§ 1210.7 Apportionment of withheld funds after compliance.

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

§ 1210.8 Period of availability of subsequently apportioned funds.

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

§ 1210.9 Effect of noncompliance.

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

§ 1210.10 Procedures affecting states in noncompliance.

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

(b) If NHTSA and FHWA determine that the State is not in compliance with 23 U.S.C. 161 and this part, based on the agencies' preliminary review, the State may, within 30 days of its receipt of the advance notice of apportionments, submit documentation showing why it is in compliance. Documentation shall be submitted to the National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, D.C. 20590.

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

Issued on: October 21, 1996.

Rodney E. Slater,

Administrator, Federal Highway Administration.

Ricardo Martinez,

Administrator, National Highway Traffic Safety Administration.

[FR Doc. 96–27313 Filed 10–22–96; 12:30 pm]

BILLING CODE 4910–59–P

National Highway Traffic Safety Administration

23 CFR Part 1313

[Docket No. 89–02; Notice 9]

RIN 2127–AD01

Incentive Grant Criteria for Drunk Driving Prevention Programs

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

ACTION: Final rule.

SUMMARY: This final rule announces that the changes that were made in an interim final rule to the agency's regulations to implement the agency's drunk driving prevention incentive grant program, under 23 U.S.C. 410, will remain in effect. In addition, this final rule amends the regulation by simplifying the application process for subsequent year Section 410 grants.

DATES: This final rule becomes effective October 25, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. Marlene Markison, Chief, Program Support Staff, NSC–10, National Highway Traffic Safety Administration, 400 Seventh Street S.W., Washington, DC 20590; telephone (202) 366–2121 or Ms. Heidi L. Coleman, Assistant Chief Counsel for General Law, Office of Chief Counsel, NCC–30, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, DC 20590, telephone (202) 366–1834.

SUPPLEMENTARY INFORMATION: Section 410, title 23, United States Code, as amended, established an incentive grant program under which States may qualify for basic and supplemental grant funds for adopting and implementing comprehensive drunk driving prevention programs that meet specified statutory criteria.

On November 28, 1995, the National Highway System Designation Act of 1995 (NHS Act) was enacted into law. Section 324 of the NHS Act contained amendments to 23 U.S.C. 410.

Interim Final Rule

On March 7, 1996, NHTSA published in the Federal Register an interim final rule to implement these changes and requested comments from the public. The changes affected two of the section 410 incentive grant criteria: the statewide program for stopping motor vehicles and the 0.02 blood alcohol concentration (BAC) per se law for persons under age 21.

General Comments on Interim Final Rule

The agency received eleven comments in response to the interim final rule. Comments were received from the National Association of Governors' Highway Safety Representatives (NAGHSR), Advocates for Highway and Auto Safety (Advocates), the National Transportation Safety Board (NTSB), and eight State agencies. The comments, and the agency's responses to them, are discussed in detail below. (The agency also received some comments to Docket No. 96–007, Notice 1, concerning a notice of proposed rulemaking on a new zero tolerance program, which related to the interim final rule. These comments have also been considered by the agency.)

Statewide Program for Stopping Motor Vehicles

Before its amendment by the NHS Act, Section 410 contained a basic grant criterion requiring that States must provide for ''a statewide program for stopping motor vehicles.'' To qualify for a basic grant under this criterion, States were required to provide:

> A statewide program for stopping motor vehicles on a nondiscriminatory, lawful basis for the purpose of determining whether or not the operators of such motor vehicles are driving while under the influence of alcohol.

On June 30, 1992, NHTSA issued an interim final rule to implement this provision. The preamble to the interim final rule stated:

> NHTSA is aware * * * that the courts in some States have declared the use of checkpoints or roadblocks to be unconstitutional under their State constitution [and has, therefore, * * *] attempted in this final rule to provide some flexibility to enable these States to describe other Statewide programs for stopping motor vehicles, using alternative methods * * *
>
> The agency[, however,] expects most States will meet this criterion by describing their plans for conducting a Statewide checkpoint or roadblock program.

Section 324(b)(1) of the NHS Act amended Section 410 by providing an alternative method of demonstrating compliance with this Section 410 basic grant criterion, for those States in which checkpoints or roadblocks have been declared to be unconstitutional. Section 324(b)(1) provides:

A State shall be treated as having met the requirement of this paragraph if—

(i) the State provides to the Secretary a written certification that the highest court of the State has issued a decision indicating that implementation of subparagraph (A) would constitute a violation of the constitution of the State; and

(ii) the State demonstrates to the satisfaction of the Secretary that—

(I) the alcohol fatal crash involvement rate in the State has decreased in each of the 3 most recent calendar years for which statistics for determining such rate are available; and

(II) the alcohol fatal crash involvement rate in the State has been lower than the average such rate for all States in each of such calendar years.

As a result of the changes made by the agency's interim final rule, dated March 7, 1996, States were permitted to demonstrate compliance with this criterion by submitting a certification to the agency. The certification must provide that the highest court of the State has issued a decision, indicating that a Statewide program for the stopping of motor vehicles on a nondiscriminatory, lawful basis for the purpose of determining whether or not the operators of such motor vehicles are driving while under the influence of alcohol, would constitute a violation of the State's Constitution. The State must also provide a copy of the court's decision.

NHTSA explained in the interim final rule that it will then, based on data contained in the Fatal Accident Reporting System (FARS) and using NHTSA's method for estimating alcohol involvement, determine the alcohol involvement rate in fatal crashes in the State in each of the three most recent calendar years for which statistics for determining this rate are available and the average such rate for all States in each of these three years.

The State will qualify, under this criterion, in the first and in subsequent years, if NHTSA determines that the data show that the alcohol involvement rate in fatal crashes in the State has decreased in each of the three most recent calendar years for which statistics for determining such rate are available, and that the alcohol involvement rate in fatal crashes in the State has been lower than the average such rate for all States in each of such calendar years.

The agency received four comments regarding the regulatory changes concerning this criterion. California and Massachusetts supported the changes made to this criterion in the interim final rule. Massachusetts said the changes seem ''reasonable and obtainable.'' California urged NHTSA to finalize the change.

NAGHSR urged NHTSA to determine compliance with this criterion by comparing ''fatality rates'' rather than ''absolute numbers of fatalities.'' The agency would like to clarify that the interim final rule did provide that compliance would be determined based on fatality rates. The interim final rule states that:

A State shall be treated as having met the requirement of this paragraph if * * * NHTSA determines, based on data contained in the Fatal Accident Reporting System (FARS) and using NHTSA's method for estimating alcohol involvement, that the *alcohol involvement rate* in fatal crashes in the State:

(A) has decreased in each of the 3 most recent calendar years for which statistics for determining *such rate* are available; and

(B) the *alcohol involvement rate* in fatal crashes in the State has been lower than the average *such rate* for all States in each of such calendar years. [emphasis added]

The agency would like to clarify how it will calculate the alcohol involvement rate. The rate will be derived by calculating the percentage of total traffic fatalities in the State in which a driver, pedestrian or bicyclist had a positive BAC (or are estimated to have had a positive BAC) out of the total traffic fatalities in the State, based on Fatal Accident Reporting System data. For example, if a State had 200 traffic fatalities in which a driver, pedestrian or bicyclist had a positive BAC (.01 or higher) out of a total of 500 fatalities, then the alcohol involvement rate for the State is 200/500, or 40 percent. The agency believes this measure represents the most reliable and most consistent indicator of alcohol involvement in fatal crashes. In addition, the data used to calculate this rate are easily accessible and widely used in the highway safety community.

North Dakota had no objections to the change made in the interim final rule, but noted that NHTSA now permits States to qualify under this criterion using saturation patrols, in lieu of sobriety checkpoints. The State expressed its support for the agency's flexibility, and notified the agency of its intention to apply for second year Section 410 grant funding, based on the State's saturation patrol program.

NHTSA will continue to permit States to qualify under this criterion based on saturation patrol programs. Four States (including North Dakota) have qualified for Section 410 funding on this basis.

Based on the agency's review of the comments, the regulatory changes made in the interim final rule to the Section 410 basic grant Statewide Program for Stopping Motor Vehicles criterion will remain in effect. No additional changes to that portion of the regulation will be made at this time.

0.02 BAC Per Se Law for Persons Under Age 21

Prior to the enactment of the NHS Act, Section 410 provided that, to qualify for basic grant funds, a State was required to meet five out of six basic grant criteria.[1] If a State qualified for a basic grant, it could also seek to qualify for funds under one or more of seven supplemental grants. To qualify under the first of these seven supplemental grants, a State was required to provide that any person under age 21 with a BAC of 0.02 percent or greater when driving a motor vehicle shall be deemed to be driving while intoxicated.

Section 324(b)(2) of the NHS Act amended Section 410 by converting this ''0.02 BAC'' requirement from a supplemental to a basic grant criterion. Accordingly, as a result of the changes made by the agency's interim final rule dated March 7, 1996, the ''0.02 BAC'' requirement remained the same. However, it was removed from the list of supplemental grants (reducing the number of such grants from seven to six), and added to the list of basic grant criteria under Section 410 (increasing the total of basic grant criteria from six to seven).

In the interim final rule, NHTSA explained that to qualify for basic grant funds, States must now meet five out of seven basic grant criteria.[2] As before, if a State qualifies for a basic grant, it can also seek to qualify for funds under one or more of the supplemental grants. However, the number of supplemental grants has been reduced from seven to six.

Massachusetts objected to the movement of the 0.02 BAC requirement from a supplemental to a basic grant criterion, but recognized that the change was Congressionally mandated. NHTSA received no other comments regarding this change. It will remain in effect.

New Zero Tolerance Sanction

In the interim final rule, NHTSA explained that Section 320 of the NHS Act added a new Section 161 to title 23, United States Code, which created a

[1] To receive a basic grant, States that qualified for section 410 funding in FY 1992 could demonstrate compliance with only four out of the five basic grant criteria that were in effect at that time.

[2] To receive a basic grant, States that qualified for section 410 funding in FY 1992 have two options. They may qualify either by demonstrating compliance with four out of the five basic grant criteria that were in effect at that time, or by demonstrating compliance with five out of the seven current basic grant criteria.

new zero tolerance sanction program. The zero tolerance sanction program requires the withholding of certain Federal-aid highway funds from States that do not enact and enforce a ''zero tolerance'' law. The ''zero tolerance'' requirement contained in Section 161 is similar, but not identical, to the ''0.02 BAC'' grant criterion contained in Section 410.

Section 410 provides that, to qualify for funding under the ''0.02 BAC'' grant criterion, a State must provide ''that any person under age 21 with a BAC of 0.02 percent or greater when driving a motor vehicle shall be deemed to be driving while intoxicated.'' Section 161 provides that, to avoid the withholding of Federal-aid highway funds, a State must enact and enforce ''a law that considers an individual under the age of 21 who has a BAC of 0.02 percent or greater while operating a motor vehicle in the State to be driving while intoxicated or driving under the influence of alcohol.''

In an NPRM dated March 7, 1996, NHTSA and the Federal Highway Administration (FHWA), the agencies responsible for jointly administering this new sanction program, stated that:

> The agencies believe that, while Congress intended to encourage all States to enact and enforce effective zero tolerance laws, it also intended to provide States with sufficient flexibility so they could develop laws that suited the particular conditions that exist in those States. Accordingly, the statute prescribes only a limited number of basic elements that State laws must meet to avoid the withholding of Federal-aid highway funds.

NHTSA and the FHWA proposed in the NPRM that, to avoid the sanction, States must demonstrate that they have enacted and are enforcing a law that: (1) Applies to all individuals under the age of 21; (2) sets a BAC of not higher than 0.02 percent as the legal limit; (3) makes operating a motor vehicle by an individual under the age of 21 above the legal limit a per se offense; and (4) provides for primary enforcement.

(In today's Federal Register, NHTSA and the Federal Highway Administration have published a separate final rule, relating to the zero tolerance program established in Section 161 of the NHS.)

Impact of New Zero Tolerance Sanction on 0.02 BAC Criterion

In the interim final rule, NHTSA explained that the proposed requirement under the new zero tolerance sanction differs from the current requirement under the Section 410 ''0.02 BAC'' grant criterion. To qualify for a Section 410 grant under the ''0.02 BAC'' grant criterion, a State must satisfy the requirements listed above, and also provide for a 30-day driver's license suspension or revocation. The 30-day suspension or revocation period must be a mandatory hard suspension or revocation (i.e., it may not be subject to hardship, conditional or provisional driving privileges). To demonstrate compliance with this criterion, States must submit a law that provides for each element of the criterion, except that States with laws that do not specifically provide for a 30-day suspension period may submit data showing that the average length of the suspension term for offenders meets or exceeds 30 days.

In the interim final rule, NHTSA requested comments regarding whether further changes to Part 1313 should be made in light of the new zero tolerance program. Specifically, NHTSA requested comments regarding whether it should retain different requirements under the ''zero tolerance'' sanction and the Section 410 ''0.02 BAC'' grant criterion, or whether it should amend the Section 410 ''0.02 BAC'' criterion to be the same as the ''zero tolerance'' sanction requirement.

The agency received fourteen comments concerning this issue. Comments were received from NAGHSR, eleven States, the NTSB and Advocates for Highway and Auto Safety.

1. Whether To Adopt a Single or Different Standards for 0.02

NAGHSR and nine State commenters urged the agency to adopt a single standard for both the Section 410 ''0.02 BAC'' grant criterion and the ''zero tolerance'' sanction requirement. These commenters believe the Section 410 ''0.02 BAC'' grant criterion has been too stringent, and they recommend that it be reduced to match the criterion that was proposed for the zero tolerance program. NTSB also recommended that the agency adopt a single standard for the two programs, but NTSB favored the criterion currently contained in Section 410 over the proposed zero tolerance requirement.

In support of its recommendation that NHTSA adopt a single standard, NAGHSR argued that a single standard would provide clarity and would enable legislatures to pass conforming legislation more easily. Its comments stated:

> NAGHSR urges NHTSA to consider the adoption of one zero tolerance standard—the standard proposed under the March 7 Notice of Proposed Rulemaking (NPRM) implementing the NHS sanctions. If such an approach were taken, states would have to go to their legislature *only once* to adopt the necessary legislation. The likelihood of passage would be greater, encouraging more states to adopt zero tolerance laws more quickly. This, in turn, would help reduce the number of impaired teenagers and young adults on the road and reduce the number of fatalities in this age group. [emphasis added]

Elsewhere in its comments, NAGHSR stated:

> In our view, it is better for a state to adopt *any* zero tolerance measure and *then revisit* the legislation and strengthen it in *subsequent* legislative sessions. The effect of such a strategy is to enable a state to quickly close a significant loophole in its minimum drinking age law while allowing it to add desirable legislative features later on. [emphasis added]

Advocates and the States of New York and Illinois supported the use of two different standards. Advocates asserted that there is:

> * * * no logical reason for Section 161 and the Section 410 program 0.02 BAC requirement to have identical penalty criterion. Section 161 is a Congressional mandate that sets a nationally uniform minimum level for zero tolerance * * *. With respect to the Section 410 program, the license suspension requirement should be longer.

Illinois and New York expressed similar views. Illinois stated:

> Although the two provisions are similar, they involve different issues. The ''zero tolerance'' sanction involves a highway funding penalty, and the Section 410 ''0.02 BAC'' criterion involves an incentive. It is our opinion that keeping the license suspension or revocation provision within the Section 410 ''0.02 BAC'' criterion is reasonable.

New York asserted:

> We see nothing inappropriate about having one standard for incentives and another standard for penalties. This allows states to make choices among different levels of compliance that better represent each state's tolerance for safety legislation.

NHTSA agrees with this view. It has decided to establish a stricter standard for the Section 410 criterion than for the zero tolerance requirement. All States must meet the zero tolerance requirement, or they will be subject to the mandatory withholding of funds. If States wish to meet the stricter criterion contained in Section 410, they may be eligible for additional incentive grant funds.

2. Whether To Change the Section 410 ''0.02 BAC'' Criterion

As explained above, NAGHSR and nine State commenters expressed their belief that the Section 410 ''0.02 BAC'' grant criterion has been too stringent, and they recommend that it be reduced to match the criterion that was proposed

for the zero tolerance program. In particular, they recommend eliminating the 30-day mandatory licensing sanction requirement currently contained in Section 410. In support of its position, NAGSHR stated:

> While it may be highly desirable for states to enact strong zero tolerance laws, it may not always be possible to motivate state legislatures to do so. Similarly, while it may be good public policy to reward states only if they adopt the best possible legislation, such legislation may not be feasible or attainable in a state for reasons totally unrelated to the merits of the issue.
>
> * * * * *
>
> The goal, in NAGHSR's view, is to encourage states to enact zero tolerance laws, not just laws that fit a rigid zero tolerance definition. States should not be deemed ineligible simply for their failure to qualify with laws that meet narrowly defined standards.

Advocates disagreed with NAGHSR's position. According to Advocates:

> The goal of Section 410 is not to assure that all states have an equal opportunity to obtain grants but rather to assure that those states that make substantive improvements in their state safety laws will receive grant funds to enable them to sustain those efforts.

Since Advocates supported a 30-day license suspension requirement for the zero tolerance program, it recommended that NHTSA consider a 90-day license suspension requirement under Section 410.

NTSB and the States of New York and Illinois supported the current Section 410 criterion, which requires a mandatory 30-day hard suspension, and urged that this criterion not be changed. NTSB expressed its belief that the existing Section 410 30-day requirement is ''consistent with the Safety Board's recommendations * * * and with the intent of Congress.'' New York commented that ''NHTSA has struck an appropriate balance that will keep public policy focused in a productive direction for saving our youth.'' Illinois stated:

> Retention of the 30-day hard suspension is supported by our experience. In the first year of our zero tolerance law enforcement, we saw an increase in young driver citations.
>
> Research shows that the swift and sure loss of driving privileges is the most effective penalty for offenders. We strongly encourage NHTSA to retain the license suspension or revocation provision in the Section 410 ''0.02 BAC'' criterion and to make no further amendments to Part 1313.

After considering carefully all of the comments received, NHTSA has decided that it will not change the Section 410 ''0.02 BAC'' grant criterion.

Subsequent Year Applications

NAGHSR, Washington State and North Dakota recommend that the qualification process for subsequent year Section 410 grants should be simplified. NAGHSR suggests that, once a State has qualified for a Section 410 grant in one year, the State should only be required to certify its continued compliance in subsequent years, by certifying that ''there has been no substantive changes in laws or conditions.''

NAGHSR asserts that States are required, under the current Section 410 regulation, to invest considerable time and expense to qualify for Section 410 grants every year, which places ''a serious burden on very limited resources.'' North Dakota explained that a recertification process ''would allow staff to concentrate on traffic safety programs rather [than on] re-documenting information already presented in the original application.''

NHTSA appreciates these thoughtful comments. Under the current Section 410 regulation, States are required to submit different items of information to demonstrate compliance under each of the criteria. These items of information fall into three categories: laws; plans and descriptions of programs; and data and other information showing effectiveness.

We agree that, if a State has qualified under a criterion based on its laws and there have been no substantive changes in the laws since the time of the original application, there is little reason to require the State to resubmit its laws in its application for subsequent year funds. Similarly, if a State has qualified under a criterion based on a plan for conducting a program or a description of its program and there have been no substantive changes in the State's plans or program since the time of the original application, there is little reason to require the State to submit another detailed plan or description in its subsequent year application. The agency will no longer require this additional information. The regulation has been amended to reflect this change.

In lieu of resubmitting its laws to demonstrate compliance in subsequent years the State receives a grant under Basic Criterion No. 1 (Expedited Driver's License Suspension or Revocation System), Basic Criterion No. 2 (Per Se Law), Basic Criterion No. 4 (Self-Sustaining Drunk Driving Prevention Program), Basic Criterion No. 6 (Mandatory Sentencing), Basic Criterion No. 7 (Per Se Law for Persons Under Age 21), Supplemental Criterion No. 1 (Program Making Unlawful Open Containers and Consumption of Alcohol in Motor Vehicles), Supplemental Criterion No. 2 (Suspension of Registration and Return of License Plate Program), Supplemental Criterion No. 3 (Mandatory Alcohol Concentration Testing Program), Supplemental Criterion No. 4 (Drugged Driving Prevention), or Supplemental Criterion No. 5 (Per Se Level of 0.08), the State may submit either a statement certifying that there have been no substantive changes in the State's laws that would affect compliance with Section 410 or a copy of any amendments to the State's laws.

In lieu of resubmitting a plan for conducting a program or a program description to demonstrate compliance in subsequent years under Basic Criterion No. 3 (Statewide Program for Stopping Motor Vehicles), Basic Criterion No. 5 (Minimum Drinking Age Prevention Program), Supplemental Criterion No. 4 (Drugged Driving Prevention), or Supplemental Criterion No. 6 (Video Equipment Program), and in lieu of resubmitting two detailed examples of community programs to demonstrate compliance in subsequent years under Basic Criterion No. 4, the State may submit either a statement certifying that there have been no substantive changes in the State's plans or program that would affect compliance with Section 410 or a copy of any changes to the State's plans or program.

However, under some of the criteria, the submission of data or certain other information showing effectiveness is required. This information does change from year to year, and the agency has considered these submissions to be critical to ensure and evaluate the effectiveness of alcohol countermeasures. Accordingly, portions of the regulation that require data or other information showing effectiveness in subsequent years will not be changed at this time.

States will continue to be required to submit data under Basic Criterion No. 1 (Expedited Driver's License Suspension or Revocation System), information documenting that the prior year's plan was effectively implemented under Basic Criterion No. 3 (Statewide Program for Stopping Motor Vehicles), data and certifications under Basic Criterion No. 4 (Self-Sustaining Drunk Driving Prevention Program), and information documenting that the prior year's plan was effectively implemented under Basic Criterion No. 5 (Minimum Drinking Age Prevention). ''Data States'' will continue to be required to submit data under Basic Criterion No. 6 (Mandatory Sentencing) and Basic

Criterion No. 7 (Per Se Law for Persons Under Age 21).

To qualify in subsequent years for supplemental grants, States will continue to be required to submit information showing that it is actively enforcing its open container and anti-consumption statute under Supplemental Criterion No. 1 (Program Making Unlawful Open Containers and Consumption of Alcohol in Motor Vehicles), data and information showing that the State is actively enforcing its law and regarding any hardship exceptions contained in its law under Supplemental Criterion No. 2 (Suspension of Registration and Return of License Plate Program), data under Supplemental Criterion No. 3 (Mandatory Alcohol Concentration Testing Program), evidence of the State's participation in the Drug Evaluation and Classification or an equivalent program and information and data on prosecutions under Supplemental Criterion No. 4 (Drugged Driving Prevention), and information and data on the use and effectiveness of the equipment under Supplemental Criterion No. 6 (Video Equipment Program).

Regulatory Analyses and Notice

Executive Order 12778 (Civil Justice Reform)

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

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

The agency has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or Department of Transportation Regulatory Policies and Procedures. Section 410 is a voluntary program. Accordingly, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the agency has evaluated the effects of this action on small entities. Based on the evaluation, we certify that this action will not have a significant impact on a substantial number of small entities. Accordingly, the preparation of a Regulatory Flexibility Analysis is unnecessary.

Paperwork Reduction Act

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

Accordingly, these requirements have been submitted previously to and approved by OMB, pursuant to the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*). These requirements have been approved under OMB No. 2127–0501. This final rule reduces for the States previous information collection requirements. A request for an extension of the OMB approval through November 1998 is currently pending.

National Environmental Policy Act

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

Executive Order 12612 (Federalism Assessment)

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

List of Subjects in 23 CFR Part 1313

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

In consideration of the foregoing, the interim rule published in the Federal Register of March 7, 1996, 61 FR 9101, amending 23 CFR Part 1313, is adopted as final, with the following changes:

PART 1313—INCENTIVE GRANT CRITERIA FOR DRUNK DRIVING PREVENTION PROGRAMS

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

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

2. Section 1313.5 is amended by adding paragraph (h) to read as follows:

§ 1313.5 Requirements for a basic grant.

* * * * *

(h) *Subsequent year submissions.* (1) In lieu of resubmitting its laws, regulations or binding policy directives to demonstrate compliance in subsequent years the State receives a basic grant as provided in paragraphs (a)(2)(ii), (a)(3)(ii), (b)(2), (d)(2)(i), (f)(2)(i), (f)(3)(i), (g)(2)(i), or (g)(3)(i) of this section, the State may submit either a statement certifying that there have been no substantive changes in the State's laws, regulations or binding policy directives that would affect compliance with Section 410 or a copy of any amendments to the State's laws, regulations or binding policy directives.

(2) In lieu of resubmitting a plan for conducting a program to demonstrate compliance in subsequent years the State receives a basic grant as provided in paragraphs (c)(3) or (e)(3) of this section, the State may submit either a statement certifying that there have been no substantive changes in the State's plans that would affect compliance with Section 410 or a copy of any changes to the State's plans.

(3) In lieu of resubmitting two detailed examples of community programs to demonstrate compliance in subsequent years the State receives a basic grant as provided in paragraph (d)(2)(ii) of this section, the State may submit either a statement certifying that there have been no substantive changes in the State's community programs that would affect compliance with Section 410 or a copy of any changes to the State's programs.

3. Section 1313.6 is amended by adding paragraph (g) to read as follows:

§ 1313.6 Requirements for supplemental grants.

* * * * *

(g) *Subsequent year submissions.* (1) In lieu of resubmitting its laws, regulations or binding policy directives to demonstrate compliance in subsequent years the State receives a supplemental grant as provided in paragraphs (a)(2)(ii), (b)(2)(ii), (c)(2)(ii), (c)(3)(i), (d)(2)(i), or (e)(2) of this section, the State may submit either a statement certifying that there have been no substantive changes in the State's laws, regulations or binding policy directives that would affect compliance with Section 410 or a copy of any amendments to the State's laws, regulations or binding policy directives.

(2) In lieu of resubmitting a plan or a description of its program in subsequent years the State receives a supplemental grant as provided in paragraph (d)(2)(iv) or (f)(3) of this section, the State may submit either a statement certifying that

there have been no substantive changes in the State's plan or program that would affect compliance with Section 410 or a copy of any changes to the State's plan or program.

Issued on: October 21, 1996.

Ricardo Martinez,

Administrator, National Highway Traffic Safety Administration.

[FR Doc. 96–27314 Filed 10–22–96; 12:30pm]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 2

[Docket No. 960828232–6294–02]

RIN 0651–AA90

Establishment of Recordal Fees Associated With the Fastener Quality Act

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The Patent and Trademark Office (PTO) is amending the rules of practice to establish fees associated with recordation of insignia of manufacturers and private label distributors to ensure the traceability of a fastener to its manufacturer or private label distributor. This amendment is in accordance with the provisions of the Fastener Quality Act. 15 U.S.C. 5401 et seq.

EFFECTIVE DATE: November 25, 1996.

FOR FURTHER INFORMATION CONTACT: Lizbeth Kulick by telephone at (703) 308–8900, or by fax at (703) 308–7220, or by mail marked to her attention and addressed to the Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia, 22202–3513.

SUPPLEMENTARY INFORMATION: On August 17, 1992, the Department of Commerce issued a notice of proposed rulemaking to implement the Fastener Quality Act (Act). 57 FR 37032. In that notice, the PTO was identified as the Office within the Commerce Department with the responsibility for recording the fastener insignia of manufacturers and private label distributors as required by Section 8 of the Act. 57 FR 37033–35, August 17, 1992. The notice proposed that the costs of recording insignia be recovered by user fees. 57 FR 37035–36, August 17, 1992.

The PTO must publish a notice in the Federal Register of any change of its fees at least 30 days before the effective date thereof. 15 U.S.C. 1113(a). On September 17, 1996, a notice of proposed rulemaking was published in the Federal Register, at 61 FR 48872–73, to announce three proposed fees of twenty dollars each, to recover costs associated with the insignia recordal program. The PTO has received no comments regarding the proposed fees.

Additionally, the September 17th notice proposed to remove two rules from Part 2, 37 CFR 2.53 and 2.189, because they were deemed not administratively necessary. Section 2.53 specifies the manner in which drawings must be transmitted. Section 2.189 simply states the Office's policy on publishing amendments to the rules. This policy is not changing, but will no longer be stated as a rule. No comments were received on the proposed removal of the two rules.

Other Considerations

This rule is not significant for the purposes of Executive Order 12866. The Office of Management and Budget approved the information collections required by this rule on October 1, 1996 (OMB number 0651–0028). This clearance expires October 31, 1999. The affected public is manufacturers and private label distributors of certain types of industrial fasteners. The estimated average number of responses is six hundred. The estimated time per response is ten minutes, so the estimated total annual burden is one hundred hours. The collected information is needed to ensure that a fastener can be traced to its manufacturer or private label distributor.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number.

This proposed fee does not require notice and comment under 5 U.S.C. 553 or any other statute, so no analysis or certification is required under 5 U.S.C. 603(a).

List of Subjects in 37 CFR Part 2

Administrative practice and procedure, Courts, Lawyers, Trademarks.

For the reasons set out in the preamble, 37 CFR Part 2 is amended as set forth below.

PART 2—RULES OF PRACTICE IN TRADEMARK CASES

1. The authority citation for part 2 continues to read as follows:

Authority: 15 U.S.C. 1123; 35 U.S.C. 6, unless otherwise noted.

2. Section 2.7 is added to read as follows:

§ 2.7 Fastener Recordal Fees.

(a) Application fee for recordal of insignia	$20.00
(b) Renewal of insignia recordal	$20.00
(c) Surcharge for late renewal of insignia recordal	$20.00

§ 2.53 [Removed]

3. Section 2.53 is removed.

§ 2.189 [Removed]

4. Section 2.189 and the undesignated center heading ''Amendment of Rules'' are removed.

Dated: October 23, 1996.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 96–27628 Filed 10–24–96; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–5638–9]

Montana: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: Montana has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed Montana's application and has made a decision, subject to public review and comment, that Montana's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Montana's hazardous waste program revisions. Montana's application for program revision is available for public review and comment.

DATES: Final authorization for Montana shall be effective December 24, 1996, unless EPA publishes a prior Federal Register action withdrawing this immediate final rule. All comments on Montana's program revision