

Dear Applicant:

All States require motorcycle riders to be licensed or endorsed to operate a motorcycle on public roads. However, National data indicate one out of four motorcycle riders (25%) involved in fatal crashes in 2008 were riding their vehicles with invalid licenses at the time of the collision, while only 12 percent of drivers of passenger vehicles in fatal crashes did not have valid licenses.

Enacting effective countermeasures to increase the licensure of motorcyclists is a huge challenge for the State Highway Safety Office that requires the cooperation of the State's Licensing Authority, agencies collecting and analyzing data, law enforcement, and judicial services. In an effort to develop initiatives that can be implemented in States to increase the number of properly endorsed motorcyclists, NHTSA anticipates funding competitive cooperative agreements for a minimum of 1 year and a maximum of 3 years. To this end, this cooperative agreement will support the development, implementation, and evaluation of up to three program efforts designed to increase the licensure of motorcycle riders.

The National Highway Traffic Safety Administration is requesting applications to support implementation of State programs to increase the number of properly endorsed motorcyclists. The agency has approximately \$335,000 available for this effort. The award will depend on a State's ability to successfully complete the activities described in the attached Request for Application. You must submit your application package by **1500 EST on 6/23/2010**.

Please submit your application, as well as any administrative or technical questions to **nhtsa~~oam~~@dot.gov**. The application requirements are provided in the Request for Application. Unnecessarily elaborate applications beyond what is sufficient to present a complete and effective response to this invitation are discouraged.

Thank you for considering this project. I look forward to receiving your application.

Sincerely,

Matthew Donahue, Contract Specialist
National Highway Traffic Safety Administration
Office of Acquisition Management
1200 New Jersey Avenue, SE
Washington, DC 20590

Enclosures

REQUEST FOR APPLICATION

Demonstration to Increase the Number of Properly Endorsed Motorcyclists

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UNITED STATES DEPARTMENT OF TRANSPORTATION**National Highway Traffic Safety Administration (NHTSA)****Discretionary Cooperative Agreement Program
Demonstration to Increase the Number of Properly Endorsed Motorcyclists****ARTICLE I. SUPPLEMENTARY INFORMATION****A. BACKGROUND**

In 2008 there were 5,290 motorcyclist (both riders and passengers) fatalities in the United States. This is an increase of 2% from 2007, and represents over 3,000 more fatalities than in 1997. There were also 96,000 persons injured in motorcycle crashes in 2008.¹ Reducing motorcycle crashes is a top priority at the National Highway Traffic Safety Administration (NHTSA).

Nationwide, 25% of motorcycle riders involved in fatal crashes were riding with invalid licenses; while only 12% of drivers of passenger vehicles did not have a valid license. This over-representation of non-valid licenses is a concern.

NHTSA, the Motorcycle Safety Foundation (MSF), and a partnership representing various motorcycle interests, published the National Agenda for Motorcycle Safety (NAMS)². NAMS provided a comprehensive plan for States and organizations to use to improve motorcycle safety. NAMS identified licensing as a significant component of a motorcycle safety program, and listed as an essential recommendation the enforcement of penalties for operating a motorcycle without a proper endorsement.

All 50 States and the District of Columbia require motorcyclists to obtain a motorcycle operator license or endorsement before they ride on public highways. The goal of licensing is to assure that motorcyclists have the minimum skills needed to operate a motorcycle safely (NHTSA, 2000a, Licensing).

At the request of a State, NHTSA conducts a technical assessment of the State's motorcycle safety program. The evaluation criterion is based NHTSA's Uniform Guidelines for State Highway Safety Programs, Highway Safety Program Guideline (HSPG) #3, Motorcycle Safety. A recent NHTSA report summarizes the outcome of recommendations from nine of the State motorcycle assessments. Though considered a critical area, of all categories, motorcycle licensing had the fewest number of recommendations implemented.

Countermeasures that work reports a high use and low cost of motorcycle licensing, however reports the effectiveness as uncertain. Though there are recommendations on the content and

¹ Traffic Safety Facts: Motorcycles, 2008 Data. DOT HS 811 159. National Center for Statistics and Analysis, Washington, DC, National Highway Traffic Safety Administration,

² National Highway Traffic Safety Administration. (2000). National Agenda for Motorcycle Safety, DOT HS 809 156, Washington, DC: NHTSA.

operation of the licensing process, there are no specific recommendations to increase licensure or to determine the effectiveness of that increase.

The National Cooperative Highway Research Program (NCHRP) Report 500, Volume 22: A Guide for Addressing Collisions Involving Motorcycles, describes strategies Maryland and Minnesota used to increase proper licensing for motorcyclists. Maryland compared their vehicle registration and driver licensing files. A letter was sent to each owner of a registered motorcycle who did not have a motorcycle operator's license. This quick and inexpensive strategy caused 1,700 owners to become licensed within four months.

The state of Washington has been concerned about the percentage on riders without a proper endorsement. A motorcycle safety task force, comprised of representatives from motorcycle rider groups and state agencies, noted that the most common contributing factors in Washington's motorcycle crashes were lane error, speeding, alcohol, and inattention. The task force concluded that while many factors contribute to crashes, the most important factors were within control of the rider. The task force also acknowledged the large percentage of un-endorsed riders in fatal crashes each year. The group recommended that rider training be increased significantly, and recommended *impoundment of a motorcycle if the operator does not have a valid license*.³ Washington's legislature took action, and Washington's law, effective as of July 22, 2007, states that "... a police officer may take custody of a vehicle, at his or her discretion, and provide for its prompt removal to a place of safety under any of the following circumstances..." and then (g) "Upon determining that a person is operating a motor vehicle without a valid and, if required, a specially endorsed driver's license or a license that has been expired for 90 days or more."⁴ Fifteen states permit vehicle impoundment for impaired driving or driving on a suspended license offence.⁵ Washington is unique in permitting impoundment of a vehicle for a rider without a proper endorsement. This initiative is one of the first that links enforcement initiatives to licensure. Media coverage of the initiative has provided an extensive communications component.

B. OBJECTIVE

The objective of this cooperative agreement is to provide funds for developing, implementing, and evaluating initiatives that increase the licensure of motorcycle riders. Applications should define their State's goal on increasing motorcycle licensure and the manner in which initiatives will be measured and evaluated to determine success. Applications should also address how the grantee will leverage partnerships with other entities in the State to support the objective(s) of this cooperative agreement. Applicants should provide reference to existing policy or statute that will support their initiatives.

C. SCOPE OF WORK / PURPOSE

The purpose of this cooperative agreement program is to support the development, implementation of initiatives that will increase the licensure of motorcyclists.

³ Motorcycle Rider Safety Task Force, Final Report. June 30, 2006. Accessed from <http://www.dol.wa.gov/about/reports/mototaskforce.pdf> in November 2008.

⁴ RCW 46.55.113

⁵ Voas, R., McKnight, A., Falb, T., and Fell, J. (2008) Update of Vehicle Sanction Laws and Their Application, Volume I: Summary, DOT HS 811 028. Washington, DC: National Highway Traffic Safety Administration

Specific objectives for this cooperative agreement program are as follows:

1. Define the scope and status of motorcycle licensure in the State and design an initiative to increase proper licensure among motorcycle operators.
2. Determine how existing policy or law can be used to support the proposed initiative to increase motorcycle operator licensure.
3. Implement the plan based on the factors described in 1 and 2, above.
4. Collect appropriate data to evaluate the effectiveness of the initiative. The evaluation should include process and outcome measures. The evaluation may include but not be limited to the following: the ability to use available statute and policy in support of the initiative, the steps required linking the data required for effective analysis, methods of overcoming barriers or challenges, and effectiveness of the program in increasing proper licensure among motorcycle operators.

Each Grantee will be expected to implement their planned approach to increase motorcycle licensure. Project length will vary depending on the scope of the proposed effort. However, projects will be considered for a minimum of one year and a maximum of three years.

ARTICLE II. NHTSA INVOLVEMENT

NHTSA will be substantially involved in all activities undertaken as part of the cooperative agreement program and will:

1. Provide a Contracting Officer's Technical Representative (COTR) to participate in the planning and management of this cooperative agreement and to coordinate activities between the Grantee and NHTSA.
2. Provide information and technical assistance from NHTSA and assist in obtaining examples of best practices from other States as determined appropriate by the COTR.
3. Serve as a liaison between NHTSA Headquarters, Regional Offices, and others (Federal, State and local) interested in increasing motorcycle licensure and promoting the activities of the grantee.
4. Review and provide comments on program content, reviews materials, and evaluation activities.
5. Stimulate the transfer of information among grant recipients and others engaged in motorcycle safety activities.

ARTICLE III. FUNDING

NHTSA anticipates funding up to three projects for up to three years from the effective date of award for a total of \$335,000. The total number of awards will depend on the nature and number of the projects submitted for consideration. Given the amount of funds available for this effort, applicants are strongly encouraged to seek other funding opportunities to supplement the Federal funds. At the discretion of the government, funds may be obligated fully at the time of award of the

cooperative agreement or incrementally over the period of the cooperative agreement. Nothing in this solicitation should be constructed as committing NHTSA to make any award.

ARTICLE IV. PERIOD OF PERFORMANCE

The period of performance for this cooperative agreement will be up to 3 years from the effective date of award. However, the actual period of performance will depend on the scope of work for the submitted project.

ARTICLE V. TERMINATION

The Government may terminate this agreement in whole or in part, upon providing written notification to the Grantee, if the Contracting Officer determines that a termination is in the Government's best interest or the Grantee defaults in performing the work and fails to cure the default within the time specified in writing by the Contracting Officer. The Grantee may terminate this agreement by providing NHTSA with a sixty (60) day advance written notice. The Grantee must deliver acceptable reports on work accomplished as part of any such termination process.

ARTICLE VI. ELIGIBILITY REQUIREMENTS

To be eligible to participate in this cooperative agreement, applicants must meet the following special competencies:

- a. The applicant (s) should represent the entity serves as the State Highway Safety Office.
- b. Considering the extent of the problem and the current needs of the State's motorcycle licensing process, show that the requested funding will enable the applicant to make significant progress toward improving or enhancing their motorcycle licensing program;
- c. Have demonstrated leadership to support such a program;
- d. Have demonstrated willingness to accept a high degree of NHTSA involvement in proposed effort.

ARTICLE VII. CONFLICT OF INTEREST

It is U.S. DOT policy to award Cooperative Agreements only to those Applicants whose objectivity is not impaired because of any related past, present, or planned interest, financial or otherwise, in organizations regulated by U.S. DOT, or in organizations whose interests may be substantially affected by Departmental activities and which is related to work specified in this Cooperative Agreement Announcement. Based on this policy, if, after award, the Grantee discovers a conflict of interest with respect to the Cooperative Agreement that could reasonably have been known prior to the award, an immediate and full disclosure shall be made in writing to the Contracting Officer. The disclosure shall include a full description of the conflict along with a description of the action the recipient has taken, or proposes to take, to avoid or mitigate such conflict.

- (a) The Applicant shall provide a statement in its proposal which describes in a concise manner all past, present or planned organizational, financial, contractual or other interest(s) with an

organization regulated by U.S. DOT, or with an organization whose interests may be affected substantially by Departmental activities, and which is related to the work under this Cooperative Agreement Announcement. The interest(s) described shall include those of the Applicant, its affiliates, proposed consultants, proposed subcontractors and key personnel of any of the above. Past interest shall be limited to within one year of the date of the Applicant's technical proposal. Key personnel shall include any person owning more than 20% interest in the Applicant, and the Applicant's corporate officers, its senior managers and any employee who is responsible for making a decision or taking an action under this Cooperative Agreement where the decision or action can have an economic or other impact on the interests of a regulated or affected organization.

(b) The Applicant shall describe in detail why it believes, in light of the interest(s) identified in (a) above, that performance of the proposed cooperative agreement can be accomplished in an impartial and objective manner.

(c) In the absence of any relevant interest identified in (a) above, the Applicant shall submit in its proposal a statement certifying that to its best knowledge and belief no affiliation exists relevant to possible conflicts of interest. The Applicant must obtain the same information from potential subcontractors prior to award of a subcontract under the resultant Cooperative Agreement.

(d) The NHTSA Contracting Officer will review the statement submitted and may require additional relevant information from the Applicant. All such information, and any other relevant information known to U.S. DOT, will be used to determine whether an award to the Applicant may create a conflict of interest. If any such conflict of interest is found to exist, the NHTSA Contracting Officer may (1) disqualify the Applicant, or (2) determine that it is otherwise in the best interest of the agency to contract with the Applicant and include appropriate provisions to mitigate or avoid such conflict in the Cooperative Agreement awarded.

(e) The refusal to provide the disclosure or representation, or any additional information required, may result in disqualification of the Applicant for award. If nondisclosure or misrepresentation is discovered after award, the resulting Cooperative Agreement may be terminated. If after award, the Grantee discovers a conflict of interest with respect to the Cooperative Agreement awarded as a result of this Cooperative Agreement Announcement, which could not reasonably have been known prior to award, an immediate and full disclosure shall be made in writing to the NHTSA Contracting Officer. The disclosure shall include a full description of the conflict, a description of the action the Grantee has taken, or proposes to take, to avoid, or mitigate such conflict. The NHTSA Contracting Officer may, however, terminate the Cooperative Agreement for convenience if he or she deems that termination is in the best interest of the Government.

ARTICLE VIII. DELIVERABLES AND REPORTING REQUIREMENTS

A. Monthly Progress Reports:

The grantee shall supply Monthly Progress Reports to the COTR within ten (10) days following the month being reported. Progress Reports must include a summary of the previous month's

activities and accomplishments as well as the proposed activities for the upcoming month(s). Any decisions and actions required in the upcoming month(s) should be included in the Progress Report. Any problems or issues that may arise that require the Contracting Officer's Technical Representative (COTR) or Contracting Officer (CO) attention should be clearly identified in a specific, identified section of the Progress Report.

B. Initial and Subsequent Meetings with COTR:

The grantee will participate in a 'kick off meeting' with the COTR and appropriate NHTSA staff in Washington D.C. at NHTSA's offices (or by teleconference) to discuss and refine the development, implementation, and evaluation of the project within 30 days of the effective date of the cooperative agreement. The grantee will prepare a 20 to 30 minute presentation describing the project and will be prepared to answer questions from the COTR and others present at the briefing. After this initial meeting with the COTR, the grantee should meet at least once a year with the COTR in Washington D.C. at NHTSA's offices to discuss the project's progress and results. These meetings will be a minimum of 4 hours in length.

C. Revised Project Plan:

If needed, the grantee will submit a revised project plan incorporating verbal and written comments from the COTR. This revised plan (if applicable) will be due no more than one (1) month from date of the initial meeting with COTR.

D. Draft Final Report:

The grantee will prepare a Draft Final Report that includes a description of the project, issue addressed, program implementation (if relevant), evaluation strategies, findings and recommendations. With regard to information transfer, it is important to know what worked and what did not work, under what circumstances, what can be done to enhance replication in similar communities, and what can be done to avoid potential problems for future replication of the project. This is true even if the grantee reviewed and documented existing programs. The grantee will submit the Draft Final Report to the COTR 60 days prior to the end of the performance period. The COTR will review the draft report and provide comments to the grantee within 30 days of receipt of the document.

E. Final Report:

The grantee will revise the Draft Final Report to reflect the COTR's comments. The revised final report will be delivered to the COTR 15 days before the end of the performance period.

F. Final project briefing to NHTSA and a presentation to a national meeting:

The grantee will deliver a briefing in Washington, DC at NHTSA's offices to the COTR and appropriate NHTSA staff to review the project implementation, evaluation, and results. This presentation shall last no less than 30 minutes and the grantee shall be prepared to answer questions from the briefing's attendees.

In consultation with the COTR, the grantee will select a national meeting of motorcycle safety stakeholders to deliver a presentation of the project and its effectiveness.

All briefings will be accompanied by Microsoft PowerPoint presentations.

ARTICLE IX. REQUIREMENTS FOR PRINTED MATERIAL

The print materials shall be provided to NHTSA in Microsoft Word text.

During all phases of program development, draft program content and materials shall be provided to the COTR, as appropriate, for approval and coordination within NHTSA. If applicable, draft materials shall also be used for program message testing (the method of testing chosen in consultation with and approved by the COTR) to ensure that the content and messages are clear, easily understood and produce the desired effect with intended audiences.

All HTML deliverables rendered under this contract must comply with the accessibility standards at 36 CFR 1194.22 that implements Section 508 of the Rehabilitation Act of 1973, as amended. This standard is available for viewing at the Access Board web site at: <http://www.access-board.gov/sec508/guide/1194.22.htm>

Unless otherwise indicated, the contractor represents by signature of this assistance agreement contract that all deliverables comply with the Access Board standards.

ARTICLE X. APPLICATION PROCEDURE

The application must include a reference to NHTSA Cooperative Agreement Number **DTNH22-10-R-00364**. Unnecessarily elaborate applications beyond what is sufficient to present a complete and effective response to this request are not desired. Only complete application packages received on or prior to the established due date and time will be considered. *Note: Programs with multiple partners must submit a single application. Only one award will be made per eligible program.*

If not utilizing the Grants.gov “Apply” function:

The applicant shall submit five (5) copies of its application, on CD-ROM (formatted as Microsoft “Word”, “Excel” or PDF documents) to the following address by no later than 3:00 PM EDT, **6/23/2010**.

US Department of Transportation
National Highway Traffic Safety Administration
Office of Acquisition Management (NPO-320)
1200 New Jersey Avenue, S.E., W51-115
Washington, DC 20590
ATTN: **Matthew Donahue**

Important: The timely submission of application packages is the ***sole responsibility of the applicant***. All prospective applicants are cautioned that, due to increased security concerns, documents transmitted via US Mail can be delayed. It is therefore recommended that when transmitting hardcopy or cd-rom applications, methods other than U.S. Mail be used.

ARTICLE XI. APPLICATION CONTENTS

The application package must include:

A. Budget Information

The Cost Proposal shall include the following information:

1. One original hardcopy of Office of Management and Budget (OMB) Standard Form (SF) 424 (Rev. 9-2003, including 424A and 424B), "Application for Federal Assistance," with the required information filled in and certified assurances signed. These forms are available at www.whitehouse.gov/OMB/grants/index.html.
2. Each Applicant shall clearly and thoroughly set forth its proposed costs by submitting a spreadsheet or spreadsheets, (along with any appropriate subsidiary schedules and attachments), in its application. Spreadsheets shall be submitted in either Excel or PDF formats. The applicant must justify each proposed cost by explaining how each cost was calculated and determined to be fair and reasonable. The applicant should also include copies of any supporting documentation it may have (i.e. indirect cost rate agreements, etc.) The Applicant's cost proposal shall cover not only the costs proposed within the prime recipient's organization, but also the costs proposed to be incurred by every lower-tier organization serving under the prime recipient (e.g., sub-recipients, consultants, subcontractors, and partners). The cost proposal shall clearly identify and display the following information as applicable:
 - Labor rates. The direct labor rates by person/labor category, showing the number of proposed hours for each particular person/labor category, and also showing the starting unloaded hourly pay rates for each person/labor category and any pay "escalations" that are being proposed.
 - Non-federal contributed amounts. The amount of the budget that is to be paid with funds identified from non-federal sources. Applicants shall ensure that all proposed non-federal contributions are reasonable, allowable, and allocable costs according to the cost principles stated in OMB Circular A-102 or any other applicable OMB Circular.
 - Indirect cost percentage and amounts. The indirect cost percentage rates and dollar amounts for items such as overhead, fringe benefits, general and administrative (G&A) and/or facilities & administration (F&A). Applicants shall provide support for each particular indirect cost element that is contained in their proposal including copies of any negotiated rate agreements. This information shall be stated as a percentage rate and a total dollar amount.
 - Travel costs. The travel costs by person-trip for any proposed travel, including the point of origin, outbound destination, purpose of the trip, estimated number of days, and the

estimated travel costs for each trip, showing air fare, lodging and food and incidental per diem costs.

- Other direct costs. Any proposed other direct costs that are not already included as part of another cost category (such as overhead). The term “other direct costs” typically includes the following: (1) photocopying; (2) postage; (3) long distance telephone calls; (4) facsimile; (fax) transmissions; (5) overnight shipping (6) materials; (7) Equipment, including computer equipment or computer software, where not included as part of another cost category.
 - Fee. No fee may be proposed for the applicant or any applicant partner. However, fees may be proposed for vendors and/or subcontractors.
3. If any sub-recipient, any sub-Contractor, any affiliate, any partner, any joint venture, any other entity other than the Applicant’s own organization, or any individual consultant will be used in carrying out the work of this project, full support for the costs and pricing proposed for each such entity or individual consultant shall be provided. The Applicant shall include for each such entity or individual consultant being proposed, the same kinds of cost and pricing support, and the same level of detail, as are required above to support the general applicant’s own internal costs. For each proposed individual consultant, the person’s proposed starting hourly pay rate should be supported by at least two recent invoices wherein that consultant has both: (1) billed a client at an hourly pay rate equal to or greater than the one being proposed as the starting rate under this Cooperative Agreement, and (2) been paid by the client, at the hourly pay rate billed in that invoice. If the proposed individual consultant’s work history does not include two such invoices, please provide an explanation.
 4. Non-Federal Funding
Non-Federal funding sources are encouraged. Since activities may be performed with a variety of financial resources, applicants need to fully identify all project costs and their funding sources in the proposed budget. The proposed budget must identify all funding sources in sufficient detail to demonstrate that the overall objectives of the project will be met. All other factors being equal, preference will be given to those that have proposed cost-sharing strategies and/or other proposed funding sources in addition to those in this announcement.
 5. Additional Cost Information
The Government reserves the right to request, at any time after the receipt of applications and before award, additional cost or price information necessary to perform an analysis. However, because an award may be made without negotiations and without any discussion, each Applicant shall document and support the proposed costs so thoroughly that no additional information is needed by NHTSA.
 6. Special Equipment
Facilities and Special Equipment, Including Tooling: It is the policy of NHTSA not to provide general or special purpose equipment, facilities, or tooling of a capital nature except

in unusual circumstances. NHTSA does not plan to provide such items under the Cooperative Agreement.

B. Technical Information

The Technical Proposal shall include the following information (*and be separated from the cost proposal – no cost information shall be included or referenced in the technical proposal*):

1. A table of contents page that provides an easy method to identify the major sections of the technical proposal.

(PROJECT DESCRIPTION)

2. A description of the State's licensing process and applicable policy or statute that will be used to achieve the stated objective. The description shall include demographics of the state, the number of licensed motorcycle riders, and statistic that accurately provide justification for the initiative.
3. A description of the project or program's goal and how the applicant plans to meet the goal. The applicant must be **specific** with respect to the methods being proposed and how the applicant will increase the number properly endorsed riders. For example, if the applicant is proposing to increase licensure from increased enforcement, what are the applicable statutes and how will law enforcement and the judicial system be used as part of the process? How will the funding be used? What partnerships may be necessary? What criteria will be used to evaluate? How will the results be reported? What steps will be taken to institutionalize funding activities and/or make such activities self-sufficient?
4. A description of the specific activity proposed by the applicant. What actions will be undertaken to support the proposed project? What partners need to be involved in the effort to ensure success? To what degree has the buy-in of these groups been secured? How does the proposed project contribute to improving motorcycle safety? What is "success" and how will it be determined?
5. A detailed explanation of time schedules, milestones, and product deliverables, including quarterly reports and draft and final reports. (See TERMS AND CONDITIONS OF AWARD.)
6. The applicant must explain if there has been or, could be looming, any major changes within the State that may enhance or, more importantly, jeopardize the success of this program. A letter of support from the State driver licensing agency should be included. Other letters of support from key individuals and organizations involved in the effort should also be provided.

(EVALUATION PLAN)

7. A description of the evaluation plan, including how information (data) will be obtained, compiled, analyzed, and reported. The evaluation should demonstrate the use of outcome and process measures.

(PERSONNEL QUALIFICATIONS / ORGANIZATION)

8. A description of how the proposed project will be managed that specifically identifies the project manager and other personnel considered critical to the successful completion of the project, including a brief description of their qualifications and respective organizational responsibilities. The applicant must furnish résumés or biographical summaries for all proposed personnel it plans to use that show their education level and relevant experience.
9. Where partners and other organizations (sub-recipients, etc.) are required to complete the proposed effort, the applicant shall describe the areas of responsibility for that organization and provide proof of its commitment to the cooperative agreement effort. Letters of support from partners and other organizations involved in the effort must be provided with the proposal.
10. The applicant also must provide an organizational chart that details the structure of the applicant organization (and its proposed partners and other organizations) including areas of responsibility for the effort inside and outside the applicant organization.

(EXPERIENCE / PAST PERFORMANCE)

11. A narrative demonstrating the applicant's capability of technical and management skills to successfully design, conduct, and evaluate programs implemented in the State and local jurisdictions. The applicant should demonstrate that such past initiatives have resulted in timely, adequate and complete projects. The applicant should also include a narrative description of documented experience, clearly indicating the relationship of past programs to this project and provide details such as project description and sponsoring agencies. The applicant shall include a list of the required start and completion dates (compared to the actual start and completion dates) for each past effort described, including a description of any past scheduling problems and how they were remedied. References to completed final project reports should include the author's name (and contact information if available).

ARTICLE XII. APPLICATION REVIEW PROCESS AND CRITERIA

Each application package will be reviewed initially to confirm that the applicant meets the eligibility requirements as set forth in Article VI of this announcement and has included all of the items specified in the *Application Procedures* section of this announcement. An Evaluation Committee will then review each application submitted by each applicant. Non-Federal employees under contract to NHTSA may serve on this Evaluation Committee.

The applications will be evaluated using the following criteria:

A. Program Approach / Work Plan (35 percent)

- The extent to which the applicant clearly identifies an improperly licensed motorcycle operator problem within its jurisdiction.
- The extent to which the applicant is knowledgeable about motorcycle licensure and existing strategies for increasing the number of properly endorsed motorcycle riders.
- The extent to which the applicant's goals are clearly articulated and the objectives are time-phased, specific, action-oriented, measurable, and achievable.
- The extent to which the applicant's approach is feasible and probability that the applicant's approach would result ultimately in referral increases or improved operations motorcycle licensure functions.
- The extent to which the applicant clearly identifies and explains creative approaches to increase motorcycle licensure.
- The applicant's plan for maintaining the effort beyond the period of performance of cooperative agreement.
- If building on an existing approach or program, the degree of innovation and creativity which differentiates the applicant's approach from what had been tried in the past.
- The degree to which the applicant has identified potential barriers to the implementation of new approaches and the applicant's plans for mitigating or eradicating those barriers.
- The degree to which the applicant's approach will adapt to other jurisdictions at a reasonable cost.
- The partnership structure proposed by the applicant. More specifically, the level of detail, reasonableness, and resourcefulness of the applicant's plans for improving working relationship with other State entities will be reviewed.
- The extent to which the applicant's work plan facilitates the involvement of NHTSA.

B. Resource Utilization (25 percent)

- The extent to which the proposed staff and State entities are clearly described, appropriately assigned, and have adequate skills and experiences.
- The reasonableness of the applicant's staffing plan to include proposed level of effort and allocation of human resources.
- The extent to which financial resources (both federal and non-federal) are used in an efficient and effective manner.
- The extent to which the applicant demonstrates it has the political and law enforcement leadership and commitment to meet the project objectives.

C. Evaluation Plan (25 percent)

- The extent to which the evaluation plan clearly articulates the project's potential to make a significant impact on increasing motorcycle licensure, defining intermediate outcomes (increased licensure, enforcement, reduced exposure) and an ultimate goal of reducing crashes and fatalities.
- The extent, to which the evaluation plan indicates how the information/data collected in the project will be compiled, analyzed, interpreted and reported.
- The degree to which data and information sources are sufficient to evaluate properly the project's results and potentials.

D. Experience, Financial Responsibility and Past Performance: (15 percent)

- The extent to which the applicant has expertise in developing and evaluating innovative programs.
- The applicant's satisfactory history of grantor/grantee partnerships.
- The extent to which the applicant has a solid record of financial responsibility and accountability as it relates to federal grant funding.
- The applicant's history of compliance with federal regulations as they relate to the administration of federal assistance agreements.

ARTICLE XIII. IMPORTANCE OF COST-SHARING

While not mandatory, applicants are strongly urged to seek funds from other Federal, State, local, and private sources to augment those federal funds available under this announcement. For equally acceptable applications, preference may be given to those that have proposed cost-sharing strategies and/or other proposed funding sources in addition to those in this announcement.

ARTICLE XIV. TERMS AND CONDITIONS OF AWARD

Prior to award, each Applicant shall comply with the certification requirements of 49 CFR Part 20, U.S. Department of Transportation New Restrictions on Lobbying, and 49 CFR Part 29, U.S. DOT Government-wide Debarment and Suspension (Non-procurement) and Government-wide Requirement for Drug Free Work Place (Grants). Certification requirements are electronically available for download at <http://www.whitehouse.gov/omb/grants/index.html>.

In addition, prior to award each Applicant shall comply with the NHTSA General Provisions for Assistance Agreements, dated July 1995 (see Appendix A).

APPENDIX A
GENERAL PROVISIONS

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

GENERAL PROVISIONS FOR ASSISTANCE AGREEMENTS

This assistance agreement shall be subject, as applicable, to the administrative requirements contained in the following documents or regulations which are hereby incorporated by reference, with the same force and effect as if they were given in full text:

49 CFR Part 18 - Department of Transportation Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

49 CFR Part 19 - Department of Transportation Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations, and, for purposes of this agreement, with commercial organizations, except as otherwise provided elsewhere in these terms and conditions.

49 CFR Part 20 - Department of Transportation New Restrictions on Lobbying.

49 CFR Part 29 - Department of Transportation Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants).

In addition, the following provisions are applicable to this agreement which provides Federal financial assistance authorized by statute.

1. Definitions
2. Allowable Costs
3. Audit Requirements
4. Standard Patent Rights
5. Data Collection
6. Protection of Individual Privacy
7. Rights in Data
8. Restrictions on Printing
9. Other Administrative Provisions and Assurances
10. Order of Precedence

DATE: 7/95

1. **DEFINITIONS.** Throughout this assistance agreement, the following terms shall have the meanings set forth below:

- a. The term "Secretary" means the Secretary of the Department of Transportation or his duly authorized designee.
- b. The term "Department" means the Department of Transportation (DOT).
- c. The term "Agency" means the National Highway Traffic Safety Administration (NHTSA).
- d. The term "Contracting Officer" or "CO" means any person authorized to execute the agreement on behalf of the NHTSA.
- e. The term "Contracting Officer's Technical Representative" or "COTR" means the CO's authorized representative responsible for the programmatic/technical administration of the agreement, the evaluation of performance under the agreement, the acceptance of technical reports, and for other specific responsibilities as may be stipulated in various provisions of the agreement.
- f. The term "Grantee" means the recipient of the award of the assistance agreement, whether a grant or cooperative agreement, and includes the following:
 - (1) States, local governments or Federally-recognized Indian tribal governments as defined in 49 CFR Part 18.
 - (2) Nonprofit organizations including public and private institutions of higher education, public and private hospitals, and other quasi-public and private nonprofit organizations as further described in 49 CFR Part 19.
 - (3) Commercial organizations including small and large businesses organized for profit; organizations which are not otherwise included among those specified in 49 CFR Part 18 or 49 CFR Part 19; or international organizations.
- g. The term "Third-Party Contract" means any legal instrument entered into between the grantee and a third party, or any lower tier, for the performance of a portion of the effort provided for under this assistance agreement and includes contracts, grants, and cooperative agreements.
- h. The term "Third-Party Contractor" means the recipient of a "Third-Party Contract."
- i. The acronym "OMB" means the Office of Management and Budget.
- j. The acronym "FAR" means Federal Acquisition Regulation.

2. **ALLOWABLE COSTS.**

- a. Payments up to the amount specified in the assistance agreement shall be made only for costs determined by the CO to be allowable, allocable and reasonable in performing the effort under the agreement in accordance with its terms and with the following cost principles:
 - (1) OMB Circular A-21 (applicable to educational institutions).
 - (2) OMB Circular A-87 (applicable to State and local governments and Federally-recognized Indian tribal governments).
 - (3) OMB Circular A-122 (applicable to non-profit organizations).
 - (4) FAR 31.2 (applicable to all other organizations).
- b. During performance of this assistance agreement, certain direct cost expenditures, not itemized in the approved budget, may become necessary. In order to avoid subsequent disallowances, or dispute based on unreasonableness or unallocability, written agreement in advance of the incurrence of such costs is appropriate. In addition, selected cost principles contain a number of items of cost for which prior approval is required. Direct cost expenditures requiring such written notification from the CO include, but are not limited to, the following:
 - (1) Purchase or rental of any item of general purpose equipment having a useful life of more than two years and an acquisition cost of \$500 or more; and all items of office and automatic data processing equipment, regardless of cost, if not itemized in the approved budget.

- (2) Purchase or rental of any item of special purpose equipment having a unit cost of \$1,000 or more if not itemized in the approved budget.
 - (3) Personnel movement of a special or mass nature not itemized in the approved budget.
 - (4) Foreign travel (each separate trip) not itemized in the approved budget.
 - (5) Domestic travel when not included in the approved budget or when the cumulative travel expenditures will exceed the approved travel budget by \$500 or 25%, whichever is greater.
 - (6) Consultant and professional services not itemized in the approved budget.
 - (7) Subcontracts not identified in the approved budget, except those for incidental supplies, materials, and general support services.
 - (8) Purchase or lease of any interest in real property, or improvements in real property not itemized in the approved budget.
- c. NHTSA may provide in advance for costs to be incurred or reimburse costs accrued by the grantee up to the maximum amount of the federal assistance payable for the period of performance. However, payment of such costs, whether in advance or by reimbursement, shall not constitute a final determination by NHTSA of the allowability of such costs and shall not constitute a waiver of any violation of the terms of the assistance agreement committed by the grantee. NHTSA shall make a final determination as to the allowability only after the final audit is completed, if required, or at the time of final payment.
- d. NHTSA shall not be obligated to reimburse the grantee for outlays (costs) in excess of the Federally-funded amount of the assistance agreement unless and until the CO executes a modification which increases the Federally-funded amount. The Federally-funded amount is the amount actually obligated under the agreement which may be less than or equal to the budgeted Federal share of the agreement.

3. AUDIT REQUIREMENTS.

- a. If this assistance agreement is with an institution of higher education, hospital or other nonprofit organization, the grantee shall conduct audits in accordance with the provisions of OMB Circular A-133, "Audits of Institutions of Higher Education and Other Nonprofit Organizations."
- b. If this assistance agreement is with a State or local government or Federally-recognized Indian tribal government, the grantee shall obtain audits in accordance with the Single Audit Act of 1984 (31 U.S.C. 7501-7), as provided in 49 CFR Part 18.26.
- c. If this assistance agreement is with a commercial organization, the following conditions shall be applicable:
 - (1) Examination of costs - The grantee shall maintain--and the CO or representatives of the CO shall have the right to examine and audit--books, records, documents, and other evidence and accounting procedures and practices, regardless of form (e.g., machine readable media such as disk, tape, etc.) or type (e.g., data bases, applications software, data base management software, utilities, etc.), sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred in performing this agreement. This right of examination shall include inspection at all reasonable times of the grantee's facilities, or parts of them, engaged in performing the agreement.
 - (2) Reports - If the grantee is required to furnish cost, funding, or performance reports, the CO or representatives of the CO shall have the right to examine and audit books, records or other documents, and supporting materials, for the purpose of evaluating (a) the effectiveness of the grantee's policies and procedures to produce data compatible with the objectives of these reports and (b) the data reported.
 - (3) Availability - The grantee shall make available at its office at all reasonable times the materials described in paragraph (1) above, for examination, audit or reproduction, until the later of 3 years after final payment or any resulting final settlement of a termination, appeal, litigation or claim, or for any shorter period specified in FAR Subpart 4.7, Records Retention, or for any longer period required by statute.

- (4) Except as otherwise provided in FAR Subpart 4.7, Records Retention, the grantee may transfer computer data in machine readable form from one reliable computer medium to another. The grantee's computer data retention and transfer procedures shall maintain the integrity, reliability, and security of the original data. The grantee's choice of form or type of materials described in paragraphs (1) and (2) of this clause affects neither the grantee's obligations nor the Government's rights under this clause.
- (5) The grantee shall insert a clause containing all the terms of this paragraph c in all third-party contracts over \$10,000 with commercial organizations under this agreement, altering the clause only as necessary to identify properly the parties and the CO under the NHTSA prime agreement.

4. **STANDARD PATENT RIGHTS.** [The clause at 37 CFR Part 401.14(a), as modified below (or as further modified in accordance with the provisions of 37 CFR Part 401), shall be applicable to all assistance agreements involving the performance of research and development efforts by small business firms, non-profit organizations, State, local, and Federally-recognized Indian tribal governments, and, unless otherwise provided, by other commercial organizations.]

The following modifications to the clause at 37 CFR Part 401.14(a) apply:

- a. The parenthetical information shall be removed from the title of the clause;
 - b. The terms "contract" and "contractor" shall be replaced by the terms "assistance agreement" and "grantee," respectively, as defined in these General Provisions (except that the grantee may modify these terms pursuant to paragraph (g)(1) of the clause for use in third-party contracts);
 - c. The terms "agency," "Federal agency," and "funding Federal agency" shall be replaced by the term "NHTSA" (except that the grantee may modify these terms pursuant to paragraph (g)(1) of the clause for use in third-party contracts);
 - d. The terms "subcontract(s)" and "subcontractor" shall be replaced by the terms "third-party contract(s)" and "third-party contractor," respectively, as defined in these General Provisions;
 - e. The terms "to be performed by a small business firm or domestic non-profit organization" shall be deleted from paragraph (g)(1) of the clause;
 - f. The following subparagraph shall be added at the end of paragraph (f) of the clause:
 - (5) The grantee agrees to provide, upon request by the CO, periodic (but no more frequently than annual) listings of all subject inventions which were disclosed to NHTSA pursuant to paragraph (c)(1) and/or a report (DD Form 882) prior to the close-out of the assistance agreement listing all subject inventions or stating that there were none.
 - g. Paragraphs (g)(2) and (g)(3) of the clause shall be deleted; and
 - h. Paragraph (i) of the clause, entitled "Communications," shall read as follows:
 - (i) Communications. All notifications required by this clause shall be submitted to the NHTSA CO.
5. **DATA COLLECTION.** (Paperwork Reduction Act of 1980) [This clause shall be applicable to all assistance agreements involving the collection of information as defined in 5 CFR 1320.7.]
- a. OMB requires review and approval of plans and reports used to collect identical information from 10 or more persons (other than Federal employees) under assistance agreements sponsored by NHTSA. A collection of information undertaken by a grantee is considered to be "sponsored" by NHTSA only if:
 - (1) The grantee is collecting information at the specific request of NHTSA; or
 - (2) The terms and conditions of the agreement require specific approval by NHTSA of the collection of information or the collection procedures.
 - b. Unless otherwise specified, data collection conducted under the assistance agreement is the responsibility of the grantee, and NHTSA support of the effort does not constitute NHTSA approval of the survey design.

questionnaire content, or data collection procedures. The grantee shall not represent to respondents that such data is being collected for, or in association with, NHTSA or any Federal agency without the specific written approval of such data collection plan or device by NHTSA. However, this requirement is not intended to preclude mention of NHTSA support of the effort in response to any inquiry or acknowledgment of such support in any publication of this data.

6. **PROTECTION OF INDIVIDUAL PRIVACY.** [This clause shall be applicable to all assistance agreements under which the grantee, or its employees, or its third-party contractors, administer any system of records on individuals on behalf of the Federal Government.]
- a. **Privacy Act Notification.** The design, development, or operation of any system of records on individuals to accomplish a Government function is subject to the Privacy Act of 1974, Public Law 93-579, December 31, 1974 (5 U.S.C. 552a) and applicable regulations. Violation of the Act may involve the imposition of criminal penalties.
- b. The grantee agrees to:
- (1) Comply with the Privacy Act of 1974 (the Act), and rules and regulations issued pursuant to the Act when performance under this agreement involves the design, development, or operation of any system of records on individuals to be operated by the grantee, its employees, or its third-party contractors to accomplish a Government function.
 - (2) Notify the NHTSA CO when the grantee anticipates operating a system of records on individuals on behalf of the Government in order to accomplish the requirements of this agreement, if such system contains information about individuals which will be retrieved by the individual's name or other particular identifier assigned to the individual. A system of records on individuals subject to the Act may not be employed in the performance of this agreement until the necessary approval and publication requirements applicable to the system have been carried out. The grantee agrees to collect, maintain, disseminate, and use such records in accordance with the requirements of the Act, and comply with all applicable requirements of the Act.
 - (3) Include the Privacy Act Notification contained in this agreement in every solicitation and in every resulting third-party contract and in every third-party contract awarded without a solicitation, when the performance of work under the third-party contract requires the design, development, or operation of a system of records on individuals that is subject to the Act.
 - (4) Include this clause b, including this paragraph, in all third-party contracts under this agreement which require the design, development, or operation of such a system of records on behalf of the Government.
- c. For purposes of the Privacy Act, when the agreement involves the design, development, or operation of a system of records on individuals to accomplish a Government function, the grantee, its employees, and its third-party contractors are considered to be employees of the Government with respect to the Government function, and the requirements of the Act, including civil and criminal penalties for violation of the Act, are applicable. In addition, failure to comply with the provisions of the Act or of this clause will make this agreement subject to termination.
- d. The terms used in this clause have the following meanings:
- (1) "Operation of a system of records" means performance of any of the activities associated with maintaining the system of records on behalf of the Government, including the collection, use, and dissemination of records.
 - (2) "Record" means any item, collection, or grouping of information about an individual that is maintained by the grantee on behalf of the Government including, but not limited to, education, financial transactions, medical history, and criminal or employment history and that contains the person's name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint or voiceprint or photograph.
 - (3) "System of records on individuals" means a group of any records under the control of the grantee on behalf of the Government from which information is retrieved by the name of the individual or by some identifying number, symbol, or other particular assigned to that individual.

7. **RIGHTS IN DATA.** [This clause is applicable in its entirety to all assistance agreements and third-party contracts, except those involving State, local, and Federally-recognized Indian tribal governments, for which this clause applies only where not inconsistent with 49 CFR 18.34, and Nonprofit Organizations, for which this clause applies only where not inconsistent with 49 CFR 19.36.]

a. **Definitions.**

- (1) "Computer software," as used in this clause, means computer programs, computer data bases, and documentation thereof.
- (2) "Data" as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to agreement administration, such as financial, administrative, cost or pricing, or management information.
- (3) "Form, fit, and function data," as used in this clause, means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, as well as data identifying source, size, configuration, mating, and attachment characteristics, functional characteristics, and performance requirements; except that for computer software it means data identifying source, functional characteristics, and performance specifications, but specifically excludes the source code, algorithm, process, formulae, and flowcharts of the software.
- (4) "Limited Rights," as used in this clause, means the rights of the Government in limited rights data as set forth in the Limited Rights Notice of subparagraph g(2).
- (5) "Limited rights data," as used in this clause, means data (other than computer software) that embody trade secrets or are commercial or financial and confidential or privileged, but only to the extent that the data pertains to items, components, or processes developed at private expense, including minor modifications thereof.
- (6) "Restricted computer software," as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software; including minor modifications of such computer software.
- (7) "Restricted rights," as used in this clause, means the rights of the Government in restricted computer software, as set forth in a Restricted Rights Notice of subparagraph g(3), or as otherwise may be provided in a collateral agreement incorporated in and made part of this agreement, including minor modifications of such computer software.
- (8) "Technical data," as used in this clause, means data (other than computer software) which are of a scientific or technical nature.
- (9) "Unlimited rights," as used in this clause, means the right of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

b. **Allocation of rights.**

- (1) Except as provided in paragraph c of this clause regarding copyright, the Government shall have unlimited rights in:
 - (i) Data first produced in the performance of this agreement;
 - (ii) Form, fit, and function data delivered under this agreement;
 - (iii) Data delivered under this agreement (except for restricted computer software) that constitutes manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or otherwise furnished for use under this agreement; and
 - (iv) All other data delivered under this agreement unless provided otherwise for limited rights data or restricted computer software in accordance with paragraph g of this clause.
- (2) The grantee shall have the right to--
 - (i) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the grantee in the performance of this agreement unless provided otherwise in paragraph d of this clause;

- (ii) Protect from unauthorized disclosure and use those data which are limited rights data or restricted computer software to the extent provided in paragraph g of this clause;
- (iii) Substantiate use of, add or correct limited rights, restricted rights or copyright notices and to take other appropriate action, in accordance with paragraphs e and f of this clause; and
- (iv) Establish claim to copyright subsisting in data first produced in the performance of this contract to the extent provided in subparagraph c(1) of this clause.

c. Copyright

- (1) Data first produced in the performance of this agreement. Unless provided otherwise in paragraph d of this clause, the grantee may establish, without prior approval of the CO, claim to copyright subsisting in scientific and technical articles based upon or containing any data first produced in the performance of this agreement and published in academic, technical or professional journals, symposia proceedings or similar works. The prior, express written permission of the CO is required to establish claim to copyright subsisting in all other data first produced in the performance of this agreement. When claim to copyright is made, the grantee shall affix the applicable copyright notices of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including agreement number) to the data when such data are delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office.

For data other than computer software the grantee grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government. For computer software, the grantee grants to the Government and others acting in its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted computer software to reproduce, prepare derivative works, and perform publicly and display publicly, by or on behalf of the Government.

- (2) Data not first produced in the performance of this agreement. The grantee shall not, without prior written permission of the CO, incorporate in data delivered under this agreement any data not first produced in the performance of this agreement and which contains the copyright notice of 17 U.S.C. 401 or 402, unless the grantee identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in subparagraph c(1) of this clause; provided, however, that if such data are computer software Government shall acquire a copyright license as set forth in subparagraph g(3) of this clause or as otherwise may be provided in a collateral agreement incorporated in or made part of this agreement.
- (3) Removal of copyright notices. The Government agrees not to remove any copyright notices placed on data pursuant to this paragraph c, and to include such notices on all reproductions of the data.

d. Release, publication and use of data

- (1) The grantee shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the grantee in the performance of this agreement, except to the extent that such data may be subject to the Federal export control or national security laws or regulations, or unless otherwise provided in this paragraph of this clause or expressly set forth in this agreement.
- (2) The grantee agrees that to the extent it receives or is given access to data necessary for the performance of this agreement which contains restrictive markings, the grantee shall treat the data in accordance with such markings unless otherwise specifically authorized in writing by the CO.

e. Unauthorized marking of data

- (1) Notwithstanding any other provisions of this agreement concerning inspection or acceptance, if any data delivered under this agreement are marked with the notices specified in subparagraphs g(2) or g(3) of this clause and use of such is not authorized by this clause, or if such data bears any other restrictive or limiting markings not authorized by this agreement, the CO may at any time either return the data to the grantee, or cancel or ignore the markings. However, the following procedures shall apply prior to cancelling or ignoring the markings:
 - (i) The CO shall make written inquiry to the grantee affording the grantee 30 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings.

- (ii) The grantee fails to respond or fails to provide written justification to substantiate the propriety markings within the 30-day period (or a longer time not exceeding 90 days approved in writing by the CO for good cause shown), the Government shall have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibitions.
- (iii) If the grantee provides written justification to substantiate the propriety of the markings within the period set in subdivision e(1)(i) of this clause, the CO shall consider such written justification and determine whether or not the markings are to be cancelled or ignored. If the CO determines that the markings are authorized, the grantee shall be so notified in writing. If the CO determines, with concurrence of the head of the contracting activity, that the markings are not authorized, the CO shall furnish the grantee a written determination, which determination shall become the final agency decision regarding the appropriateness of the markings unless the grantee files suit in a court of competent jurisdiction within 90 days of receipt of the CO's decision. The Government shall continue to abide by the markings under this subdivision e(1)(iii) until final resolution of the matter either by the CO's determination becoming final (in which instance the Government shall thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosure prohibitions) or by final disposition of the matter by court decision if suit is filed.

(2) The time limits in the procedures set forth in subparagraph e(1) of this clause may be modified in accordance with regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request thereunder.

f. Omitted or incorrect markings.

- (1) Data delivered to the Government without either the limited rights or restricted rights notice as authorized by paragraph g of this clause, or the copyright notice required by paragraph c of this clause, shall be deemed to have been furnished with unlimited rights, and the Government assumes no liability for the disclosure, use, or reproduction of such data. However, to the extent the data has not been disclosed without restriction outside the Government, the grantee may request, within 6 months (or a longer time approved by the CO for good cause shown) after delivery of such data, permission to have notices placed on qualifying data at the grantee's expense, and the CO may agree to do so if the grantee--
 - (i) Identifies the data to which the omitted notice is to be applied;
 - (ii) Demonstrates that the omission of the notice was inadvertent;
 - (iii) Establishes that the use of the proposed notice is authorized; and
 - (iv) Acknowledges that the Government has no liability with respect to the disclosure or use of any such data made prior to the addition of the notice or resulting from the omission of the notice.
- (2) The CO may also (i) permit correction at the grantee's expense, of incorrect notices if the grantee identifies the data on which correction of the notice is to be made, and demonstrates that the correct notice is authorized, or (ii) correct any incorrect notices.

g. Protection of limited rights data and restricted computer software.

- (1) When data other than that listed in subdivisions b(1)(i), (ii), and (iii) of this clause are specified to be delivered under this agreement and qualify as either limited rights data or restricted computer software, if the grantee desires to continue protection of such data, the grantee shall withhold such data and not furnish them to the Government under this agreement. As a condition to this withholding, the grantee shall identify the data being withheld and furnish form, fit, and function data in lieu thereof. Limited rights data that is formatted as a computer data base for delivery to the Government are to be treated as limited rights data and not restricted computer software.
- (2) Notwithstanding subparagraph g(1) of this clause, the agreement may identify and specify the delivery of limited rights data, or the CO may require by written request the delivery of limited rights data that has been withheld or would otherwise be withholdable. If delivery of such data is so required, the grantee may affix the following "Limited Rights Notice" to the data and the Government will thereafter treat the data, subject to the provisions of paragraphs e and f of this clause, in accordance with such Notice:

LIMITED RIGHTS NOTICE

- (a) These data are submitted with limited rights under NHTSA Agreement No. _____
These data may be reproduced and used by the Government with the express limitation that they will not, without written permission of the grantee, be used for purposes of manufacture or disclosed outside the Government; except that the Government may disclose these data outside the Government for the following purposes, if any, provided that the Government makes such disclosure subject to prohibition against further use and disclosure:
- (i) Use (except for manufacture) by support service contractors.
 - (ii) Evaluation by nongovernment evaluators.
 - (iii) Use (except for manufacture) by other grantees or contractors participating in the Government's program of which the agreement is a part, for information and use in connection with the effort or work performed under each agreement or contract.
 - (iv) Release to a foreign government, or instrumentality thereof, as the interests of the United States may require, for information or evaluation by such government.
- (b) This Notice shall be marked on any reproduction of these data, in whole or in part.

(End of notice)

- (3)(i) Notwithstanding subparagraph g(1) of this clause, the agreement may identify and specify the delivery of restricted computer software, or the CO may require by written request the delivery of restricted computer software that has been withheld or would otherwise be withholdable. If delivery of such computer software is so required, the grantee may affix the following "Restricted Rights Notice" to the computer software and the Government will thereafter treat the computer software, subject to paragraphs e and f of this clause, in accordance with the Notice:

RESTRICTED RIGHTS NOTICE

- (a) This computer software is submitted with restricted rights under NHTSA Agreement No. _____
It may not be used, reproduced or disclosed by the Government except as provided in paragraph (b) of this Notice or as otherwise expressly stated in the agreement.
- (b) This computer software may be--
- (1) Used or copied for use in or with the computer for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;
 - (2) Used or copied for use in a backup computer if any computer for which it was acquired is non-operative;
 - (3) Reproduced for safekeeping (archives) or backup purposes;
 - (4) Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software incorporating restricted computer software are made subject to the same restricted rights; and
 - (5) Disclosed to and reproduced for use by support service contractors in accordance with subparagraphs (b)(1) through (4) of this clause, provided the Government makes such disclosure or reproduction subject to these restricted rights; and
 - (6) Used or copied for use in or transferred to a replacement computer.
- (c) Notwithstanding the foregoing, if this computer software is published copyrighted computer software, it is licensed to the Government, without disclosure prohibitions, with the minimum rights set forth in paragraph (b) of this clause.
- (d) Any other rights or limitations regarding the use, duplication, or disclosure of this computer software are to be expressly stated in, or incorporated in the agreement.

- (e) This Notice shall be marked on any reproduction of this computer software, in whole or in part.

(End of notice)

- (3)(ii) Where it is impractical to include the Restricted Rights Notice on restricted computer software, the following short-form Notice may be used in lieu thereof:

RESTRICTED RIGHTS NOTICE – SHORT FORM

Use, reproduction, or disclosure is subject to restrictions set forth in NHTSA Agreement No. _____ with (name of Grantee).

(End of notice)

- (3)(iii) If restricted computer software is delivered with the copyright notice of 17 U.S.C. 401, it will be presumed to be published copyrighted computer software licensed to the Government without disclosure prohibitions, with the minimum rights set forth in paragraph b of this clause, unless the grantee includes the following statement with such copyright notice: "Unpublished—rights reserved under the Copyright Laws of the United States."

- h. Third Party Contracts. The grantee has the responsibility to obtain from its third-party contractors all data and rights therein necessary to fulfill the grantee's obligations to the Government under this agreement. If a third-party contractor refuses to accept terms affording the Government such rights, the grantee shall promptly bring such refusal to the attention of the CO and not proceed with the third-party contract award without further authorization.
- i. Relationship to patents. Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government.

8. RESTRICTIONS ON PRINTING.

- a. Government Printing and Binding Regulations are published by the Joint Committee on Printing, Congress of the United States. These regulations are applicable to NHTSA when NHTSA bears the entire cost of printing of materials exclusively for its own use.
- b. This assistance agreement is not made primarily or substantially for the purpose of typesetting or having material printed for NHTSA use.
- c. The grantee may reproduce reports, data, or other written material required under the terms of the agreement for the use of NHTSA, provided that the material duplicated does not exceed 5,000 units of only one page, or that items consisting of multiple pages do not exceed 25,000 units in the aggregate. Grantees must advise the CO if the estimated quantities will exceed these ceilings so that Departmental/Committee approval can be obtained.
- d. These restrictions do not preclude the writing, editing, preparation of manuscript copy and related illustrative material, or the publication of findings by grantees; or the administrative printing requirements of the grantee required for its own use to respond to the terms of the agreement.

9. OTHER ADMINISTRATIVE PROVISIONS AND ASSURANCES.

- a. No Government Obligations to Third Parties. Absent its specific consent, the NHTSA shall not be subject to any obligations or liabilities with respect to any person or entity not a party to this agreement in connection with performance under the agreement, notwithstanding its concurrence in or approval of the solicitation or award of any third-party contract.
- b. Severability. If any provision of this agreement is held invalid, the remainder of this agreement shall not be affected thereby if such remainder would then continue to conform to the terms and requirements of applicable law.

- c. The grantee assures and certifies that no member of or delegate to Congress, or resident Commissioner, will be admitted to any share or part of this assistance agreement, or to any benefit arising from it. And further, it shall comply with the provisions of 18 U.S.C. 1913 which prohibits the direct or indirect use of any funds appropriated by Congress to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or any other device intended or designed to influence a member of Congress, to favor or oppose, any legislation or appropriation, whether before or after the introduction of any bill or resolution proposing such legislation or appropriation.
- d. The grantee warrants that it has not paid and agrees not to pay any bonus, commission or fee for the purpose of obtaining approval of its application for the financial assistance agreement.
- e. The grantee assures that it shall comply with all applicable provisions of Federal, State and local law. Nothing in this agreement shall require the grantee to observe or enforce compliance with any provision hereof, perform any other act or do any other thing in contravention of applicable State or territorial law; provided that if any of the provisions of the agreement violates any applicable State or territorial law, or if compliance with any of the provisions of the agreement would require the grantee to violate any applicable State or territorial law, the grantee will at once notify the CO in writing in order that appropriate modifications may be made to the agreement to remedy the violation.

All limits and standards set forth in this agreement are minimum requirements, and shall not affect the application of more stringent State or local standards; provided, however, that in its procurement actions under this agreement, the grantee shall not give any preference to or discriminate against goods and services produced or manufactured in any country, State, or other geographical area, except as provided in paragraph f below.

- f. The grantee assures and certifies that all manufactured products, steel, and cement used in carrying out this agreement are produced in the United States, in accordance with Section 165 of the Surface Transportation Assistance Act of 1982 (Pub. L. 97-424; 96 Stat. 2097), unless the Secretary of DOT has determined under Section 165 that it is appropriate to waive this requirement.

10. ORDER OF PRECEDENCE.

In the event of any inconsistency between any provisions of this agreement, the following order of precedence shall apply:

- a. Statement of Purpose (excluding the grantee's proposal, if incorporated).
- b. Special provisions contained in the assistance agreement.
- c. General Provisions, whether referenced or stated in full text, contained herein.
- d. The grantee's proposal (if incorporated).