**DEPARTMENT OF TRANSPORTATION**

**National Highway Traffic Safety Administration**

**23 CFR Part 1313**

**[Docket No. NHTSA–98–4942]**

**RIN 2127–AH42**

## Incentive Grants for Alcohol-Impaired Driving Prevention Programs

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

**ACTION:** Interim final rule; request for comments.

**SUMMARY:** This interim final rule amends the regulations that implement the Section 410 program, under which States can receive incentive grants for alcohol-impaired driving prevention programs. The amendments to the regulations reflect changes that were made to the Section 410 program by the Transportation Equity Act for the 21st Century (TA–21).

As a result of this interim final rule, the basic grant program now provides States with two alternative means for qualifying for a basic grant. Under the first alternative, States may qualify for a ''Programmatic Basic Grant'' if they submit materials demonstrating that they meet five out of seven grant criteria. Under the second alternative, States may qualify for a ''Performance Basic Grant'' by submitting data demonstrating that the State has successfully reduced the percentage of alcohol-impaired fatally injured drivers in the State over a three-year period. If States qualify for both a Programmatic and a Performance Basic Grant, they may receive both grants. This rule also provides that States that are eligible for one or both of the basic grants may qualify also for a supplemental grant.

This interim final rule establishes the criteria States must meet and the procedures they must follow to qualify for Section 410 incentive grants, beginning in FY 1999.

**DATES:** This interim final rule becomes effective on January 28, 1999. Comments on this interim rule are due no later than March 1, 1999.

**ADDRESSES:** Written comments should refer to the docket number of this notice and be submitted (preferably in two copies) to: Docket Management, PL–401, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. (Docket hours are Monday–Friday from 10 a.m. to 5 p.m., excluding holidays.) The docket is also accepting comments electronically, through the worldwide web, at www.dms.dot.gov.

**FOR FURTHER INFORMATION CONTACT:** Ms. Marlene Markison, Office of State and Community Services, NSC–10, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590 telephone (202) 366–2121; or Mr. Otto G. Matheke III, Office of Chief Counsel, NCC–20, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, telephone (202) 366–5253.

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## I. Background

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

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

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

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

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

The National Highway System Designation Act of 1995 led to further amendments to the Section 410 program. The criterion for a statewide program for stopping motor vehicles was modified to accommodate States in which roadblocks were unconstitutional. In addition, the per se

law at 0.02 BAC for persons under age 21 requirement was eliminated as supplemental grant criterion , and became instead a basic grant criterion (thereby increasing the total number of basic grant criteria from six to seven). With this change, States could qualify for a basic grant by meeting five out of seven criteria.

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

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

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

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

## II. Programmatic Basic Grant

Prior to the enactment of TEA–21, the Section 410 basic grant criteria included the following: an expedited administrative driver's licenses suspension or revocation system; a per se law at 0.10 BAC (during the first three fiscal years in which a basic grant is received based on this criterion and a per se law at 0.08 BAC in each subsequent fiscal year); a statewide program for stopping motor vehicles; a self-sustaining drunk driving prevention program; a minimum drinking age prevention program; mandatory sentences for repeat offenders; and a per se law at 0.02 BAC for persons under age 21.

TEA–21 removed some of these criteria from the section 410 program. A per se law at 0.08 BAC became the criterion for a separate incentive grant program, 23 U.S.C. 163, under which States may qualify for a total of $500 million over a six year period, and a per se law at 0.02 BAC for persons under age 21 became (in 1995) became the criterion for a sanction program, 23 U.S.C. 161, under which States will be subject to the withholding of highway construction funds beginning in FU 2000 unless they have enacted and are enforcing such a law. Most of the criteria (or modifications thereof) continue to be features of the Section 410 program.

With the enactment of TEA–21, to qualify for a programmatic basic grant, a State must demonstrate compliance with five out of the following seven grant criteria: an administrative license suspension or revocation system; an underage drinking prevention program; a statewide traffic enforcement program; a graduated driver's licensing system; a program to target drivers with high BAC; a program to reduce drinking and driving among young adults; and a BAC testing program.

Of these criteria, the graduated driver's licensing system, the program that targets drivers with high BAC, and the young adult drinking and driving programs are new to the Section 410 program. Three of the criteria (the administrative license suspension or revocation system, the underage drinking prevention program and the statewide traffic enforcement program) were basic grant criteria prior to the enactment of TEA–21. The BAC testing program represents a modification of a former Section 410 criterion, which encouraged States to provide for mandatory BAC testing of drivers in certain motor vehicle crashes.

### *A. Administrative License Suspension or Revocation System*

Studies show that when States adopt an administrative license suspension or revocation law, they experience an average 6–9 percent reduction in alcohol-related fatalities.

An administrative (or expedited) license suspension or revocation system has been a basic grant criterion under the Section 410 program since the program's inception. TEA–21 continues to include this basic grant criterion in Section 410, but the Act streamlines the elements that States must meet to demonstrate compliance with this criterion. TEA–21 provides that, to qualify for a grant based on this criterion, a State must demonstrate:

> An administrative driver's license suspension or revocation system for individuals who operate motor vehicles while under the influence of alcohol that requires that—
>
> (i) In the case of an individual who, in any 5-year period beginning after the date of enactment of [TEA–21], is determined on the basis of a chemical test to have been operating a motor vehicle while under the influence of alcohol or is determined to have refused to submit to such a test as proposed by a law enforcement officer, the State agency responsible for administering drivers' licenses, upon receipt of the report of the law enforcement officer—
>
> (I) Shall suspend the driver's license of such individual for a period of not less than 90 days if such individual is a first offender in such 5-year period; and
>
> (II) Shall suspend the driver's license of such individual for a period of not less than 1 year, or revoke such license, if such individual is a repeat offender in such 5-year period; and
>
> (ii) The suspension and revocation referred to * * * shall take effect not later than 30 days after the day on which the individual refused to submit to a chemical test or received notice of having been determined to be driving under the influence of alcohol, in accordance with the procedures of the State.

Prior to the enactment of TEA–21, this criterion contained a number of specific procedural requirements, including that the officer serve the driver with a written notice and take possession of the driver's license at the time of the stop, that the notice contain certain information about the administrative procedures under which the State may suspend or revoke the driver's license, that the State provide for due process of

law and that the officer immediately report to the State entity responsible for administering driver's licenses all information relevant to the action taken. These specific requirements, which States in past years argued were overly prescriptive, were removed from this criterion in TEA–21. Accordingly, they have been removed from the regulation as well.

To qualify under this criterion, as amended by TEA–21, a State must provide simply that first offenders will be subject to a 90-day suspension, that repeat offenders will be subject to a one-year suspension or revocation, and that suspensions or revocations will take effect within 30 days after the offender refuses to submit to a chemical test or receives notice of having failed the test.

The interim final rule continues to provide that these suspension and revocation terms must be hard (i.e., that during these terms, *all* driving privileges are suspended or revoked), except that first offenders who submitted to and were determined to have failed a chemical test, may be subject to a 30-day hard suspension, and then may receive restricted driving privileges or a hardship license for the remainder of the 90-day term.

The interim final rule continues to provide that States may demonstrate compliance with this criterion as either ''Law States'' or ''Data States.'' The rule, however, simplifies the information States must submit to demonstrate compliance in subsequent fiscal years.

As provided in the interim rule, a ''Law State'' is a State that has a law, regulation or binding policy directive implementing or interpreting the law or regulation that meets each element of the criterion. A ''Data State'' is a State that has a law, regulation or binding policy directive that provides for an administrative license suspension or revocation system, but it does not meet each element of the criterion. For example, the law may permit restricted licenses during the 90-day or one-year period or the law may not specifically provide that suspensions must take effect within 30 days.

To demonstrate compliance in the first fiscal year a State qualifies for a grant based on this criterion, a Law State need only submit a copy of its conforming law, regulation or binding policy directive. A Data State must submit its law, regulation or binding policy directive, and data demonstrating compliance with any element not specifically provided for in the State's law.

In the past, to demonstrate compliance with this criterion in subsequent fiscal years, both Law States and Data States were required to submit data regarding the number of licenses suspended, the average lengths of suspension, and the average length of time that elapsed until suspensions took effect for both first and repeat offenders.

The agency has decided to streamline this requirement, which should reduce reporting requirements for States considerably. Under the interim final rule, to demonstrate compliance with this criterion in subsequent fiscal years, a Law State need only submit a copy of any changes to the State's law, regulation or binding policy directive. If there have been no changes in the State's law, regulation or binding policy directive since the previous year's submission, the State shall submit instead a certification to that effect.

To demonstrate compliance with this criterion in subsequent fiscal years, Data States must submit the same information as Law States, plus they must provide updated data demonstrating compliance with any element not specifically provided for in the State's law.

Although States are no longer required by the statute and the interim regulation to show that law enforcement officers take possession of driver licenses at the time of the stop, the agency encourages States nonetheless to continue this practice. NHTSA has found that the practice of immediately seizing a driver's license is a powerful deterrent and should be used whenever possible.

*B. Underage Drinking Prevention Program*

Drinking by drivers under 21 years of age continues to be a significant safety problem, and studies show that when States adopt a minimum drinking age of 21 years, they experience an average 12 percent decrease in alcohol-related fatalities in the affected age group. Many States, however, do not enforce minimum drinking age laws as vigorously as possible.

An underage drinking (or minimum drinking age) prevention program has been a grant criterion under Section 410 since the program's inception, first as a supplemental grant criterion and later as a criterion for a basic grant. TEA–21 continues to include this basic grant criterion in Section 410, but the Act modifies it slightly. TEA–21 provides that, to qualify for a grant based on this criterion, a State must demonstrate:

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

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

The interim final rule incorporates these new elements into the implementing regulation, and includes in Appendix A to the regulation a list of security features that States may include on their driver's licenses to make them tamper resistant.

While States are required under this interim final rule to adopt only one of the listed security features, the agency urges States to consider incorporating as many of the security features as possible into their driver's licenses to prevent underage drivers from altering existing licenses or from obtaining or producing counterfeits.

The interim final rule also makes two additional modifications to this criterion. It specifies that public information programs targeted to underage drivers publicize drinking age laws, zero tolerance laws and the penalties associated with a violation of these statutes, and it provides that the overall enforcement strategy developed under this program must be capable of being implemented locally throughout the State. The agency believes these elements are important to ensure the effectiveness of underage drinking prevention programs.

In the past, to demonstrate compliance with this criterion, a State was required to submit a plan (or an updated plan) for conducting an underage drinking prevention program. Under the interim final rule, to demonstrate compliance in the first fiscal year a State receives a grant based on this criterion, the State must submit information demonstrating that a program that meets each programmatic element of this criterion is already in place. This change conforms the

regulation to the practices that States already have been following. As in past years, States must also submit sample driver's licenses. The samples must demonstrate that licenses issued to drivers under the age of 21 are easily distinguishable from licenses issued to older drivers and that they are tamper resistant.

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

The agency notes that the Office of Juvenile Justice and Delinquency Prevention of the U.S. Department of Justice (DOJ) awarded $25 million in grants in FY 1998 to States to encourage the enforcement of minimum drinking age laws. An additional $25 million in grants will be available for this purpose in FY 1999. States that do not already meet each element of the underage drinking prevention program criterion under Section 410 may consider using DOJ grant funds to develop programs that will enable these States to qualify for Section 410 funding.

*C. Statewide Traffic Enforcement Program*

Highly visible, widely publicized and frequently conducted impaired-driving traffic enforcement programs are very effective at reducing alcohol-related fatalities. NHTSA research strongly supports the use of roadside sobriety checkpoints and other checkpoint programs to reduce impaired driving deaths and injuries. Decreases in alcohol-related crashes have been reported consistently in States where checkpoints are employed. A recent study of a highly publicized Statewide sobriety checkpoint program (''Checkpoint Tennessee'') found a 20 percent reduction in impaired driving-related fatal crashes, when compared to five surrounding States with no intervention during the same period.

In addition, selective traffic enforcement programs, saturation patrols, and special impaired driving patrols, particularly when accompanied by aggressive public information programs and applied in a coordinated Statewide effort, have been found to be very effective tools for reducing alcohol-related fatalities.

A basic grant criterion for Statewide programs for stopping motor vehicles has been a feature of the Section 410 program since 1991. Initially, only roadblock or checkpoint programs were considered acceptable under this criterion, but the criterion was expanded later to permit, in certain cases, other intensive and highly publicized traffic enforcement techniques.

TEA–21 continues to include in Section 410 a basic grant criterion for a Statewide traffic enforcement program, but the Act provides for added flexibility regarding the elements States must meet to comply. TEA–21 provides that, to qualify for a grant based on this criterion, a State must demonstrate:

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

In other words, any State may qualify by having either a Statewide program for stopping motor vehicles or a Statewide special traffic enforcement program (STEP) for impaired driving that emphasizes publicity regarding the program.

The agency has modified this criterion to reflect the changes made by TEA–21. As provided in the interim final rule, whether the State has established a Statewide program for stopping motor vehicles or a STEP, the State program must provide for the following components: motor vehicles must be stopped or STEP's must be conducted on a Statewide basis (in major areas covering at least 50 percent of the State's population); stops must be made or STEP's must be conducted not less than monthly; stops must be made or STEP's must be conducted by both State and local law enforcement agencies; and effective public information efforts must be conducted to inform the public about these enforcement activities.

To demonstrate compliance in the first fiscal year the State receives a grant based on this criterion, the State must submit a plan for its Statewide traffic enforcement program, which meets each element of this criterion. The plan must include guidelines, policies or operation procedures governing the program, and provide approximate dates and locations of programs planned in the coming year. The plan must also include the names of law enforcement agencies expected to participate and describe the public information efforts to be conducted.

To demonstrate compliance in subsequent fiscal years, the State must submit an updated plan, and information documenting that the prior year's plan was implemented effectively including, for example, samples of public information materials used and information that documents the enforcement activities that took place.

*D. Graduated Driver's Licensing System*

There is growing support nationwide for the adoption of graduated driver's licensing (GDL) systems. A GDL system generally consists of a multi-staged (usually, a three-stage) process for issuing driver's licenses to young people. During the first stage, the applicant generally is issued a learner's permit and may operate a motor vehicle only while under the supervision of an licensed driver over the age of 21. During the second stage, the applicant is issued an intermediate (or restricted) license and may operate a motor vehicle without a supervising adult, but only under certain conditions. Additional restrictions also generally apply during these first two stages. Once drivers meet all of the conditions and restrictions of the first two stages, they can reach the third stage and earn an unrestricted license.

Some of the significant benefits of this system are that young drivers are able to gain valuable driving experience under controlled circumstances, and they must demonstrate responsible driving behavior and proficiency to move through each stage of the system before graduating to the next.

Approximately 20 States have established some form of GDL system in the last five years, and studies indicate that the use of such systems results in improved highway safety. The adoption of GDL systems resulted in a five percent reduction in crashes in California and Maryland, an eight percent reduction in New Zealand, a 16 percent reduction for young male drivers in Oregon, and a 31 percent reduction in Ontario, Canada.

TEA–21 adds a new graduated driver's licensing system basic grant criterion to the Section 410 program. TEA–21 provides that, to qualify for a grant based on this criterion, a State must demonstrate:

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

To qualify under this criterion, the agency's implementing regulations require States to have a three-stage program that includes a learner's permit stage (Stage I), an intermediate (or restricted) license stage (Stage II), and a final stage, under which the driver receives an unrestricted license (Stage

III). Stage I must last for at least three months and the combined period of Stages I and II must last for at least one year.

The regulations provide that applicants must be tested for knowledge and vision before they receive a Stage I learner's permit. To move to a Stage II intermediate license, applicants must have met all the conditions of the Stage I learner's permit for a period of at least three months, and they must pass a driving skills test. To receive an unrestricted license under Stage III, applicants must have met all the conditions of the Stage I learner's permit and the Stage II intermediate license for a combined period of at least one year.

The regulations also specify the conditions that must be imposed during Stages I and II. Drivers with Stage I learner's permits and Stage II intermediate licenses must abide by the State's seat belt use laws and zero tolerance laws if they are under the age of 21, and they must remain crash and conviction free. During Stage I, permit holders may not operate a motor vehicle at any time (day or night) unless they are accompanied by a licensed driver who is 21 years of age or older. During Stage II, drivers may not operate a motor vehicle during certain nighttime hours unless they are accompanied by a licensed driver who is at least 21 years of age or covered by a State-approved exception to this restriction. These hours are to be specified by the State, and they must cover some period of time between the hours of 10:00 p.m. abd 6:00 a.m.

Permits and licenses issued at all three stages must be distinguishable from each other. Since drivers, once they reach Stage III, are eligible to receive an unrestricted license, none of the other conditions listed above need to apply during that stage of the system.

The interim regulation provides that the GDL must cover ''young drivers,'' but it does not define this term. Most States that have already adopted GDL systems cover novice teenage drivers, up to a specified age, although one State covers all novice drivers. The agency defers to the States to determine the age of drivers that should be covered by their GDL systems.

To demonstrate compliance in the first fiscal year a State receives a grant based on this criterion, a State must submit a copy of the law, regulation or binding policy directive implementing or interpreting the law or regulation, which provides for each element of the graduated driver's licensing system criterion. To demonstrate compliance in subsequent fiscal years, the State need only submit a copy of any changes to the State's law, regulation or binding policy directive. If there have been no changes in the State's law, regulation or bindng policy directive since the previous year's submission, the State shall submit instead a certification to that effect.

Although not required under the regulation, NHTSA urges States to consider including certain features in their graduated driver's licensing systems, because these features are consistent with the provisions recommended by NHTSA, the National Safety Council and other National organizations in ''Saving Teenage Lives: The Call for Graduated Driver Licensing'' (in press). For example, States should consider requiring that applicants complete a basic skills or ''driver's education'' course, with both classroom instruction and supervised driving practice, before they receive a Stage II intermediate license. In addition, States should consider requiring the following conditions during Stage II: advanced driver training; supervised practice; lower thresholds of accumulated points before sanctions or corrective actions are imposed; limits on the number of non-family passengers under the age of 21 who may accompany the driver in the vehicle; advanced driver testing before receiving an unrestricted license; a requirement that learner's permit holders remain crash and conviction free for six (rather than three) months before moving to the next phase; that intermediate license holders remain crash and conviction free for an additional 12 months before moving to the next phase; and a nighttime driving restriction during the intermediate stage that is in effect during the entire 10:00 p.m. to 6:00 a.m. time period.

*E. Drivers With High BAC*

NHTSA is keenly aware of the hazards posed by drinking drivers with a blood alcohol concentration (BAC) that significantly exceeds existing legal levels. Research indicates that drivers with a highly elevated BAC not only are at increased risk of causing alcohol-related crashes and fatalities, but also are placing themselves at increased risk of incurring more serious injuries.

According to the Fatality Analysis Reporting System (FARS), 30 percent of persons killed in motor vehicle crashes in 1997 were in crashes involving a driver or non-occupant with a BAC of 0.10 or greater. Drivers with a BAC of 0.15 or greater are estimated to have risks that increase to more than 300 times that of sober drivers. NHTSA estimates that more than half of all drinking drivers involved in fatal crashes have a BAC that exceeds 0.15 percent. Moreover, a high BAC is a strong indicator that the driver is a problem drinker and is at risk of becoming a repeat offender.

To combat the dangers posed by drivers with a high BAC, TEA–21 adds a new basic grant criterion for programs that target these drivers. TEA–21 provides that, to qualify for a grant based on this criterion, a State must demonstrate:

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

This interim final rule provides that, to qualify for a grant based on this criterion, a State must have a system for imposing enhanced penalties on those drivers who have been convicted of operating a motor vehicle while under the influence of alcohol and determined to have a high BAC. These enhanced penalties must be either more severe or more numerous than those applicable to persons who have been convicted of operating a motor vehicle while under the influence of alcohol, but were not determined to have a high BAC.

In order to provide States with a high degree of latitude in fashioning appropriate enhanced penalties on these drivers, NHTSA has not specified in the interim rule the particular minimum sanctions that must apply. The enhanced penalties may include longer terms of license suspension, increased fines, additional or extended sentences of confinement, vehicle sanctions, or mandatory assessment and treatment as appropriate.

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

The agency is aware of ten States that have such graduated penalty programs. In these States, the enhanced or

additional penalties begin to apply at levels ranging from 0.15 to 0.20 BAC.

To demonstrate compliance in the first fiscal year a State receives a grant based on this criterion, a State must submit a copy of the law, regulation or binding policy directive implementing or interpreting the law or regulation, which provides for each element of the program for drivers with high BAC criterion. The law, regulation or binding policy must specify the penalties that are to be imposed on drivers determined to have a high BAC, and these penalties must be greater than those that apply to other convicted drivers. To demonstrate compliance in subsequent fiscal years, the State need only submit a copy of any changes to the State's law, regulation or binding policy directive. If there have been no changes in the State's law, regulation or binding policy directive since the previous year's submission, the State shall submit instead a certification to that effect.

*F. Young Adult Drinking and Driving Programs*

Alcohol involvement in crashes reaches its highest rate for those between the ages of 21 and 34. FARS data for 1997 indicates that 45 percent of all drinking drivers in alcohol-related fatal crashes were in this age group. More than 50 percent of those drivers 21 to 34 years of age who were killed in fatal crashes had alcohol in their system—the highest percentage of any age group. Data from a 1996 Roadside Survey show that although the percentage of all drivers with a BAC of 0.05 or above had decreased since 1986 (from 8.4 percent to 7.7 percent), the percentage of those age 21–34 with a BAC of 0.05 or above increased (from 9.9 percent to 11.3 percent). The same tread was true for those with a BAC of 0.10 or above—the percentage of all drivers with a BAC of 0.10 or above decreased (from 3.2 percent to 2.8 percent) while the percentage of those age 21–34 with a BAC of 0.10 or above increased (from 3.3 percent to 3.8 percent). Self-reported survey data indicate that adults age 21–29 are the most likely to drive after drinking. Since the drivers in this age group can drink lawfully, the laws and enforcement strategies that are used to target teenage drivers are not available for them. Therefore, other prevention and enforcement strategies must be identified to target drivers in this age group.

TEA–21 adds a new basic grant criterion to the Section 410 program to encourage the development of young adult drinking and driving programs. TEA–21 provides that, to qualify for a grant based on this criterion, a State must demonstrate:

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

The interim final rule provides that, to qualify under this criterion, States must meet two requirements. First, they must demonstrate that they have in place a public information and awareness campaign aimed at persons between the ages of 21 and 34. Such a program must be conducted on a Statewide basis, and it must be designed to increase awareness among young adults (age 21–34) regarding alcohol-impaired driving laws and the penalties, costs and other consequences of alcohol-impaired driving.

Second, they must demonstrate that they have in place certain partnership activities that seek to promote prevention. The interim regulation identifies four such activities: activities involving the participation of employers; activities involving the participation of colleges or universities; activities involving the participation of the hospitality industry; and activities involving the participation of appropriate State officials that will encourage the assessment and incorporation of treatment as appropriate in judicial sentencing for young adult drivers.

The agency does not expect that States will have all such partnership activities in place during the first year of the Section 410 program. Accordingly, the interim final rule provides States with an opportunity to put these activities into place over time. To qualify in the first fiscal year a State receives a grant based on this criterion, the State must be engaged in one of these four partnership activities, and it must have a plan for expanding into the other areas. To qualify in subsequent fiscal years, the State must be engaged in all four activities.

To demonstrate compliance in the first fiscal year a State receives a grant based on this criterion, the State must submit a description and sample materials documenting the Statewide public information and awareness campaign, a description and sample materials documenting the ongoing partnership activities involving at least one of the four components listed above, and a plan that outlines proposed efforts to conduct activities involving all four of these components. To demonstrate compliance in subsequent fiscal years, the State must submit an updated description of its Statewide public information and awareness campaign and of all ongoing partnership activities, with information documenting that all four components are involved.

*G. Testing for BAC*

Improving the rate of testing for blood alcohol concentration (BAC) of drivers involved in fatal crashes is a critical component of any alcohol-impaired driving program. Increased BAC testing helps us to understand the problem, identify offenders, and take steps to develop effective solutions to reduce the tragic consequences of impaired driving. According to FARS data, only 43.7 percent of all drivers involved in fatal crashes in 1997 were tested for BAC and the results are known. NHTSA estimates that thousands of drivers each year are impaired by alcohol when involved in a fatal crash, but are not detected or charged because a BAC test was not administered or the results are not available. If more drivers were tested for BAC and the results are made available, estimates of alcohol involvement in fatal crashes would be more accurate, more offenders would be prosecuted and the data collected would facilitate the development of better alcohol-impaired driving countermeasures.

Mandatory BAC testing has been a supplemental grant criterion under Section 410 since the inception of the program. TEA–21 modifies this criterion and makes it, for the first time, a criterion for a basic grant. Under TEA–21, to qualify for a grant based on this criterion, a State must demonstrate:

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

Prior to the enactment of TEA–21, States could qualify for a supplemental grant based on this criterion if they demonstrated that they provided for mandatory testing of drivers involved in fatal or serious-injury crashes for the presence of alcohol when there was probable cause to do so. States could demonstrate compliance as either Law States or Data States. Law States were required to submit a law that provided that law enforcement officials were required to order and that offenders were required to submit to a chemical test in all fatal and serious injury crashes where there was probable cause to order the test. Data States were required to submit data showing that substantially all drivers in fatal and

serious injury crashes were in fact tested.

TEA–21 changed this criterion by focusing solely on fatal (and not serious injury) crashes and by shifting the emphasis of this criterion from program design to performance. TEA–21 provides that, to qualify for a grant based on this criterion in FY 1999 and 2000, a State must show an effective system for improving the rate of testing (without specifying the method for doing so). To qualify, beginning in FY 2001, a State must have a testing rate that is above the national average.

The agency believes Congress intended to encourage States to take a variety of steps in the first two fiscal years of this program (in FY's 1999 and 2000) to increase their particular testing rates and, thereby, increase testing rates in the nation as a whole. Then, in FY 2001 and beyond, only those States that exceed the national average will be eligible for a grant based on this criterion.

Accordingly, the agency has decided to provide additional flexibility in the interim final rule by permitting States to qualify for a grant based on this criterion in FY's 1999 and 2000 through various methods.

States may continue to qualify based on a law or data. A State can qualify based on its law, if the law provides that law enforcement officials are required to order and that offenders are required to submit to a chemical test in all fatal crashes. A State can qualify based on data, if the data shows that the State's percentage of BAC testing among drivers involved in fatal motor vehicle crashes is equal to or exceeds the national average, as determined under the most recently available FARS data as of the first day of the fiscal year for which grant funds are being sought.

Alternatively, the interim final rule provides that States may qualify instead by agreeing to conduct a symposium or workshop designed to increase the percentage of BAC testing for drivers involved in fatal motor vehicle crashes. The symposium or workshop must be attended by a broad range of individuals in the State who play a role and can have an impact on the State's percentage of BAC testing, including representatives of law enforcement officials, prosecutors, hospital officials, medical examiners and/or coroners, physicians and judges. States have conducted these types of workshops or symposia, with positive results. The agency believes States that take this step can be effective at increasing their BAC testing percentages.

The information States must submit to demonstrate compliance with this criterion differs, depending on the fiscal year in which the State is applying, whether this is a first or a subsequent-year application, and the method the State is using to qualify. The interim final rule provides a detailed account of the information that must be submitted in each individual case.

For example, to demonstrate compliance in FY 1999 or 2000 based on a law, the State must submit a copy of the law, regulation or binding policy directive implementing or interpreting the law or regulation that provides for each element of this criterion. To demonstrate compliance in FY 1999 or 2000 based on data, the State must submit a statement certifying that the percentage of BAC testing among drivers involved in fatal motor vehicle crashes in the State is equal to or greater than the national average, as determined under the most recently available FARS data as of the first day of the fiscal year for which grant funds are being sought. NHTSA will verify the actual testing percentages.

To demonstrate compliance in FY 1999 or 2000 based on an agreement to conduct a symposium or workshop, the State must describe the symposium or workshop that is planned, and submit a copy of the proposed agenda and a list of the names and affiliations of the individuals who are expected to attend. If the symposium or workshop has already taken place, the State must describe the event and submit the actual agenda and list of attendees.

If a State demonstrated compliance in FY 1999 based on an agreement to conduct a symposium, then to demonstrate compliance in FY 2000 using the same method, the State must submit the report or other documentation that was generated as a result of the symposium or workshop, with the recommendations that were developed, and a plan that outlines how the recommendations will be implemented.

Beginning in FY 2001, to demonstrate compliance for a grant based on this criterion, a State need only submit a statement certifying that the percentage of BAC testing among drivers involved in fatal motor vehicle crashes in the State is equal to or exceeds the national average, as determined under the most recently available FARS data as of the first day of the fiscal year for which grant funds are being sought. NHTSA will verify the actual testing percentages.

## III. Performance Grant Criteria

In past years, some have challenged the approach taken by the Section 410 program, under which States qualify for grants if they adopt programs from a prescribed list established by Congress. They argue that States should be provided the opportunity to qualify for grants based on their performance, without regard to the particular programs that the States chose to use to obtain their results.

The new Section 410 program, as amended by TEA–21, addresses this concern by providing for not one, but two, basic grants. States may qualify for funds under a programmatic basic grant if they conduct programs that are outlined in the programmatic basic grant criteria. Alternatively, States may qualify for funds under a performance basic grant simply by demonstrating State performance. (Moreover, States that meet both sets of requirements can qualify to receive both basic grants.)

To qualify for a performance basic grant, a State must demonstrate each of the following:

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

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

The interim final rule adopts these two conditions, and establishes two methods for calculating the percentages described above.

Each calendar year, NHTSA will calculate the percentage of fatally injured drivers with a BAC of 0.10 percent or greater for each State and the average percentage for all States for each of the three most recent calendar years for which the data are available as of the first day of the fiscal year for which grant funds are being sought, using data contained in the FARs, and NHTSA's method for estimating alcohol involvement (as developed and published by Klein, 1986). The agency then will make the information available through its regional offices.

Any State that meets the two requirements outlined above, based on the percentages calculated by NHTSA, may demonstrate compliance simply by submitting a certification statement. NHTSA will verify the actual percentages.

Alternatively, any State with a percentage of BAC testing among fatally injured drivers of 85 percent or greater in the three most recent calendar years for which FARS data are available as of

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

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

## IV. Supplemental Grant Criteria

Prior to the enactment of TEA–21, the Section 410 supplemental grant criteria included the following: an open container and consumption law; a suspension of registration and return of license plate program; a mandatory blood alcohol concentration testing program; a drugged driving prevention program; a per se law at 0.08 BAC (during the first three fiscal years in which a basic grant was received); and a video equipment program.

TEA–21 removed some of these criteria from the Section 410 program. A per se law at 0.08 BAC became the criterion for a separate incentive grant program, 23 U.S.C. 163, under which States may qualify for a total of $500 million over a six-year period. An open container and consumption law became the criterion for a new transfer program, 23 U.S.C. 154, under which States will be subject to a transfer of highway construction funds beginning in FY 2001 unless they have enacted and are enforcing such a law. Some of the supplemental criteria (or modifications thereof) continue to be features of the Section 410 program.

With the enactment of TEA–21, to qualify for a supplemental grant, a State must be eligible for at least one of the two Section 410 basic grants, and it must demonstrate compliance with one or more of the following six supplemental grant criteria: a video equipment program; a self-sustaining drunk driving prevention program; the reduction of driving with a suspended license; a passive alcohol sensor program; an effective DWI tracking system; or other innovative programs.

Of these criteria, the passive alcohol sensor program, an effective DWI tracking system and other innovative programs are new to Section 410. Two of the criteria were features of Section 410 prior to the enactment of TEA–21 (the video equipment program was a supplemental grant criterion and the self-sustaining drunk driving prevention program was a criterion for a basic grant). The reduction of driving with a suspended license criterion represents a modification of a former Section 410 criterion, which encouraged States to provide for the suspension of registration and return of license plates for certain serious offenses.

### *A. Video Equipment Program*

The use of in-vehicle video equipment to record DWI investigations has increased in recent years, and officers who have used the equipment identify many positive results. They indicate, for example, that use of the equipment provides evidence of what happened at the time of the arrest, it convinces many defendants to plead guilty, it helps officers testify in court and it protects officers from false allegations and liability suits. Use of the equipment also helps the persons who have been detained. It helps to ensure that officers follow correct procedures and otherwise protects the suspects' rights.

The majority of law enforcement agencies that use video equipment have written policies governing its use. These policies address what types of arrests should be recorded, who is responsible for maintaining the equipment, evidentiary issues and information about training. A model policy has been developed by the International Association of Chiefs of Police.

A video equipment program has been a supplemental grant criterion under Section 410 since 1991. TEA–21 continues to include this program as a supplemental grant criterion, without change. To qualify for a grant based on this criterion, a State must demonstrate that:

> The State provides for a program to acquire video equipment to be used in detecting persons who operate motor vehicles while under the influence of alcohol and in prosecuting those persons, and to train personnel in the use of that equipment.

The requirements that States must meet and the information they must submit to demonstrate compliance with this criterion are essentially unchanged. Accordingly, there are not substantive changes to this portion of the agency's implementing regulation.

To demonstrate compliance in the first fiscal year a State receives a grant based on this criterion, as before, the State must submit a plan for the acquisition and use of video equipment in law enforcement vehicles for the enforcement of impaired driving laws, including: a schedule for the areas where the equipment has been and will be installed and used; a plan for training law enforcement personnel, prosecutors and judges in the use of this equipment; and a plan for public information and education programs to enhance the general deterrent effect of the equipment.

To demonstrate compliance in subsequent years, the State must submit information on the use and effectiveness of the equipment and an updated plan for any acquisition and use of additional equipment.

### *B. Self-Sustaining Drunk Driving Prevention Program*

Self-sustaining drunk driving prevention programs ensure that resources are generated while a State is enforcing its impaired driving laws, and then are made available to detect, arrest, prosecute and sanction other DWI offenders and to educate the public about impaired driving. A self-sustaining program provides for fines, reinstatement fees or other charges to be assessed, and for the funds received to be used directly to sustain a comprehensive Statewide drunk driving prevention program. States that have institute such programs have been very effective in reducing alcohol-related crashes and fatalities.

A self-sustaining drunk driving prevention program has been a basic grant criterion under the Section 410 program since the program's inception. TEA–21 continues to include this grant criterion in Section 410, but changes it from a basic to a supplemental criterion and makes some modifications to the elements that States must meet to demonstrate compliance with this criterion. TEA–21 provides that, to qualify for a grant based on this criterion, a State must demonstrate that:

> The State provides for a self-sustaining drunk driving prevention program under which a significant portion of the fines or surcharges collected from individuals apprehended and fined for operating a motor vehicle while under the influence of alcohol are returned to those communities which have comprehensive programs for the prevention of such operations of motor vehicles.

Prior to the enactment of TEA–21, States could qualify under this criterion if a significant portion of the fines or surcharges collected from individuals apprehended and fined for operating a motor vehicle while under the influence of alcohol was either returned or an equivalent amount was provided to communities with self-sustaining comprehensive drunk driving prevention programs. TEA–21 amended

this criterion to provide that providing an equivalent amount of funds is no longer sufficient. The actual fines or surcharges collected now must be returned to those communities in order for a State to comply. This statutory change has been incorporated into the implementing regulation.

The agency recognizes that this change may prevent some States, such as those whose Constitution prohibits such a dedicated non-discretionary use of fines and penalties obtained from driving offenders, from qualifying under this criterion. However, NHTSA notes that Congress changed this criterion from a basic to a supplemental grant criterion. Accordingly, a State's inability to comply with this criterion will not inhibit any State's ability to obtain a basic grant.

In previous years, States were required to submit a great deal of information to demonstrate compliance with this criterion. In an effort to streamline the administration of this program, and to reduce the recordkeeping and reporting burdens on the States, the agency has simplified this portion of the regulation. To demonstrate compliance in the first year a State receives a grant based on this criterion, the State now need only submit a copy of the law, regulation or binding policy directive that provides for a self-sustaining drunk driving prevention program and certain Statewide data (or a representative sample).

The law, regulation or binding policy directive must provide for fines or surcharges to be imposed on individuals apprehended for operating a motor vehicle while under the influence of alcohol and for such fines or surcharges collected to be returned to communities with comprehensive drunk driving prevention programs. The interim final rule defines the elements of such a program. The data must show the aggregate amount of fines or surcharges collected, the aggragate amount of revenues returned to communities with comprehensive drunk driving prevention programs under the State's self-sustaining system, and the aggregate cost of the State's comprehensive drunk driving prevention programs.

To demonstrate compliance in subsequent years, States need only submit updated data and either a copy of any changes to the State's law, regulation or binding policy directive or, if there have been no changes to the State's law, regulation or binding policy directive, then a certification statement to that effect.

*C. Reduction of Driving With a Suspended License*

Driving with a suspended license (DWS) is illegal in all States, yet many drivers with suspended licenses continue to drive. Studies estimate that, in some States, as many as 60–80 percent of drivers with suspended or revoked licenses continue to drive, although it is believed that these drivers tend to operate their vehicles less frequently and more carefully, to avoid detection.

A program for the suspension of the registration and the return of license plates has been a supplemental grant criterion since the inception of the Section 410 program. TEA–21 adopts as a supplemental grant criterion a modification of this program, which encourages the development of a program to reduce driving with a suspended license. TEA–21 provides that, to qualify for a grant based on this criterion, a State must demonstrate that:

> The State enacts and enforces a law to reduce driving with a suspended license. Such law . . . may require a ''zebra'' stripe that is clearly visible on the license plate of any motor vehicle owned and operated by a driver with a suspended license.

Some States, such as Oregon, have enacted ''zebra stripe'' laws (although no such laws are currently in effect). The Oregon ''zebra stripe'' program, which included strong public information and enforcement components, showed a marked reduction in driving with a suspended license. Other laws have been shown to be effective at reducing this problem, as well; in particular, laws that provide for vehicle sanctions. Accordingly, the agency has decided that States can qualify under this criterion if they have in effect any one of a number of vehicle-related sanctions. The sanctions may provide for either: the suspension of the registration and the return of license plates; or the impoundment, immobilization, forfeiture or confiscation of motor vehicles; as well as the use of ''zebra stripes'' or other distinctive markings on license plates.

Prior to TEA–21, to qualify under the criterion for the suspension of the registration and the return of license plates, State laws had to apply to DWS offenders and repeat DWI offenders. Under TEA–21 and the revised regulation, this criterion requires that the vehicle sanctions apply only to the former.

In addition, prior to TEA–21, the vehicle sanction had to be in place during the entire term during which the individual's driver's license was under suspension or revocation. Under TEA–21 and the revised regulation, this criterion does not specify a minimum length of time during which the vehicle sanction must apply. The regulation requires only that the sanction must be in place for some time period, to be specified by the State, during the offender's driver's license suspension or revocation term. Consistent with past practice, and the requirements of similar criteria currently being administered by the agency Under other programs, the sanction must apply to any motor vehicle owned by the individual.

NHTSA recognizes that the suspension of the registration and the return of license plates, as well as the impoundment, immobilization, forfeiture or confiscation of a motor vehicle could have serious adverse consequences on individuals other than the offender. Accordingly, although the agency does not encourage States to create exceptions to their laws, and exceptions certainly are not required to be included for a State to qualify for a grant under this criterion, the interim final rule provides that a State may provide limited exceptions to their vehicle sanctions on an individual basis to avoid undue hardship to any individual who is completely dependent on the motor vehicle for the necessities of life. Such individuals may include any family member of the convicted individual, and any co-owner of the motor vehicle, but not the convicted individual.

Such exceptions may be issued only in accordance with a State law, regulation or binding policy directive establishing the conditions under which motor vehicles or license plates 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 unrestricted use of the motor vehicle.

To demonstrate compliance in the first fiscal year a State receives a grant based on this criterion, a State must submit a copy of the law, regulation or binding policy directive implementing or interpreting the law or regulation, which provides for each element of the reduction of driving with a suspended license criterion. To demonstrate compliance in subsequent fiscal years, the State need only submit a copy of any changes to the State's law, regulation or binding policy directive. If there have been no changes in the State's law, regulation or binding policy directive since the previous year's submission, the State shall submit instead a certification to that effect.

*D. Passive Alcohol Sensors*

Passive alcohol sensors are designed to enhance the ability of law enforcement officials to detect alcohol use by a driver. These sensors often are used to enhance the capabilities of officers at sobriety checkpoints or investigative stops. Research reports indicate that passive sensor use increased the detection of BACs of 0.10 or more by 15 percent. An officer's ability to detect alcohol at lower BACs (e.g., between 0.05 and 0.10), where it is more difficult for the officer to detect alcohol, was nearly doubled with the use of passive alcohol sensors, thereby making these procedures more efficient. Passive alcohol detection serves as an extension of the officers' ability to detect alcohol with their senses, thereby enhancing the enforcement of alcohol-related traffic safety laws. The detection of alcohol typically provides sufficient grounds to further investigate whether an alcohol-related traffic law (e.g., driving under the influence) has been violated.

TEA–21 adds a new supplemental grant criterion to the Section 410 program to encourage the use of passive alcohol sensors. TEA–21 provides that, to qualify for a grant based on this criterion, a State must demonstrate that:

> The State provides for a program to acquire passive alcohol sensors to be used by police officers in detecting persons who operate motor vehicles while under the influence of alcohol, and to train police officers in the use of that equipment.

To qualify for an incentive grant based on this new criterion, a State must have a passive alcohol sensor program that calls for the acquisition and use of passive alcohol sensors and provides for training law enforcement personnel in their use.

The information States must submit to demonstrate compliance with this criterion is similar to the information they must submit to demonstrate compliance with the video equipment program. To demonstrate compliance in the first fiscal year a State receives a grant based on this criterion, the State must submit a plan for the acquisition and use of passive alcohol sensors. The plan must include: A schedule for the areas where the equipment has been and will be used; a plan to train law enforcement personnel and to inform prosecutors and judges about the purpose and use of these devices; and a plan for a public information and education program to enhance the general deterrent effect of the equipment. To demonstrate compliance in subsequent fiscal years, the State must submit information on the use and effectiveness of the equipment and an updated plan for any acquisition and use of additional equipment.

*E. Effective DWI Tracking System*

Each year, more than 1.4 million drivers are arrested for DWI. The development of an effective DWI tracking system in a State can enhance the deterrent effect of sanctions by ensuring that offenders do not fail to complete conditions of sentences, administrative actions, or assessment and treatment due to oversight or insufficient access to records. Effective DWI tracking systems also can assure that offenders subsequently charged with DWI are sanctioned at the time of posting bond and sentencing as repeat, not first, offenders. In addition, effective tracking systems serve to focus resources on those offenders who pose the greatest risk to themselves and others—repeat offenders and problem drinkers with a high BAC.

In 1997, NHTSA completed a comprehensive study and published a three-volume report entitled ''Driving While Intoxicated Tracking Systems.'' The study concludes that an effective DWI tracking system should provide the means to accomplish two ends.

First, the DWI ''critical path'' of each offender should be monitored from arrest through dismissal or sentence completion. Any weakness in the critical path may be perceived by an offender as an inability of ''the system'' to provide adequate punishment and may not deter the offender from repeating the offense. For example, if alcohol treatment was a condition of a sentence, but the offender successfully regained driving privilege without completing treatment, program effectiveness for that individual may be reduced. General deterrence could be reduced as well, due to the perception that sanctions are not enforced.

Second, the DWI tracking system should provide aggregate DWI data on various demographic groups that will allow legislators, policymakers, treatment professionals, and others to evaluate the current DWI environment, countermeasure programs, and laws designed to reduce DWI, or to rehabilitate DWI offenders. At a minimum, annual statistical reports should be available that provide data on arrests, convictions, fines assessed and paid, pleas, sanctions, sentences, and treatment effectiveness by various demographic groups.

TEA–21 adds a new supplemental grant criterion to the Section 410 program for States that develop effective DWI tracking systems. TEA–21 provides that, to qualify for a grant based on this criterion, a State must demonstrate:

> An effective driving while intoxicated (DWI) tracking system. Such a system * * * may include data covering arrests, case prosecutions, court dispositions and sanctions, and provide for the linkage of such data and traffic records systems to appropriate jurisdictions and offices within the State.

To qualify for a grant based on this criterion, a State must demonstrate that it has established a tracking system with the ability to: collect, store, and retrieve data on individual DWI cases, from arrest through all stages, until dismissal or until all applicable sanctions have been completed; link the DWI tracking system to appropriate jurisdictions and offices within the State to provide all appropriate officials with timely and accurate information concerning individuals charged with an alcohol-related driving offense; and provide aggregate data, organized by specific categories, suitable for allowing appropriate State officials to evaluate the DWI environment in the State.

To demonstrate compliance in the first fiscal year a State receives a grant based on this criterion, the State must submit information describing the system, including the means used to collect, store and retrieve data and an explanation of how the system is linked to appropriate jurisdictions and offices within the State. The State must submit also an example of available statistical reports and analyses and a sample data run showing tracking of a DWI arrest, through final disposition. To demonstrate compliance in subsequent fiscal years, the State must submit information demonstrating the use of the system.

*F. Other Innovative Programs*

NHTSA has long sought ways to encourage the development of innovative programs to address impaired driving and other highway safety issues. The agency has sought also to identify innovative programs that have been demonstrated to be effective, and to publicize these successful programs, so that others can duplicate them in their States or communities. This technique, of encouraging the development and then the duplication of effective, innovative programs, accomplishes several objectives. It encourages experimentation, identifies success, promotes the best use of available resources and helps States and communities avoid having to ''reinvent the wheel.''

Since 1993, NHTSA has published the *Traffic Safety Digest*, which highlights innovative programs in 12 different

areas of traffic safety. The *Digest* is published quarterly.

TEA–21 adds a new supplemental grant criterion to the Section 410 program to encourage the development of innovative programs. TEA–21 provides that, to qualify for a grant based on this criterion, a State must demonstrate:

> Other innovative programs to reduce traffic safety problems resulting from individuals driving while under the influence of alcohol or controlled substances, including programs that seek to achieve such a reduction through legal, judicial, enforcement, educational, technological, or other approaches.

To qualify for an incentive grant based on this new criterion, a State must demonstrate that it has implemented an innovative program designed to reduce alcohol- or drug-impaired driving. To ensure that programs are operational and current, the interim regulation provides that the program must have been implemented within the last two years. It must also have been shown to be effective.

The agency will consider a program to be innovative if it contains one or more substantial components that make the program different from those previously conducted in the State. The program may be an adaptation or combination of approaches that have been used before, but it must include one or more features (that are more than incidental) that make the program unique. For example, innovative programs may demonstrate new ways to reach target populations (such as teenagers or Native Americans) more effectively, involve non-traditional partners in efforts to deter impaired driving (as the CODES project did when it encouraged data sharing between the law enforcement and medical communities), or be based on the passage of a unique law or ordinance that is designed to address alcohol- or drug-impaired driving.

To qualify for a grant based on this criterion, the innovative component(s) of the program must not have been used by the State in this or a previous fiscal year to qualify for a Section 410 grant based on any other criterion. For example, a State that qualifies for a grant based on its use of video or passive sensor equipment could not qualify for a grant under the ''other innovative programs'' criterion based on its use of such equipment, unless the State uses the equipment in a unique and innovative way, and the State's unique or innovative method for using the equipment has been determined to be effective.

In addition, the innovative component(s) of the program may be used only once to qualify for a supplemental Section 410 under the ''other innovative programs'' criterion.

To demonstrate compliance with this criterion, States must submit a description of the program. The information that must be included in the description listed in the interim regulation. The description may be presented in the same format used by States when submitting proposals to NHTSA's *Traffic Safety Digest.* Programs described by a State in its Section 410 application and determined by NHTSA to qualify under the ''other innovative programs'' criterion will enable the State to qualify for supplemental grant funds, and also will be considered for publication in the *Traffic Safety Digest.*

## V. Administrative Issues

### *A. Qualification Requirements*

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

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

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

Upon receipt and subsequent approval of a State's application, NHTSA will award grant funds to the State and will authorize the State to incur costs after receipt of an HS Form 217. Vouchers must be submitted to the appropriate NHTSA Regional Administrator and reimbursement will be made to States for authorized expenditures. The funding guidelines applicable to the Section 402 Highway Safety Program will be used to determine reimbursable expenditures under the Section 410 program. As with requests for reimbursement under the Section 402 program, States should indicate on the vouchers what amount of the funds expended are eligible for reimbursement under Section 410.

### *B. Limitation on Grants*

Prior to the enactment of TEA–21, qualifying States were eligible to receive each Section 410 grant for up to five fiscal years. Basic grants were limited to an amount equal to 30 percent of the State's Section 402 apportionment for fiscal year 1992. Each supplemental grant was limited to five percent of the State's fiscal year 1992 Section 402 apportionment. In addition, States were required to match the grant funds they received, so that the Federal share did not exceed 75 percent of the cost of the program adopted under Section 410 in the first fiscal year the State received funds, 50 percent in the second fiscal year the State received funds and 25 percent in the third, fourth and fifth fiscal year.

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

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

Section 410, as amended by TEA–21, limits the funds that will be available each fiscal year for supplemental grants to 10 percent of the funding for the

entire Section 410 program for that fiscal year. TEA–21 does not specify how each State's supplemental grant is to be calculated.

The interim final rule provides that supplemental grants will be calculated by multiplying the number of supplemental grant criteria a State meets by five percent of the State's Section 402 apportionment for FY 1997. The agency believes such a calculation takes into account, in an appropriate way, the size of the State in terms of population and highway mileage (in accordance with the formula used under Section 402) and the accomplishments the State has demonstrated in its alcohol-impaired driving prevention program.

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

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

*C. Award Procedures*

The release of the full grant amounts under Section 410 shall be subject to the availability of funding for that fiscal year. If there are expected to be insufficient funds to award full grant amounts to all eligible States in any fiscal year, NHTSA may release less than the full grant amounts upon initial approval of the State's application and documentation, and the remainder of the full grant amounts up to the State's proportionate share of available funds, before the end of that fiscal year. Project approval, and the contractual obligation of the Federal government to provide grant funds, shall be limited to the amount of funds released.

The Secretary may transfer any amounts remaining available under 23 U.S.C. Sections 405, 410 and 411 to the amounts made available under any other of these programs to ensure, to the maximum extent possible, that each State receives the maximum incentive funding for which it is eligible.

## VI. Interim final rule

These regulations are being published as an interim final rule. Accordingly, the revised regulations in Part 1313 are fully in effect 30 days after the date of the document's publication. No further regulatory action by the agency is necessary to make these regulations effective.

These regulations have been published as an interim final rule because insufficient time was available to provide for prior notice and opportunity for comment. Grants will be available under these revised regulations, beginning in FY 1999. Many of the grant criteria require States to enact legislation in order to comply. States are preparing their legislative agendas now for their 1999 legislative sessions. The States have a need to know what the criteria for grants under this program will be as soon as possible so they can enact conforming legislation.

In the agency's view, the States will not be impeded by the use of an interim final rule. The procedures that States must follow to apply for grants under this program are not altered in any significant way from the procedures they have followed in the past to apply for Section 410 incentive grant funds. Those procedures were established by rulemaking and were subject to notice and the opportunity for comment.

The criteria States must meet to qualify for funds are derived from the Federal statute, and many of them are the same or similar to criteria previously contained in the Section 410 and other grant programs administered by NHTSA. For these reasons, the agency believes that there is good cause to find that providing notice and comment in connection with this rulemaking action is impracticable, unnecessary, and contrary to the public interest.

The agency requests written comments on these new regulations. All comments submitted in response to this document will be considered by the agency. Following the close of the comment period, the agency will publish a document in the **Federal Register** responding to the comments and, if appropriate, will make further amendments to the provisions of Part 1313.

## VII. Written Comments

Interested persons are invited to comment on this interim final rule. It is requested, but not required, that two copies be submitted.

All comments must be limited to 15 pages in length. Necessary attachments may be appended to those submissions without regard to the 15-page limit (49 CFR 553.21). This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

Written comments to the public docket must be received by March 1, 1999. To expedite the submission of comments, simultaneous with the publication of this notice, NHTSA will provide copies to all Governors' Representatives for Highway Safety.

All comments received before the close of business on the comment closing date will be considered and will be available for examination in the docket at the above address before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date.

NHTSA will continue to file relevant material in the docket as it becomes available after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons who wish to be notified upon receipt of their comments in the docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Copies of all comments will be placed in the Docket for this interim final rule in the Office of Docket Management, Room PL–401, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590.

## VIII. Rulemaking Analyses and Notices

*A. Executive Order 12612 (Federalism)*

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Accordingly, a Federalism Assessment has not been prepared.

*B. Executive Order 12778 (Civil Justice Reform)*

This interim final rule will not have any preemptive or retroactive effect. The enabling legislation does not establish a procedure for judicial review of rules

promulgated under its provisions. There is no requirement that individuals submit a petition for reconsideration or other administrative proceedings before they may file suit.

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

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

The action will not have an annual effect on the economy of $100 million or more or adversely affect in a material way a sector of the economy, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities. It will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency, and it will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof. Nor does it raise novel legal or policy issues.

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

*D. Regulatory Flexibility Act*

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the agency has evaluated the effects of this action on small entities.

Based on the evaluation, we certify that this action will not have a significant impact on a substantial number of small entities. States are the recipients of any funds awarded under the Section 410 program, and they are not considered to be small entities, under the Regulatory Flexibility Act.

*E. Paperwork Reduction Act*

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

Accordingly, these requirements have been submitted previously to and approved by OMB, pursuant to the Paperwork Reduction Act (44 U.S.C. 3501, et seq.). These requirements have been approved under OMB No. 2127–0501, through January 31, 2000. This interim final rule reduces for the States previous information collection requirements associated with demonstrating compliance with many of the criteria.

*F. National Environmental Policy Act*

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

*G. Unfunded Mandates Reform Act*

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

**List of Subjects in 23 CFR Part 1313**

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

In consideration of the foregoing, NHTSA revises Part 1313, chapter III, of Title 23 of the Code of Federal Regulations to read as follows:

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

Sec.

1313.1 Scope.
1313.2 Purpose.
1313.3 Definitions.
1313.4 General requirements.
1313.5 Requirements for a programmatic basic grant.
1313.6 Requirements for a performance basic grant.
1313.7 Requirements for a supplemental grant.
1313.8 Award procedures.
Appendix A to Part 1313—Tamper Resistant Driver's License

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

### § 1313.1 Scope.

This part establishes criteria, in accordance with 23 U.S.C. 410, for awarding incentive grants to States that adopt and implement effective programs to reduce traffic safety problems resulting from individuals driving motor vehicles while under the influence of alcohol.

### § 1313.2 Purpose.

The purpose of this part is to encourage States to adopt and implement effective programs to reduce traffic safety problems resulting from individuals driving motor vehicles while under the influence of alcohol. The criteria established are intended to ensure that State alcohol-impaired driving prevention programs for which incentive grants are awarded meet or exceed minimum levels designed to improve the effectiveness of such programs.

### § 1313.3 Definitions.

(a) ''Alcoholic beverage'' means wine containing one-half of one percent or more of alcohol by volume, beer and distilled spirits. 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.

(b) ''Blood alcohol concentration'' or ''BAC'' means grams of alcohol per deciliter or 100 milliliters blood or grams of alcohol per 210 liters of breath.

(c) ''Controlled substance'' has the meaning given such term under section 102(6) of the Controlled Substances Act, 21 U.S.C. 802(6).

(d) ''FARS'' means NHTSA's Fatality Analysis Reporting System, previously called the Fatal Accident Reporting System.

(e) ''Motor vehicle'' means a vehicle driven or drawn by mechanical power and manufactured primarily for use on public streets, roads and highways, but does not include a vehicle operated only on a rail line.

(f) ''Operating a motor vehicle while under the influence of alcohol'' means operating a vehicle while the alcohol concentration in the blood or breath, as determined by chemical or other tests, equals or exceeds the level established by the State that would be deemed to be or equivalent to the standard driving while intoxicated offense in the State.

(g) ''Standard driving while intoxicated (DWI) offense'' means the law in the State that makes it a criminal offense to operate a motor vehicle while under the influence of or intoxicated by alcohol, but does not require a measurement of alcoholic content.

**§ 1313.4 General requirements.**

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

(1) Submit an application to the appropriate NHTSA Regional Office that demonstrates that it meets the requirements of § 1313.5 and/or § 1313.6 and, if applicable, § 1313.7, and includes certifications that:

(i) It has an alcohol-impaired driving prevention program that meets the requirements of 23 U.S.C. 410 and 23 CFR Part 1313;

(ii) It will use the funds awarded under 23 U.S.C. 410 only for the implementation and enforcement of alcohol-impaired driving prevention programs;

(iii) It will administer the funds in accordance with 49 CFR Part 18 and OMB Circulars A–102 and A–87; and

(iv) It will maintain its aggregate expenditures from all other sources for its alcohol-impaired driving prevention programs at or above the average level of such expenditures in fiscal years 1996 and 1997 (either State or Federal fiscal year 1996 and 1997 can be used); and

(2) After being informed by NHTSA that it is eligible for a grant, submit to the agency, within 30 days, a Program Cost Summary (HS Form 217) obligating the Section 410 funds to alcohol-impaired driving prevention programs.

(3) Submit a State Highway Safety Plan by September 1 of each year, pursuant to 23 U.S.C. 402 and 23 CFR Part 1200, that documents how the State intends to use the Section 410 grant funds.

(4) Submit an application for grant funds, which must be received by the agency not later than August 1 of the fiscal year for which the State is applying for funds.

(b) *Limitation on grants.* A State may receive grants for up to six fiscal years beginning after September 30, 1997, subject to the following limitations:

(1) After September 30, 1998, the amount of each basic grant in a fiscal year, under § 1313.5 or § 1313.6, shall equal 25 percent of the State's apportionment under 23 U.S.C. 402 for FY 1997, subject to the availability of funds. If a State qualifies for basic grants in a fiscal year under both § 1313.5 and § 1313.6, the total amount of basic grants in the fiscal year shall equal 50 percent of the State's 23 U.S.C. 402 apportionment for FY 1997, subject to the availability of funds.

(2) After September 30, 1998, the amount of a State's supplemental grant in a fiscal year, under § 1313.7, shall be determined by multiplying the number of supplemental grant criteria the State meets by five percent of the State's 23 U.S.C. 402 apportionment for FY 1997, except that the amount shall be subject to the availability of funds. The amount available for supplemental grants for all States in a fiscal year, under § 1313.7, shall not exceed ten percent of the total amount made available under 23 U.S.C. 410 for the fiscal year.

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

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

(5) In the fifth and sixth fiscal years a State receives a basic or supplemental grant, it shall be reimbursed for up to 25 percent of the cost of its alcohol-impaired driving prevention program adopted pursuant to 23 U.S.C. 410.

**§ 1313.5 Requirements for a programmatic basic grant.**

To qualify for a programmatic basic incentive grant of 25 percent of the State's 23 U.S.C. 402 apportionment for FY 1997, a State must adopt and demonstrate compliance with at least five of the following criteria:

(a) Administrative license suspension or revocation system.

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

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

(A) Suspend all driving privileges for a period of not less than 90 days if the individual refused to submit to a chemical test and is a first offender;

(B) Suspend all driving privileges for a period of not less than 90 days, or not less than 30 days followed immediately by a period of not less than 60 days of a restricted, provisional or conditional license, if the individual was determined on the basis of a chemical test to have been operating a motor vehicle while under the influence of alcohol, and is a first offender. A restricted, provisional or conditional license may be issued only in accordance with a State law, regulation or binding policy directive establishing the conditions under which such a license may be issued, or with statewide published guidelines, and in exceptional circumstances specific to the offender; and

(C) Suspend or revoke all driving privileges for a period of not less than one year if the individual was determined on the basis of a chemical test to have been operating a motor vehicle while under the influence of alcohol or refused to submit to such a test, and is a repeat offender; and

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

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

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

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

(ii) To demonstrate compliance in subsequent fiscal years, a Law State

shall submit a copy of any changes to the State's law, regulation or binding policy directive or, if there have been no changes, the State shall submit a statement certifying that there have been no changes in the State's laws, regulations or binding policy directives.

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

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

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

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

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

(b) Underage Drinking Prevention Program

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

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

(ii) Public information programs targeted to underage drivers regarding drinking age laws, zero tolerance laws, and respective penalties;

(iii) A program to educate alcoholic beverage retailers and servers about both on- and off-premise consumption, and the civil, administrative and/or criminal penalties associated with the illegal sale of alcoholic beverages to underage drinkers;

(iv) An overall enforcement strategy directed at the sale and purchase of alcoholic beverages involving persons under the age of 21 that can be implemented locally throughout the State; and

(v) A prevention program that enlists the aid of persons under the age of 21.

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

(3) *Demonstrating compliance.* (i) To demonstrate compliance in the first fiscal year the State receives a grant based on this criterion, the State shall submit a description and sample materials documenting an underage drinking prevention program that covers each element of paragraphs (b)(1) (ii) through (v) of this section. The State shall also submit sample driver's licenses issued to persons both under and over 21 years of age that demonstrate the distinctive appearance of licenses for drivers under age 21 and the tamper resistance of these licenses.

(ii) To demonstrate compliance in subsequent fiscal years, the State shall document any changes to the State's driver's licenses or underage drinking prevention program or, if there have been no changes, a statement certifying that there have been no changes in the State's driver's licenses or its underage drinking prevention program.

(c) Statewide Traffic Enforcement Program

(1) *Criterion.* A Statewide traffic enforcement program that emphasizes publicity and is either:

(i) a program for stopping motor vehicles on a non-discriminatory, lawful basis for the purpose of determining whether or not the operators of such motor vehicles are driving under the influence of alcohol; or

(ii) a special traffic enforcement program to detect impaired drivers operating motor vehicles while under the influence of alcohol.

(2) *Demonstrating compliance.* (i) To demonstrate compliance in the first fiscal year the State receives a grant based on this criterion, the State shall submit a comprehensive plan to conduct a program under which:

(A) Motor vehicles are stopped or special traffic enforcement is conducted on a Statewide basis, in major areas covering at least 50 percent of the State's population;

(B) Stops are made or special traffic enforcement is conducted not less than monthly;

(C) Stops are made or special traffic enforcement is conducted by both State and local (county and city) law enforcement agencies; and

(D) Effective public information efforts are conducted to inform the public about these enforcement programs.

(ii) The plan shall include guidelines, policies or operation procedures governing the Statewide enforcement program and provide approximate dates and locations of programs planned in the upcoming year, and the names of the law enforcement agencies expected to participate. The plan shall describe the public information efforts to be conducted.

(iii) to demonstrate compliance in subsequent fiscal years, the State shall submit an updated plan for conducting a Statewide enforcement program in the following year and information documenting that the prior year's plan was effectively implemented.

(d) Graduated Driver's Licensing System

(1) *Criterion.* A graduated driver's licensing system for young drivers that consists of the following three stages:

(i) Stage I. A learner's permit may be issued after an applicant passes vision and knowledge test, including tests about the rules of the road, signs and signals. The State I learner's permit must be subject to the following conditions:

(A) Stage I learner's permit holders under the age of 21 are prohibited from operating a motor vehicle with a BAC of 0.02 or greater;

(B) Stage I learner's permit holders are prohibited from operating a motor vehicle while any occupant in the vehicle is not properly restrained in accordance with State or local safety belt and child restraint laws;

(C) A licensed driver who is 21 years of age or older must be in any motor vehicle operated by the Stage I learner's permit holder at all times;

(D) Stage I learner's permit holders must remain crash and conviction free; and

(E) The Stage I learner's permit must be distinguishable from Stage II and III driver's licenses;

(ii) Stage II. An intermediate driver's license may be issued after an applicant has successfully complied with the conditions of the Stage I learner's permit for not less than three months and passed a driving skills test. The Stage II intermediate driver's license must be subject to the following conditions:

(A) Stage II intermediate driver's license holders under the age of 21 are prohibited from operating a motor vehicle with a BAC of 0.02 or greater;

(B) Stage II intermediate driver's license holders are prohibited from operating a motor vehicle while any occupant in the vehicle is not properly restrained in accordance with state or local safety belt and child restraint laws;

(C) A licensed driver who is 21 years of age or older must be in any motor vehicle operated by the Stage II intermediate driver's license holder, during some period of time between the hours of 10:00 p.m. and 6:00 a.m.. as specified by the State, unless covered by a State-approved exception;

(D) Stage II intermediate driver's license holders must remain crash and conviction free; and

(E) The Stage II intermediate driver's license must be distinguishable from Stage I learner's permits and Stage III driver's licenses; and

(iii) Stage III. A driver's license may be issued after an applicant has successfully complied with the conditions of the Stage I learner's permit and the Stage II intermediate driver's license for a combined period of not less than one year. The Stage III driver's license must be distinguishable from Stage I learner's permits and Stage II intermediate driver's licenses.

(2) *Definitions.* (i) ''Conviction free'' means that the individual, during the term of the permit or license, has not been charged with and subsequently convicted of any offense under State or local law relating to the use or operating of a motor vehicle.

(ii) ''Crash free'' means that the individual, during the term of the permit or license, has not been determined to be the party at fault in any police reportable motor vehicle crash.

(3) *Demonstrating compliance.* (i) To demonstrate compliance in the fiscal year the State receives a grant based on this criterion, the State shall submit a copy of the law, regulation or binding policy directive implementing or interpreting the law or regulation, which provides for each element of this criterion.

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

(e) Program for Drivers With High BAC

(1) *Criterion.* Programs to target individuals with a high BAC who operate a motor vehicle.

(i) The programs shall establish a system of graduated sanctions for individuals convicted of operating a motor vehicle while under the influence of alcohol, under which enhanced or additional sanctions apply to such individuals if they were determined to have a high BAC.

(ii) The threshold level at which the high BAC sanctions must begin to apply may be any BAC level that is higher than the BAC level established by the State that is deemed to be or equivalent to the standard driving while intoxicated (DWI) offense, and less than or equal to 0.20 BAC.

(2) *Definitions.* ''Enhanced or additional sanctions'' means the imposition of longer terms of license suspension, increased fines, additional or extended sentences of confinement, vehicle sanctions, mandatory assessment and treatment as appropriate, or other consequences that do not apply to individuals who were not determined to have a high BAC.

(3) *Demonstrating compliance.* (i) To demonstrate compliance in the first fiscal year the State receives a grant based on this criterion, the State shall submit a copy of the law, regulation or binding policy directive implementing or interpreting the law or regulation, which provides for each element of this criterion. In addition, the State shall submit the provisions that set forth the sanctions under its standard DWI offense.

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

(f) Young Adult Drinking and Driving Program

(1) *Criterion* A young adult drinking and driving program designed to reduce the incidence of operating a motor vehicle while under the influence of alcohol by individuals between the ages of 21 and 34 that provides for:

(i) A Statewide public information and awareness campaign for young adult drivers regarding alcohol-impaired driving laws, and the legal and economic consequences of alcohol-impaired driving; and

(ii) Activities, implemented at the State and local levels, designed to reduce the incidence of alcohol-impaired driving by drivers between the ages of 21 and 34 that involve:

(A) the participation of employers;

(B) the participation of colleges or universities;

(C) the participation of the hospitality industry; or

(D) the participation of appropriate State officials to encourage the assessments and incorporation of treatment as appropriate into judicial sentencing for drivers between the ages for 21 and 34 who have been convicted for the first time of operating a motor vehicle while under the influence of alcohol.

(2) *Demonstrating compliance.* (i) To demonstrate compliance in the first fiscal year the State receives a grant based on this criterion, the State shall submit:

(A) a description and sample materials documenting the State's Statewide public information and awareness campaign;

(B) a description and sample materials documenting activities designed to reduce the incidence of alcohol-impaired driving by young drivers, which must involve at least one of the four components contained in paragraph (f)(1)(ii) of this section; and

(C) a plan that outlines proposed efforts to involve in these activities all four components contained in paragraph (f)(1)(ii) of this section.

(ii) To demonstrate compliance in subsequent fiscal years, the State shall submit an updated description of its Statewide public information and awareness campaign and of other activities designed to reduce the incidence of alcohol-impaired driving by young adult drivers. The State shall submit information documenting that these activities involve all four components contained in paragraph (f)(1)(ii) of this section.

(g) Testing for BAC

(1) *Criterion.* (i) In FY 1999 and FY 2000, an effective system for increasing the percentage of BAC testing among drivers involved in fatal motor vehicle crashes, under which:

(A) BAC testing law. The State's law provides for mandatory BAC testing for any driver involved in a fatal motor vehicle crash;

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

(C) BAC testing symposium. The State has plans to conduct, or conducted no more than two years prior to the date of its application, a symposium or workshop designed to increase the percentage of BAC testing for drivers involved in fatal motor vehicle crashes. The symposium or workshop must be attended by law enforcement officials, prosecutors, hospital officials, medical examiners, coroners, physicians, and judges; and must address the medical, ethical, and legal impediments to increasing the percentage of BAC testing among drivers involved in fatal motor vehicle crashes.

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

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

(ii) ''Mandatory BAC testing'' means a law enforcement officer must request each driver involved in a fatal motor vehicle crash to submit to BAC testing.

(3) *Demonstrating compliance in FY 1999 and FY 2000.* (i) To demonstrate compliance based on this criterion in FY 1999 or FY 2000, the State shall submit:

(A) a copy of the law, regulation or binding policy directive implementing or interpreting the law or regulation, which provides for each element of the mandatory BAC testing requirement, as provided in paragraph (g)(1)(i)(A) of this section;

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

(C) a description of the planned or completed symposium or workshop, including a copy of the actual or proposed agenda and a list of the names and affiliations of the individuals who attended or who are expected to be invited to attend, except as provided in paragraph (g)(3)(ii)(C).

(ii) To demonstrate compliance in FY 2000:

(A) If in the first fiscal year the State demonstrated compliance under paragraph (g)(3)(i)(A), the State may submit instead a copy of any changes to the State's law, regulation or binding policy directive or, if there have been no changes, the State shall submit a statement certifying that there have been no changes in the States laws, regulations or binding policy directives.

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

(C) If in the first fiscal year the State demonstrated compliance under paragraph (g)(3)(i)(C), the State shall submit instead a copy of the report or other documentation that was generated as a result of the symposium or workshop, with recommendations designed to increase BAC testing for drivers involved in fatal motor vehicle crashes, and a plan that outlines how the recommendations will be implemented in the State.

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

**§ 1313.6 Requirements for a performance basic grant.**

(a) *Criterion.* A State will qualify for a performance basic incentive grant of 25 percent of the State's 23 U.S.C. 402 apportionment for FY 1997 if:

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

(2) the percentage of fatally injured drivers in the State with a BAC of 0.10 percent or greater has been lower than the average percentage for all States in each of the same three calendar years.

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

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

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

(c) *Demonstrating compliance.* (1) To demonstrate compliance with this criterion, a State shall submit a statement certifying that the State meets each element of this criterion, based on the percentages calculated in accordance with paragraphs (b)(1) and (b)(2) of this section.

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

paragraphs (b)(2) and (b)(3) of this section.

**§ 1313.7 Requirements for a supplemental grant.**

To qualify for a supplemental grant under this section, a State must qualify for a programmatic basic grant under § 1313.5, a performance basic grant under § 1313.6, or both, and meet one or more of the following criteria:

(a) Video Equipment Program

(1) *Criterion.* A program:

(i) To acquire video equipment to be installed in law enforcement vehicles and used in detecting persons who operate motor vehicles while under the influence of alcohol or a controlled substance;

(ii) To effectively prosecute those persons; and

(iii) To train personnel in the use of that equipment.

(2) *Demonstrating compliance.* (i) To demonstrate compliance in the first fiscal year the State receives a grant based on this criterion, the State shall submit a plan for the acquisition and use of video equipment in law enforcement vehicles for the enforcement of impaired driving laws, including:

(A) A schedule for the areas where the equipment has been and will be installed and used;

(B) A plan for training law enforcement personnel, prosecutors and judges in the use of this equipment; and

(C) A plan for public information and education programs to enhance the general deterrent effect of the equipment.

(ii) To demonstrate compliance in subsequent fiscal years, the State shall submit information on the use and effectiveness of the equipment and an updated plan for any acquisition and use of additional equipment.

(b) Self-Sustaining Drunk Driving Prevention Program

(1) *Criterion.* A self-sustaining drunk driving prevention program under which a significant portion of the fines or surcharges collected from individuals apprehended and fined for operating a motor vehicle while under the influence of alcohol are returned to communities with comprehensive programs for the prevention of such operations of motor vehicles.

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

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

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

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

(D) A public information program designed to make the public aware of the problem of impaired driving and of the efforts in place to address it.

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

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

(A) A copy of the law, regulation or biding policy directive implementing or interpreting the law or regulation, which provides:

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

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

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

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

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

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

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

(c) Reduction of Driving With a Suspended License

(1) *Criterion.* A law to reduce driving with a suspended driver's license. The law must impose one of the following sanctions on any individual who has been convicted of driving with a driver's license that was suspended or revoked by reason of a conviction for an alcohol-related traffic offense. Such sanctions must include at least one of the following for some period of time during the term of the individual's driver's license suspension or revocation, as specified by the State:

(i) The suspension of the registration of, and the return to such State of the license plates for, any motor vehicle owned by the individual;

(ii) The impoundment, immobilization, forfeiture or confiscation of any motor vehicle owned by the individual; or

(iii) The placement of a distinctive license plate on any motor vehicle owned by the individual.

(2) *Definitions.* ''Suspension and return'' means the temporary debarring of the privilege to operate or maintain a particular registered motor vehicle on the public highways and the confiscation or impoundment of the motor vehicle's license plates.

(3) *Exceptions.* (i) A State may provide limited exceptions to the sanctions listed in paragraphs (c)(1)(i) and (c)(1)(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.

(ii) Such exceptions may be issued only in accordance with a State law, regulation or binding policy directive establishing the conditions under which motor vehicles or license plates 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 motor vehicle by the individual.

(4) *Demonstrating compliance.* (i) To demonstrate compliance in the first fiscal year the State receives a grant based on this criterion, the State shall submit a copy of the law, regulation or binding policy directive implementing or interpreting the law or regulation, which provides for each element of this criterion.

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

no changes in the State's laws, regulations or binding policy directives.

(d) Passive Alcohol Sensor Program

(1) *Criterion.* A program:

(i) To acquire passive alcohol sensors to be used during enforcement activities to enhance the detection of the presence of alcohol in the breath of drivers; and

(ii) To train law enforcement personnel and inform judges and prosecutors about the purpose and use of the equipment.

(2) *Definitions.* ''Passive alcohol sensor'' means a screening device used to sample the ambient air in the vicinity of the driver's exhaled breath to determine whether or not it contains alcohol.

(3) *Demonstrating compliance.* (i) To demonstrate compliance in the first fiscal year the State receives a grant based on this criterion, the State shall submit a plan for the acquisition and use of passive alcohol sensors to enhance the enforcement of impaired driving laws, including:

(A) A schedule for the areas where the equipment has been and will be used;

(B) A plan for training law enforcement personnel in the recommended procedures for use of these devices in the field, and for informing prosecutors and judges about the purpose and use of the equipment; and

(C) A plan for public information and education programs to enhance the general deterrent effect of the equipment.

(ii) To demonstrate compliance in subsequent fiscal years, the State shall submit information on the use and effectiveness of the equipment and an updated plan for any acquisition and use of additional equipment.

(e) Effective DWI Tracking System

(1) *Criterion.* An effective driving while intoxicated (DWI) tracking system containing the ability to:

(i) Collect, store, and retrieve data on individual DWI cases from arrest, through case prosecution and court disposition and sanction (including fines assessed and paid), until dismissal or until all applicable sanctions have been completed;

(ii) Link the DWI tracking system to appropriate data and traffic records systems in jurisdictions and offices within the State to provide prosecutors, judges, law enforcement officers, motor vehicle administration personnel, and other officials with timely and accurate information concerning individuals charged with an alcohol-related driving offense; and

(iii) Provide aggregate data, organized by specific categories (geographic locations, demographic groups, sanctions, etc.), suitable for allowing legislators, policymakers, treatment professionals, and other State officials to evaluate the DWI environment in the State.

(2) *Demonstrating compliance.*

(i) To demonstrate compliance in the first fiscal year the State receives a grant based on this criterion, the State shall submit a description of its DWI tracking system, including:

(A) A description of the means used for the collection, storage and retrieval of data;

(B) An explanation of how the system is linked to data and traffic records systems in appropriate jurisdictions and offices within the State;

(C) An example of available statistical reports and analyses; and

(D) A sample data run showing tracking of a DWI arrest through final disposition.

(ii) To demonstrate compliance in subsequent fiscal years, the State shall submit a report or analysis using the DWI tracking system data, demonstrating that the system is still in operation.

(f) Other Innovative Programs

(1) *Criterion.* An innovative program to reduce traffic safety problems resulting from individuals operating motor vehicles while under the influence of alcohol or controlled substances, through legal judicial, enforcement, educational, technological or other approaches. The program must:

(i) Have been implemented within the last two years;

(ii) Contain one or more substantial components that:

(A) Make this program different from programs previously conducted in the State; and

(B) Have not been used by the State to qualify for a grant in a previous fiscal year based on this criterion or in any fiscal year based on any other criterion contained in §§ 1313.5, 1313.6 or 1313.7 of this part; and

(iii) Be shown to have been effective.

(2) *Demonstrating compliance.* To demonstrate compliance for a grant based on this criterion, the State shall submit a description of the innovative program, which includes:

(i) The name of the program;

(ii) The area or jurisdiction where it has been implemented and the population(s) targeted;

(iii) The specific condition or problem the program was intended to address, the goals and objectives of the program and the strategies or means used to achieve those goals;

(iv) The actual results of the program and the means used to measure the results;

(v) All sources of funds that were applied to the problem; and

(vi) The name, address and telephone number of a contact person.

### § 1313.8 Award procedures.

(a) In each Federal fiscal year, grants will be made to eligible States upon submission and approval of the application required by § 1313.4(a) and subject to the limitations in § 1313.4(b). The release of grant funds under this part shall be subject to the availability of funding for that fiscal year. If there are expected to be insufficient funds to award full grant amounts to all eligible States in any fiscal year, NHTSA may release less than the full grant amounts upon initial approval of the State's application and documentation and the remainder of the full grant amounts up to the State's proportionate share of available funds, before the end of that fiscal year. Project approval, and the contractual obligation of the Federal government to provide grant funds, shall be limited to the amount of funds released.

(b) If any amounts authorized for grants under this part for a fiscal year are expected to remain unobligated in that fiscal year, the Administrator may transfer such amounts to the programs authorized under 23 U.S.C. 405 and 23 U.S.C. 411, to ensure to the extent possible that each State receives the maximum incentive funding for which it is eligible.

(c) If any amounts authorized for grants under 23 U.S.C. 405 and 23 U.S.C. 411 are transferred to the grant program under this part in a fiscal year, the Administrator shall distribute the transferred amounts so that each eligible State receives a proportionate share of these amounts, subject to the conditions specified in § 1313.4.

## Appendix A to Part 1313—Tamper Resistant Driver's License

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

(1) Ghost image.

(2) Ghost graphic.

(3) Hologram.

(4) Optical variable device.

(5) Microline printing.

(6) State seal or a signature which overlaps the individual's photograph or information.

(7) Security laminate.
(8) Background containing color, pattern, line or design.
(9) Rainbow printing.
(10) Guilloche pattern or design.
(11) Opacity mark.
(12) Out of gamut colors (i.e., pastel print).
(13) Optical variable ultra-high-resolution lines.
(14) Block graphics.
(15) Security fonts and graphics with known hidden flaws.
(16) Card stock, layer with colors.
(17) Micro-graphics.
(18) Retroflective security logos.
(19) Machine readable technologies such as magnetic strips, a 1D bar code or a 2D bar code.

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