revocation, and that suspensions or revocations must take effect within 30 days after the offender refuses to submit to a chemical test or receives notice of having failed the test.

The agency has always interpreted this criterion to require that the one-year suspension be served as a ``hard'' suspension of all of the offender's driving privileges, and there is nothing in the legislative history of TEA-21 that would suggest that Congress intended that this interpretation should change. In fact, the provisions of the TEA-21 Restoration Act reinforce the agency's interpretation.

In July 1998, two months after the enactment of TEA-21, Congress passed the TEA-21 Restoration Act to restore provisions that were agreed to by the conferees to TEA-21, but inadvertently were not included in the TEA-21 conference report.

The TEA-21 Restoration Act created the Section 164 Repeat Intoxicated Driver Transfer Program, under which States are required to establish certain minimum penalties for repeat offenders. Any State that doesn't establish these minimum penalties by October 1, 2000, will be subject to a transfer of funds. Section 164 establishes four minimum penalties for repeat offenders, one of which is ``the suspension of all driving privileges * * * for not less than one year.''

Since Congress had established a minimum one-year hard suspension for repeat offenders as a condition for States to avoid the transfer of funds under the TEA-21 Restoration Act, the agency concluded that the Section 410 criterion, which would help a State

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qualify for an incentive grant, should not require anything less.

In addition, the agency provided significant flexibility to the States in the interim final rule by allowing them to qualify under this criterion as either Law States or Data States. Law States can demonstrate compliance with this criterion by submitting copies of their conforming laws. If a State's laws do not conform with one or more elements of this criterion, the State can qualify instead as a Data State. Data States can demonstrate compliance by submitting copies of their laws, and data demonstrating compliance with the elements not specifically provided for in their laws.

Regarding Mr. Allred's suggestion that the one-year requirement will be problematic,

particularly in rural areas, the agency notes that, in FY 1999, thirty States qualified for programmatic basic grants and that, of these, fifteen States complied with the administrative license suspension or revocation system criterion, including such States as Iowa, New Hampshire, Oregon, Utah and Vermont.

For the reasons discussed above, this portion of the interim regulation has been adopted without change.

2. Underage Drinking Prevention Program

TEA-21 provides that, to qualify for a grant based on this criterion, a State must demonstrate:

An effective system * * * for preventing operators of motor vehicles under age 21 from obtaining alcoholic beverages and for preventing persons from making alcoholic beverages available to individuals under age 21. Such system may include the issuance of drivers' licenses to individuals under age 21 that are easily distinguishable in appearance from drivers' licenses issued to individuals age 21 or older and the issuance of drivers' licenses that are tamper resistant.

As explained in the interim final rule, this criterion is almost identical to the minimum drinking age prevention program criterion contained in Section 410 prior to the enactment of TEA-21, except that TEA-21 added two elements to the criterion. Under TEA-21, the system must not only prevent drivers under the age of 21 from obtaining alcoholic beverages. It must also take steps that prevent persons of any age from making alcoholic beverages available to those who are under 21. In other words, the system must target young drinkers and also providers. In addition, the interim final rule indicated that States must demonstrate both that driver's licenses that are issued to individuals under the age of 21 are distinguishable from those issued to individuals over 21 years of age, and that they are tamper resistant.

Mr. Allred of Utah, commenting on behalf of NAGHSR, submitted the only comment regarding this criterion. He objected to the requirement that licenses must be made ``tamper resistant.'' He stated that TEA-21 uses the ``state adoption of a special tamper-resistant underage license * * * [only] as an example of an underage program,'' and he asserted that TEA-21 ``leaves open the option that a state may satisfy this criteria in other ways.''

The agency agrees that TEA-21 did not require the agency to include a requirement in its implementing regulation that States must adopt tamper resistant underage licenses. The statute requires only that States must have an ``effective [underage drinking prevention] system.'' However, Congress clearly authorized the agency to define what it considered to be an ``effective system'' and suggested that such a system might include the issuance of easily distinguishable and tamper-resistant licenses.

Because the prevention of underage drinking hinges on the ability of alcohol providers to properly identify those who are underage, NHTSA believes that the issuance of easily distinguishable and tamper resistant driver's licenses is a critical element to an effective underage drinking prevention system. Easily distinguishable licenses help providers determine whether people are representing themselves to be over the age of 21, and tamper resistant features help prevent people who are under 21 from misrepresenting their age.

In addition, the interim regulations provided a tremendous amount of flexibility to the States regarding the manner in which they may meet this requirement. While the agency urged States, in the interim final rule, to consider incorporating as many of the security features as possible into their driver's licenses to prevent underage drivers from altering existing licenses or from obtaining or producing counterfeits, the interim regulations provided that States need only adopt one security feature to meet this element of the criterion, from a broad list of possible choices. The list was included as Appendix A to the interim final rule, and it included, for example, ghost images, holograms, security laminate or a State seal or signature which overlaps the individual's photograph or information.

The agency is unaware of any State in this country that does not already use at least one of the security features listed in Appendix A to the interim final rule, and we are unaware of any State that was unable to qualify for a Section 410 grant because of its inability to meet this condition.

All thirty States that received Section 410 programmatic basic grants in FY 1999 submitted driver's licenses that met this criterion. For all of these reasons, the agency has adopted this portion of the interim regulation without change.

3. Statewide Traffic Enforcement Program

TEA-21 provides that, to qualify for a grant based on this criterion, a State must demonstrate:

A statewide program for stopping motor vehicles on a nondiscriminatory, lawful basis for the purpose of determining whether the operators of such motor vehicles are driving while under the influence of alcohol; or a statewide special traffic enforcement program for impaired driving that emphasizes publicity for the program.

The interim final rule provides that a State may qualify for a grant based on this criterion by having either a Statewide program for stopping motor vehicles or a Statewide special traffic enforcement program (STEP) for impaired driving that emphasizes publicity regarding the program.

Mr. Allred of Utah, writing for NAGHSR, submitted the only comment regarding this criterion. Mr. Allred expressed concern that States would be required, under the interim regulations, to conduct ``statewide programs for stopping vehicles'' to qualify under this criterion. He requested that ``NHTSA * * * allow states that are constitutionally prohibited from implementing sobriety checkpoints to be eligible if they implement saturation patrols or similar enforcement programs.'' Mr. Allred stated, ``This was a successful approach in the previous 410 program, and we believe that it should be continued.''

The agency wishes to clarify that States are not required to conduct sobriety checkpoint programs in order the qualify under this criterion. As we stated in the interim final rule, States may qualify by conducting either roadblock or checkpoint programs or STEP programs that meet certain conditions.

As we explained in the interim final rule, initially, under the Section 410 program, only roadblock or checkpoint programs were considered acceptable under this criterion, but the criterion was expanded later to permit, in certain cases, other intensive and highly publicized traffic enforcement techniques.

TEA-21 and the interim regulations continue to provide this flexibility and,

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in addition, they provide additional flexibility regarding the elements States must meet to comply with this criterion.

The interim final rule explained that, to qualify for a grant based on this criterion, the State's program for stopping motor vehicles or its STEP must be conducted on a statewide basis; stops must be made or STEPs must be conducted not less than monthly; stops must be made or STEPs must be conducted by both State and local law enforcement agencies; and effective public information efforts must be conducted to inform the public about these enforcement efforts. Saturation patrol programs that contain all of the components of a STEP can qualify as a STEP under this criterion.

Therefore, the agency believes that no changes are needed to address Mr. Allred's concerns. Accordingly, this portion of the interim regulation has been adopted without change.

4. Graduated Driver's Licensing System

TEA-21 provides that, to qualify for a grant based on this criterion, a State must demonstrate:

A 3-stage graduated licensing system for young drivers that includes nighttime driving restrictions during the first 2 stages, requires all vehicle occupants to be properly restrained, and makes it unlawful for a person under age 21 to operate a motor vehicle with a blood alcohol concentration of 0.02 percent or greater.

The interim final rule described, in further detail, the elements that must make up this three-stage system. Specifically, the interim final rule provided that, to qualify under this criterion, States must have a three-stage program that includes a learner's permit stage (Stage I), an intermediate (or restricted) license stage (Stage II) and a final stage, under which the driver receives an unrestricted license (Stage III).

The interim regulations also established the qualifications that applicants must meet to receive a permit or license at each stage, and the conditions that permit and license holders must follow during each stage.

In particular, the interim regulations provided that an applicant must pass vision and knowledge tests, including tests about the rules of the road, signs and signals to qualify for a Stage I learner's permit; an applicant must successfully comply with the conditions of the Stage I learner's permit for not less than three months and pass a driving skills test to qualify for a Stage II intermediate driver's license; and an applicant must successfully comply with the conditions of the Stage I learner's permit and the Stage II intermediate driver's license for a combined period of not less than one year to qualify for a Stage III driver's license.

The interim regulations provided also that drivers must be subject to the following conditions during Stages I and II: drivers under the age of 21 must not operate a motor vehicle with a BAC of .02 or greater; drivers must not operate a motor vehicle while any occupant in the vehicle is not properly restrained in accordance with State or local law; drivers must remain crash and conviction free; and drivers must abide by certain driving restrictions.

In particular, Stage I learner's permit holders may not operate a motor vehicle at any time unless they are accompanied by a licensed driver who is 21 years of age or older and Stage II intermediate driver's license holders may not operate a motor vehicle during some period of time between the hours of 10 p.m. and 6 a.m., as specified by the State, unless they are accompanied by a licensed driver who is 21 years of age or older or are covered by a State-approved exception.

In addition, the interim regulations provided that the State's Stage I learner's permit, Stage II intermediate license and Stage III full driver's license all must be distinguishable from each other.

Since the graduated driver's licensing criterion was the most detailed criterion under the Section 410 basic programmatic grant, it is not surprising that it generated the most comments. Comments were received regarding this criterion from Mr. Allred of Utah for NAGHSR and from the States of Illinois, Maryland, Oregon and Wisconsin. We note that each of these five States qualified in FY 1999 for a Section 410 programmatic basic grant, and that Maryland qualified, in part, based on its GDL law. In fact, a total of eight States qualified for Section 410 programmatic basic grants in FY 1999 based, in part, on the GDL criterion.

The specific comments that were submitted and the agency's responses to these comments are discussed in detail below.

a. Successful Compliance with Earlier Stages:

As stated above, the interim regulations provided that, to qualify for a Stage II license, an applicant must have ``successfully complied'' with the conditions of the Stage I learner's permit for not less than three months and, to qualify for a Stage III license, an applicant must have ``successfully complied'' with the conditions of the Stage I learner's permit and the Stage II intermediate driver's license for a combined period of one year.

The agency received comments regarding this requirement from Illinois and Maryland. Both of these comments suggest that an applicant's non-compliance during one stage should not

necessarily prevent an applicant from moving to the next stage. Illinois recommended, for example, that ``Minor convictions can be tolerated while penalties [should be] assigned to serious convictions."

Similarly, Maryland recommended that applicants should not be prevented from moving from one stage to the next based on their non- compliance with the State's occupant protection laws. Maryland recommended instead that ``the final rule should simply and unambiguously state that novice drivers in Stages I and II of a graduated licensing program * * * must comply with the State's occupant protection laws or face the prescribed State sanctions." According to Maryland, ``Any additional requirement * * * will be counterproductive to the extent it prevents States from receiving grants [to support impaired driving programs]." This issue was raised also by other States when the agency was reviewing their applications for FY 1999 Section 410 funds.

Originally, the agency interpreted the phrase ``successfully complied" to mean that, if an applicant violated any of the conditions of the earlier stages (including the conditions regarding zero tolerance, proper restraints and driving restrictions), the applicant could not proceed to the next stage.

Following a detailed review of a number of State GDL laws, however, the agency came to realize that current State laws, including those that have been held out as models by advocates of GDL legislation, do not apply such harsh consequences. If the agency were to insist that GDL laws must provide that any violation of a condition in Stage I or II would prohibit an applicant from proceeding to the next stage, it is our belief that few, if any, of the GDL laws currently in effect would qualify under this criterion. We do not believe this is the outcome that Congress intended.

Accordingly, we now consider the requirement that applicants must have ``successfully complied" with the conditions of the previous stages to mean instead that, if an applicant fails to meet a condition of an earlier stage, the applicant must be subject to the consequences that are established by the State or local law.

The consequences may vary. For example, the consequence for a violation of the State's zero tolerance law may be a 30-day suspension of the driver's permit or license, but it need

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not result in a full revocation. The consequence for a violation of the driving restrictions could be a requirement that the driver attend an education program. The consequence for a violation of the proper restraint requirement may be a fine or points on the driver's permit or license.

Therefore, the regulations have been amended to clarify that ``successfully complied" means that the applicant either has not violated any of the conditions of the previous stage(s) or, if the applicant has violated a condition of the previous stage(s), that the applicant has been subject to the consequences that are prescribed by State or local law for this violation.

b. Crash and Conviction Free Requirement: As stated above, the interim regulations provided that a driver must remain crash and conviction free during Stages I and II. The term ``conviction free" was defined in the interim regulations to mean ``that the individual, during the term of the permit or license, has not been charged with and subsequently convicted of any offense under State or local law relating to the use or operation of a motor vehicle." The term ``crash free" was defined to mean ``that the individual, during the term of the permit or license, has not been determined to be the party at fault in any police reportable motor vehicle crash."

The agency received comments regarding this element of the criterion from Illinois, Maryland and Wisconsin.

Illinois asserted in its comments that, because young drivers in Illinois ``are licensed under our graduated licensing system for a time period of 60-72 months, we believe requiring them to be crash and conviction free for a period of 5-6 years is unreasonable." The agency notes that the interim regulations provided that drivers must comply with the crash and conviction free

requirement only during Stages I and II. They provided also that eligible drivers could move from Stage I to Stage II after a period of only three months, and that eligible drivers could move from Stages I and II to Stage III after a combined period of only one year. Accordingly, under the interim regulations, a State could meet this requirement by providing for a minimum crash and conviction free period of only one year.

However, the agency recognizes that the interim regulations could have been interpreted to require that drivers must remain crash and conviction free during the entire length of Stages I and II if those stages lasted longer than one year. Accordingly, the regulations have been amended to clarify that drivers must comply with this condition for a period of only three months during Stage I and for a combined period of only one year during Stages I and II, even if those stages last for a longer period of time.

Illinois also expressed opposition to the requirement that drivers must remain crash free. While the interim regulations limited this requirement by defining ``crash free'' to mean ``that the individual * * * has not been determined to be the party at fault in any police reportable motor vehicle crash,'' Illinois explained that, ``in Illinois we do not assign blame in crashes, so we do not have a basis for determining that a driver is crash free.'' Similar comments were received from other States.

Maryland explained that ``it is the policy/practice of some law enforcement agencies to report all parties in a collision to be at fault and to charge all parties with a traffic violation [and] leave it up to the courts to determine guilt/fault.'' Because this is the practice in the State, Maryland asserted that ``it would be patently unfair to prohibit a novice driver from progressing from one stage to the next because the driver was involved in [a crash] even if that driver is not ultimately determined to be at fault.''

Wisconsin asserted that there are ``States whose crash data systems do not capture the investigating officer's `at fault' determination.'' To resolve this issue, Wisconsin suggested that these States ``should be allowed to use a surrogate indicator of fault,'' such as the issuance of a traffic citation. Maryland recommended instead that the crash free requirement be eliminated altogether in the final rule.

The agency has considered these comments carefully and has come to realize that the requirements that drivers must remain both crash and conviction free are, to a large extent, redundant. If a motor vehicle crash is ``police reportable [or reported]'' and the party is found to be ``at fault,'' that party generally will be charged with a violation of some offense, which then would be considered to be a ``conviction.'' Moreover, the agency now realizes that it would be extremely difficult, if not impossible, for States to determine independently whether an applicant had been involved in a crash and found to be at fault on any basis other than based on moving violations or other convictions.

For all of these reasons, the agency has decided to simplify this element of the GDL criterion. We have removed from the regulations the requirement that applicants must remain crash free, and we have removed the definition of the term ``crash free'' because it no longer applies. Accordingly, to demonstrate compliance with this element, States now need only show that their laws require that applicants remain conviction free.

In addition, to provide States with additional flexibility and to avoid the imposition of unreasonable restrictions, we have provided that it is up to each State to determine which convictions will adversely affect a driver's progression in the GDL program. Accordingly, the regulations now provide that, to qualify under this element of the GDL criterion, States must require that applicants remain free of convictions that relate to the use or operation of a motor vehicle, to the extent required by State law, for a minimum of three months during Stage I, before moving to Stage II, and for a combined minimum period of one year during Stages I and II, before moving to Stage III.

c. Driving Restrictions:

As stated above, the interim regulations provided that Stage I learner's permit holders may not

operate a motor vehicle at any time unless they are accompanied by a licensed driver who is 21 years of age or older and Stage II intermediate driver's license holders may not operate a motor vehicle during some period of time between the hours of 10:00 p.m. and 6:00 a.m., as specified by the State, unless they are accompanied by a licensed driver who is 21 years of age or older or are covered by a State-approved exception.

The agency received comments regarding this element of the GDL criterion from Maryland and Wisconsin.

Maryland's GDL system is unusual, because most of its features cover novice drivers of all ages, not just novice drivers who are underage. However, the nighttime driving restrictions in Maryland's GDL system apply only to novice drivers who are under the age of 18. In its comments, Maryland asserts that ``it is inappropriate and largely impractical to restrict adult novice drivers in Stage II from driving alone at any hour of the night.'' Accordingly, Maryland recommends that the nighttime driving restrictions should apply only to minors.

As explained in the agency's interim final rule, ``the interim regulation provides that the GDL must cover `young drivers,' but it does not define this term.'' In the interim final rule, the agency deferred to the States to determine the age of drivers that should be covered by their GDL systems. In response to Maryland's comment, the agency would like to clarify that a State may elect to apply some features of its GDL to adult drivers, and not be

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compelled then to apply all of its GDL features to such drivers.

Wisconsin objected to the requirement that the driver who must accompany Stage I permit or Stage II license holders must be 21 years of age or older and also suggested that certain exceptions should be permitted to the driving restriction requirement.

Specifically, Wisconsin recommended ``that the minimum age limit for accompanying riders should be 18'' because ``18 is the age of majority and the age by which most drivers have completed the first two stages of the [State's GDL system] * * *'' Wisconsin urged the agency to establish a minimum age of 18 also because ``some teens are married and have spouses age 18-20 years old.'' Wisconsin also recommended that ``there should be exceptions to the GDL accompaniment rule for drivers operating on Stage II probationary licenses if they are serving as volunteer drivers in community-based `teen safe ride' programs.''

The requirement that GDL drivers must be accompanied by drivers over the age of 21 at all times during Stage I and during certain night-time hours during Stage II is designed to ensure that young novice drivers receive adult supervision during critical periods of time while they are being exposed to increased levels of risk as drivers. The agency does not believe most 18-year-olds have the experience or the maturity to provide this adult supervision.

In fact, research indicates that, not only are teenage drivers more likely than other drivers to be involved in motor vehicle crashes, but their risk of exposure increases significantly when they drive at night with other teens in their vehicles. As stated in the NHTSA and National Safety Council publication ``Saving Teenage Lives: The Call for Graduated Driver Licensing,'' two-thirds of all teenagers who die as passengers in motor vehicle crashes are, at the time of the crash, in vehicles that are driven by other teenagers.

For these reasons, NHTSA has decided not to lower the minimum age of persons who must accompany GDL drivers during Stages I and II.

With regard to Wisconsin's request that the agency permit certain exceptions to this requirement, we note that NHTSA has allowed some limited exceptions under the interim regulations. While the agency does not encourage the States to adopt these exceptions, NHTSA has permitted them under the interim regulations. These exceptions include permitting a parent, a guardian, a custodian or a driver's education instructor to accompany a GDL driver during Stage II, even if such person is not 21 years of age. We have also permitted Wisconsin's teen safe ride

exception to the Stage II night-time driving restriction.

For the reasons discussed above, this portion of the interim regulation has been adopted without change.

d. Distinguishable Licenses:

The interim final regulations require that ``the Stage I learning permit must be distinguishable from [the] Stage II and III driver's licenses."

The agency received comments regarding this element of the GDL criterion from Oregon and NAGHSR.

Oregon commented that requiring three distinguishable permits/ licenses is overly prohibitive. According to Oregon, ``the fiscal impact for many states to establish and maintain such a system is considerable. Given the relatively quick turnaround time involved in the issuance of three distinct permits/licenses, the regulatory function would require additional FTE to ensure issuance and compliance, computer software upgrades to support system functions, and acquiring and maintaining the permit/ license product supplies and equipment."

Mr. Allred of Utah echoed these sentiments on NAGHSR's behalf. In particular, he urged that States should not be required ``to have specially marked licenses'' because it would be ``both onerous and costly." Mr. Allred noted that ``law enforcement officials may be able to electronically access licensing data and determine at what stage a driver is in the State's graduated licensing system regardless of markings on a driver's license."

NHTSA agrees with these comments. Since the central feature of a GDL system is the establishment of three separate driver licensing stages, with a different set of conditions under which drivers may operate a vehicle during each stage, the agency believes it is essential that, when law enforcement officers examine a driver's license (or permit), that they be able to determine the stage to which that the driver is currently assigned. However, the agency recognizes that there may be more than one way for States to demonstrate compliance with this condition, and the interim regulations did not specify the ways in which States could demonstrate their compliance with this element of the GDL criterion.

Accordingly, the regulations have been revised to clarify that States can demonstrate compliance with this element in one of three ways. If a State's law specifically provides that the State's Stage I permit and the State's Stage II and Stage III licenses must be distinguishable from each other, the State can demonstrate compliance by submitting a copy of the law.

If a State's law is not explicit in this regard, the State can demonstrate compliance instead by submitting sample permits and licenses, which contain visual features that would enable a law enforcement officer to distinguish between the three documents at a traffic stop. Alternatively, if the State's permit and licenses do not contain a visual feature that would enable a law enforcement officer to determine at a traffic stop whether the driver is in Stage I, II or III, but the State has a system in place that would enable an officer to make this determination in some other way, the State can demonstrate compliance by describing the State's system.

The agency has decided to revise the interim regulation to clarify these alternatives.

5. Program for Drivers with High BAC

TEA-21 provides that, to qualify for a grant based on this criterion, a State must demonstrate:

Programs to target individuals with high blood alcohol concentrations who operate a motor vehicle. Such programs may include implementation of a system of graduated penalties and assessment of individuals convicted of driving under the influence of alcohol.

The interim final rule provides that, to qualify for a grant based on this criterion, States must have a system for imposing enhanced penalties on those drivers who have been convicted of operating a motor vehicle while under the influence of alcohol and determined to have a high BAC. The agency explained, in the interim final rule, that the enhanced penalties must be either more severe

or more numerous than those applicable to persons who have been convicted of operating a motor vehicle while under the influence of alcohol, but were not determined to have a high BAC.

Regarding what constitutes a ``high BAC,'' the interim final rule explained that the threshold level at which high BAC sanctions must begin to apply may be at any level above the ``standard'' BAC level at which sanctions for non-commercial drivers begin to apply, but it must begin at or below 0.20 BAC. For example, if the standard BAC level in a State is 0.08, then the State may begin to impose enhanced sanctions on offenders determined to have a BAC of 0.09 or greater, or the State could choose to begin imposing such sanctions on offenders with a BAC of 0.12 and above. If the State does not begin to impose such sanctions, however, until offenders are determined to be at 0.21 BAC or

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greater, the State system will not comply.

The agency received comments regarding this criterion from Oregon, Maryland and Wisconsin.

Oregon asserted in its comments that ``research indicates that impairment begins at BAC levels below .08 BAC,'' and that ``impairment at any level above the per se legal limit should be the focus of'' the criteria for receiving a basic grant under Section 410. For these reasons, Oregon expressed its view that the high BAC criterion ``negates what research has determined to be the real issue'' and the State urged the agency to make this criterion a supplemental, rather than a basic, grant requirement.

While the agency agrees that impairment begins far below these ``high BAC'' levels, NHTSA acknowledges also that drivers with highly elevated BACs are at far greater risk than other drivers of being involved in alcohol-related crashes, which cause fatal and serious injuries. As stated in the interim final rule, according to the Fatality Analysis Reporting System (FARS), 30 percent of persons killed in motor vehicle crashes in 1997 were in crashes that involved a driver or non-occupant with a BAC of 0.10 or greater. In addition, NHTSA estimates that more than half of all drinking drivers involved in fatal crashes have a BAC that exceeds 0.15 percent.

In addition, NHTSA believes that traditional impaired driving countermeasures frequently are not effective with high BAC drivers. Accordingly, the agency believes there is value to developing remedies that target this specific group of drivers.

Finally, we note that the high BAC program was established as a basic grant criterion by Congress. Accordingly, the agency is not at liberty to change it to a supplemental grant criterion, in the absence of an amendment to the underlying legislation.

In its comments on the interim regulations, Maryland objected to the requirement that the high BAC sanctions must begin to apply at a level ``above the standard BAC level.'' According to Maryland, ``a number of States have adopted bi-level or multilevel impaired driving offenses'' and Maryland asserted that ``there is no rationale for the [agency] to consider [the lower offenses in those States] to be anything but the `standard' impaired driving offense.'' Maryland urged the agency to revise the interim regulations ``to provide that any statutory level above the lowest BAC defining an impaired driving offense be considered a high BAC * * * deemed to satisfy this criterion.''

With regard to States with bi-level or multilevel impaired driving provisions, the agency considers a number of factors to determine which level is the State's ``standard BAC level.'' These factors include the treatment of the offense, its relation to other offenses in the State and the sanctions and other consequences that result when persons violate these offenses.

The agency believes that the ``standard BAC level'' in all States is currently either 0.08 or 0.10. NHTSA is aware that some States have established offenses for non-commercial drivers at lower BAC levels (such as 0.05), but we consider these offenses to be ``less-serious'' (and frequently, ``lesser-included'') offenses, not the standard BAC offenses in those States. The agency is aware

of ten States that have high BAC programs. In these States, enhanced or additional penalties begin to apply at levels ranging from 0.15 to 0.20 BAC.

Wisconsin's comments relate to the enhanced penalties that must be imposed. Wisconsin explains, ``our statutes do not specify the penalties for varying BAC levels,'' but they ``require the chief judge of each of the state's ten judicial administrative districts to adopt sentencing guidelines for all municipal and circuit court judges to follow * * * [which] take the BAC level into account as an aggravating factor.'' Wisconsin asserts that this ``linkage'' between sentencing and BAC level ``should be accepted as satisfying the graduated penalties criterion.''

The interim regulations provided the States with a tremendous amount of flexibility regarding the types of enhanced penalties they must establish. According to the interim final rule, the penalties could include longer terms of license suspension, increased fines, additional or extended sentences of confinement, vehicle sanctions, or mandatory assessment and treatment. The States were provided flexibility also regarding the manner in which to establish these sanctions. For example, the sanctions could be established by statute, regulation or other means (such as binding policy directive). However, consistent with the application of other criteria under the Section 410 program, the sanctions must be mandatory. Therefore, to qualify for a grant based on this criterion, it is not sufficient for a State to establish only guidelines.

For the reasons discussed above, this portion of the interim regulation has been adopted without change.

6. Young Adult Drinking and Driving Program

TEA-21 provides that, to qualify for a grant based on this criterion, a State must demonstrate:

Programs to reduce driving while under the influence of alcohol by individuals age 21 through 34. Such programs may include awareness campaigns; traffic safety partnerships with employers, colleges, and the hospitality industry; assessments of first time offenders; and incorporation of treatment into judicial sentencing.

The interim final rule provided that, to qualify under this criterion, States must meet two requirements. First, they must demonstrate that they have in place a Statewide public information and awareness campaign aimed at persons between the ages of 21 and 34. Second, they must demonstrate that they have in place certain partnership activities that seek to promote prevention. Specifically, the interim regulations provided that States must be engaged in one of four different types of partnership activities to qualify in the first fiscal year a State receives a grant based on this criterion, and that States must be engaged in all four types of partnership activities to qualify for a grant based on this criterion in subsequent years.

The four types of partnership activities include activities involving the participation of: employers; colleges or universities; the hospitality industry; and appropriate State officials that will encourage the assessment and incorporation of treatment as appropriate in judicial sentencing for young adult drivers.

The agency received comments regarding this criterion from North Dakota and Mr. Allred of Utah for NAGHSR.

In its comments, North Dakota stated that it ``agrees with the type of partnerships defined.'' However, North Dakota asserted that ``developing and maintaining all four partnerships'' by the second fiscal year, in order to qualify for funding, ``is excessive.'' North Dakota suggested instead that States ``be allowed to select and maintain two partnerships along with the public awareness campaign and report documented proven results.''

Mr. Allred voiced similar objections to the interim requirement, but suggested an alternative solution. He recommended the adoption of a ``gradual approach,'' under which States would be ``required to have programs involving one group the first year and all four groups by the fourth year.''

The agency has decided to accept NAGHSR's recommendation. To qualify

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for a grant based on this criterion, a State must have in place a Statewide public information and awareness campaign, plus one or more of the partnership activities described in the regulations. To qualify in the first fiscal year a State receives a grant based on this criterion, the State must have at least one of the partnership activities in place; to qualify in the second fiscal year, the State must have at least two such activities in place; the State must have at least three partnership activities in place to qualify in the third year; and all four must be in place, to qualify in the fourth or in subsequent years. The regulations have been revised accordingly.

7. Testing for BAC
TEA-21 provides that, to qualify for a grant based on this criterion, a State must demonstrate:

An effective system for increasing the rate of testing of the blood alcohol concentrations of motor vehicle drivers involved in fatal accidents and, in fiscal year 2001 and each fiscal year thereafter, a rate of such testing that is equal to or greater than the national average.

The interim final rule provided that States could qualify for a grant under this criterion in FY 1999 and FY 2000 in one of three ways: based on a law; based on data or by agreeing to conduct a symposium or workshop designed to increase the percentage of BAC testing for drivers involved in fatal motor vehicle crashes. As provided in the interim final rule, States could qualify for a grant under this criterion in FY 2001 and in each fiscal year thereafter, based only on data.

To qualify in any fiscal year based on data, the interim final rule explained that the data must show that the State's percentage of BAC testing among drivers involved in fatal motor vehicle crashes is equal to or exceeds the national average, as determined under the most recently available FARS data as of the first day of the fiscal year for which grant funds are being sought. The agency received no comments regarding this criterion.

During the administration of the Section 410 program in FY 1999, however, the agency noted that ``the most recently available FARS data'' that were available on ``the first day of [that] fiscal year'' were not yet finalized and, by the end of the fiscal year, the data for many States had changed.

The agency believes that it should not use preliminary data to make funding decisions if finalized data can be used instead. We note that, as stated previously in today's final rule, beginning in FY 2000, NHTSA will no longer release Section 410 funds in two stages, and the funds will be released near the end of the fiscal year (by September 30). Since the FARS data that are available on the first day of a fiscal year generally are finalized in the spring of that fiscal year, the regulation has been changed to provide that, beginning in FY 2000, these final data will be used.

Since Section 410 applications are due by August 1 of each fiscal year, the regulation has been changed to provide that the data to be used are the ``most recently available final FARS data as of August 1 of the fiscal year.'' However, as noted above, these final FARS data generally are available prior to August 1. To assist States in their preparation of Section 410 applications, the agency will provide States with the final data as soon as they are available.

8. Performance Grant Criterion
Under TEA-21, to qualify for a performance basic grant, a State must demonstrate each of the following:

(A) The percentage of fatally injured drivers with 0.10 percent or greater blood alcohol concentration in the State has decreased in each of the 3 most recent calendar years for which statistics for determining such percentages are available; and

(B) The percentage of fatally injured drivers with 0.10 percent or greater blood alcohol concentration in the State has been lower than the average percentage for all States in each of the [3 most recent] calendar years [for which statistics for determining such percentages are available].

The interim final rule adopted these two conditions and established two methods for calculating the percentages described above.

The interim rule explained that, each calendar year, NHTSA will calculate the percentage of fatally injured drivers with a BAC of 0.10 percent or greater for each State and the average percentage for all States for each of the three most recent calendar years for which the data are available as of the first day of the fiscal year for which grant funds are being sought. These calculations will be made using data contained in the Fatality Analysis Reporting System (FARS), and NHTSA's method for estimating alcohol involvement (as developed and published by Klein, 1986). The agency then will verify the actual percentages.

The interim rule explained further that, any State with a percentage of BAC testing among fatally injured drivers of 85 percent or greater in the three most recent calendar years for which FARS data are available as of the first day of the fiscal year for which grant funds are being sought, as determined by the FARS data, may perform its own calculations. The State would calculate the percentage of fatally injured drivers with a BAC of 0.10 percent or greater in that State for these three calendar years, using only data for drivers with a known BAC.

The interim final rule indicated that a State would demonstrate compliance with this criterion by submitting its calculations and a statement certifying that the State meets the requirements, based on the State's calculation of the percentage of fatally injured drivers with such a BAC in the State and NHTSA's calculation of this percentage in all States. NHTSA indicated that it will verify the actual percentages submitted using FARS data.

The agency received comments regarding this portion of the interim final rule from North Dakota, Maryland, NAGHSR and Michigan.

Both North Dakota and Maryland raised objections regarding the use of FARS data and the agency's method for estimating alcohol involvement, when there are gaps in the data. Maryland asserts that ``FARS data has been found to be incomplete and/or inaccurate in a number of respects, particularly in past years.'' North Dakota argued that it is severely penalized by NHTSA's imputation process.

As an illustration, North Dakota asserted that its ``fatality rate, based on deaths per 100 million vehicle miles traveled, is consistently lower than the national rate. In 1995, North Dakota had the lowest number of fatalities since 1944 with 74 deaths. Of these 74, [North Dakota's] data identified 37 as alcohol-related.'' However, ``the FARS imputation process added 6 to the total killed in alcohol-related crashes. This imputation increased [North Dakota's] percent of alcohol related fatalities from 50 to 57.9% and made [North Dakota] the highest in the nation.''

Both of these comments question the use of the imputation process. The agency would like to emphasize, first of all, that the FARS imputation process is applied only to those fatal crashes that involve a driver or non-occupant who was not tested for alcohol, or whose test results are unknown. Since the State has not provided BAC data for these crashes, the agency uses a statistical model to estimate whether alcohol was involved.

In other words, if a State reports a crash to FARS, but reports no information regarding the BAC level of the driver(s) or non-occupant(s) involved in the crash, the agency does not assume that no alcohol was involved, but rather the statistical model

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supplies an estimate, based on prior experience. The statistical model considers the characteristics of the crash and, based on data from prior years, determines the likelihood that alcohol was involved. For example, there is a high incidence of alcohol-involvement in single- vehicle night-time crashes, so additional instances of alcohol use would be imputed if a State reports a number of such crashes without reporting any BAC information.

This is what happened to North Dakota in 1995. Although the North Dakota data had identified only 37 of its 74 deaths as being alcohol- related, the State's estimate was based on reported BAC information from only 40 (out of 97) drivers involved in fatal crashes. Based on the characteristics of the crashes for which BAC information was not reported, the agency estimated that an additional 6 deaths were alcohol-related.

Maryland suggested in its comments that ``the final rule should provide that a State can submit alternative data to establish compliance with the performance grant criteri[on]." This is already an option. As provided in the interim regulations, ``any State with a percentage of BAC testing among fatally injured drivers of 85 percent or greater in each of the three most recent calendar years * * * may calculate * * * the percentage of fatally injured drivers with a BAC of 0.10 percent or greater in that State for those calendar years, using State data."

Accordingly, States can exercise this option by increasing to 85 the percentage of drivers in fatal crashes who are tested.

Mr. Allred of Utah, commenting on behalf of NAGHSR, recognized that the ``regulations allow a state with an 85% BAC testing rate for fatally injured drivers to make its own eligibility calculations." He pointed out, however, that ``NHTSA will verify the percentages submitted using FARS data," and he asserted that ``the FARS estimate and state data are very likely to be different, which would affect a state's eligibility and would defeat the purpose of allowing a state to use acceptable state data." Mr. Allred suggested that NHTSA instead ``conduct a verification of the data using the state's own data."

When the agency stated in the interim final rule that NHTSA would verify the actual percentages submitted by States using FARS data, we wish to clarify that the agency intended this statement to mean that NHTSA would verify the percentages submitted by States in their Section 410 applications, based on the data submitted to the agency by States as part of NHTSA's FARS program (prior to the imputation process). This language appeared only in the preamble to the interim final rule, and not in the regulations themselves. Accordingly, no change is needed to the regulations as a result.

Michigan expressed concern regarding the requirement that States must demonstrate that the percentage of fatally injured drivers with 0.10 percent or greater BAC has decreased and has been lower than the average percentage for all States in each of the three most recent calendar years. Specifically, Michigan asserted that ``natural variation occurs from year to year, and this variation may well be compounded by the use of statistical estimates." Michigan argues that this variation could ``mask a three year trend that would otherwise have put the state in compliance with the rule" and Michigan urges that ``a state should not be penalized for achieving a three year trend that was in the proper direction, but had an apparent `blip' in [one of the three years] that may well be due to expected variation."

NHTSA appreciates Michigan's comment. However, the condition that States must meet the above-noted requirements ``in each of the three most recent calendar years" was established by statute. Accordingly, the agency is not at liberty to change this element of the requirement, without an amendment to the underlying statute.

Moreover, as stated above, the Section 410 statute requires that States must demonstrate that the percentage of fatally injured drivers with 0.10 percent or greater BAC has decreased and has been lower than the average percentage for all States in each of the three most recent calendar years. Accordingly, a State will not qualify if this percentage has increased or has been higher than the national average. Similarly, a State also will not qualify if the percentage has remained the same or has equaled the national average. If it appears that a State's percentage has remained

the same or has equaled the national average, based on rounded FARS figures, the agency will determine the actual value of these percentages to as many decimal places as are needed to determine whether the State percent has decreased and has been lower than the national average.

As discussed previously in today's final rule, during the administration of the Section 410 program in FY 1999, the agency noted that ``the most recently available FARS data'' that were available on ``the first day of [that] fiscal year'' were not yet finalized and, by the end of the fiscal year, the data for many States had changed.

As stated above, the agency believes that it should not use preliminary data to make funding decisions if finalized data can be used instead. Today's final rule provides that, beginning in FY 2000, NHTSA will no longer release Section 410 funds in two stages, and the funds will be released near the end of the fiscal year (by September 30). Since the FARS data that are available on the first day of a fiscal year generally are finalized in the spring of that fiscal year, this portion of the regulation also has been changed to provide that, beginning in FY 2000, these final data will be used.

Since Section 410 applications are due by August 1 of each fiscal year, the regulation has been changed to provide that the data to be used are the ``most recently available final FARS data as of August 1 of the fiscal year.'' However, as noted above, these final FARS data generally are available prior to August 1. To assist States in their preparation of Section 410 applications, the agency will provide States with the final data as soon as they are available.

V. Rulemaking Analyses and Notices

A. Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and it has been determined that this action will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Accordingly, a Federalism Assessment has not been prepared.

B. Executive Order 12778 (Civil Justice Reform)

This final rule will not have any preemptive or retroactive effect. The enabling legislation does not establish a procedure for judicial review of rules promulgated under its provisions. There is no requirement that individuals submit a petition for reconsideration or other administrative proceedings before they may file suit.

C. Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The agency has examined the impact of this action and has determined that it is not a significant action within the meaning of Executive Order 12866 or significant within the meaning of the Department of Transportation Regulatory Policies and Procedures.

The action will not have an annual effect on the economy of $100 million or more or adversely affect in a material way a sector of the economy, competition, jobs, the environment,

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public health or safety, or State, local or tribal governments or communities. It will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency, and it will not materially alter the budgetary impact of entitlements, grants, user fees, or loan

programs or the rights and obligations of recipients thereof. Nor does it raise novel legal or policy issues.

In addition, the costs associated with this rule are not significant and are expected to be offset by the grant funds received and the resulting highway safety benefits. The adoption of alcohol-impaired driving prevention programs should help to reduce impaired driving, which is a serious and costly problem in the United States. Accordingly, further economic assessment is not necessary.

D. Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601-612), the agency has evaluated the effects of this action on small entities. Based on the evaluation, we certify that this action will not have a significant impact on a substantial number of small entities. States are the recipients of any funds awarded under the Section 410 program, and they are not considered to be small entities, under the Regulatory Flexibility Act.

E. Paperwork Reduction Act

The requirements in this final rule that provide that States retain and report information to the Federal government which demonstrates compliance with the alcohol-impaired driving prevention incentive grant criteria, are considered to be information collection requirements, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR Part 1320.

Accordingly, these requirements have been submitted previously to and approved by OMB, pursuant to the Paperwork Reduction Act (44 U.S.C. 3501, et seq.). These requirements have been approved under OMB No. 2127-0501, through April 30, 2003. This final rule reduces for the States previous information collection requirements associated with demonstrating compliance with many of the criteria.

F. National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and has determined that it will not have any significant impact on the quality of the human environment.

G. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Public Law 104-4) requires agencies to prepare a written assessment of the costs, benefits and other affects of final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. This final rule does not meet the definition of a Federal mandate, because the resulting annual expenditures will not exceed the $100 million threshold. In addition, this incentive grant program is completely voluntary and States that choose to apply and qualify will receive incentive grant funds.

List of Subjects in 23 CFR Part 1313

Alcohol and alcoholic beverages, Grant programs-transportation, Highway safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, the interim final rule published in the Federal Register of

December 29, 1998, 63 FR 71688, is adopted as final, with the following changes:

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

1. The authority citation for Part 1313 continues to read as follows:

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

2. Section 1313.5 is amended by revising paragraphs (d)(1)(i)(D), (d)(1)(ii)(D), (d)(2), (d)(3), (f)(2)(ii), (g)(1)(i)(B), (g)(1)(ii), (g)(3)(i)(B), (g)(3)(ii)(B), and (g)(4),to read as follows:

Sec. 1313.5 Requirements for a programmatic basic grant.

* * * * *

(d) Graduated driver's licensing system.
(1) * * *
(i) * * *
(D) Stage I learner's permit holders must remain conviction free for not less than three months; and
(ii) * * *
(D) Stage II intermediate driver's license holders must have remained conviction free during Stages I and II for a combined period of not less than one year; and
* * * * *
(2) Definitions.
(i) Conviction free means that, during the term of the permit or license, the driver has not been charged with and subsequently convicted of any offense under State or local law relating to the use or operation of a motor vehicle, to the extent required by State law.
(ii) Successfully complied means that the driver:
(A) did not violate any of the conditions of the previous stage(s),or
(B) has been subject to the consequences prescribed by State or local law for violating the conditions of the previous stage(s).
(3) Demonstrating compliance. (i) To demonstrate compliance in the first fiscal year the State receives a grant based on this criterion, the State shall submit a copy of the law, regulation or binding policy directive implementing or interpreting the law or regulation, which provides for each element of this criterion. If the State's law, regulation or binding policy directive does not provide that Stage I permits and Stage II and Stage III licenses must be distinguishable, the State shall submit either:
(A) Sample permits and licenses, which contain visual features that would enable a law enforcement officer to distinguish between the permit and the licenses; or
(B) A description of the State's system, which enables law enforcement officers in the State during traffic stops to distinguish between the permit and the licenses.
(ii) To demonstrate compliance in subsequent fiscal years, the State shall submit a copy of any changes to the State's law, regulation, binding policy directive, permit or licenses, or State system or, if there have been no changes, the State shall submit a statement certifying that there have been no changes in the State's laws, regulations, binding policy directives, permit or licenses, or State system.
* * * * *

(f) Young adult drinking and driving program.

(2) * * *

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

(A) An updated description of its Statewide public information and awareness campaign;

(B) A description and sample materials documenting activities designed to reduce the incidence of alcohol-impaired driving by young drivers, which must involve:

(1) at least two of the four components contained in paragraph (f)(1)(ii) of this section in the second fiscal year the State receives Section 410 funds based on this criterion;

(2) at least three of the four components contained in paragraph (f)(1)(ii) of this section in the third fiscal

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year the State receives Section 410 funds based on this criterion; and

(3) all four components contained in paragraph (f)(1)(ii) of this section in the fourth or subsequent fiscal year the State receives Section 410 funds based on this criterion; and

(C) an updated plan that outlines proposed efforts to involve all four components contained in paragraph (f)(1)(ii) of this section, until the State's activities involve all four components.

(g) Testing for BAC.

(1) * * *

(i) * * *

(B) BAC testing data. The State's percentage of BAC testing among drivers involved in fatal motor vehicle crashes is equal to or greater than the national average, as determined by the most recently available final FARS data as of August 1 of the fiscal year for which grant funds are being sought.

* * * * *

(ii) In FY 2001 and each subsequent fiscal year, a percentage of BAC testing among drivers involved in fatal motor vehicle crashes that is equal to or greater than the national average, as determined by the most recently available final FARS data as of August 1 of the fiscal year for which grant funds are being sought.

* * * * *

(3) * * *

(i) * * *

(B) a statement certifying that the percentage of BAC testing among drivers involved in fatal motor vehicle crashes in the State is equal to or greater than the national average, as determined by the most recently available final FARS data as of August 1 of the fiscal year for which grant funds are being sought; or

* * * * *

(ii) * * *

(B) If in the first fiscal year the State demonstrated compliance under paragraph (g)(3)(i)(B), the State may submit instead a statement certifying that the percentage of BAC testing among drivers involved in fatal motor vehicle crashes in the State continues to be equal to or greater than the national average, as determined by the most recently available final FARS data as of August 1 of the fiscal year for which grant funds are being sought.

* * * * *

(4) Demonstrating compliance beginning in FY 2001. To demonstrate compliance for a grant based on this criterion in FY 2001 or any subsequent fiscal year, the State shall submit a statement certifying that the percentage of BAC testing among drivers involved in fatal motor vehicle crashes in the State is equal to or greater than the national average, as determined by the most recently available final FARS data as of August 1 of the fiscal year for which grant funds are

being sought.

3. Section 1313.6 is amended by revising paragraphs (a)(1), (b), and (c)(2) to read as follows:

Sec. 1313.6 Requirements for a performance basic grant.

(a)(1) the percentage of fatally injured drivers in the State with a BAC of 0.10 percent or greater has decreased in each of the three most recent calendar years for which statistics for determining such percentages are available as determined by the most recently available final FARS data as of August 1 of the fiscal year for which grant funds are being sought; and

* * * * *

(b) Calculating percentages. (1) The percentage of fatally injured drivers with a BAC of 0.10 percent or greater in each State is calculated by NHTSA for each calendar year, using the most recently available final FARS data as of August 1 of the fiscal year for which grant funds are being sought and NHTSA's method for estimating alcohol involvement.

(2) The average percentage of fatally injured drivers with a BAC of 0.10 percent or greater for all States is calculated by NHTSA for each calendar year, using the most recently available final FARS data as of August 1 of the fiscal year for which grant funds are being sought and NHTSA's method for estimating alcohol involvement.

(3) Any State with a percentage of BAC testing among fatally injured drivers of 85 percent or greater in each of the three most recent calendar years, as determined by the most recently available final FARS data as of August 1 of the fiscal year for which grant funds are being sought, may calculate for submission to NHTSA the percentage of fatally injured drivers with a BAC of 0.10 percent or greater in that State for those calendar years, using State data.

(c) * * *

(2) Alternatively, a State with a percentage of BAC testing among fatally injured drivers of 85 percent or greater, as determined by the most recently available final FARS data as of August 1 of the fiscal year for which grant funds are being sought, may demonstrate compliance with this criterion by submitting its calculations developed under paragraph (b)(3) of this section and a statement certifying that the State meets each element of this criterion, based on the percentages calculated in accordance with paragraphs (b)(2) and (b)(3) of this section.

Issued on: July 24, 2000.
Rosalyn G. Millman,
Deputy Administrator, National Highway Traffic Safety Administration.
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