Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 20, 30, 31, 32, 33, and 35

Expanded Definition of Byproduct Material (NARM Rulemaking), Availability of Web Page

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission (NRC) has crafted a Web page for the rulemaking titled "Expanded Definition of Byproduct Material," also known as the "NARM rulemaking." The Energy Policy Act of 2005 requires the NRC to establish a regulatory framework for the expanded definition of byproduct material to include certain naturally occurring and accelerator-produced radioactive material through rulemaking. Documents in support of this rulemaking will be posted on the Web page via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov* as they become publicly available.

DATES: The NRC is not soliciting comments at this time; however, NRC will request formal public comments when a notice of proposed rulemaking is published in the **Federal Register.**

ADDRESSES: Documents related to the NARM rulemaking may be examined at the NRC Public Document Room, located at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. They may also be viewed and downloaded electronically from the "Expanded Definition of Byproduct Material (NARM Rulemaking)" Web page via the rulemaking Web site *http://ruleforum.llnl.gov* and selecting "Other Rulemaking-Related Comment Requests" from the selection menu. For information about the interactive rulemaking Web site, contact Ms. Carol Gallagher (301) 415–5905; e-mail *CAG@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Jayne M. McCausland, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6219, e-mail *jmm2@nrc.gov.* For questions related to the NARM rulemaking, contact Ms. Lydia Chang, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6319, e-mail *lwc1@nrc.gov.*

SUPPLEMENTARY INFORMATION: Section 651(e) of the Energy Policy Act of 2005 (the Act) expanded the definition of *Byproduct material* in section 11e. of the Atomic Energy Act of 1954, to include certain naturally occurring and accelerator-produced radioactive material (NARM). The Act also required the NRC to provide a regulatory framework for licensing and regulating the additional byproduct material. The NRC is developing a rulemaking to revise its regulations to expand the definition of *Byproduct material* to include the following materials produced, extracted, or converted after extraction for use for a commercial, medical, or research activity:

(1) Any discrete source of radium-226;

(2) Any accelerator-produced radioactive material; and

(3) Any discrete source of naturally occurring radioactive material, other than source material, that the Commission, in consultation with the Administrator of the Environmental Protection Agency, the Secretary of Energy, the Secretary of Homeland Security, and the head of any other appropriate Federal agency, determines would pose a threat to public health and safety or the common defense and security similar to the threat posed by a discrete source of radium-226.

To aid the rulemaking process, NRC held a roundtable public meeting on November 9, 2005, to solicit input from stakeholders on the NARM rulemaking. Participants for the roundtable public meeting included representatives from other Federal agencies, State governments, the medical community, professional organizations, public interest groups, and members of the general public. The transcripts from the November 9, 2005, public meeting and a meeting summary have been posted on the NARM rulemaking Web page with other supporting documents. Additional documents may be added as they become publicly available, including the draft proposed rule. The Web page can be accessed via NRC's rulemaking Web site at *http://ruleforum.llnl.gov* under "Other Rulemaking-Related Comment Requests" selection menu. The specific link to the NARM rulemaking Web page is *http://ruleforum.llnl.gov/cgi-bin/rulemake?source=narm&st=ipcr.* Once the proposed rule is published in the **Federal Register,** the NARM rulemaking Web page would still be accessed at *http://ruleforum.llnl.gov* but relocated under "Proposed Rules" selection menu.

Dated at Rockville, Maryland, this 21st day of December, 2005.

For the Nuclear Regulatory Commission.

Scott W. Moore,

Chief, Rulemaking and Guidance Branch, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

23 CFR Part 1313

[Docket No. NHTSA–2005–23454]

RIN 2127–AJ73

Amendment to Grant Criteria for Alcohol-Impaired Driving Prevention Programs

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

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This notice proposes to amend the regulations that implement the section 410 program, under which States can receive incentive grants for alcohol-impaired driving prevention programs. The proposed amendments implement changes that were made to the section 410 program by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy For Users (SAFETEA–LU).

As a result of SAFETEA–LU, States are provided with two alternative means to qualify for a section 410 grant. Under the first alternative, States may qualify as a "low fatality rate State" if they have an alcohol-related fatality rate of 0.5 or

less per 100 million vehicle miles traveled (VMT). Under the second alternative, States may qualify as a "programmatic State" if they demonstrate that they meet three of eight grant criteria for fiscal year 2006, four of eight grant criteria for fiscal year 2007, and five of eight grant criteria for fiscal years 2008 and 2009. Qualifying under both alternatives would not entitle the State to receive additional grant funds. SAFETEA–LU also provides for a separate grant to the ten States that are determined to have the highest rates of alcohol-related driving fatalities.

This notice of proposed rulemaking proposes criteria States must meet and procedures they must follow to qualify for section 410 grants, beginning in fiscal year 2006.

DATES: Written comments may be submitted to this agency and must be received by February 2, 2006.

ADDRESSES: Comments should refer to the docket number and be submitted (preferably in two copies) to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Alternatively, you may submit your comments electronically by logging on to the Docket Management System (DMS) Web site at *http://dms.dot.gov.* Click on "Help & Information" or "Help/Info" to view instructions for filing your comments electronically. Regardless of how you submit your comments, you should identify the Docket number of this document. You may call the docket at (202) 366–9324. Docket hours are 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: For programmatic issues: Ms. Carmen Hayes, Highway Safety Specialist, Injury Control Operations & Resources (ICOR), NTI–200, or Jack Oates, Chief, Implementation Division, ICOR, NTI–200, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–2421. For legal issues: Mr. Roland (R.T.) Baumann III, Attorney-Advisor, Legislation and General Law, Office of the Chief Counsel, NCC–113, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–1834.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

The Alcohol Impaired Driving Countermeasures program was created by the Drunk Driving Prevention Act of 1988 and codified at 23 U.S.C. 410. As originally conceived, States could qualify for basic and supplemental grants under 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 impaired 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.

During the decade and a half since the inception of the section 410 program, it has been amended several times to change the grant criteria and grant award amounts. The most recent amendments prior to those leading to today's action arose out of the Transportation Equity Act for the 21st Century (TEA–21), Public Law 105–178. TEA–21 amended both the grant amounts and the criteria that States had to meet to qualify for both basic and supplemental grants under the section 410 program. Under TEA–21, States qualified for a "programmatic" basic grant by meeting five of seven of the following criteria: An administrative driver's license suspension or revocation system; an underage drinking prevention program; a statewide impaired-driving traffic enforcement program; a graduated driver's license system; a program to target drivers with a high blood alcohol concentration (BAC) level; a program to reduce drinking and driving among young adults (between the ages of 21 and 34); and a BAC testing program. In addition, States could qualify for a "performance" basic grant by demonstrating that the percentage of fatally injured drivers in the State with a BAC of 0.10 or more had decreased in each of the three previous calendar years and that the percentage of fatally injured drivers with a BAC of 0.10 or more in the State was lower than the average percentage for all States in the same calendar year. Supplemental grants were also available for States that received a programmatic and/or performance grant and met additional criteria.

On August 10, 2005, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) was enacted into law (Pub. L. 109–59). Section 2007 of SAFETEA–LU made new amendments to 23 U.S.C. 410. These amendments again modified the grant criteria and the award amounts and made a number of structural changes to streamline the program. Today's action proposes to amend the Section 410 regulation to implement those changes.

II. Summary of Proposed Changes to the Regulation

SAFETEA–LU discontinues one type of grant under the section 410 program—the supplemental grant—retaining what is essentially equivalent to the basic grant under the old program. The proposed rule implements this change, detailing the programmatic criteria a State needs to meet under the new program.

Under SAFETEA–LU, the number of programmatic criteria available for selection by a State seeking to qualify for a grant increases from seven to eight. At the same time, the number of these criteria that a State must satisfy to receive a grant decreases from five (under the old section 410 program) to three in the first fiscal year, four in the following fiscal year, and five in the remaining fiscal years of the program. The proposed rule implements these changes, which have the combined effect of increasing the States' qualification options for the duration of the program while reducing the States'

compliance requirements for the first two years of the program.

SAFETEA–LU directs that States with low alcohol-related fatality rates, based on the agency's Fatality Analysis Reporting System (FARS), be awarded grants without the need to satisfy any of these programmatic criteria. These States will qualify for funds without the administrative burden of submitting an application. Also, the ten States with the highest alcohol-related fatality rates, based on the FARS, will receive an additional grant with only minimal procedural requirements. The proposed rule streamlines the section 410 program by providing greatly simplified procedures for these high- and low-fatality rate States to receive grant funds.

Finally, the proposed rule codifies the SAFETEA–LU requirement that grant funds be distributed to the States based on the formula that has applied for years to State highway safety programs under 23 U.S.C. 402. This will ensure the full and equitable distribution of funds under the section 410 program.

III. The Section 410 Program Under SAFETEA–LU

The SAFETEA–LU amendments, which take effect in FY 2006, retain the basic grant structure of the old section 410 Program but eliminate all supplemental grants. States may qualify for a grant in one of two ways. A State determined to be a "low fatality rate State" by virtue of having an alcohol-related fatality rate of 0.5 or less per 100 million VMT is eligible for a grant, as further described under section III.A. Under SAFETEA–LU, fatality rates are to be determined by using NHTSA's FARS data. States may also qualify by meeting certain programmatic requirements. A State may qualify as a "programmatic State" by demonstrating compliance with several specified criteria, the number varying by fiscal year, as further described under section III.B. Five programmatic criteria are continued from the TEA–21 basic grant criteria with minor modifications. SAFETEA–LU eliminates two programmatic criteria from the TEA–21 basic criteria—the graduated driver's licensing system and the young adult drinking and driving program. These criteria are replaced by two new programmatic criteria—a prosecution and adjudication outreach program and an alcohol rehabilitation or DWI court program. An eighth programmatic criterion, the self-sustaining impaired driving prevention program, existed under the TEA–21 as a supplemental grant criterion and is continued under SAFETEA–LU as the equivalent of a programmatic basic grant criterion under the old section 410 program.

Under SAFETEA–LU, grant funds are to be allocated to qualifying States on the basis of the apportionment formula in 23 U.S.C. 402(c)—75 percent in the ratio which the population of each State bears to the total population of all qualifying States and 25 percent in the ratio which the public road mileage in each State bears to the total public road mileage of all qualifying States. The total amount of funding available each fiscal year for these grants will be known only after the agency identifies the States that are eligible to receive a new category of grants as "high fatality rate States."

The SAFETEA–LU amendments include provisions for separate grants to be made to these "high fatality rate States," as further described under section III.C. Each of the ten States with the highest alcohol-related fatality rates, based on FARS data, will be eligible for a separate grant. The statute provides that up to 15 percent of the amount available to carry out the section 410 program shall be available for grants to these States. Funds will be allocated among the ten qualifying high fatality rate States based on the apportionment formula in 23 U.S.C. 402(c), with the limitation that no more than 30 percent of the funds available for these grants may be awarded to any one State.

The section 410 program derives its definition of "State" from 23 U.S.C. 401, which includes any of the fifty States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. Accordingly, each of these entities is eligible to participate in this program by submitting an application to the agency or by qualifying as a low or high fatality rate State, provided reportable FARS data exist for those jurisdictions.

A. Low Fatality Rate States (23 CFR 1313.5)

Under TEA–21, States could qualify for one particular grant based on performance or another grant by meeting programmatic criteria. States that met both sets of requirements could receive two grants. SAFETEA–LU discontinues the two-grant approach and provides instead for two alternative means of receiving a single grant, based either on a performance or programmatic approach.

Under SAFETEA–LU, the performance-based measure requires States to have an alcohol related fatality rate of 0.5 or less per 100 million VMT as of the date of the grant, as determined using the agency's most recent FARS data. As directed by SAFETEA–LU, the agency will calculate the alcohol-related fatality rate per 100 million VMT for each State using the most recent final FARS data available prior to the date of grant awards. Any State that is determined to have a fatality rate of 0.5 or less per 100 million VMT will be considered eligible for a grant under section 410 as a low fatality rate State. States for which no reportable FARS data exist will not be evaluated for qualification as low fatality rate States.

Prior to the start of the application period (on or about June 1 of that fiscal year), the agency will inform States that qualify for a grant based on low fatality rates. These States will not be required to submit an application demonstrating compliance with the programmatic requirements. They will, however, be required to submit information that identifies how the grant funds will be used in accordance with the requirements of SAFETEA–LU. If the agency experiences a delay in making fatality rate information available, all States should prepare and submit information demonstrating compliance with the required number of programmatic criteria. A State should not assume qualification for section 410 funding as a "low fatality rate State" until the information is made available by the agency.

B. Programmatic States (23 CFR 1313.6)

Prior to the enactment of SAFETEA–LU, the section 410 grant criteria included the following: An administrative license suspension or revocation system; an underage drinking prevention program; a statewide traffic enforcement program; a graduated driver's license system; a program to target drivers with high BACs; a program to reduce drinking and driving among young adults; and a BAC testing program. Under SAFETEA–LU, the graduated driver's license system and the young adult drinking and driving program have been eliminated and two new criteria have been added—a prosecution and adjudication outreach program and an alcohol rehabilitation or DWI court program. In addition, the self-sustaining impaired driving prevention program (previously a supplemental grant criterion) has been retained as one of the criteria for a new grant. The remaining criteria from TEA–21 (some with modifications) continue to be features of the section 410 program under SAFETEA–LU.

To qualify for a section 410 grant in FY 2006 based on programmatic criteria, SAFETEA–LU requires a State to demonstrate compliance with three of the following eight criteria: A high

visibility impaired driving enforcement program; a prosecution and adjudication outreach program; a BAC testing program; a high-risk drivers program; an alcohol rehabilitation or DWI court program; an underage drinking prevention program; an administrative driver's license suspension or revocation system; and a self-sustaining impaired driving prevention program. States will be required to meet four of eight criteria to qualify in FY 2007 and five of eight criteria to qualify in each subsequent fiscal year. The details of these criteria are set forth below.

The terms "offender" and "offense" are used in this proposal and refer to being detected and recorded as an impaired driver. A "first offense" does not necessarily mean that the individual involved had never driven while impaired prior to that offense. Overall, the probability of being detected while driving is roughly 1 to 2 percent. Thus the chances are small that one or more offenses truly reflect the only times that individual has driven while impaired.

i. High Visibility Impaired Driving Enforcement Program

To qualify for a grant based on this criterion, SAFETEA–LU requires a State to demonstrate:

A State program to conduct a series of high visibility, statewide law enforcement campaigns in which law enforcement personnel monitor for impaired driving, either through the use of sobriety check points or saturation patrols, on a nondiscriminatory, lawful basis for the purpose of determining whether the operators of the motor vehicles are driving while under the influence of alcohol—

(A) If the State organizes the campaigns in cooperation with related periodic national campaigns organized by the National Highway Traffic Safety Administration, except that this subparagraph does not preclude a State from initiating sustained high visibility, Statewide law enforcement campaigns independently of the cooperative efforts; and

(B) If, for each fiscal year, the State demonstrates to the Secretary that the State and the political subdivisions of the State that receive funds under this section have increased, in the aggregate, the total number of impaired driving law enforcement activities at high incident locations (or any other similar activity approved by the Secretary) initiated in such State during the preceding fiscal year by a factor that the Secretary determines meaningful for the State over the number of such activities initiated in such State during the preceding fiscal year.

Agency's Proposal (23 CFR 1313.6(a)). Under this criterion, the agency proposes to require a State to: (1) Participate in a national high visibility impaired driving law enforcement campaign organized by NHTSA; (2) conduct a series of additional high visibility law enforcement campaigns within the State throughout the year; and (3) use sobriety checkpoints and/or saturation patrols at high-risk locations throughout the State, conducted in a highly visible manner and supported by publicity. A State could qualify by establishing a program that uses checkpoints, saturation patrols or both. The State would be required to participate in the National Impaired Driving Crackdown and conduct sustained highly visible enforcement throughout the remainder of the year.

Under the proposed rule, the State would be required to show that each of the State's participating law enforcement agencies will conduct checkpoints and/or saturation patrols on at least four nights during the National impaired driving campaign organized by NHTSA and at least monthly during the remainder of the year. The State would be required to provide information on the coordination of these activities, including the State's efforts to publicize the law enforcement activities through the use of paid and/or earned media plans. States should publicize these activities before, during and after law enforcement operations. Publicity before the operation creates general deterrence and encourages "would be" impaired drivers to stay where they are or find a safe ride home. Publicity during the event (such as ride-alongs for members of the media) increases the credibility of advertisements and demonstrates to the public that law enforcement is, in fact, taking place in their community. Publicity after the event reinforces law enforcement's commitment by reporting on the number of individuals arrested and the consequences (such as loss of license, time in jail, court costs and attorney fees) that they experience.

Basis for Proposal. Highly visible, widely publicized and frequently conducted impaired-driving traffic enforcement programs are effective in reducing alcohol-related fatalities. NHTSA research strongly supports the use of roadside sobriety checkpoints to reduce impaired driving deaths and injuries. Decreases in alcohol-related crashes have been reported consistently in States where checkpoints are employed. A 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. Saturation patrols or similar enhanced impaired driving enforcement efforts, particularly when well-coordinated, conducted in a highly visible manner and accompanied by publicity, can also be effective, though research to date on the use of saturation patrols has shown they yield more modest results.

A grant criterion for Statewide programs to conduct highly visible law enforcement activities 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 other intensive and highly publicized traffic enforcement techniques.

In recent years, NHTSA has coordinated the National "You Drink & Drive. You Lose" crackdown campaign and promoted sustained highly visible law enforcement activities during other high-risk times of year. Thousands of law enforcement agencies have participated in the crackdown during each of the campaigns and Congress has consistently provided dedicated funding to support the law enforcement activities and the use of paid media. In 2002, NHTSA identified 13 Strategic Evaluation States (SES) with especially high numbers and/or rates of alcohol-related fatalities. These States received technical support and financial assistance to conduct highly visible impaired driving enforcement efforts during the crackdowns and on a sustained basis throughout the year. In 2003, for the first time since 1999, the nation experienced a decline in alcohol-related fatalities (511 fewer fatalities, a 2.9 percent reduction from the previous year). A decline occurred also in 2004 (411 fewer fatalities; a 2.4 percent reduction from the previous year). Much of this decline, particularly in 2003, occurred in the States participating in the SES program.

To guide the SES, NHTSA outlined criteria to be followed to ensure that law enforcement efforts are coordinated, frequent, visible, and publicized through paid and earned media. These criteria have been used as guidance in developing the elements that States would follow under the proposed rule to qualify for a grant under the high visibility impaired driving enforcement program criterion.

Demonstrating Compliance (23 CFR 1313.6(a)(3)). To demonstrate compliance in the first fiscal year that a State receives a grant based on this criterion, the State would submit a comprehensive plan for conducting its high visibility impaired driving law enforcement program. The plan would be required to contain various elements, including guidelines, policies or operation procedures, approximate

dates and projected locations of planned law enforcement activities, a list of law enforcement agencies expected to participate, a paid media buy plan (if the State buys media) and a description of anticipated earned media activities designed to generate awareness before, during and after the operation.

In subsequent fiscal years, the State would submit information evaluating the results of the prior year's plan and an updated plan for the upcoming year. SAFETEA–LU provides that States must increase the number of impaired driving law enforcement activities by a factor determined to be meaningful by the agency. The proposed rule would address this requirement by providing that the plan must demonstrate that a sufficient number of law enforcement agencies will participate in the effort during the first year a State qualifies for a grant under this criterion and increase participation in subsequent years. It would require that the plan demonstrate that State Police and local law enforcement agencies collectively serving at least 50 percent of the State's population or serving geographic areas that account for at least 50 percent of the State's alcohol-related fatalities will participate in the first year a State receives a grant based on this criterion, 55 percent in the second year, 60 percent in the third year, and 65 percent in the fourth year. Recent experience in the SES grant program has shown that most States are able to prepare a plan and participate at the 50 percent level in the first fiscal year, and then expand participation from that level in subsequent years. Additionally, after the first fiscal year, to maintain a State's qualification under this criterion, the State would be required to provide data on the total number of impaired driving law enforcement activities conducted in the State during the preceding year.

ii. Prosecution and Adjudication Outreach Program

Several components of the criminal justice system are involved when an individual is arrested for impaired driving. SAFETEA–LU includes, for the first time in Section 410, a criterion that addresses the responsibilities of the individuals that prosecute and adjudicate impaired driving cases. The criterion is focused specifically on improving the prosecution and adjudication of DWI offenses.

To qualify for a grant based on this criterion, SAFETEA–LU requires a State to demonstrate:

A State prosecution and adjudication program under which—

(A) The State works to reduce the use of diversion programs by educating and informing prosecutors and judges through various outreach methods about the benefits and merits of prosecuting and adjudicating defendants who repeatedly commit impaired driving offenses;

(B) The courts in a majority of the judicial jurisdictions of the State are monitored on the courts' adjudication of cases of impaired driving offenses; or

(C) Annual statewide outreach is provided for judges and prosecutors on innovative approaches to the prosecution and adjudication of cases of impaired driving offenses that have the potential for significantly improving the prosecution and adjudication of such cases.

Agency's Proposal (23 CFR 1313.6(b)). Under this criterion, the agency proposes to require a State either to provide an outreach and education program available to court professionals that focuses on the negative aspects of using diversion programs, or provide an outreach and education program available to court professionals that details innovative approaches to the prosecution and adjudication of impaired driving offenses, or monitor State courts through the collection of information in a majority of jurisdictions (at least 50 percent) for adjudication outcomes of impaired driving offenses.

To meet this criterion, a State would be required to submit evidence that it is currently performing one or more of these activities. States wishing to comply based on an outreach and education program are encouraged to provide traffic safety outreach and education to judges and prosecutors, using NHTSA recommended courses. The State would be required to conduct these education and outreach programs annually and use only materials that the agency has reviewed and approved for use. The proposed rule would allow a State to comply with the outreach and education program by demonstrating that the State employs a Traffic Safety Resource Prosecutor (TSRP) and a State Judicial Educator, because the agency believes similar benefits can be achieved through deployment of these professionals. States wishing to comply based on a court monitoring program would be required to collect data on offender sentencing.

Basis for Proposal. States that institute outreach programs provide an effective means to educate prosecutors and judges about the shortcomings of diversion programs in reducing impaired driving recidivism and to provide information on more effective sentencing alternatives. Alternative sanctions for DWI offenses may include home detention with electronic monitoring, intensive probation supervision, daily reporting centers, and sanctions such as vehicle impoundment, license plate confiscation or ignition interlock installation. An increase in the number of court systems that have access to this information will result in less reliance on diversion programs and more on sentencing alternatives that are more effective in modifying impaired behavior.

It is important for States to have a process in place to record the adjudications of cases involving impaired drivers. The collection of this information is vital to State interests to focus on localities that are not prosecuting and adjudicating defendants who commit repeat DWI offenses.

The agency has previously identified as problematic the use of pre-conviction diversion programs. Diversion programs, which are permitted in many States, are presented by prosecuting attorneys as an alternative to the traditional adjudication and sanction of DWI offenses and the court may accept or deny their use. Where these programs are accepted, the court may dismiss criminal charges against DWI offenders after completion of a treatment program. This restricts the type of information that would ordinarily be added to an offender's driving record and enables individuals with multiple offenses to be treated as first offenders. Diversion programs not only allow offenders to avoid sanctions but also increase the possibility that repeat offenders avoid identification.

Prosecutors and judges should actively fulfill their respective functions in the prosecution and adjudication of impaired driving cases. Where State laws provide for diversion of impaired driving cases, judges and prosecutors should exercise oversight in its use. Oversight includes approving diversion only where permitted by law and insuring that diverted defendants' records of impaired driving are available for enhancement in the event of recidivism.

Demonstrating Compliance (23 CFR 1313.6(b)(3)). To demonstrate compliance in the first fiscal year for an outreach and education program under the proposed rule, the State would be required to provide information that details the proposed content of the course covering either information on reducing the use of diversion programs or alternative approaches to sanctioning DWI offenders. A State would certify that its program is provided on an annual basis. Alternatively, the State would be allowed to submit information indicating its use of a TSRP and State Judicial Educator to provide NHTSA-

approved educational programs to prosecutors and judges and a description of the courses presented and the level of judicial and prosecutor contact.

To demonstrate compliance in the first fiscal year for a court-monitoring program, the State would be required to provide information that includes the name and location of the courts covered (a majority of jurisdictions, at least 50 percent, must be included) and the kind of data collected. At a minimum, the data collected would be required to include a list of all original criminal or traffic-related charges against the defendant, the final charges brought by the prosecutor, and the disposition of the charges or sentence provided.

To demonstrate compliance in a subsequent fiscal year for an outreach and education program, the State would be required to provide additional information if course content has been altered from the previous year. A compliant State would be required to continue to certify that the outreach is conducted annually. For States complying because of their use of a TSRP and State Judicial Educator, no information need be provided unless there has been a change in the status of these positions. A compliant State would be required to continue to certify the use of these positions.

To demonstrate compliance in a subsequent fiscal year for a court-monitoring program, the State would be required to submit a statement indicating it plans to retain a compliant court-monitoring program. Information on data collection elements and the courts involved in the program would not be required unless there is a change from the previous year.

iii. BAC Testing Program

To qualify for a grant based on this criterion, SAFETEA–LU requires a State to demonstrate:

> An effective system for increasing from the previous year the rate of blood alcohol concentration testing of motor vehicle drivers involved in fatal crashes.

Agency's Proposal (23 CFR 1313.6(c)). The agency is proposing to evaluate a State's performance based on a review of available FARS data. For each fiscal year, the agency would review the most recent final FARS data available for each State prior to the date of award and compare the BAC testing percentages of each State against the final FARS data for the same State in the previous year. A State could qualify based on data if the data shows that the State's percentage of BAC testing among drivers involved in fatal motor vehicle crashes has improved from the previous year.

Basis for Proposal. Improving the rate of testing for blood alcohol concentration (BAC) of drivers involved in fatal crashes continues to be a critical component of any alcohol-impaired driving program. Increased BAC testing helps us to define the problem, identify offenders, and take steps to develop effective solutions to reduce the tragic consequences of impaired driving. According to FARS data, approximately 50 percent of all drivers involved in fatal crashes (both surviving and killed) in 2003 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 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 was a supplemental grant criterion under section 410 since the inception of the program. TEA–21 made it a criterion for a basic grant, allowing a State to qualify if, during the first two years, the State implemented an effective system for improving the rate of testing. To qualify in subsequent years, the State had to have a testing rate that was above the national average. SAFETEA–LU continues to include this criterion for a grant with an important modification. The focus of the requirement has shifted from a system that provides for a testing rate above the national average to one that demonstrates an improved rate of testing from year to year.

Demonstrating Compliance (23 CFR 1313.6(c)(3)). To demonstrate a significant BAC testing increase, the Agency proposes that qualifying States show an increase from one year to the next of at least 5 percentage points. States with testing rates above 50 percent would be required to show an increase of at least 5 percent in the testing of untested drivers. For example, if a State has a testing rate of 65 percent, it would have to test at least 5 percent of the 35 percent of drivers that remained untested after fatal vehicle crashes, for an increase in testing of 1.75 percent of drivers involved in fatal crashes over the previous year in order to meet this criterion.

For each fiscal year, to demonstrate compliance for a grant based on this criterion under the proposed rule, a State need only submit a statement indicating compliance with the BAC testing requirements of this section (*i.e.*, a State whose testing rate is under 50 percent would be required to increase its testing rate by 5 percent each year and a State whose testing rate is 50 percent or greater would need to achieve an increase of 5 percent of untested drivers each year). Prior to the application period (on or about June 1 of that fiscal year), NHTSA would produce a list of States, available through its regional offices, that are determined to qualify under this criterion based on a review of FARS data.

iv. High Risk Drivers Program

To qualify for a grant based on this criterion, SAFETEA–LU requires a State to demonstrate:

> A law that establishes stronger sanctions or additional penalties for individuals convicted of operating a motor vehicle while under the influence of alcohol whose blood alcohol concentration is 0.15 percent or more than for individuals convicted of the same offense but with a lower blood alcohol concentration. For purposes of this paragraph, "additional penalties" includes—
>
> (A) A 1-year suspension of a driver's license, but with the individual whose license is suspended becoming eligible after 45 days of such suspension to obtain a provisional driver's license that would permit the individual to drive—
>
> (i) Only to and from the individual's place of employment or school; and
>
> (ii) Only in an automobile equipped with a certified alcohol ignition interlock device; and
>
> (B) A mandatory assessment by a certified substance abuse official of whether the individual has an alcohol abuse problem with possible referral to counseling if the official determines that such a referral is appropriate.

Agency's Proposal (23 CFR 1313.6(d)). The agency is proposing to require that a compliant State law mandate specified additional penalties for individuals convicted of operating a motor vehicle with a 0.15 BAC or higher. These additional penalties would include a one-year license suspension, except that States could permit the offender to drive after 45 days with a restricted license provided that a state-certified ignition interlock (meeting NHTSA's ignition interlock performance specifications; *see* 57 FR 11772 for the most recent specifications) is installed in every vehicle owned and every vehicle operated by the offender. This restriction is meant to ensure that high-risk offenders cannot easily circumvent the driving restrictions. The restricted license could permit driving to places of employment or school. The penalties would also include a mandatory

assessment by a certified substance abuse official. If it is determined after assessment that an offender must seek treatment, a State could also permit the offender to drive with a restricted license to a treatment facility.

The requirements of this criterion should not be confused with those of 23 U.S.C. 164, the repeat intoxicated driver laws grant program. Under section 164, a State must provide a one-year hard license suspension to any individual convicted of repeat DWI offenses within a five-year period. There are no exceptions under that program that would allow a driver to operate a motor vehicle before one year has passed. SAFETEA–LU and the revised Section 410 requirements do not vary this requirement. If a State, in the interest of complying with this programmatic requirement under section 410, revises its law to allow high BAC offenders committing multiple offenses to receive a restricted license after 45 days, it will not remain compliant with section 164. In order to comply with both programs, the State must view the requirements under this criterion as applying to first offenses only.

Basis for Proposal. NHTSA is aware of the dangers posed by drinking drivers with high blood alcohol concentrations (BACs). Data from the FARS indicate that 8,565 people were killed in motor vehicle crashes in 2004 that involved at least one driver with a BAC of 0.15 or higher. NHTSA estimates that thirteen percent of all drivers involved in a fatal crash have a BAC of 0.15 or greater. Of all drivers involved in fatal crashes with a positive BAC, fifty-five percent have a BAC of 0.15 or more.

The rationale for high-BAC sanctioning systems is that DWI offenders with higher BACs pose a greater risk than offenders with lower BACs. There is evidence that DWI offenders with higher BACs are more likely than DWI offenders with lower BACs to be involved in a crash (Zador, Krawchuck, Voas, 2000; Compton *et al.*, 2002). After adjusting for variables such as driver age and gender, the relative risk of a crash of any severity increases as BAC increases (Compton *et al.*, 2002). Compared to drivers with zero BACs, the relative risk of a crash is 5 times higher for a BAC of .10, 22 times higher for a BAC of .15, 82 times higher for a BAC of .20, and 154 times higher for a BAC of .25 or higher.

The objective of stronger sanctions targeting high BAC drivers is to reduce recidivism among this high-risk group of offenders by increasing the certainty and severity of punishment. Although historically some prosecutors routinely negotiated and some judges routinely applied stronger sanctions for high-BAC offenders within the framework of the general impaired driving statutes, many high BAC offenders did not receive enhanced penalties. In a high-BAC sanctioning system, the high-BAC threshold is established above the *per se* level for a standard offense, currently set by all States at .08 BAC.

TEA–21 included a "High BAC" basic criterion for State programs that targeted high BAC drivers. Under TEA–21, States needed to demonstrate a system for imposing enhanced penalties on drivers who had been convicted of operating a motor vehicle while under the influence of alcohol and determined to have a high BAC. These enhanced penalties were required to be either more severe or more numerous than those applicable to persons who were convicted of operating a motor vehicle while under the influence of alcohol, but not determined to have a high BAC. Under TEA–21, NHTSA defined a high BAC threshold as being any level above the standard BAC level at which sanctions for non-commercial drivers began to apply, provided sanctions began at or below .20 BAC. NHTSA did not specify particular minimum sanctions, but the sanctions could include longer terms of license suspension, increased fines, additional or extended sentences of confinement or vehicle sanctions along with mandatory assessment and treatment, as determined appropriate.

Demonstrating Compliance (23 CFR 1313.6(d)(2)). To demonstrate compliance in the first fiscal year under the proposed rule, a State would be required to submit a copy of its law that provides for stronger sanctions or additional penalties along with mandatory assessment and treatment for individuals convicted of an impaired driving offense with a BAC of 0.15 or higher. The law would be required to specify the penalties that are to be imposed on drivers with a 0.15 or higher BAC and, at a minimum, these penalties would include a one-year license suspension and a mandatory assessment by a certified substance abuse official and referral to treatment as appropriate. The State law could permit an exception to the one-year driver's license suspension and permit a high-risk offender to drive to places of employment, school, or treatment after 45 days, if an ignition interlock device is installed on all vehicles owned and all vehicles operated by the offender.

To demonstrate compliance in subsequent fiscal years under the proposed rule, the State need only submit a copy of any changes to the State's law. If there have been no changes in the State's law since the previous year's submission, the State need only submit a certification to that effect.

v. Alcohol Rehabilitation or DWI Court Program

To qualify for a grant based on this criterion, SAFETEA–LU requires a State to demonstrate:

> A program for effective inpatient and outpatient alcohol rehabilitation based on mandatory assessment and appropriate treatment for repeat offenders or a program to refer impaired driving cases to courts that specialize in driving while impaired cases that emphasize the close supervision of high-risk offenders.

Agency's Proposal (23 CFR 1313.6(e)). The agency proposes two alternative methods for States to meet this criterion: (1) A State would be required to demonstrate an effective inpatient and outpatient rehabilitation program based on State law that requires mandatory assessments by a certified substance abuse official and required referral to treatment as determined appropriate for repeat offenders (defined under this criterion as those individuals committing a second or subsequent DWI offense within five years); provide a system to track the treatment process of repeat offenders to ensure completion; and offer educational opportunities for court professionals regarding treatment approaches and sanctions; or (2) a State would be required to have a State sanctioned DWI court in operation that covers high-risk offenders (defined under this criterion as repeat offenders or individuals convicted of a DWI offense with a BAC higher than .15) and abide by the Ten Guiding Principles of DWI Courts (as of the publication of this proposal available at *http://www.ndci.org/pdf/Guiding_Principles_of_DWI_Court.pdf*), as established by the National Association of Drug Court Professionals, and generally follow the characteristics of a DWI Court as described in this section.

Basis for Proposal. High-risk and repeat offenses are often symptoms of alcohol abuse or dependency. In order to confront the problem of regular alcohol misuse and impaired driving, section 410, for the first time, enables States to qualify for grant funding based on their use of certain treatment methods. Studies have shown that programs that employ intensive supervision have resulted in a significant reduction in DWI recidivism (Wiliszowski, Lacey, 1997). More specifically, studies of repeat offenders, a population involving approximately ten percent of alcohol-related deaths annually, indicated that regular contact

with a concerned person, such as a judge, positively impacted drinking and driving decisions (Wiliszowski, Murphy, Jones, Lacey, 1996).

The basis for an effective inpatient and outpatient alcohol rehabilitation program is an assessment by a certified substance abuse official that is mandated by State law. The law must also require judges to order repeat offenders to treatment if determined necessary by the assessment. The State must have a means to track the progress of repeat offenders ordered to treatment and to ensure that the goals of the assessment are met. Education for court professionals on alcohol abuse, issues surrounding treatment, basic treatment approaches, and treatment options that are available to defendants in a given area also are part of an effective system.

DWI courts can also be used to combat the problem of recidivism by high-risk offenders. A DWI Court uses all criminal justice stakeholders (judges, prosecutors, defense attorneys, probation officers and others) along with alcohol and drug treatment professionals. This group of professionals comprises a "DWI Court Team," and uses a cooperative approach to systematically change participant behavior. This approach includes identification and referral of participants early in the legal process to a full continuum of drug and alcohol treatment and other rehabilitative services. Compliance with treatment and other court-mandated requirements is verified by frequent alcohol/drug testing, close supervision and interaction with the judge in a non-adversarial court review hearing. During these review hearings, the judge devises an appropriate response for participant compliance (or non-compliance) in an effort to further the team's goals to encourage pro-social sober behaviors that will prevent DWI recidivism.

Demonstrating Compliance (23 CFR 1313.6(e)(3)). To demonstrate compliance in FY 2006 under the proposed rule, the State would provide a copy of its law that provides repeat offenders with mandatory assessments and treatment as determined appropriate. The State would also include a copy of its tracking system for monitoring treatment of repeat offenders and a list of the educational opportunities provided to court professionals concerning treatment. Alternatively, the State could provide evidence that an officially sanctioned DWI court is operating somewhere in the State.

To demonstrate compliance in a subsequent year under the proposed rule, the State need only submit information that documents changes to either the law or the program previously determined compliant. If there are no changes, the State need only submit a certification stating that there have been no changes since the State's previous year's submission. To demonstrate compliance in FY 2007 under the DWI court provision, the State would provide evidence that two State sanctioned DWI courts are operating somewhere in the State. The State would provide evidence in FY 2008 that it has three State sanctioned DWI courts and in FY 2009 and subsequent fiscal years that it has four State sanctioned DWI courts.

vi. Underage Drinking Prevention Program

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. SAFETEA–LU continues to include this grant criterion in section 410, but in a slightly modified form.

To qualify for a grant based on this criterion, SAFETEA–LU requires a State to demonstrate:

> An effective strategy, as determined by the Secretary, 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 a strategy may include—
>
> (A) The issuance of tamper-resistant drivers' licenses to individuals under age 21 that are easily distinguishable in appearance from drivers' licenses issued to individuals age 21 or older; and
>
> (B) A program provided by a nonprofit organization for training point of sale personnel concerning, at a minimum—
>
> (i) The clinical effects of alcohol;
>
> (ii) Methods of preventing second party sales of alcohol;
>
> (iii) Recognizing signs of intoxication;
>
> (iv) Methods to prevent underage drinking; and
>
> (v) Federal, State, and local laws that are relevant to such personnel; and
>
> (C) Having a law in effect that creates a 0.02 percent blood alcohol content limit for drivers under 21 years old.

Agency's Proposal (23 CFR 1313.6(f)). Under the agency's proposal, an effective strategy 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. The system must target underage drinkers and providers. SAFETEA–LU identifies three components that may be part of a State's effective strategy, and the agency proposes that States must meet each of them to qualify for a grant based on this criterion.

First, States would be required to demonstrate that drivers' licenses issued to individuals under the age of 21 are both tamper-resistant and distinguishable from those issued to individuals 21 years of age or older. The Appendix to the proposed regulation contains a list of security features that States may include on their driver's licenses to make them tamper-resistant. The agency urges States to incorporate as many of the security features as possible into their drivers' licenses to prevent underage drivers from altering existing licenses or obtaining or producing counterfeits. Drivers' licenses that comply with the requirements of the Real ID Act (Pub. L. 109–13) and its implementing regulations would satisfy the proposed requirements for tamper-resistance.

Second, States would be required to demonstrate that they have a program, provided by a nonprofit or public organization that provides training for point-of-sale personnel and procedures in place to ensure program attendance. At a minimum, the training would need to cover the clinical effects of alcohol, methods of preventing second party sales of alcohol, recognizing signs of intoxication, methods to prevent underage drinking, and relevant laws that apply to such personnel.

Third, States would be required to have in effect a zero tolerance law that makes it illegal for persons under the age of 21 to drive with any measurable amount of alcohol in their system, which must be set by the State to be no greater than 0.02 percent BAC. Under 23 U.S.C. 161, States without zero tolerance laws are subject to a penalty withholding of 10 percent of highway funds provided under 23 U.S.C. 104(b). Currently, all 50 States have enacted conforming zero tolerance laws. Puerto Rico and the territories do not have conforming laws.

In addition to the elements identified by SAFETEA–LU, the proposed rule would include two elements based on research findings in a report of the National Research Council Institute of Medicine (IOM) of the National Academy of Science, *Reducing Underage Drinking: A Collective Responsibility*. The State would be required to plan to conduct a highly visible enforcement program that focuses on access to alcohol by persons under age 21. Enforcement strategies under the program could include compliance checks, party dispersal efforts, keg registration and law enforcement focused on zero tolerance laws. The focus of the enforcement

program would be to create general deterrence among those under the age of 21 and those who provide alcohol to them. In addition, the State would be required to develop a communications strategy to support the enforcement effort. The strategy must be designed to reach citizens under the age of 21, their parents and other adults who can impact underage drinkers' access to alcohol. The strategy must publicize the enforcement program and enhance general deterrence by focusing on the State's laws, including the consequences and liability for those under 21 who drink, or drink and drive, and adults who provide alcohol to underage drinkers. In addition, the strategy must include a peer education component. When developing a strategy, States may wish to consider use of evidence-based youth-oriented interventions and effective programs that have been determined to be promising model programs under the National Registry of Effective Programs and Practices (NREPP).

All aspects of the effective system proposed under this criterion must be capable of implementation at a local level. The agency believes that this is an important concept to ensure the effectiveness of an underage drinking prevention program.

Basis for Proposal. Drinking by drivers under 21 years of age continues to be a significant safety problem. Studies have shown that when States adopted a minimum drinking age of 21 years, they experienced 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.

Over the last two years there has been increased national interest and emphasis on underage drinking, primarily as a result of the IOM report, *Reducing Underage Drinking: A Collective Responsibility*. The report highlights the problem of underage drinking as endemic, underscoring that the problem will not be reduced in the absence of significant new interventions. The IOM report identifies key strategies based on research undertaken at the National Institute on Alcohol Abuse and Alcoholism of the National Institutes of Health, and evidence-based programs determined to be effective such as those meeting the standards of the Substance Abuse and Mental Health Services Administration's NREPP.

Demonstrating Compliance (23 CFR 1313.6(f)(3)). To demonstrate compliance in the first fiscal year that a State receives a grant based on this criterion under the proposed rule, the State would be required to submit sample drivers' licenses demonstrating 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. The State would have to show that it provides point-of-sale personnel with training that covers the stated minimum requirements and includes procedures that ensure program attendance. A copy of the State's zero tolerance law that complies with 23 U.S.C. 161 would be provided. In addition, States would be required to submit a plan that provides for highly visible enforcement focused on alcohol access by those under 21. The plan would provide information on the types of enforcement strategies to be used. A communication strategy with a peer education component that supports the enforcement plan also would be required to be provided.

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

vii. Administrative License Suspension or Revocation System

To qualify for a grant based on this criterion, SAFETEA–LU requires a State to 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—
>
> (A) In the case of an individual who, in any 5-year period beginning after the date of enactment of the Transportation Equity Act for the 21st Century, 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) 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; except that under such suspension an individual may operate a motor vehicle, after the 15-day period beginning on the date of the suspension, to and from employment, school, or an alcohol treatment program if an ignition interlock device is installed on each of the motor vehicles owned or operated, or both, by the individual; and
>
> (ii) 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; except that such individual [may be allowed] to operate a motor vehicle, after the 45-day period beginning on the date of the suspension or revocation, to and from employment, school, or an alcohol treatment program if an ignition interlock device is installed on each of the motor vehicles owned or operated, or both, by the individual; and
>
> (B) The suspension and revocation referred to under clause (i) take effect not later than 30 days after the date 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.

Agency's Proposal (23 CFR 1313.6(g)). To satisfy this criterion under the proposed rule, a State would be required to provide that first offenders must be subject to a 90-day suspension, that repeat offenders must be subject to a one-year suspension or revocation, and that suspensions or revocations must take effect within 30 days after the offender refuses to submit to a chemical test or receives notice of having failed the test. The proposed rule would not require, but would permit, a State to provide limited driving privileges after not less than 15 days for first offenders and not less than 45 days for repeat offenders, if an ignition interlock device is installed on all vehicles owned and all vehicles operated by the offender and the offender's driving privileges are restricted to places of employment, school or treatment.

The proposed rule would continue to provide that States may demonstrate compliance with this criterion as either "Law States" or "Data States." A "Law State" would be 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" would be a State that has a law, regulation or binding policy directive that provides for an administrative license suspension or revocation system, but does not meet each element of the criterion. For example, the law may not specifically provide that suspensions must take effect within 30 days. The data provided by the State, however, might demonstrate that the average time to suspend an offender's license is 30 days or less.

Basis for Proposal. Studies show that when States adopt an administrative license suspension or revocation law, they experience a 6 to 9 percent reduction in alcohol-related fatalities.

Prior to the enactment of SAFETEA–LU, this criterion provided longer hard license suspension periods, during which all driving privileges were to be suspended, requiring at least a 30-day

suspension of all driving privileges for a first offender who fails a chemical test, at least a 90-day suspension of all driving privileges for a first offender who refuses to submit to a test and a one-year suspension of all driving privileges for repeat offenders. SAFETEA–LU provides that first offenders (whether they fail or refuse to submit to a test) may operate a vehicle under limited circumstances after a 15-day period if their vehicles are equipped with ignition interlock devices and repeat offenders may do the same after a 45-day period. Research has demonstrated that the installation of ignition interlocks can lead to reductions in drinking and driving recidivism.

Demonstrating Compliance (23 CFR 1313.6(g)(3)–(4)). To demonstrate compliance in the first fiscal year a State qualifies for a grant based on this criterion under the proposed rule, a Law State need only submit a copy of its conforming law, regulation or binding policy directive. A Data State would submit its law, regulation or binding policy directive, and data demonstrating compliance with any element not specifically provided for in the State's law.

To demonstrate compliance with this criterion in subsequent fiscal years under the proposed rule, a Law State need only submit a copy of any changes to the State's law, regulation or binding policy directive. If there are no changes in the State's law, regulation or binding policy directive since the previous year's submission, the State need only submit a certification to that effect. In subsequent fiscal years, Data States would be required to submit the same information as Law States. They would also provide updated data demonstrating compliance with any element not specifically provided for in the State's law.

Although States would not be required 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.

viii. Self-Sustaining Impaired Driving Prevention Program

To qualify for a grant based on this criterion, SAFETEA–LU requires a State to demonstrate:

> A program under which a significant portion of the fines or surcharges collected from individuals who are fined for operating a motor vehicle while under the influence of alcohol are returned to communities for comprehensive programs for the prevention of impaired driving.

Agency's Proposal (23 CFR 1313.6(h)). States used to be able to 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 impaired driving prevention programs. Under TEA–21, the approach was amended to make clear that providing an equivalent amount of funds is no longer sufficient. The actual fines or surcharges collected were required to be returned to the collecting communities in order for a State to comply.

The agency's proposal modifies this approach slightly to define a significant portion of the fines or surcharges to mean at least 90 percent of the total amount collected. Compliance with this criterion would require that 90 percent of the total amount collected be returned to communities for comprehensive programs for the prevention of impaired driving. This slight change in approach is intended to alleviate some of the costs States incur in maintaining a Statewide system that returns collected fines and surcharges. For the purpose of operating a self-sustaining program, the agency proposes to allow 10 percent of collected funds to be used for planning and administration costs under this criterion.

The agency recognizes that some States, such as those whose Constitution prohibits such dedicated non-discretionary use of fines and penalties obtained from driving offenders, would not be able to qualify under this criterion. Because a State is required to meet only three of the eight program requirements in the first year (four in the second year and five in subsequent years), a State's inability to comply with this criterion would not necessarily preclude it from obtaining a grant.

Basis for Proposal. Self-sustaining impaired driving prevention programs ensure that resources generated while a State is enforcing its impaired driving laws are returned to the collecting communities in order to confront the problems of impaired driving at a local level. 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 impaired driving prevention program. States that have instituted such programs have been very effective in reducing alcohol-related crashes and fatalities.

Demonstrating Compliance (23 CFR 1313.6(h)(3)). To demonstrate compliance with this criterion in the first year under the proposed rule, a State would submit a copy of the law, regulation, or binding policy directive that provides for a self-sustaining impaired driving prevention program and certain Statewide data (or a representative sample) that establishes dedicated use of fine revenues to support community impaired driving prevention programs. 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 at least 90 percent of such fines or surcharges collected to be returned to communities with comprehensive impaired driving programs. The agency's proposal defines the elements of such a program. The data must show the aggregate amount of fines or surcharges collected and the amount of revenues returned to communities with comprehensive impaired driving prevention programs under the State's self-sustaining system. In addition, the State would certify that the amount of funds returned to communities to conduct comprehensive impaired driving prevention programs meets the requirements of this criterion.

To demonstrate compliance in subsequent years under the proposed rule, 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, a certification statement to that effect.

C. High Fatality Rate States (23 CFR 1313.7)

SAFETEA–LU provides a separate grant to the 10 States that have the highest fatality rates, as determined using the most recent FARS data. Up to 15 percent of the total amount available for section 410 grants may be used to fund these separate grants.

As directed by SAFETEA–LU, the agency will calculate the alcohol fatality rate per 100 million VMT for each State using the most recent final FARS data available prior to the date of the grant. Any State that is determined to have one of the ten highest fatality rates will be eligible for the separate grant under section 410. States for which no reportable FARS data exist will not be evaluated for qualification as a high fatality rate State.

A qualifying high fatality rate State would be required to submit a plan that details expenditures for the funding provided. Expenditures are limited to the eight programs outlined in the programmatic grant criteria and other allowable costs provided for in the statute (see Section IV.A, Qualification and Post-Approval Requirements, for discussion of all allowable costs). At least 50 percent of the funds must be used to support a high visibility impaired driving enforcement campaign as detailed in Section III.B(i) and the State would be required to describe its plans for use of these funds, including plans for conducting enforcement and communications efforts. High fatality rates States are encouraged to use remaining amounts under the grant to implement recommendations made to the State by the agency as a result of an Impaired Driving Technical Assessment or Impaired Driving Special Management Review (SMR) conducted within the previous five fiscal years. Funds expended to implement assessment or SMR recommendations must continue to meet the grant expenditure limitations in SAFETEA–LU.

Once the agency has approved the plan, funds will be made available to the State on the basis of the apportionment formula in section 402(c). No qualifying State, however, may be allocated more than 30 percent of the total funds available for this separate grant. These requirements are specified by SAFETEA–LU.

States that qualify as high fatality rate States in subsequent years will be required to submit an updated plan in each year that they qualify. The agency will inform those States that qualify as high fatality rate States of their eligibility for the separate grant as soon as practicable after the most recent final FARS data prior on which the date the grant becomes available (on or about June 1 of that fiscal year).

IV. Administrative Issues

A. Qualification and Post-Approval Requirements (23 CFR 1313.4(a)–(b))

The proposed rule outlines, in the qualification requirements section, 23 CFR 1313.4(a)(2), certain procedural steps to be followed when States wish to apply for a grant under this program and have not qualified as a low fatality rate States. Many of these procedural requirements would continue unchanged from the old section 410 program.

Applications would be required to be submitted to the agency no later than August 1 of the fiscal year in which the States are applying for grant funds. The application would require the submission of a certification 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 under section 410; (3) it will administer the funds in accordance with relevant regulations and OMB Circulars and to defray only the costs allowable under 23 U.S.C. 410; 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 2004 and 2005. The proposed rule provides that either the State or Federal fiscal year may be used. The proposed maintenance of effort provision would not require that the State make up for Federal funding that has been reduced. As a result, the agency would not include, for the purpose of calculating an average level of expenditure, program funds that have been discontinued as a result of the enactment of SAFETEA–LU (*e.g.*, grant funds provided under 23 U.S.C. 163). The agency also will not include funds that are no longer transferred to 23 U.S.C. 402, because of the State's compliance in the previous two fiscal years with programs for which noncompliance would have resulted in a transfer penalty.

The proposed rule, under 23 CFR 1313.4(a)(1), would provide that States qualifying as low and/or high fatality rate States will not be required to submit an application. These States, however, still would be required to submit certifications to the agency.

Consistent with current procedures in other highway safety grant programs being administered by NHTSA, the agency's proposal at 1313.4(b)(2) provides that once a State has been informed that it will receive a grant, it would be required to include documentation in the Highway Safety Plan prepared under section 402 that indicates how it intends to use the grant funds. The State must also detail program accomplishments in the Annual Report submitted under the regulation implementing section 402. These documenting requirements must continue each fiscal year until all grant funds have been expended. The grant funds may be distributed among any of the eight alcohol-impaired driving prevention programs under section 410 or to defray the following costs specified in SAFETEA–LU:

(1) Labor costs, management costs, and equipment procurement costs for the high visibility, Statewide law enforcement campaigns under subsection (c)(1).

(2) The costs of the training of law enforcement personnel and the procurement of technology and equipment, including video equipment and passive alcohol sensors, to counter directly impaired operation of motor vehicles.

(3) The costs of public awareness, advertising, and educational campaigns that publicize use of sobriety check points or increased law enforcement efforts to counter impaired operation of motor vehicles.

(4) The costs of public awareness, advertising, and educational campaigns that target impaired operation of motor vehicles by persons under 34 years of age.

(5) The costs of the development and implementation of a State impaired operator information system.

(6) The costs of operating programs that result in vehicle forfeiture or impoundment or license plate impoundment.

Following the award of grant funds, the State would be allowed to incur costs only after submission of an electronic HS Form 217 obligating the grant funds to alcohol-impaired driving prevention programs. Under the agency's proposal at § 1313.4(b)(1), the electronic HS Form 217 would need to be provided to the agency within 30 days after the agency's eligibility determination, but in no event later than September 12 of each fiscal year.

B. Funding Requirements and Limitations (23 CFR 1313.4(c))

SAFETEA–LU contains statutory conditions that limit the use and amount of funding a State receives. The agency's proposal, under § 1313.4(c), articulates these statutory conditions without change, as set forth below.

States may qualify for a grant using two alternative methods. Beginning in FY 2006, a State that qualifies for a grant under section 410 is to receive grant funds in accordance with the apportionment formula in section 402(c). The funds available each fiscal year for high fatality rate State grants are statutorily limited to no more than 15 percent of the funding for the entire section 410 program for that fiscal year. These grant funds are to be shared by the ten States that have the highest fatality rates and allocated in accordance with the apportionment formula in section 402(c). However, no State will be eligible to receive more than 30 percent of the total funds made available for these grants.

Under SAFETEA–LU, States continue to be required to match the grant funds they receive. 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 and 50 percent in the third and fourth fiscal year the State receives funds.

The agency proposes to continue to accept a "soft" match in the administration of the section 410 program. 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 may not use any Federal funds, such as section 402 funds, to satisfy the matching requirements. In addition, a State can use each non-Federal expenditure only once for matching purposes.

The agency proposes to allow a State to use no more than 10 percent of the total funds received under 23 U.S.C. 410 for planning and administration (P&A) costs, to defray the costs of operating the grant program. As with the section 402 program, Federal participation in P&A activities would not be allowed to exceed 50 percent of the total cost of such activities.

C. Award Procedures (23 CFR 1313.8)

The release of the full grant amounts under section 410 is 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 release the remainder, 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, would be limited to the amount of funds released.

V. Comments

The agency finds good cause to limit the period for comment on this notice to 30 days. In order to publish a final rule in time to accommodate an application period of two months for States and a subsequent review period for the agency, this comment period is deemed necessary. The shortened comment period will assist the agency in making sure that grant funds under section 410 are made available to States during the fiscal year.

Interested persons are invited to comment on this notice of proposed rulemaking. 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. (*See* 49 CFR 553.21). This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

You may submit your comments by one of the following methods:

(1) By mail to: Docket Management Facility, Docket No. NHTSA–05–XXXX, DOT, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590;

(2) By hand delivery to: Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday;

(3) By fax to the Docket Management Facility at (202) 493–2251; or

(4) By electronic submission: log onto the DMS Web site at *http://dms.dot.gov* and click on "Help and Information" or "Help/Info" to obtain instructions.

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. The agency 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.

You may review submitted comments in person at the Docket Management Facility located at Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday.

You may also review submitted comments on the Internet by taking the following steps:

(1) Go to the DMS web page at *http://dms.dot.gov/search/*.

(2) On that page, click on "search".

(3) On the next page (*http://dms.dot.gov/search/*) type in the four digit docket number shown at the beginning of this notice. Click on "search".

(4) On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may also download the comments. Although the comments are imaged documents, instead of word processing documents, the "pdf" versions of the documents are word searchable.

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.

VI. Statutory Basis for This Action

The agency's proposal would implement changes to the grant program under 23 U.S.C. 410 due to amendments made by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy For Users (SAFETEA–LU) (Pub. L. 109–59, section 2007).

VII. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is "significant" and therefore subject to OMB review and to the requirements of the Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The agency's proposal has no impact on the total amount of grant funds distributed and thus no impact on the national economy. All grant funds provided under section 410 will be distributed each fiscal year among qualifying States (regardless of the number of States that qualify), using a statutorily-specified formula. The proposal would not alter this approach.

The agency's proposal also does not affect amounts over the significance threshold of $100 million each year. The proposal sets forth application procedures and showings to be made to be eligible for a grant. Under the statute, low fatality rate States will receive grants by direct operation of the statute without the need to formally submit a grant application. The agency estimates that these grants to low fatality rate States will account for more than 35% of the section 410 funding provided annually under SAFETEA–LU. The

funds to be distributed under the application procedures developed in the proposal will therefore be well below the annual threshold of $100 million.

In consideration of the foregoing, the agency has determined that this rulemaking is not economically significant. Accordingly, an economic assessment is not necessary.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR part 121 define a small business, in part, as a business entity "which operates primarily within the United States." (13 CFR 121.105(a)). No regulatory flexibility analysis is required if the head of an agency certifies the rulemaking action will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that an action will not have a significant economic impact on a substantial number of small entities.

NHTSA has considered the effects of this proposal under the Regulatory Flexibility Act. States are the recipients of funds awarded under the section 410 program and they are not considered to be small entities under the Regulatory Flexibility Act. Therefore, I certify that this notice of proposed rulemaking would not have a significant economic impact on a substantial number of small entities.

C. Executive Order 13132 (Federalism)

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

The agency has analyzed this rulemaking action in accordance with the principles and criteria set forth in Executive Order 13132 and has determined that this proposed rule would not have sufficient Federalism implications to warrant consultation with State and local officials or the preparation of a Federalism summary impact statement. Moreover, the proposed rule would not preempt any State law or regulation or affect the ability of States to discharge traditional State government functions.

D. Executive Order 12988 (Civil Justice Reform)

Pursuant to Executive Order 12988, "Civil Justice Reform" (61 FR 4729, February 7, 1996), the agency has considered whether this rulemaking would have any retroactive effect. This rulemaking action would not have any retroactive effect. This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

E. Paperwork Reduction Act

The requirements in this rulemaking action that States retain and report information to the Federal government demonstrating compliance with the alcohol-impaired driving prevention 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 June 30, 2006. Although SAFETEA–LU revises the structure of the grant program under section 410, the revision does not result in an increase in the amount of information States must provide to demonstrate compliance with the criteria.

F. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with a base year of 1995 (about $118 million in 2004 dollars)). This proposed rule does not meet the definition of a Federal mandate, because the resulting annual State expenditures will not exceed the $100 million threshold. The program is voluntary and States that choose to apply and qualify will receive grant funds.

G. National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that this proposal will not have a significant impact on the quality of the human environment.

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

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

I. Regulatory Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

J. Privacy Act

Please note that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete

Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), or you may visit *http://dms.dot.gov.*

List of Subjects in 23 CFR Part 1313

Alcohol abuse, Drug abuse, Grant programs-transportation, Highway safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, the agency proposes to revise Part 1313 of title 23 of the Code of Federal Regulations as follows:

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

1. The headings for Part 1313 would be revised to read as set forth above.

2. The citation of authority for part 1313 would continue to read as follows:

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

3. Section 1313.3 would be amended by removing paragraphs (c) and (g), redesignating paragraphs (d) through (f) as paragraphs (c) through (e) and adding new paragraphs (f) and (g) to read as follows:

§ 1313.3 Definitions.

* * * * *

(f) *Other associated costs permitted by statute* means labor costs, management costs, and equipment procurement costs for the high visibility enforcement campaigns under § 1313.6(a); the costs of training law enforcement personnel and procuring technology and equipment, including video equipment and passive alcohol sensors, to counter directly impaired operation of motor vehicles; the costs of public awareness, advertising, and educational campaigns that publicize use of sobriety check points or increased law enforcement efforts to counter impaired operation of motor vehicles or that target impaired operation of motor vehicles by persons under 34 years of age; the costs of the development and implementation of a State impaired operator information system; and the costs of operating programs that result in vehicle forfeiture or impoundment or license plate impoundment.

(g) *State* means any one of the fifty States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

4. Sections 1313.4 through 1313.8 would be revised to read as follows:

§ 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) Meet the requirements of § 1313.5 or § 1313.7 concerning alcohol-related fatalities, as determined by the agency, and submit written certifications signed by the Governor's Representative for Highway Safety that it will—

(i) Use the funds awarded under 23 U.S.C. 410 only for the implementation and enforcement of alcohol-impaired driving prevention programs in § 1313.6 and other associated costs permitted by statute;

(ii) Administer the funds in accordance with 49 CFR Part 18 and OMB Circular A–87; and

(iii) 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 2004 and 2005 (either State or Federal fiscal year 2004 and 2005 can be used); or

(2) By August 1, submit an application to the appropriate NHTSA Regional Office identifying the criteria that it meets under § 1313.6 and including the certifications in paragraph (a)(1)(i) through (a)(1)(iii) of this section and the additional certification that it has an alcohol-impaired driving prevention program that meets the requirements of 23 U.S.C. 410 and 23 CFR Part 1313.

(b) *Post-approval requirements.* (1) Within 30 days after notification of award, in no event later than September 12 of each year, a State must submit electronically to the agency a Program Cost Summary (HS Form 217) obligating the funds to the Section 410 program; and

(2) Until all Section 410 grant funds are expended, the State must document how it intends to use the funds in the Highway Safety Plan it submits pursuant to 23 U.S.C. § 402 (or in an amendment to that plan) and detail the program activities accomplished in the Annual Report it submits for its highway safety program pursuant to 23 CFR § 1200.33.

(c) *Funding requirements and limitations.* A State may receive grants, beginning in FY 2006, in accordance with the apportionment formula under 23 U.S.C. 402 and subject to the following limitations:

(1) The amount available for grants under § 1313.5 or § 1313.6 shall be determined based on the total number of eligible States for these grants and after deduction of the amount necessary to fund grants under § 1313.7.

(2) The amount available for grants under § 1313.7 shall not exceed fifteen percent of the total amount made available to States under 23 U.S.C. 410 for the fiscal year.

(3) In the first or second fiscal years a State receives a grant under this Part, 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 grant under this Part, 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.

§ 1313.5 Requirements for a low fatality rate state.

To qualify for a grant as a low fatality rate State, the State shall have an alcohol related fatality rate of 0.5 or less per 100,000,000 vehicle miles traveled (VMT) as of the date of the grant, as determined by NHTSA using the most recently available final FARS data. The agency plans to make this information available to States by June 1 of each fiscal year.

§ 1313.6 Requirements for a programmatic state.

To qualify for a grant as a programmatic State, a State must adopt and demonstrate compliance with at least three of the following criteria in FY 2006, at least four of the following criteria in FY 2007, and at least five of the following criteria in FY 2008 and FY 2009.

(a) *High Visibility Enforcement Campaign*—(1) *Criterion.* A high visibility impaired driving law enforcement program that includes:

(i) State participation in National impaired driving law enforcement campaigns organized by NHTSA;

(ii) Additional high visibility law enforcement campaigns within the State conducted on a monthly basis at high-risk times throughout the year; and

(iii) Use of sobriety checkpoints and/or saturation patrols at high-risk locations throughout the State, conducted in a highly visible manner and supported by publicity.

(2) *Definitions*—(i) *Sobriety checkpoint* means a law enforcement activity during which law enforcement officials stop motor vehicles on a non-discriminatory, lawful basis for the purpose of determining whether or not the operators of such motor vehicles are driving while impaired by alcohol and/or other drugs.

(ii) *Saturation patrol* means a law enforcement activity during which enhanced levels of law enforcement are conducted in a concentrated geographic area (or areas) for the purpose of detecting drivers operating motor

vehicles while impaired by alcohol and/or other drugs.

(3) *Demonstrating compliance.* (i) To demonstrate compliance in the first fiscal year a State receives a grant based on this criterion, the State shall submit a comprehensive plan for conducting a high visibility impaired driving law enforcement program under which:

(A) State Police and local law enforcement agencies collectively serving at least 50 percent of the State's population or serving geographic subdivisions that account for at least 50 percent of the State's alcohol-related fatalities will participate in the State's high visibility impaired driving law enforcement program;

(B) Each participating law enforcement agency will conduct checkpoints and/or saturation patrols on at least four nights during the national impaired driving campaign organized by NHTSA and will conduct checkpoints and/or saturation patrols at least once per month throughout the remainder of the year;

(C) The State will coordinate law enforcement activities throughout the State to maximize the frequency and visibility of law enforcement activities at high-risk locations Statewide; and

(D) Paid and/or earned media will publicize law enforcement activities before, during and after they take place, both during the national campaign and on a sustained basis at high risk times throughout the year.

(ii) To demonstrate compliance in subsequent fiscal years, the State shall submit information documenting that the prior year's plan was effectively implemented and an updated plan for conducting a current high visibility impaired driving law enforcement program containing the elements specified in paragraphs (a)(3)(i) and (a)(3)(iii) of this section, except that the level of law enforcement agency participation must reach at least 55 percent of the state population in the second year the State receives a grant based on this criterion, 60 percent in the third year and 65 percent in the fourth year.

(iii) For the purposes of paragraph (a) of this section, a comprehensive plan shall include:

(A) Guidelines, policies or procedures governing the Statewide enforcement program;

(B) Approximate dates and locations of planned law enforcement activities;

(C) A list of law enforcement agencies expected to participate; and

(D) A paid media buy plan, if the State buys media, and a description of anticipated earned media activities before, during and after planned enforcement efforts;

(b) *Prosecution and Adjudication Outreach Program*—(1) *Criterion.* A prosecution and adjudication program that provides for either:

(i) A statewide outreach effort that reduces the use of diversion programs through education of prosecutors and court professionals; or

(ii) A statewide outreach effort that provides information to prosecutors and court professionals on innovative approaches to the prosecution and adjudication of impaired driving cases; or

(iii) A Statewide tracking system that monitors the adjudication of impaired driving cases that—

(A) Covers a majority of the judicial jurisdictions in the State; and

(B) Collects data on original criminal and traffic-related charge(s) against a defendant, the final charge(s) brought by a prosecutor, and the disposition of the charge(s) or sentence provided.

(2) *Definitions*—(i) *Diversion Program* means a program under which an offender is allowed to obtain a reduction or dismissal of an impaired driving charge or removal of an impaired driving offense from a driving record based on participation in an educational course or community service activity.

(ii) *Traffic Safety Resource Prosecutor* (TSRP) means an individual used by the State to provide support in the form of education and outreach programs and technical assistance to enhance the capability of prosecutors to effectively prosecute across the State traffic safety violations.

(iii) *State Judicial Educator* means an individual used by the State to enhance the performance of a State's judicial system by providing education and outreach programs and technical assistance to continuously improve personal and professional competence of all persons performing judicial branch functions.

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

(A) Course materials for Statewide outreach efforts that cover either reducing the use of diversion programs or alternative approaches to sanctioning DWI offenders and a certification that its program is provided on an annual basis using NHTSA-approved materials; or

(B) Information indicating its use of a State sanctioned Traffic Safety Resource Prosecutor and State Judicial Educator; or

(C) The names and locations of the judicial jurisdictions covered by a Statewide tracking system and the type of information collected.

(ii) To demonstrate compliance in a subsequent fiscal year for an outreach and education program, the State must certify that the outreach and education program continues to be conducted on an annual basis using agency-approved materials and provide information on the course content if it has been altered from the previous year.

(iii) To demonstrate compliance in a subsequent fiscal year for use of a TSRP and State Judicial Educator, the State certify the continued existence of these positions and provide updated information if there has been a change in the status of these positions.

(iv) To demonstrate compliance in a subsequent fiscal year for use of a Statewide tracking system that monitors the adjudication of impaired driving cases, the State must provide the information collected from the previous year and an updated list of the courts involved and updated general data collection information if there has been a change from the previous year.

(c) *BAC Testing Program*—(1) *Criterion.* In FY 2006 and each subsequent fiscal year, an effective system for increasing the percentage of BAC testing among drivers involved in fatal motor vehicle crashes, under which the State's percentage of BAC testing among drivers involved in fatal motor vehicle crashes is greater than the previous year by at least 5 percentage points, for State testing rates up to 50 percent, or greater than the previous year by at least 5 percent of the State's percentage of untested drivers, for State testing rates above 50 percent. The most recently available final FARS data as of the date of the grant will be used to determine a State's BAC testing rate.

(2) *Definition. 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.

(3) *Demonstrating compliance.* To demonstrate compliance based on this criterion, 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 greater than the previous year, as determined under § 1313.6(c)(1), using the most recently available final FARS data as of the date of the grant.

(d) *High Risk Drivers Program*—(1) *Criterion.* A law that establishes stronger sanctions or additional penalties for individuals convicted of operating a motor vehicle with a high BAC that requires, in the case of an individual who, in any five-year period beginning

after June 9, 1998, is convicted of operating a motor vehicle with a BAC of 0.15 or more—

(i) A suspension of all driving privileges for a period of not less than one year, or not less than 45 days followed immediately by a period of not less than 320 days of a restricted, provisional or conditional license, if an ignition interlock device is installed on every motor vehicle owned and every motor vehicle operated by the individual. A restricted, provisional or conditional license may be issued only to permit the offender to operate a motor vehicle to and from employment, school or an alcohol treatment program; and

(ii) A mandatory assessment by a certified substance abuse official, with possible referral to counseling if determined appropriate.

(2) *Demonstrating Compliance.* (i) To demonstrate compliance in the first fiscal year a State receives a grant based on this criterion, the State shall submit a copy of the law that 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 or, if there have been no changes, the State shall submit a statement certifying that there have been no changes in the State's law.

(e) *Alcohol Rehabilitation or DWI Court Program*—(1) *Criterion.* A treatment program for repeat or high-risk offenders in a State that provides for either:

(i) An effective inpatient and outpatient alcohol rehabilitation system for repeat offenders, under which—

(A) A State enacts and enforces a law that provides for mandatory assessment of a repeat offender by a certified substance abuse official and requires referral to appropriate treatment as determined by the assessment;

(B) A State monitors the treatment progress of repeat offenders through a Statewide tracking system; and

(C) Educational opportunities are provided by the State for court professionals regarding treatment approaches and sanctioning techniques; or

(ii) A DWI Court program, under which a State refers impaired driving cases involving high-risk offenders to a State-sanctioned DWI Court for adjudication.

(2) Definitions. (i) *DWI Court* means a court that specializes in driving while impaired cases and abides by the Ten Guiding Principles of DWI Courts in effect on the date of the grant, as established by the National Association of Drug Court Professionals.

(ii) *High-risk offender* means a person who meets the definition of a repeat offender, or has been convicted of driving while intoxicated or driving under the influence with a BAC level of 0.15 or greater.

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

(3) *Demonstrating Compliance.* (i) To demonstrate compliance with this requirement in the FY 2006, the State shall submit:

(A) A copy of its law that provides for mandatory assessment and referral to treatment, a copy of its tracking system for monitoring the treatment of repeat offenders, and a list of the educational opportunities provided to court professionals; or

(B) A certification that one State-sanctioned DWI court is operating in the State, which includes the name and location of the court.

(ii) To demonstrate compliance in subsequent fiscal years in which a State receives a grant based on this criterion, the State shall submit:

(A) Information concerning any changes to the alcohol rehabilitation program that was previously approved by the agency, or if there have been no changes, a statement certifying that there have been no changes to the materials previously submitted; or

(B) In FY 2007, a certification that at least two State-sanctioned DWI courts are operating in the State, which includes the names and locations of the courts. In FY 2008, a certification that at least three State-sanctioned DWI courts are operating in the State, which includes the names and locations of the courts. In FY 2009, a certification that at least four State-sanctioned DWI courts are operating in the State, which includes the names and locations of the courts.

(f) *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 a tamper resistant driver's license to persons under age 21 that is easily distinguishable in appearance from a driver's license issued to persons 21 years of age and older;

(ii) A program, conducted by a nonprofit or public organization that provides training to alcoholic beverage retailers and servers concerning the clinical effects of alcohol, methods of preventing second-party sales of alcohol, recognizing signs of intoxication, methods to prevent underage drinking, and relevant laws that apply to retailers and servers and that provides procedures to ensure program attendance by appropriate personnel;

(iii) A law that creates a blood alcohol content limit of no greater than 0.02 percent for drivers under age 21;

(iv) A plan that focuses on underage drivers' access to alcohol by those under age 21 and the enforcement of applicable State law; and

(v) A strategy for communication to support enforcement designed to reach those under age 21 and their parents or other adults and that includes a media campaign and a peer education component.

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

(3) *Demonstrating Compliance.* (i) To demonstrate compliance in the first fiscal year a State receives a grant based on this criterion, the State shall submit sample drivers' 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. States shall also submit a plan describing a program for educating point of sale personnel that covers each element of § 1313.6(f)(1)(ii). States shall submit a copy of their zero tolerance law that complies with 23 U.S.C. 161. In addition, States shall submit a plan that provides for an enforcement program and communications strategy meeting § 1313.6(f)(1)(iv) and (v).

(ii) 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 there have been no changes since the State's previous year submission.

(g) *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) For a first offender, suspend all driving privileges for a period of not less than 90 days, or not less than 15 days followed immediately by a period of not less than 75 days of a restricted, provisional or conditional license, if an ignition interlock device is installed on every motor vehicle owned and every motor vehicle operated by the individual. A restricted, provisional or conditional license may be issued only to permit the offender to operate a motor vehicle to and from employment, school or an alcohol treatment program; and

(B) For a repeat offender, suspend or revoke all driving privileges for a period of not less than one year, or not less than 45 days followed immediately by a period of not less than 320 days of a restricted, provisional or conditional license, if an ignition interlock device is installed on every motor vehicle owned and every motor vehicle operated by the individual. A restricted, provisional or conditional license may be issued only to permit the offender to operate a motor vehicle to and from employment, school or an alcohol treatment program; 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 a 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 that 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, a statement certifying that there have been no changes to the State's laws, regulations or binding policy directives.

(iii) For purposes of paragraph (g), *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 a 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 that 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 (g)(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 paragraph (g), 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.

(h) *Self-Sustaining Impaired Driving Prevention Program*—(1) *Criterion.* A self-sustaining impaired driving prevention program under which a significant portion of the fines or surcharges collected from individuals who are fined for operating a motor vehicle while under the influence of alcohol are returned to communities for use in a comprehensive impaired driving prevention program.

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

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

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

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

(D) A public information program designed to make the public aware of the problem of impaired driving through paid and earned media and of the State's efforts to address it.

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

(iii) *Significant portion* means at least 90 percent of the fines or surcharges collected.

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

(A) A copy of the law, regulation or binding policy directive implementing or interpreting the law or regulation that 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 (h)(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, a statement certifying that there have been no changes in the State's laws, regulations or binding policy directives.

§ 1313.7 Requirements for a high fatality rate state.

(a) *Qualification.* To qualify for a grant as a high fatality rate State, the State shall be among the ten States that have the highest alcohol-related fatality rates, as determined by the agency using the most recently available final FARS data as of the date of the grant. The agency plans to make this information available to States by June 1 of each fiscal year.

(b) *Demonstrating Compliance.* To demonstrate compliance in each fiscal year a State qualifies as a high fatality rate State, the State shall submit a plan for grant expenditures that is approved by the agency and that expends funds in accordance with § 1313.4. The plan must allocate at least 50 percent of the funds to conduct a high visibility impaired driving enforcement campaign in accordance with § 1313.6(a) and include information that satisfies the planning requirements of § 1313.6(a)(3)(iii).

§ 1313.8 Award procedures.

In each Federal fiscal year, grants will be made to eligible States upon submission and approval of the information required by § 1313.4(a) and subject to the requirements of § 1313.4(b) and (c). The release of grant funds under this part shall be subject to the availability of funding for that fiscal year.

5. Revise the Appendix to part 1313 to read as follows:

Appendix 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) Retroreflective security logos.
(19) Machine readable technologies such as magnetic strips, a 1D bar code or a 2D bar code.

Issued on: December 22, 2005.

Brian M. McLaughlin,

Senior Associate Administrator for Traffic Injury Control.

[FR Doc. 05–24623 Filed 12–30–05; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[REG–148568–04]

RIN 1545–BD93

Time for Filing Employment Tax Returns and Modifications to the Deposit Rules

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations, notice of proposed rulemaking, and notice of public hearing.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to the annual filing of Federal employment tax returns and requirements for employment tax deposits for employers in the Employers' Annual Federal Tax Program (Form 944) (hereinafter referred to as the Form 944 Program). Those temporary regulations provide requirements for filing returns to report the Federal Insurance Contributions Act (FICA) taxes and income tax withheld under section 6011 of the Internal Revenue Code (Code) and §§ 31.6011(a)–1 and 31.6011(a)–4. Those regulations also require employers qualified for the Form 944 Program to file Federal employment tax returns annually. In addition, those regulations provide requirements for employers to make deposits of tax under FICA and the income tax withholding provisions of the Code (collectively, employment taxes) under section 6302 of the Code and § 31.6302–1. The text of those regulations serves, in part, as the text of these proposed regulations. In addition to rules related to the Form 944 Program, these proposed regulations provide an additional method for quarterly return filers to determine whether the amount of accumulated employment taxes is considered *de minimis*. This document also provides notice of a public hearing.

DATES: Written or electronic comments must be received by April 3, 2006. Outlines of topics to be discussed at the public hearing scheduled for April 26, 2006 at 10 a.m. must be received by April 5, 2006.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–148568–04), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–148568–04), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically, via the IRS Internet site at *http://www.irs.gov/regs* or via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–148568–04). The public hearing will be held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations relating to section 6011, Raymond Bailey, (202) 622–4910; concerning the proposed regulations relating to section 6302, Audra M. Dineen, (202) 622–4940; concerning submissions of comments and the hearing, Treena Garrett, (202) 622–7180 (not a toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Regulations on Employment Taxes and Collection of Income Tax at Source (26 CFR part 31) under sections 6011 and 6302. These amendments are designed to require employers qualified for the Form 944 Program to file Federal employment tax returns annually and to permit most employers in the Form 944 Program to remit their accumulated employment taxes annually with their return. The text of those temporary regulations also serves, in part, as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations. These proposed regulations are one part of the IRS's effort to reduce taxpayer burden by requiring certain employers to file Federal employment tax returns annually rather than quarterly and by permitting certain employers to remit employment taxes annually with their return.