U.S. Department of Transportation
Federal Highway Administration

Memorandum

Subject: **ACTION:** 23 U.S.C. 148(g) Highway Safety Improvement Program Special Rules Guidance

Date: February 2, 2022

From: Cheryl J. Walker Cheryl J. Walker
Associate Administrator, Office of Safety

In Reply Refer To: HSA-1

To: Division Administrators

The Infrastructure Investment and Jobs Act (IIJA) (Pub. L. 117-58, also known as the "Bipartisan Infrastructure Law" (BIL)), was signed into law on November 15, 2021. Among other things, the BIL established a new Special Rule under the Highway Safety Improvement Program (HSIP) for vulnerable road user (VRU) safety and continued the two existing special rules for High-Risk Rural Roads (HRRR) and Older Drivers and Pedestrians without change. The VRU Special Rule is part of a larger focus on non-motorist safety that includes a new requirement for States to complete VRU safety assessments.

This memorandum provides guidance to support implementation of the three Special Rules in section 148(g) of title 23 of the United States Code (U.S.C.) as part of the HSIP:

- HRRR Special Rule (23 U.S.C. 148(g)(1));
- Older Drivers and Pedestrians Special Rule (23 U.S.C. 148(g)(2)); and
- VRU Safety Special Rule (23 U.S.C. 148(g)(3)).

For each Special Rule, the guidance includes the statutory reference, purpose, definitions, a description of how FHWA will determine if the special rule applies, and a description of how States should implement each Special Rule. This guidance replaces guidance FHWA issued on December 27, 2012, related to the HRRR Special Rule and on February 13, 2013 and May 19, 2016, related to the Older Drivers and Pedestrians Special Rule.

FHWA also issued guidance on December 16, 2021 ("Policy on Using Bipartisan Infrastructure Law Resources to Build a Better America," hereafter "Policy") that serves as an overarching framework to prioritize the use of BIL resources on projects that will Build a Better America. That Policy is available on FHWA's BIL implementation website at the following URL: https://www.fhwa.dot.gov/bipartisan-infrastructure-law/docs/building_a_better_america-policy_framework.pdf.

Except where required by statute or regulations, the contents of this document do not have the force and effect of law and are not meant to bind States in any way. This document is intended only to provide clarity to States regarding existing requirements under the law or agency *policies. While this is non-binding guidance, compliance with applicable statutes or regulations cited is required.*

High-Risk Rural Roads (HRRR) Special Rule Guidance

Statutory Reference

The HRRR Special Rule at 23 U.S.C. 148(g)(1) provides: "If the fatality rate on rural roads in a State increases over the most recent 2-year period for which data are available, that State shall be required to obligate in the next fiscal year for projects on high risk rural roads an amount equal to at least 200 percent of the amount of funds the State received for fiscal year 2009 for high risk rural roads under subsection (f) of this section, as in effect on the day before the date of enactment of the MAP-21."

Purpose

The purpose of this section of the guidance is to clarify: A) how to interpret the definition of HRRR in a State; B) how FHWA will determine if the Special Rule applies to a State; and C) how a State should implement the HRRR Special Rule.

Definition

The definition of high risk rural road is provided in 23 U.S.C. 148(a)(1) as: "any roadway functionally classified as a rural major or minor collector or a rural local road with significant safety risks, as defined by a State in accordance with an updated State strategic highway safety plan."

The definition of a HRRR provides flexibility to States in determining their HRRRs. The definition of a HRRR is limited to the same functional classifications as under the Safe, Accountable, Flexible, Efficient Transportation Act: A Legacy for Users (SAFETEA-LU) Pub. L. 109-59), of rural major and minor collectors and rural local roads. However, only the roads within those functional classifications "with significant safety risks" will become the roadways designated as HRRRs. 23 U.S.C. 148(a)(1) requires that States define the significant safety risks of these functionally classified roads in accordance with their updated State Strategic Highway Safety Plans (SHSPs).

To determine what a "significant safety risk" is, States may develop their own methodologies in accordance with their updated SHSPs for the specified roadway functional classifications. Some examples of definitions for "significant safety risk" are provided below and may be used singularly or in combination:

1. Continue to use the SAFETEA-LU definition: Roadways with a fatality rate that is higher than roadways of similar functional classifications in that State. For instance, a roadway with a fatality rate 10 percent higher than roads with a similar classification in that State. Alternatively, a State may use crash rates resulting in fatalities and serious injuries.

2. Use roadways with a crash frequency above a designated threshold, which eliminates the comparison calculation to other roadways.
3. Define high-risk rural roadway characteristics that are correlated with specific severe crash types, such as cross-section width, lack of shoulders, substandard alignment, hazardous roadside, etc.
4. Use information gathered through means such as field reviews, safety assessments, road safety audits, and local knowledge and experience. Using information from observations in the field can identify high-risk locations that may not be identified through data analysis or by identifying roadway characteristics.

FHWA Determination of Whether the HRRR Special Rule Applies

If the fatality rate on rural roads in a State increases over the most recent 2-year period for which data are available, then the HRRR Special Rule applies. (23 U.S.C. 148(g)(1)). The FHWA will use the fatality rate per 100 million vehicle miles traveled (100 MVMT) for roads in the State classified as rural major and minor collectors and rural local roads. The FHWA will use the Fatality Analysis Reporting System (FARS) data and Highway Performance Monitoring System (HPMS) data to calculate the fatality rate.

Consistent with other safety performance measures, FHWA uses a 5-year rolling average for the fatality rate. This approach provides a balance between the stability of the data (by averaging multiple years) and providing an accurate trend of the data (by minimizing how far back in time to consider data). The table below shows the relationship of the annual fatality rates of available data to the fiscal year for which the Special Rule would apply.

Table: Timeline of HRRR Special Rule Determination

5-year averages to compare	FHWA Notifies State DOT if HRRR Special Rule Applies	Fiscal Year that HRRR Special Rule would apply
2014-2018 to 2016-2020	By March 2022	FY 2023 Oct. 1, 2022 to Sept. 30, 2023
2015-2019 to 2017-2021	By March 2023	FY 2024 Oct. 1, 2023 to Sept. 30, 2024
2016-2020 to 2018-2022	March 2024	FY 2025 Oct. 1, 2024 to Sept. 30, 2025
2017-2021 to 2019-2023	March 2025	FY 2026 Oct. 1, 2025 to Sept. 30, 2026

This process would continue each year.

Specifically, the FHWA will—

- Calculate fatality rates for the two 5-year periods using FARS and HPMS.
- Calculate the difference between the two 5-year average fatality rates.
- Round the difference to the nearest hundredth. If the rounded difference results in an increase of 0.01 or greater, then the HRRR Special Rule applies.

For example:

> The State of Lincoln's 5-year average fatality rates based on 100 MVMT on the three functional classifications of rural roads for the periods ending 2018 and 2020 increased from 2.110 to 2.113. Comparing the two 5-year average fatality rates, the difference is 0.003. Rounded to the nearest hundredth, the difference would be 0.00. Therefore, the HRRR Special Rule would not apply to the State of Lincoln for the next fiscal year.
>
> The State of Jefferson's 5-year average fatality rates in 100 MVMT on the three functional classifications of rural roads for the periods ending in 2018 and 2020 increased from 2.308 to 2.392. Comparing the two 5-year average fatality rates, the difference is 0.084. Rounded to the nearest hundredth, the difference would be 0.08. Therefore, the HRRR Special Rule would apply to the State of Jefferson for the next fiscal year.

State Implementation of the HRRR Special Rule

If the HRRR Special Rule applies to a State, 23 U.S.C. 148(g)(1) requires that the State obligate in the next fiscal year for high-risk rural roads, as defined in accordance with their updated SHSP, an amount at least equal to 200 percent of its FY 2009 high-risk rural roads set-aside. The amount for each State if the HRRR Special Rule were to be triggered is provided as a Table in the Attachment.

If the HRRR Special Rule applies to a State in a particular fiscal year, the FHWA will set aside the required amount from that year's HSIP apportionment with an associated obligation limitation of one year. This set-aside will have its own FMIS code. Please visit FHWA's Notices website (https://www.fhwa.dot.gov/legsregs/directives/notices/) for more information on HRRR Special Rule set-aside funding amounts per fiscal year at the appropriate future time.

The FHWA will provide regular updates to the Division Offices to track the progress of obligating the required amount for States where the HRRR Special Rule applies. If the HRRR Special Rule applies to a State, the State should include information in its annual HSIP report required under 23 U.S.C. 148(h)(1)(A), verifying that it met the requirements of the HRRR Special Rule.

Obligation limitation associated with HRRR Special Rule funds is only available for one fiscal year. If a State cannot obligate HRRR Special Rule funds in the first fiscal year, the State should explain why it is unable to obligate the HRRR Special Rule funds and must return any unused obligation limitation for August Redistribution. The State will be required to set aside formula obligation limitation in the second fiscal year for use only with the carried over HRRR Special Rule funds.

If a State de-obligates HRRR Special Rule funds due to project underruns or project cancellation, the State must obligate the remaining HRRR Special Rule funds on another HRRR project by the end of the fiscal year. The following table outlines the HRRR Special Rule requirements, funding, and obligation limitation by year.

Table: HRRR Special Rule Requirements, Funding, and Obligation Limitation

	Year 1 FY in which HRRR Special Rule is Triggered	Year 2 If Unobligated Balance Remains
Requirement	States are required to obligate all HRRR Special Rule funds in the triggered FY (Year 1)	States required to obligate remaining HRRR Special Rule funds
Funds (Contract Authority)	Set aside by HCF with designated program code	Funds will continue to be available for obligation
Obligation Limitation	HCF will set aside HRRR Special Rule obligation limitation for Year 1 funds in an amount equal to the contract authority	State required to set aside formula obligation limitation in an amount equal to the HRRR funds carried over from the prior year
August Redistribution	State must return unused set-aside HRRR Special Rule obligation limitation for August Redistribution. If not returned, the obligation limitation will expire and be removed from FMIS. Returned limitation will not be restored in the following year	State must return unused set-aside formula obligation limitation for August Redistribution. If not returned, the obligation limitation will expire and be removed from FMIS. Returned limitation will not be restored in the following year
De-obligation	If a State de-obligates previous years' HRRR Special Rule funds for a legitimate reason, funds must be re-obligated that same FY on one or more HRRR projects.	

Older Drivers and Pedestrians Special Rule Guidance

Statutory Reference

The Older Drivers and Pedestrians Special Rule at 23 U.S.C. 148(g)(2) provides: "If traffic fatalities and serious injuries per capita for drivers and pedestrians over the age of 65 in a State increases during the most recent 2-year period for which data are available, that State shall be required to include, in the subsequent Strategic Highway Safety Plan of the State, strategies to address the increases in those rates, taking into account the recommendations included in the publication of the Federal Highway Administration entitled 'Highway Design Handbook for

Older Drivers and Pedestrians' (FHWA-RD-01-103), and dated May 2001, or as subsequently revised and updated."

In June 2014, FHWA revised and renamed its Handbook to incorporate new research findings and treatments to improve the safety of the transportation system for the aging population. Accordingly, for purposes of implementation of this Special Rule, States should refer to FHWA's "Handbook for Designing Roadways for the Aging Population" (FHWA-SA-14-103), available at: http://safety.fhwa.dot.gov/older_users/handbook/aging_driver_handbook_2014_final%20.pdf.

Purpose

The purpose of this section of the guidance is to clarify: A) the definition of serious injury; B) how FHWA will determine if the Older Drivers and Pedestrians Special Rule applies to a State; and C) how States should implement this Special Rule.

Definitions

The FHWA has developed performance measures, as required in 23 U.S.C. 150(d), and provided the definition of "serious injury" as it relates to those measures. A serious injury is defined as any crash involving a motor vehicle traveling on a public roadway that is coded "Suspected Serious Injury (A)" as defined in the Model Minimum Uniform Crash Criteria (MMUCC).[1] (23 CFR 490.205).

FHWA Determination of Whether the Older Drivers and Pedestrians Special Rule Applies

To determine whether the Older Drivers and Pedestrians Special Rule applies in a State, the FHWA will consider older drivers and older pedestrians collectively. If the rate of traffic fatalities and serious injuries for drivers and pedestrians 65 years of age and older (referred to as "older drivers and pedestrians" in this document) in a State increases during the most recent 2-year period, then the Older Drivers and Pedestrians Special Rule applies.

Specifically, the FHWA will–

- Add together the number of fatalities for older drivers and pedestrians from the FARS Annual Report File and the number of serious injuries as reported in the State's annual Highway Safety Improvement Program report for drivers and pedestrians 65 years of age and older;
- Divide that combined amount by the population per 1,000 of State residents that are 65 years of age or older from the U.S. Census Bureau; and
- Calculate the difference between the two 5-year average rates of fatalities and serious injuries.
- Round the difference to the nearest hundredth. If the rounded difference results in an increase of 0.01 or greater, then the Older Drivers and Pedestrians Special Rule applies.

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[1] Model Minimum Uniform Crash Criteria (DOT HS 812 433, July 2017), or as subsequently revised and updated, https://crashstats.nhtsa.dot.gov/Api/Public/Publication/812433.

For example:

> The State of Lincoln's 5-year average rate of fatalities and serious injuries per 1,000 capita for older drivers and pedestrians was 202.120 for the period ending 2018 and 202.123 for the period ending 2020. Comparing the two 5-year average fatality and serious injury rates, the difference is 0.003. Rounded to the nearest hundredth, the difference would be 0.0. Therefore, the Older Drivers and Pedestrians Special Rule *would not* apply to the State of Lincoln.
>
> The State of Jefferson's 5-year average rate of fatalities and serious injuries per 1,000 capita for older drivers and pedestrians was 202.308 for the period ending 2018 and 202.392 for the period ending 2020. Comparing the two 5-year average fatality and serious injury rates, the difference is 0.084. Rounded to the nearest hundredth, the difference would be 0.08. Therefore, the Older Drivers and Pedestrians Special Rule *would* apply to the State of Jefferson.

If the Older Drivers and Pedestrians Special Rule applies to a State in a particular fiscal year, the FHWA will notify the State by March of that fiscal year, after the data is available and the average rates of fatalities and serious injuries for older drivers and pedestrians are calculated.

State Implementation of the Older Drivers and Pedestrians Special Rule

If it is determined that the Older Drivers and Pedestrians Special Rule applies to a State, per 23 U.S.C. 148(g)(2), that State shall include, in its subsequent SHSP update, strategies to address the increase in the older driver and older pedestrian fatal and serious injuries rate, taking into account the recommendations included in the 2014 FHWA publication, "Handbook for Designing Roadways for the Aging Population" and any subsequently revised and updated versions. The State also should conduct a secondary analysis to determine whether the increase is attributable to driver fatalities and injuries, pedestrian fatalities and injuries, or a combination of the two. This helps a State determine whether the emphasis on safety programs and countermeasures should be focused on drivers and/or pedestrians.

Vulnerable Road User (VRU) Safety Special Rule

Statutory Reference

The new VRU Special Rule at 23 U.S.C. 148(g)(3) provides: “If the total annual fatalities of vulnerable road users in a State represents not less than 15 percent of the total annual crash fatalities in the State, that State shall be required to obligate not less than 15 percent of the amounts apportioned to the State under section 104(b)(3) for the following fiscal year for highway safety improvement projects to address the safety of vulnerable road users.’’

Purpose

The purpose of this section of the guidance is to clarify: A) the definition of “vulnerable road user”; B) how FHWA will determine if the VRU Special Rule applies to a State; and C) how a State should implement the VRU Special Rule.

Definitions

The definition of "vulnerable road user" is provided in 23 U.S.C. 148(a)(15) as "a nonmotorist—

> ''(A) with a fatality analysis reporting system person attribute code that is included in the definition of the term 'number of non-motorized fatalities' in section 490.205 of title 23, Code of Federal Regulations (or successor regulations); or
>
> ''(B) described in the term 'number of non-motorized serious injuries' in that section."

While the statutory definition for "vulnerable road user" includes both "number of non-motorized fatalities" and "number of serious injuries," the VRU Special Rule only considers non-motorized fatalities, per 23 U.S.C. 148(g)(3).[2]

FHWA Determination of Whether the VRU Safety Special Rule Applies

If the number of traffic fatalities for vulnerable road users (also referred to as "non-motorists") is equal to or greater than fifteen (15) percent of the total State fatalities in a single year period, then the VRU Special Rule applies. The FHWA will determine if the VRU Special Rule applies to each State and notify States of the determinations each year.

The FHWA will collect the annual number of fatalities for non-motorists and the total number of fatalities from the FARS. The number of non-motorist fatalities will then be divided by the total fatalities and multiplied by 100 to get a percentage. The VRU Special Rule applies if the calculated value is 15% or greater.

The VRU Special Rule requires the use of single year data. Since the number of fatalities for non-motorists and the total number of fatalities are whole integers, the percent will be rounded to the nearest whole integer.

The table below shows the year of available fatality data that will be used in the determination and the fiscal year for which the VRU Special Rule would apply.

Table: Timeline of VRU Special Rule Determination

Annual data	FHWA Notifies State DOT if VRU Special Rule Applies	Fiscal Year that VRU Special Rule would apply
2020	By March 2022	FY 2023 Oct. 1, 2022 to Sept. 30, 2023
2021	By March 2023	FY 2024 Oct. 1, 2023 to Sept. 30, 2024

[2] The VRU Special Rule only considers non-motorized fatalities, which, by reference to 23 CFR 490.205, refers to fatalities with the FARS person attribute codes for Pedestrian, Bicyclist; Other Cyclist, and Person on Personal Conveyance. The FARS person attribute codes only describe the role of the person involved in the crash and may include other types of individuals that fall under the definition of these attribute codes. For example, a construction worker may be viewed as a Pedestrian (and therefore a vulnerable road user) if the construction worker is not in a vehicle.

2022	By March 2024	FY 2025 Oct. 1, 2024 to Sept. 30, 2025
2023	March 2025	FY 2026 Oct. 1, 2025 to Sept. 30, 2026

State Implementation of the VRU Special Rule

If the VRU Special Rule applies to a State, that State shall be required to obligate in the next fiscal year not less than 15 percent of the amounts apportioned to the State under 23 U.S.C. 104(b)(3) for the following fiscal year for highway safety improvement projects to address the safety of vulnerable road users. (23 U.S.C. 148(g)(3)). All highway safety improvement projects, including those implemented under the VRU Special Rule, must be on a public road consistent with the State's SHSP and correct or improve a hazardous road location or feature, or address a highway safety problem (23 U.S.C. 148(a)(4)(A)). Therefore, States should ensure that the SHSP takes into consideration fatalities and serious injuries to pedestrians and bicyclists (*See* 23 U.S.C. 148(d)(1)(B)(v)). States also should ensure the SHSP analyzes and makes effective use of safety data to address safety problems and opportunities on all public roads and for all road users (23 CFR 924.9(a)(3)(vi)).

If the VRU Special Rule applies to a State in a particular fiscal year, the FHWA will set aside the required amount of funds from that fiscal year's HSIP apportionment along with associated obligation limitation of one year. This set-aside will have its own FMIS code. Please visit FHWA's Notices website (https://www.fhwa.dot.gov/legsregs/directives/notices/) for more information on VRU Special Rule set-aside funding amounts per fiscal year at the appropriate future time.

The FHWA will provide regular updates to the Division Offices to track the progress of obligating the required amount for States where the VRU Special Rule applies. If the VRU Special Rule is applied to a State, the State should include information in its annual HSIP report required under 23 U.S.C. 148(h)(1)(A), verifying that it met the requirements of the VRU Special Rule.

Obligation limitation associated with VRU Special Rule funds is only available for one fiscal year. If a State does not obligate VRU Special Rule funds in the first fiscal year, the State should explain why it is unable to obligate the VRU Special Rule funds and must return any unused obligation limitation for August Redistribution. The State will be required to set aside formula obligation limitation in the second fiscal year for use only with the carried over VRU Special Rule funds.

If a State de-obligates VRU Special Rule funds due to project underruns or project cancellation, the State must obligate the remaining VRU Special Rule funds on another VRU project by the end of the fiscal year. The following table outlines the VRU Special Rule requirements, funding, and obligation limitation by year.

Table: VRU Special Rule Requirements, Funding, and Obligation Limitation

	Year 1 FY in which VRU Special Rule is Triggered	Year 2 If Unobligated Balance Remains
Requirement	States are required to obligate all VRU Special Rule funds in the triggered FY (Year 1)	States required to obligate remaining VRU Special Rule funds
Funds (Contract Authority)	Set aside by HCF with designated program code	Funds will continue to be available for obligation
Obligation Limitation	HCF will set aside VRU Special Rule obligation limitation for Year 1 funds in an amount equal to the contract authority	State required to set aside formula obligation limitation in an amount equal to the VRU funds carried over from the prior year
August Redistribution	State must return unused set-aside VRU Special Rule obligation limitation for August Redistribution. If not returned, the obligation limitation will expire and be removed from FMIS. Returned limitation will not be restored in the following year	State must return unused set-aside formula obligation limitation for August Redistribution. If not returned, the obligation limitation will expire and be removed from FMIS. Returned limitation will not be restored in the following year
De-obligation	If a State de-obligates previous years' VRU Special Rule funds for a legitimate reason, funds must be re-obligated that same FY on one or more VRU projects	

Attachment

Table: 2009 Set-Aside Amounts and Obligation Requirements for HRRR Special Rule

Attachment

Table: 2009 Set-Aside Amounts and Obligation Requirements for HRRR Special Rule
Source: https://www.fhwa.dot.gov/legsregs/directives/notices/n4510742/n4510742t17.cfm

State*	2009 HRRR set-aside funds	Funds required to be obligated in a fiscal year for HRRR if the Special Rule applies
ALABAMA	$2,062,489	$4,124,978
ALASKA	$450,000	$900,000
ARIZONA	$2,046,858	$4,093,716
ARKANSAS	$1,374,327	$2,748,654
CALIFORNIA	$8,781,564	$17,563,128
COLORADO	$1,413,042	$2,826,084
CONNECTICUT	$751,445	$1,502,890
DELAWARE	$450,000	$900,000
DIST. OF COL.	$450,000	$900,000
FLORIDA	$4,722,502	$9,445,004
GEORGIA	$3,149,726	$6,299,452
HAWAII	$450,000	$900,000
IDAHO	$647,399	$1,294,798
ILLINOIS	$3,024,273	$6,048,546
INDIANA	$1,756,64 5	$3,513,290
IOWA	$1,335,895	$2,671,790
KANSAS	$1,575,055	$3,150,110
KENTUCKY	$1,439,993	$2,879,986
LOUISIANA	$1,542,587	$3,085,174
MAINE	$450,000	$900,000
MARYLAND	$1,331,794	$2,663,588
MASSACHUSETTS	$1,136,838	$2,273,676
MICHIGAN	$2,926,006	$5,852,012
MINNESOTA	$1,810,055	$3,620,110
MISSISSIPPI	$1,639,574	$3,279,148
MISSOURI	$2,328,568	$4,657,136
MONTANA	$694,880	$1,389,760
NEBRASKA	$938,461	$1,876,922
NEVADA	$743,907	$1,487,814
NEW HAMPSHIRE	$450,000	$900,000
NEW JERSEY	$1,666,605	$3,333,210
NEW MEXICO	$943,712	$1,887,424
NEW YORK	$3,095,686	$6,191,372
NORTH CAROLINA	$2,363,489	$4,726,978
NORTH DAKOTA	$628,833	$1,257,666
OHIO	$2,757,751	$5,515,502
OKLAHOMA	$1,899,409	$3,798,818

State*	2009 HRRR set-aside funds	Funds required to be obligated in a fiscal year for HRRR if the Special Rule applies
OREGON	$1,220,060	$2,440,120
PENNSYLVANIA	$2,883,447	$5,766,894
RHODE ISLAND	$450,000	$900,000
SOUTH CAROLINA	$2,008,769	$4,017,538
SOUTH DAKOTA	$758,550	$1,517,100
TENNESSEE	$2,118,260	$4,236,520
TEXAS	$7,286,076	$14,572,152
UTAH	$665,659	$1,331,318
VERMONT	$450,000	$900,000
VIRGINIA	$2,229,887	$4,459,774
WASHINGTON	$1,572,286	$3,144,572
WEST VIRGINIA	$805,658	$1,611,316
WISCONSIN	$1,868,071	$3,736,142
WYOMING	$453,909	$907,818

* The Puerto Rico Highway Program is an allocated program and not subject to the HRRR Special Rule (23 U.S.C. 165).

cc:
Directors of Field Services
Safety Field
HCC
HCF
HPL
HSA