

the use of additional personnel for specific alcohol-impaired driving countermeasures, dedicated to enforcement of the laws (including regulations).

(d) Any funds released under paragraph (b)(2) of this section shall be used for highway safety improvement program activities eligible under 23 U.S.C. 148.

(e) Once the funds have been transferred or released under paragraph (b) of this section, the State may not revise the notification described in paragraph (a) of this section identifying how the funds will be programmed between alcohol-impaired driving programs and highway safety improvement program activities.

(f) The Federal share of the cost of any project carried out with the funds transferred or released under paragraph (b) of this section is 100 percent.

(g)(1) If any funds are transferred under paragraph (b)(1) of this section to the apportionment of a State under Section 402 for a fiscal year, the amount of obligation authority determined under paragraph (g)(2) of this section shall be transferred for carrying out projects described in paragraph (c) of this section.

(2) The obligation authority referred to in paragraph (g)(1) of this section shall be transferred from the obligation authority distributed for the fiscal year to the State for Federal-aid highways and highway safety construction programs, and the amount shall be determined by multiplying:

(i) The amount of funds transferred under paragraph (b)(1) of this section to the apportionment of the State under Section 402 for the fiscal year; by

(ii) The ratio that:

(A) The amount of obligation authority distributed for the fiscal year to the State for Federal-aid highways and highway safety construction programs; bears to

(B) The total of the sums apportioned to the State for Federal-aid highways and highway safety construction programs (excluding sums not subject to any obligation limitation) for the fiscal year.

(h) Notwithstanding any other provision of law, no limitation on the total obligations for highway safety programs under Section 402 shall apply to

funds transferred under paragraph (b)(1) of this section.

§ 1270.8 Procedures affecting States in noncompliance.

(a) Each fiscal year, each State determined to be in noncompliance with 23 U.S.C. 154 and this part will be advised of the funds reserved from apportionment under § 1270.6 in the notice of apportionments required under 23 U.S.C. 104(e), which normally occurs on October 1.

(b) Each State whose funds are reserved under § 1270.6 will be afforded 30 days from the date the funds are reserved to submit documentation showing why it is in compliance. Documentation must be submitted to the appropriate NHTSA Regional Administrator. If such documentation is provided, a reservation will remain in place on the State's affected funds while the agencies consider the information. If the agencies affirm the noncompliance determination, the State will be notified of the decision and the affected funds will be processed in accordance with the requests regarding the derivation and distribution of funds provided by the State as required by §§ 1270.6(b) and 1270.7(a).

[81 FR 67166, Sept. 30, 2016, as amended at 84 FR 2734, Feb. 8, 2019]

§ 1270.9 States' responsibilities regarding compliance.

(a) States are responsible for ensuring compliance with 23 U.S.C. 154 and this part.

(b) A State that has been determined to be in compliance with the requirements of 23 U.S.C. 154 and this part must promptly notify the appropriate NHTSA Regional Administrator in writing of any change or change in enforcement of the State's open container law, identifying the specific change(s).

PART 1275—REPEAT INTOXICATED DRIVER LAWS

Sec.

1275.1 Scope.

1275.2 Purpose.

1275.3 Definitions.

1275.4 Compliance criteria.

§ 1275.1

1275.5 “General practice” certification option.

1275.6 Reservation of funds.

1275.7 Use of reserved funds.

1275.8 Procedures affecting States in non-compliance.

1275.9 States’ responsibilities regarding compliance.

AUTHORITY: 23 U.S.C. 164; delegation of authority at 49 CFR 1.85 and 1.95.

SOURCE: 81 FR 67168, Sept. 30, 2016, unless otherwise noted.

§ 1275.1 Scope.

This part prescribes the requirements necessary to implement Section 164 of Title 23, United States Code, which encourages States to enact and enforce repeat intoxicated driver laws.

§ 1275.2 Purpose.

The purpose of this part is to specify the steps that States must take to avoid the reservation and transfer of Federal-aid highway funds for non-compliance with 23 U.S.C. 164.

§ 1275.3 Definitions.

As used in this part:

(a) *24-7 sobriety program* has the meaning given the term in §1300.23(b) of this title.

(b) *Alcohol concentration* means grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

(c) *Driving while intoxicated* means driving or being in actual physical control of a motor vehicle while having an alcohol concentration above the permitted limit as established by each State, or an equivalent non-BAC intoxicated driving offense.

(d) *Driving under the influence* has the same meaning as “driving while intoxicated.”

(e) *FHWA* means the Federal Highway Administration.

(f) *Ignition interlock system* means a State-certified system designed to prevent drivers from starting their car when their breath alcohol concentration is at or above a preset level.

(g) *Imprisonment* means confinement in a jail, minimum security facility, community corrections facility, house arrest with electronic monitoring, inpatient rehabilitation or treatment center, or other facility, provided the

23 CFR Ch. II (4-1-25 Edition)

individual under confinement is in fact being detained.

(h) *Mandatory sentence* means a sentence that cannot be waived, suspended, or otherwise reduced by the State.

(i) *Motor vehicle* means a vehicle driven or drawn by mechanical power and manufactured primarily for use on public highways, but does not include a vehicle operated solely on a rail line or a commercial vehicle.

(j) *NHTSA* means the National Highway Traffic Safety Administration.

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

(l) *Repeat intoxicated driver law* means a State law or combination of laws or programs that impose the minimum penalties specified in §1275.4 for all repeat intoxicated drivers.

(m) *State* means any of the 50 States, the District of Columbia or the Commonwealth of Puerto Rico.

§ 1275.4 Compliance criteria.

(a) To avoid the reservation of funds specified in §1275.6, a State must enact and enforce a repeat intoxicated driver law that establishes, as a minimum penalty, that all repeat intoxicated drivers:

(1) Receive, for a period of not less than one year, one or more of the following penalties:

(i) A suspension of all driving privileges;

(ii) A restriction on driving privileges that limits the individual to operating only motor vehicles with an ignition interlock device installed, unless a special exception described in paragraph (b) of this section applies; or

(iii) A restriction on driving privileges that limits the individual to operating motor vehicles only if participating in, and complying with, a 24-7 sobriety program;

(2) Receive an assessment of their degree of alcohol abuse, and treatment as appropriate; and

(3) Except as provided in §1275.5, receive a mandatory sentence of—

(i) Not less than five days (120 hours) of imprisonment or 30 days (240 hours)

NHTSA and FHWA, DOT

§ 1275.7

of community service for a second offense; and

(ii) Not less than ten days (240 hours) of imprisonment or 60 days (480 hours) of community service for a third or subsequent offense.

(b) *Special exceptions.* As used in paragraph (a)(1)(ii) of this section, *special exception* means an exception under a State alcohol-ignition interlock law for the following circumstances only:

(1) The individual is required to operate an employer's motor vehicle in the course and scope of employment and the business entity that owns the vehicle is not owned or controlled by the individual; or

(2) The individual is certified in writing by a physician as being unable to provide a deep lung breath sample for analysis by an ignition interlock device.

[81 FR 67168, Sept. 30, 2016, as amended at 84 FR 2734, Feb. 8, 2019]

§ 1275.5 “General practice” certification option.

(a) Notwithstanding §1275.4(a)(3), a State that otherwise meets the requirements of §1275.4 may comply with 23 U.S.C. 164 and this part based on the State's “general practice” for incarceration. A State electing this option shall—

(1) If the State law does not comply with the requirements of §1275.4(a)(3)(i), submit the following certification signed by the Governor's Representative for Highway Safety:

I, [Name], Governor's Representative for Highway Safety, certify that, in [State name], at least 75 percent of *repeat intoxicated drivers* receive a *mandatory sentence of imprisonment* for a second offense, as those terms are defined in 23 CFR 1275.3. This certification is based on data from the period of twelve consecutive months of the calendar year immediately preceding the date of this certification. I sign this certification based on personal knowledge and other appropriate inquiry. [Signature of Governor's Representative for Highway Safety] [Date of signature]

(2) If the State law does not comply with the requirements of §1275.4(a)(3)(ii), submit the following certification signed by the Governor's Representative for Highway Safety:

I, [Name], Governor's Representative for Highway Safety, certify that, in [State

name], at least 75 percent of *repeat intoxicated drivers* receive a *mandatory sentence of not less than ten days (240 hours) of imprisonment* for a third or subsequent offense, as those terms are defined in 23 CFR 1275.3. This certification is based on data from the period of twelve consecutive months of the calendar year immediately preceding the date of this certification. I sign this certification based on personal knowledge and other appropriate inquiry. [Signature of Governor's Representative for Highway Safety] [Date of signature]

(b) A State electing the option under this section must submit a new certification to the appropriate NHTSA Regional Administrator by not later than October 1 of each fiscal year to avoid the reservation of funds specified in §1275.6. The State is encouraged to submit the certification by August 15 to avoid any delay in release of funds on October 1 of that calendar year while NHTSA evaluates its certification.

§ 1275.6 Reservation of funds.

(a) On October 1 of each fiscal year, if a State has not enacted or is not enforcing a law that complies with §1275.4, FHWA will reserve an amount equal to 2.5 percent of the funds apportioned to the State for that fiscal year under each of 23 U.S.C. 104(b)(1) and (b)(2).

(b) The reservation of funds will be made based on proportionate amounts from each of the apportionments under 23 U.S.C. 104(b)(1) and (b)(2). The State's Department of Transportation will have 30 days from the date the funds are reserved under this section to notify FHWA, through the appropriate Division Administrator, if it would like to change the distribution of the amounts reserved between 23 U.S.C. 104(b)(1) and (b)(2).

§ 1275.7 Use of reserved funds.

(a) Not later than 60 days after the funds are reserved under §1275.6, the Governor's Representative for Highway Safety and the Chief Executive Officer of the State's Department of Transportation for each State must jointly identify, in writing to the appropriate NHTSA Regional Administrator and FHWA Division Administrator, how the funds will be programmed between alcohol-impaired driving programs under paragraph (c) of this section and highway safety improvement program

§ 1275.8

23 CFR Ch. II (4–1–25 Edition)

activities under paragraph (d) of this section. Funds will remain reserved until this notification is provided by the State.

(b) As soon as practicable after NHTSA and FHWA receive the notification described in paragraph (a) of this section, the Secretary will:

(1) Transfer the reserved funds identified by the State for alcohol-impaired driving programs under paragraph (c) of this section to the apportionment of the State under 23 U.S.C. 402; and

(2) Release the reserved funds identified by the State for highway safety improvement program activities under paragraph (d) of this section to the State Department of Transportation.

(c) Any funds transferred under paragraph (b)(1) of this section shall be—

(1) Used for approved projects for alcohol-impaired driving countermeasures; or

(2) Directed to State and local law enforcement agencies for enforcement of laws prohibiting driving while intoxicated or driving under the influence and other related laws (including regulations), including the purchase of equipment, the training of officers, and the use of additional personnel for specific alcohol-impaired driving countermeasures, dedicated to enforcement of the laws (including regulations).

(d) Any funds released under paragraph (b)(2) of this section shall be used for highway safety improvement program activities eligible under 23 U.S.C. 148.

(e) Once the funds have been transferred or released under paragraph (b) of this section, the State may not revise the notification described in paragraph (a) of this section identifying how the funds will be programmed between alcohol-impaired driving programs and highway safety improvement program activities.

(f) The Federal share of the cost of any project carried out with the funds transferred or released under paragraph (b) of this section is 100 percent.

(g)(1) If any funds are transferred under paragraph (b)(1) of this section to the apportionment of a State under Section 402 for a fiscal year, the amount of obligation authority determined under paragraph (g)(2) of this section shall be transferred for car-

rying out projects described in paragraph (c) of this section.

(2) The obligation authority referred to in paragraph (g)(1) of this section shall be transferred from the obligation authority distributed for the fiscal year to the State for Federal-aid highways and highway safety construction programs, and the amount shall be determined by multiplying:

(i) The amount of funds transferred under paragraph (b)(1) of this section to the apportionment of the State under Section 402 for the fiscal year; by

(ii) The ratio that:

(A) The amount of obligation authority distributed for the fiscal year to the State for Federal-aid highways and highway safety construction programs; bears to

(B) The total of the sums apportioned to the State for Federal-aid highways and highway safety construction programs (excluding sums not subject to any obligation limitation) for the fiscal year.

(h) Notwithstanding any other provision of law, no limitation on the total obligations for highway safety programs under Section 402 shall apply to funds transferred under paragraph (b)(1) of this section.

§ 1275.8 Procedures affecting States in noncompliance.

(a) Each fiscal year, each State determined to be in noncompliance with 23 U.S.C. 164 and this part will be advised of the funds reserved from apportionment under §1275.6 in the notice of apportionments required under 23 U.S.C. 104(e), which normally occurs on October 1.

(b) Each State whose funds are reserved under §1275.6 will be afforded 30 days from the date the funds are reserved to submit documentation showing why it is in compliance (which may include a “general practice” certification under §1275.5). Documentation must be submitted to the appropriate NHTSA Regional Administrator. If such documentation is provided, a reservation will remain in place on the State’s affected funds while the agencies consider the information. If the agencies affirm the noncompliance determination, the State will be notified of the decision and the affected funds

NHTSA and FHWA, DOT

§ 1275.9

will be processed in accordance with the requests regarding the derivation and distribution of funds provided by the State as required by §§1275.6(b) and 1275.7(a).

[81 FR 67168, Sept. 30, 2016, as amended at 84 FR 2734, Feb. 8, 2019]

§ 1275.9 States' responsibilities regarding compliance.

(a) States are responsible for ensuring compliance with 23 U.S.C. 164 and this part.

(b) A State that has been determined to be in compliance with the requirements of 23 U.S.C. 164 and this part must promptly notify the appropriate NHTSA Regional Administrator in writing of any change or change in enforcement of the State's repeat intoxicated driver law, identifying the specific change(s).

PARTS 1276–1299 [RESERVED]