Executive Order 12630 (Taking of Private Property)

This action would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

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 would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 655

Design standards, Grant programs—transportation, Highways and roads, Incorporation by reference, Signs and symbols, Traffic regulations.

Issued on: July 12, 2001.

Christine M. Johnson,

Program Manager, Operations.

The FHWA hereby amends part 655 of chapter I of title 23, Code of Federal Regulations as set forth below:

PART 655—TRAFFIC OPERATIONS

1. The authority citation for part 655 continues to read as follows:

Authority: 23 U.S.C. 101(a), 104, 109(d), 114(a), 217, 315, and 402(a); 23 CFR 1.32; and 49 CFR 1.48(b).

Subpart F—Traffic Control Devices on Federal-Aid and Other Streets and Highways

2. In § 655.601, paragraph (a) is revised to read as follows:

§ 655.601 Purpose.

* * * * *

(a) Manual on Uniform Traffic Control Devices (MUTCD), 2000 Millennium Edition, FHWA, dated December 18, 2000, including Errata No. 1 to MUTCD 2000 Millennium Edition dated June 14, 2001. This publication is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 and is on file at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. These documents are available for inspection and copying at the Federal Highway Administration, Room 3408, 400 Seventh Street, SW., Washington, DC 20590, as provided in 49 CFR part 7. The text is also available from the Federal Highway Administration's website at: *http://mutcd.fhwa.dot.gov*.

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[FR Doc. 01–18247 Filed 7–25–01; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

23 CFR Part 1345

[Docket No. NHTSA–01–10154]

RIN 2127–AH40

Occupant Protection Incentive Grants

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

ACTION: Final rule.

SUMMARY: This document announces that the regulations that were published in an interim final rule to implement an occupant restraint program established by the Transportation Equity Act for the 21st Century (TEA 21) will remain in effect, with some modifications. Under the final rule, States can qualify for incentive grant funds if they adopt and implement effective programs to reduce highway deaths and injuries resulting from individuals riding unrestrained or improperly restrained in motor vehicles.

DATES: This final rule becomes effective on July 26, 2001.

FOR FURTHER INFORMATION CONTACT: Ms. Joan Tetrault, Office of State and Community Services, NSC–01, NHTSA, 400 Seventh Street, SW., Washington DC 20590; telephone (202) 366–2121; or Ms. Heidi L. Coleman, Office of Chief Counsel, NCC–30; telephone (202) 366–1834.

SUPPLEMENTARY INFORMATION: The Transportation Equity Act for the 21st Century (TEA 21), Pub. L. 105–178, was signed into law on June 9, 1998. Section 2003 of the Act established a new incentive grant program under Section 405 of Title 23, United States Code (Section 405). Under this program, States may qualify for incentive grant funds by adopting and implementing effective programs to reduce highway deaths and injuries resulting from individuals riding unrestrained or improperly restrained in motor vehicles. The program was designed to stimulate increased seat belt, child safety seat and booster seat use.

Background

Effectiveness of Occupant Protection Systems

Injuries caused by motor vehicle traffic crashes in America are a major health care problem and are the leading cause of death for people aged 5 to 35. Each year injuries caused by traffic crashes in the United States claim approximately 41,000 lives and cost Americans an estimated $150 billion. Seat belts are an effective means of reducing fatalities and serious injuries when traffic crashes occur. Seat belts are estimated to save nearly 11,000 lives each year. Lap and shoulder belts reduce the risk of fatal injury to front seat passenger car occupants by 45 percent and the risk of moderate to critical injury by 50 percent. For light truck occupants, seat belts reduce the risk of fatal injury by 60 percent and moderate to critical injury by 65 percent.

Child safety seats reduce the risk of fatal injury in a crash by 71 percent for infants (less than 1 year old) and by 54 percent for toddlers (1–4 years old). In 1999, there were 550 occupant fatalities among children under 5 years of age. Of those 550 fatalities, an estimated 291 (53 percent) were totally unrestrained. From 1975 through 1999, an estimated 4,500 lives were saved by the use of child restraints (child safety seats or adult belts). In 1999, an estimated 307 children under age 5 were saved as a result of child restraint use.

America's Experience With Seat Belts and Child Safety Seats

The first seat belts were installed by automobile manufacturers in the 1950s. Until the mid-1980s, seat belt use was very low—only 10 to 15 percent nationwide. From 1984 through 1987, belt use increased from 14 percent to 42 percent, as a result of the passage of seat belt use laws in 31 States. Belt use is now mandated in 49 States, the District of Columbia, Puerto Rico and the U.S. Territories (which include the Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands), but only 17 States, the District of Columbia, Puerto Rico and the U.S. Territories allow law enforcement officials to stop a vehicle solely on the basis of observing a seat belt violation. Most States require that another violation must first be observed (i.e., secondary enforcement) before seat belt law violators can be stopped and issued a citation. Under these conditions, national seat belt usage has reached its current (2000) level of 71 percent, and is increasing slowly (currently about 2 percentage points per year).

The first law requiring children to be in child safety seats was enacted in 1978 in Tennessee. By 1985, all 50 States and the District of Columbia had passed child passenger laws. Statewide reported usage rates currently range between 60 and 90 percent, depending on the age of the child. Most safety seats, however, are used improperly to some degree.

Presidential Initiative To Increase Seat Belt and Child Safety Seat Usage

In 1997, NHTSA was directed by a Presidential Initiative to Increase Seat Belt Usage Nationwide (Presidential Initiative) to achieve a seat belt use rate of 85 percent by the year 2000 and a 90 percent seat belt use rate by 2005. The agency was further directed to reduce child occupant fatalities (0–4 years) by 15 percent in the year 2000 and by 25 percent in 2005. The national seat belt use rate reached 71 percent and the number of child occupant fatalities (0–4 years) were reduced by more than 15 percent by 1999 and by more than 17 percent by 2000. The agency continues to work toward achieving a seat belt use rate of 90 percent and reducing child occupant fatalities an additional 8 percent by 2005.

The Presidential Initiative contained a four-point strategy to meet its goals. The first point in the strategy is to build public/private partnerships to address the issue of seat belt and child safety seat use. In addition, the strategy calls for States to enact strong laws and to embrace active, high-visibility enforcement. Finally, the strategy calls for public and private partners to conduct well-coordinated, effective public education. The occupant protection incentive grant program enacted by Congress as part of TEA 21 reinforces these elements by encouraging States to adopt and strengthen seat belt use laws (including laws that provide for primary, or standard, enforcement) and child safety seat use laws, conduct high visibility enforcement, and establish education programs.

TEA 21 Section 405 Program

Section 405 provides that the Secretary of Transportation shall make grants to States that adopt and implement effective programs to reduce highway deaths and injuries resulting from individuals riding unrestrained or improperly restrained in motor vehicles.

Interim Final Rule

On October 1, 1998, NHTSA published an interim final rule in the **Federal Register** to implement the Section 405 program. The interim final rule explained that, to qualify for funding under the Section 405 program, a State must adopt or demonstrate at least four of the following six criteria: a seat belt use law; a primary (standard enforcement) seat belt use law; minimum fines or penalty points against the driver license of an individual for a violation of the State's seat belt use law and for a violation of the State's child passenger protection law; a special traffic enforcement program; a child passenger protection education program; and a child passenger protection law. The interim final rule defined the elements of the grant criteria and the manner in which States must demonstrate compliance, as described below.

Grant Criteria

1. Seat Belt Use Law

A State must have in effect a seat belt use law that makes unlawful throughout the State the operation of a passenger motor vehicle whenever an individual (other than a child who is secured in a child restraint system) in the front seat of the vehicle (and, beginning in fiscal year 2001, in any seat in the vehicle) does not have a seat belt properly secured about the individual's body.

2. Primary Seat Belt Use Law

A State must provide for the primary (or standard) enforcement of its seat belt use law. Under a primary enforcement law, law enforcement officials have the authority to enforce the law without, for example, the need to show that they had probable cause or had cited the offender for a violation of another offense.

3. Minimum Fine or Penalty Points

A State must impose a minimum fine or provide for the imposition of penalty points against the driver's license of an individual for a violation of the seat belt use law of the State and for a violation of the child passenger protection law of the State. The interim regulations provided that the minimum fine shall mean a total monetary penalty of at least $25.00, which may include fines, fees, court costs or any other monetary assessments collected.

4. Special Traffic Enforcement Program

A State must provide for a statewide Special Traffic Enforcement Program for occupant protection that emphasizes publicity for the program. The term ''Special Traffic Enforcement Program'' (STEP) references a model program that NHTSA recommends for State and community implementation because it has proven to be effective in increasing seat belt use at both statewide and community levels. STEPs combine public education, publicity and intensified enforcement to increase seat belt and child safety seat use rates.

5. Child Passenger Protection Education Program

A State must plan to implement a statewide comprehensive child passenger protection education program that includes education programs about proper seating positions for children in air bag equipped motor vehicles and instruction on how to reduce the improper use of child restraint systems.

6. Child Passenger Protection Law

A State must have in effect a law that requires minors who are riding in a passenger motor vehicle to be properly secured in a child safety seat or other appropriate restraint system.

A more detailed discussion of the six elements described above is contained in the interim final rule (63 FR 52592–95).

Terms Governing the Incentive Grant Funds

The interim final rule indicated that a total of $68 million has been authorized for the Section 405 program over a period of five years, beginning in fiscal year 1999. Specifically, TEA 21 authorized $10 million for fiscal year 1999, $10 million for fiscal year 2000, $13 million for fiscal year 2001, $15 million for fiscal year 2002 and $20 million for fiscal year 2003. In fiscal year 1999, 38 States, the District of Columbia, Puerto Rico and 3 U.S. territories received grants totaling $9.5 million and, in fiscal year 2000, 38 States, the District of Columbia, Puerto Rico and 2 U.S. territories received grants totaling $9.5 million.

Under Section 405, States are required to match the grant funds they receive as follows: the Federal share cannot exceed 75 percent of the cost of implementing and enforcing the occupant protection program adopted to qualify for these funds in the first and second fiscal years the State receives funds; 50 percent in the third and fourth fiscal years it receives funds; and 25 percent in the fifth and sixth fiscal years.

No grant may be made to a State unless the State certifies that it will maintain its aggregate expenditures from all other sources for its occupant protection 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). As was stated in the interim final rule, the agency will accept soft matching in Section 405's administration, meaning that 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.

Award Procedures

To receive a grant in any fiscal year, the interim final rule indicated that each State is required to submit an application to NHTSA, through the appropriate NHTSA Regional Administrator, which demonstrates that the State meets the requirements of the grant being requested. In addition, the State must submit a certification. A more detailed discussion regarding the contents of the certifications is contained in the interim final rule (63 FR 52595–96).

The interim final rule indicated that in both the first and in subsequent years, 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 405 funds to occupant protection programs.

To be eligible for grant funds in fiscal year 1999, the interim rule provided that States had to submit their applications no later than August 1, 1999. To be eligible for grant funds in any subsequent fiscal years, States must submit their applications no later than August 1 of the fiscal year in which they are applying for funds. The agency strongly encouraged States to submit all of these materials in advance of the regulatory deadlines.

As the agency explained in the interim final rule, the release of the full grant amounts under Section 405 shall be subject to the availability of funding for that fiscal year.

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

However, based on the agency's experience administering this grant program as well as the other grant programs that were authorized under TEA 21 in fiscal years 1999 and 2000, NHTSA has determined that it is not necessary to release funds in two stages. Accordingly, in FY 2001 and in each fiscal year thereafter, all Section 405 funds will be released at the same time. Since applications for Section 405 funds are due each fiscal year by August 1, the funds will be awarded near the end of each fiscal year (no later than September 30).

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

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

Request for Comments

The agency requested comments from interested persons on the interim final rule that was published in October 1, 1998. Comments were due by November 30. The agency stated in the interim final rule that all comments submitted to the agency would be considered and that, following the close of the comment period, the agency would publish a document in the **Federal Register** responding to the comments and, if appropriate, would make revisions to the provisions of Part 1345.

Comments Received

The agency received submissions from seven commenters in response to the interim final rule. Comments were received from Henry M. Jasny, General Counsel for Advocates for Highway and Auto Safety (Advocates) and six states. The State comments were submitted by Betty J. Mercer, Division Director, Office of Highway Safety Planning, Michigan Department of State Police (Michigan); Albert E. Goke, Chief of the Montana Traffic Safety Bureau, Governor's Representative for Highway Traffic Safety (Montana); Ken Carpenter, State of New York, Governor's Traffic Safety Committee, Department of Motor Vehicles (New York); Thomas E. Bryer, P.E., Director of the Pennsylvania Bureau of Highway Safety & Traffic Engineering (Pennsylvania); James R. Grate, Manager, West Virginia Highway Safety Program (West Virginia); and Charles H. Thompson, Secretary of the Wisconsin Department of Transportation (Wisconsin). The comments, and the agency's responses to them, are discussed in detail below.

1. General Comments

Some of the comments received in response to the interim final rule were positive. For example, Montana welcomed the addition of this incentive grant program and Advocates stated that it is ''supportive of any legislative or agency initiated efforts to increase seat belt use rates. Seat belt use is the most effective means of ensuring occupant protection in most crash modes.'' Advocates stated also that it ''generally supports NHTSA's approach in the interim final rule and the criteria adopted by NHTSA in this rule.''

Additional comments related to the specific requirements that States must meet to qualify for a grant. These comments, and the agency's response to them, are discussed specifically below.

2. Seat Belt Use Law Criterion

The interim final rule provided that, to meet the seat belt use law criterion beginning in FY 2001, a State's seat belt use law must require seat belt use in all seating positions in a vehicle. Michigan commented that resistance to seat belt use laws will make it difficult for many States to upgrade laws to all seating positions. Although Michigan recognized that the requirement for such laws was included in the statute, it asserted that ''NHTSA should recognize that States will need considerable assistance in strategic planning and garnering general public support if upgraded belt laws are to become a reality in this country.''

The agency agrees that States may need technical assistance, such as data on injuries and fatalities involving unbelted occupants riding in rear seating positions, to help gain public support for such laws and the agency is prepared to provide such assistance. However, the purpose of the Section 405 program, and the seat belt use law criterion, was not merely to reward the status quo, but rather to provide an incentive for States to strengthen their laws and improve their programs. Moreover, even if States are not able to pass enhanced seat belt use laws, they still may qualify for funds under Section 405 by meeting four out of the remaining five criteria.

The interim rule indicated that the agency had decided to permit exceptions in seat belt use laws for persons with medical excuses; postal, utility and other commercial drivers who make frequent stops in the course of their business; emergency vehicle operators and passengers; persons riding in positions not equipped with seat

belts; persons in public and livery conveyances; persons riding in parade vehicles; and persons in the custody of police.

Advocates supported some of these exceptions, but disagreed with the agency's decision to permit exceptions for utility and other commercial drivers who make frequent stops in the course of their business. Advocates stated that, ''despite the adoption of such an exemption in some state laws, this exemption is vague, since the term 'frequent stops' is not defined, and is based on convenience rather than necessity. Exemptions from safety regulations should not be based on practical convenience, especially where the exceptions may undermine the general requirement.''

As the agency noted in the interim final rule, prior to the issuance of that document, the agency had reviewed existing State occupant protection laws to determine whether they contained any exceptions. We determined that a number of States made it unlawful for an individual to ride unrestrained in a motor vehicle, but provided an exception for utility or other commercial drivers who make frequent stops in the course of their business.

Although the Section 405 statute did not specifically provide for such an exception, the agency did not believe it was Congress' intent that the statute be read so literally as to penalize every State whose laws contained any exceptions at all. Accordingly, the agency considered whether this exception, and the others found in State laws at that time, would either be incompatible with the language of the statute or would so severely undermine the safety considerations underlying the statute so as to render a State whose law contains the exception ineligible from the incentive grant program.

In the agency's view, the exception that permits utility or other commercial drivers to ride unrestrained is limited and addresses a legitimate need for convenience in certain circumstances. In addition, we believe that this exception is not inconsistent with the language of the statute and would not severely undermine the safety considerations underlying the statute. We continue to believe that such an exception should be permitted.

Accordingly, this portion of the interim regulation is adopted without change.

3. Primary Seat Belt Use Law Criterion

Michigan commented that it will be difficult for States with secondary enforcement laws to upgrade to primary enforcement laws and that many States will be unable to meet the primary belt use law criterion within the period of eligibility. Michigan stated that ''resources and expertise should be gathered to develop a workable successful approach to attaining a national change in attitude among the general public about these laws.''

Advocates, on the other hand, supported the primary seat belt use law criterion. It stated that ''such laws are generally considered the single most effective means of increasing state seat belt use rates, especially when combined with heightened enforcement and publicity.''

The agency firmly believes that primary seat belt use laws, especially when they are actively enforced with high visibility, represent the most effective means of increasing seat belt use rates. Studies indicate that, overall, States with primary seat belt use laws achieve significantly higher seat belt use rates (NHTSA, 1999). For example, the June 2000 National Occupant Protection Use Survey (NOPUS) shows that the average seat belt use rate in States with primary enforcement laws was 77 percent, while the average seat belt use rate in States with secondary enforcement laws was only 63 percent.

Further, the public's support for primary enforcement of seat belt laws appears to be increasing. According to a 1998 NHTSA survey on attitudes toward the enforcement of State seat belt laws, 58 percent of those surveyed believed that law enforcement officials should be allowed to stop a vehicle if a seat belt violation is observed, an increase from 52 percent in 1996 (Motor Vehicle Occupant Safety Survey, 1998). In addition, a survey conducted in 1997 by Public Opinion Strategies found that 61 percent of those surveyed supported primary enforcement of seat belt use laws.

Moreover, as stated previously regarding the seat belt use law criterion of the Section 405 program, the purpose of the program, and the primary seat belt use law criterion, was not merely to reward the status quo, but rather to provide an incentive for States to strengthen their laws and improve their programs. In addition, even if States are not able to enact enhanced seat belt use laws, they may still qualify for funds under Section 405 by meeting four out of the remaining five criteria.

For all of these reasons, this portion of the interim regulation is adopted without change.

4. Minimum Fine or Penalty Points Criterion

To qualify under the minimum fine or penalty points criterion, a State must impose a minimum fine or provide for the imposition of penalty points against the driver's license of an individual for a violation of the seat belt use law of the State and for a violation of the child passenger protection law of the State. The interim final rule provided that the term ''minimum fine'' means ''a total monetary penalty that may include fines, fees, court costs, or any other additional monetary assessments collected.'' The interim rule provided further that the minimum fine must amount to ''not less than $25.00.''

The agency received three comments objecting to the $25 minimum fine set by the agency. Wisconsin commented that ''the interim final rule arbitrarily establishes $25 as the minimum monetary penalty * * *'' It recommended instead that each State should be allowed to set its own minimum fine and stated that the minimum fine ''should be set at the lowest non-zero monetary penalty being used by any State,'' which it believed to be $10. Wisconsin indicated that ''relative to many traffic law violations, both $10 and $25 are rather nominal monetary penalties, and the difference between the two figures is hardly worth the political capital that would be required to convince a state legislature to increase the fine from the lower level to the higher level. The interim final rule should not penalize states that have had 'a' monetary penalty, albeit under $25, in place for many years.''

Montana also objected to the $25 minimum fine, stating that ''significant fines in rural states surely are not as high as those imposed in highly urban areas. Typically, rural states with lower incomes and lesser densities enact fines suited to their own conditions.'' Montana noted that a $20 fine is the average fine imposed in that State for a variety of traffic penalties. Further, Montana stated that ''you remember when Montana was known for its $5.00 energy conservation fine imposed on drivers for speeding. That small fine was sufficient to maintain deterrence in our driving majority to avoid speeding, to remind the public of its driving responsibilities, and I believe to contribute to our success in achieving safety restraint usage rates at a high level of compliance.'' Montana proposed that the minimum fine level be set at $20, which would allow it to comply with the minimum penalty requirement.

West Virginia commented that ''NHTSA has overstepped their authority by interpreting what Congress meant by the term 'minimum' and setting that minimum amount at $25.'' The State expressed its belief that

Congress' intent was to allow each individual State to decide what its minimum fine should be.

By contrast, Advocates asserted that the minimum $25 fine was insufficient. It stated that, ''such a low penalty threshold sends the message that seat belt and child restraint laws are trivial matters * * *.'' Advocates stated that it was ''not convinced that fines of $25, even when accompanied by court fees and costs, comprise a sufficient deterrent to violations of belt and child restraint use laws.'' It asserted that the agency should not ''merely adopt a minimum fine level that represents the current lowest common denominator in existing practice,'' but instead should adopt a minimum fine level that will ''encourage States to achieve higher standards of belt use through tougher State law requirements, including sanctions.''

Advocates argued also that because the interim regulation allowed a State to demonstrate compliance with the minimum fine criterion through laws, regulations or binding policy directives, or ''as a matter of general judicial practice without specification in state law,'' the criterion could be met ''by nearly any State law and does not require improvements in State action or enforcement.''

Lastly, Advocates asserted that low level monetary fines are not an equivalent to penalty points on a license. Although Advocates recognized that the statute allows State laws to qualify if they establish a minimum fine, it stated that this ''does not mean that the regulatory criteria should specify a fine that is minimal.''

After considering carefully all of the comments received regarding this criterion, NHTSA has decided that it will not change the $25.00 minimum fine requirement. As indicated in the interim final rule, the agency believes that it would be inconsistent with Congressional intent to allow States who provide for nominal or insignificant penalties to qualify for incentive grant funds with this criterion. At the same time, the agency does not want to set a minimum fine level that would prohibit rural States or States with higher poverty levels from reasonably meeting this criterion. During its review of State laws, the agency found that many States set a maximum fine level but did not establish a minimum fine for seat belt or child restraint violations. The agency determined that setting a $25 minimum fine level would challenge States to establish stronger standards for seat belt and child restraint violations, without imposing unreasonable burdens. While the regulation sets forth minimum penalties for seat belt use and child restraint violations, States are free to enact more severe penalties.

With respect to Advocates' comments regarding the importance of penalty points, the agency agrees that penalty points are an effective sanction for individuals who fail to use seat belts and child restraints. However, as Advocates acknowledged, the statute specifically provides that States may qualify under the minimum fine or penalty points criterion by assessing either a minimum fine or penalty points or both. Accordingly, the agency is not at liberty to require that States assess penalty points to qualify for a Section 405 grant.

Two States (New York and Pennsylvania) questioned whether their practice of waiving fines imposed for violations of the child passenger protection law, in cases where a violator presents proof of purchase of a child restraint system, would be permitted under the agency's regulations. During its review of FY 1999 grant applications, the agency determined that a State whose law contained such an exception would not be rendered ineligible from qualifying for a grant under the minimum fine or penalty points criterion if the State's law otherwise met the elements of this criterion. We have added language to the final rule, to reflect this determination.

5. Special Traffic Enforcement Program Criterion

The interim final rule provided that, to qualify under the Special Traffic Enforcement Program criterion, a State must provide for a statewide Special Traffic Enforcement Program for occupant protection that emphasizes publicity for the program. The interim rule indicated that the term ''Special Traffic Enforcement Program'' (STEP) references a model program that NHTSA recommends for State and community implementation because it has proven to be effective in increasing seat belt use at both statewide and community levels.

Michigan commented that the Section 405 statute does not emphasize ''*S*pecial *T*raffic *E*nforcement *P*rogram (STEP), but uses the term 'special traffic enforcement program' which could mean any number of statewide programs conducted in a manner other than the NHTSA STEP enforcement model.'' Although it expressed its support for the requirement that STEP programs must reach 70% of a State's population and that States must describe the statewide nature of their programs, it asserted that ''requiring a STEP model be implemented, however, does not permit the states the flexibility needed to tailor such a program to the needs and political climate of the state.'' It asserted that ''the STEP approach has not been documented to be effective in all locations in the country, especially those states without standard enforcement laws or without the ability to conduct enforcement checkpoints.''

Michigan recommended that the criterion should be modified to allow States to qualify ''by demonstrating there is a special statewide enforcement program, i.e., 'belt saturation patrol', in place that reaches a specified population base and includes a statewide publicity campaign, not require that it follow a STEP enforcement model.''

Advocates expressed its support for the STEP criterion, stating that ''we believe that STEP activities are reasonably calculated to improve safety belt use rates and, if properly conducted based on the requirements set forth in the interim final rule, should serve to improve seat belt use rates in the near term. We believe that such programs have previously proven effective because they focus states resources and activities on seat belt use and achieving a specific goal.''

As we stated in the interim final rule, States may conduct any enforcement activity, including saturation patrols, as long as the State's enforcement efforts call for specified periods of intensified enforcement in defined patrol areas, coupled with statewide publicity to draw attention to the enforcement efforts, and are carried out in jurisdictions that reach 70% of the State's population.

The agency believes that the requirements in the interim rule are sufficiently flexible to ensure that States are permitted to use any enforcement strategy available to them. Accordingly, we will not make any changes to the interim regulations in response to Michigan's comment.

The agency notes that this portion of the regulation uses the term ''police.'' Recognizing that law enforcement activities are conducted by police and also by law enforcement officials who perform their duties under other titles, the agency has replaced the term ''police'' each time it appears in this portion of the regulation with the phrase ''law enforcement officials.'' No other changes have been made to this portion of the regulation in this final rule.

6. Child Passenger Protection Education Program Criterion

The interim final rule provided that, to qualify under the child passenger protection education program criterion,

a State must plan to implement a statewide child passenger protection education program that meets the following elements: (1) The program must provide information to the public about proper seating positions for children in air bag equipped motor vehicles, the importance of restraint use, and instruction on how to reduce the improper use of child restraint systems; (2) the program must provide for child passenger safety training and retraining to establish or update child passenger safety technicians, police officers, fire and emergency personnel and other educators to function at the community level for the purpose of educating the public about proper restraint use and to teach child care givers how to install a child safety seat correctly, and the training should encompass the goals and objectives of NHTSA's Standardized Child Passenger Safety Technician Curriculum; (3) the program must provide for periodic child safety seat clinics conducted by State or local agencies (health, medical, hospital, enforcement, etc.); and (4) each of the State's program activities (with the exception of the training and retraining activities) must cover at least 70% of the State's population; that is, the public information and clinic components of State programs must reach counties or other subdivisions of the State that collectively contain at least 70% of the State's population.

Advocates asserted that the agency needed to ''provide some objective performance goals'' under this criterion. It stated that, ''while this aspect of the program is well intentioned, none of the requirements stated in the interim final rule, with the exception of the need to cover 70% of the state population, have quantifiable goals or objective threshold levels against which performance can be assessed.'' As a result, Advocates asserted that, ''this criterion is easy for a state to meet but difficult for the agency to evaluate in terms of effectiveness and performance.''

The agency believes that the requirements contained in the interim final rule are sufficient to ensure that the States establish meaningful child passenger protection programs. As Advocates acknowledged in their comments, each of the State's program activities (with the exception of the training and retraining activities) is required to cover at least 70% of the State's population. In addition, to demonstrate compliance with the public information program component in the first fiscal year in which a State wishes to qualify for a grant based on this criterion, it must submit a sample or synopsis of the content of planned public information program and the strategy that it plans to use to reach 70% of the targeted population. To demonstrate compliance with the training component, the State must submit a description of the activities it will use to train and retrain child passenger safety technicians and others, and it must provide the durations and locations of such training activities. Also, States must estimate the approximate number of people who will participate in the training and retraining activities and submit a plan for conducting clinics that will serve at least 70% of the population.

Additional requirements are imposed on States in subsequent fiscal years. To demonstrate compliance with the child passenger program criterion after the first fiscal year a State receives a grant based on this criterion, States must submit an updated plan for conducting a child passenger protection education program in the following year and information documenting that the prior year's plan was effectively implemented. The information must document that a public information program, training and child safety seat clinics were conducted; identify which agencies were involved; and indicate the dates, durations and locations of these programs.

The agency believes that these criteria are sufficient to ensure that meaningful child passenger protection education programs will be established. These requirements also will enable the agency to determine whether a State's child passenger safety initiatives are broad based and serve populations most in need of child passenger safety information. Accordingly, the agency has decided not to add any new compliance criteria in response to Advocates' comments.

Michigan commented that ''the NHTSA Standardized Child Passenger Safety technical training has been in place for a relatively short period of time. Because training for certification takes considerable time, the reality is that States will not be in a position to have the required number of instructors needed to reach 70% of the population in the first years of the eligibility period.'' To better accommodate the time needed to develop a network of trained child passenger safety instructors, Michigan encouraged the agency to adopt a more graduated approach to reaching the targeted population. Michigan encouraged the agency to amend the interim regulations to require that in fiscal year 2000, the State's training programs reach 50% of the targeted population; in fiscal year 2001, the State's programs reach 60% of the State's population; and in fiscal year 2002, the State's programs reach 70% of the State's population.

The interim final rule did not require that a State's training and retraining activities cover 70% of the State's population. The interim regulations provided that a State's public information and clinic programs must reach 70% of the State's population, but they specifically excluded the training component of a State's child passenger education program from this requirement. Moreover, as of January 2001, there were more than 14,000 certified child passenger safety technicians trained under the NHTSA/AAA Standardized child passenger safety (CPS) training course, and more than 850 technician instructors. Accordingly, the agency is confident that the infrastructure of trained and certified CPS professionals is sufficient to meet the needs throughout the country. NHTSA has provided funding to States to help develop this infrastructure and States are continuing to dedicate highway safety grant funds to expand CPS training, education and outreach, as needed. Accordingly, the agency did not modify the interim final rule in response to this comment.

Pennsylvania questioned the requirement that States submit a sample or synopsis of the contents of the planned public information program and the strategy that will be used to ''reach 70% of the targeted population.'' Specifically, Pennsylvania requested that the agency clarify the meaning of the term ''targeted population.''

The agency agrees that this portion of the interim final rule should be clarified. The agency believes that the public information component of a State's child passenger protection program should cover 70% of the State's total population and that the clinic component should cover 70% of a targeted population. The agency recognizes that 70% of a State's total population does not have children of child safety seat or booster seat age. Accordingly, States should not be required to conduct clinics reaching 70% of their total population.

The agency has modified the regulation to require that a State's clinic program be designed to reach at least 70% of a targeted population, and the term ''targeted population'' has been defined to mean ''a specific group of people chosen by the State to receive instruction on proper use of child restraint systems.'' The regulation also has been modified to require that States identify the target population for their clinic programs and provide a rationale for choosing a specific group, supported

by data, where possible. For example, a State may choose to target all parents and care givers of children child safety seat age or booster seat age if data identify a statewide problem. Alternatively, a State may design its clinic program to focus on a lack of restraint use or high misuse rate among a specified minority, low-income or rural population, if data show a disproportionately high problem among that population as compared to data for the rest of the State.

We have determined, however, that the public information component of the State's child passenger protection education program should reach 70% of the State's total population. The public information campaign should be designed to raise awareness among the population as a whole of the importance of child restraint use.

We believe that these changes will give States flexibility in determining how to best structure their child passenger protection education programs and ensure that those groups most in need of instruction on the proper use of child restraint systems will receive this information.

In addition, the agency notes that this portion of the regulation also uses the term ''police.'' As stated previously, law enforcement officials perform their duties under a variety of titles, not limited to the title ''police.'' Accordingly, the agency has replaced the term ''police'' each time it appears in this portion of the regulation with the phrase ''law enforcement officials.''

7. Child Passenger Protection Law Criterion

The interim final rule provided that, to qualify under this criterion, a State must make unlawful the operation of a passenger motor vehicle whenever an individual who is less than 16 years of age is not properly secured in a child safety seat or other appropriate restraint system in any seating position of the vehicle. The agency noted in the interim final rule that some States currently allow some children under age 16 to ride unrestrained if they are in the rear seat of passenger vehicles or if they ride in certain excepted vehicles. The agency stated in the interim rule that it believes the intent of the legislation was to eliminate these gaps in coverage.

In its comments, Advocates agreed with the agency that the intent of this criterion was to close the gaps in current State laws and Advocates asserted that ''no exceptions should be permitted in order to qualify under this criterion.''

The agency has considered exceptions under this criterion very carefully, and only limited exceptions have been permitted, such as when children under the age of 16 ride on a school bus or when children under age 16 have a medical or physical condition that would prevent appropriate restraint and their condition is certified by a physician.

Accordingly, this portion of the interim regulation is adopted without change.

8. Limitation on Grant Amounts

The interim final rule provided that no grant may be made to a State unless the State certifies that it will maintain its aggregate expenditures from all other sources for its occupant protection program at or above the level of such expenditures in fiscal years 1996 and 1997. Pennsylvania questioned what the agency meant by the term ''all other sources'' and recommended that the agency clarify this provision.

The agency recognizes that, in fiscal years 1996 and 1997, some States expended unusually large sums of money on their occupant protection programs and that these sums were from special funding sources that are no longer available. In particular, many States experienced a transfer of funds in fiscal year 1995, under the Section 153 program, because they did not have in effect conforming motorcycle helmet or seat belt use legislation. Some of these States chose to use these funds to upgrade their occupant protection programs and, in many cases, the funds that had been transferred in fiscal year 1995 were expended in fiscal years 1996 and 1997.

The agency believes that the maintenance of effort requirement contained in the Section 405 program was intended to ensure that States maintain their ordinary spending on their occupant protection programs and that the funds they receive under the Section 405 program will supplement those expenditures and not replace them. The agency does not believe the requirement was intended to match special or unusual funding resources, such as the Section 153 transfer or other funds made available to States under Chapter 1 of Title 23 of the United States Code, some or all of which a State may choose to use also to supplement its ordinary spending in this area. The agency believes that the inclusion of these special funding sources in the maintenance of effort requirement would impose a hardship on the States and would not result in the most effective use of these resources.

Accordingly, the regulation has been modified to clarify that States must maintain their aggregate expenditures from all other sources, except those authorized under Chapter 1 of Title 23 of the United States Code, for their occupant protection programs at or above the average level of such expenditures in fiscal years 1996 and 1997.

9. Section 2003(b)

TEA 21 established a new incentive grant program under Section 2003(b) to promote child passenger protection education and training. Section 2003(b) provides federal funds for activities that are designed to prevent deaths and injuries to children; educate the public concerning the design, selection, placement, and installation of child restraints; and train and retrain child passenger safety professionals, police officers, fire and emergency medical personnel, and other educators concerning all aspects of child restraint use.

Wisconsin questioned why the agency's interim final rule was silent about the eligibility criteria that will be applied for States seeking grants under 2003(b).

The agency announced the availability of grants under Section 2003(b) in notices published in the **Federal Register** on September 20, 1999 (64 FR 50861) and on November 6, 2000 (65 FR 66582). The specific eligibility criteria for the grants were discussed in these notices.

Regulatory Analyses and Notices

Executive Order 12988 (Civil Justice Reform): This final rule will not have any preemptive or retroactive effect. The enabling legislation does not establish a procedure for judicial review of final 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 in court.

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 significant under Executive Order 12866 and the Department of Transportation's Regulatory Policies and Procedures.

This 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.

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 405 program, and they are not considered to be small entities, as that term is defined in the Regulatory Flexibility Act.

Paperwork Reduction Act: This final rule contains 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. 2127–0600, through February 28, 2002.

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.

The 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 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.

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

List of Subjects in 23 CFR Part 1345

Grant programs—Transportation, Highway safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, the interim final rule published in the **Federal Register** of October 1, 1998, 63 FR 52592, adding a new Part 1345 to chapter II of Title 23 of the Code of Federal Regulations, is adopted as final, with the following changes:

PART 1345—INCENTIVE GRANT CRITERIA FOR OCCUPANT PROTECTION PROGRAMS

1. The authority citation for Part 1345 continues to read as follows:

Authority: Pub. L. 105–178; 23 U.S.C. 405; delegation of authority at 49 CFR 1.50.

2. Section 1345.3 is amended by adding a new paragraph (f) to read as follows:

§ 1345.3 Definitions.

* * * * *

(f) *Targeted population* means a specific group of people chosen by a State to receive instruction on proper use of child restraint systems.

3. Section 1345.4 is amended by revising paragraph (a)(1)(iv) to read as follows:

§ 1345.4 General requirements.

(a) * * *

(1) * * *

(iv) It will maintain its aggregate expenditures from all other sources, except those authorized under Chapter 1 of Title 23 of the United States Code, for its occupant protection 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);

* * * * *

4. Section 1345.5 is amended as follows:

a. A new paragraph (c)(4) is added;

b. Paragraph (d)(2) is amended by removing the word ''police'' and adding in its place ''law enforcement officials''; and paragraph (d)(5) is amended by removing the word ''police'' and adding in its place ''law enforcement'';

c. Paragraph (e)(1)(iv) is revised; paragraphs (e)(1)(ii) and (e)(2)(ii) are amended by removing the term ''police officers'' each time it appears and adding in its place ''law enforcement officials''; and paragraph (e)(2)(i) is amended by removing the word ''targeted'' and adding in its place ''State's''.

The addition and revision read as follows:

§ 1345.5 Requirements for a grant.

* * * * *

(c) * * *

(4) If a State has in effect a law that provides for the imposition of a fine of not less than $25.00 or one or more penalty points for a violation of the State's child passenger protection law, but provides that imposition of the fine or penalty points may be waived if the offender presents proof of the purchase of a child safety seat, the State shall be deemed to have in effect a law that provides for the imposition of a minimum fine or penalty points, as provided in paragraph (c)(1) of this section.

* * * * *

(e) * * *

(1) * * *

(iv) The States's public information program must reach at least 70% of the State's total population. The State's clinic program must reach at least 70% of a targeted population determined by the State and States must provide a rationale for choosing a specific group, supported by data, where possible.

* * * * *

Issued on: July 13, 2001.

L. Robert Shelton,

Executive Director.

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 84

RIN 1076–AE00

Encumbrances of Tribal Land—Contract Approvals

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: The Department of the Interior, Bureau of Indian Affairs (BIA), is issuing a Final Rule that states which types of contracts or agreements encumbering tribal land are not subject to approval by the Secretary of the Interior under the Indian Tribal Economic Development and Contract Encouragement Act of 2000. The regulation also provides, in accordance with the Act, that Secretarial approval is not required (and will not be granted) for any contract or agreement that the Secretary determines is not covered by the Act. Finally, for contracts and agreements that are covered by the Act, the regulation sets out mandatory conditions for the Secretary's approval.