AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
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number of accidents (fatalities, injuries, and property damage only) per mile.

[69 FR 9499, Feb. 27, 2004, as amended at 74 FR 28442, June 16, 2009]

§973.214 Indian lands congestion management system (CMS).

(a) For purposes of this section, congestion means the level at which transportation system performance is no longer acceptable due to traffic interference. The BIA and the FHWA, in consultation with the tribes, shall develop criteria to determine when a CMS is to be implemented for a specific federally or tribally owned IRR transportation system that is experiencing congestion. Either the tribe or the BIA, in consultation with the tribe, shall consider the results of the CMS in the development of the IRR transportation plan and the IRRTIP, when selecting strategies for implementation that provide the most efficient and effective use of existing and future transportation facilities to alleviate congestion and enhance mobility.

(b) In addition to the requirements provided in §973.204, the CMS must meet the following requirements:

(1) For those BIA or tribal transportation systems that require a CMS, consideration shall be given to strategies that reduce private automobile travel and improve existing transportation system efficiency. Approaches may include the use of alternate mode studies and implementation plans as components of the CMS.

(2) A CMS will:

(i) Identify and document measures for congestion (e.g., level of service);

(ii) Identify the causes of congestion;

(iii) Include processes for evaluating the cost and effectiveness of alternative strategies;

(iv) Identify the anticipated benefits of appropriate alternative traditional and nontraditional congestion management strategies;

(v) Determine methods to monitor and evaluate the performance of the multi-modal transportation system; and

(vi) Appropriately consider the following example categories of strategies, or combinations of strategies for each area:

(A) Transportation demand management measures;

(B) Traffic operational improvements;

(C) Public transportation improvements;

(D) ITS technologies; and

(E) Additional system capacity.

CHAPTER II—NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION AND FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

SUBCHAPTER A—PROCEDURES FOR STATE HIGHWAY SAFETY PROGRAMS

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SUBCHAPTER A—PROCEDURES FOR STATE HIGHWAY SAFETY PROGRAMS

PART 1200—UNIFORM PROCEDURES FOR STATE HIGHWAY SAFETY PROGRAMS

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1200.36 Continuing requirements.

AUTHORITY: 23 U.S.C. 402; delegations of authority at 49 CFR 1.48 and 1.50.

SOURCE: 62 FR 34402, June 26, 1997, unless otherwise noted.

Subpart A—General

§ 1200.1 Purpose.

This part establishes uniform application, approval, implementation, and closeout procedures for State highway safety programs authorized under 23 U.S.C. 402.

§ 1200.2 Applicability.

The provisions of this part apply to highway safety programs conducted by States under 23 U.S.C. 402.

§ 1200.3 Definitions.

As used in this subchapter—

Approving Official means a Regional Administrator of the National Highway Traffic Safety Administration, with the concurrence of a Division Administrator of the Federal Highway Administration as necessary.

Carry-forward funds means those funds that a State has obligated but not expended in the fiscal year in which they were apportioned, that are being reprogrammed to fund activities in a subsequent fiscal year.

Contract authority means the statutory language that authorizes the agencies 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.

Equipment means any tangible personal property acquired for use under the State's approved highway safety program.

FHWA means the Federal Highway Administration.

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

Governor means the Governor of any of the fifty States, Puerto Rico, the 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 Indians as provided in 23 U.S.C. 402(i), the Secretary of the Interior.

Governor's Representative for Highway Safety means the official appointed by the Governor to implement the State's highway safety program or, for the application of this part to Indians as provided in 23 U.S.C. 402(i), an official of the Bureau of Indian Affairs who is

duly designated by the Secretary of the Interior to implement the Indian highway safety program.

NHTSA means the National Highway Traffic Safety Administration.

Program area means a National Priority Program Area identified in § 1205.3 of this chapter or a program area identified by the State in the highway safety plan as encompassing a major highway safety problem in the State and for which effective countermeasures have been identified.

Program income means gross income received by the State or any of its subgrantees or contractors that is directly or indirectly generated by a Federally-supported project during the project performance period.

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

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

Subpart B—Application, Approval, and Funding of the Highway Safety Program

§ 1200.10 Application.

Each fiscal year, a State's application for funds for its highway safety program shall consist of the following components:

(a) A Performance Plan, containing the following elements:

(1) A list of objective and measurable highway safety goals, within the National Priority Program Areas and other program areas, based on highway safety problems identified by the State during the processes under paragraph (a)(2) of this section. Each goal must be accompanied by at least one performance measure that enables the State to track progress, from a specific baseline, toward meeting the goal (e.g., a goal to ''increase safety belt use from XX percent in 19___ to YY percent in 20___,'' using a performance measure of ''percent of restrained occupants in front outboard seating positions in passenger motor vehicles'').

(2) A brief description of the processes used by the State to identify its highway safety problems, define its highway safety goals and performance measures, and develop projects and activities to address its problems and achieve its goals. In describing these processes, the State shall identify the participants in the processes (e.g., highway safety committees, community and constituent groups), discuss the strategies for project or activity selection (e.g., constituent outreach, public meetings, solicitation of proposals), and list the information and data sources consulted.

(b) A Highway Safety Plan, approved by the Governor's Representative for Highway Safety, describing the projects and activities the State plans to implement to reach the goals identified in the Performance Plan. The Highway Safety Plan must, at a minimum, describe one year of Section 402 program activities (and may include activities funded from other sources, so long as the source of funding is clearly distinguished).

(c) A Certification Statement, signed by the Governor's Representative for Highway Safety, providing assurances that the State will comply with applicable laws and regulations, financial and programmatic requirements, and in accordance with § 1200.11 of this part, the special funding conditions of the Section 402 program.

(d) A Program Cost Summary (HS Form 217 or its electronic equivalent), completed to reflect the State's proposed allocations of funds (including carry-forward funds) by program area, based on the goals identified in the Performance Plan and the projects and activities identified in the Highway Safety Plan. The funding level used shall be an estimate of available funding for the upcoming fiscal year.

[62 FR 34402, June 26, 1997, as amended at 64 FR 40764, July 28, 1999]

§ 1200.11 Special funding conditions.

The State's highway safety program under Section 402 shall be subject to the following conditions, and approval under § 1200.13 of this part shall in no event be deemed to waive these conditions:

(a) Responsibility of the Governor—The Governor of the State shall be responsible for the administration of the Section 402 program through a State highway safety agency that shall have adequate powers and be suitably equipped and organized to carry out the program.

(b) Participation by Political Subdivisions—Political subdivisions shall be authorized to carry out local highway safety programs, approved by the Governor, as a part of the State highway safety program, and at least 40 percent of all Federal funds provided under this part shall be used by or for the benefit of political subdivisions, in accordance with the provisions of part 1250 of this chapter.

(c) Access for Persons with Disabilities—Adequate and reasonable access shall be provided for the safe and convenient movement of persons with physical disabilities, including those in wheelchairs, across curbs constructed or replaced on or after July 1, 1976, at all pedestrian crosswalks throughout the State.

(d) Use of Safety Belts—Programs shall be provided (which may include financial incentives and disincentives) to encourage the use of safety belts by drivers and passengers in motor vehicles.

(e) Planning and Administration Costs—Funding and matching requirements for planning and administration costs shall be in accordance with the provisions of part 1252 of this chapter.

(f) Purchase and Disposition of Equipment—Major purchases and dispositions of equipment shall require prior approval by the approving official, in accordance with the provisions of § 1200.21(d) of this part.

§ 1200.12 Due date.

Three copies of the application documents identified in § 1200.10 of this part must be received by the NHTSA regional office no later than September 1 preceding the fiscal year to which the documents apply. The NHTSA regional office will forward copies to NHTSA headquarters and the FHWA division office. Failure to meet this deadline may result in delayed approval and funding.

§ 1200.13 Approval.

(a) Upon receipt of application documents complying with the provisions of § 1200.10 and § 1200.11 of this part, the Approving Official will issue a letter of approval to the Governor and the Governor's Representative for Highway Safety.

(b) The approval letter identified in paragraph (a) of this section will contain the following statement:

> We have reviewed (STATE)'s _____ fiscal year 19___ Performance Plan, Highway Safety Plan, Certification Statement, and Cost Summary (HS Form 217), as received on (DATE) _____. Based on these submissions, we find your State's highway safety program to be in compliance with the requirements of the Section 402 program. This determination does not constitute an obligation of Federal funds for the fiscal year identified above or an authorization to incur costs against those funds. The obligation of Section 402 program funds will be effected in writing by the NHTSA Administrator at the commencement of the fiscal year identified above. However, Federal funds reprogrammed from the prior-year Highway Safety Program (carry-forward funds) will be available for immediate use by the State on October 1. Reimbursement will be contingent upon the submission of an updated HS Form 217 (or its electronic equivalent), consistent with the requirements of 23 CFR 1200.14(d), within 30 days after either the beginning of the fiscal year identified above or the date of this letter, whichever is later.

(c) If approval is withheld, for reasons of non-compliance with § 1200.10 or § 1200.11 of this part or other applicable law, the Approving Official shall identify in writing the specific area(s) of non-compliance which formed the basis for withholding approval.

[62 FR 34402, June 26, 1997, as amended at 64 FR 40764, July 28, 1999]

§ 1200.14 Apportionment and obligation of Federal funds.

(a) Except as provided in paragraph (b) of this section, on October 1 of each fiscal year the NHTSA Administrator shall, in writing, distribute funds available for obligation under Section 402 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 and FHWA Administrators shall, in writing, distribute a part of the funds authorized under Section 402 contract authority to ensure program continuity and shall specify any conditions or limitations imposed by law on the use of the funds. Upon appropriation of Section 402 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) The funds distributed under paragraph (a) or (b) of this section shall be available for expenditure by the states to satisfy the Federal share of expenses under the approved highway safety program, and shall constitute a contractual obligation of the Federal Government, subject to any conditions or limitations identified in the distributing document.

(d)(1) Notwithstanding the provisions of paragraph (c) of this section, reimbursement of State expenses shall be contingent upon the submission of an updated HS Form 217 (or its electronic equivalent), within 30 days after either the beginning of the fiscal year or the date of the written approval required under § 1200.13 of this part, whichever is later.

(2) The updated HS Form 217 (or its electronic equivalent) required under paragraph (d)(1) of this section shall reflect the State's allocation of Section 402 funds made available for expenditure during the fiscal year, including known carry-forward funds.

[62 FR 34402, June 26, 1997, as amended at 64 FR 40764, July 28, 1999]

Subpart C—Implementation and Management of the Highway Safety Program

§ 1200.20 General.

Except as otherwise provided in this subpart and subject to the provisions herein, the requirements of 49 CFR part 18 and applicable cost principles govern the implementation and management of State highway safety programs carried out under 23 U.S.C. 402. Cost principles include those referenced in 49 CFR 18.22 and those set forth in applicable Department of Transportation, NHTSA, or FHWA Orders.

§ 1200.21 Equipment.

(a) *Title*. Except as provided in paragraphs (e) and (f) of this section, title to equipment acquired under the Section 402 program will vest upon acquisition in the State or its subgrantee, as appropriate.

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

(c) *Management and disposition*. Subject to the requirement of paragraphs (b), (d), (e) and (f) of this section, States and their subgrantees and contractors shall manage and dispose of equipment acquired under the Section 402 program in accordance with State laws and procedures.

(d) *Major Purchases and dispositions*. All purchases and dispositions of equipment with a useful life of more than one year and an acquisition cost of $5,000 or more must receive prior written approval from the Approving Official.

(e) *Right to transfer title*. The Approving Official may reserve the right to transfer title to equipment acquired under the Section 402 program to the Federal Government or to a third party when such third party is otherwise eligible under existing statutes. Any such transfer shall be subject to the following requirements:

(1) The equipment shall be identified in the grant or otherwise made known to the State in writing;

(2) The Approving Official shall issue disposition instructions within 120 calendar days after the equipment is determined to be no longer needed in the Section 402 program, in the absence of which the State shall follow the applicable procedures in 49 CFR part 18.

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

(1) Title shall remain vested in the Federal Government;

(2) Management shall be in accordance with Federal rules and procedures, and an annual inventory listing shall be submitted;

(3) The State or its subgrantee shall request disposition instructions from the Approving Official when the item is no longer needed in the Section 402 program.

§ 1200.22 Changes.

States shall provide documentary evidence of any reallocation of funds between program areas by submitting to the NHTSA regional office an amended HS form 217 (or its electronic equivalent), reflecting the changed allocation of funds, within 30 days of implementing the change.

[62 FR 34402, June 26, 1997, as amended at 64 FR 40764, July 28, 1999]

§ 1200.23 Vouchers and project agreements.

Each State shall submit official vouchers for total expenses incurred to the Approving Official. Copies of the project agreement(s) and supporting documentation for the vouchers, and any amendments thereto, shall be made available for review by the Approving Official upon request.

(a) *Content of vouchers.* At a minimum, each voucher shall provide the following information for expenses claimed in each program area:

(1) Program Area;

(2) Federal funds obligated;

(3) Amount of Federal funds allocated to local benefit (provided mid-year (by March 31) and with the final voucher);

(4) Cumulative Total Cost to Date;

(5) Cumulative Federal Funds Expended;

(6) Previous Amount Claimed;

(7) Amount Claimed this Period;

(8) Matching rate (or Special matching writeoff used, *i.e.*, sliding scale rate authorized under 23 U.S.C. 120(a), determined in accordance with the applicable NHTSA Order).

(b) *Submission requirements.* At a minimum, vouchers shall be submitted to the Approving Official on a quarterly basis, no later than 15 working days after the end of each quarter, except that where a State receives funds by electronic transfer at an annualized rate of one million dollars or more, vouchers shall be submitted on a monthly basis, no later than 15 working days after the end of each month. Failure to meet these deadlines may result in delayed reimbursement.

§ 1200.24 Program income.

(a) *Inclusions.* Program income includes income from fees for services performed, from the use or rental of real or personal property acquired with grant funds, from the sale of commodities or items fabricated under the grant agreement, and from payments of principal and interest on loans made with grant funds.

(b) *Exclusions.* Program income does not include interest on grant funds, rebates, credits, discounts, refunds, taxes, special assessments, levies, fines, proceeds from the sale of real property or equipment, income from royalties and license fees for copyrighted material, patents, and inventions, or interest on any of these.

(c) *Use of program income*—(1) *Addition.* Program income shall ordinarily be added to the funds committed to the Highway Safety Plan. Such program income shall be used to further the objectives of the program area under which it was generated.

(2) *Cost sharing or matching.* Program income may be used to meet cost sharing or matching requirements only upon written approval of the Approving Official. Such use shall not increase the commitment of Federal funds.

§ 1200.25 Improvement plan.

If a review of the Annual Report required under § 1200.33 of this part or of other relevant information indicates little or no progress toward meeting State goals, the Approving Official and State officials will jointly develop an improvement plan. This plan will detail strategies, program activities, and funding targets to meet the defined goals.

§ 1200.26 Non-compliance.

Where a State is found to be in noncompliance with the requirements of the Section 402 program or with applicable law, the special conditions for high-risk grantees and the enforcement procedures of 49 CFR part 18, or the sanctions procedures of part 1206 of

this chapter, may be applied as appropriate.

§ 1200.27 Appeals.

Review of any written decision by an Approving Official under this part may be obtained by submitting a written appeal of such decision, signed by the Governor's Representative for Highway Safety, to the Approving Official. Such appeal shall be forwarded promptly to the NHTSA Associate Administrator for State and Community Services or the FHWA Regional Administrator with jurisdiction over the specific division, as appropriate. The decision of the NHTSA Associate Administrator or FHWA Regional Administrator shall be final and shall be transmitted to the Governor's Representative for Highway Safety through the cognizant Approving Official.

Subpart D—Closeout

§ 1200.30 Expiration of the right to incur costs.

Unless extended in accordance with the provisions of § 1200.31 of this part, the right to incur costs under Section 402 expires on the last day of the fiscal year to which it pertains. The State and its subgrantees and contractors may not incur costs for Federal reimbursement past the expiration date.

§ 1200.31 Extension of the right to incur costs.

Upon written request by the State, specifying the reasons therefor, the Approving Official may extend the right to incur costs for some portion of the State highway safety program by a maximum of 90 days. The approval of any such request for extension shall be in writing, shall specify the new expiration date, and shall be signed by the Approving Official. If an extension is granted, the State and its subgrantees and contractors may continue to incur costs in accordance with the Highway Safety Plan until the new expiration date, and the due dates for other submissions covered by this subpart shall be based upon the new expiration date. However, in no case shall any extension be deemed to authorize the obligation of additional Federal funds beyond those already obligated to the State, nor shall any extension be deemed to extend the due date for submission of the Annual Report. Only one extension shall be allowed during each fiscal year.

§ 1200.32 Final voucher.

Each State shall submit a final voucher which satisfies the requirements of § 1200.23(a) of this part within 90 days after the expiration of each fiscal year, unless extended in accordance with the provisions of § 1200.31 of this part. The final voucher constitutes the final financial reconciliation for each fiscal year.

§ 1200.33 Annual report.

Within 90 days after the end of the fiscal year, each State shall submit an Annual Report. This report shall describe:

(a) The State's progress in meeting its highway safety goals, using performance measures identified in the Performance Plan. Both Baseline and most current level of performance under each measure will be given for each goal.

(b) How the projects and activities funded during the fiscal year contributed to meeting the State's highway safety goals. Where data becomes available, a State should report progress from prior year projects that have contributed to meeting current State highway safety goals.

[62 FR 34402, June 26, 1997, as amended at 64 FR 40764, July 28, 1999]

§ 1200.34 Disposition of unexpended balances.

Any funds which remain unexpended after final reconciliation shall be carried forward, credited to the State's highway safety account for the new fiscal year, and made immediately available for use under the State's new highway safety program, subject to the approval requirements of § 1200.13 of this part. Carry-forward funds must be identified by the program area from which they are removed when they are reprogrammed from the previous fiscal year. Once so identified, such funds are available for use without regard to the program area from which they were carried forward, unless specially earmarked by the Congress.

§ 1200.35 Post-grant adjustments.

The closeout of a highway safety program in a fiscal year does not affect the ability of NHTSA or FHWA to disallow costs and recover funds on the basis of a later audit or other review or the State's obligation to return any funds due as a result of later refunds, corrections, or other transactions.

§ 1200.36 Continuing requirements.

The following provisions shall have continuing applicability, notwithstanding the closeout of a highway safety program in a fiscal year:

(a) The requirements governing equipment, as provided in § 1200.21 of this part;

(b) The audit requirements and records retention and access requirements of 49 CFR part 18.

SUBCHAPTER B—GUIDELINES

PART 1204 [RESERVED]

PART 1205—HIGHWAY SAFETY PROGRAMS; DETERMINATIONS OF EFFECTIVENESS

Sec.
1205.1 Scope.
1205.2 Purpose.
1205.3 Identification of National Priority Program Areas.
1205.4 Funding requirements.

AUTHORITY: 23 U.S.C. 402; delegations of authority at 49 CFR 1.48 and 1.50.

SOURCE: 47 FR 15120, Apr. 8, 1982, unless otherwise noted.

§ 1205.1 Scope.

This part identifies those highway safety programs that are eligible for Federal funding under the State and Community Highway Safety Grant Program (23 U.S.C. 402) and specifies the Federal funding requirements for those programs.

§ 1205.2 Purpose.

The purpose of this part is to establish national highway safety priorities and establish program areas within which highway safety programs developed by the states would be eligible to receive Federal funding.

§ 1205.3 Identification of National Priority Program Areas.

(a) Under statutory provisions administered by NHTSA, the following NHTSA-administered highway safety program areas have been identified as encompassing a major highway safety problem which is of national concern, and for which effective countermeasures have been identified. Programs developed in such areas are eligible for Federal funding, pursuant to guidelines issued by the National Highway Traffic Safety Administration and the review procedure set forth in § 1205.4:

(1) Alcohol and Other Drug Countermeasures
(2) Police Traffic Services
(3) Occupant Protection
(4) Traffic Records
(5) Emergency Medical Services
(6) Motorcycle Safety

(b) Under statutory provisions administered by FHWA, the following FHWA-administered highway safety program area has been identified as encompassing a major highway safety problem which is of national concern, and for which effective countermeasures have been identified. The program developed in this area is eligible for Federal funding, pursuant to provisions of 23 U.S.C. 402(g), guidelines issued by the Federal Highway Administration and the review procedures set forth in § 1205.4: *Roadway Safety*.

(c) Under statutory provisions jointly administered by NHTSA and FHWA, the following highway safety program areas, jointly administered by NHTSA and FHWA, have been identified as encompassing a major highway safety problem which is of national concern, and for which effective countermeasures have been identified. Programs developed in such areas are eligible for Federal funding, pursuant to guidelines issued by NHTSA and FHWA and the review procedures set forth in § 1205.4:

(1) Pedestrian and Bicycle Safety
(2) Speed Control

[47 FR 15120, Apr. 8, 1982, as amended at 53 FR 11270, Apr. 6, 1988; 56 FR 50255, Oct. 4, 1991; 59 FR 64127, Dec. 13, 1994]

§ 1205.4 Funding requirements.

A State may use funds made available under 23 U.S.C. 402 to support projects and activities within—

(a) Any National priority program area identified in § 1205.3 of this part; or

(b) Any other highway safety program area that is identified in the Highway Safety Plan required under § 1200.10(b) of this chapter as encompassing a major highway safety problem in the State and for which effective countermeasures have been identified.

[62 FR 34405, June 26, 1997]

PART 1206—RULES OF PROCEDURE FOR INVOKING SANCTIONS UNDER THE HIGHWAY SAFETY ACT OF 1966

Sec.
1206.1 Scope.
1206.2 Purpose.
1206.3 Definitions.
1206.4 Sanctions.
1206.5 Review process.

AUTHORITY: 23 U.S.C. 402; delegation of authority at 49 CFR 1.48 and 1.50.

SOURCE: 61 FR 28747, June 6, 1996, unless otherwise noted.

§ 1206.1 Scope.

This part establishes procedures governing determinations to invoke the sanctions applicable to any State that does not comply with the highway safety program requirements in the Highway Safety Act of 1966, as amended (23 U.S.C. 402).

§ 1206.2 Purpose.

The purpose of this part is to prescribe procedures for determining whether and the extent to which the 23 U.S.C. 402 sanctions should be invoked, and to ensure that, should sanctions be proposed to be invoked against a State, the State has a full and fair opportunity to be heard on the issues involved.

§ 1206.3 Definitions.

As used in this part:

(a) *Administrators* means the Administrators of the Federal Highway Administration and the National Highway Traffic Safety Administration.

(b) *Highway safety program* means an approved program in accordance with 23 U.S.C. 402, which is designed by a State to reduce traffic accidents, and death, injuries and property damage resulting therefrom.

(c) *Implementing* means both having and putting into effect an approved highway safety program.

§ 1206.4 Sanctions.

(a) The Administrators shall not apportion any funds under 23 U.S.C. 402 to any State which is not implementing a highway safety program.

(b) If the Administrators have apportioned funds to a State and subsequently determine that the State is not implementing a highway safety program, the Administrators shall reduce the funds apportioned under 23 U.S.C. 402 to the State by amounts equal to not less than 50 per centum, until such time as the Administrators determine that the State is implementing a highway safety program.

(c) The Administrators shall consider the gravity of the State's failure to implement a highway safety program in determining the amount of the reduction.

(d) If the Administrators determine that a State has begun implementing a highway safety program before the end of the fiscal year for which the funds were withheld, they shall promptly apportion to the State the funds withheld from its apportionment.

(e) If the Administrators determine that the State did not correct its failure before the end of the fiscal year for which the funds were withheld, the Administrators 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 30 days after such determination.

§ 1206.5 Review process.

(a) In any fiscal year, if the Administrators determine, based on a preliminary review, that a State is not implementing a highway safety program in accordance with 23 U.S.C. 402, the Administrators shall issue jointly to the State an advance notice, advising the State that the Administrators expect to either withhold funds from apportionment under 23 U.S.C. 402, or reduce the State's apportioned funds under 23 U.S.C. 402. The Administrators shall state the amount of the expected withholding or reduction. The advance notice will normally be sent not later than ninety days prior to final apportionment.

(b) If the Administrators issue an advance notice to a State, based on a preliminary review, the State may, within 30 days of its receipt of the advance notice, submit documentation demonstrating that it is implementing a

highway safety program. Documentation shall be submitted to the Administrator for NHTSA, 1200 New Jersey Avenue, SE., Washington, D.C. 20590.

(c) If the Administrators decide, after reviewing all relevant information, that a State is not implementing a highway safety program in accordance with 23 U.S.C. 402, they shall issue a final notice, advising the State either of the funds being withheld from apportionment under 23 U.S.C. 402, or of the apportioned funds being reduced under 23 U.S.C. 402 and the amount of the withholding or reduction. The final notice of a withholding will normally be issued on October 1. The final notice of a reduction will be issued at the time of a final decision.

[61 FR 28747, June 6, 1996, as amended at 74 28442, June 16, 2009]

PART 1208—NATIONAL MINIMUM DRINKING AGE

Sec.
1208.1 Scope.
1208.2 Purpose.
1208.3 Definitions.
1208.4 Adoption of National Minimum Drinking Age.
1208.5 Unavailability of withheld funds.
1208.6 Procedures affecting States in noncompliance.

AUTHORITY: 23 U.S.C. 158; delegation of authority at 49 CFR 1.48 and 1.50.

SOURCE: 51 FR 10380, Mar. 26, 1986, unless otherwise noted.

§ 1208.1 Scope.

This part prescribes the requirements necessary to implement 23 U.S.C. 158, which establishes the National Minimum Drinking Age.

§ 1208.2 Purpose.

The purpose of this part is to clarify the provisions which a State must have incorporated into its laws in order to prevent the withholding of Federal-aid highway funds for noncompliance with the National Minimum Drinking Age.

§ 1208.3 Definitions.

As used in this part:

Alcoholic beverage means beer, distilled spirits and wine containing one-half of one percent or more of alcohol by volume. Beer includes, but is not limited to, ale, lager, porter, stout, sake, and other similar fermented beverages brewed or produced from malt, wholly or in part or from any substitute therefor. Distilled spirits include alcohol, ethanol or spirits or wine in any form, including all dilutions and mixtures thereof from whatever process produced.

Public possession means the possession of any alcoholic beverage for any reason, including consumption on any street or highway or in any public place or in any place open to the public (including a club which is *de facto* open to the public). The term does not apply to the possession of alcohol for an established religious purpose; when accompanied by a parent, spouse or legal guardian age 21 or older; for medical purposes when prescribed or administered by a licensed physician, pharmacist, dentist, nurse, hospital or medical institution; in private clubs or establishments; or to the sale, handling, transport, or service in dispensing of any alcoholic beverage pursuant to lawful employment of a person under the age of twenty-one years by a duly licensed manufacturer, wholesaler, or retailer of alcoholic beverages.

Purchase means to acquire by the payment of money or other consideration.

§ 1208.4 Adoption of National Minimum Drinking Age.

The Secretary shall withhold ten percent of the amount required to be apportioned to any State under each of §§ 104(b)(1), 104(b)(2), 104(b)(5) and 104(b)(6) of title 23 U.S.C. on the first day of each fiscal year in which the purchase or public possession in such State of any alcoholic beverage by a person who is less than twenty-one years of age is lawful.

[60 FR 66076, Dec. 21, 1995]

§ 1208.5 Unavailability of withheld funds.

Funds withheld under § 1208.4 from apportionment to any State will not be available for apportionment to the State.

[60 FR 66076, Dec. 21, 1995]

§ 1208.6 Procedures affecting States in noncompliance.

(a) Every fiscal year, each State determined to be in noncompliance with the National Minimum Drinking Age, based on NHTSA's and FHWA's preliminary review of its statutes for compliance or non-compliance, will be advised of the funds expected to be withheld under § 1208.4 from apportionment, as part of the advance notice of apportionments required under 23 U.S.C. 104(e), normally not later than ninety days prior to final apportionment.

(b) If NHTSA and FHWA determine that the State is in noncompliance with the National Minimum Drinking Age based on their preliminary review, the State may, within 30 days of its receipt of the advance notice of apportionments, submit documentation showing why it is in compliance. Documentation shall be submitted to the National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

(c) Every fiscal year, each State determined to be in noncompliance with the National Minimum Drinking Age, based on NHTSA's and FHWA's final determination of compliance or noncompliance, will receive notice of the funds being withheld under § 1208.4 from apportionment, as part of the certification of apportionments required under 23 U.S.C. 104(e), which normally occurs on October 1 of each fiscal year.

[53 FR 31322, Aug. 18, 1988. Redesignated at 60 FR 66076, Dec. 21, 1995, as amended at 74 FR 28442, June 16, 2009]

PART 1210—OPERATION OF MOTOR VEHICLES BY INTOXICATED MINORS

Sec.

1210.1 Scope.
1210.2 Purpose.
1210.3 Definitions.
1210.4 Adoption of zero tolerance law.
1210.5 Certification requirements.
1210.6 Period of availability of withheld funds.
1210.7 Apportionment of withheld funds after compliance.
1210.8 Period of availability of subsequently apportioned funds.
1210.9 Effect of noncompliance.
1210.10 Procedures affecting states in noncompliance.

AUTHORITY: 23 U.S.C. 161; delegation of authority at 49 CFR 1.48 and 1.50.

SOURCE: 61 FR 55217, Oct. 25, 1996, unless otherwise noted.

§ 1210.1 Scope.

This part prescribes the requirements necessary to implement 23 U.S.C. 161, which encourages States to enact and enforce zero tolerance laws.

§ 1210.2 Purpose.

The purpose of this part is to specify the steps that States must take to avoid the withholding of Federal-aid highway funds for noncompliance with 23 U.S.C. 161.

§ 1210.3 Definitions.

As used in this part:

(a) *Alcohol concentration* means either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

(b) *BAC* means either blood or breath alcohol concentration.

(c) *Operating a motor vehicle* means driving or being in actual physical control of a motor vehicle.

§ 1210.4 Adoption of zero tolerance law.

(a) The Secretary shall withhold five percent of the amount required to be apportioned to any State under each of sections 104(b)(1), 104(b)(3) and 104(b)(5) of title 23, United States Code, on the first day of fiscal year 1999 if the State does not meet the requirements of this part on that date.

(b) The Secretary shall withhold ten percent of the amount required to be apportioned to any State under each of sections 104(b)(1), 104(b)(3) and 104(b)(5) of title 23, United States Code, on the first day of fiscal year 2000 and any subsequent fiscal year if the State does not meet the requirements of this part on that date.

(c) A State meets the requirements of this section if the State has enacted and is enforcing a law that considers an individual under the age of 21 who has a BAC of 0.02 percent or greater while operating a motor vehicle in the State to be driving while intoxicated or driving under the influence of alcohol. The law must:

(1) Apply to all individuals under the age of 21;

(2) Set a BAC of not higher than 0.02 percent as the legal limit;

(3) Make operating a motor vehicle by an individual under age 21 above the legal limit a *per se* offense;

(4) Provide for primary enforcement; and

(5) Provide that license suspensions or revocations are authorized for any violation of the State zero tolerance law.

§ 1210.5 Certification requirements.

(a) Until a State has been determined to be in compliance with the requirements of 23 U.S.C. 161, to avoid the withholding of funds in any fiscal year, beginning with FY 1999, the State shall certify to the Secretary of Transportation, before the last day of the previous fiscal year, that it meets the requirements of 23 U.S.C. 161, and this part.

(b) The certification shall contain:

(1) A copy of the State zero tolerance law, regulation, or binding policy directive implementing or interpreting such law or regulation, that conforms to 23 U.S.C. 161 and § 1210.4(c); and

(2) A statement by an appropriate State official, that the State has enacted and is enforcing a conforming zero tolerance law. The certifying statement shall be worded as follows:

I, (Name of certifying official), (position title), of the (State or Commonwealth) of _____, do hereby certify that the (State or Commonwealth) of _____, has enacted and is enforcing a zero tolerance law that conforms to the requirements of 23 U.S.C. 161 and 23 CFR 1210.4(c).

(c) An original and four copies of the certification shall be submitted to the appropriate NHTSA Regional Administrator. Each Regional Administrator will forward the certifications he or she receives to appropriate NHTSA and FHWA offices.

(d) Once a State has been determined to be in compliance with the requirements of 23 U.S.C. 161, it is not required to submit additional certifications, except that the State shall promptly submit an amendment or supplement to its certification provided under paragraphs (a) and (b) of this section if the State's zero tolerance legislation changes.

§ 1210.6 Period of availability of withheld funds.

(a) Funds withheld under § 1210.4 from apportionment to any State on or before September 30, 2000, will remain available for apportionment until the end of the third fiscal year following the fiscal year for which the funds are authorized to be appropriated.

(b) Funds withheld under § 1210.4 from apportionment to any State after September 30, 2000 will not be available for apportionment to the State.

§ 1210.7 Apportionment of withheld funds after compliance.

Funds withheld from a State from apportionment under § 1210.4, which remain available for apportionment under § 1210.6(a), will be made available to the State if it conforms to the requirements of §§ 1210.4 and 1210.5 before the last day of the period of availability as defined in § 1210.6(a).

§ 1210.8 Period of availability of subsequently apportioned funds.

Funds apportioned pursuant to § 1210.7 will remain available for expenditure until the end of the third fiscal year following the fiscal year in which the funds are apportioned.

§ 1210.9 Effect of noncompliance.

If a State has not met the requirements of 23 U.S.C. 161 and this part at the end of the period for which funds withheld under § 1210.4 are available for apportionment to a State under § 1210.6, then such funds shall lapse.

§ 1210.10 Procedures affecting states in noncompliance.

(a) Each fiscal year, each State determined to be in noncompliance with 23 U.S.C. 161 and this part, based on NHTSA's and FHWA's preliminary review of its law, will be advised of the funds expected to be withheld under § 1210.4 from apportionment, as part of the advance notice of apportionments required under 23 U.S.C. 104(e), normally not later than ninety days prior to final apportionment.

(b) If NHTSA and FHWA determine that the State is not in compliance

with 23 U.S.C. 161 and this part, based on the agencies' preliminary review, the State may, within 30 days of its receipt of the advance notice of apportionments, submit documentation showing why it is in compliance. Documentation shall be submitted to the National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, D.C. 20590.

(c) Each fiscal year, each State determined not to be in compliance with 23 U.S.C. 161 and this part, based on NHTSA's and FHWA's final determination, will receive notice of the funds being withheld under § 1210.4 from apportionment, as part of the certification of apportionments required under 23 U.S.C. 104(e), which normally occurs on October 1 of each fiscal year.

[61 FR 55217, Oct. 25, 1996, as amended at 74 FR 28442, June 16, 2009]

PART 1215—USE OF SAFETY BELTS—COMPLIANCE AND TRANSFER-OF-FUNDS PROCEDURES

Sec.
1215.1 Scope.
1215.2 Purpose.
1215.3 Definitions.
1215.4 Compliance criteria.
1215.5 Exemptions.
1215.6 Review and notification of compliance status.
1215.7 Transfer of funds.
1215.8 Use of transferred funds.

AUTHORITY: 23 U.S.C. 153; Secs. 205(e) and 355, Pub. L. 104–59; delegations of authority at 49 CFR 1.48 and 1.50.

SOURCE: 58 FR 44759, Aug. 25, 1993, unless otherwise noted.

§ 1215.1 Scope.

This part establishes criteria, in accordance with 23 U.S.C. 153, as amended, and Section 355 of the National Highway System Designation Act of 1995, for determining compliance with the requirement that States not having safety belt use laws be subject to a transfer of Federal-aid highway apportionments under 23 U.S.C. 104 (b)(1), (b)(2), and (b)(3) to the highway safety program apportionment under 23 U.S.C. 402.

[61 FR 28749, June 6, 1996]

§ 1215.2 Purpose.

This part clarifies the provisions which a State must incorporate into its safety belt law to prevent the transfer of a portion of its Federal-aid highway funds to the section 402 highway safety program apportionment, describes notification and transfer procedures, establishes parameters for the use of transferred funds, and provides alternate compliance criteria for New Hampshire and Maine.

[61 FR 28749, June 6, 1996]

§ 1215.3 Definitions.

As used in this part:

FHWA means the Federal Highway Administration.

Motor vehicle means any vehicle driven or drawn by mechanical power manufactured primarily for use on public highways, except any vehicle operated exclusively on a rail or rails.

NHTSA means the National Highway Traffic Safety Administration.

Passenger vehicle means a motor vehicle which is designed for transporting 10 individuals or less, including the driver, except that such term does not include a vehicle which is constructed on a truck chassis, a motorcycle, a trailer, or any motor vehicle which is not required on the date of the enactment of this section under a Federal motor vehicle safety standard to be equipped with a belt system.

Safety belt means, with respect to open-body passenger 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 passenger vehicles, an occupant restraint system consisting of integrated lap shoulder belts.

Secretary means the Secretary of Transportation.

[58 FR 44759, Aug. 25, 1993, as amended at 61 FR 28749, June 6, 1996]

§ 1215.4 Compliance criteria.

(a) Except as provided in paragraphs (c) or (d) of this section, in order to avoid the transfer or reservation (as applicable) specified in § 1215.7, a State must have and continue in effect at all times during the fiscal year a law which makes unlawful throughout the

State the operation of a passenger vehicle whenever an individual in a front seat of the vehicle (other than a child who is secured in a child restraint system) does not have a safety belt properly fastened about the individual's body.

(b) A State that enacts the law specified in paragraph (a) of this section will be determined to comply with 23 U.S.C. 153, provided that any exemptions are consistent with § 1215.5.

(c) If New Hampshire or Maine enacts a law described in paragraph (a) of this section by January 27, 1996, the State shall be deemed as having that law in effect on September 30, 1995.

(d)(1) If the Secretary certifies in a fiscal year that New Hampshire or Maine has achieved the safety belt use rate specified in paragraph (d)(2) of this section, the State shall be considered as complying with the provisions of paragraph (a) of this section.

(2) The safety belt use rate must be not less than 50 percent in each of fiscal years 1995 and 1996, and not less than the national average as determined by the Secretary in each fiscal year thereafter.

[61 FR 28749, June 6, 1996]

§ 1215.5 Exemptions.

(a) Safety belt use laws exempting persons with medical excuses, persons in emergency vehicles, persons in the custody of police, persons in public and livery conveyances, persons in parade vehicles, persons in positions not equipped with safety belts, and postal, utility and other commercial drivers who make frequent stops in the course of their business shall be deemed to comply with 23 U.S.C. 153.

(b) Safety belt use laws exempting vehicles equipped with air bags shall be deemed not to comply with 23 U.S.C. 153.

(c) An exemption not identified in paragraph (a) of this section shall be deemed to comply with 23 U.S.C. 153 only if NHTSA and FHWA determine that it is consistent with the intent of § 1215.4(a), and applies to situations in which the risk to occupants is very low or in which there are exigent justifications.

[61 FR 28749, June 6, 1996]

§ 1215.6 Review and notification of compliance status.

Review of each State's laws and notification of compliance status shall occur each fiscal year, in accordance with the following procedures:

(a) NHTSA and FHWA will review appropriate State laws for compliance with 23 U.S.C. 153. States initially found to be in non-compliance will be notified of such finding and of funds expected to be transferred or reserved (as applicable) under § 1215.7, through the advance notice of apportionments required under 23 U.S.C. 104(e), normally not later than ninety days prior to final apportionment.

(b) A State notified of non-compliance under paragraph (a) of this section may, within 30 days after its receipt of the advance notice of apportionments, submit documentation showing why it is in compliance to the Associate Administrator for State and Community Services, NHTSA, 1200 New Jersey Avenue, SE., Washington, D.C., 20950.

(c) Each fiscal year, States determined to be in non-compliance with 23 U.S.C. 153 will receive notice of the funds being transferred or reserved (as applicable) under § 1215.7, through the certification of apportionments required under 23 U.S.C. 104(e), normally on October 1.

[61 FR 28749, June 6, 1996, as amended at 74 FR 28442, June 16, 2009]

§ 1215.7 Transfer of funds.

(a) Except as provided in paragraph (b) of this section, if at any time in a fiscal year beginning after September 30, 1994, a State does not have in effect a law described in § 1215.4(a), the Secretary shall transfer 3 percent of the funds apportioned to the State for the succeeding fiscal year under 23 U.S.C. 104 (b)(1), (b)(2) and (b)(3) to the apportionment of the State under 23 U.S.C. 402.

(b) For New Hampshire or Maine, except as provided in § 1215.4(c), if at any time in a fiscal year beginning after September 30, 1994, the State does not have in effect a law described in § 1215.4(a), the Secretary shall reserve 3 percent of the funds to be apportioned to the State for the succeeding fiscal

year under 23 U.S.C. 104 (b)(1), (b)(2) and (b)(3) if the Secretary has not certified, in accordance with § 1215.4(d), that the State has achieved the applicable safety belt use rate.

(c) If, at the end of a fiscal year in which the funds are reserved for New Hampshire or Maine under paragraph (b) of this section, the Secretary has not certified that the State achieved the applicable safety belt use rate, the Secretary shall transfer the funds reserved from the State to the apportionment of the State under 23 U.S.C. 402.

(d) Any obligation limitation existing on transferred funds prior to the transfer will apply, proportionately, to those funds after transfer.

[61 FR 28749, June 6, 1996]

§ 1215.8 Use of transferred funds.

(a) Any funds transferred under § 1215.7 may be used for approved projects in any section 402 program area.

(b) Any funds transferred under § 1215.7 shall not be subject to Federal earmarking of any amounts or percentages for specific program activities.

(c) The Federal share of the cost of any project carried out under section 402 with the transferred funds shall be 100 percent.

(d) In the event of a transfer of funds under § 1215.7, the 40 percent political subdivision participation in State highway safety programs and the 10 percent limitation on the Federal contribution for Planning and Administration activities carried out under section 402 shall be based upon the sum of the funds transferred and amounts otherwise available for expenditure under section 402.

PART 1225—OPERATION OF MOTOR VEHICLES BY INTOXICATED PERSONS

Sec.

1225.1 Scope.
1225.2 Purpose.
1225.3 Definitions.
1225.4 Adoption of 0.08 BAC *per se* law.
1225.5 General requirements for incentive grant program.
1225.6 Award procedures for incentive grant program.
1225.7 Certification requirements for sanction program.
1225.8 Funds withheld from apportionment.
1225.9 Period of availability of withheld funds.
1225.10 Apportionment of withheld funds after compliance.
1225.11 Notification of compliance.
1225.12 Procedures affecting States in noncompliance.
APPENDIX A TO PART 1225—EFFECTS OF THE 0.08 BAC SANCTION PROGRAM ON NON-COMPLYING STATES

AUTHORITY: 23 U.S.C. 163; sec. 351, Pub. L. 106–346—Appendix, 114 Stat. 1356A–34, 35; delegation of authority at 49 CFR 1.48 and 1.50.

SOURCE: 68 FR 50708, Aug. 22, 2003, unless otherwise noted.

§ 1225.1 Scope.

This part prescribes the requirements necessary to implement 23 U.S.C. 163, which encourages States to enact and enforce 0.08 BAC *per se* laws through the use of incentive grants and Section 351 of Public Law 106–346—Appendix, which requires the withholding of Federal-aid highway funds from any State that has not enacted and is not enforcing a 0.08 BAC *per se* law as described in 23 U.S.C. 163.

§ 1225.2 Purpose.

The purpose of this part is to specify the steps that States must take to qualify for incentive grant funds in accordance with 23 U.S.C. 163; and the steps that States must take to avoid the withholding of funds as required by Section 351 of Public Law 106–346—Appendix.

§ 1225.3 Definitions.

As used in this part:

(a) *Alcohol concentration* means either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

(b) *ALR* means either administrative license revocation or administrative license suspension.

(c) *BAC* means either blood or breath alcohol concentration.

(d) *BAC per se law* means a law that makes it an offense, in and of itself, to operate a motor vehicle with an alcohol concentration at or above a specified level.

(e) *Citations to State law* means citations to all sections of the State's law

relied on to demonstrate compliance with 23 U.S.C. 163, including all applicable definitions and provisions of the State's criminal code and, if the State has an ALR law, all applicable provisions of the State's ALR law.

(f) *Has enacted and is enforcing* means the State's law is in effect and the State has begun to implement the law.

(g) *Operating a motor vehicle* means driving or being in actual physical control of a motor vehicle.

(h) *Standard driving while intoxicated offense* means the non-BAC *per se* driving while intoxicated offense in the State.

(i) *State* means any one of the 50 States, the District of Columbia, or Puerto Rico.

§ 1225.4 Adoption of 0.08 BAC *per se* law.

In order to avoid the withholding of funds as specified in § 1225.8 of this part, and to qualify for an incentive grant under § 1225.5 of this part, a State must demonstrate that it has enacted and is enforcing a law that provides that any person with a blood or breath alcohol concentration (BAC) of 0.08 percent or greater while operating a motor vehicle in the State shall be deemed to have committed a *per se* offense of driving while intoxicated or an equivalent *per se* offense. The law must:

(a) Apply to all persons;

(b) Set a BAC of not higher than 0.08 percent as the legal limit;

(c) Make operating a motor vehicle by an individual at or above the legal limit a *per se* offense;

(d) Provide for primary enforcement;

(e) Apply the 0.08 BAC legal limit to the State's criminal code and, if the State has an administrative license suspension or revocation (ALR) law, to its ALR law; and

(f) Be deemed to be or be equivalent to the standard driving while intoxicated offense in the State.

§ 1225.5 General requirements for incentive grant program.

(a) *Certification requirements.* (1) To qualify for a first-year grant under 23 U.S.C. 163, a State must submit a certification by an appropriate State official, that the State has enacted and is enforcing a 0.08 BAC *per se* law that conforms to 23 U.S.C. 163 and § 1225.4 of this part and that the funds will be used for eligible projects and programs.

(i) If the State's 0.08 BAC *per se* law is currently in effect and is being enforced, the certification shall be worded as follows:

(Name of certifying official), (position title), of the (State or Commonwealth) of _____, do hereby certify that the (State or Commonwealth) of _____ has enacted and is enforcing a 0.08 BAC *per se* law that conforms to 23 U.S.C. 163 and 23 CFR 1225.4, (citations to State law), and that the funds received by the (State or Commonwealth) of _____ under 23 U.S.C. 163 will be used for projects eligible for assistance under title 23 of the United States Code, which include highway construction as well as highway safety projects and programs.

(ii) If the State's 0.08 BAC *per se* law is not currently in effect, but will become effective and be enforced before the end of the current fiscal year, the certification shall be worded as follows:

(Name of certifying official), (position title), of the (State or Commonwealth) of _____, do hereby certify that the (State or Commonwealth) of _____ has enacted a 0.08 BAC *per se* law that conforms to 23 U.S.C. 163 and 23 CFR 1225.4, (citations to State law), and will become effective and be enforced as of (effective date of the law), and that the funds received by the (State or Commonwealth) of _____ under 23 U.S.C. 163 will be used for projects eligible for assistance under title 23 of the United States Code, which include highway construction as well as highway safety projects and programs.

(2) To qualify for a subsequent-year grant under 23 U.S.C. 163, a State must submit a certification by an appropriate State official.

(i) If the State's 0.08 BAC *per se* law has not changed since the State last qualified for grant funds under this program, the certification shall be worded as follows:

(Name of certifying official), (position title), of the (State or Commonwealth) of _____, do hereby certify that the (State or Commonwealth) of _____ has not changed and is enforcing a 0.08 BAC *per se* law, which conforms to 23 U.S.C. 163 and 23 CFR 1225.4, and that the funds received by the (State or Commonwealth) of _____ under 23 U.S.C. 163 will be used for projects eligible for assistance under title 23 of the United States Code, which include highway construction as

well as highway safety projects and programs.

(ii) If the State's 0.08 BAC *per se* law has changed since the State last qualified for grant funds under this program, the certification shall be worded as follows:

(Name of certifying official), (position title), of the (State or Commonwealth) of _____, do hereby certify that the (State or Commonwealth) of _____ has amended and is enforcing a 0.08 BAC *per se* law that conforms to 23 U.S.C. 163 and 23 CFR 1225.4, (citations to State law), and that the funds received by the (State or Commonwealth) of _____, under 23 U.S.C. 163 will be used for projects eligible for assistance under title 23 of the United States Code, which include highway construction as well as highway safety projects and programs.

(3) An original and four copies of the certification shall be submitted to the appropriate NHTSA Regional Administrator. Each Regional Administrator will forward the certifications it receives to appropriate NHTSA and FHWA offices.

(4) Each State that submits a certification will be informed by the agencies whether or not it qualifies for funds.

(5) To qualify for grant funds in a fiscal year, certifications must be received by the agencies not later than July 15 of that fiscal year.

(b) *Limitation on grants.* A State may receive grant funds, subject to the following limitations:

(1) The amount of a grant apportioned to a State under § 1225.4 of this part shall be determined by multiplying:

(i) The amount authorized to carry out section 163 of 23 U.S.C. for the fiscal year; by

(ii) The ratio that the amount of funds apportioned to each such State under section 402 for such fiscal year bears to the total amount of funds apportioned to all such States under section 402 for such fiscal year.

(2) A State may obligate grant funds apportioned under this Part for any project eligible for assistance under title 23 of the United States Code.

(3) The Federal share of the cost of a project funded with grant funds awarded under this part shall be 100 percent.

§ 1225.6 Award procedures for incentive grant program.

(a) In each Federal fiscal year, grant funds will be apportioned to eligible States upon submission and approval of the documentation required by § 1225.5(a) and subject to the limitations in § 1225.5(b). The obligation authority associated with these funds is subject to the limitation on obligation pursuant to section 1102 of the Transportation Equity Act for the 21st Century (TEA–21).

(b) As soon as practicable after the apportionment in a fiscal year, but in no event later than September 30 of the fiscal year, the Governor's Representative for Highway Safety and the Secretary of the State's Department of Transportation for each State that receives an apportionment shall jointly identify, in writing to the appropriate NHTSA Regional Administrator, the amounts of the State's apportionment that will be obligated to highway safety program areas and to Federal-aid highway projects. Each NHTSA Regional Administrator will forward copies of the joint letters to the appropriate NHTSA and FHWA offices.

(c) Apportionments will not be made by the NHTSA and FHWA unless this letter from the State is received.

§ 1225.7 Certification requirements for sanction program.

(a) Beginning with FY 2004, to avoid the withholding of funds, each State shall certify to the Secretary of Transportation, before the last day of the previous fiscal year, that it meets all the requirements of 23 U.S.C. 163 and this part.

(b) The certification shall contain a statement from an appropriate State official that the State has enacted and is enforcing a 0.08 BAC *per se* law that conforms to 23 U.S.C. 163 and 23 CFR part 1225.

(1) If the State's 0.08 BAC *per se* law is currently in effect and is being enforced, the certification shall be worded as follows:

I, (name of certifying official), (position title), of the (State or Commonwealth) of _____, do hereby certify that the (State or Commonwealth) of _____, has enacted and

is enforcing a 0.08 BAC *per se* law that conforms to the requirements of 23 U.S.C. 163 and 23 CFR 1225.4, (citations to State law).

(2) If the State's 0.08 BAC *per se* law is not currently in effect, but will become effective and be enforced before the end of the current fiscal year, the certification shall be worded as follows:

I, (name of certifying official), (position title), of the (State or Commonwealth) of _____, do hereby certify that the (State or Commonwealth) of _____, has enacted a 0.08 BAC *per se* law that conforms to the requirements of 23 U.S.C. 163 and 23 CFR 1225.4, (citations to State law), and will become effective and be enforced as of (effective date of the law).

(c) An original and four copies of the certification shall be submitted to the appropriate NHTSA Regional Administrator. Each NHTSA Regional Administrator will forward copies of the certifications received to the appropriate NHTSA and FHWA offices.

(d) Once a State has been determined to be in compliance with the requirements of 23 U.S.C. 163 and this part, it is not required to submit additional certifications, except that the State shall promptly submit an amendment or supplement to its certification provided under this section if the State's 0.08 BAC *per se* law changes.

(e) *Certifications submitted in FY 2003.* (1) Any State that submits a certification of compliance under §1225.5 of this part, in conformance with the requirements of 23 U.S.C. 163, on or before July 15, 2003, will qualify for an incentive grant in FY 2003 and will avoid the withholding of funds in FY 2004. All certifications submitted in conformance with the incentive grant program will meet the certification requirements of the sanction program.

(2) Any State that submits a certification of compliance under this section, in conformance with the requirements of 23 U.S.C. 163, between July 16, 2003 and September 30, 2003, will not qualify for an incentive grant in FY 2003, but will meet the certification requirements of the sanction program, thereby avoiding the withholding of funds in FY 2004.

(f) *Certifications submitted in FY 2004 or thereafter.* Any State that has been in noncompliance with the requirements of 23 U.S.C. 163 and this part, in or after FY 2004, will initially be subject to a withholding of funds in accordance with §1225.8 of this part. Following the submission of a conforming certification of compliance by such States, all withheld funds will be restored to a States' appropriate apportionment categories in accordance with §1225.9 of this part.

§1225.8 Funds withheld from apportionment.

(a) Beginning in fiscal year 2004, the Secretary shall withhold 2 percent of the amount required to be apportioned for Federal-aid highways to any State under each of paragraphs (1), (3), and (4) of section 104(b) of title 23, United States Code, if a State has not enacted and is not enforcing a law that meets the requirements of 23 U.S.C. 163 and §1225.4 of this part.

(b) In fiscal year 2005, the Secretary shall withhold 4 percent of the amount required to be apportioned for Federal-aid highways to any State under each of paragraphs (1), (3), and (4) of section 104(b) of title 23, United States Code, if a State has not enacted and is not enforcing a law that meets the requirements of 23 U.S.C. 163 and §1225.4 of this part.

(c) In fiscal year 2006, the Secretary shall withhold 6 percent of the amount required to be apportioned for Federal-aid highways to any State under each of paragraphs (1), (3), and (4) of section 104(b) of title 23, United States Code, if a State has not enacted and is not enforcing a law that meets the requirements of 23 U.S.C. 163 and §1225.4 of this part.

(d) In fiscal year 2007, and in each fiscal year thereafter, the Secretary shall withhold 8 percent of the amount required to be apportioned for Federal-aid highways to any State under each of paragraphs (1), (3), and (4) of section 104(b) of title 23, United States Code, if a State has not enacted and is not enforcing a law that meets the requirements of 23 U.S.C. 163 and §1225.4 of this part.

§1225.9 Period of availability of withheld funds.

If a State meets the requirements of 23 U.S.C. 163 and §1225.4 of this part

within 4 years from the date that a State's apportionment is reduced under §1225.8, the apportionment for such State shall be increased by an amount equal to the reduction, as illustrated by appendix A of this part. The restored apportionment will be available to a State, as quickly as possible, upon a determination by NHTSA that the State is in conformance and notification to the FHWA.

§1225.10 Apportionment of withheld funds after compliance.

If a State has not met the requirements of 23 U.S.C. 163 and §1225.4 of this part by October 1, 2007, the funds withheld under §1225.8 shall begin to lapse and will no longer be available for apportionment to the State, in accordance with appendix A of this part.

§1225.11 Notification of compliance.

(a) Beginning with FY 2004, NHTSA and FHWA will notify States of their compliance or noncompliance with the statutory and regulatory requirements of 23 U.S.C. 163 and this part, based on a review of certifications received. States will be required to submit their certifications on or before September 30, to avoid the withholding of funds in a fiscal year.

(b) This notification of compliance will take place through FHWA's normal certification of apportionments process. If the agencies do not receive a certification from a State, by June 15 of any fiscal year, or if the certification does not conform to the requirements of 23 U.S.C. 163 and this part, the agencies will make an initial determination that the State is not in compliance.

§1225.12 Procedures affecting States in noncompliance.

(a) Each fiscal year, each State determined to be in noncompliance with 23 U.S.C. 163 and this part, based on NHTSA and FHWA's preliminary review of its certification, will be advised of the amount of funds expected to be withheld under §1225.8 from apportionment, as part of the advance notice of apportionments required under 23 U.S.C. 104(e), which is ordinarily issued on July 1 of each fiscal year.

(b) If NHTSA and FHWA determine that any State is not in compliance with 23 U.S.C. 163 and this part, based on the agencies' preliminary review, the State may submit documentation showing why it is in compliance. States will have until September 30 to rebut the initial determination or to come into compliance with 23 U.S.C. and this part. Documentation shall be submitted through NHTSA's Regional Administrators, who will refer the requests to appropriate NHTSA and FHWA offices for review.

(c) Each fiscal year, each State determined not to be in compliance with 23 U.S.C. 163 and this part, based on NHTSA's and FHWA's final determination, will receive notice of the funds being withheld under §1225.8 from apportionment, as part of the certification of apportionments required under 23 U.S.C. 104(e), which normally occurs on October 1 of each fiscal year.

APPENDIX A TO PART 1225—EFFECTS OF THE 0.08 BAC SANCTION PROGRAM ON NON-COMPLYING STATES

EFFECTS OF THE 0.08 BAC SANCTION PROGRAM ON NON-COMPLYING STATES

Fiscal year	Withhold	Lapse
2004	2%	
2005	4	
2006	6	
2007	8	
2008	8	2% withheld in FY04.
2009	8	4% withheld in FY05.
2010	8	6% withheld in FY06.
2011	8	8% withheld in FY07.
2012	8	8% withheld in FY08.

PART 1235—UNIFORM SYSTEM FOR PARKING FOR PERSONS WITH DISABILITIES

Sec.

1235.1 Purpose.
1235.2 Definitions.
1235.3 Special license plates.
1235.4 Removable windshield placards.
1235.5 Temporary removable windshield placards.
1235.6 Parking.
1235.7 Parking space design, construction, and designation.
1235.8 Reciprocity.
APPENDIX A TO PART 1235—SAMPLE REMOVABLE WINDSHIELD PLACARD

APPENDIX B TO PART 1235—SAMPLE TEMPORARY REMOVABLE WINDSHIELD PLACARD

AUTHORITY: Pub. L. 100–641, 102 Stat. 3335 (1988); 23 U.S.C. 101(a), 104, 105, 109(d), 114(a), 135, 217, 307, 315, and 402(a); 23 CFR 1.32 and 1204.4; and 49 CFR 1.48(b).

SOURCE: 56 FR 10329, Mar. 11, 1991, unless otherwise noted.

§ 1235.1 Purpose.

The purpose of this part is to provide guidelines to States for the establishment of a uniform system for handicapped parking for persons with disabilities to enhance access and the safety of persons with disabilities which limit or impair the ability to walk.

§ 1235.2 Definitions.

Terms used in this part are defined as follows:

(a) *International Symbol of Access* means the symbol adopted by Rehabilitation International in 1969 at its Eleventh World Congress on Rehabilitation of the Disabled.

(b) *Persons with disabilities which limit or impair the ability to walk* means persons who, as determined by a licensed physician:

(1) Cannot walk two hundred feet without stopping to rest; or

(2) Cannot walk without the use of, or assistance from, a brace, cane, crutch, another person, prosthetic device, wheelchair, or other assistive device; or

(3) Are restricted by lung disease to such an extent that the person's forced (respiratory) expiratory volume for one second, when measured by spirometry, is less than one liter, or the arterial oxygen tension is less than sixty mm/hg on room air at rest; or

(4) Use portable oxygen; or

(5) Have a cardiac condition to the extent that the person's functional limitations are classified in severity as Class III or Class IV according to standards set by the American Heart Association; or

(6) Are severely limited in their ability to walk due to an arthritic, neurological, or orthopedic condition.

(c) *Special license plate* means a license plate that displays the International Symbol of Access:

(1) In a color that contrasts to the background, and

(2) In the same size as the letters and/or numbers on the plate.

(d) *Removable windshield placard* means a two-sided, hanger-style placard which includes on each side:

(1) The International Symbol of Access, which is at least three inches in height, centered on the placard, and is white on a blue shield;

(2) An identification number;

(3) A date of expiration; and

(4) The seal or other identification of the issuing authority.

(e) *Temporary removable windshield placard* means a two-sided, hanger-style placard which includes on each side:

(1) The International Symbol of Access, which is at least three inches in height, centered on the placard, and is white on a red shield;

(2) An identification number;

(3) A date of expiration; and

(4) The seal or other identification of the issuing authority.

§ 1235.3 Special license plates.

(a) Upon application of a person with a disability which limits or impairs the ability to walk, each State shall issue special license plates for the vehicle which is registered in the applicant's name. The initial application shall be accompanied by the certification of a licensed physician that the applicant meets the §1235.2(b) definition of persons with disabilities which limit or impair the ability to walk. The issuance of a special license plate shall not preclude the issuance of a removable windshield placard.

(b) Upon application of an organization, each State shall issue special license plates for the vehicle registered in the applicant's name if the vehicle is primarily used to transport persons with disabilities which limit or impair the ability to walk. The application shall include a certification by the applicant, under criteria to be determined by the State, that the vehicle is primarily used to transport persons with disabilities which limit or impair the ability to walk.

(c) The fee for the issuance of a special license plate shall not exceed the

fee charged for a similar license plate for the same class vehicle.

§ 1235.4 Removable windshield placards.

(a) The State system shall provide for the issuance and periodic renewal of a removable windshield placard, upon the application of a person with a disability which limits or impairs the ability to walk. The State system shall require that the issuing authority shall, upon request, issue one additional placard to applicants who do not have special license plates.

(b) The initial application shall be accompanied by the certification of a licensed physician that the applicant meets the § 1235.2(b) definition of persons with disabilities which limit or impair the ability to walk.

(c) The State system shall require that the removable windshield placard is displayed in such a manner that it may be viewed from the front and rear of the vehicle by hanging it from the front windshield rearview mirror of a vehicle utilizing a parking space reserved for persons with disabilities. When there is no rearview mirror, the placard shall be displayed on the dashboard.

§ 1235.5 Temporary removable windshield placards.

(a) The State system shall provide for the issuance of a temporary removable windshield placard, upon the application of a person with a disability which limits or impairs the ability to walk. The State system shall require that the issuing authority issue, upon request, one additional temporary removable windshield placard to applicants.

(b) The State system shall require that the application shall be accompanied by the certification of a licensed physician that the applicant meets the § 1235.2(b) definition of persons with disabilities which limit or impair the ability to walk. The certification shall also include the period of time that the physician determines the applicant will have the disability, not to exceed six months.

(c) The State system shall require that the temporary removable windshield placard is displayed in such a manner that it may be viewed from the front and rear of the vehicle by hanging it from the front windshield rearview mirror of a vehicle utilizing a parking space reserved for persons with disabilities. When there is no rearview mirror, the placard shall be displayed on the dashboard.

(d) The State system shall require that the temporary removable windshield placard shall be valid for a period of time for which the physician has determined that the applicant will have the disability, not to exceed six months from the date of issuance.

§ 1235.6 Parking.

Special license plates, removable windshield placards, or temporary removable windshield placards displaying the International Symbol of Access shall be the only recognized means of identifying vehicles permitted to utilize parking spaces reserved for persons with disabilities which limit or impair the ability to walk.

§ 1235.7 Parking space design, construction, and designation.

(a) Each State shall establish design, construction, and designation standards for parking spaces reserved for persons with disabilities, under criteria to be determined by the State. These standards shall:

(1) Ensure that parking spaces are accessible to, and usable by, persons with disabilities which limit or impair the ability to walk;

(2) Ensure the safety of persons with disabilities which limit or impair the ability to walk who use these spaces and their accompanying accessible routes; and

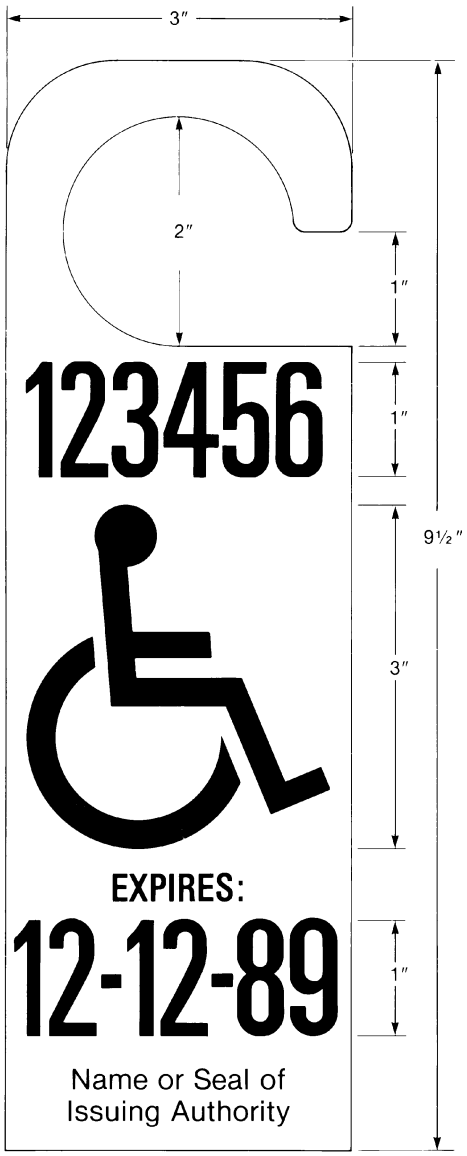
(3) Ensure uniform sign standards which comply with those prescribed by the ''Manual on Uniform Traffic Control Devices for Streets and Highways'' (23 CFR part 655, subpart F) to designate parking spaces reserved for persons with disabilities which limit or impair the ability to walk.

(b) The design, construction, and alteration of parking spaces reserved for persons with disabilities for which Federal funds participate must meet the Uniform Federal Accessibility Standards.

§ 1235.8 Reciprocity.

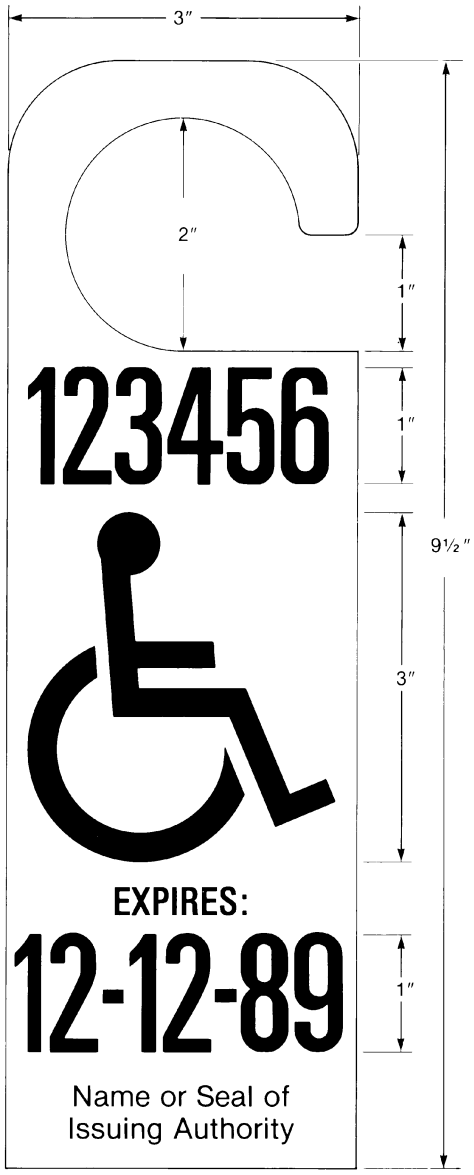
The State system shall recognize removable windshield placards, temporary removable windshield placards and special license plates which have been issued by issuing authorities of other States and countries, for the purpose of identifying vehicles permitted to utilize parking spaces reserved for persons with disabilities which limit or impair the ability to walk.

APPENDIX A TO PART 1235—SAMPLE REMOVABLE WINDSHIELD PLACARD



COLORS
SYMBOL & LEGEND — WHITE
BACKGROUND — BLUE

APPENDIX B TO PART 1235—SAMPLE TEMPORARY REMOVABLE WINDSHIELD PLACARD



COLORS
SYMBOL & LEGEND—WHITE
BACKGROUND—RED

PART 1240—SAFETY INCENTIVE GRANTS FOR USE OF SEAT BELTS—ALLOCATIONS BASED ON SEAT BELT USE RATES

Subpart A—General

Sec.
1240.1 Purpose.
1240.2 Applicability.
1240.3 Definitions.

Subpart B—Determination of Allocations

1240.10 Identification of eligible States.
1240.11 Determination of State seat belt use rate for calendar years 1996 and 1997.
1240.12 Determination of State seat belt use rate for calendar year 1998 and beyond.
1240.13 Determination of national average seat belt use rate.
1240.14 Determination of Federal medical savings and notification of proposed allocations.
1240.15 Allocations.
APPENDIX A TO PART 1240—ADJUSTMENT PROCEDURES FOR STATE-SUBMITTED INFORMATION (CALENDAR YEARS 1996 AND 1997)
APPENDIX B TO PART 1240—PROCEDURES FOR MISSING OR INADEQUATE STATE-SUBMITTED INFORMATION (CALENDAR YEARS 1996 AND 1997)
APPENDIX C TO PART 1240—CERTIFICATION (CALENDAR YEAR 1998 SURVEY BASED ON SURVEY APPROVED UNDER 23 U.S.C. 153)
APPENDIX D TO PART 1240—DETERMINATION OF NATIONAL AVERAGE SEAT BELT USE RATE
APPENDIX E TO PART 1240—DETERMINATION OF FEDERAL MEDICAL SAVINGS

AUTHORITY: 23 U.S.C. 157; delegations of authority at 49 CFR 1.48 and 1.50.

SOURCE: 63 FR 57909, Oct 29, 1998, unless otherwise noted.

Subpart A—General

§ 1240.1 Purpose.

This part establishes requirements and procedures governing the allocation of funds to States made under 23 U.S.C. 157(c), based on seat belt use rates.

§ 1240.2 Applicability.

These procedures apply to all allocations of funds to States, based on seat belt use rates, beginning with allocations for fiscal year 1999.

§ 1240.3 Definitions.

As used in this part—

Base seat belt use rate means the highest State seat belt use rate for the State for any calendar year during the period from 1996 through the calendar year preceding the previous calendar year;

Federal medical savings means the amount of Federal budget savings relating to Federal medical costs (including savings under the Medicare and Medicaid programs under titles XVIII and XIX of the Social Security Act (42 U.S.C.1395 *et seq.*)), as determined under this part;

FHWA means the Federal Highway Administration;

NHTSA means the National Highway Traffic Safety Administration;

Passenger motor vehicle means a passenger car, pickup truck, van, minivan, or sport utility vehicle;

State means any of the fifty States, the District of Columbia, or Puerto Rico.

State seat belt use rate means the seat belt use rate for a State, rounded to the nearest tenth of one percent, after any required weighting, adjustment, or substitution under this part, that is used in determining eligibility for and the amount of an allocation under this part.

Subpart B—Determination of Allocations

§ 1240.10 Identification of eligible States.

(a) On or about September 1, 1998, and each September 1 thereafter, NHTSA will identify, on the basis of seat belt use rates determined, as applicable, under §§ 1240.11, 1240.12, and 1240.13 of this part—

(1) Each State that had a State seat belt use rate during the previous calendar year and the year preceding the previous calendar year that exceeded the national average seat belt use rate for each of those years; and

(2) Each State that does not meet the requirements of paragraph (a)(1) of this section and that had a State seat belt use rate during the previous calendar year that exceeded the State's base seat belt use rate.

(b) Any seat belt use rate used in making the determinations under this

part shall be rounded to the nearest tenth of one percent.

(c) A State identified under paragraph (a)(1) or (a)(2) of this section, and not ineligible under §1240.12(a)(2) of this part, shall receive an allocation of funds reflecting the Federal medical savings, in accordance with the procedures of §§1240.14 and 1240.15 of this part.

§1240.11 Determination of State seat belt use rate for calendar years 1996 and 1997.

(a) *Review of State-submitted information*. NHTSA will review available seat belt use rate information submitted by each State for calendar years 1996 and 1997 to determine whether—

(1) Measurements of seat belt use were based on direct observation;

(2) At least 70 percent of observation sites were surveyed during the calendar year for which the seat belt use rate is reported;

(3) All passenger motor vehicles were sampled; and

(4) All front seat outboard occupants in the sampled vehicles were counted.

(b) *Determination of State seat belt use rate*. Seat belt use rate information submitted by a State for calendar year 1996 or 1997 will be—

(1) Accepted as the State seat belt use rate if it satisfies paragraphs (a)(1), (a)(2), (a)(3), and (a)(4) of this section.

(2) Accepted after adjustment in accordance with the procedures of Appendix A of this part, as the State seat belt use rate, if it satisfies paragraphs (a)(1) and (a)(2) of this section, but fails to satisfy paragraph (a)(3) or (a)(4) of this section.

(3) Rejected, and the procedures of Appendix B of this part shall apply, if it fails to satisfy paragraph (a)(1) or (a)(2) of this section.

§1240.12 Determination of State seat belt use rate for calendar year 1998 and beyond.

(a) *State seat belt use survey*. (1) Beginning in calendar year 1998, State seat belt use rates used for determining allocations under this part shall be based on a survey conducted each calendar year by each State that satisfies all the requirements of Part 1340 of this title (the Uniform Criteria for State Observational Surveys of Seat Belt Use).

(2) A State that does not conduct a survey required under paragraph (a)(1) of this section in any calendar year, or that conducts a survey that does not satisfy all the requirements of part 1340 of chapter III of this title, shall be ineligible for an allocation of funds on the basis of both §1240.10(a)(1) and §1240.10(a)(2) of this part during the second and third succeeding fiscal years (e.g., if a State fails to conduct a conforming survey in calendar year 1998, the State is ineligible for an allocation of funds during FY 2000 and FY 2001).

(b) *Submission of survey information*. (1) Each State shall submit to NHTSA, no later than March 1st after the calendar year during which a survey required under paragraph (a)(1) of this section is conducted, the seat belt use rate determined under the survey, reported as a percentage to one decimal place, accompanied by a survey report, consisting of all documentation identified in §1340.5 of chapter III of this title and summarizing the results of any analyses conducted under the survey.

(2) NHTSA will review a survey report submitted under paragraph (b)(1) of this section to determine whether the survey complies with all the requirements of §1340 of chapter III of this title. Written notice of approval or disapproval of a survey will be sent to the Governor's Representative for Highway Safety within 30 days of receipt of the survey report. Any notice of disapproval will be accompanied by a detailed statement of the reasons for disapproval.

(3) A State may elect to submit a description of its proposed survey methodology, consisting of all documentation identified in §1340.5 (a), (b) and (c)(3) of chapter III of this title for advance review, prior to conducting the survey.

(4) NHTSA will review a proposed survey methodology submitted under paragraph (b)(3) of this section and inform the Governor's Representative for Highway Safety in writing within 30 days of receipt of the proposed methodology whether the survey, if conducted in accordance with the methodology,

would comply with all the requirements of § 1340 of chapter III of this title. Any notice indicating non-compliance will be accompanied by a detailed statement of the reasons.

(5) A State that submits a description of its proposed survey methodology under paragraph (b)(3) of this section continues to be required to submit all information required under paragraph (b)(1) of this section, after the State conducts its survey, for review under paragraph (b)(2) of this section.

(c) *Submission of Certification—calendar year 1998 surveys.* (1) A survey conducted by a State in calendar year 1998 shall be deemed to comply with the requirements of § 1340 of chapter III of this title, if—

(i) The survey's design was approved by the agency, in writing, on or after June 29, 1992, for the purposes of the grant program authorized under 23 U.S.C. 153;

(ii) The survey design has remained unchanged since the survey was approved (except to the extent that the requirements of paragraph (c)(1)(iii) constitute a change); and

(iii) The survey samples all passenger motor vehicles, measures seat belt use by all front seat outboard occupants in the sampled vehicles, and counts seat belt use only within the calendar year for which the seat belt use rate is reported.

(2) A State that meets the requirements of paragraph (c)(1) of this section shall submit a certification signed by the Governor's Representative for Highway Safety, in the form prescribed in Appendix C of this part, accompanied by the information required under paragraph (b)(1) of this section.

(3) Written notice of acceptance or rejection of a certification will be sent to the Governor's Representative for Highway Safety within 30 days of receipt of the information required under paragraph (c)(2) of this section. Any notice of rejection will be accompanied by a detailed statement of the reasons for rejection.

(d) *Determination of State seat belt use rate.* The seat belt use rate submitted by the State for a calendar year will be accepted as the State seat belt use rate for that calendar year if—

(1) It was determined under a survey whose survey report was approved under paragraph (b)(2) of this section; or

(2) For calendar year 1998 only, the State satisfies the requirements of paragraphs (c)(1) and (c)(2) of this section, and its certification is accepted under paragraph (c)(3) of this section.

§ 1240.13 Determination of national average seat belt use rate.

The national average seat belt use rate for a calendar year shall be the sum of the individual State seat belt use rates for all the States, after weighting each individual State seat belt use rate in accordance with the procedures of Appendix D of this part.

§ 1240.14 Determination of Federal medical savings and notification of proposed allocations.

On or about September 1, 1998, and each September 1 thereafter, NHTSA will—

(a) Calculate, in accordance with the procedures in Appendix E of this part, the Federal medical savings and each State's share of those savings, due to the amount by which the State seat belt use rate for the previous calendar year—

(1) Exceeds the national average seat belt use rate for that calendar year, for each State described in § 1240.10(a)(1) of this part; or

(2) Exceeds the State's base seat belt use rate, for each State described in § 1240.10(a)(2) of this part; and

(b) Notify the States described in § 1240.10(c) of this part of their proposed allocations, which shall be equal to the amount of the Federal medical savings calculated under paragraphs (a)(1) and (a)(2) of this section, as applicable, reduced proportionately across all States if the allocations would exceed the total amount authorized for allocation during the fiscal year.

§ 1240.15 Allocations.

(a) Funds allocated under this part shall be available for any projects eligible for assistance under title 23, United States Code.

(b) Not later than 25 days after notification under § 1240.14(b) of this part, the Governor's Representative for

Highway Safety and the Secretary of the State's Department of Transportation for each State that receives notification shall jointly identify, in writing to the appropriate NHTSA Regional Administrator and FHWA Division Administrator, the amounts of the State's proposed allocations that will be used in highway safety programs and in Federal-aid highway programs.

(c) On or about October 1, 1998, and each October 1 thereafter, the funds to which a State is entitled under this part will be allocated in the proportions identified by the State under paragraph (b) of this section, reduced proportionately across all States if the allocations would, in the aggregate, exceed total obligation limitations applicable to 23 U.S.C. 157.

(d) Thereafter, each State shall identify specific NHTSA program areas and FHWA projects for which the allocated funds will be used.

APPENDIX A TO PART 1240—ADJUSTMENT PROCEDURES FOR STATE-SUBMITTED INFORMATION (CALENDAR YEARS 1996 AND 1997)

A. In States where State-submitted information on seat belt use rates does not include data for Front outboard occupants in passenger motor vehicles (FOPV), an adjustment will be made based on the national ratio of seat belt use rates for FOPV to the seat belt use rate for the group of occupants and vehicles that were included in the State-submitted information. The national seat belt use rates will be derived from the most recent National Occupant Protection Use Survey (NOPUS). For each affected State, the adjustment will be made by dividing the NOPUS seat belt use rate for FOPV by the NOPUS seat belt use rate for the surveyed group, or the seat belt use rate for the closest available group to the surveyed group. The NOPUS seat belt use rate for FOPV will be derived for each affected State by weighting the NOPUS seat belt use rates for passenger cars and for passenger motor vehicles that are not passenger cars (hereafter LTVs) by the relative number of registrations of passenger cars and LTVs in each State. This method will produce a factor which will be multiplied by the State's survey-based seat belt use rate to produce an adjusted seat belt use rate reflecting the required vehicle and occupant population.

B. The process may be expressed mathematically as follows:

$$U_a = U_s((N_{pc} * R_{pc} + N_{ltv} * R_{ltv}) / N_s)$$

Where:

U_a = the adjusted State seat belt use rate

U_s = the State-submitted seat belt use rate

N_{pc} = the national front outboard passenger car seat belt use rate from NOPUS

N_{ltv} = the national front outboard LTV seat belt use rate from NOPUS

R_{pc} = the portion of State passenger motor vehicle registrations that are passenger cars

R_{ltv} = the portion of State passenger motor vehicle registrations that are LTVs

N_s = the national seat belt use rate for the State-surveyed vehicle and occupant population (or closest available group from NOPUS)

APPENDIX B TO PART 1240—PROCEDURES FOR MISSING OR INADEQUATE STATE-SUBMITTED INFORMATION (CALENDAR YEARS 1996 AND 1997)

A. If State-submitted seat belt use rate information is unavailable or inadequate for both calendar years 1996 and 1997, State seat belt use rates for calendars year 1996 and 1997 will be estimated based on seat belt use rates of fatally-injured occupants. Data from the Fatality Analysis Reporting System (FARS) will be translated into estimated observed seat belt use rates using an algorithm that relates historical belt use by fatally-injured occupants to observed use.[1]

B. The algorithm is as follows:

$$u = (-.221794 + \sqrt{.049193 + .410769F}) / .456410$$

Where:

u = the estimated observed seat belt use

F = the seat belt use in potentially fatal crashes

In the above formula, F is calculated as follows:

$$F = (f / (1 - e)) / ((f / (1 - e)) + 1 - f)$$

Where:

F = the seat belt use in potentially fatal crashes

e = State-specific weighted average effectiveness of seat belts in passenger cars and passenger motor vehicles that are not passenger cars

f = State-specific seat belt use rate of fatally-injured occupants of passenger vehicles

C. If State-submitted seat belt use rate information is available for either calendar year 1996 or 1997, but not both, a State seat belt use rate for the year for which information is missing will be estimated by calculating the percent change in the FARS-based observed seat belt use rate (derived from the above algorithm) between the two years.

[1] Blincoe, L.J. *Estimating the Benefits of Increased Safety Belt Use*. Washington, DC: U.S. Department of Transportation, NHTSA, DOT HS 808 133, June, 1994.

This factor will then be applied to the seat belt use rate from the known year to derive an estimate of the seat belt use rate for the unknown year.

APPENDIX C TO PART 1240—CERTIFICATION (CALENDAR YEAR 1998 SURVEY BASED ON SURVEY APPROVED UNDER 23 U.S.C. 153)

State Certification-Calendar Year 1998 Seat Belt Use Survey

State of _____

Seat Belt Use Rate Reported for Calendar Year _____ : _____ %.

In accordance with the provisions of 23 CFR 1240.12(c)(2), I hereby certify as follows:

1. The seat belt use rate reported above is based on a survey whose design was approved by NHTSA, in writing, on or after June 29, 1992, under the provisions of the grant program authorized by 23 U.S.C. 153.

2. The survey design has remained unchanged since the survey was approved (except to the extent that the requirements of paragraph 3 constitute a change).

3. The survey samples all passenger motor vehicles (including cars, pickup trucks, vans, minivans, and sport utility vehicles), measures seat belt use by all front outboard occupants in the sampled vehicles, and counts seat belt use completely within the calendar year for which the seat belt use rate is reported.

_____

Governor's Representative for Highway Safety

_____

(Date)

APPENDIX D TO PART 1240—DETERMINATION OF NATIONAL AVERAGE SEAT BELT USE RATE

A. To determine the national average seat belt use rate in a calendar year, each State seat belt use rate for the calendar year will be weighted to reflect the percentage of total national vehicle miles traveled attributable to that State.

B. If a State seat belt use rate is unavailable for a State during a calendar year (either because the State did not conduct a seat belt use survey or a survey was conducted but does not comply with the Uniform Criteria for State Observational Surveys of Seat Belt Use, 23 CFR Part 1340), NHTSA will calculate a State seat belt use rate, using the last available State seat belt use rate determined under §1240.11 or §1240.12 of this part, as applicable, along with information on seat belt use rates from the FARS, and an algorithm relating FARS seat belt use rates to observed seat belt use rates (see Appendix 1, note). This procedure will produce an estimated State seat belt use rate for the unknown calendar year. The estimated State seat belt use rate will then be weighted in the manner described in paragraph A of this appendix.

C. The national average seat belt use rate for the calendar year will be determined by adding the weighted State seat belt use rates for each of the States (*i.e.*, the national average seat belt use rate is the weighted average of all the State seat belt use rates).

D. NHTSA may elect to use a seat belt use survey that does not comply with the Uniform Criteria for State Observational Surveys of Seat Belt Use in determining the national average seat belt use rate (even though the State that submitted the survey is ineligible to receive an allocation of funds), if in NHTSA's judgment, the deficiencies in the survey are not so substantial as to render the survey less accurate than the FARS estimate.

APPENDIX E TO PART 1240—DETERMINATION OF FEDERAL MEDICAL SAVINGS

A. To determine the savings to the Federal Government from reduced medical costs attributable to seat belt use, NHTSA will first estimate the impact of seat belt use on the number of fatalities and injuries, using methods described in the report "Estimating the Benefits from Increased Safety Belt Use."[1] These methods establish a relationship between the effectiveness of seat belts, current use rates, and existing injury levels to determine the impact of increasing seat belt use on motor vehicle safety. Using these methods, NHTSA will estimate the fatalities prevented and the non-fatal injuries avoided by increased seat belt use.

B. In the 1996 report "The Economic Cost of Motor Vehicle Crashes, 1994,"[2] NHTSA measured both the medical costs and payment sources for motor vehicle crashes. NHTSA will adjust the national medical cost figures from this report to individual State income levels to reflect local cost levels. These per-case costs will be further adjusted for inflation, using the most recent annual average Consumer Price Index for medical care, and then multiplied by the injuries and fatalities prevented in each State to derive the total medical care savings from increased seat belt use. The Federal portion of these costs will be derived from the best

[1] Blincoe, L.J. *Estimating the Benefits of Increased Safety Belt Use*. Washington, DC: U.S. Department of Transportation, NHTSA, DOT HS 808 133, June, 1994.

[2] Blincoe, L.J. *The Economic Cost of Motor Vehicle Crashes, 1994*. Washington, DC: U.S. Department of Transportation, NHTSA, DOT HS 808 425, July, 1996.

available data found in the same cost report or in other sources, as they may become available.

SUBCHAPTER C—GENERAL PROVISIONS

PART 1250—POLITICAL SUBDIVISION PARTICIPATION IN STATE HIGHWAY SAFETY PROGRAMS

Sec.
1250.1 Scope.
1250.2 Purpose.
1250.3 Policy.
1250.4 Determining local share.
1250.5 Waivers.

AUTHORITY: 23 U.S.C. 315, 402(b); and delegations of authority at 49 CFR 1.48 and 1.50.

SOURCE: 41 FR 23948, June 14, 1976, unless otherwise noted.

§ 1250.1 Scope.

This part establishes guidelines for the States to assure their meeting the requirements for 40 percent political subdivision participation in State highway safety programs under 23 U.S.C. 402 (b)(1)(C).

§ 1250.2 Purpose.

The purpose of this part is to provide guidelines to determine whether a State is in compliance with the requirement that at least 40 percent of all Federal funds apportioned under 23 U.S.C. 402 will be expended by political subdivisions of such State.

§ 1250.3 Policy.

To assure that the provisions of 23 U.S.C. 402(b)(1)(C) are complied with, the NHTSA and FHWA field offices will:

(a) Prior to approving the State's Annual Work Program (AWP), review the AWP and each of the subelement plans which make up the AWP. The NHTSA Regional Administrator will review the 14½ safety standard areas for which NHTSA is responsible and the FHWA Division Administrator will review the 3½ safety standard areas for which FHWA is responsible. The narrative description for each subelement plan should contain sufficient information to identify the funds to be expended by, or for the benefit of the political subdivisions.

(b) Withhold approval of a State's AWP, as provided in Highway Safety Program Manual volume 103, chapter III, paragraph 3c, where the program does not provide at least 40 percent of Federal funds for planned local program expenditures.

(c) During the management review of the State's operations, determine if the political subdivisions had an active voice in the initiation, development and implementation of the programs for which such sums were expended.

§ 1250.4 Determining local share.

(a) In determining whether a State meets the requirement that at least 40 percent of Federal 402 funds be expended by political subdivisions, FHWA and NHTSA will apply the 40 percent requirement sequentially to each fiscal year's apportionments, treating all apportionments made from a single fiscal year's authorizations as a single entity for this purpose. Therefore, at least 40 percent of each State's apportionments from each year's authorizations must be used in the highway safety programs of its political subdivisions prior to the period when funds would normally lapse. The 40 percent requirement is applicable to the State's total federally funded safety program irrespective of Standard designation or Agency responsibility.

(b) When Federal funds apportioned under 23 U.S.C. 402 are expended by a political subdivision, such expenditures are clearly part of the local share. Local safety project related expenditures and associated indirect costs, which are reimbursable to the grantee local governments, are classifiable as the local share of Federal funds. Illustrations of such expenditures are the cost incurred by a local government in planning and administration of project related safety activities, driver education activities, traffic court programs, traffic records system improvements, upgrading emergency medical services, pedestrian safety activities, improved traffic enforcement, alcohol countermeasures, highway debris removal programs, pupil transportation programs, accident investigation, surveillance of high accident locations, and traffic engineering services.

(c) When Federal funds apportioned under 23 U.S.C. 402 are expended by the State or a State agency for the benefit of a political subdivision, such funds may be considered as part of the local share, provided that the political subdivision benefitted has had an active voice in the initiation, development, and implementation of the programs for which such funds are expended. In no case may the State arbitrarily ascribe State agency expenditures as ''benefitting local government.'' Where political subdivisions have had an active voice in the initiation, development, and implementation of a particular program, and a political subdivision which has not had such active voice agrees in advance of implementation to accept the benefits of the program, the Federal share of the cost of such benefits may be credited toward meeting the 40 percent local participation requirement. Where no political subdivisions have had an active voice in the initiation, development, and implementation of a particular program, but a political subdivision requests the benefits of the program as part of the local government's highway safety program, the Federal share of the cost of such benefits may be credited toward meeting the 40 percent local participation requirement. Evidence of consent and acceptance of the work, goods or services on behalf of the local government must be established and maintained on file by the State, until all funds authorized for a specific year are expended and audits completed.

(d) State agency expenditures which are generally not classified as local are within such standard areas as vehicle inspection, vehicle registration and driver licensing. However, where these Standards provide funding for services such as: driver improvement tasks administered by traffic courts, or where they furnish computer support for local government requests for traffic record searches, these expenditures are classifiable as benefitting local programs.

§ 1250.5 Waivers.

While the 40 percent requirement may be waived in whole or in part by the Secretary or his delegate, it is expected that each State program will generate political subdivision participation to the extent required by the Act so that requests for waivers will be minimized. Where a waiver is requested, however, it will be documented at least by a conclusive showing of the absence of legal authority over highway safety activities at the political subdivision levels of the State and will recommend the appropriate percentage participation to be applied in lieu of the 40 percent.

PART 1251—STATE HIGHWAY SAFETY AGENCY

Sec.
1251.1 Purpose.
1251.2 Policy.
1251.3 Authority.
1251.4 Functions.

AUTHORITY: 23 U.S.C. 402; 23 U.S.C. 315; 49 CFR 1.48 and 1.50.

SOURCE: 45 FR 59145, Sept. 8, 1980, unless otherwise noted.

§ 1251.1 Purpose.

The purpose of this part is to prescribe the minimum authority and functions of the State Highway Safety Agency established in each State by the Governor under the authority of the Highway Safety Act (23 U.S.C. 402).

§ 1251.2 Policy.

In order for a State to receive funds under the Highway Safety Act, the Governor shall exercise his or her responsibilities through a State Highway Safety Agency that has ''adequate powers and is suitably equipped and organized to carry out the program to the satisfaction of the Secretary.'' 23 U.S.C. 402(b)(1)(A). Accordingly, it is the policy of this part that approval of a State's Highway Safety Plan will depend upon the State's compliance with §§ 1251.3 and 1251.4 of this part.

§ 1251.3 Authority.

Each State Highway Safety Agency shall be authorized to:

(a) Develop and implement a process for obtaining information about the highway safety programs administered by other State and local agencies.

(b) Periodically review and comment to the Governor on the effectiveness of highway safety plans and activities in the State regardless of funding source.

(c) Provide or facilitate the provision of technical assistance to other State agencies and political subdivisions to develop highway safety programs.

(d) Provide financial and technical assistance to other State agencies and political subdivisions in carrying out highway safety programs.

§ 1251.4 Functions.

Each State Highway Safety Agency shall:

(a) Develop and prepare the Highway Safety Plan prescribed by volume 102 of the Highway Safety Program Manual (23 CFR 1204.4, Supplement B), based on evaluation of highway accidents and safety problems within the State.

(b) Establish priorities for highway safety programs funded under 23 U.S.C. 402 within the State.

(c) Provide information and assistance to prospective aid recipients on program benefits, procedures for participation, and development of plans.

(d) Encourage and assist local units of government to improve their highway safety planning and administration efforts.

(e) Review the implementation of State and local highway safety plans and programs, regardless of funding source, and evaluate the implementation of those plans and programs funded under 23 U.S.C. 402.

(f) Monitor the progress of activities and the expenditure of section 402 funds contained in the State's approved Highway Safety Plan.

(g) Assure that independent audits are made of the financial operations of the State Highway Safety Agency and of the use of section 402 funds by any subrecipient.

(h) Coordinate the State Highway Safety Agency's Highway Safety Plan with other federally and non-federally supported programs relating to or affecting highway safety.

(i) Assess program performance through analysis of data relevant to highway safety planning.

PART 1252—STATE MATCHING OF PLANNING AND ADMINISTRATION COSTS

Sec.

1252.1 Purpose.
1252.2 Definitions.
1252.3 Applicability.
1252.4 Policy.
1252.5 Procedures.
1252.6 Responsibilities.

AUTHORITY: 23 U.S.C. 402 and 315; 49 CFR 1.48(b) and 1.50.

SOURCE: 45 FR 47145, July 14, 1980, unless otherwise noted.

§ 1252.1 Purpose.

This part establishes the National Highway Traffic Safety Administration (NHTSA) and the Federal Highway Administration (FHWA) policy on planning and administration (P&A) costs for State highway safety agencies. It defines planning and administration costs, describes the expenditures that may be used to satisfy the State matching requirement, prescribes how the requirement will be met, and when States will have to comply with the requirement.

§ 1252.2 Definitions.

(a) *Fiscal year* means the twelve months beginning each October 1, and ending the following September 30.

(b) *Direct costs* are those costs which can be identified specifically with a particular planning and administration or program activity. The salary of a data analyst on the State highway safety agency staff is an example of a direct cost attributable to P&A. The salary of an emergency medical technician course instructor is an example of direct cost attributable to a program activity.

(c) *Indirect costs* are those costs (1) incurred for a common or joint purpose benefiting more than one program activity and (2) not readily assignable to the program activity specifically benefited. For example, centralized support services such as personnel, procurement, and budgeting would be indirect costs.

(d) *Planning and administration (P&A) costs* are those direct and indirect costs that are attributable to the overall development and management of the Highway Safety Plan. Such costs could include salaries, related personnel benefits, travel expenses, and rental costs.

(e) *Program management costs* are those costs attributable to a program

area (e.g., salary of an emergency medical services coordinator, the impact evaluation of an activity, or the travel expenses of a local traffic engineer).

(f) *State highway safety agency* is the agency directly responsible for coordinating the State's highway safety program authorized by 23 U.S.C. 402.

§ 1252.3 Applicability.

The provisions of this part apply to obligations incurred after November 6, 1978, for planning and administration costs under 23 U.S.C. 402.

§ 1252.4 Policy.

Federal participation in P&A activities shall not exceed 50 percent of the total cost of such activities, or the applicable sliding scale rate in accordance with 23 U.S.C. 120. The Federal contribution for P&A activities shall not exceed 10 percent of the total funds the State receives under 23 U.S.C. 402. In accordance with 23 U.S.C. 120(i), the Federal share payable for projects in the Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands shall be 100 percent. The Indian State, as defined by 23 U.S.C. 402 (d) and (i), is exempt from the provisions of this part. NHTSA funds shall be used only to finance P&A activities attributable to NHTSA programs and FHWA funds shall be used only to finance P&A costs attributable to FHWA programs.

[47 FR 15121, Apr. 8, 1982]

§ 1252.5 Procedures.

(a) P&A tasks and related costs shall be described in the P&A module of the State's Highway Safety Plan. The State's matching share shall be determined on the basis of the total P&A costs in the module. Federal participation shall not exceed 50 percent (or the applicable sliding scale) of the total P&A costs. A State shall not use NHTSA funds to pay more than 50 percent of the P&A costs attributable to NHTSA programs nor use FHWA funds to pay more than 50 percent of the P&A costs attributable to FHWA programs. In addition, the Federal contribution for P&A activities shall not exceed 10 percent of the total funds in the State received under 23 U.S.C. 402.

(b) FHWA and NHTSA funds may be used to pay for the Federal share of P&A costs up to the amounts determined by multiplying the Federal share by the ratio between the P&A costs attributable to FHWA programs and the P&A costs attributable to NHTSA programs. For example: A State's total P&A costs are $40,000. The State's share is 50 percent or $20,000. To pay the remaining $20,000, the State first ascertains the amount spent out of the total costs for each agency's programs, then applies the ratio between these two amounts to the $20,000. If $36,000 of the total costs are spent for NHTSA programs and $4,000 for FHWA programs, the ratio would be 9/1 and the corresponding allocation of the Federal share would be $18,000 to NHTSA and $2,000 to FHWA.

(c) A State at its option may allocate salary and related costs of State highway safety agency employees to one of the following:

(1) The administration and planning functions in the P&A module;

(2) The program management functions in one or more Program modules; or

(3) A combination of administration and planning functions in the P&A module and the program management functions in one or more program modules.

(d) If an employee is principally performing administration and planning functions under a P&A module, the total salary and related costs may be allocated to the P&A module. If the employee is principally performing program management functions under one or more program modules, the total salary and related costs may be charged directly to the appropriate module(s). If an employee is spending time on a combination of administration and planning functions and program management functions, the total salary and related costs may be charged to the appropriate module(s) based on the actual time worked under each module. If the State highway safety agency elects to allocate costs based on acutal time spent on an activity, the State highway safety agency must keep accurate time records showing the work activities for each employee. The State's record keeping system

must be approved by the appropriate FHWA and NHTSA officials.

(e) Those tasks and related costs contained in the P&A module, not defined as P&A costs under § 1252.2(d) of this part, are not subject to the planning and administration cost matching requirement.

[45 FR 47145, July 14, 1980, as amended at 47 FR 15121, Apr. 8, 1982]

§ 1252.6 Responsibilities.

During the Highway Safety Plan approval process, the responsible FHWA and NHTSA officials shall approve a P&A module only if the projected State expenditure is at least 25 percent (or the appropriate sliding scale rate) of the total P&A costs identified in the module. If a State elects to prorate P&A and program management costs, the appropriate NHTSA and FHWA officials must approve the method that the State highway safety agency will use to record the time spent on these activities. During the process of reimbursement, the responsible FHWA and NHTSA officials shall assure that Federal reimbursement for P&A costs at no time exceeds 75 percent (of the applicable sliding scale rate) of the costs accumulated at the time of reimbursement.

SUBCHAPTER D—TRANSFER AND SANCTION PROGRAMS

PART 1270—OPEN CONTAINER LAWS

Sec.
1270.1 Scope.
1270.2 Purpose.
1270.3 Definitions.
1270.4 Compliance criteria.
1270.5 Certification requirements.
1270.6 Transfer of funds.
1270.7 Use of transferred funds.
1270.8 Procedures affecting States in noncompliance.

AUTHORITY: 23 U.S.C. 154; delegation of authority at 49 CFR 1.48 and 1.50.

SOURCE: 63 FR 53585, Oct. 6, 1998, unless otherwise noted.

§ 1270.1 Scope.

This part prescribes the requirements necessary to implement Section 154 of Title 23 of the United States Code which encourages States to enact and enforce open container laws.

§ 1270.2 Purpose.

The purpose of this part is to specify the steps that States must take to avoid the transfer of Federal-aid highway funds for noncompliance with 23 U.S.C. 154.

§ 1270.3 Definitions.

As used in this part:

(a) *Alcoholic beverage* means:

(1) Beer, ale, porter, stout, and other similar fermented beverages (including sake or similar products) of any name or description containing one-half of 1 percent or more of alcohol by volume, brewed or produced from malt, wholly or in part, or from any substitute therefor;

(2) Wine of not less than one-half of 1 per centum of alcohol by volume; or

(3) Distilled spirits which is that substance known as ethyl alcohol, ethanol, or spirits of wine in any form (including all dilutions and mixtures thereof from whatever source or by whatever process produced).

(b) *Enact and enforce* means the State's law is in effect and the State has begun to implement the law.

(c) *Motor vehicle* means a vehicle driven or drawn by mechanical power and manufactured primarily for use on public highways, but does not include a vehicle operated solely on a rail or rails.

(d) *Open alcoholic beverage container* means any bottle, can, or other receptacle that:

(1) Contains any amount of alcoholic beverage; and

(2)(i) Is open or has a broken seal; or

(ii) The contents of which are partially removed.

(e) *Passenger area* means the area designed to seat the driver and passengers while the motor vehicle is in operation and any area that is readily accessible to the driver or a passenger while in their seating positions, including the glove compartment.

(f) *Public highway or right-of-way of a public highway* means the width between and immediately adjacent to the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel; inclusion of the roadway and shoulders is sufficient.

(g) *State* means any of the 50 States, the District of Columbia, or the Commonwealth of Puerto Rico.

[63 FR 53585, Oct. 6, 1998, as amended at 65 FR 51538, Aug. 24, 2000]

§ 1270.4 Compliance criteria.

(a) To avoid the transfer of funds as specified in § 1270.6 of this part, a State must enact and enforce a law that prohibits the possession of any open alcoholic beverage container, and the consumption of any alcoholic beverage, in the passenger area of any motor vehicle (including possession or consumption by the driver of the vehicle) located on a public highway, or the right-of-way of a public highway, in the State.

(b) The law must apply to:

(1) The possession of any open alcoholic beverage container and the consumption of any alcoholic beverage;

(2) The passenger area of any motor vehicle;

(3) All alcoholic beverages;

(4) All occupants of a motor vehicle; and (5) All motor vehicles located a

public highway or the right-of-way of a public highway.

(c) The law must provide for primary enforcement.

(d) *Exceptions.* (1) If a State has in effect a law that makes unlawful the possession of any open alcoholic beverage container and the consumption of any alcoholic beverage in the passenger area of any motor vehicle, but permits the possession of an open alcoholic beverage container in a locked glove compartment, or behind the last upright seat or in an area not normally occupied by the driver or a passenger in a motor vehicle that is not equipped with a trunk, the State shall be deemed to have in effect a law that applies to the passenger area of any vehicle, as provided in paragraph (b)(2) of this section.

(2) If a State has in effect a law that makes unlawful the possession of any open alcoholic beverage container or the consumption of any alcoholic beverage by the driver (but not by a passenger) in the passenger area of a motor vehicle designed, maintained, or used primarily for the transportation of persons for compensation, or in the living quarters of a house coach or house trailer, the State shall be deemed to have in effect a law that applies to all occupants of a motor vehicle, as provided in paragraph (b)(4) of this section.

§ 1270.5 Certification requirements.

(a) Until a State has been determined to be in compliance, or after a State has been determined to be in non-compliance, with the requirements of 23 U.S.C. 154, to avoid the transfer of funds in any fiscal year, beginning with FY 2001, the State shall certify to the Secretary of Transportation, on or before September 30 of the previous fiscal year, that it meets the requirements of 23 U.S.C. 154 and this part.

(b) The certification shall be made by an appropriate State official, and it shall provide that the State has enacted and is enforcing an open container law that conforms to 23 U.S.C. 154 and § 1270.4 of this part.

(1) If the State's open container law is currently in effect and is being enforced, the certification shall be worded as follows:

(Name of certifying official), (position title), of the (State or Commonwealth) of _____, do hereby certify that the (State or Commonwealth) of _____, has enacted and is enforcing an open container law that conforms to the requirements of 23 U.S.C. 154 and 23 CFR 1270.4, (citations to pertinent State statutes, regulations, case law or other binding legal requirements, including definitions, as needed).

(2) If the State's open container law is not currently in effect, but will become effective and be enforced by October 1 of the following fiscal year, the certification shall be worded as follows:

(Name of certifying official), (position title), of the (State or Commonwealth) of _____, do hereby certify that the (State or Commonwealth) of _____, has enacted an open container law that conforms to the requirements of 23 U.S.C. 154 and 23 CFR 1270.4, (citations to pertinent State statutes, regulations, case law or other binding legal requirements, including definitions, as needed), and will become effective and be enforced as of (effective date of the law).

(c) An original and four copies of the certification shall be submitted to the appropriate NHTSA Regional Administrator. Each Regional Administrator will forward the certifications to the appropriate NHTSA and FHWA offices.

(d) Once a State has been determined to be in compliance with the requirements of 23 U.S.C. 154, it is not required to submit additional certifications, except that the State shall promptly submit an amendment or supplement to its certification provided under paragraphs (a) and (b) of this section if the State's open container law changes or the State ceases to enforce such law.

[63 FR 53585, Oct. 6, 1998, as amended at 65 FR 51538, Aug. 24, 2000]

§ 1270.6 Transfer of funds.

(a) On October 1, 2000, and October 1, 2001, if a State does not have in effect or is not enforcing the law described in § 1270.4, the Secretary shall transfer an amount equal to 1½ percent of the funds apportioned to the State for that fiscal year under each of 23 U.S.C. 104(b)(1), (b)(3), and (b)(4) to the apportionment of the State under 23 U.S.C. 402.

(b) On October 1, 2002, and each October 1 thereafter, if a State does not have in effect or is not enforcing the law described in § 1270.4, the Secretary shall transfer an amount equal to 3 percent of the funds apportioned to the State for that fiscal year under each of 23 U.S.C. 104(b)(1), (b)(3), and (b)(4) to the apportionment of the State under 23 U.S.C. 402.

(c) On October 1, the transfers to Section 402 apportionments will be made based on proportionate amounts from each of the apportionments under Sections 104(b)(1), (b)(3) and (b)(4). Then the State's Department of Transportation will be given until October 30 to notify FHWA, through the appropriate Division Administrator, if they would like to change the distribution among Section 104(b)(1), (b)(3) and (b)(4).

[63 FR 53585, Oct. 6, 1998, as amended at 65 FR 51538, Aug. 24, 2000]

§ 1270.7 Use of transferred funds.

(a) Any funds transferred under § 1270.6 may:

(1) Be used for approved projects for alcohol-impaired driving countermeasures; or

(2) Be directed to State and local law enforcement agencies for enforcement of laws prohibiting driving while intoxicated or driving under the influence and other related laws (including regulations), including the purchase of equipment, the training of officers, and the use of additional personnel for specific alcohol-impaired driving countermeasures, dedicated to enforcement of the laws (including regulations).

(b) States may elect to use all or a portion of the transferred funds for hazard elimination activities eligible under 23 U.S.C. 152.

(c) No later than 60 days after the funds are transferred under § 1270.6, the Governor's Representative for Highway Safety and the Secretary of the State's Department of Transportation for each State shall jointly identify, in writing to the appropriate NHTSA Administrator and FHWA Division Administrator, how the funds will be programmed among alcohol-impaired driving programs, hazard elimination programs and planning and administration costs.

(d) The Federal share of the cost of any project carried out with the funds transferred under § 1270.6 of this part shall be 100 percent.

(e) The amount to be transferred under § 1270.6 of this part may be derived from one or more of the following:

(1) The apportionment of the State under § 104(b)(1);

(2) The apportionment of the State under § 104(b)(3); or

(3) The apportionment of the State under § 104(b)(4).

(f)(1) If any funds are transferred under § 1270.6 of this part to the apportionment of a State under Section 402 for a fiscal year, an amount, determined under paragraph (e)(2) of this section, of obligation authority will be distributed for the fiscal year to the State for Federal-aid highways and highway safety construction programs for carrying out projects under Section 402.

(2) The amount of obligation authority referred to in paragraph (e)(1) of this section shall be determined by multiplying:

(i) The amount of funds transferred under § 1270.6 of this part to the apportionment of the State under Section 402 for the fiscal year; by

(ii) The ratio that:

(A) The amount of obligation authority distributed for the fiscal year to the State for Federal-aid highways and highway safety construction programs; bears to

(B) The total of the sums apportioned to the State for Federal-aid highways and highway safety construction programs (excluding sums not subject to any obligation limitation) for the fiscal year.

(g) Notwithstanding any other provision of law, no limitation on the total obligations for highway safety programs under Section 402 shall apply to funds transferred under § 1270.6 to the apportionment of a State under such section.

[63 FR 53585, Oct. 6, 1998, as amended at 65 FR 51538, Aug. 24, 2000]

§ 1270.8 Procedures affecting States in noncompliance.

(a) Each fiscal year, each State determined to be in noncompliance with 23

U.S.C. 154 and this part, based on NHTSA's and FHWA's preliminary review of its certification, will be advised of the funds expected to be transferred under § 1270.4 from apportionment, as part of the advance notice of apportionments required under 23 U.S.C. 104(e), normally not later than ninety days prior to final apportionment.

(b) If NHTSA and FHWA determine that the State is not in compliance with 23 U.S.C. 154 and this part, based on the agencies' preliminary review, the State may, within 30 days of its receipt of the advance notice of apportionments, submit documentation showing why it is in compliance. Documentation shall be submitted to the appropriate National Highway Traffic Safety Administration Regional office.

(c) Each fiscal year, each State determined not to be in compliance with 23 U.S.C. 154 and this part, based on NHTSA's and FHWA's final determination, will receive notice of the funds being transferred under § 1270.6 from apportionment, as part of the certification of apportionments required under 23 U.S.C. 104(e), which normally occurs on October 1 of each fiscal year.

PART 1275—REPEAT INTOXICATED DRIVER LAWS

Sec.
1275.1 Scope.
1275.2 Purpose.
1275.3 Definitions.
1275.4 Compliance criteria.
1275.5 Certification requirements.
1275.6 Transfer of funds.
1275.7 Use of transferred funds.
1275.8 Procedures affecting States in noncompliance.

AUTHORITY: 23 U.S.C. 164; delegation of authority at 49 CFR §§ 1.48 and 1.50.

SOURCE: 63 FR 55802, Oct. 19, 1998, unless otherwise noted.

§ 1275.1 Scope.

This part prescribes the requirements necessary to implement Section 164 of Title 23, United States Code, which encourages States to enact and enforce repeat intoxicated driver laws.

§ 1275.2 Purpose.

The purpose of this part is to specify the steps that States must take to avoid the transfer of Federal-aid highway funds for noncompliance with 23 U.S.C. 164.

§ 1275.3 Definitions.

As used in this part:

(a) *Alcohol concentration* means grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

(b) *Driver's motor vehicle* means a motor vehicle with a title or registration on which the repeat intoxicated driver's name appears.

(c) *Driving while intoxicated* means driving or being in actual physical control of a motor vehicle while having an alcohol concentration above the permitted limit as established by each State, or an equivalent non-BAC intoxicated driving offense.

(d) *Driving under the influence* has the same meaning as ''driving while intoxicated.''

(e) *Enact and enforce* means the State's law is in effect and the State has begun to implement the law.

(f) *Ignition interlock system* means a State-certified system designed to prevent drivers from starting their car when their breath alcohol concentration is at or above a preset level.

(g) *Impoundment or immobilization* means the removal of a motor vehicle from a repeat intoxicated driver's possession or the rendering of a repeat intoxicated driver's motor vehicle inoperable. For the purpose of this regulation, ''impoundment or immobilization'' also includes the forfeiture or confiscation of a repeat intoxicated driver's motor vehicle or the revocation or suspension of a repeat intoxicated driver's motor vehicle license plate or registration.

(h) *Imprisonment* means confinement in a jail, minimum security facility, community corrections facility, house arrest with electronic monitoring, inpatient rehabilitation or treatment center, or other facility, provided the individual under confinement is in fact being detained.

(i) *License suspension* means a hard suspension of all driving privileges.

(j) *Motor vehicle* means a vehicle driven or drawn by mechanical power and

manufactured primarily for use on public highways, but does not include a vehicle operated solely on a rail line or a commercial vehicle.

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

(l) *Repeat intoxicated driver law* means a State law that imposes the minimum penalties specified in § 1275.4 of this part for all repeat intoxicated drivers.

(m) *State* means any of the 50 States, the District of Columbia or the Commonwealth of Puerto Rico.

[63 FR 55802, Oct. 19, 1998, as amended at 65 FR 59124, Oct. 4, 2000]

§ 1275.4 Compliance criteria.

(a) To avoid the transfer of funds as specified in § 1275.6 of this part, a State must enact and enforce a law that establishes, as a minimum penalty, that all repeat intoxicated drivers shall:

(1) Receive a driver's license suspension of not less than one year;

(2) Be subject to either—

(i) The impoundment of each of the driver's motor vehicles during the one-year license suspension;

(ii) The immobilization of each of the driver's motor vehicles during the one-year license suspension; or

(iii) The installation of a State-approved ignition interlock system on each of the driver's motor vehicles at the conclusion of the one-year license suspension;

(3) Receive an assessment of their degree of alcohol abuse, and treatment as appropriate; and

(4) Receive a mandatory sentence of—

(i) Not less than five days of imprisonment or 30 days of community service for a second offense; and

(ii) Not less than ten days of imprisonment or 60 days of community service for a third or subsequent offense.

(b) *Exceptions*. (1) A State may provide limited exceptions to the impoundment or immobilization requirements contained in paragraphs (a)(2)(i) and (a)(2)(ii) of this section on an individual basis, to avoid undue hardship to any individual who is completely dependent on the motor vehicle for the necessities of life, including any family member of the convicted individual, and any co-owner of the motor vehicle, but not including the offender.

(2) A State may provide limited exceptions to the requirement to install an ignition interlock system on each of the offender's motor vehicles, contained in paragraph (a)(2)(iii) of this section, on an individual basis, to avoid undue financial hardship, provided the State law requires that the offender may not operate a motor vehicle without an ignition interlock system.

(3) Such exceptions may be issued only in accordance with a State law, regulation or binding policy directive establishing the conditions under which vehicles may be released by the State or under Statewide published guidelines and in exceptional circumstances specific to the offender's motor vehicle, and may not result in the unrestricted use of the vehicle by the repeat intoxicated driver.

[63 FR 55802, Oct. 19, 1998, as amended at 65 FR 59124, Oct. 4, 2000]

§ 1275.5 Certification requirements.

(a) Until a State has been determined to be in compliance, or after a State has been determined to be in non-compliance, with the requirements of 23 U.S.C. 164, to avoid the transfer of funds in any fiscal year, beginning with FY 2001, the State shall certify to the Secretary of Transportation, on or before September 30 of the previous fiscal year, that it meets the requirements of 23 U.S.C. 164 and this part.

(b) The certification shall be made by an appropriate State official, and it shall provide that the State has enacted and is enforcing a repeat intoxicated driver law that conforms to 23 U.S.C. 164 and § 1275.4 of this part.

(1) If the State's repeat intoxicated driver law is currently in effect and is being enforced, the certification shall be worded as follows:

(Name of certifying official), (position title), of the (State or Commonwealth) of _____, do hereby certify that the (State or Commonwealth) of _____, has enacted and is enforcing a repeat intoxicated driver law that conforms to the requirements of 23 U.S.C. 164 and 23 CFR 1275.4, (citations to pertinent State statutes, regulations, case law or other binding legal requirements, including definitions, as needed).

(2) If the State's repeat intoxicated driver law is not currently in effect, but will become effective and be enforced by October 1 of the following fiscal year, the certification shall be worded as follows:

(Name of certifying official), (position title), of the (State or Commonwealth) of _____, do hereby certify that the (State or Commonwealth) of _____, has enacted a repeat intoxicated driver law that conforms to the requirements of 23 U.S.C. 164 and 23 CFR 1275.4, (citations to pertinent State statutes, regulations, case law or other binding legal requirements, including definitions, as needed), and will become effective and be enforced as of (effective date of the law).

(c) An original and four copies of the certification shall be submitted to the appropriate NHTSA Regional Administrator. Each Regional Administrator will forward the certifications to the appropriate NHTSA and FHWA offices.

(d) Once a State has been determined to be in compliance with the requirements of 23 U.S.C. 164, it is not required to submit additional certifications, except that the State shall promptly submit an amendment or supplement to its certification provided under paragraphs (a) and (b) of this section if the State's repeat intoxicated driver legislation changes or the State ceases to enforce its law.

[63 FR 55802, Oct. 19, 1998, as amended at 65 FR 59124, Oct. 4, 2000]

§ 1275.6 Transfer of funds.

(a) On October 1, 2000, and October 1, 2001, if a State does not have in effect or is not enforcing the law described in § 1275.4, the Secretary shall transfer an amount equal to 1½ percent of the funds apportioned to the State for the fiscal year under each of 23 U.S.C. 104(b)(1), (b)(3), and (b)(4) to the apportionment of the State under 23 U.S.C. 402.

(b) On October 1, 2002, and each October 1 thereafter, if a State does not have in effect or is not enforcing the law described in § 1275.4, the Secretary shall transfer an amount equal to 3 percent of the funds apportioned to the State for the fiscal year under each of 23 U.S.C. 104(b)(1), (b)(3), and (b)(4) to the apportionment of the State under 23 U.S.C. 402.

(c) On October 1, the transfers to section 402 apportionments will be made based on proportionate amounts from each of the apportionments under 23 U.S.C. 104(b)(1),(b)(3) and (b)(4). Then the States will be given until October 30 to notify FHWA, through the appropriate Division Administrator, if they would like to change the distribution among 23 U.S.C. 104(b)(1),(b)(3) and (b)(4).

[63 FR 55802, Oct. 19, 1998, as amended at 65 FR 59124, Oct. 4, 2000]

§ 1275.7 Use of transferred funds.

(a) Any funds transferred under § 1275.6 may:

(1) Be used for approved projects for alcohol-impaired driving countermeasures; or

(2) Be directed to State and local law enforcement agencies for enforcement of laws prohibiting driving while intoxicated or driving under the influence and other related laws (including regulations), including the purchase of equipment, the training of officers, and the use of additional personnel for specific alcohol-impaired driving countermeasures, dedicated to enforcement of the laws (including regulations).

(b) States may elect to use all or a portion of the transferred funds for hazard elimination activities eligible under 23 U.S.C. 152.

(c) The Governor's Representative for Highway Safety and the Secretary of the State's Department of Transportation for each State shall jointly identify, in writing to the appropriate NHTSA Administrator and FHWA Division Administrator, how the funds will be programmed among alcohol-impaired driving programs, hazard elimination programs, and planning and administration costs, no later than 60 days after the funds are transferred.

(d) The Federal share of the cost of any project carried out with the funds transferred under § 1275.6 of this part shall be 100 percent.

(e) The amount to be transferred under § 1275.6 of this Part may be derived from one or more of the following:

(1) The apportionment of the State under § 104(b)(1);

(2) The apportionment of the State under § 104(b)(3); or

(3) The apportionment of the State under § 104(b)(4).

(f)(1) If any funds are transferred under § 1275.6 of this part to the apportionment of a State under Section 402 for a fiscal year, an amount, determined under paragraph (e)(2) of this section, of obligation authority will be distributed for the fiscal year to the State for Federal-aid highways and highway safety construction programs for carrying out projects under Section 402.

(2) The amount of obligation authority referred to in paragraph (e)(1) of this section shall be determined by multiplying:

(i) The amount of funds transferred under § 1275.6 of this Part to the apportionment of the State under Section 402 for the fiscal year; by

(ii) The ratio that:

(A) The amount of obligation authority distributed for the fiscal year to the State for Federal-aid highways and highway safety construction programs; bears to

(B) The total of the sums apportioned to the State for Federal-aid highways and highway safety construction programs (excluding sums not subject to any obligation limitation) for the fiscal year.

(g) Notwithstanding any other provision of law, no limitation on the total obligations for highway safety programs under Section 402 shall apply to funds transferred under § 1275.6 to the apportionment of a State under such section.

[63 FR 55802, Oct. 19, 1998, as amended at 65 FR 59124, Oct. 4, 2000]

§ 1275.8 Procedures affecting States in noncompliance.

(a) Each fiscal year, each State determined to be in noncompliance with 23 U.S.C. 164 and this part, based on NHTSA's and FHWA's preliminary review of its certification, will be advised of the funds expected to be transferred under § 1275.4 from apportionment, as part of the advance notice of apportionments required under 23 U.S.C. 104(e), normally not later than ninety days prior to final apportionment.

(b) If NHTSA and FHWA determine that the State is not in compliance with 23 U.S.C. 164 and this part, based on the agencies' preliminary review, the State may, within 30 days of its receipt of the advance notice of apportionments, submit documentation showing why it is in compliance. Documentation shall be submitted to the appropriate National Highway Traffic Safety Administration Regional office.

(c) Each fiscal year, each State determined not to be in compliance with 23 U.S.C. 164 and this part, based on NHTSA's and FHWA's final determination, will receive notice of the funds being transferred under § 1275.6 from apportionment, as part of the certification of apportionments required under 23 U.S.C. 104(e), which normally occurs on October 1 of each fiscal year.