

HIGHWAY SAFETY IMPROVEMENT PROGRAM (23 USC 148 Requirements)

DEFINITIONS

- The term “high risk rural road” means any roadway functionally classified as a rural major or minor collector or a rural local road—
 - (A) on which the accident rate for fatalities and incapacitating injuries exceeds the statewide average for those functional classes of roadway; or
 - (B) that will likely have increases in traffic volume that are likely to create an accident rate for fatalities and incapacitating injuries that exceeds the statewide average for those functional classes of roadway.
- The term “highway safety improvement program” means the program carried out under this section.
- The term “highway safety improvement project” means a project described in the State strategic highway safety plan that—
 - (i) corrects or improves a hazardous road location or feature; or
 - (ii) addresses a highway safety problem
- The term “highway safety improvement project” includes a project for one or more of the following:
 - Intersection safety improvement.
 - Pavement and shoulder widening (including addition of a passing lane to remedy an unsafe condition).
 - Installation of rumble strips or another warning device, if the rumble strips or other warning devices do not adversely affect the safety or mobility of bicyclists, pedestrians, and the disabled.
 - Installation of a skid-resistant surface at an intersection or other location with a high frequency of accidents.
 - An improvement for pedestrian or bicyclist safety or safety of the disabled.
 - Construction of any project for the elimination of hazards at a railway-highway crossing that is eligible for funding under section 130, including the separation or protection of grades at railway-highway crossings.
 - Construction of a railway-highway crossing safety feature, including installation of protective devices.
 - The conduct of a model traffic enforcement activity at a railway-highway crossing.
 - Construction of a traffic calming feature.
 - Elimination of a roadside obstacle.
 - Improvement of highway signage and pavement markings.
 - Installation of a priority control system for emergency vehicles at signalized intersections.

- Installation of a traffic control or other warning device at a location with high accident potential.
- Safety-conscious planning.
- Improvement in the collection and analysis of crash data.
- Planning, integrated interoperable emergency communications equipment, operational activities, or traffic enforcement activities (including police assistance) relating to workzone safety.
- Installation of guardrails, barriers (including barriers between construction work zones and traffic lanes for the safety of motorists and workers) and crash attenuators.
- The addition or retrofitting of structures or other measures to eliminate or reduce accidents involving vehicles and wildlife.
- Installation and maintenance of signs (including fluorescent, yellow-green signs) at pedestrian-bicycle crossings and in school zones.
- Construction and yellow-green signs at pedestrian-bicycle crossings and in school zones.
- Construction and operational improvements on high risk rural roads.

➤ The term “safety project under any other section” means a project carried out for the purpose of safety under any other section of Title 23, USC.

➤ The term “State highway safety improvement program” means projects or strategies included in the State strategic highway safety plan carried out as part of the State transportation improvement program.

➤ The term “State strategic highway safety plan” means a plan developed by the State transportation department that comprehensively identifies and analyzes highway safety problems and opportunities.

PROGRAM

➤ **PURPOSE**—The purpose of the highway safety improvement program shall be to achieve a significant reduction in traffic fatalities and serious injuries on public roads.

ELIGIBILITY

➤ To obligate funds apportioned under the new Section 104(b)(5) {Highway Safety Improvement Program} to carry out this section, a State shall have in effect a State Highway Safety Improvement Program in which the State—

(A) develops and implements a state strategic highway safety plan that identifies and analyzes highway safety problems and opportunities;

(B) produces a program of projects or strategies to reduce identified safety problems;

(C) evaluates the plan on a regular basis to ensure the accuracy of the data and priority of proposed improvements; and

(D) submits to the Secretary an annual report (*see expanded discussion of reports on pg. 4-5 of this doc.*)

ELIGIBLE PROJECTS

- In General—A State may obligate funds apportioned to the State under the Highway Safety Improvement Program to carry out -

Any highway safety improvement project on any public road or publicly owned bicycle or pedestrian pathway or trail; or

As provided under **Flexible Funding for States With a Strategic Highway Safety Plan**, other safety projects

- Use of other funding for safety

Effect of Section—Nothing in this section prohibits the use of funds made available under other provisions of this title for highway safety improvement projects.

Use of Other funds—States are encouraged to address the full scope of their safety needs and opportunities by using funds made available under other provisions of this title (except a provision that specifically prohibits that use).

FLEXIBLE FUNDING FOR STATES WITH A STRATEGIC HIGHWAY SAFETY PLAN

- To further the implementation of a State strategic highway safety plan, a State may use up to 10 percent of the amount of funds apportioned to the State under the Highway Safety Improvement Program for a fiscal year to carry out safety projects under any other section as provided in the State strategic highway safety plan if the State certifies that-

(A) the State has met needs in the State relating to railway-highway crossings; and

(B) the State has met the State's infrastructure safety needs relating to highway safety improvement projects

- Nothing in this subsection requires a State to revise any State process, plan, or program in effect on the date of enactment of this section

HIGH RISK RURAL ROADS

After making an apportionment under the Highway Safety Improvement Program for a fiscal year beginning after September 30, 2005, the Secretary shall ensure, from amounts made available to carry out this section for such a fiscal year, that a total of \$90,000,000 of such apportionment is set aside by the States, proportionally according to the share of each State of the total amount so apportioned, for use only for construction and operational improvements on high risk rural roads.

- A State may use funds apportioned to the State pursuant to this subsection for any project under this section if the State certifies to the Secretary that the State has met all of its needs for construction and operational improvements on high risk rural roads.

ELIMINATION OF HAZARDS RELATING TO RAILWAY-HIGHWAY CROSSINGS

- Before making an apportionment under the Highway Safety Improvement Program for a fiscal year, the Secretary shall set aside, from amounts made available to carry out the highway safety improvement program under section 148 for such fiscal year, at least \$220,000,000 for the elimination of hazards and the installation of protective devices at rail-highway crossings.
- If a State demonstrates to the satisfaction of the Secretary that the State has met all its needs for installation of protective devices at railway-highway crossings, the State may use funds made available by this section for other purposes under this subsection.

REPORTS

A State shall submit to the Secretary a report that:

(A) describes progress being made to implement highway safety improvement projects under this section;

(B) assesses the effectiveness of those improvements; and

(C) describes the extent to which the improvements funded under this section contribute to the goals of:

- (i) reducing the number of fatalities on roadways;
- (ii) reducing the number of roadway related injuries;
- (iii) reducing the occurrence of roadway related crashes;
- (iv) mitigating the consequences of roadway-related crashes; and
- (v) reducing the occurrences of crashes at railway-highway crossings.

- **CONTENTS; SCHEDULE.**—The Secretary shall establish the content and schedule for this report.

TRANSPARENCY—States shall also submit to the Secretary an annual report that describes in a clearly understandable fashion, not less than 5 percent of locations determined by the State as exhibiting the most severe safety needs, using such criteria as the State determines to be appropriate to establish the relative severity of those locations, in terms of accidents, injuries, deaths, traffic volume levels, and other relevant data; and containing an assessment of—

- (i) potential remedies to hazardous locations identified;
- (ii) estimated costs associated with those remedies; and
- (iii) impediments to implementation other than cost associated with those remedies.

These reports shall be made available to the public by the Secretary through—

- (A) the Web site of the Department; and
- (B) such other means as the Secretary determines to be appropriate.

- **DISCOVERY AND ADMISSION INTO EVIDENCE OF CERTAIN REPORTS, SURVEYS, AND INFORMATION**—Notwithstanding any other provision of law, reports, surveys, schedules, lists, or data compiled or collected for any purpose directly relating to the reporting requirements under the State highway safety improvement program, or published by the Secretary, shall not be subject to discovery or admitted into evidence in a Federal or State court proceeding or considered for other purposes in any action for damages arising from any occurrence at a location identified or addressed in such reports, surveys, schedules, lists, or other data.

(Note that an additional report on Section 130 efforts is also required; see pg. 8)

FEDERAL SHARE OF HIGHWAY SAFETY IMPROVEMENT PROJECTS

- Except as provided in sections 120 and 130, the Federal share of the cost of a highway safety improvement carried out with funds apportioned to a State under the Highway Safety Improvement Program shall be 90 percent.

APPORTIONMENT FORMULA

- For the highway safety improvement program, in accordance with the following formula:
 - (i) 33 1/3 percent of the apportionments in the ratio that—
 - (I) the total lane miles of Federal-aid highways in each State bears to
 - (II) the total lane miles of Federal-aid highways in all States;
 - (ii) 33 1/3 percent of the apportionments in the ratio that—

- (I) the total vehicle miles traveled on lanes on Federal-aid highways in each State; bears to
- (II) the total vehicle miles traveled on lanes on Federal-aid highways in all States.
- (iii) 32 1/3 percent of the apportionment is in the ratio that
 - (I) the number of fatalities on the Federal-aid system in each State in the latest fiscal year for which data are available; bears to
 - (II) the number of fatalities on the Federal-aid system in all States in the latest fiscal year for which data are available.

- **MINIMUM APPORTIONMENT** Notwithstanding the above apportionment formula, each State shall receive a minimum of 1/2 of 1 percent of the funds apportioned under the Highway Safety Improvement Program.

TRANSITION

- **Implementation**
Except as provided below (Interim Period), the Secretary shall approve obligation of funds apportioned under the Highway Safety Improvement Program, only if, not later than October 1, 2006, a State has developed and implemented a State strategic highway safety plan as required pursuant to Section 148(c).
- **Interim Period**
 - (A) Before October 1 of the second fiscal year after the date of the enactment of this Act and until the date on which a state develops and implements a State strategic highway safety plan, the Secretary shall apportion funds to a state for the highway safety Improvement program and the state may obligate funds apportioned to the State for the highway safety improvement program under section 148 for projects that were eligible for funding under sections 130 and 152 of that title as in effect on the day before the date of enactment of this Act.
 - (B) **No Strategic Highway Safety Plan** - If a State has not developed a strategic highway safety plan by October 1, 2007, the state shall receive for the highway safety improvement program for each subsequent fiscal year until the date of development of such plan an amount that equals the amount apportioned to the State for that program for fiscal year 2007.

HIGH RISK RURAL ROADS

- **Definition:** The term "high risk rural road" means any roadway functionally classified as a rural major or minor collector or a rural local road –
 - (A) On which the crash rate for fatalities and incapacitating injuries exceeds the statewide average for those functional classes of roadway; or

(B) That will likely have increases in traffic volume that are likely to create a crash rate for fatalities and incapacitating injuries that exceeds the statewide average for those functional classes of roadway;

- **Annual Set Aside Funding:** Section 148 requires that a total of \$90,000,000 be set aside by the States for use only for construction and operational improvements on high risk rural roads.

- **Apportionment:**
 - \$90,000,000 apportioned proportionately according to the share of each State of the total amount apportioned under Section 148. Each State shall receive a minimum of 1/2 of 1% of the set-aside funds.

- **Federal Share:** Ninety percent (90%) of the cost except as provided by Section 120(c) - Increased Federal Share for Certain Safety Projects.

- **Data Needs:** Crash data will be needed to develop crash rates for fatalities and incapacitating injuries on a statewide and corridor basis for rural major or minor collectors and rural local roads. Projected traffic volumes may be used to justify a rural road as a future high risk roadway if the additional traffic will likely create a crash rate that is higher than the statewide average.

- **Special Rule:** If a State certifies to the Secretary that it has met all of its needs for construction and operational improvements on high risk rural roads, the State may use these funds for any project under Section 148.

- **Obligation of funds**

- **Interim Period:** Before October 1, 2006 and until the State develops and implements a SHSP, funds will be apportioned and may be obligated for projects that were eligible for funding under the previous Section 130 and 152 programs.
- Once a State has developed a SHSP, the State may obligate funds as apportioned.
- If no SHSP is developed by October 1, 2007, the State will receive the amount apportioned to that State for fiscal year 2007. This amount will remain fixed for each subsequent fiscal year until the date of development of a SHSP.

23 USC130 as Amended by SAFETEA-LU
(Title I, Subtitle D, Section 1401)

Elimination of Hazards Relating to Railway-Highway Crossings

- **Annual Set Aside Funding:** Section 130(e) is amended to state that at least \$220M is “set aside” from amounts made available to carry out the Highway Safety Improvement Program for the elimination of hazards and the installation of protective devices at railway-highway crossings. At least 50% of the set aside funds shall be available for the installation of protective devices at railway-highway crossings.
- **Special Rule:** If a State demonstrates to the satisfaction of the Secretary that it has met all its needs for installation of protective devices at railway-highway crossings, the State may use funds made available by this section (Section 130 “set aside”) for other purposes under this subsection (Section 130(e)). [Those other purposes generally being elimination of hazards at railway-highway crossings.]
- **Eligible Projects:**
 - Installation of grade crossing protective devices¹ at or near grade crossings for the specific benefit of the road user at the crossing)
 - Separation grades at crossings
 - Reconstruction of existing railroad grade crossing structures
 - Relocation of highways to eliminate grade crossings
 - Relocation of a portion of a railway, only if less costly than the above methods
- **Apportionment:**
 - Fifty percent of the funds set aside shall be apportioned pursuant to section 104(b)(3)(A).
 - Fifty percent of the funds set aside shall be apportioned based on the ratio of total public railway-highway crossings in each State to the total number of public railway-highway crossings in all States.
 - The minimum apportionment for each State is 1/2 of 1% of the set aside funds.
- **Obligation of funds:** Funds allocated under this section (Section 130 set-aside) are available for 5 years after the end of the fiscal year in which the funds are allocated. Funds are subject to the overall Federal aid obligation limitation.
- **Federal Share:** Ninety percent (90%) of the cost, except as provided in Section 1201, effective October 1, 2005.
- **Reports to Congress:** No later than April 1, 2006, and every two years thereafter, the Secretary shall submit a report to Congress pursuant to section 130(g).
- **Data compilation and analyses:** A new section, 130(k) has been added that states that no more than 2% of the funds apportioned to a State to carry out Section 130 may be used for compilation and analysis of data in support of activities required by section 130(g) (Biennial Reports to Congress).

¹ The FHWA has defined the following grade crossing improvements as “protective devices”: installation of standard signs and pavement markings; installation or replacement of active warning devices; upgrading active warning devices, including track circuit improvements and interconnections with highway traffic signals; crossing illumination; crossing surface improvements; general site improvements.