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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### Federal Highway Administration

#### 23 CFR Part 1240

[Docket No. NHTSA-98-4494]

RIN 2127-AH38

### Safety Incentive Grants for Use of Seat Belts—Allocations Based on State Seat Belt Use Rates

**AGENCY:** National Highway Traffic Safety Administration (NHTSA) and Federal Highway Administration (FHWA), DOT.

**ACTION:** Interim final rule; request for comments.

**SUMMARY:** This interim final rule establishes procedures for determining allocations of funds under a new Federal grant program. Section 157 of title 23, United States Code, directs the Secretary of Transportation to allocate funds to States whose seat belt use rates meet certain requirements. Allocations are to be based on savings in medical costs to the Federal Government due to seat belt use rates that meet the requirements. In order to allocate the funds, the Secretary must determine which States have seat belt use rates that meet the requirements and the amount of medical savings to the Federal Government attributable to each such State's seat belt use rate. This document sets forth the requirements that govern allocations of funds under this program.

**DATES:** This interim final rule is effective on October 29, 1998. Comments concerning this document are due no later than January 29, 1999.

**ADDRESSES:** Comments should refer to the docket number set forth above and be submitted in writing to: Docket Management, Room PL-401, National Highway Traffic Safety Administration, Nassif Building, 400 Seventh Street, SW, Washington, DC 20590. (Docket hours are Monday-Friday, 9 a.m. to 5 p.m., excluding Federal holidays.)

**FOR FURTHER INFORMATION CONTACT:** The following persons at the U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590—In NHTSA: Joan Catherine Tetrault, State and Community Services, NSC-01, (202) 366-2121; John Donaldson, Office of the Chief Counsel,

NCC-30, (202) 366-1834. In FHWA: Byron E. Dover, Office of Highway Safety, HHS-10, (202) 366-2161; Raymond W. Cuprill, Office of the Chief Counsel, HCC-20, (202) 366-0834.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

Section 1403 of the recently enacted Transportation Equity Act for the 21st Century (Pub. L. 105-178) added a new Section 157 to title 23 of the United States Code (replacing a predecessor Section 157). The new section (hereafter Section 157) authorizes a State seat belt incentive grant program covering FYs 1999 through 2003. Under this program, the Secretary of Transportation is directed to allocate funds each fiscal year to States that achieve a seat belt use rate that exceeds, for the past two years, the national average seat belt use rate, or that exceeds the highest seat belt use rate achieved by the State in certain designated previous years. The allocated funds are to reflect the amount of savings in medical costs to the Federal Government, based on the seat belt use rates. States may use these allocated funds for any projects eligible for assistance under title 23, United States Code. (Section 157 provides for the further distribution of funds, if any funds remain unallocated after the required allocations related to seat belt use rates are made, but today's action does not address those provisions.)

Today's interim final rule sets forth the requirements and procedures that will apply to the allocation of funds based on seat belt use rates. The Secretary's authority to administer the program has been delegated to NHTSA and FHWA. Consequently, this interim final rule is being issued jointly by the two agencies (hereafter, the agencies).

##### B. General

Section 157 requires the Secretary to allocate funds, starting in FY 1999, to States that achieve certain seat belt use rates. A State can satisfy the requirement by meeting one of two conditions: First, if the State's seat belt use rate in each of the preceding two calendar years exceeded the national average seat belt use rate for those years; and second, if the State's seat belt use rate in the previous calendar year exceeded its "base seat belt use rate." The base seat belt use rate is defined as the State's highest seat belt use rate for any calendar year during the period of 1996 through the calendar year preceding the previous calendar year. (For example, for allocations made in FY 2000 (on or about October 1, 1999), the base seat belt use rate would be the State's highest seat belt use rate during

the period from calendar year 1996 through calendar year 1997.) Section 157 further provides that a State may receive an allocation under the second condition only if it fails to meet the first condition. Hence, if a State meets both conditions, it may not receive an allocation under both conditions, and it may not receive an allocation under the second condition. It must receive an allocation under the first condition.

A State that meets the first condition described above is to receive an allocation of funds that reflects the "savings to the Federal Government" due to the amount by which the State seat belt use rate for the previous calendar year exceeds the national average seat belt use rate for that year. A State that meets the second condition (and not the first condition) is to receive an allocation that reflects the "savings to the Federal Government" due to the amount by which the State seat belt use rate for the previous calendar year exceeds the State's base seat belt use rate. Section 157 defines "savings to the Federal Government" as "the amount of Federal budget savings relating to Federal medical costs (including savings under the medicare and medicaid programs under titles XVIII and XIX of the Social Security Act (42 U.S.C. 1395 *et seq.*)), as determined by the Secretary."

In order to determine whether a State is eligible for an allocation of funds during each fiscal year, based on the above-described requirements, NHTSA must obtain and evaluate State seat belt use rate information from two contiguous calendar years. Specifically, to make the determinations necessary to allocate funds in FY 1999, Section 157 requires the use of seat belt use rate information submitted by the States for calendar years 1996 and 1997. Section 157 provides that this information is to be weighted by the Secretary to ensure national consistency in methods of measurement. The determinations necessary to allocate funds in FY 2000 and thereafter require the use of seat belt use rate information for calendar year 1998 and beyond, and are subject to different requirements. (For FY 2000 allocations only, calendar year 1997 seat belt use rate information is still required, along with the calendar year 1998 information, and the 1997 information is subject to the above-described weighting procedure.) Specifically, beginning in calendar year 1998, Section 157 requires States to measure seat belt use rates following criteria established by the Secretary, to ensure that the measurements are "accurate and representative." In accordance with this latter mandate,

NHTSA recently published the Uniform Criteria for State Observational Surveys of Seat Belt Use (hereafter, Uniform Criteria), an interim final rule establishing the criteria to be followed by States in measuring seat belt use rates for calendar year 1998 and beyond (23 CFR Part 1340, 63 FR 46389, September 1, 1998).

For all calendar years during which State seat belt use rates must be measured, NHTSA must calculate the national average seat belt use rate, to use in eligibility and allocation determinations. Additionally, for each State determined to be eligible for an allocation (either based on a seat belt use rate that exceeds the national average seat belt use rate or one that exceeds the State's own base seat belt use rate), NHTSA must calculate the amount of medical savings to the Federal Government due to the State's higher seat belt use rate, to determine the amount of the allocation. These necessary steps, along with the information needed to accomplish them, are identified and explained in today's interim final rule.

### C. Highlighted Provisions

#### 1. Identification of Eligible States

Consistent with Section 157, the interim final rule provides that a State will receive an allocation of funds on or about October 1, 1998 and each October 1 thereafter if its seat belt use rate either exceeds the national average seat belt use rate for the previous two calendar years or exceeds the State's base seat belt use rate. The interim final rule also provides that the State may not receive an allocation under both of these criteria. If the State meets the first criterion, its allocation will be based on that criterion, irrespective of whether the State also meets the second criterion. These eligibility requirements mirror the requirements of the statute. When NHTSA makes eligibility determinations under the regulation, it will use seat belt use rate data rounded to the nearest tenth of one percent.

The interim final rule applies different procedures to the identification of eligible States for allocations in FY 1999 (i.e., on or about October 1, 1998) and in FY 2000 and beyond (i.e., on or about October 1, 1999 and each October 1 thereafter). For fiscal year 1999, a state will receive an allocation if it meets one of the two previously discussed conditions, on the basis of calendar year 1996 and 1997 seat belt use rate information. The use and adjustment of that information is governed by other provisions in the rule. (See Determination of State Seat

Belt Use Rate for Calendar Years 1996 and 1997, below, for a discussion of those provisions.) Since data for these two years predates the enactment of Section 157, NHTSA is affording wide latitude to the States, and will make adjustments to the data or substitutions, as necessary, as discussed in greater detail below.

For seat belt use rate information for calendar year 1998 and beyond, which affects allocations beginning in FY 2000, Congress has directed that the information be provided by the States in accordance with criteria established by the Secretary (the previously discussed Uniform Criteria). Consequently, for a State to be considered for an allocation in FY 2000 and beyond, with one exception, the interim final rule provides that it must conduct a survey and submit a survey report that satisfies the Uniform Criteria. The exception allows a State to certify, with respect to calendar year 1998 only, that it has conducted a survey using a survey design that was approved in writing by NHTSA for the purposes of qualification under 23 U.S.C. 153 (a previous grant program with similar survey needs), with certain specific modifications, and to submit a copy of that survey report. The requirement for the survey, and the details of review, approval, and certification, are governed by other provisions of the rule. (See Determination of State Seat Belt Use Rate for Calendar year 1998 and Beyond, below, for a discussion of those provisions.)

The rule provides that a State is ineligible for an allocation if it fails to conduct a seat belt use survey when one is required. States should note that failure to comply with these survey requirements during one calendar year will affect more than one year of allocations. For example, if a State fails to conduct a survey in calendar year 1998, it will not be eligible to receive an allocation in either FY 2000 or FY 2001 under the first condition described above. This result is due to the need for data from two contiguous calendar years in order to make the determinations required for those allocations. Using the same example, the interim final rule provides that the State will also not be eligible to receive an allocation in FY 2000 or FY 2001 under the second condition described above. While the second condition does not rely upon two contiguous calendar years of data, NHTSA believes that allowing a State to be evaluated under the second condition when it has not met the prerequisites for evaluation under the first condition is inconsistent with the statutory framework.

#### 2. Determination of State Seat Belt Use Rate for Calendar Years 1996 and 1997

Section 157 requires that the State seat belt use rate for calendar years 1996 and 1997 be weighted to ensure national consistency in methods of measurement. The interim final rule provides a mechanism to achieve the required national consistency. NHTSA will use existing seat belt use rate information submitted by a State for each of calendar years 1996 and 1997, provided it meets four requirements: (1) Measurements of seat belt use were based on direct observation; (2) at least 70 percent of observation sites were surveyed during the calendar year for which the seat belt use rate is reported; (3) all passenger motor vehicles were sampled; and (4) all front seat outboard occupants in the sampled vehicles were counted. These requirements are also among the requirements included in the Uniform Criteria that apply to surveys to be conducted in calendar year 1998 and beyond, except that the Uniform Criteria require that all observations be made during the calendar year for which the seat belt use rate is reported. (The Uniform Criteria include additional requirements as well.) The third requirement, that passenger motor vehicles (passenger cars, pickup trucks, vans, minivans, and sport utility vehicles) be sampled, is a direct requirement of Section 157.

If the first two requirements are met, but either of the last two requirements is not met, the interim final rule provides that the State-submitted seat belt use rate information will be adjusted, based on information from the most recently conducted National Occupant Protection Use Survey (NOPUS). The NOPUS is a probability-based survey of national seat belt use conducted by NHTSA on a periodic basis. Using the NOPUS, an adjustment will be made based on the national ratio of seat belt use rates for front outboard occupants in passenger motor vehicles to the use rates for the group of occupants and vehicles that were included in the State-submitted information. The adjustment process will result in an estimate of seat belt use rate that includes front seat outboard occupants for passenger motor vehicles. The details of this process appear in Appendix A to the interim final rule.

If either of the first two requirements is not met for calendar year 1996 or 1997 submissions, NHTSA will not use the State-submitted seat belt use rate information for any calendar year during which a requirement is not met, as the agency does not believe that the information can be meaningfully

adjusted to ensure national consistency in methods of measurement. Instead, the interim final rule provides that NHTSA will use information from the Fatality Analysis Reporting System (FARS) to arrive at an estimate of the State's seat belt use rate. The FARS is a NHTSA database containing information, including seat belt use statistics, about crashes that have resulted in at least one fatality. Seat belt use rates of fatally-injured occupants from the FARS will be correlated to observed use rates, using an algorithm that relates historical seat belt use by fatally-injured occupants to observed use. The details of this process appear in Appendix B to the interim final rule.

In establishing the process for data adjustment and use of alternate data, as discussed above, NHTSA has given careful attention to achieving fair and nationally consistent measures of seat belt use rates for calendar years 1996 and 1997, mindful of the fact that these years have already ended, while allowing significant flexibility in the use of a variety of existing information provided by the States.

### *3. Determination of State Seat Belt Use Rate for Calendar Year 1998 and Beyond*

Section 157 provides that States must submit seat belt use rate information in accordance with criteria established by the Secretary, beginning in calendar year 1998 and in each calendar year thereafter. As discussed above, NHTSA published these criteria in an interim final rule in the **Federal Register** on September 1, 1998 (63 FR 46389). States should refer to that document for guidance on survey requirements. Today's interim final rule requires that each State must submit its seat belt use rate, expressed as a percentage to one decimal place, and an accompanying survey report each calendar year by no later than March 1st after the calendar year in which the survey was conducted. The survey report is to consist, at minimum, of the documentation required under the Uniform Criteria (23 CFR 1340.5), including information about design, data collection, and estimation, and is to summarize the results of any analyses conducted under the survey.

The time-frame for submission provides ample opportunity for States to compile information and compute seat belt use rates following the close of the calendar year, while also providing sufficient time for necessary agency reviews and determinations, and for the timely allocation of funds. The interim final rule provides that NHTSA will review each survey report to determine whether it complies with the

requirements of the Uniform Criteria, and provide written notice of approval or disapproval to the Governor's Representative for Highway Safety. The rule also provides that a State may submit a description of its proposed survey methodology for advance review, prior to conducting the survey. This will provide an extra measure of assurance to a State, prior to committing resources, that its survey will satisfy the requirements of the Uniform Criteria. After conducting the survey, the State will still be required to submit its survey report for review, along with the State's seat belt use rate.

The Uniform Criteria are substantially similar to survey guidelines that existed under another grant program (23 U.S.C. 153). Under that program, some States had previously submitted survey designs and received NHTSA approval for the designs. NHTSA believes that prior approval under that program is a strong indication that the survey will satisfy most of the requirements of the Uniform Criteria, provided the survey design has remained unchanged. Consequently, where a State-submitted survey design has received previous NHTSA approval (on or after June 29, 1992, the date of publication of the guidelines for the previous program), the interim final rule provides that in lieu of reviewing a survey design for calendar year 1998, NHTSA will accept the State's seat belt use rate if the survey methodology it is following has remained unchanged since that approval, except for the additional requirements included under the new program, which must all be met. The new requirements include the sampling of all passenger motor vehicles, the measurement of seat belt use by all front outboard occupants in the sampled vehicles, and the counting of seat belt use only within the calendar year for which the seat belt use rate is reported. The State must certify that its seat belt use rate is based on a survey whose design has received such prior approval, that its survey design incorporates the new requirements identified above and that it otherwise has remained unchanged. The certification format appears in Appendix C of the interim final rule. The State is still required to submit its seat belt use rate and its survey report, which is to consist of the documentation required under the Uniform Criteria (23 CFR 1340.5), along with the certification, by March 1st after the calendar year during which the survey was conducted. The interim final rule provides that NHTSA will send written notice of acceptance or rejection of the certification to the Governor's Representative for Highway Safety. The

certification process applies only to calendar year 1998 surveys, to reduce administrative review burdens during the first year of the survey requirement in view of the late enactment of Section 157. Thereafter (i.e., for surveys conducted in calendar year 1999 and beyond), the review and approval process described above will apply.

### *4. Determination of National Average Seat Belt Use Rate*

Section 157 requires a determination of each State that is eligible for an allocation of funds based on a seat belt use rate that exceeds the national average seat belt use rate for the past two years. Consequently, for each calendar year for which State seat belt use rates are required to be determined, as discussed above, NHTSA must calculate the national average seat belt use rate. The procedure adopted under the interim final rule provides that each State's seat belt use rate for the relevant calendar year, adjusted as necessary under other provisions of the rule, will be weighted to reflect the percentage of total national vehicle miles traveled attributable to that State. The national average seat belt use rate will be determined by summing all of the weighted State seat belt use rates.

If a seat belt use rate is unavailable for a State during a particular calendar year or is reported based on a survey that does not comply with the Uniform Criteria, NHTSA will use the most recently available seat belt use rate for the State, as determined under other provisions of today's interim final rule, along with information from the FARS and from the algorithm that relates historical seat belt use by fatally-injured occupants to observed use, as discussed previously. In this manner, the agency will arrive at an estimated seat belt use rate for the State for the missing calendar year. NHTSA will apply this procedure to all States for which a seat belt use rate is unavailable during a calendar year, in order to include seat belt use rates from every State in the calculation of the national average seat belt use rate. The details of this process appear in Appendix D to the interim final rule.

Appendix D to the interim final rule provides that NHTSA reserves the option to use the results of a non-complying survey in determining the national average seat belt use rate, if in NHTSA's judgment, the deficiencies in the survey are not so substantial as to render the survey less accurate than an estimate based on the FARS process. The agency has included this option in recognition of the fact that all estimates

are necessarily imperfect, and to ensure maximum flexibility in the process of determining an accurate national average seat belt use rate. States should note that NHTSA's estimation of a State's seat belt use rate for the purpose of determining the national average seat belt use rate will not alter a State's ineligibility to receive an allocation of funds if the State has not complied with applicable survey submission requirements.

#### *5. Determination of Federal Medical Savings*

As provided under Section 157, the measurement of savings in Federal medical costs is to equal the amount of Federal budget savings, including savings under the Medicare and Medicaid programs, attributable to differences in seat belt use rates. To measure these savings, the interim final rule first provides that NHTSA will determine the impact of seat belt use on fatalities and injuries. The methods used relate the effectiveness of seat belts, current use rates, and existing injury levels to determine the impact of increasing seat belt use on motor vehicle safety. The methods adopted in the interim final rule are well-established, and have been used for many years in analyses of NHTSA's regulatory programs, and in published estimates of the impacts of seat belt use.

After estimating the number of fatalities prevented and non-fatal injuries avoided due to increased seat belt use, NHTSA will adjust national medical costs to individual State income levels, to reflect local per-case costs. These per-case costs will be further adjusted for inflation, using the most recent annual average Consumer Price Index for medical care, and multiplied by the number of injuries and fatalities prevented in each State to derive the total medical cost savings from increased seat belt use. NHTSA will then determine the Federal share of those medical costs from the best available sources. The details of this process appear in Appendix E to the interim final rule.

#### *6. Allocations*

As previously discussed, Section 157 provides that the amount of a State's allocation is equal to the amount of Federal medical savings attributable to the difference between the State's seat belt use rate and the national average seat belt use rate or the State's base seat belt use rate, as applicable. The interim final rule provides that, on or about September 1 prior to each fiscal year during which allocations are to be made, NHTSA will notify each State of

its proposed allocation. Consistent with Section 157, the rule provides that the proposed allocations will be reduced proportionately if the allocations would exceed the total amount of available authorizations. Allocations will be further reduced if, in the aggregate, they exceed total obligation limitations applicable to Section 157. Allocated funds are available for any project eligible for assistance under Title 23, United States Code. Within 25 days after notice of its proposed allocation, each State must identify the amount of the allocated funds that will be used for highway safety programs and the amount that will be used for Federal-aid highway programs. The interim final rule provides that this information is to be sent, in writing, jointly by the Governor's Representative for Highway Safety and the Secretary of the State's Department of Transportation to the appropriate NHTSA Regional Administrator and FHWA Division Administrator. On or about October 1, the funds will be allocated officially, in accordance with the information received from the State. Thereafter, the State will identify specific NHTSA program areas or FHWA accounts to which the allocated funds are to be credited. This process will permit the proper accounting entries to be made.

#### **D. Interim Final Rule**

This rule is being published as an interim final rule, without prior notice and opportunity to comment. The agencies believe that there is good cause for finding that providing prior notice and comment in connection with this rulemaking action is impracticable, unnecessary, and contrary to the public interest, since it concerns actions required by statute to be taken as early as September 1, 1998. For the same reasons, the agencies have determined that prior notice and an opportunity for comment are not required under the Department's regulatory policies and procedures.

The statute authorizing the grant program to which this interim final rule applies (Pub. L. 105-178) provides that determinations of eligibility are to be made as early as September 1, 1998, and that allocations of funds to States are to be made on October 1, 1998. The statute was enacted on June 9, 1998, leaving little time for implementation of necessary procedures. These circumstances make it necessary to implement the statutory requirements by an interim final rule. For these reasons, pursuant to 5 U.S.C. 808 (Pub. L. 104-121) (the Congressional review provisions of the Small Business Regulatory Enforcement Fairness Act),

the agency also, for good cause, finds that notice and public procedure are impracticable, unnecessary, and contrary to the public interest and, therefore, this rule can be made effective upon publication.

In the agencies' view, the States will not be impeded by the use of an interim final rule. The procedures that States must follow to receive an allocation of funds under this new program are similar to procedures that States have followed in another grant program administered by NHTSA (23 U.S.C. 153). These procedures were subject to prior notice and the opportunity to comment. Moreover, additional information contained in this rule is in the nature of calculations, adjustments, and estimation to be made by NHTSA. These methods are well-established and have been used for many years in analyses of NHTSA's regulatory programs.

As an interim final rule, this regulation is fully in effect upon the date of its publication. No further regulatory action by the agencies is necessary to make the rule effective. However, in order to benefit from comments which interested parties and the public may have, the agencies are requesting that comments be submitted to the docket for this notice. All comments submitted in response to this notice, in accordance with the procedures outlined below, will be considered by the agencies.

#### **E. Written Comments**

The agencies are providing until January 29, 1999 for interested parties to present data, views, and arguments concerning this interim final rule. While the interim final rule provides notice of procedures that are immediately in effect during the current year, it also contains recurring procedures and requirements that affect future years. The long comment period will afford States the opportunity to provide more informed comments relevant to future years of the program, on the basis of experience from this year's requirements. This comment period coincides with the comment period for a companion rule, the Uniform Criteria for State Observational Surveys of Seat Belt Use (63 FR 46389), allowing commenters to address both rules in a contemporaneous time period. The agencies invite comments on the issues raised in this notice and any other issues relevant to this action. Comments must not exceed 15 pages in length (49 CFR 553.21). This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion. Necessary attachments may be

appended to these submissions without regard to the 15-page limit.

All comments received by the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date. Following the close of the comment period, the agencies will publish a document responding to the comments and, if appropriate, the agencies will amend the provisions of this rule. The agencies will continue to file relevant material in the docket as it becomes available after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified of receipt of their comments by the docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receipt of the comments, the docket supervisor will return the postcard by mail.

#### **Regulatory Analyses and Notices**

##### *Executive Order 12612 (Federalism)*

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that it does not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. Accordingly, a Federalism Assessment has not been prepared.

##### *Executive Order 12778 (Civil Justice Reform)*

This interim final rule does not have any preemptive or retroactive effect. It merely implements the statutory requirements of a new grant program. The enabling legislation does not establish a procedure for judicial review of final rules promulgated under its provisions. There is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceedings before they may file suit in court.

##### *Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures*

This rulemaking action was reviewed under Executive Order 12866, "Regulatory Planning and Review." The action has been determined to be "significant" under Executive Order 12866 and under the Department of Transportation Regulatory Policies and

Procedures because it is likely to result in significant economic impacts. The Final Economic Assessment (FEA) for this rule describes the economic effects of this rulemaking action in detail. A copy of the FEA has been placed in the docket for public inspection.

Following is a summary of the cost and benefit information for this rule. The total annual cost of conducting surveys following the procedures of this rule and of a recently published companion rule (63 FR 46389) (if each State conducted one) is estimated to be \$1.9 million. However, most States already conduct surveys similar to those that would be required in order to qualify for funds under Section 157, after FY 1999. The FEA concludes that there will be a one-time redesign cost totaling \$160,000 for those states that currently conduct annual surveys, but whose surveys require revision, and an annual cost totaling \$192,750 for those States that currently do not conduct annual surveys.

NHTSA believes that incentives provided by Section 157 could result in safety efforts that would increase seat belt use rates by an average of 1 to 4 percentage points. If such an increase is achieved, from 232 to 940 lives would be saved annually, from 5,700 to 23,000 nonfatal injuries would be prevented, and medical costs would decline by \$64 million to \$258 million. To raise seat belt use rates, States will have to initiate enforcement efforts and public education programs or enact legislation to upgrade current seat belt use laws to provide for primary enforcement. NHTSA estimates that the level of expenditure needed to raise seat belt use rates by 1 to 4 percentage points nationwide is approximately \$200,000 per state, or \$10.4 million (based on the fifty States, the District of Columbia, and Puerto Rico).

A State may be eligible for an allocation of funds during each of fiscal years 2000 through 2003 if it conducts a survey of seat belt use during each of calendar years 1998 through 2001, and may be eligible for an allocation of funds during fiscal year 1999 without conducting a survey. Eligibility is dependent on whether the results of the survey meet certain statutory criteria. Allocations available to the States, provided they meet the statutory criteria, total \$82,000,000 for fiscal year 1999, \$92,000,000 for fiscal year 2000, \$102,000,000 for fiscal year 2001, and \$112,000,000 for each of fiscal years 2002 and 2003. The exact amount of funds allocated to States that meet the statutory criteria will vary, depending on their seat belt use rate. It is unlikely that all available funds will be allocated

under this rule, because not all States will meet the statutory criteria and seat belt use rates of complying States will vary.

##### *Regulatory Flexibility Act*

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the agencies have evaluated the effects of this action on small entities. States will be the recipients of any funds awarded under the Section 157 program, and they are not small entities. We hereby certify that this action will not have a significant economic impact on a substantial number of small entities.

##### *Paperwork Reduction Act*

The State seat belt use surveys that are required to be submitted by this interim final rule are considered to be information collection requirements, as defined by the Office of Management and Budget in 5 CFR Part 1320. On August 10, 1998, the Department of Transportation submitted an emergency processing information collection request to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). On August 17, OMB approved the request for clearance, assigning the collection OMB Clearance No. 2127-0597. The emergency clearance will expire on February 28, 1999. Through February 28, 1999, NHTSA is authorized to collect 17,942 burden hours from the affected States, the District of Columbia, and Puerto Rico.

##### *National Environmental Policy Act*

The agencies have reviewed this action for the purpose of compliance with the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), and have determined that it will not have a significant effect on the human environment.

##### *Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually. This interim final rule does not meet the definition of a Federal mandate. It is a voluntary program, in which States can choose to participate at their option. The costs to States to participate in this program will not exceed the \$100 million threshold. Moreover, States that choose to participate in this program will receive

allocations of Federal funds for activities that are eligible under Title 23, United States Code.

#### List of Subjects in 23 CFR Part 1240

Grant programs—Transportation, Highway safety, Intergovernmental relations, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, title 23, chapter II, subchapter B of the Code of Federal Regulations is amended as set forth below.

1. Part 1240 is added to read as follows:

### PART 1240—SAFETY INCENTIVE GRANTS FOR USE OF SEAT BELTS—ALLOCATIONS BASED ON SEAT BELT USE RATES

#### Subpart A—General

Sec.

- 1240.1 Purpose.
- 1240.2 Applicability.
- 1240.3 Definitions.

#### Subpart B—Determination of Allocations

- 1240.10 Identification of eligible States.
- 1240.11 Determination of State seat belt use rate for calendar years 1996 and 1997.
- 1240.12 Determination of State seat belt use rate for calendar year 1998 and beyond.
- 1240.13 Determination of national average seat belt use rate.
- 1240.14 Determination of federal medical savings and notification of proposed allocations.
- 1240.15 Allocations.

Appendix A—Adjustment Procedures for State-Submitted Information (Calendar Years 1996 and 1997)

Appendix B—Procedures for Missing or Inadequate State-Submitted Information (Calendar Years 1996 and 1997)

Appendix C—Certification (Calendar Year 1998 Survey Based on Survey Approved Under 23 U.S.C. 153)

Appendix D—Determination of National Average Seat Belt Use Rate

Appendix E—Determination of Federal Medical Savings

**Authority:** 23 U.S.C. 157; delegations of authority at 49 CFR 1.48 and 1.50.

#### Subpart A—General

##### § 1240.1 Purpose.

This part establishes requirements and procedures governing the allocation of funds to States made under 23 U.S.C. 157(c), based on seat belt use rates.

##### § 1240.2 Applicability.

These procedures apply to all allocations of funds to States, based on seat belt use rates, beginning with allocations for fiscal year 1999.

##### § 1240.3 Definitions.

As used in this part—

*Base seat belt use rate* means the highest State seat belt use rate for the

State for any calendar year during the period from 1996 through the calendar year preceding the previous calendar year;

*Federal medical savings* means the amount of Federal budget savings relating to Federal medical costs (including savings under the Medicare and Medicaid programs under titles XVIII and XIX of the Social Security Act (42 U.S.C. 1395 *et seq.*)), as determined under this part;

*FHWA* means the Federal Highway Administration;

*NHTSA* means the National Highway Traffic Safety Administration;

*Passenger motor vehicle* means a passenger car, pickup truck, van, minivan, or sport utility vehicle;

*State* means any of the fifty States, the District of Columbia, or Puerto Rico.

*State seat belt use rate* means the seat belt use rate for a State, rounded to the nearest tenth of one percent, after any required weighting, adjustment, or substitution under this part, that is used in determining eligibility for and the amount of an allocation under this part.

#### Subpart B—Determination of Allocations

##### § 1240.10 Identification of eligible States.

(a) On or about September 1, 1998, and each September 1 thereafter, NHTSA will identify, on the basis of seat belt use rates determined, as applicable, under §§ 1240.11, 1240.12, and 1240.13 of this part—

(1) Each State that had a State seat belt use rate during the previous calendar year and the year preceding the previous calendar year that exceeded the national average seat belt use rate for each of those years; and

(2) Each State that does not meet the requirements of paragraph (a)(1) of this section and that had a State seat belt use rate during the previous calendar year that exceeded the State's base seat belt use rate.

(b) Any seat belt use rate used in making the determinations under this part shall be rounded to the nearest tenth of one percent.

(c) A State identified under paragraph (a)(1) or (a)(2) of this section, and not ineligible under § 1240.12(a)(2) of this part, shall receive an allocation of funds reflecting the Federal medical savings, in accordance with the procedures of §§ 1240.14 and 1240.15 of this part.

##### § 1240.11 Determination of State seat belt use rate for calendar years 1996 and 1997.

(a) *Review of State-submitted information.* NHTSA will review available seat belt use rate information submitted by each State for calendar

years 1996 and 1997 to determine whether—

(1) Measurements of seat belt use were based on direct observation;

(2) At least 70 percent of observation sites were surveyed during the calendar year for which the seat belt use rate is reported;

(3) All passenger motor vehicles were sampled; and

(4) All front seat outboard occupants in the sampled vehicles were counted.

(b) *Determination of State seat belt use rate.* Seat belt use rate information submitted by a State for calendar year 1996 or 1997 will be—

(1) Accepted as the State seat belt use rate if it satisfies paragraphs (a)(1), (a)(2), (a)(3), and (a)(4) of this section.

(2) Accepted after adjustment in accordance with the procedures of Appendix A of this part, as the State seat belt use rate, if it satisfies paragraphs (a)(1) and (a)(2) of this section, but fails to satisfy paragraph (a)(3) or (a)(4) of this section.

(3) Rejected, and the procedures of Appendix B of this part shall apply, if it fails to satisfy paragraph (a)(1) or (a)(2) of this section.

##### § 1240.12 Determination of State seat belt use rate for calendar year 1998 and beyond.

(a) *State seat belt use survey.*

(1) Beginning in calendar year 1998, State seat belt use rates used for determining allocations under this part shall be based on a survey conducted each calendar year by each State that satisfies all the requirements of Part 1340 of this title (the Uniform Criteria for State Observational Surveys of Seat Belt Use).

(2) A State that does not conduct a survey required under paragraph (a)(1) of this section in any calendar year, or that conducts a survey that does not satisfy all the requirements of part 1340 of chapter III of this title, shall be ineligible for an allocation of funds on the basis of both § 1240.10(a)(1) and § 1240.10(a)(2) of this part during the second and third succeeding fiscal years (e.g., if a State fails to conduct a conforming survey in calendar year 1998, the State is ineligible for an allocation of funds during FY 2000 and FY 2001).

(b) *Submission of survey information.*

(1) Each State shall submit to NHTSA, no later than March 1st after the calendar year during which a survey required under paragraph (a)(1) of this section is conducted, the seat belt use rate determined under the survey, reported as a percentage to one decimal place, accompanied by a survey report, consisting of all documentation identified in § 1340.5 of chapter III of

this title and summarizing the results of any analyses conducted under the survey.

(2) NHTSA will review a survey report submitted under paragraph (b)(1) of this section to determine whether the survey complies with all the requirements of § 1340 of chapter III of this title. Written notice of approval or disapproval of a survey will be sent to the Governor's Representative for Highway Safety within 30 days of receipt of the survey report. Any notice of disapproval will be accompanied by a detailed statement of the reasons for disapproval.

(3) A State may elect to submit a description of its proposed survey methodology, consisting of all documentation identified in § 1340.5 (a), (b) and (c)(3) of chapter III of this title for advance review, prior to conducting the survey.

(4) NHTSA will review a proposed survey methodology submitted under paragraph (b)(3) of this section and inform the Governor's Representative for Highway Safety in writing within 30 days of receipt of the proposed methodology whether the survey, if conducted in accordance with the methodology, would comply with all the requirements of § 1340 of chapter III of this title. Any notice indicating non-compliance will be accompanied by a detailed statement of the reasons.

(5) A State that submits a description of its proposed survey methodology under paragraph (b)(3) of this section continues to be required to submit all information required under paragraph (b)(1) of this section, after the State conducts its survey, for review under paragraph (b)(2) of this section.

(c) *Submission of Certification—calendar year 1998 surveys.*

(1) A survey conducted by a State in calendar year 1998 shall be deemed to comply with the requirements of § 1340 of chapter III of this title, if—

(i) The survey's design was approved by the agency, in writing, on or after June 29, 1992, for the purposes of the grant program authorized under 23 U.S.C. 153;

(ii) The survey design has remained unchanged since the survey was approved (except to the extent that the requirements of paragraph (c)(1)(iii) constitute a change); and

(iii) The survey samples all passenger motor vehicles, measures seat belt use by all front seat outboard occupants in the sampled vehicles, and counts seat belt use only within the calendar year for which the seat belt use rate is reported.

(2) A State that meets the requirements of paragraph (c)(1) of this

section shall submit a certification signed by the Governor's Representative for Highway Safety, in the form prescribed in Appendix C of this part, accompanied by the information required under paragraph (b)(1) of this section.

(3) Written notice of acceptance or rejection of a certification will be sent to the Governor's Representative for Highway Safety within 30 days of receipt of the information required under paragraph (c)(2) of this section. Any notice of rejection will be accompanied by a detailed statement of the reasons for rejection.

(d) *Determination of State seat belt use rate.* The seat belt use rate submitted by the State for a calendar year will be accepted as the State seat belt use rate for that calendar year if—

(1) It was determined under a survey whose survey report was approved under paragraph (b)(2) of this section; or

(2) For calendar year 1998 only, the State satisfies the requirements of paragraphs (c)(1) and (c)(2) of this section, and its certification is accepted under paragraph (c)(3) of this section.

#### **§ 1240.13 Determination of national average seat belt use rate.**

The national average seat belt use rate for a calendar year shall be the sum of the individual State seat belt use rates for all the States, after weighting each individual State seat belt use rate in accordance with the procedures of Appendix D of this part.

#### **§ 1240.14 Determination of Federal medical savings and notification of proposed allocations.**

On or about September 1, 1998, and each September 1 thereafter, NHTSA will—

(a) Calculate, in accordance with the procedures in Appendix E of this part, the Federal medical savings and each State's share of those savings, due to the amount by which the State seat belt use rate for the previous calendar year—

(1) Exceeds the national average seat belt use rate for that calendar year, for each State described in § 1240.10(a)(1) of this part; or

(2) Exceeds the State's base seat belt use rate, for each State described in § 1240.10(a)(2) of this part; and

(b) Notify the States described in § 1240.10(c) of this part of their proposed allocations, which shall be equal to the amount of the Federal medical savings calculated under paragraphs (a)(1) and (a)(2) of this section, as applicable, reduced proportionately across all States if the allocations would exceed the total amount authorized for allocation during the fiscal year.

#### **§ 1240.15 Allocations.**

(a) Funds allocated under this part shall be available for any projects eligible for assistance under title 23, United States Code.

(b) Not later than 25 days after notification under § 1240.14(b) of this part, the Governor's Representative for Highway Safety and the Secretary of the State's Department of Transportation for each State that receives notification shall jointly identify, in writing to the appropriate NHTSA Regional Administrator and FHWA Division Administrator, the amounts of the State's proposed allocations that will be used in highway safety programs and in Federal-aid highway programs.

(c) On or about October 1, 1998, and each October 1 thereafter, the funds to which a State is entitled under this part will be allocated in the proportions identified by the State under paragraph (b) of this section, reduced proportionately across all States if the allocations would, in the aggregate, exceed total obligation limitations applicable to 23 U.S.C. 157.

(d) Thereafter, each State shall identify specific NHTSA program areas and FHWA projects for which the allocated funds will be used.

#### **Appendix A—Adjustment Procedures for State-Submitted Information (Calendar Years 1996 and 1997)**

A. In States where State-submitted information on seat belt use rates does not include data for Front outboard occupants in passenger motor vehicles (FOPV), an adjustment will be made based on the national ratio of seat belt use rates for FOPV to the seat belt use rate for the group of occupants and vehicles that were included in the State-submitted information. The national seat belt use rates will be derived from the most recent National Occupant Protection Use Survey (NOPUS). For each affected State, the adjustment will be made by dividing the NOPUS seat belt use rate for FOPV by the NOPUS seat belt use rate for the surveyed group, or the seat belt use rate for the closest available group to the surveyed group. The NOPUS seat belt use rate for FOPV will be derived for each affected State by weighting the NOPUS seat belt use rates for passenger cars and for passenger motor vehicles that are not passenger cars (hereafter LTVs) by the relative number of registrations of passenger cars and LTVs in each State. This method will produce a factor which will be multiplied by the State's survey-based seat belt use rate to produce an adjusted seat belt use rate reflecting the required vehicle and occupant population.

B. The process may be expressed mathematically as follows:

$$U_a = U_s (N_{pc} * R_{pc} + N_{ltv} * R_{ltv}) / N_s$$

Where:

$U_a$  = the adjusted State seat belt use rate

$U_s$  = the State-submitted seat belt use rate



$N_{pc}$  = the national front outboard passenger car seat belt use rate from NOPUS

$N_{ltv}$  = the national front outboard LTV seat belt use rate from NOPUS

$R_{pc}$  = the portion of State passenger motor vehicle registrations that are passenger cars

$R_{ltv}$  = the portion of State passenger motor vehicle registrations that are LTVs

$N_s$  = the national seat belt use rate for the State-surveyed vehicle and occupant population (or closest available group from NOPUS)

#### Appendix B—Procedures for Missing or Inadequate State-Submitted Information (Calendar Years 1996 and 1997)

A. If State-submitted seat belt use rate information is unavailable or inadequate for both calendar years 1996 and 1997, State seat belt use rates for calendar year 1996 and 1997 will be estimated based on seat belt use rates of fatally-injured occupants. Data from the Fatality Analysis Reporting System (FARS) will be translated into estimated observed seat belt use rates using an algorithm that relates historical belt use by fatally-injured occupants to observed use.<sup>1</sup>

B. The algorithm is as follows:

$$u = (-.221794 + \sqrt{.049193 + .410769F}) / .456410$$

Where:

$u$  = the estimated observed seat belt use

$F$  = the seat belt use in potentially fatal crashes

In the above formula,  $F$  is calculated as follows:

$$F = (f / (1 - e)) / ((f / (1 - e)) + 1 - f)$$

Where:

$F$  = the seat belt use in potentially fatal crashes

$e$  = State-specific weighted average effectiveness of seat belts in passenger cars and passenger motor vehicles that are not passenger cars

$f$  = State-specific seat belt use rate of fatally-injured occupants of passenger vehicles

C. If State-submitted seat belt use rate information is available for either calendar year 1996 or 1997, but not both, a State seat belt use rate for the year for which information is missing will be estimated by calculating the percent change in the FARS-based observed seat belt use rate (derived from the above algorithm) between the two years. This factor will then be applied to the seat belt use rate from the known year to derive an estimate of the seat belt use rate for the unknown year.

#### Appendix C—Certification (Calendar Year 1998 Survey Based on Survey Approved Under 23 U.S.C. 153)

State Certification—Calendar Year 1998 Seat Belt Use Survey

State of \_\_\_\_\_

Seat Belt Use Rate Reported for Calendar Year \_\_\_\_\_ : \_\_\_\_\_ %.

In accordance with the provisions of 23 CFR 1240.12(c)(2), I hereby certify as follows:

1. The seat belt use rate reported above is based on a survey whose design was approved by NHTSA, in writing, on or after June 29, 1992, under the provisions of the grant program authorized by 23 U.S.C. 153.

2. The survey design has remained unchanged since the survey was approved (except to the extent that the requirements of paragraph 3 constitute a change).

3. The survey samples all passenger motor vehicles (including cars, pickup trucks, vans, minivans, and sport utility vehicles), measures seat belt use by all front outboard occupants in the sampled vehicles, and counts seat belt use completely within the calendar year for which the seat belt use rate is reported.

Governor's Representative for Highway Safety

(Date)

#### Appendix D—Determination of National Average Seat Belt Use Rate

A. To determine the national average seat belt use rate in a calendar year, each State seat belt use rate for the calendar year will be weighted to reflect the percentage of total national vehicle miles traveled attributable to that State.

B. If a State seat belt use rate is unavailable for a State during a calendar year (either because the State did not conduct a seat belt use survey or a survey was conducted but does not comply with the Uniform Criteria for State Observational Surveys of Seat Belt Use, 23 CFR Part 1340), NHTSA will calculate a State seat belt use rate, using the last available State seat belt use rate determined under § 1240.11 or § 1240.12 of this part, as applicable, along with information on seat belt use rates from the FARS, and an algorithm relating FARS seat belt use rates to observed seat belt use rates (see Appendix 1, note). This procedure will produce an estimated State seat belt use rate for the unknown calendar year. The estimated State seat belt use rate will then be weighted in the manner described in paragraph A of this appendix.

C. The national average seat belt use rate for the calendar year will be determined by adding the weighted State seat belt use rates for each of the States (i.e., the national average seat belt use rate is the weighted average of all the State seat belt use rates).

D. NHTSA may elect to use a seat belt use survey that does not comply with the Uniform Criteria for State Observational Surveys of Seat Belt Use in determining the national average seat belt use rate (even though the State that submitted the survey is ineligible to receive an allocation of funds), if in NHTSA's judgment, the deficiencies in the survey are not so substantial as to render the survey less accurate than the FARS estimate.

#### Appendix E—Determination of Federal Medical Savings

A. To determine the savings to the Federal Government from reduced medical costs attributable to seat belt use, NHTSA will first

estimate the impact of seat belt use on the number of fatalities and injuries, using methods described in the report "Estimating the Benefits from Increased Safety Belt Use."<sup>1</sup> These methods establish a relationship between the effectiveness of seat belts, current use rates, and existing injury levels to determine the impact of increasing seat belt use on motor vehicle safety. Using these methods, NHTSA will estimate the fatalities prevented and the non-fatal injuries avoided by increased seat belt use.

B. In the 1996 report "The Economic Cost of Motor Vehicle Crashes, 1994,"<sup>2</sup> NHTSA measured both the medical costs and payment sources for motor vehicle crashes. NHTSA will adjust the national medical cost figures from this report to individual State income levels to reflect local cost levels. These per-case costs will be further adjusted for inflation, using the most recent annual average Consumer Price Index for medical care, and then multiplied by the injuries and fatalities prevented in each State to derive the total medical care savings from increased seat belt use. The Federal portion of these costs will be derived from the best available data found in the same cost report or in other sources, as they may become available.

Issued on: September 30, 1998.

**Kenneth R. Wykle,**

Administrator, Federal Highway Administration.

**Ricardo Martinez,**

Administrator, National Highway Traffic Safety Administration.

[FR Doc. 98-28811 Filed 10-23-98; 3:26 pm]

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## POSTAL SERVICE

### 39 CFR Part 6

#### Board of Governors Bylaws

**AGENCY:** Postal Service.

**ACTION:** Final rule.

**SUMMARY:** The Board of Governors of the United States Postal Service has approved an amendment to its bylaws. The amendment allows Governors attending special meetings of the Board conducted by conference telephone call to receive the statutory \$300 compensation for a meeting day if the meeting lasts more than an hour.

**EFFECTIVE DATE:** October 6, 1998.

**FOR FURTHER INFORMATION CONTACT:** Thomas J. Koerber, (202) 268-4800.

**SUPPLEMENTARY INFORMATION:** On October 6, 1998, the Board of Governors

<sup>1</sup> Blincoc, L.J. *Estimating the Benefits of Increased Safety Belt Use*. Washington, DC: U.S. Department of Transportation, NHTSA, DOT HS 808 133, June, 1994.

<sup>2</sup> Blincoc, L.J. *The Economic Cost of Motor Vehicle Crashes, 1994*. Washington, DC: U.S. Department of Transportation, NHTSA, DOT HS 808 425, July, 1996.

<sup>1</sup> Blincoc, L.J. *Estimating the Benefits of Increased Safety Belt Use*. Washington, DC: U.S. Department of Transportation, NHTSA, DOT HS 808 133, June, 1994.