Chapter II

Planning

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# II. Planning

Chapter II describes the Highway Safety Office (HSO) process for development of the Federal Triennial Highway Safety Plan (HSP) and funding of traffic safety related projects at the local and statewide levels.

# A. Overview and Eligible Fund Uses

This section provides an overview of the highway safety planning development process used by the HSO to develop the annual HSP.

Beginning with FY 2024, every three (triennial) Federal fiscal years (October 1 – September 30) the HSO shall develop a THSP to qualify for Federal highway safety funding. The THSP is prepared and submitted by the HSO to the *[insert division/bureau name]* for review and comment. Upon approval, the THSP is forwarded by the HSO to the *[insert title].* After all Department approvals have been obtained, the HSO forwards the THSP to the National Highway Traffic Safety Administration (NHTSA) for approval. Federal approval of the THSP is in the form of a letter acknowledging that the State’s submission of the highway safety plan complies with all Federal requirements. The THSP is due on July 1 annually and is submitted to NHTSA. The NHTSA Regional Office provides submittal instructions.

A consolidated application process for the projects of the Section 402 program and eight National Priority Safety Programs and the Section 1906 grant program ais required to be submitted annually beginning FY24 in the Annual Grant Application. Additional uses for Section 402 funds were allowed by the Building Bipartisan Infrastructure Law (a/k/a BIL and also known as the Infrastructure Investment and Jobs Acts (IIJA). They are: to reduce crashes caused by driver misuse or misunderstanding of new vehicle technology; to increase vehicle recall awareness; to provide to the public information relating to the risks of child heatstroke death when left unattended in a motor vehicle after the motor is deactivated by the operator; to reduce injuries and deaths resulting from the failure by drivers of motor vehicles to move to another traffic lane or reduce the speed of the vehicle when law enforcement, fire service, emergency medical services, or other emergency or first responder vehicles are stopped or parked on or next to a roadway with emergency lights activated; and to prevent crashes, injuries, and deaths caused by unsecured vehicle loads.

The two newest Section 405 programs, Preventing Roadside Deaths, and, Driver and Officer Safety Education were established effective with FY 2024.

At the beginning of the THSP development process, the HSO considers a number of factors in determining project priorities and areas of emphasis. These factors are:

* Federal legislation and regulations
* State statutes
* Federal and national priorities and goals
* State and local problems

Other influences can be outcomes of public participation and engagement (FY 2024), Federal and State legislative bodies, community-based organizations, local and national interest groups, State and local traffic safety related non-profit organizations and local governments. Projects can be proposed by members of any of these organizations, directly or indirectly. The key goal is to assure that all projects in the THSP are data driven as required by Federal law.

From time to time, Congress designates or earmarks Federal highway safety funds for specific purposes and uses. Countermeasure strategies developed in response to these earmarked funds must be data driven as well, with the earmarked funds dedicated to the areas of the State with the greatest threat to public safety.

Uniform Guidelines promulgated by the U.S. DOT Secretary list the eligible program uses:

* Speeding
* Occupant protection
* Alcohol or drug impaired driving
* Motorcycle,
* School bus safety
* Aggressive, fatigued and distracted driving
* Law enforcement services
* Driver awareness of commercial motor vehicles (FY17)
* Driver performance
* Bicycle and pedestrian safety
* Traffic records
* Emergency medical services (EMS).

For FY 17 and beyond the FAST Act allowed States to use Section 402 funds for *research* projects.

NOTE: On April 2, 2020, NHTSA issued an FAQ, “Impacts of National Emergency” and on April 9, 2020, a “Notice Announcing Waiver and Postponement of Certain Requirements”. Those documents contained temporary changes to the highway safety grant programs and *expired in late 2020.* State actions during that time can be examined as part of the NHTSA Management Review process.

# B. Triennial Highway Safety Plan and Annual Grant Application Process and Calendar

This section describes the process used by the HSO annually to develop the THSP and annual updates, if any, and the Annual Grant Application. A twelve-month calendar of the major planning activities is included. Planning is a continuous process throughout the year. When the THSP or any amendments are completed, planning for the following fiscal year typically begins.

The THSP is required by the U.S. Department of Transportation (U.S. DOT), NHTSA regulations, see [23 CFR Part 1300.11](https://www.ecfr.gov/current/title-23/chapter-III/part-1300/subpart-B/section-1300.11). The federal regulations outline the required contents:

* planning process including program area problem identification,
* public participation and engagement,
* performance plan
* countermeasure strategy for programming funds
* and the performance report.

The THSP describes the processes, data sources and information used to identify the State's highway safety planning (problem identification, public participation and engagement, performance measures and countermeasure strategies). A performance target and at least one performance measure for each program area must be identified. Progress toward each target will be tracked from a stated baseline toward meeting the target by the specified date.

The planning development process consists of a number of stages:

* Problem identification
* Planning to select and prioritize targets and countermeasure strategies
* Identification of performance measures
* Participation from traffic-safety related partners
* Development of funding priorities and planned activities
* Issuance of Requests for Proposal (RFP)
* Review, negotiation and preliminary approval of project agreements
* Submission of project agreements in the Annual Grant Application or as THSP amendments to the Regional Administrator
* Implementation

The HSO works with inter-agency groups, State and local government agencies, community coalitions and many others to develop the THSP. The initial planning meetings are attended by HSO staff only. These initial meetings allow for the review of prior year comments on prior activities (by Federal, State and local partners), the assignment of staff to draft program areas, the development of an initial budget and the production of rough drafts for each program area. Once an initial draft is produced, the development meetings should be expanded to include the outcomes of public participation and engagement activities which include underserved and overrepresented communities and other HSO traffic safety partners for solicitation of comments and input on potential problems and countermeasure strategies. Regional NHTSA and divisional FHWA representatives should be invited to meet with the HSO during the planning process to provide input and make recommendations early in the planning process.

**i. Submission for NHTSA Review, Approval and Appeal Procedures for the THSP**

Although the THSP is not required by regulation to have a formal signature, it is considered a legal grant application document and under State law may require a signature. The THSP is intrinsically connected to the Annual Grant Application (AGA) which does require the Governor’s Representative (GR) signature via the required certifications and assurances. In signing the AGA, the GR is also certifying that the contents of the THSP, as updated in the AGA, are true and accurate, see [NHTSA BIL Implementation Webinar Q&A March 20, 2023](https://www.nhtsa.gov/sites/nhtsa.gov/files/2023-03/15908d-Final%20Rule%20Questions%20and%20Answers_March%2020%202023_3pm-tag.pdf).

The HSO is required to submit the THSP triennially beginning FY 2024 to NHTSA no later than July 1. The deadline is FIRM. NHTSA must approve or disapprove the HSP within 60 days. NHTSA may need to request additional information from the HSO regarding the contents of the HSP to determine whether the statutory requirements have been met. To ensure that the plan is approved or disapproved, the HSO must respond promptly, not later than seven days, to any requests from NHTSA. NHTSA will issue a letter of approval/disapproval to the State’s GR and may specify conditions. If the THSP is disapproved, the reasons will be specified. The HSO is then required to resubmit the THSP with the necessary modifications. NHTSA will notify the HSO within 30 days of receipt of the revised THSP, via a letter, whether the THSP is approved or disapproved. The decision of the Regional Administrator (RA) may be appealed by submitting a letter. The letter will be forwarded by the RA for consideration by the Associate Administrator, Regional Operations and Program Delivery, at NHTSA Headquarters.

If the State’s plan is not approved, NHTSA shall reduce the Section 402 funds by 20% of the amount that would otherwise be apportioned. The funds can either later be apportioned to the State when the plan is approved, or, if not approved, the funds will be apportioned to the other States.

**ii. Annual Grant Application Process, NHTSA Review and Approval Procedure**

The HSO develops and submits an Annual Grant Application due on August 1 to NHTSA which includes adjustments to the THSP including additional performance measures if needed, the project and subrecipient information for the fiscal year, the Section 405 and Section 1906 grant applications and the required Certifications and Assurances. It is important to demonstrate that the AGA aligns with the most recent triennial HSP.

**iii. AGA Contents**

The AGA must include:

* *Analysis:* Updates to any analysis included in the THSP at the level of detail used in the THSP.
* *Countermeasure Strategy*: Any adjustments to the countermeasure strategies used for programming funds which must be explained by a written narrative providing reasons for the adjustment and how these reasons are informed by the most recent Annual Report (AR). If no adjustments to the strategies are made, a written explanation of why is required.
* *Changes in the Performance Plan*: Performance measures may be *added* based on updated traffic safety problem identification or as part of a Section 405 grant. Amendments to the common performance targets with the State DOT may be made, but the AGA may *not* amend any other existing performance target. The common performance targets are fatalities, fatality rate and serious injuries.
* *Project and subrecipient information*: For each project funded by the AGA the following information is required:
* Project name and description, including a description of the activities conducted, location where the project is performed, and affected communities
* Federal funding source
* Project agreement number
* Subrecipient, including name and type of organization
* Amount of federal funds
* Eligible use of funds
* Whether the costs are Planning and Administration, and the amount, if applicable
* Whether the costs are an expenditure of unexpended grant funds. (“promised projects”)
* Identification of the countermeasure strategies used in the most recent THSP or in an approved update to the THSP.
* *Section 405 grant and Section 1906 racial profiling data collection grant applications:* Grant applications must be prepared in accordance with the requirements and as provided in 23 CFR Part 1300 appendix B which is signed by the GR.
* *Certification and Assurances:* The certifications and assurances for 23 USC Chapter 4 and Section 1906 grants contained in 23 CFR Part 1300 appendix A, signed by the GR, certifying to the AGA contents and providing assurances the State will comply with applicable laws and programmatic requirements.

Within 60 days after receipt, the NHTSA administrator shall notify the HSO in writing of grant awards and specify any conditions or limitations imposed by law on the use of funds. The decision of the NHTSA Administrator is final – there is no appeal process. Because the calculation depends on the number of States meeting the qualifications, States must respond promptly to NHTSA’s requests for additional information. Failure to provide requested information may delay approval and funding of the State’s Section 405 grant or disqualification from receiving Section 405 or racial profiling data collection grants, see 23 CFR 1300.12.

Amendments to the AGA to add projects or update project information for previously approved projects are subject to the approval of the NHTSA Regional Administrator (RA) with some exceptions. See 23 CFR Part 1300.12(d) and 1300.32. For example, a change in the amount of funds that does not alter the scope of the project does not require prior approval. The RA *must have approved* any changes *before* approval of vouchers for payment. The RA will disapprove changes and projects that are inconsistent with the THSP or that do not constitute an appropriate use of Federal funds. In 2023 NHTSA is planning to issue guidance to assist the States in understanding these requirements.

**iv. THSP/AGA Development and Safe System**

* The Safe System Approach is a new national initiative that aims to eliminate fatal and serious injuries for all road users.
* The Safe System Approach emerged overseas and began being adapted by U.S. cities. Most recently, the US DOT adopted the Safe System approach as the framework for its National Roadway Safety Strategy.
* SSA Principles: Death/serious injury is unacceptable, humans make mistakes, humans are vulnerable, responsibility is shared, safety is proactive, redundancy is crucial
* SSA Elements: safe road users, safe vehicles, safe speeds, safe roads, post-crash care
* Focuses on anticipating human mistakes and lessening impact forces to reduce crash severity (speed). If crashes are to occur, we can at least prevent them from resulting in a fatality.
* While some have framed the Safe System Approach as one that replaces the current safety framework and even excludes enforcement and education, it is clearly not the consensus vision for the Safe System, and in any case would be disastrous for safety.
* On the contrary, SHSOs currently have major responsibilities to ensure key aspects of the Safe System – safe road users, encouraging safe speeds, supporting post-crash care, and indirectly contributing to the other elements as well.

**v. THSP and Annual Grant Application Development Process Calendar**

The following table illustrates a twelve-month planning calendar for the HSO THSP and AGA development process.

**Table 1. THSP and AGA Development Process Calendar *[SAMPLE]***

|  |  |
| --- | --- |
| November-December | * Debrief the previous year’s programs, review crash data, State and national priorities, update problem identification, review any survey results and set preliminary performance targets with HSO staff.
* Identify public participation and engagement goals and affected and potentially affected communities especially underserved and overrepresented.
* Conduct public participation and engagement activities and document results.
* Coordinate data and problem identification with the State’s SHSP.
 |
| January -February  | * Closeout HSO fiscal year to NHTSA within 120 days after the end of the fiscal year.
* Submit Annual Report to NHTSA within 120 days after the end of the fiscal year.
* Host an annual planning conference with partners to obtain input.
* Review program data and targets to determine funding distribution and overall direction of program.
* Consider the NHTSA regional response to the prior year’s Annual Report and THSP approval letter, and any applicable Management Review or Assessment comments.
 |
| March  | Determine revenue estimates, establish draft budget and review internally. |
| April-May  | Convene program area sessions with current and prospective subrecipients to create specific plans and countermeasure strategies within each program area. |
| June  | * Draft the THSP for review by appropriate internal officials, NHTSA and program area experts.
* Post subrecipient RFP application on HSO web site.
 |
| July - August | * Review and submit the THSP by July 1 for NHTSA review and approval. Respond promptly to any requests for additional information.
* Develop HSO in-house grants or other form of in-house program documentation.
* Draft and obtain internal approval for the AGA with the required information including project and subrecipient information, Section 405 and racial profiling data collection grant applications and certifications and assurances signed by the GR and submit to NHTSA by August 1.
* Invite HSO Grant Advisory Review Team to review selected project proposals.
 |
| September | * Print, distribute and post the approved THSP.
* Start implementation and gain approval for grants and contracts from the appropriate officials. Review project proposals and make selections.
* Notify successful applicants when appropriate, conduct pre-award risk assessments and develop final grant agreements.
* Obtain approval for grants and contracts from the appropriate Department official.
* Submit HSO in-house grants for Department approval.
* Review project expenditures to date to determine potential carry forward funds.
 |
| October - November | * Implement grants and contracts.
* Issue Notice To Proceed to selected grantees.
* Obligate funds to GTS.
* Establish and implement monitoring schedule for the year.
 |
| December  | * Begin work on the contents of the Annual Report.
* Ensure all subrecipient grants are closed prior to the January deadline.
 |

# C. Coordination with the State Strategic Highway Safety Plan and Safe System

This section describes the process used by the HSO to coordinate the State Strategic Highway Safety Plan (SHSP) targets and strategies with development of the annual HSP.

The HSO is structurally located within the [*agency and department name]*. The *[agency and department name]* is responsible for the development of the State’s SHSP.

The HSO shall coordinate closely with the State staff responsible for development of the SHSP to maximize integration and utilization of data analysis resources, fully represent driver behavior issues and strategies, and utilize any statewide safety committees to obtain input from State and local traffic safety partners for the HSO THSP. The HSO shall ensure that the targets and objectives contained in the SHSP are considered in the annual development of the THSP and incorporated to the fullest extent possible. The HSO shall review the SHSP and THSP to identify any gaps in addressing driver behavior issues and eliminate any redundancy to ensure the maximum use of resources.

See Section B (iv), THSP and the Safe System.

The State is required to include in the THSP a description of the efforts made by the State to coordinate the THSP, the AGA and highway safety data collection and information system activities with other non-federal supported programs relating to highway safety including the State SHSP. Examples might include the joint use of the same databases, common targets in the THSP as derived from the SHSP or the creation of joint teams to collaboratively develop countermeasure strategies. See 23 CFR Part 1300.4 (c) (11).

This information can be provided within the THSP in a number of ways. Some States include a description of their State’s SHSP process while highlighting the specific interaction between the SHSP and the THSP planning processes. A link to the State’s SHSP can also be included in the THSP. Another method is to include relevant segments of the SHSP within the THSP, such as listing the SHSP emphasis areas or strategies and targets or inserting the relevant SHSP information in the corresponding program section of the THSP.

The HSP performance targets are required to be identical to the State DOT targets for the three common performance measures (fatalities, fatality rate and serious injuries) reported in the State Highway Safety Improvement Program (HSIP) annual report, as coordinated through the State’s SHSP. These performance measures are based upon a 5-year rolling average. See 23 CFR Part 1300.11 (c) (2) (iii). These common targets are the only targets allowed to be modified by the AGA. **NOTE: For FY 2024 only, the performance targets submitted for common performance measures with the State DOT are NOT required to be identical to the same State DOT targets reported in the HSIP annual report. See** [**June 5, 2023 NHTSA-FHWA Final Rule Amendment**](https://www.govinfo.gov/content/pkg/FR-2023-06-05/html/2023-11758.htm)

The SHSP is required to be updated at least every five years.

# D. Governors Highway Safety Association Guidance

This section describes the planning tools provided by the Governors Highway Safety Association (GHSA) to assist the HSO in developing the THSP and AGA.

DISCLAIMER: The latest version of the GHSA HSP Guidance document has NOT been updated to the BIL and to the NHTSA Final Rule issued February 6, 2023. As some of the basic planning and process principles contained in the Guidance may still be used as a general guide to overall planning, it is still available on the GHSA website under FAST Act resources.

In February 2023, GHSA developed “Quick Review Checklists” to assist States with preparation of their FY 2024 Triennial Highway Safety Plan (THSP) and Annual Grant Application (AGA) in accordance with the BIL and the 2023 Final Rule.

These Checklists and other updated resources related to the changes made by the BIL and the new Final Rule are available at [GHSA Resources-SHSO Guidance](https://www.ghsa.org/resources/shso-guidance) on the GHSA website and on the Members Only website under Legislative and Regulatory Information/IIJA Implementation and NHTSA Guidance.

The website page also contains the [GHSA Annual Report Guidance](http://www.ghsa.org/resources/shso-guidance) under FAST Act Resources. This Guidance will be updated in 2023, see Chapter VII. Annual Report.

# E. Identification of State and Local Problems Data Analysis and Public Participation and Engagement

This section describes the procedures and the data analysis process used by the HSO to identify State and local problems including public participation and engagement for the THSP.

A description of the data sources and processes used by the State to identify its highway safety problems is required in the THSP. The HSO must also describe and provide an analysis of the State’s overall highway safety problems as identified through an analysis of the data. The State is also required to describe the State’s public participation and engagement planning efforts. The information and all data sources utilized in these processes must be listed. The Core required performance measures should be examined as part of this initial problem identification process, see Sections F. and G. for information and further guidance.

1. **Problem identification Through Data Analysis**

The purpose of the THSP problem identification and assessment process is to:Prob

* Understand the scope of the State’s traffic crash problem and causation factors
* Identify effective countermeasures to reduce or eliminate the problems
* Design evaluation mechanisms to measure changes in problem severity
* Manage influencing factors by using statistical crash data to highlight a particular problem in order to obtain the necessary support for instituting an effective countermeasure

The problem identification process used by the HSO includes analysis of traffic safety data and other data from established statewide sources. The process is completed by *[insert position title or agency name]* by [*insert date]* annually for the THSP and AGA and provided to the HSO staff for review. The statistics analyzed are historical data collected over time through a uniform process. These statistics include the:

* State traffic crash database - crash, vehicle, and person data
* Data on average daily traffic counts and vehicle miles traveled
* Federal Fatality Analysis Reporting System (FARS)
* Vehicle and Driver Information - the State’s driver license, vehicle registration, and citation/conviction files
* Trauma Registry *[if applicable]*, Injury data and EMS databases
* Census and sociodemographic data from the *[insert agency name]*
* *Geospatial data*

The result of the HSO problem identification process is the establishment of the major traffic safety program areas in which to focus the State’s efforts.

Data elements fall into three general categories: people, vehicles, and roadway. These categories may be broken down into subgroups and assigned relevant characteristics, as shown in the following table.

**Table 2. Categories of Traffic Safety Data**

|  |  |  |
| --- | --- | --- |
| **Data Category** | **Subgroups** | **Notes:** |
| People | Drivers, occupants, pedestrians | Age, gender, underserved and overrepresented communities, blood alcohol level, driver’s education experience and training |
| Vehicles | Passenger cars, trucks, buses, motorcycles, bicycles, non-motorized vehicles, etc. | Automatic driver assistance systems, interaction with pedestrians and bicyclists |
| Roadway | Interstate, primary, secondary | Political subdivisions, lighting conditions, surface conditions, traffic signals, intersections |

Data subgroups should be reviewed to determine over-representation. Such over-represented subgroups indicate traffic safety problems. A good example is the high percentage of crashes among teenage drivers compared to the lower percentage of crashes among all drivers, or rural drivers in fatal crashes. Further analysis should focus on identifying subgroup characteristics (for example, increased severity) or any other specific factors suggested by the data when asking the traditional “who, what, where, why and how” questions.

Over-represented factors can be determined by comparing the rate of crashes for a subgroup or characteristic within the jurisdiction to the same rate in a comparable or larger jurisdiction. The rate may be expressed either as a percentage or a ratio.

***Percentage Example:*** If the percentage of adult vehicle occupants that do *not* use seat belts within a jurisdiction is greater than the statewide percentage, then that characteristic is over-represented.

***Ratio Example:*** Dividing nighttime (10 p.m. to 6 a.m.) crashes by the total number of crashes for the jurisdiction within a given time frame produces a ratio. If that ratio is higher than the statewide ratio, a driving while impaired (DWI) problem may be indicated since typically many nighttime crashes are DWI related.

Asking the following questions may help with data analysis and ultimately problem identification.

**Table 3. Questions to Help with Data Analysis and Problem Identification**

|  |  |
| --- | --- |
| **Question** | **Examples** |
| Are high crash incidence locations identified with emphasis on underserved communities? | Specific communities and neighborhoods, road sections, highways, streets, and intersections |
| What appears to be the major crash causation? | Alcohol, other drugs, speed, other traffic violations, weather, road condition |
| What characteristics are over-represented or occur more frequently than would be expected in the crash picture? | Number of crashes involving 16- to 19-year-olds versus other age groups, or number of alcohol crashes occurring on a particular roadway segment as compared with other segments |
| Are there factors that increase crash severity which are or should be addressed? | Non-use of occupant protection devices (seat belts, motorcycle helmets, etc.) |

The following table shows an array of information that may be applied in the analysis of a crash problem.

 **Table 4. Information That May Be Applied to Problem Analysis**

|  |  |  |
| --- | --- | --- |
| Causal Factors: | Crash Characteristics: | Factors Affecting Severity: |
| * driving violations
 | * time of day
 | * occupant protection non-use
 |
| * loss of control
 | * day of week
 | * position in vehicle
 |
| * weather
* alcohol involvement
 | * age of driver
* gender of driver
 | * roadway elements (markings, guardrail, shoulders, surface, etc.)
 |
| * roadway design
 |  |  |

HSO staff should be alert to the following factors that may impede effective problem identification and make appropriate adjustments when they appear:

* Data access restrictions
* Inability to link automated data systems
* Poor data quality
* Reporting threshold fluctuations (variations among jurisdictions in the minimum damage or crash severity they routinely report)
* Insufficient data (property damage only, non-reportable crashes, near misses, bicycle crashes, etc.)
1. **Public Participation and Engagement Requirements**

Effective with the FY 2024 THSP, the HSO must establish and document in the THSP the starting goals for *meaningful* public engagement and participation (PP&E) including how they will contribute to the development of the highway safety program and countermeasure strategies. To determine “meaningful”, NHTSA will determine if the information submitted by the State shows that a public participation program was implemented that provided full and good faith efforts to ensure affected communities were identified, and the State gave meaningful consideration to the feedback received, see Questions 8 [NHTSA BIL Implementation Webinar Q&A March 20, 2023](https://www.nhtsa.gov/sites/nhtsa.gov/files/2023-03/15908d-Final%20Rule%20Questions%20and%20Answers_March%2020%202023_3pm-tag.pdf)

The data and information gathered must *inform every aspect of the THSP* beginning with problem identification and extending through the selection of countermeasure strategies and finally projects. Affected and potentially affected communities must be identified with emphasis on those which are *underserved* and *overrepresented.*

The HSO shall annually develop goals for PP&E and identify the strategies which will be deployed including the HSO assignment of internal responsibility, timelines, outside assistance from community organizations, methods for initiating activities, documenting activities and analyzing the results.

The PP&E results must be described in the THSP including:

* 1. Engagement opportunities conducted and design
	2. Accessibility measures, for both language and physical challenges
	3. Results including description of attendees
	4. Summary of issues covered, and,
	5. How the comments and views were incorporated into the THSP development

The THSP must also describe the *ongoing* engagement planning which will take place during the three-years of the THSP including:

1. Statement of the SHSO goals for public engagement
2. Identification of the affected and potentially affected communities including emphasis on underserved and overrepresented communities and a description of how they were identified
3. Steps the State plans to take to reach and engage those communities including accessibility measures used in outreach and in engagement opportunities, and,
4. How the State will incorporate the affected communities’ comments into the decision-making process

This ongoing process calls for the HSO to take a serious look at what had been done and what could be done differently going forward. This should include adjusting starting goals, rethinking how the HSO’s reach can be expanded and identifying new strategies by examining what did or did not work.

As NHTSA stated in the preamble to the Final Rule, as a general matter, States may use NHTSA grant funds for costs associated with public participation and engagement activities, including activities required to plan and conduct public engagement required for submission of the THSP. The costs of PP&E *planning* activities are restricted to Section 402 Planning and Administration, see [Questions 16-18 NHTSA BIL Implementation Webinar Q&A March 20, 2023](https://www.nhtsa.gov/sites/nhtsa.gov/files/2023-03/15908d-Final%20Rule%20Questions%20and%20Answers_March%2020%202023_3pm-tag.pdf). The specifics of whether and how NHTSA grant funds may be used to pay for PP&E costs are highly fact specific and implicate many different Federal laws and regulations. In general, Federal grant funds may not be expended on activities required to qualify for the grant. State laws, also, may impact these sorts of expenditures. States should contact their NHTSA Regional Office to discuss specific questions.

The HSO shall refer to technical and best practices resources made available by NHTSA in the [NHTSA Bipartisan Infrastructure Law resources](https://www.nhtsa.gov/highway-safety-grants-program) and the U.S. DOT [Promising Practices for Meaningful Public Involvement in Transportation Decision-making](https://www.transportation.gov/sites/dot.gov/files/2022-10/Promising%20Practices%20for%20Meaningful%20Public%20Involvement%20in%20Transportation%20Decision-making.pdf). GHSA's [A Guide to Effectively Partnering with State Highway Safety Office](https://www.ghsa.org/resources/partnering18) revised in 2018 identifies how organizations can collaborate with HSOs to improve traffic safety outcomes. It explains how HSOs operate; provides examples of partnership opportunities, both non-funded and funded; and includes a handy checklist for potential partners to reference as they work toward establishing relationships with HSOs.

# F. Performance Plan, Countermeasure Strategies and Performance Report

This section describes the process for identifying program areas, targets and countermeasure strategies for inclusion in the THSP.

Using the data and information gathered through the problem identification process, the HSO then selects key program areas for emphasis and coordinates the development of priority traffic safety performance targets, performance measures and countermeasure strategies for funding for each program area using a planning process documented in the HSP. See Section A. Overview. for a list of the eligible program uses.

## i. Description of Target Setting Processes

The HSP should describe the *processes* used by the State to define its highway safety targets to address its problems. In describing these processes, the State shall list the information and identify all data sources consulted including the influence of public participation and engagement. The State process for setting targets must be based on data trends and a resource allocation assessment.

**ii. Performance Plan**

The performance plan, organized by program area, is required to list the data-driven targets and the performance measures the State plans to implement in the new fiscal year. At least one performance measure and performance target that is data driven is required for each program area that enables the HSO to track progress from a stated baseline toward meeting the target (e.g., a target to increase seat belt use to X percent in Year \_\_\_\_,'' using a performance measure of percent of restrained occupants in front outboard seating positions in passenger motor vehicles''). See Section G. Performance Measures below.

Targets should be data-driven, realistic and attainable and should guide program investments. Selected targets must be a constant or improved performance from the current status. If the data specifically indicated that maintenance of the current number or rate can only be expected, a constant target may be stated. If the HSO chooses to set an aggressive target in a particular program area, the strategies and funding chosen to achieve that target should be similarly aggressive to demonstrate a reasonable opportunity to reach the target.

For performance targets that are common across DOT agencies, the countermeasure strategies that will be deployed to achieve those targets may be a combination of those contained in the HSO’s THSP and other State and local plans. If so, it is *not* required that the funds used to carry out the program area strategies from those other sources be identified in the THSP. However, some explanation is appropriate.

The 12 Minimum outcome and behavior performance measures were developed by NHTSA in collaboration with GHSA and others. The initial process is described in Traffic Safety Performance Measures for States and Federal Agencies, (DOT HS 811 025) and are a minimum in developing the State’s performance measures and targets. 23 CFR Part 1300.11 (c) (2) (iii) requires that the THSP performance targets for the three common performance measures (fatalities, serious injuries and fatality rate) with the State DOT HSIP annual report be based on 5-year rolling averages (only). Serious injury baselines should use 5 years of the latest *State* data. For the 3 Minimum *activity* measures, States are not required to set targets but are required to report the measures annually. State crash data sources may also be used. An optional Performance Plan chart will be available from NHTSA-GHSA for FY 2024.

A template for developing clear and concise performance target statements was developed by GHSA in conjunction with NHTSA for the Minimum performance measures. All States are encouraged to use the template. The template includes a sample target statement for the Minimum measures which must be used as a minimum in developing the State’s performance measures and targets developed by NHTSA in collaboration with GHSA. The template includes the display of baselines.

The [Uniform Guidelines for State Highway Safety Programs](https://one.nhtsa.gov/nhtsa/whatsup/tea21/tea21programs/index.htm) promulgated by NHTSA describe the guidelines with which each State's programs must comply. The overall State goal is to reduce traffic safety related crashes, deaths and injuries.

The most recent update of the THSP targets occurred in *[insert year]*. Within the HSO, responsibility for development and review of the annual key program areas, targets, performance measures and countermeasure strategies are assigned to the [*insert position(s)]*.

**[NOTE: TAILOR LANGUAGE TO SPECIFIC STATE PROCESS - *For the most part the THSP development is an internal activity conducted within the HSO under the leadership of the HSO Administrator. Input and information collected through the PP&E process and throughout the year from Federal, State and local traffic safety sources and partners are considered by the HSO. In some cases, the HSO may specifically solicit input from selected partners or others with experience in a selected program area. This process ensures that State and local agencies, as well as public and private organizations, using the program areas, targets and strategies developed by the HSO, can then propose projects that directly support and implement those strategies.***

***This guidance is provided to subrecipients annually in the “General Information about HSO Grants” section of the HSO annual RFP publication. This section includes a synopsis of the State data and the selected funding priorities, key problem areas, targets and emphasis areas and proven strategies.]***

**iii. Countermeasure Strategies for Funding**

This section of the THSP should be organized by program area. For each program area, the countermeasure strategies must be identified that will help guide the State’s program and annual project selection to achieve the targets.

The description for each countermeasure strategy must include all of the following:

* The problem identified that the countermeasure strategy addresses, and a description of the **linkage**(connection) between problem identification and the identified countermeasure strategies,
* Performance target that the strategy will address explaining the link between its effectiveness and the target,
* Any Federal funds (estimate for the three years) that will be used including the funding source (all sources) and estimated amount,
* Considerations (strategy) to be used to determine what *projects*to fund to implement the strategy including public engagement, data, affected communities, impacted locations (include lowest geographic location) and solicitation of proposals (specific project description and subrecipients are listed later in the AGA),
* Manner in which the strategy is informed by the NHTSA Uniform Guidelines and if applicable, NHTSA-facilitated programmatic assessments; and,
* A list of the “*specific”* countermeasures that will be implemented.

The specific countermeasures must include information justifying the expected effectiveness:

A.     A citation to the countermeasure rated 3 or above in the most recent edition of [Countermeasures That Work](https://www.nhtsa.gov/book/countermeasures/countermeasures-that-work) or, a recommendation in a NHTSA-facilitated program assessment report or, included in the NHTSA Uniform Guidelines for State Highway Safety Programs, GO Team recommendations, or,

B.     For *all others*, a citation providing justification such as data, data analysis, research evaluation and/or substantive anecdotal evidence supporting its effectiveness.

When aggregated, strategies should lead logically to overall statewide performance and be linked to the anticipated success of the countermeasures or strategies selected and funded, see 23 CFR 1300.11(b)(4). A FHWA [Crash Modification Factor Clearinghouse](http://cmfclearinghouse.org/resources_countermeasures.cfm) resource is also available for considering strategies.

**iv. Evidence-based Traffic Safety Enforcement Program and National Mobilizations**

Beginning with FY2024, the THSP is not required to have a separate section to satisfy the Federal requirement that the State describe its traffic safety enforcement program. The THSP, however, must include a traffic safety enforcement program as part of its countermeasure strategies. This allows the State to structure countermeasure strategies that rely on enforcement as only one part of a multi-countermeasure strategy.

In the AGA Certifications and Assurances under Section 402 Requirements, item 4 requires that the State support a “data-based traffic safety enforcement program that fosters effective community collaboration to increase public safety and data collection and analysis to ensure transparency, identify disparities in traffic enforcement and inform traffic enforcement policies, procedures and activities”, see [23 USC Section 402 (b)(1)(E)](https://www.govinfo.gov/content/pkg/USCODE-2021-title23/pdf/USCODE-2021-title23-chap4-sec402.pdf).

Beginning with FY 2024, the HSO Annual Report must include a “description of the State’s evidence-based enforcement program activities including discussion of community collaboration efforts and efforts to support data collection and analysis to ensure transparency, identify disparities in traffic enforcement and inform traffic enforcements policies, procedures and activities”, see [23 CFR Part 1300.35 (b)(3)](https://www.ecfr.gov/current/title-23/chapter-III/part-1300/subpart-D/section-1300.35)

The HSO is required to support three national mobilizations. In the AGA Certifications and Assurances under Section 402 Requirements, item 6 requires that the State participate in not less than three National high-visibility law enforcement mobilizations as identified annually in the NHTSA Communications Calendar. Beginning with FY 2024, the HSO Annual Report must include information regarding the national mobilization participation metrics (e.g., participating and reporting agencies, enforcement activity, citation information, paid and earned media information) is required to be provided to NHTSA in the Annual Report, see [23 CFR Part 1300.35 (b)(4)](https://www.ecfr.gov/current/title-23/chapter-III/part-1300/subpart-D/section-1300.35).

**v. Performance Report**

Beginning FY 2024 within the THSP the HSO is required to provide a program-area level report on the State’s progress in meeting its performance targets from the most recently submitted THSP at the level of detail in [23 CFR Part 1300.35(a)](https://www.ecfr.gov/current/title-23/chapter-III/part-1300/subpart-D/section-1300.35) for the required Annual Report (for FY 2024 only, report on progress toward targets only in the FY 2023 HSP). The following must be included: the extent to which the State’s progress in achieving those targets aligns with the THSP, and a description of how the countermeasure strategies implemented contributed to meeting the State’s targets. The State should use the most recent data available including State-level fatal data as well as additional non-fatality data. NOTE: This is NOT the same level of information required of the States in the comprehensive Annual Report (AR) under 23 CFR 1300.35(a). While the Annual Report focuses on activities conducted during a single grant year, the THSP focuses on countermeasure strategies implemented during the triennial period. The HSO can use the information reported in the previous Annual Reports to assist in developing the THSP performance report. An optional Performance Report Target chart will be available from NHTSA-GHSA for FY 2024.

# G. Performance Measures

This section describes the required establishment of performance measures in the performance plan section of the THSP required for traffic safety grants.

The performance plan of the HSP must state a performance measure for each HSO target to track progress toward meeting the target by the specified date using absolute numbers, percentages or rates. Performance measures should be reviewed each year to track progress. The purpose of measuring performance is to determine whether programs are working and to what extent. Beginning with FY 2024, *only* the three common performance measures with the State DOT listed in the THSP can be amended in the AGA, if necessary.

In the State’s performance plan section of the HSP, each target is required to be accompanied by at least one performance measure that enables the State to track progress toward meeting the quantifiable annual target (e.g., a goal to ''increase seat belt use to XX by 20XX,'' using a performance measure of ''percent of restrained occupants in front outboard seating positions in passenger motor vehicles''), see 23 CFR Part 1300.11 (c). The most recently released State and FARS data shall be used by the State.

**Minimum Performance Measures**

Beginning with MAP-21, 12 Minimum performance outcome and behavior measures developed by NHTSA in collaboration with GHSA and others, described in [Traffic Safety Performance Measures for States and Federal Agencies](http://www.ghsa.org/resources/performance-measures) (DOT HS 811 025) are required to be used as a minimum in developing the State’s performance measures and targets. Therefore, it is essential to examine each of these measures as part of the initial problem identification process. There are also three activity measures which must be reported annually. The measures are:

OUTCOME AND BEHAVIOR MEASURES

1. Fatalities (actual-FARS) \*
2. Number of serious injuries (State crash file) \*
3. Fatality rate per 100M VMT (FARS, FHWA) \*
4. Number of unrestrained passenger vehicle occupant fatalities, all seating positions (\*FARS)
5. Number of fatalities involving driver or motorcycle operator with .08 BAC or above (\*FARS)
6. Number of speeding-related fatalities (\*FARS)
7. Number of motorcyclist fatalities (\*FARS)
8. Number of unhelmeted motorcyclist fatalities (\*FARS)
9. Number of drivers age 20 or younger involved in fatal crashes (\*FARS)
10. Number of pedestrian fatalities (\*FARS)
11. Number of bicyclist fatalities (\*FARS) (beginning FY15)
12. Percent observed belt use for passenger vehicles – front seat outboard occupants (State survey)

\*State THSP performance targets are identical to the State DOT target for this measure. NOTE: For FY 2024 only, the performance targets submitted for common performance measures with the State DOT are NOT required to be identical to the same State DOT targets reported in the HSIP annual report. See [June 5, 2023 NHTSA-FHWA Final Rule Amendment](https://www.govinfo.gov/content/pkg/FR-2023-06-05/html/2023-11758.htm)

In April 2020 NHTSA announced beginning with FY 2020 States may also use State data to set these targets. However, FARS data is encouraged to be used if it is more current.

ACTIVITY MEASURES

1. Number of seat belt citations issued during grant-funded enforcement activities (grant activity reports)
2. Number of impaired driving citations issued and arrests made during grant-funded enforcement activities (grant activity reports)
3. Number of speeding citations issued and arrests made during grant-funded enforcement activities (grant activity reports)

Program areas outside of the GHSA-NHTSA Minimum performance measures may be included if sufficient justification for addressing those issues has been established in the problem identification process. Performance measures (and corresponding performance targets) are required to be developed for each program area that receives funding by the HSO. If the HSO intends to fund programs outside the Minimum Performance Measures, for each of these other programs, performance measures are required to be developed as well as: (i) quantifiable annual performance targets and (ii) justification for each performance target that explains why the target is appropriate and data driven.

A performance measure is an indicator to express the activity that will be used to establish a performance target and must be directly aligned to the target(s) of a project. Performance measures when combined with the performance target provide the basis for determining the degree of achievement of established targets. Acceptable activity levels or outputs shall be established as part of each grant agreement.

There are two common types of performance measures: direct and proxy. *Direct measures* are preferred. Examples of direct measures include number of crashes, citations, people trained, units purchased, etc. Sometimes it is impossible to obtain direct measures. If such is the case, a proxy measure might be used. *Proxy measures* are indicators that provide an indirect assessment of desired activity. An example is a self-reporting survey conducted among a statistically valid sample of the population to determine behavioral change (recognition of public service announcements on television or radio, seat belt usage, impaired driving issues, etc.).

The characteristics of a good performance measure are that it is:

* Quantifiable where possible
* Directly linked to objectives
* Accurate and clearly defined
* Understandable
* Objective
* Practical

For a more detailed explanation of the measures, see, [GHSA-NHTSA Frequently Asked Questions on Performance Measures](http://www.ghsa.org/resources/performance-measures)

States began conducting an annual attitudes survey in FY 2010. The survey contains nine recommended (or equivalent) questions on occupant protection, impaired driving and speeding that States may use. See the following on the GHSA web site: [Survey Recommendations for the NHTSA-GHSA Working Group](http://www.ghsa.org/resources/performance-measures). Additional related resources are available on this page. The results of the attitudes survey can be summarized in the data section of the THSP and the complete findings reported in the following year’s Annual Report. Many States have found the surveys highly effective in evaluating their media campaigns as well as assisting with decisions regarding the use of grant funding. While conducting the surveys is not required, States are strongly urged to continue doing them. The data is important to help the States and also NHTSA.

[Model Performance Measures for State Traffic Records Systems, DOT HS 881 441](http://www.ghsa.org/resources/performance-measures) is a collection of 61 voluntary model measures to help HSOs monitor and improve the quality of the data in their traffic records systems. It covers all six traffic records systems: crash, driver, vehicle, roadway, citation/adjudication, and EMS/injury surveillance; and provides basic definitions for the six critical performance attributes: timeliness, accuracy, completeness, uniformity, integration, and accessibility. The measures are intended for use by Federal, State, and local governments to monitor the development and implementation of traffic record data systems, strategic plans, and data improvement grant processes. They have been grouped by performance attributes across the six core State traffic record data systems: crash, vehicle, driver, roadway, citation/adjudication, and emergency medical services (EMS)/injury surveillance. These common performance measures and the attendant guidance on their application are expected to help stakeholders quantify systemic improvements to their traffic records systems. The model performance measures are intended to help States monitor and improve the quality of the data in their traffic record systems. States can use these measures to develop and track performance targets in their Traffic Records Strategic Plans, Traffic Records Assessments, and THSP; establish data quality improvement measures for specific traffic records planned activities and projects; and support data improvement goals in the Strategic Highway Safety Plan. See the [MMUCC](https://www.nhtsa.gov/mmucc) web site for additional guidance. MMUCC is a minimum, standardized data set for describing motor vehicle crashes and the vehicles, persons and environment involved.

Within the HSO, responsibility for development and review of the annual performance measures is assigned to the [*insert position title]*.

# H. Section 405 Application Information and Section 1906

This section describes the requirements for inclusion in the AGA of the required Section 405 application information.

# There is a single application deadline for all highway safety *grants* including the traditional Section 402 program and incentive grant programs. The National Priority Safety Programs, or incentive grant programs, are codified in a single section, 23 CFR 405 and referred to as Section 405. These programs include Occupant Protection, State Traffic Safety Information Systems (Traffic Records), Impaired Driving Countermeasures, Motorcyclist Safety, Distracted Driving, Nonmotorized Safety and beginning in FY 2024 two new program, Preventing Roadside Deaths and Driver and Officer Safety Education.

# The specific eligibility, qualification, transfer of funds and match requirements are detailed in [23 CFR Part 1300.20 - .28](https://www.ecfr.gov/current/title-23/chapter-III/part-1300) for States applying for any of the Section 405 or the Section 1906 grant program. Information is available from NHTSA for the HSO requirement for annually completing [Appendix B to Part 1300](https://www.ecfr.gov/current/title-23/chapter-III/part-1300/appendix-Appendix%20B%20to%20Part%201300). As part of the Section 405 application, the State is required to provide specific information which varies depending on the National Priority Safety Program incentive grant(s) for which the State wishes to receive funding consideration.

The Section 402 application is reviewed by the NHTSA Regional Office. The program portion of the Section 405 application is reviewed by a NHTSA Team and the legal requirements are reviewed by the NHTSA legal counsel.

**i. Maintenance of Effort**

The BIL eliminated the Maintenance of Effort (MOE) going forward. Maintenance of effort (MOE) had been required when States received Section 405 funding for occupant protection, State traffic safety information systems and impaired driving countermeasures grant programs. Due to federal Congressional restrictions in the final budget for FY20, NHTSA was required to stop enforcing the MOE requirement**.** NHTSA issued a national emergency waiver for MOE for FY20. For additional information on MOE requirements, see the [GHSA MOE Advisory](https://www.ghsa.org/resources/shso-guidance).

**ii. Planning and Administration (P&A) Costs and Local Share**

No P&A costs are allowed from Section 405 grant funds. The 40 percent share for local share requirement does not apply to projects paid with Section 405 funds used for Section 402 purposes.

**iii. Eligible Uses of Section 405 Funds and Section 1906**

The eligible uses of funds awarded under Sec. 405, and Sec. 1906, depends upon the program and fiscal year for which funds are awarded and shall be limited to the following, see 23 CFR Part 1300.21 - 28:

| **Section 405 Program** | **Eligible Uses and Limitations** |
| --- | --- |
| Occupant Protection (OP) §1300.21Lower Use States cannot use Section 405 funds for OP Assessments. High Use States can use Section 405(b) funds for Section 402 activities which could include OP Assessment costs. | * High Use States: 90% for FY2024 forward for any project or activity eligible for funding under 23 USC 402 and the balance for the OP purposes below.
* For FY 2024 forward, *all* States must use 10% for activities relating to child passenger safety programs serving low-income and underserved populations, see 23 CFR 1300.21(g)(1)(v).
* Lower Use States – only the following:

- High-visibility enforcement mobilizations including paid media that emphasizes publicity for the program and law enforcement- Training OP safety professionals, police, fire and EM personnel, educators and parents concerning all aspects of the use of child restraints and OP- Educating the public on the proper use and installation of child restraints including related equipment and information systems- Providing community CPS services including programs on proper seating positions for children and how to reduce the improper use of child restraints-Recruiting and training nationally certified CPS technicians for those serving low-income and underserved populations, educating parents and caregivers in low-income and underserved populations on proper use and installation and purchasing and distributing child restraints to low-income and underserved, and,- Establishing and maintaining information systems containing data concerning OP including the collection and administration of CPS and OP surveys |
| Traffic Records §1300.22 | 100% to make quantifiable, measurable progress improvements in the accuracy, completeness, timeliness, uniformity, accessibility or integration of data in one of the significant, core highway safety database including: software, equipment to improve a process, improving the compatibility and interoperability with other systems, enhancing the ability to observe and analyze trends, traffic records improvement training and for professionals, hiring traffic records professionals to improve systems including FARS, adoption of the MMUCC, supporting reporting criteria relating to emerging topics, and conducting research relating to traffic safety information systems. |
| Impaired Driving §1300.23For formula grant States (identified as low, mid or high range) Section 405 funds cannot be used for any AL Assessments.  | * All States:

- High-visibility enforcement (HVE) efforts- Hiring a full-time or part-time alcohol, drugs or combined coordinator- Court support of hiring CJ professionals to assist in handling impaired driving cases (traffic safety resource prosecutors, judges, judicial outreach liaisons and probation officers)- Training and education of those professionals including providing compensation to a law enforcement officer to replace a law enforcement officer who is receiving drug recognition expert training or is an instructor in that training, or establishing DWI courts.- Improving BAC testing and reporting- Alcohol ignition interlock programs- Improving blood alcohol and drug concentration screening and testing, detection of potentially impairing drugs (including through oral fluid as a specimen and related reporting,- Paid and earned media in support of HVE and conducting SFST training, ARIDE training and DRE training for law enforcement, law enforcement phlebotomy training, equipment and related equipment and expenses in connection with impaired driving enforcement- Training on the use of alcohol and drug screening and brief intervention- Training for and implementation of impaired driving assessment programs for persons convicted of alcohol, drug or combined offenses to determine recidivism or mental health/substance abuse treatment- Developing impaired driving information systems- Costs associated with 24 – 7 sobriety programs - Testing and implementing programs and purchasing technologies to better identify, monitor or treat impaired persons (see 5 listed examples)* Low-Range State: In addition to the above: Programs designed to reduce impaired driving based on problem ID, and, Up to 50% for any Section 402 eligible projects
* Mid-Range State: In addition to the above, Programs identified in 23 CFR Part 1300.21(j)(1) and programs designed to reduce impaired driving based on problem ID ***if*** advance approval is received from NHTSA.
* High Range State: may use for HVE and programs identified above designed to reduce impaired driving based on problem ID ***if*** all proposed uses are described in a statewide impaired driving plan submitted to and approved by NHTSA.

Beginning FY 2024, per 1300.23(5): A State may use grant funds for any expenditure relating to (i) increasing the timely and accurate reporting to Federal, State, and local database of crash information, including electronic crash reporting systems that allow accurate real-or near-real time uploading of crash information, or impaired driving criminal justice information; or (ii) researching or evaluating impaired driving countermeasures. |
| Ignition Interlock §1300.23 (g) | * For any eligible project or activity under Section 402 including Impaired Driving Assessments and drug-impaired driving programs
 |
| 24/7 Program §1300.23 (h) | * For any eligible project or activity under Section 402 including Impaired Driving Assessments and drug-impaired driving programs
 |
| Distracted Driving (DD) Awareness or DD Law §1300.24 | * Awareness: At least 50% to *only* educate the public through advertising concerning information about the dangers of texting or using a cell phone while driving, for traffic signs that notify drivers about the DD State law or for law enforcement costs related to DD law enforcement.
* Law: Not more than 50% for any eligible project/activity under Section 402, and, not more than 75% for any eligible project or activity under Section 402 *if* the State has conformed its distracted driving data to the most current MMUCC
 |
| Motorcyclist Safety (MC) §1300.25 (Territories not eligible)Note: A State that receives a MC grant may sub allocate funds to a nonprofit organization incorporated in that State to carry out grant activities under this section. | * Improvements to MC training curricula
* Improvements in program delivery of motorcycle training to both urban and rural areas including (A) purchase or repair of practice motorcycles; (B) instructional materials; (C) mobile training units; (D) leasing or purchasing facilities for closed-course motorcycle skill training
* Measures designed to increase recruitment or retention of MC training instructors, and,
* Public awareness, PSAs and other outreach programs to enhance driver awareness of motorcyclists including “Share the Road”.
* ***If*** the State qualifies under *low fatality performance criteria,* up to 50% for any eligible project or activity under Section 402
 |
| Nonmotorized Safety §1300.26 | * Training of law enforcement officials on State laws applicable to nonmotorized road user safety
* Carrying out a program to support enforcement mobilizations and campaigns designed to enforce State traffic laws applicable to nonmotorized user safety, or,
* Public education and awareness programs designed to inform motorists and nonmotorized road users regarding nonmotorized road user safety, the value of nonmotorized road user safety equipment and compliance with any State or local laws regarding use of the equipment, State traffic laws applicable to nonmotorized road users’ safety including the responsibility of motorists and infrastructure designed to improve nonmotorized road user safety, and,
* Collection of data and establishment and maintenance of data systems relating to nonmotorized road user fatalities.
 |
| Preventing Roadside Deaths §1300.27 | * Purchase and deploy digital alert technology capable of receiving alerts regarding nearby first responders, and, in the case of motor vehicles used for emergency response activities capable of sending alerts to civilian drivers to protect first responders on the scene and en route,
* Educate the public regarding the safety of vehicles and individuals stopped at the roadside through public information campaigns,
* Law enforcement costs related to enforcing laws to protect the safety of vehicles and individuals stopped at the roadside,
* Programs to identify, collect and report to State and local agencies data related to crashes, and,
* Pilot and incentivize measures including optical visibility measures to increase the visibility of stopped and disabled vehicles.
 |
| Driver and Officer Safety Education§1300.28 | * Production of educational materials and training of staff for driver education and driving safety courses and peace officer training as described in the section, or,
* Implementation of a law or program described in the section.
 |
| **Section 1906**Racial Profiling Data Collection §1300.29 | * Collecting and maintaining data on traffic stops,
* Evaluating the results of the data or,
* Developing and implementing programs, public outreach and training to reduce the impact of traffic stops described in the section.
 |

**iv. NHTSA Section 405 Award Determinations and Appeals**

After reviewing applications and making award determinations, NHTSA shall, in writing, distribute funds available for obligation to qualifying States and specify any conditions or limitations imposed by law on the use of the funds. NHTSA will transfer unallocated Section 405 funds to Section 402. NHTSA is required, within 60 days after the date of the Section 405 awards, to make publicly available on the U.S. DOT website an identification of the States awarded grants, the States that applied and were not awarded grants, the States that did not apply for a grant and a list of the deficiencies that made a State ineligible for a grant, see [NHTSA 2023 Grant Determinations](https://www.nhtsa.gov/sites/nhtsa.gov/files/2022-10/15734-FY23%20Deficiencies%20in%20State%20Applications_final%20101422-v2-tag.pdf).

Grant awards are subject to the availability of funds. Beginning with FY 2024, the amount proportion of an incentive grant awarded to a State in a fiscal year under Section 405 or Section 1906 differs and is identified in the language of each Section 405 subsection, see for example, [Impaired Driving grants 23 CFR Part 1300.20(f)](https://www.ecfr.gov/current/title-23/chapter-III/part-1300/subpart-C/section-1300.23).

If all Section 405 funds available will not be distributed, the funds are transferred to Section 402 and distributed in proportion to the amount each State received under Section 402 for FY 2022, see 23 CFR §1300.20 (e). [23 CFR Part 1300.20(e)](https://www.ecfr.gov/current/title-23/chapter-III/part-1300/subpart-C/section-1300.20)

The Section 405 application review is a final decision of the NHTSA Administrator and is not subject to appeal.

**v. Racial Profiling Data Collection Grants**

The BIL Act revised some aspects of the Section 1906 incentive grant program originally created under SAFETEA-LU. The purpose is to encourage States to maintain and allow public inspection of statistical information on the race and ethnicity of the driver for all motor vehicle stops made on all public roads except those classified as local or minor rural roads. States have two ways to qualify and certain documentation and assurances are required to be submitted with the AGA, see 23 CFR Part 1300.29, [see 23 CFR Part 1300.29](https://www.ecfr.gov/current/title-23/chapter-III/part-1300/subpart-C/section-1300.29). Under the BIL Act, there is no limitation on the number of fiscal years a State may receive a grant and an additional use of funds is permitted, see 23 CFR Part 1300.29(d).

# I. Special Funding Conditions for Section 402 Grants

This section describes the requirement for inclusion in the THSP of other Section 402 programs created by the BIL Act.

Beginning with FY 2024, there are several special provisions in the Final Rule regarding the use of Section 402 funds, see [23 CFR Part 1300.13(a- g)](https://www.ecfr.gov/current/title-23/chapter-III/part-1300/subpart-B/section-1300.13):

1. **Planning and Administration Costs**

Planning and administration (P&A) and program management costs are defined in the Final Rule. Federal participation in P&A activities shall not exceed 50% of the total cost of the activities, or the applicable sliding scale rate. Effective FY 2024, the Federal share for P&A activities shall not exceed 18% (with exceptions) of the total funds the State receives under Section 402. P&A tasks and related costs shall be included in the P&A program area of the State’s AGA. The State’s matching share is determined on the basis of the total P&A costs in that program area. See also Chapter IV. Grant Selection and Execution, Section H. Development of Highway Safety Office Internal Grants for federal requirements for allocating HSO salary and related costs.

1. **Participation by Political Subdivisions** (see Section K. Local Share)
2. **Marijuana-impaired Driving**

A State that has legalized medicinal or recreational marijuana shall consider implementing programs to educate drivers regarding the risks associated with marijuana-impaired driving and reduce injuries and deaths resulting from marijuana-impaired driving.

1. **Unattended Passengers’ Program**

A State must use a portion of the grant funds to carry out a program to educate the public regarding the risks of leaving a child or unattended passenger in a vehicle after the vehicle motor is deactivated by the operator.

1. **Teen Traffic Safety Program**

A State may use grant funds to implement statewide efforts to improve traffic safety for teens.

1. **Prohibition on Funds for Automated Traffic Enforcement Systems**

The HSO may only expend funds to carry out a program to purchase, operate or maintain an automated traffic enforcement system only in school and work zones. The system must comply with U.S. DOT guidelines as updated. See also Chapter VI. Fiscal Procedures, Section E. Allowable Costs. Beginning with FY 2024, States with automated traffic enforcement systems are no longer required to submit a certification or conduct a survey.

1. **Motorcycle Checkpoints and Surveys**

The HSO is prohibited from expending funds for any program to check motorcycle helmet usage or to create check points that specifically target motorcyclists.

# J. Funding

This section outlines the process for establishing funding priorities in the THSP and annual AGA as well as Federal funding restrictions and requirements.

The U. S. Congress authorizes traffic safety funds to be appropriated to the U.S. DOT, NHTSA. NHTSA apportions and distributes these funds to the States. The States obligate these funds through the annual AGA which is subject to NHTSA review. Any earmarked or special purpose funds shall be used only in that particular program area and cannot be transferred to any other program area. When developing the THSP and the AGA, new revenue estimates for each funding source are obtained annually from the NHTSA Regional office by the HSO typically in the first quarter of the calendar year for the following fiscal year. This information along with estimated prior year unexpended funds is used to develop the estimated total highway safety funding available for the upcoming fiscal year.

The HSO *[insert position title]* is responsible for annually allocating the estimated amount of revenue by program area for the THSP budget based on the information gathered in the problem identification, performance target and countermeasure strategy processes to assure the greatest potential impact on the State’s overall goal of reducing traffic safety related crashes, deaths and injuries. The process for making the budget allocation decision should be documented in the THSP.

The State annually submits a consolidated AGA application for Section 402 funds and Section 405 and Section 1906 funds for the National Priority Safety Program Grant programs. The HSO may also receive penalty transfer funds. Planned funds are subject to revision depending on the actual amount of funding received by the State.

**i. Highway Safety Improvement Program Funds and Other Funding Sources**

Beginning with FY 2024, the State DOT may flex up to 10% of their Highway Safety Improvement Program (HSIP) funds for behavioral safety programs. (non-infrastructure projects).

Beginning with FY 2024, the HSO is not required to identify funding from other sources (Federal, State, local and private sector) for strategies that the HSO considers necessary to reach their performance targets. Such funds would only be identified by the HSO if used for match.

**ii. Planning and Administration Program Area**

The tasks and related costs for Planning and Administration (P&A) should be included in a P&A program area within the THSP, or, another format where the activities are described, 23 CFR Part 1300.13 (a). There are definitions of P&A eligible costs, limitations on the federal share of total P&A costs and sources of funds, and, limits on the amount of funds that can be spent on P&A programs. If the State is using HSO indirect costs as P&A match, such costs can only be applied to P&A expenditures. See Section H. (i) Planning and Administration Costs and Local Share and Chapter IV. Grant Selection and Execution, Section H. Development of Highway Safety Office Internal Grants for additional information.

**iii. Apportionment and Obligation of Federal Funds**

In the event that authorizations exist but no applicable appropriation act has been enacted by Congress by October 1 of a fiscal year the NHTSA Administrator shall, in writing, distribute a part of the funds authorized under 23 USC Chapter 4 contract authority to ensure program continuity and shall specify any conditions or limitations imposed by law on the use of the funds. Upon appropriation of Section 402 funds, the NHTSA Administrator shall, in writing, promptly adjust the obligation limitation and specify any conditions or limitations imposed by law on the use of the funds. See 23 CFR § 1300.15 (b).

The funds distributed are available for expenditure by the State to satisfy the Federal share of expenses under the approved AGA and shall constitute a contractual obligation of the Federal Government, subject to any conditions or limitations identified in the distributing documentation. Such funds shall be available for expenditure by the State as provided in 23 CFR Part 1300.41(b).

States are independently responsible for ensuring that projects constitute an appropriate use of grant funds. Vouchers that request payment for projects whose project agreement numbers or amounts claimed do not match project agreements (submitted by the HSO) or exceed the estimated amount of Federal funds provided under 23 CFR §1300.11 (e) shall be rejected, in whole or in part, until an amendment is submitted to and approved by the NHTSA Regional Office in accordance with 23 CFR §1300.32.

Within the HSO, responsibility for development of the estimated THSP budget is assigned to the *[insert position title]*. The required countermeasure strategies and any necessary revisions are prepared by the *[insert position title]* for approval by the HSO Administrator and inclusion in the AGA submitted annually to NHTSA including project agreements and revisions submitted to the Regional Administrator after the AGA has been approved by NHTSA.

# K. Local Share

*This section defines the requirement imposed upon the HSO by Federal regulation to ensure that a minimum percentage of certain new Federal fund sources be expended for the benefit of local units of government.*

States are required to ensure that at least 40 percent (or 95 percent for Indian Nations) of all (new) Federal funds apportioned under Section 402 for any fiscal year are **expended\*** by the political (local) subdivisions of the State, including Indian tribal governments, in carrying out local highway safety programs. A State may request a waiver. These local highway safety programs must be operated in accordance with the minimum standards established by the Secretary under Section 402. For FY 2024 and forward, see [23 CFR Part 1300.13(b)](https://www.ecfr.gov/current/title-23/chapter-III/part-1300/subpart-B/section-1300.13) and Questions 24-26 [NHTSA BIL Implementation Webinar Q&A March 20, 2023](https://www.nhtsa.gov/sites/nhtsa.gov/files/2023-03/15908d-Final%20Rule%20Questions%20and%20Answers_March%2020%202023_3pm-tag.pdf).

In the 2023 Final Rule, the requirements have been reorganized and significantly changed. The definition of political subdivision was broadened to include separate legal entities with legal functions, such as, school districts, court systems, regional entities, associations comprised of representatives from political subdivisions acting in their official capacities, see [23 CFR Part 1300.3](https://www.ecfr.gov/current/title-23/chapter-III/part-1300/subpart-A/section-1300.3).

When Federal funds are *directly* expended by a political subdivision under a subaward from the State, the expenditure clearly qualifies as part of the required expenditures. A political subdivision may expend funds through direct performance or by entering into contracts or subawards with other entities (including non-profits) to carry out projects on its behalf.

When funds are expended by a *State on behalf of a political subdivision,* the funds may qualify as part of the required local expenditure IF there is evidence of the political subdivision’s involvement in identifying traffic safety needs AND input into implementation of the activity within its jurisdiction. The key is the connection between the need and activity requested by the political subdivision and the project that the State, or another entity, carries out on their behalf. Such expenditures qualify if:

* The political subdivision has been engaged in the planning process and entered into an agreement with the HSO, or,
* The political subdivision was not involved in the planning process but has submitted a request demonstrating a need within its jurisdiction and requesting the State to implement a project on its behalf.

The HSO may also make an agreement with involved non-profit organizations to carry out a program on behalf of political subdivisions if properly documented. The HSO shall ensure that local share source documentation is readily available on-site including evidence of the details of the qualification and related agreements. If only a portion of the expenditures under a project may meet these requirements, the State must allocate funds proportionally.

Any agreements for funds to be expended by the State *on behalf of* a political subdivision must be made before the AGA is submitted to NHTSA including HSO possession of the required documentation whether a letter, signed form, etc.

In extraordinary circumstances where the political subdivision does not have the legal authority for the highway safety activity, the HSO may apply for a waiver in whole or part from the Regional Administrator that documents conclusively the absence of legal authority for political subdivisions over the highway safety activity. The application for waiver must recommend the appropriate percentage participation to be applied in lieu of the local share, see 23 CFR Part 1300.13(c).

When the State proposes to use the salary and benefits of a State employee toward meeting the 40 percent requirement, the State should ensure that the required documentation is in place before any work is carried out and that it evidences that the local government consented and accepted the work of the State employee on its behalf as described in 23 CFR Part 1300.13.

With regard to State expenditures, such as State Highway Patrol/Police enforcement or statewide paid media, the State may designate such expenditures as benefiting local government to meet the 40 percent requirement only where the requirements of 23 CFR Part 1300.13(3) have been met and agreement is documented annually in writing from the local government.

Contracts for Statewide HVE media campaigns, even if made with political subdivisions, do not qualify as local expenditures because they are, by definition, an extension of State performance. See 2 CFR 200.331. Direct expenditures for media efforts may be credited to political subdivisions only if those expenditures are made under a subaward from the State. Note that this restriction on media campaigns applies only to Statewide media efforts associated with HVE campaigns. States are encouraged to enter into subawards with political subdivisions to carry out targeted local media campaigns, and the costs of such efforts would qualify as local expenditures. See Preamble to the NHTSA Final Rule February 6, 2023.

**\*NOTE:** The HSO is required not only to obligate 40 percent of the Section 402 funds to the benefit of locals but must also ensure that the required percentage of funds is actually *expended* to the benefit of locals. This requires the HSO to periodically monitor local grant expenditure rates during the fiscal year. Each voucher entered into the Federal Grant Tracking System (GTS) shall provide the dollar amount of Federal funds for each program area which was allocated to local benefit at least at mid-year (by March 31) and with the final voucher at fiscal year closeout. If by March 31 the percentage of local benefit reported appears to be significantly low, research should be done to determine the cause including slow vouchering by subrecipients or an insufficient number or dollar amount of local sub grants.

*Use of Transfer Funds for Section 402 Purposes-Benefit to Locals***:** At least 40 percent of the annual 154 and 164 funds must be used by or for the benefit of political subdivisions. (Note: BIA local share is 95%), see [Federal Register update of transfer and sanction programs](https://www.federalregister.gov/documents/2016/09/30/2016-23788/regulatory-update-of-transfer-and-sanction-programs). On April 10, 2023, NHTSA stated effective immediately with FY 2023 the State may aggregate in GTS the 40 percent local expenditures for Sections 402, Section 154 and Section 164 to meet the 40 percent requirement. The expenditures will no longer be tracked separately in GTS.

Section 154 and 164 transfer funds obligated and spent on alcohol/drug-impaired driving countermeasures or directed to State and local law enforcement agencies for projects funded by Section 154 and 164 take on the characteristics and requirements of the Section 402 program. No matching funds are required for these transfer funds; per Section 154 (c) (4) and Section 164 (b) (4), the Federal share of the project cost is 100 percent.

*Use of Section 405 Funds that are Section 402 Eligible***:** The 40 percent share for local benefit requirement does not apply to projects paid with Section 405 funds used for Section 402 purposes.

# L. Transfer Funds

This section is designed to define transfer and incentive fund sources and clarify the differences between them.

Section 402 funds are used by the HSO to support countermeasure strategies identified in the THSP as encompassing a major highway safety problem in the State. In addition to Section 402 funds, the State may be eligible to receive funds from other Federal transfer program sources. The specific available programs typically change with each Federal reauthorization of the highway safety program.

An annual determination is made by the U.S. DOT FHWA regarding the State’s inability to enact or enforce specified State traffic safety laws or policies to address a program area as prescribed by the U.S. Congress in the current reauthorization. Information regarding the State’s laws and policies is requested by the U.S. DOT to determine the State’s eligibility. The State is notified annually through FHWA’s Advance Notice of Apportionments (July 1) and FHWA’s Final Notice of Apportionments (October 1). Two and one-half percent (2.5) of Federal-aid funds apportioned for the National Highway Performance Plan (NHPP) and Surface Transportation Program (STP) (23 U.S.C. § 104(b) (1) and 23 U.S.C. § 104(b) (2)) are reserved, applied separately for each program, until the State certifies how it will use the reserved funds. The State DOT and the HSO Administrator determine the division of transfer funds and notify the U.S. DOT by letter, known as the “split letter”, due 60 days after the funds have been transferred. The requirements are detailed in federal regulations at 23 CFR Parts 1270 and 1275.

The HSO is required to update the AGA to indicate how it intends to use its split of penalty transfer funds, if any, from Section 154 and 164. Alternatively, the HSO may plan ahead knowing that there will be transfer funds in October and include these funds in the AGA submission prior to that date.

The Federal P&A share shall not exceed 50 percent of total P&A costs, except for select States using the sliding scale for match (See NHTSA Order 462-6C Matching Rates for State and Community Highway Safety Program at https://www.nhtsa.gov/highway-safety-grants-program/resources-guide).No match is required for penalty transfer funds (Section 154 or 164 funds) when repurposed for Section 402 programs), for U.S. Territories (23 U.S.C. 120(i)), or for federally recognized Indian Tribal governments (23 USC 402(h)) under the Indian highway safety program. For FY2024 up to **18** percent of the new Section 154/164 funds may be designated for P&A. Such funds may only be expended for P&A activities which support project agreements funded by Section 154 or 164 funds. See [23 CFR Part 1300.13(a)](https://www.ecfr.gov/current/title-23/chapter-III/part-1300/subpart-B/section-1300.13).

Use of Transfer Funds for Section 402 Purposes-Benefit to Locals**:** At least 40 percent of the annual 154 and 164 funds must be used by or for the benefit of political subdivisions. (Note: BIA local share is 95%), see [Federal Register update of transfer and sanction programs](https://www.federalregister.gov/documents/2016/09/30/2016-23788/regulatory-update-of-transfer-and-sanction-programs). On April 10, 2023, NHTSA stated effective immediately with FY 2023 the State may aggregate in GTS the 40 percent local expenditures for Sections 402, Section 154 and Section 164 to meet the 40 percent requirement. The expenditures will no longer be tracked separately in GTS.

Section 154 and 164 transfer funds obligated and spent on alcohol/drug-impaired driving countermeasures or directed to State and local law enforcement agencies for projects funded by Section 154 and 164 take on the characteristics and requirements of the Section 402 program. No matching funds are required for these transfer funds; per Section 154 (c) (4) and Section 164 (b) (4), the Federal share of the project cost is 100 percent.

The HSO and NHTSA are responsible for the oversight of Funds transferred to NHTSA’s Section 402 program for alcohol-impaired driving programs under MAP-21 and the FAST Act, and beginning FY 2024 for impaired driving programs, while the State DOT and FHWA are responsible for the oversight of funds released for HSIP eligible activities.

States may also use funds for paid media to support impaired driving countermeasures or for purchase of equipment and training of officers for enforcement of DWI/DUI/related laws. States may not use penalty transfer funds for general law enforcement, training or equipment purchases.

The most current information regarding the requirements and limitations of the transfer fund programs can be found online in the [NHTSA Highway Safety Grants Management Resources](https://www.nhtsa.gov/highway-safety-grants-program/resources-guide).

**M. Advertising**

# *This section provides information on the Federal restrictions on the purchase of advertising with highway safety funds.*

# The HSO has the authority to use funds for approved projects to purchase advertising in a variety of mediums including television and radio, cinema, internet, print, outdoor (billboard space) and sports marketing for highway safety messages. NHTSA advocates the use of a sustained high visibility enforcement model that focuses on strategically deploying enforcement and communications resources at targeted times and locations throughout the year based on State problem identification. The objective is to influence and sustain year-round behavioral change while getting higher returns on investment and further improvements in traffic safety. NHTSA has not updated its previous 2013 "Guidance for States Using Section 402 Funds for Purchasing Advertising for Highway Safety Messages”.

# When a State plans to use funds for this purpose, it is suggested that the HSO document in an annual communications plan the following: what program/policy the advertising is supporting, how the advertising will be implemented to support an operational enforcement program whether it be a periodic crackdown/mobilization or an on-going saturation or roving patrol, the amount allocated for paid advertising and the measures that will be used to assess message recognition and penetration of target audience.

# If a subrecipient is granted advertising funds, the subrecipient should likewise be required to report this information to the State.

# As with other activities, paid advertising should be part of a comprehensive program designed to address specific highway safety goals identified in the HSO Performance Plan. Advertising should not be a stand-alone program or activity. For example, the communications plan should be preceded by the enforcement plan.

# Federal funds are to be used only for certain specified advertising and public relations costs. *See*  [2 CFR Part 200.421](http://www.ecfr.gov/cgi-bin/text-idx?SID=53e06ff69dcb6de8a22fa89277a33161&mc=true&node=pt2.1.200&rgn=div5#se2.1.200_1421). Federal grant funds are *never* available to cover the costs of promotional items and memorabilia. See [NHTSA Memo Use of Highway Safety Grant Funds May 18, 2016](https://www.nhtsa.gov/sites/nhtsa.gov/files/2023-03/Use%20of%20NHTSA%20Highway%20Safety%20Grant%20Funds%20for%20Certain%20Purchases%2005182016.pdf)

# Television public service announcements and advertising created with the aid of Federal funds must contain closed captioning of the verbal content.

# See also Chapter V. Grant Administration and Management, Section D. Public Information and Education (PI&E).

# Sports Marketing: If the State enters into a sports marketing sponsorship agreement, with a team, stadium or arena, it must further the achievement of the program’s performance targets. In conjunction with the purchase of paid advertising, attendance at sporting and entertainment events that charge admission may occur which could be deemed an unallowable cost. See Chapter V, Section D (iii). Public Information and Education (PI&E) for guidance on applicable tests for such expenditures and examples of possible circumstances and their appropriate resolution.

**N. Certifications and Assurances - Appendix A**

*This section explains the requirements for development of the certification and assurances section of the HSP.*

Each fiscal year the HSO signs Certifications and Assurances with the submission of the AGA that the State complies with all applicable Federal statutes, regulations, and directives in effect with respect to the period for which it is receiving grant funding.

# A Certification Statement for the Section 402 program, which can be signed only by the State’s Governor's Representative for Highway Safety, is required. The statement provides assurances that the State will comply with not only with applicable laws and regulations but also financial and programmatic requirements, and the special funding conditions of the programs. The State must use only the exact format and language specified in Appendix A (make no changes in the required language) and include every certification. NOTE: NHTSA will provide an electronic Certification and Assurances document for use by the States. An electronic signature will not be accepted.

# Subrecipient Certifications and Assurances: The HSO must also be aware that Federal regulations require that the HSO ensure that every subrecipient and contract (i.e., purchase orders) include any clauses required by Federal statute and Executive Order and their implementing regulations and that the subrecipient or contractor is aware of the requirements imposed upon them, see [23 CFR Part 1300 Appendix A](https://www.federalregister.gov/documents/2023/02/06/2023-01819/uniform-procedures-for-state-highway-safety-grant-programs) and Uniform Guidance [2 CFR Part 200.332(a)(2)](https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-D/subject-group-ECFR031321e29ac5bbd/section-200.332).

# Under the BIL, 23 CFR Part 1300 Appendix A Certifications and Assurances identifies for the HSO the following certifications and assurances that are required to be imposed upon subrecipients. They are:

# Nondiscrimination

# Political Activity (Hatch Act)

# Certification Regarding Federal Lobbying

# Restriction on State Lobbying

# Certification Regarding Debarment and Suspension

# Buy America Act

# Prohibition on Using Grant Funds to Check for Helmet Usage

# For FY 2024, the Final Rule added a clause, Certification of Conflict of Interest which also applies to subrecipients.

The HSO may at their option require additional subrecipient State certifications and assurances, such as, seat belt use policies or training requirements for law enforcement officers.

Failure to comply with applicable Federal statutes, regulations and directives may subject State officials to civil or criminal penalties in accordance with [2 CFR Part 200.338 - 343 Remedies for Noncompliance](http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=0f94deabfcc105ce7cdf811c8b6b7631&mc=true&n=pt2.1.200&r=PART&ty=HTML#sg2.1.200_1337.sg7) See Chapter IV. Grant Selection and Execution – Section D. Final Grant Agreement Preparation for additional information.

# O. Three Years Plus One Plus One Federal Obligation Restriction

This section explains the Federal restriction on the number of years that States are allowed to carry forward unobligated funds.

[23 CFR Part 1300.41(b)](https://www.ecfr.gov/current/title-23/chapter-III/part-1300/subpart-E/section-1300.41) requires that unexpended grant funds shall not be available for expenditure beyond the period of three years after the last day of the fiscal year of apportionment or allocation. Any amounts so apportioned or allocated that remain unobligated at the end of that period shall lapse.

Section 402 and Section 405 grant funds are authorized for apportionment or allocation each fiscal year. When developing the annual AGA funding plan, the HSO must be aware of the limitations placed upon the length of time that the funds are available. Grant funds are available for expenditure for three years after the last day of the fiscal year of apportionment or allocation (referred to as “three years plus one”). States should, to the fullest extent possible, expend these funds during those fiscal years.

During the last year of availability of the funds in year 4, NHTSA will notify States of unexpended grant funds potentially subject to lapsing not later than 180 days before the end of the period of availability. The State may then commit the unexpended grant funds to a specific project, referred to as a “promised project”, which will be completed before the end of the period of availability which is year 5.

The funds committed to a specific project must then be expended before the end of the succeeding fiscal year and only on that project. The funds cannot be moved to another project. The final voucher for that project must be submitted within 120 days after the end of that fiscal year.

Unspent funds for promised projects cannot be moved to other promised projects. At the end of the time period, any unexpended grant funds for that promised project will **lapse** and NHTSA will **deobligate** unexpended balances, see 23 CFR Part 1300.41 (b)(4).

Claims for promised projects (that are required to be sent to the Regional Office **by September 30** of year 5) are manually tracked by the NHTSA Regional Program Manager using an internal tracking system – not GTS.

# P. Fund Liquidation

This section establishes a process for the HSO to monitor the regular expenditure of federally appropriated highway safety funds.

The HSO shall promptly obligate and expend Federal highway safety grant funds and track fund liquidation including transfer and incentive funds by funding year and source. The oldest funds should be expended first whenever possible.

The HSO [*insert position title]* shall be responsible for periodically examining the current liquidation of each funding source by year, looking back at least three years, and shall promptly notify the HSO Administrator of any unreasonably large amounts of unliquidated funds. This examination shall include a prompt review of the GTS Grant Fund Balances Report (#7) and other reports and reconciliation of all categories with the HSO records. The HSO shall monitor closely the spending rates of all subrecipients and make periodic projections to assure the prompt start of project agreements and determine if there are impediments to full expenditure of funds by the project end. The HSO shall deobligate unspent funds in a timely manner to allow carryover into the next fiscal year.

The HSO shall document the specific rationale and anticipated timeframe for expenditure of any Federal funds which are not going to be promptly obligated. Where applicable, the HSO should ensure timeliness in contracting with the State DOT and vouchering of transfer funds through GTS. The HSO and NHTSA are only responsible for spending oversight for the funds shifted to the HSO.

See also section Q. Three Years Plus One Federal Obligation Restriction above.

# Q. Delegation of Authority

This section establishes signature authority for Federal traffic safety grants and contracts, assurances, certifications and other documents delegated to various levels within the Department.

NHTSA regulations require a formalized process be established by the State as to who can act on behalf of the HSO Administrator in his or her absence. The HSO is required to establish a written Delegation of Authority, see [23 CFR Part 1300.4](https://www.ecfr.gov/current/title-23/chapter-III/part-1300/subpart-A/section-1300.4).

The following table lists signature authority related to the HSO traffic safety grant program.

**Table 5. Delegation of Signature Authority**

|  |  |
| --- | --- |
| **Document** | **Signature Authority**  |
| Triennial Highway Safety Plan | ***Approved by the [insert position title]******Submitted by the HSO Administrator***  |
| Annual Grant Application including requests to NHTSA to purchase equipment ($5,000 or more) Certifications and Assurances Appendix A | ***Approved by the [insert position title]******Submitted by the HSO Administrator*** ***Signed by Governor’s Representative or designee***  |
| Federal Cooperative Agreements | ***HSO Administrator*** |
| National Highway Traffic Safety Administration Agreements | ***HSO Administrator***  |
| Other Federal Grant Applications | ***HSO Administrator*** |
| Internal HSO Planning and Administration, and Program Management grants  | ***[insert position title]***  |
| Reimbursable Service Agreements | ***HSO Administrator*** |
| Traffic Safety Program Grant Agreements and Amendments (any amount) | ***HSO Administrator*** |
| State Vouchers for Federal Reimbursement | ***[insert division name]*** |
| Separate requests to NHTSA to purchase equipment ($5,000 or more) with Federal funds | ***HSO Administrator***  |

In the absence of the HSO Administrator, HSO signature authority is delegated to the following individuals in the order noted:

1. ***[insert position title]***
2. ***[insert position title]***

The NHTSA Regional Office shall be notified in writing of the name and type of authorization and provided with the signature of each person currently assigned signature authority on behalf of the HSO. Whenever a temporary or permanent change occurs in the authorization assignment or the person assigned to the named authorized position, the NHTSA Regional Office shall immediately be notified in writing and provided the new information.

# R. Federal Spending Transparency

*This section provides information and guidance regarding the Federal requirements for the HSO to obtain and report certain prime and sub award information regarding Federal spending transparency.*

The HSO is required to report certain information to NHTSA as mandated in the Federal Funding Accountability and Transparency Act (FFATA) and subsequent Office of Management and Budget (OMB) guidance. This information is then made available to the public at the [www.USAspending.gov](http://www.USAspending.gov) web site.

Prime awardees (the HSO and the Bureau of Indian Affairs) awarding Federal grants of $25,000 or higher (and beginning with FY 2022 grants $30,000 or higher) are responsible for reporting them. The FFATA sub award Reporting System (FSRS) is the reporting tool HSOs use to capture and report sub award data and/or sub awardee executive compensation data, see [www.fsrs.gov](http://www.fsrs.gov).

Prime awardees (the HSOs and BIA) must:

* transition from DUNS to a SAM-generated Unique Entity Identifier (UEI) was required by April 4, 2022, and a UEI will be automatically generated for existing entities,
* register in the System for Award Management (SAM) at <https://sam.gov/content/home> ; and,
* register in FSRS.

NHTSA advised the HSOs in July 2021 that the subrecipient DUNS number is to be used on FY22 project agreements issued *before* April 4, 2022. After that date, the UEI must be used on all project agreements. NHTSA advised that States did not need to update existing project agreement when the DUNS number was replaced with the UEI but should keep a record of the UEI in the project file.

Subrecipients are not required to be *registered* in SAM however if they do register, the information will transfer to and prepopulate the FSRS web site. In addition, the HSO is required to collect the names and total compensation of the five most highly compensated officers of the sub awardee agency if, in the preceding year, the agency:

* received 80% of more of its annual gross revenues from Federal awards; AND,
* $25 million or more in annual gross revenues from Federal awards; AND,
* if the public does not have access to this information from reports filed under section 13(a) or 15(d) of the Securities Exchange act of 1934 or section 6104 of the Internal Revenue Code of 1986.

For each sub award, the HSO and BIA must enter the following into the FSRS web site:

* + - * FAIN (Federal aid identification number) \*The FAIN is sent to the HSO when GTS sends an e-mail notifying them of the award.
			* Sub award amount
			* Date of the award (date the grant agreement is signed)
			* Project description (grant title)
			* Primary place of performance
			* Sub award number
			* Executive Compensation answers

\*The FAIN is required to be included in the HSO subrecipient award document. On November 23, 2022, NHTSA issued written Guidance to assist States in identifying the FAIN in advance to be used for a specific subaward. The guidance is intended to assist HSOs comply with the government-wide requirements related to FAIN for subawards for both the Uniform Guidance and the federal Transparency Act. In addition, the HSO is responsible for properly documenting within their financial systems the **actual** FAIN for all federal awards received and expended. The NHTSA Regional Office should be contacted with any questions and/or issues, see [2 CFR Part 200.332 (a) (1-6)](https://www.ecfr.gov/current/title-2/part-200).

Information is available on the GHSA web site at, Planning and Management Tools/Transparency Regulations: [Transparency Requirements](https://www.ghsa.org/resources/transparency-requirements) NOTE: HSOs should be aware that it is important to use the correct DUNS/UEI numbers and for the HSO to be actively registered in the CCR for the system to properly work. See also Chapter IV-Grant Selection and Execution, Section D- Final Grant Agreement Preparation.

**S. Buy America Act**

*This section provides information and guidance regarding the Federal requirements that the HSO use highway safety grant funds to purchase only products manufactured or assembled in the United States.*

# Appendix A of Part 1300 identifies for the HSO all of the certifications and assurances that are required to be submitted annually. One of the required certifications is compliance with the Buy America Act, 23 U.S.C. Section 313. The Act prohibits States from using highway grant funds under 23 U.S.C. Chapter 4 to purchase products unless they are produced in the United States. The prohibition applies to steel, iron and all manufactured products unless a waiver has been requested from the Secretary of Transportation. The Secretary may waive the requirement if: it would be inconsistent with the public interest; the products are not produced in the United States in sufficient and reasonably available quantities and of satisfactory quality; or use of the products produced in the United States would increase the overall cost by more than 25 percent.

NHTSA has determined that for compliance purposes American-made covers any product that is manufactured *OR assembled* in the United States. This requirement applies to all items purchased with Federal funds including office supplies. There are no waivers for classes of items. The waiver process generally takes 60 days. The waiver goes into effect at the time of its publication in the Federal Register. The waiver determination will state if the waiver applies only to the requestor or to others wishing to purchase the same item. The duration of the waiver will be stated in the Federal Register publication.

A public interest waiver issued by NHTSA became effective July 30, 2015. The waiver allows States to purchase any manufactured product with a purchase price of $5,000 or less, excluding a motor vehicle defined in 49 USC 30102(a)(6), when the product is purchased using Federal grant funds administered under Chapter 4 of Title 23 of the U.S. Code. The purchase of foreign-made cars, motorcycles, trailers and other similar conveyances must be made using a waiver regardless of price. Effective July 30, 2015, any pending waiver requests for an item with a purchase price of $5,000 or less were no longer necessary.

NHTSA has issued Guidance dated January 23, 2014, which details the waiver criteria and the process for submitting a written waiver request to the applicable NHTSA Regional Administrator, see [NHTSA Highway Safety Grants Management Resources](https://www.nhtsa.gov/highway-safety-grants-program/resources-guide). NHTSA and GHSA conducted a webinar on January 29, 2014, “NHTSA Highway Safety Grant Program Updated GHSA-NHTSA Webinar” which included additional information on the Buy America Act requirements and the waiver process, see the GHSA website/Members Only/Webinar for a complete copy of the presentation. Caution is advised when considering purchases or waivers outside of the federal Buy America initiative.

Effective with FY 2022 grants, the Uniform Guidance requires compliance with [2 CFR Part 200.322 Domestic preferences for procurements](https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=2a6b234cbf3b5ecf389caf73374e72ef&mc=true&n=sp2.1.200.d&r=SUBPART&ty=HTML#se2.1.200_1322). This update requires a preference for purchase, acquisition or use of goods, products or materials produced in the United States, including contracts and purchase orders. This means that in addition to the Buy America requirements, the HSO must include the domestic preference requirements in all subawards including all contracts and purchase orders for work or products.