DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

23 CAR Part 1345

[Docket No. NHTSA–98–4496]

RIN 2127–AH40

Occupant Protection Incentive Grants

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

ACTION: Interim final rule; request for comments.

SUMMARY: This interim final rule implements a new program established by the Transportation Equity Act for the 21st Century (TEA–21), under which States can qualify for incentive grant funds if they adopt and implement effective programs to reduce highway deaths and injuries resulting from individuals riding unrestrained or improperly restrained in motor vehicles. This interim final rule solicits public comment.

DATES: This interim final rule becomes effective November 2, 1998. Comments on this interim final rule are due no later than November 30, 1998.

ADDRESSES: Written comments should refer to the docket number for this notice, and be submitted (preferably in two copies) to: Docket Management, Room PL–401, National Highway Traffic Safety Administration, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590. (Docket hours are Monday–Friday, 10 a.m. to 5 p.m., excluding Federal holidays.)

FOR FURTHER INFORMATION CONTACT: Ms. Joan Tetrault, State and Community Services, NSC–01, NHTSA, 400 Seventh Street, S.W., Washington, D.C. 20590; telephone (202) 366–2121, or Ms. Heidi L. Coleman, Assistant Chief Counsel for General Law, NCC–30, NHTSA, 400 Seventh Street, S.W., Washington, D.C. 20590; telephone (202) 366–1834.

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

Background

Effectiveness of Occupant Protection Systems

Injuries caused by motor vehicle traffic crashes in America are a major health care problem and are the leading cause of death for people aged 6 to 27. Each year injuries caused by traffic crashes in the United States claim approximately 42,000 lives and cost Americans an estimated $150 billion. Safety belts are an effective means of reducing fatalities and serious injuries when traffic crashes occur. Safety belts are estimated to save nearly 11,000 lives each year. Lap and shoulder belts reduce the risk of fatal injury to front seat passenger car occupants by 45 percent and the risk of moderate to critical injury by 50 percent. For light truck occupants, safety belts reduce the risk of fatal injury by 60 percent and moderate to critical injury by 65 percent.

Child safety seats reduce the risk of fatal injury in a crash by 69 percent for infants (less than 1 year old) and by 47 percent for toddlers (1–4 years old). In 1997, there were 593 occupant fatalities among children under 5 years of age. Of those 593 fatalities, an estimated 298 (54 percent) were totally unrestrained. From 1975 through 1997, an estimated 3,894 lives were saved by the use of child restraints (child safety seats or adult belts). In 1997, an estimated 312 children under age 5 were saved as a result of child restraint use.

America's Experience With Safety Belts and Child Safety Seats

While the first safety belts were installed by automobile manufacturers in the 1950s, safety belt use was very low—only 10 to 15 percent nationwide—until the early 1980s. From 1984 through 1987, belt use increased from 14 percent to 42 percent, as a result of the passage of safety belt use laws in 31 States. Belt use is now mandated in 49 States, the District of Columbia, Puerto Rico and the U.S. Territories (which include the Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands), but only 13 States, the District of Columbia, Puerto Rico and the U.S. Territories allow police to stop a vehicle solely on the basis of observing a safety belt violation. Most States require that another violation must first be observed (i.e., secondary enforcement) before safety belt law violators can be stopped and issued a citation. Under these conditions, national safety belt usage seems to have reached a plateau of 69 percent.

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

The President's Call To Increase Safety Belt and Child Safety Seat Usage

In 1997, President Clinton established the Presidential Initiative to Increase Seat Belt Usage Nationwide (Presidential Initiative), setting goals of achieving a safety belt use rate of 85% by the year 2000 and a 90 percent safety belt use rate by 2005. The President also seeks to reduce child occupant fatalities (0–4 years) by 15 percent in the year 2000 and by 25 percent in 2005. The Presidential Initiative contained a four point strategy to meet its goals of increasing safety belt and child safety seat use.

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

Grant Criteria

To be eligible for a grant under the new Section 405 statute, a State must adopt or demonstrate at least four of the following six criteria: a safety belt use law; a primary safety belt use law; minimum fines or penalty points against the driver license of an individual for a violation of the State's safety belt use law or a violation of the State's child passenger protection law; a special traffic enforcement program; a child passenger protection education program; and a child passenger protection law. The elements of these grant criteria and the manner in which States must demonstrate compliance are explained fully below:

1. Safety Belt Use Law

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

Based on the definitions contained in the statute, NHTSA has determined that the term ''passenger motor vehicle'' means passenger car, pickup truck, van, minivan, or sport utility vehicle. The statute did not contain a definition of the term ''child restraint system.'' NHTSA has determined that this term shall have the same meaning as the term ''child safety seat.'' The term ''child safety seat'' was defined by the statute. The definitions are reflected in § 1345.3 of the regulation.

Except for children in child restraint systems, the statute does not provide for any exemptions from application. However, NHTSA understands that all States have exemptions written into their safety belt laws. The agency believes that Congress' intent to aid States in their efforts to achieve higher belt use rates would not be served by reading the statute so literally as to deny an incentive grant to States whose laws contain any exemptions. On the other hand, some exemptions would either be incompatible with the language of the statute or would so severely undermine the safety considerations underlying the statute so as to render a State whose law contains the exemption ineligible for the incentive grant program.

NHTSA has reviewed existing safety belt laws and has decided to permit exemptions covering persons with medical excuses; postal, utility and other commercial drivers who make frequent stops in the course of their business; emergency vehicle operators and passengers; persons riding in positions not equipped with safety belts; persons in public and livery conveyances; persons riding in parade vehicles and persons in the custody of police. Any State considering an exemption other than those identified as acceptable should anticipate that the agency would review the exemption to determine whether it is in accordance with the intent of the statute and applies to situations in which the risk to occupants is very low or in which there are exigent circumstances. For example, the agency would consider an exemption for persons in vehicles equipped with air bags to be wholly unacceptable.

To demonstrate compliance with this criterion, the State is required to submit a copy of its law, regulation or binding policy directive interpreting or implementing the law or regulation that provides for each element of the safety belt use law criterion. The State is required to identify any exemptions to its safety belt use law.

2. Primary Safety Belt Use Law

To qualify under this criterion, a State must provide for primary enforcement of its safety belt use law. Under a primary enforcement law, law enforcement officials have the authority to enforce the law without the need to show that they have probable cause to believe that another violation had been committed. Any State that provides for secondary enforcement of its safety belt use law will not qualify for funds under this criterion. A review of State laws indicates that currently, 13 States, the District of Columbia, Puerto Rico and all the U.S. Territories have primary enforcement laws and 36 States have secondary enforcement laws.

To demonstrate compliance with this criterion, the State is required to submit a copy of its law, regulation or binding policy directive interpreting or implementing the law or regulation, that provides for each element of the primary safety belt use law criterion.

3. Minimum Fine or Penalty Points

To qualify under this criterion, a State must impose a minimum fine or provide for the imposition of penalty points against the driver's license of an individual for a violation of the safety belt use law of the State and for a violation of the child passenger protection law of the State. In other words, a violation of either the safety belt use law or the child passenger protection law must trigger the imposition of a minimum fine or penalty points.

Although the statute does not set a specific monetary amount as a ''minimum fine,'' NHTSA believes it would be inconsistent for Congress to set a statutory requirement for a minimum fine level, but leave open the possibility that there would be no monetary penalty or one that is nominal and insignificant. Accordingly, NHTSA has determined that the term ''minimum fine'' shall mean a total monetary penalty of at least $25.00, which may include fines, fees, court costs, or any other additional monetary assessments collected. The definition of ''minimum fine'' is contained in § 1345.3 of the regulation.

States will be permitted to meet this grant criterion as either ''Law States'' or ''Data States.'' To qualify as a Law State, the State must have a law, regulation, or binding policy directive interpreting or implementing such law or regulation that provides for each element of the minimum fine/penalty points criterion. A Law State may demonstrate compliance with this criterion by submitting a copy of its conforming law, regulation or binding policy directive.

A State that does not have a law, regulation or binding policy directive that conforms to each element of this criterion may qualify instead as a Data State. A Data State may show compliance with this criterion by submitting data covering at least a three-month period within the last twelve months showing the total number of persons convicted of a safety belt use or child passenger protection law violation and that 80% of all such persons were required to pay a fine of at least $25.00 or had one or more penalty points assessed against their driver's license. The total number of persons convicted must be sufficient to show that the State is conducting meaningful enforcement and adjudication of its safety belt use and child passenger protection laws.

A State is permitted to submit data based on a representative sample. By representative sample, the agency means that data should be obtained from all communities in the State or from a sample of communities representative of the State as a whole. The agency notes that a State may qualify as a Law State with respect to its safety belt use law and as a Data State with respect to its child passenger protection law, or vice versa.

4. Special Traffic Enforcement Program

To qualify under this criterion, a State must provide for a statewide Special Traffic Enforcement Program for occupant protection that emphasizes publicity for the program.

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

Several States have already developed and employed effective STEPs. In 1993, North Carolina launched a statewide campaign to increase safety belt use. The ''Click It or Ticket'' program combined law enforcement blitzes with extensive publicity. North Carolina law

enforcement agencies conducted 3,425 checkpoints across the State which resulted in nearly 34,000 safety belt and nearly 2,300 child safety seat citations. Safety belt use in the State rose from 63 percent to 80 percent.

Georgia is currently conducting a STEP operation called ''Operation Strap n' Snap.'' This two-year program, which began in August 1997, is scheduled to include eight enforcement waves. After the first enforcement wave, Georgia's safety belt use rate climbed to its highest level ever at 67.75 percent, up from 62 percent.

To qualify under this criterion, a State must plan to implement a STEP that provides for periodic enforcement efforts. Each enforcement effort must include the following five elements in chronological order: (1) A pre-wave seat belt observed use survey; (2) A statewide media campaign to inform the public about the risks and costs of traffic crashes, the benefits of increased occupant protection use, and the need for traffic enforcement as a way to manage those risks and costs; (3) Local media events announcing the pending enforcement wave; (4) A wave of enforcement effort consisting of checkpoints, saturation patrols or other enforcement tactics; and (5) A post-wave observed use survey coupled with a post-wave media event announcing the results of the survey and the enforcement effort.

By requiring that States conduct observed use surveys, NHTSA does not mean to require States to conduct scientifically based surveys with representative sample sizes. It will be sufficient if pre-wave and post-wave surveys are based on observed use and conducted at the same times (day and hour) and locations so that the measures are comparable.

The State's program must provide for at least 2 enforcement efforts each year and must require the participation of both State and local law enforcement agencies in each enforcement effort. In addition, States must demonstrate that their program covers at least 70% of the State's population.

Coverage can be accomplished by an area-wide or corridor approach, or a combination of those approaches. Under the area-wide approach, the population covered by the program is estimated based on the populations covered by each of the participating local law enforcement jurisdictions and the total State population. Under the corridor approach, the population covered is estimated based on traffic volumes over specified transportation routes, with concentrated enforcement/education efforts focused on that ''mobile'' population, and the total traffic volumes statewide on comparable roadways.

To demonstrate compliance in the first year the State receives a grant based on this criterion, the State must submit a plan to conduct a program that includes the elements described above. The plan must provide the approximate dates, durations and locations of the enforcement efforts planned in the upcoming year and must specify the types of enforcement methods that will be used during each enforcement effort. The State must also provide a listing of the law enforcement agencies that will participate in the enforcement efforts along with an estimate of the approximate cumulative percentage of the State's population served by those agencies or the approximate percentage of the traffic volume on roadways covered by the enforcement program.

In addition, the State must document the activities it plans to conduct to provide the public with information on the importance of occupant restraints and to publicize each enforcement effort and its results. This information should include a sample or synopsis of the content of the public information messages that will accompany the enforcement efforts and the strategy the State intends to use to deliver each message to its target audience.

To qualify for funding in subsequent years, the State must submit an updated plan for conducting its STEP and information documenting that the prior year's plan was effectively implemented. The information shall document that enforcement efforts were conducted; which police agencies were involved; and the dates, duration and location of each enforcement effort. The State must also submit samples of materials used, and document activities that took place to reach the target population. For example, the State may submit copies of news articles about the program or document press events, television and radio coverage or other publicity about the program and the enforcement efforts.

5. Child Passenger Protection Education Program

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

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

To demonstrate compliance in the first fiscal year a State receives a grant based on this criterion, the State shall submit a comprehensive plan to conduct a statewide comprehensive child passenger protection education program that meets the elements set forth above. In its plan, the State must include a sample or synopsis of the content of the planned public information program and the strategy that will be used to reach 70% of the targeted population.

Also, the State must describe the activities that will be used to train and retrain child passenger safety technicians, police officers, fire and emergency personnel and other educators and provide the durations and locations of such training activities. In addition, the State must provide information on the approximate number of people who will participate in the training and retraining activities. The State must also describe its plan to conduct clinics that will serve at least 70% of the targeted population.

To qualify for funding in subsequent years, the State must submit an updated plan for conducting a child passenger protection education program and information documenting that the prior year's plan was effectively implemented. The information shall document that a public information program, training and child safety seat

clinics were conducted; which agencies were involved; and the dates, durations and locations of these programs.

6. Child Passenger Protection Law

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

The terms ''passenger motor vehicle'' and ''child safety seat'' which are used to describe this criterion are defined by statute. The statutory definitions are reflected in § 1345.3 of the regulation. The statute did not define the term ''minor.''

NHTSA has determined that, to comply with this grant criterion, a State must make unlawful the operation of a passenger motor vehicle whenever an individual who is less than 16 years of age is not properly secured in a child safety seat or other appropriate restraint system in any seating position of the vehicle. NHTSA believes that Congress' intent to aid the States in their efforts to achieve higher child safety seat and safety belt use would not be served if children under age 16 were allowed to ride unrestrained in a passenger motor vehicle. NHTSA's review of State laws indicates that some States currently allow some children under age 16 to ride unrestrained if they are in the rear seat of passenger vehicles. Other States' laws allow some children under 16 who ride in certain types of excepted vehicles to be unrestrained. NHTSA believes that the intent of the legislation was to eliminate these gaps in coverage. In addition, the agency believes that defining minor to mean under age 16 is consistent with the majority of State driver licensing laws that allow individuals at ages 16 and higher to obtain driver's licenses.

To demonstrate compliance, a State must submit a copy of its law, regulation, or binding policy directive interpreting or implementing such law or regulation adopting each element of the child passenger protection law requirement. In addition, the State is required to identify any exemptions to its child passenger protection law.

The agency notes that children age 12 and under should always sit in the back seat of a motor vehicle. Frontal crashes are the most serious types of crashes. The back seat is the safest seat because it is farthest away from the impact of such a crash. In addition, people sitting in the back seat have the soft back of the front seat in front of them, instead of hard surfaces like the windshield, mirror or dashboard.

Children should also sit in the back seat to guard against injuries from air bags. Air bags can seriously injure or kill children who are in the front seat. In a crash, the air bag must deploy in a fraction of a second. The energy of the air bag's deployment can harm anyone in the front seat who is too close to the air bag. Children age 12 and under who are not properly restrained are particularly at risk.

In addition, the agency wishes to stress the importance of placing children under age 4 in child safety seats. Specifically, the agency recommends that children less than 20 pounds, or less than one year old, be placed in a rear facing infant seat secured in the rear seat of the vehicle by the safety belts. Children from about 20 to 40 pounds and at least one year old should be placed in a forward-facing child seat secured in the rear seat of the vehicle by a safety belt. Children more than 40 pounds should sit in a booster seat secured in the rear seat of the vehicle with both portions of a lap/shoulder belt (except only the lap portion is used with some booster seats equipped with a front shield). Finally, the agency recommends that children whose sitting height is high enough so that they can, without the aid of a booster seat, wear the shoulder belt comfortably across their shoulder and secure the lap belt across their pelvis and whose legs are long enough to bend over the front of the seat when their backs are against the vehicle seat back be secured with both portions of a lap/shoulder belt.

Certifications in Subsequent Years

NHTSA believes that if a State has qualified under a criterion based on its laws and there have been no 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. In lieu of resubmitting its laws to demonstrate compliance in subsequent years the State receives a grant based on its compliance with Criterion No. 1 (Safety Belt Use Law), Criterion No. 2 (Primary Safety Belt Use Law), Criterion No. 3 (Minimum Fine or Penalty Points) or Criterion No. 6 (Child Passenger Protection Law), the State may submit a statement certifying that there have been no changes in the State's laws. A State demonstrating compliance as a Data State under Criterion No. 3 would still be required to submit all necessary data.

Limitations on Grant Amounts

Section 405 provides, in subsection (c), that an eligible State may receive as a grant an amount that shall not exceed 25 percent of its fiscal year 1997 highway safety grant (Section 402) apportionment under 23 U.S.C. 402.

No State may receive a grant in more than six fiscal years. A total of $68 million has been authorized for the Section 405 program over a period of five years. Specifically TEA–21 authorizes $10 million for fiscal year 1999, $10 million for fiscal year 2000, $13 million for fiscal year 2001, $15 million for fiscal year 2002 and $20 million for fiscal year 2003. Under Section 405, States are required to match the grant funds they receive as follows: the Federal share can not exceed 75 percent of the cost of implementing and enforcing the occupant protection program adopted to qualify for these funds in the first and second fiscal years the State receives funds; 50 percent in the third and fourth fiscal years it receives funds; and 25 percent in the fifth and sixth fiscal years.

No grant may be made to a State unless the State certifies that it will maintain its aggregate expenditures from all other sources for its occupant protection programs at or above the average level of such expenditures in fiscal years 1996 and 1997 (either State or Federal fiscal year 1996 and 1997 can be used).

The agency will accept a ''soft'' match in Section 405's administration, as it has for the agency's Section 402 and 410 programs. By this, NHTSA means the State's share may be satisfied by the use of either allowable costs incurred by the State or the value of in-kind contributions applicable to the period to which the matching requirement applies. A State could not, however, use any Federal funds, such as its Section 402 funds, to satisfy the matching requirements. In addition, a State can use each non-Federal expenditure only once for matching purposes.

Award Procedures

To receive a grant in any fiscal year, the State is required to submit an application to NHTSA, through the appropriate NHTSA Regional Administrator, which demonstrates that the State meets the requirements of the grant being requested. The particular requirements of these grants are defined in detail in § 1345.5 of the regulation. The State also must submit certifications that: (1) it has an occupant protection program that meets the grant requirements; (2) it will use the funds awarded only for the implementation and enforcement of occupant protection programs; (3) it will administer the funds in accordance with relevant regulations and OMB Circulars; and (4)

it will maintain its aggregate expenditures from all other sources for its occupant protection programs at or above the average level of such expenditures in fiscal years 1996 and 1997. State or Federal fiscal years may be used.

In both the first and in subsequent years, once a State has been informed that it is eligible for a grant, the State must include documentation in the State's Highway Safety Plan, prepared under Section 402, that indicates how it intends to use the grant funds. The documentation must include a Program Cost Summary (HS Form 217) obligating the section 405 funds to occupant protection programs.

To be eligible for grant funds in fiscal year 1999, States must submit their applications no later than August 1, 1999. To be eligible for grant funds in any subsequent fiscal years, States must submit their applications no later than August 1 of the fiscal year in which they are applying for funds. The agency will permit (and strongly encourages) States to submit all of these materials in advance of the regulatory deadlines.

Upon receipt and subsequent approval of a State's application, NHTSA will award grant funds to the State and will authorize the State to incur costs after receipt of an HS Form 217. Vouchers must be submitted to the appropriate NHTSA Regional Administrator and reimbursement will be made to States for authorized expenditures. The funding guidelines applicable to the Section 402 Highway Safety Program will be used to determine reimbursable expenditures under the Section 405 program. As with requests for reimbursement under the Section 402 program, States should indicate on the vouchers what amount of the funds expended are eligible for reimbursement under Section 405.

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

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

Interim Final Rule

These regulations are being published as an interim final rule. Accordingly, the new regulations in Part 1345 are fully in effect 30 days after the date of the document's publication. No further regulatory action by the agency is necessary to make these regulations effective.

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

In the agency's view, the States will not be impeded by the use of an interim final rule. The procedures that States must follow under this new program are similar to procedures that States have followed in other grant programs administered by NHTSA. These procedures were established by rulemaking and were subject to prior notice and opportunity for comment.

Moreover, the criteria are derived from the Federal statute and their implementation does not involve a significant amount of discretion on the part of the agency. For these reasons, the agency believes that there is good cause for finding that providing notice and comment in connection with this rulemaking action is impracticable, unnecessary, and contrary to the public interest.

The agency requests written comments on these new regulations. All comments submitted in response to this document will be considered by the agency. Following the close of the comment period, the agency will publish a document in the **Federal Register** responding to the comments and, if appropriate, will make revisions to the provisions of Part 1345.

Written Comments

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

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

Written comments to the public docket must be received by November 30, 1998. 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 received after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date. NHTSA will continue to file relevant material in the docket as they become available after the closing date, and it is recommended that interested persons continue to examine the docket for new materials.

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

Copies of all documents will be placed in Docket No. NHTSA–98–4496; in Docket Management, Room PL–401, Nassif Building, 400 Seventh Street, SW, Washington, DC 20590.

Regulatory Analyses and Notice

Executive Order 12778 (Civil Justice Reform)

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

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

The agency has examined the impact of this action and has determined that it is not significant under Executive Order 12866 and the Department of Transportation's Regulatory Policies and Procedures.

The action will not have an annual effect on the economy of $100 million or more or adversely affect in a material way a sector of the economy, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities. It will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency, and it will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and

obligations of recipients thereof. Nor does it raise novel legal or policy issues.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the agency has evaluated the effects of this action on small entities. Based on the evaluation, we certify that this action will not have a significant impact on a substantial number of small entities. States are the recipients of any funds awarded under the Section 405 program, and they are not considered to be small entities, as that term is defined in the Regulatory Flexibility Act.

Paperwork Reduction Act

This interim final rule contains information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the agency has submitted a copy of this section to the Office of Management and Budget for its review.

The public information and recordkeeping burden for this collection of information is estimated to be 1736 hours annually. The total number of respondents is estimated to be up to 56. The average number of hours per respondent is 31 (1736 hours/56 = 31 hours).

Organizations and individuals desiring to submit comments on the information collection requirements should submit them to Docket Management, Room PL–401, National Highway Traffic Safety Administration, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590. Comments should refer to the docket number for this notice and should be sent within 30 days of the publication of this interim final rule.

The agency considers comments by the public on this collection of information in: evaluating whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have a practical use; evaluating the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; enhancing the quality, usefulness, and clarity of the information to be collected; and minimizing the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection will be published in the **Federal Register** after it is approved by the OMB.

For more details see the Paperwork Reduction Act Analysis available for copying and review in the public docket.

The title, description, and respondent description of the information collection are shown below with an estimate of the annual burden.

Title: Occupant Protection Incentive Grants.

OMB Clearance number: Not assigned.

Description of the need for the information and proposed use of the information: To determine whether States comply with grant criteria, NHTSA is requiring States to submit copies of relevant safety belt and child passenger protection statutes, plans and/or reports on statewide special traffic enforcement and child passenger protection education programs and possibly some traffic court records. In addition, to allow the agency to track grant funds, NHTSA is requiring States to submit a Program Cost Summary (Form 217), allocating the section 405 funds to occupant protection programs.

Description of likely respondents (including estimate of frequency of response to the collection of information): The respondents are the States. All respondents would submit an application and Form 217 to NHTSA in each year they seek to qualify for incentive grant funds.

Estimate of total annual reporting and record keeping burden resulting from the collection of information: NHTSA estimates that each respondent will take 30 hours to prepare and submit the grant application and one hour to prepare and submit a Program Cost Summary (Form 217) for an estimated total hour burden on all respondents of 1736 hours (31 hours x 56 respondents). Based on an estimated cost of $50.00 per hour employee cost, each response is estimated to cost a State $1550. If every jurisdiction considered a ''State'' under this program were to apply, the total cost on all respondents per year would be $86,800. It is not anticipated, however, that all 56 jurisdictions will apply each year.

National Environmental Policy Act

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

The Unfunded Mandates Reform Act

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

Executive Order 12612 (Federalism)

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

List of Subjects in 23 CFR Part 1345

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

In consideration of the foregoing, a new Part 1345 is added to Chapter III of Title 23 of the Code of Federal Regulations to read as follows:

PART 1345—INCENTIVE GRANT CRITERIA FOR OCCUPANT PROTECTION PROGRAMS

Sec.

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

§ 1345.1 Scope.

This part establishes criteria, in accordance with section 2003 of the Transportation Equity Act for the 21st Century, for awarding incentive grants to States that adopt and implement effective programs to reduce highway deaths and injuries resulting from individuals riding unrestrained or improperly restrained in motor vehicles.

§ 1345.2 Purpose.

The purpose of this part is to implement the provisions of section

2003 of the Transportation Equity Act for the 21st Century, 23 U.S.C. 405, and to encourage States to adopt effective occupant protection programs.

§ 1345.3 Definitions.

(a) *Child restraint system* means child safety seat.

(b) *Child safety seat* means any device (except safety belts) designed for use in a motor vehicle to restrain, seat, or position a child who weighs 50 pounds or less.

(c) *Minimum fine* means a total monetary penalty which may include fines, fees, court costs, or any other additional monetary assessments collected.

(d) *Passenger motor vehicle* means a passenger car, pickup truck, van, minivan, or sport utility vehicle.

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

§ 1345.4 General requirements.

(a) *Qualification requirements.* To qualify for a grant under 23 U.S.C. 405, a State must, for each year it seeks to qualify:

(1) Submit an application to the appropriate NHTSA Regional Administrator demonstrating that it meets the requirements of § 1345.5 and include certifications that:

(i) It has an occupant protection program that meets the requirements of 23 U.S.C. 405;

(ii) It will use the funds awarded under 23 U.S.C. 405 only for the implementation and enforcement of occupant protection programs;

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

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

(2) After being informed by NHTSA that it is eligible for a grant, submit to the agency, within 30 days, a Program Cost Summary (HS Form 217) obligating the section 405 funds to occupant protection programs.

(3) The State's Highway Safety Plan, which is required to be submitted by September 1 of each year, pursuant to 23 U.S.C. 402 and 23 CFR 1200, should document how it intends to use the Section 405 grant funds.

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

(b) *Limitation on grants.* A State may receive a grant for up to six fiscal years beginning after September 30, 1998, subject to the following limitations:

(1) The amount of a grant, under § 1345.5 shall equal up to 25 percent of the State's 23 U.S.C. 402 apportionment for fiscal year 1997, subject to availability of funds.

(2) In the first and second fiscal years a State receives a grant, it shall be reimbursed for up to 75 percent of the cost of its occupant protection program adopted pursuant to 23 U.S.C. 405.

(3) In the third and fourth fiscal years a State receives a grant, it shall be reimbursed for up to 50 percent of the cost of its occupant protection program adopted pursuant to 23 U.S.C. 405.

(4) In the fifth and sixth fiscal years a State receives a grant, it shall be reimbursed for up to 25 percent of the cost of its occupant protection program adopted pursuant to 23 U.S.C. 405.

§ 1345.5 Requirements for a grant.

To qualify for an incentive grant, a State must adopt and implement effective programs to reduce highway deaths and injuries resulting from individuals riding unrestrained or improperly restrained in motor vehicles. A State must adopt and implement at least four of the following criteria:

(a) *Safety belt use law.* (1) In fiscal years 1999 and 2000, a State must make unlawful throughout the State the operation of a passenger motor vehicle whenever an individual (other than a child who is secured in a child restraint system) in the front seat of the vehicle does not have a safety belt properly secured about the individual's body.

(2) Beginning in fiscal year 2001, a State must make unlawful throughout the State the operation of a passenger motor vehicle whenever an individual (other than a child who is secured in a child restraint system) in any seating position in the vehicle does not have a safety belt properly secured about the individual's body.

(3) To demonstrate compliance with this criterion, a State shall submit a copy of the State's safety belt use law, regulation or binding policy directive interpreting or implementing the law or regulation that provides for each element of paragraphs (a)(1) or (a)(2), as appropriate, of this section. The State is also required to identify any exemptions to its safety belt use law.

(b) *Primary safety belt use law.* (1) A State must provide for primary enforcement of its safety belt use law.

(2) To demonstrate compliance with this criterion, the State shall submit a copy of its law, regulation or binding policy directive interpreting or implementing the law or regulation that provides for each element of paragraph (b)(1) of this section.

(c) *Minimum fine or penalty points.* (1) A State must provide for the imposition of a minimum fine of not less than $25.00 or one or more penalty points on the driver's license of an individual:

(i) For a violation of the State's safety belt use law; and

(ii) for a violation of the State's child passenger protection law.

(2)(i) To demonstrate compliance with this criterion, a Law State shall submit a copy of the law, regulation or binding policy directive interpreting or implementing the law or regulation that provides for each element of paragraph (c)(1) of this section.

(ii) For purposes of this paragraph, a ''Law State'' means a State that has a law, regulation or binding policy directive interpreting or implementing the law or regulation that provides for each element of the minimum fines or penalty points criterion including the imposition of a minimum fine of not less than $25.00 or one or more penalty points for a violation of the State's safety belt use and child passenger protection laws.

(3)(i) To demonstrate compliance with this criterion, a Data State shall submit data covering a period of at least three months during the past twelve months showing the total number of persons who were convicted of a safety belt use or child passenger protection law violation and that 80 percent or more of all such persons were required to pay at least $25 in fines, fees or court costs or had one or more penalty points assessed against their driver's license. The State can provide the necessary data based on a representative sample.

(ii) For purposes of this paragraph, a ''Data State'' means a State that does not require the mandatory imposition of a minimum fine of not less than $25.00 or one or more penalty points for a violation of the State's safety belt use and child passenger protection laws.

(d) *Special traffic enforcement program.* (1) A State must establish a statewide Special Traffic Enforcement Program for occupant protection that emphasizes publicity for the program. The program must provide for periodic enforcement efforts. Each enforcement effort must include the following five elements, in chronological order:

(i) A seat belt observed use survey conducted before any enforcement wave;

(ii) A media campaign to inform the public about the risks and costs of traffic

crashes, the benefits of increased occupant protection use, and the need for traffic enforcement as a way to manage those risks and costs.

(iii) Local media events announcing a pending enforcement wave;

(iv) A wave of enforcement effort consisting of checkpoints, saturation patrols or other enforcement tactics.

(v) A post-wave observed use survey coupled with a post-wave media event announcing the results of the survey and the enforcement effort.

(2) The State's program must provide for at least two enforcement efforts each year and must require the participation of State and local police in each effort.

(3) The State's program must cover at least 70% of the State's population.

(4) To demonstrate compliance with this criterion in the first year the State receives a grant based on this criterion, the State shall submit a plan to conduct a program that covers each element identified in paragraphs (d)(1) through (d)(3) of this section. Specifically, the plan shall:

(i) Provide the approximate dates, durations and locations of the efforts planned in the upcoming year;

(ii) Specify the types of enforcement methods that will be used during each enforcement effort and provide a listing of the law enforcement agencies that will participate in the enforcement efforts along with an estimate of the approximate cumulative percentage of the State's population served by those agencies or the approximate percentage of the traffic volume on roadways covered by the enforcement program; and

(iii) Document the activities the State plans to conduct to provide the public with information on the importance of occupant restraints and to publicize each enforcement effort and its results. This information should include a sample or synopsis of the content of the public information messages that will accompany the enforcement efforts and the strategy that the State intends to use to deliver each message to its target audience.

(5) To demonstrate compliance with this criterion in subsequent fiscal years the State receives a grant based on this criterion, the State shall submit an updated plan for conducting a special traffic enforcement program in the following year and information documenting that the prior year's plan was effectively implemented. The information shall document that enforcement efforts were conducted; which police agencies were involved; and the dates, duration and location of each enforcement effort. The State must also submit samples of materials used, and document activities that took place to reach the target population.

(e) *Child passenger protection education program.* (1) A State must provide an effective system for educating the public about the proper use of child safety seats. The program must, at a minimum:

(i) Provide information to the public about proper seating positions for children in air bag equipped motor vehicles, the importance of restraint use, and instruction on how to reduce the improper use of child restraint systems;

(ii) Provide for child passenger safety (CPS) training and retraining to establish or update child passenger safety technicians, police officers, fire and emergency personnel and other educators to function at the community level for the purpose of educating the public about proper restraint use and to teach child care givers how to install a child safety seat correctly. The training should encompass the goals and objectives of NHTSA's Standardized Child Passenger Safety Technician Curriculum;

(iii) Provide periodic child safety seat clinics conducted by State and local agencies (health, medical, hospital, enforcement, etc.); and

(iv) The State's program activities (with the exception of the training and retraining activities) must cover at least 70% of the State's population; that is, the program activities must take place in counties or other subdivisions of the State that collectively contain at least 70% of the State's population.

(2) To demonstrate compliance with this criterion in the first fiscal year the State receives a grant based on this criterion, the State shall submit a plan to conduct a child passenger protection education program that covers each element identified in paragraph (e) (1) of this section. The information shall include:

(i) A sample or synopsis of the content of the planned public information program and the strategy that will be used to reach 70% of the targeted population;

(ii) A description of the activities that will be used to train and retrain child passenger safety technicians, police officers, fire and emergency personnel and other educators and provide the durations and locations of such training activities;

(iii) An estimate of the approximate number of people who will participate in the training and retraining activities; and

(iv) A plan to conduct clinics that will serve at least 70% of the targeted population.

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

(f) *Child passenger protection law.* (1) The State must make unlawful the operation of a passenger motor vehicle whenever an individual who is less than 16 years of age is not properly secured in a child safety seat or other appropriate restraint system.

(2) To demonstrate compliance with this criterion, a State shall submit a copy of the law(s), regulation or binding policy directive interpreting or implementing the law or regulation that provides for each element of paragraph (f)(1) of this section. In addition, the State must identify any exemptions to its child passenger protection law(s).

(g) *Certifications in subsequent years.* (1) To demonstrate compliance in subsequent years the State receives a grant based on criteria in paragraphs (a), (b), (c) or (f) of this section, if the State's law, regulation or binding policy directive has not changed, the State, in lieu of resubmitting its law, regulation or binding policy directive as provided in paragraphs (a)(3), (b)(2), (c)(2)(i) or (f)(2) of this section, may submit a statement certifying that there have been no substantive changes in the State's laws, regulations or binding policy directives.

(2) The certifying statement shall be worded as follows:

(Name of certifying official), (position title), of the (State or Commonwealth) of _____, do hereby certify that the (State or Commonwealth) of _____ has not changed and is enforcing a law, that conforms to 23 U.S.C. 405 and 23 CFR 1345.5 (insert reference to section and paragraph), (citations to State law).

§ 1345.6 Award procedures.

(a) In each Federal fiscal year, grants will be made to eligible States upon submission and approval of the application required by § 1345.4(a) and subject to the limitation in § 1345.4(b). The release of grant funds under this part shall be subject to the availability of funding for that fiscal year. If there are expected to be insufficient funds to award full grant amounts to all eligible

States in any fiscal year, NHTSA may release less than the full grant amounts upon initial approval of the State's application and documentation and the remainder of the full grant amounts, up to the State's proportionate share of available funds, before the end of that fiscal year. Project approval, and the contractual obligation of the Federal government to provide grant funds, shall be limited to the amount of funds released.

(b) If any amounts authorized for grants under this part for a fiscal year are expected to remain unobligated in that fiscal year, the Administrator may transfer such amounts to the programs authorized under 23 U.S.C. 410 and 23 U.S.C. 411, to ensure to the extent possible that each State receives the maximum incentive funding for which it is eligible.

(c) If any amounts authorized for grants under 23 U.S.C. 410 and 23 U.S.C. 411 are transferred to the grant program under this part in a fiscal year, the Administrator shall distribute the transferred amounts so that each eligible State receives a proportionate share of these amounts, subject to the conditions specified in § 1345.4.

Issued on: September 25, 1998.

Ricardo Martinez,

Administrator, National Highway Traffic Safety Administration.

[FR Doc. 98–26243 Filed 9–28–98; 12:12 pm]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8784]

RIN 1545–AV89

Substantiation of Business Expenses—Use of Mileage Allowances To Substantiate Automobile Expenses

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary and final regulations.

SUMMARY: This document contains temporary and final regulations relating to the use of mileage allowances to substantiate automobile business expenses. The regulations affect payors who make payments and employees who receive payments under reimbursement or other expense allowance arrangements for the business use of an automobile.

DATES: *Effective date:* These regulations are effective October 1, 1998.

Applicability date: These regulations apply to transportation expenses paid or incurred after December 31, 1997.

FOR FURTHER INFORMATION CONTACT: Donna M. Crisalli, (202) 622–4920 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Section 274(d) provides that a taxpayer is not allowed a deduction or credit for certain expenses unless the expense is substantiated. These substantiation requirements apply to the expenses of use of any listed property (defined in section 280F(d)(4)), which includes any passenger automobile and any other property used as a means of transportation. The Secretary may issue regulations that provide that some or all of the substantiation requirements will not apply to expenses that do not exceed a prescribed amount.

Section 1.274(d)–1 provides, in part, that the Commissioner may prescribe rules under which mileage allowances reimbursing ordinary and necessary expenses of local travel and transportation while traveling away from home will satisfy the substantiation requirements of § 1.274–5T(c), and the requirements of an adequate accounting to the employer for purposes of § 1.274–5T(f)(4). However, § 1.274(d)–1(a)(3) provides that such mileage allowances are available only to the owner of a vehicle.

New § 1.274(d)–1T applies these substantiation rules to mileage allowances for business use of an automobile after December 31, 1997, without the limitation in § 1.274(d)–1(a)(3) that a mileage allowance is available only to the owner of a vehicle. See Rev. Proc. 97–59 (1997–52 I.R.B. 24), for rules that implement these regulations. The regulations also adopt new § 1.62–2T(e)(2) to incorporate this new rule.

Special Analyses

It has been determined that these temporary and final regulations are not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary and final regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal authors of these regulations are Edwin B. Cleverdon and Donna M. Crisalli of the Office of the Assistant Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.274(d)–1 also issued under 26 U.S.C. 274(d).

Section 1.274(d)–1T also issued under 26 U.S.C. 274(d). * * *

Par. 2. In § 1.62–2, paragraph (m) is amended by adding a sentence at the end of the paragraph to read as follows:

§ 1.62–2 Reimbursement and other expense allowance arrangements.

* * * * *

(m) * * * Paragraph (e)(2) of this section applies to payments made under reimbursement or other expense allowance arrangements received by an employee with respect to expenses paid or incurred on or before December 31, 1997. For payments with respect to expenses paid or incurred after December 31, 1997, see § 1.62–2T(e)(2).

Par. 3. Section 1.62–2T is added to read as follows:

§ 1.62–2T Reimbursement and other expense allowance arrangements (temporary).

(a) through (e)(1) [Reserved]. For further guidance, see § 1.62–2(a) through (e)(1).

(e)(2) *Expenses governed by section 274(d).* For further guidance, see § 1.62–2(e)(2) except that each reference to § 1.274(d)–1 is deemed to be a reference to § 1.274(d)–1T.

(e)(3) through (l) [Reserved]. For further guidance, see § 1.62–2(e)(3) through (l).

(m) *Effective dates.* Paragraph (e)(2) of this section applies to payments made under reimbursement or other expense