Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–08–20 McDonnell Douglas: Amendment 39–12197. Docket 99–NM–276–AD.

Applicability: Model DC–8 series airplanes, as listed in McDonnell Douglas Alert Service Bulletin DC8–24A068, Revision 01, dated November 1, 1999; certificated in any category; except those airplanes that have been converted from a passenger to a cargo-carrying (''freighter'') configuration, without toilet flushing systems and associated equipment installed.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent overheating of the flush pump motor, which could result in damage to the flush pump motor cover, and consequent smoke in the lavatory area, accomplish the following:

Replacing Circuit Breakers and Marking of Nameplate

(a) Within 2 years after the effective date of this AD, replace the toilet flushing circuit breakers of the lavatory with new circuit breakers, and mark applicable nameplates, in accordance with McDonnell Douglas Alert Service Bulletin DC8–24A068, Revision 01, dated November 1, 1999.

Note 2: Replacements and markings accomplished prior to the effective date of this AD in accordance with McDonnell Douglas DC–8 Service Bulletin 24–68, dated February 14, 1984; are considered acceptable for compliance with the requirements of paragraph (a) of this AD.

Spares

(b) As of the effective date of this AD, no person shall install a 2 amp toilet flushing circuit breaker, part number MP1503–DC8, on any airplane.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin DC8–24A068, Revision 01, dated November 1, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on May 31, 2001.

Issued in Renton, Washington, on April 17, 2001.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–9938 Filed 4–25–01; 8:45 am]

BILLING CODE 4910–13–P

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: Final rule.

SUMMARY: This final rule adopts, without change, the regulations that were published in an interim final rule to implement a new grant program established by the Transportation Equity Act for the 21st Century (TEA–21), and codified at section 157 of Title 23, United States Code. The final rule establishes procedures for allocating Federal grant funds to States whose seat belt use rates meet certain requirements. Under the statute, funds are to be allocated to States whose seat belt use rates exceed either the national average seat belt use rate or the State's highest-achieved seat belt use rate during certain years. Allocations are to be based on savings in medical costs to the Federal Government resulting from these seat belt use rates. The procedures in this final rule implement these statutory requirements.

DATES: This rule is effective on May 29, 2001.

FOR FURTHER INFORMATION CONTACT: The following persons at the U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590—In NHTSA: Wendi Wilson-John, 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 Safety Design, HSA–10, (202) 366–2161; Raymond W. Cuprill, Office of the Chief Counsel, HCC–30, (202) 366–0791.

SUPPLEMENTARY INFORMATION:

A. Background

Section 1403 of the Transportation Equity Act for the 21st Century (TEA–21) (Public Law 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 fiscal years (FYs) 1999 through 2003. Under this program, the Secretary of Transportation (the Secretary) is directed to allocate funds each fiscal year, 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; or second, if the State's seat belt use rate in the previous calendar year exceeded its ''base seat belt use rate.'' Section 157 defines the ''base seat belt use rate'' as the ''highest State seat belt use rate for the State for any calendar year during the period of 1996 through the calendar year preceding the previous calendar year.'' For example, for allocations to be made in FY 2001 (on or about October 1, 2000), the base seat belt use rate would be the State's highest seat belt use rate during the period from calendar year (CY) 1996 through CY 1998, and the State would meet the second condition if the State's CY 1999 seat belt use rate exceeds this base rate for the CY 1996 through CY 1998 period. Section 157 further provides that a State that meets the first condition must receive an allocation only under the first condition (even if the State also meets the second condition). Hence, a State may receive an allocation under the second condition only if it meets that condition and fails to meet 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.'' 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.)

B. Information Requirements and Determinations

A State's eligibility for an allocation of funds under the first condition during each fiscal year is dependent on State seat belt use rate information from two contiguous prior calendar years. Specifically, to make the determinations necessary to allocate funds in a given fiscal year under the first condition, section 157 requires the use of seat belt use rate information submitted by the States for the ''previous calendar year'' and the ''year preceding the previous calendar year.'' For example, FY 2000 allocations (on or about October 1, 1999) are dependent on CY 1997 and CY 1998 information, and FY 2001 allocations (on or about October 1, 2000) are dependent on CY 1998 and CY 1999 information. A State's eligibility for an allocation of funds under the second condition during each fiscal year (if it fails to meet the first condition) is dependent on seat belt use rate information from earlier calendar years beginning with CY 1996 and ending with the ''previous calendar year.'' For example, FY 2000 allocations (on or about October 1, 1999) are dependent on CY 1996 through CY 1998 information, and FY 2001 allocations (on or about October 1, 2000) are dependent on CY 1996 through CY 1999 information.

Section 157 provides that CY 1996 and CY 1997 information submitted by the States is to be weighted by the Secretary to ensure national consistency in methods of measurement. However, for CY 1998 and thereafter, 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 published a companion rule to today's rule, the Uniform Criteria for State Observational Surveys of Seat Belt Use (23 CFR Part 1340—Interim final rule, 63 FR 46389, September 1, 1998; final rule, 65 FR 13679, March 14, 2000) (hereafter, the Uniform Criteria), establishing the criteria to be followed by States in measuring seat belt use rates for CY 1998 and beyond.

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 (based on a seat belt use rate that exceeds either the national average seat belt use rate or 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 steps, and the information requirements necessary to accomplish them, were set forth in detail in an interim final rule published in the **Federal Register** on October 29, 1998 (63 FR 57904). The interim final rule set forth detailed procedures governing the determination of State seat belt use rates, the national average seat belt use rate, and the Federal medical savings—all prerequisites to making allocations of funds to eligible States each fiscal year. Today's final rule responds to comments to that interim final rule, and promulgates final requirements and procedures that apply to the allocation of funds based on seat belt use rates. This final rule is being issued jointly by NHTSA and the FHWA (hereafter, the agencies), because the agencies share responsibility for this grant program.

C. Comments on the Interim Final Rule

The interim final rule solicited comments from interested parties and noted that the agencies would respond to all comments and, if appropriate, amend the provisions of the rule. The agencies received comments from State agencies in Michigan, Missouri, New York, and Washington, from Advocates for Highway and Auto Safety, and from one private citizen. As explained below in the discussion addressing each of these comments, the agencies have made no changes to the rule.

The Washington Traffic Safety Commission (Washington) and Advocates for Highway and Auto Safety (Advocates) both expressed support for the interim final rule without change. Washington termed the procedures and formulas for allocation of funding ''reasonable and fair.'' Advocates endorsed the incentive grant program as a ''significant financial incentive'' and a ''novel approach'' that might lead States to actively pursue strategies to increase seat belt use. Advocates supported the interim final rule as providing ''a reasonable basis for making the determinations of state use rates and a national average seat belt use rate required by the statute.'' Although it expressed concern that surveys, as opposed to ''more scientifically conducted studies,'' could yield inflated seat belt use rates, Advocates believed that the interim final rule and the Uniform Criteria, together, were reasonably calculated to provide comparative seat belt use rates that would be acceptable for determining

relative increases in seat belt use rates under this program.

The Michigan Department of State Police (Michigan) recommended that the formula for allocating incentive funds to States be ''weighted to recognize the difficulty of achieving, and the benefit of sustaining, safety belt use rates above the national average.'' According to Michigan, as seat belt use increases, additional protection is provided to at-risk drivers who are traditionally unbelted, and for each percentage point of increase at higher seat belt use levels, there should be a greater increase in the number of lives saved and serious injuries prevented. Michigan concluded that savings in medical costs to the Federal Government should be greater per percentage point increase at levels above the national average. Michigan also recommended that States whose seat belt use rates have increased, but remain below the national average, should continue to receive incentive funds to encourage aggressive seat belt programs.

The agencies agree with Michigan's comment that, as seat belt use rates increase, and at-risk drivers who are traditionally unbelted (and over-represented in crashes) begin to use seat belts, savings in medical costs will be even greater, due to decreases in injuries and fatalities among these at-risk drivers. In fact, the process used to calculate medical savings under the interim final rule (see ''Appendix E—Determination of Federal Medical Savings'' and the report cited therein) accounts for these beneficial impacts as marginal seat belt use rates increase when seat belt use is already at a high level. The agencies are confident that the process established in the interim final rule results in an accurate estimate of the medical cost savings associated with increased seat belt use at all levels. Consequently, we have made no changes to the rule in response to this comment.

Michigan's concern that States whose seat belt use rates have increased but remain below the national average should continue to receive funds is accommodated under the existing language of the rule, to the full extent allowed by the statute. In accordance with section 157, a State whose seat belt use rate is below the national average will receive an allocation of funds provided its rate exceeds its ''base seat belt use rate,'' which was defined in the statute and in the interim final rule as ''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.'' Accordingly, a State will receive an allocation of funds based on improvements in seat belt use rates, even if the rate remains below the national average, provided only that the improvement is measured against a baseline of the highest previously achieved seat belt use rate during the time period specified in the statute. No changes have been made to the rule in response to this comment.

The New York Department of Motor Vehicles (New York) requested that the interim final rule be modified to explicitly extend previous approvals granted under the section 153 program (23 U.S.C. 153) for seat belt use survey designs. (This was one of several comments from New York directed at the companion rule, the Uniform Criteria. In the preamble to the final rule for the Uniform Criteria, NHTSA explained that the comment was outside the scope of that rule, and would be addressed in today's action.)

The interim final rule provided a procedure, applicable only to CY 1998 surveys, under which a State that had received previous written approval under Section 153 for a survey design could certify that the survey remained unchanged, except for the addition of elements required to comply with Section 157. Such a certification would serve in lieu of the otherwise required survey review and approval process. In crafting this exception, the agencies were mindful of the great burden imposed on the States by the short lead times that occurred at the inception of this program. We do not believe it appropriate to extend this exception to the later years of this program, as sufficient time has elapsed to allow all States to develop surveys that satisfy the requirements of the Uniform Criteria. Moreover, NHTSA has worked closely with the States to ensure that their surveys meet these requirements and, at this time, all States that have chosen to submit surveys are able to meet the requirements. Consequently, we decline to adopt New York's request, and we have made no changes to the rule in response to this comment. States will continue to be required to submit documentation of their survey procedures to NHTSA each year for verification of compliance with the requirements of the Uniform Criteria.

Mr. William C. Hickey, a private citizen, urged the agencies to require mandatory seat belt use in buses with a capacity of 37 to 45 seats. Today's action, conducted under the authority of 23 U.S.C. 157, does not relate to buses, nor does it mandate seat belt use in any category of vehicles. Mr. Hickey's comment falls outside the authority of the statute and the scope of this action. Consequently, the agencies have made no changes to the rule in response to this comment.

The Missouri Department of Public Safety (Missouri) expressed dissatisfaction with the procedures adopted under the interim final rule to estimate seat belt use rates when State data was missing and to account for seat belt use in pickup trucks. Missouri stated that the requirements of the Uniform Criteria were incorporated immediately into its CY 1998 survey. However, according to Missouri, the timetable of the grant program did not allow it to submit seat belt use rate information for the FY 1998 grant process. (The agencies assume that Missouri refers to the grant process leading to FY 1999 allocations.) Missouri explained that, ''[i]n lieu of the 1997 use rate figure,'' it submitted its 1996 seat belt use rate, with the result that NHTSA used the CY 1996 information to ''formulate'' a CY 1997 seat belt use rate, and that the numbers for both years then were adjusted under the interim final rule to account for pickup trucks.

Missouri characterized the ''formulated'' CY 1997 seat belt use rate as improbably high and ''suspect in terms of overall reliability,'' particularly when compared with the new methodology, which was used to calculate the CY 1998 seat belt use rate. According to Missouri, ''the basic unfairness with this process is that we are comparing a 1997 rate formulated from a 1996 survey that does not include pickup trucks, with the actual 1998 rate which includes pickup truck information.'' Missouri believes that this approach led to its loss of eligibility for ''nearly $1 million'' in FY 2000, and requested that Missouri's ''1996 and 1997 revised use rates be revisited to more accurately show the impact of the pickup trucks.''

Missouri noted that the definition of passenger vehicle in the agencies' interim final rule is inconsistent with the State's own definition, because the interim final rule includes pickup trucks. The result, according to Missouri, is that a portion of the seat belt use rate under the interim final rule includes vehicles in which, under most circumstances, occupants are not required to use seat belts in Missouri. Missouri asserted that the inclusion of pickup trucks in the determination of seat belt use rates resulted in a reduction in Missouri's overall percentage of belt usage and a ''skewed'' national average. According to Missouri, this disparity will hurt Missouri's

ability to qualify for incentive grants under this program in the future.

On the subject of the seat belt survey requirements, Missouri stated that implementing the new methodology was ''arduous and expensive,'' requiring 460 survey sites instead of the 18 the State had used in previous years. Missouri claimed that many States were dissatisfied with the increased number of survey sites, and that many States requested and were granted exceptions to the new survey process, raising questions about the ''inherent fairness that the new survey was designed to create.''

Missouri recommended several approaches to ''level the playing field'' and assure fairness. Specifically, Missouri suggested that all States should arrive at their light truck data in the same way; that pickup truck data should not be considered for purposes of the FY 1999 grant; that the ''policy'' of granting exceptions should be discontinued; and that all States should implement seat belt surveys without deviation from the NHTSA methodology. As a final point, Missouri suggested that the agencies should ''simply disseminate funding to all states [and] fix the problems in the process design * * * in time to implement a valid process for FY 2000.''

The agencies recognize that the early implementation of this grant program presented difficult problems. TEA–21, which introduced the new section 157, was enacted in mid-1998, but it established a framework under which the first allocations of funds (during FY 1999) were to be based on seat belt use rate information from prior years—CY 1996 and CY 1997. Recognizing that these two calendar years had already ended, and could not be the subject of uniform guidance or criteria, Congress required that available information from the States for these earlier years be ''weighted by the Secretary to ensure national consistency in methods of measurement.'' For CY 1998 and beyond, Congress required that information submitted by the States be in accordance with criteria established by the Secretary.

Given these circumstances, the agencies were faced with the task of using the best seat belt use information available from the States for CY 1996 and CY 1997 and applying reasonable procedures to ensure consistent treatment from State-to-State, as required by section 157. If seat belt use rate information was missing for a calendar year (as was the case for Missouri in CY 1997), the agencies used the most reliable methods at hand to estimate the missing information or to extrapolate it from other available sources. The inclusion of pickup trucks in the determination of the seat belt use rate is a statutory requirement. Consequently, if information on pickup trucks was missing (as was the case for Missouri in CY 1996 and CY 1997), it too had to be derived from other sources. The interim final rule set forth detailed procedures governing the agencies' treatment of these various contingencies for CY 1996 and CY 1997, including procedures to adjust for incomplete State-submitted information and procedures for making estimates where State data for a given year was missing entirely.

The agencies recognize that any estimation procedure introduces potential uncertainties. However, section 157 requires the agencies to evaluate seat belt use rate information from two contiguous prior calendar years in order to determine a State's eligibility for an allocation, and Missouri provided information only for CY 1996. The agencies could not make the statutorily required determinations based on Missouri's submission of CY 1996 seat belt use information ''in lieu of'' the CY 1997 information, but required information from both of those years.

Similarly, the agencies were bound by the statute to account for pickup trucks in the determination of seat belt use rates. The estimation procedures of the interim final rule were applied carefully and consistently to all States with incomplete or missing data. We are unaware of a process that would allow the CY 1996 and CY 1997 seat belt use rates to ''more accurately show the impact of the pickup trucks,'' as Missouri requests, and Missouri does not detail an alternative process.

Missouri's comment that the inclusion of pickup trucks in the determination of seat belt use rates resulted in a ''skewed'' national average, because its own seat belt use law exempts most of these vehicles, misconceives the purpose of this grant program. Section 157 does not dictate which vehicles State laws should cover, and it does not seek to allocate funds to a State based on the State's level of compliance with its own laws. Rather, the statute measures performance against a uniform standard, and that standard precisely defines the universe of covered vehicles, which includes pickup trucks. Hence, it is a requirement imposed by the Congress that Missouri's seat belt use rate (and that of any other State seeking to qualify for an allocation of funds) must take pickup trucks into account (all pickup trucks—not simply pickup trucks which are not exempt), irrespective of the breadth of the State's legal requirements. Similarly, the national average seat belt use rate must be based on inclusion of pickup trucks. The Federal requirement to include pickup trucks is an integral part of the incentive structure of this grant program.

Missouri's various comments that the estimation methods of the interim final rule and the inclusion of pickup trucks in the determination of seat belt use rates reduced the State's ability to qualify for incentive grants reflect a misunderstanding of the mechanics of the allocation process. For the years at issue, Missouri's seat belt use rate (irrespective of adjustments under the interim final rule) has remained somewhat below the national average seat belt use rate. Therefore, unless the State experiences a substantial increase in seat belt use so as to exceed the national average seat belt use rate, Missouri must hope to qualify for an allocation under this program by achieving a seat belt use rate that exceeds its base seat belt use rate. This approach would not entitle Missouri to receive ''nearly $1,000,000'' in FY 2000, as the State's comments suggest. Rather, the allocation in each fiscal year would equal the Federal medical savings attributable to the amount by which it has exceeded its base seat belt use rate.

In FY 1999, Missouri received an allocation because the agency determined that the State had achieved a seat belt use rate in CY 1997 of 62.6 percent, which exceeded its agency-adjusted base seat belt use rate in CY 1996 of 58.3 percent. The allocation amounted to $986,100, which reflected the full value of the Federal medical savings attributable to that increase. As a result, 62.6 percent became Missouri's new base seat belt use rate, and Missouri would not be entitled to another allocation until its seat belt use rate exceeds 62.6 percent (and then only for an amount equal to the Federal medical savings attributable to the specific increase above that base rate). In FY 2000, Missouri did not receive an allocation, because its CY 1998 seat belt use rate was 60.4 percent, which did not exceed the new base seat belt use rate of 62.6 percent.

While the agency stands by the estimates that it developed under the interim final rule, it is worth noting that, even if the agency-estimated CY 1997 seat belt use rate for Missouri was overstated, Missouri did not suffer as a result of this calculation. For example, had Missouri's seat belt use rate in CY 1997 been estimated to be lower, and had Missouri reached 62.6 percent more gradually (after a period of two years),

rather than all at once (in a single year), according to the agency's estimates, the State would have received allocations during two fiscal years (*i.e.*, in FY 1999 and FY 2000) instead of one. However, the sum of those individual allocations essentially would have equaled the single allocation it actually received in FY 1999. (Any slight deviation that may have resulted would have been attributable to inflation adjustment factors and other minor differences in the year-to-year calculation of Federal medical savings.) In summary, contrary to Missouri's assertions, its standing under this grant program has not been harmed by the estimation process used under the interim final rule.

The agencies recognize that the implementation of seat belt survey requirements in conformance with the requirements of the Uniform Criteria was administratively difficult for some States. However, all States were subject to these same criteria and, contrary to Missouri's assertions, no exceptions or deviations were made.

Missouri's recommended approaches to ''level the playing field,'' that all States should arrive at their light truck data in the same way and that seat belt use surveys be implemented without deviation from the NHTSA methodology, relate to how seat belt use surveys are conducted. These issues are the subject of the companion rule, the Uniform Criteria. For a detailed discussion of issues related to conducting the surveys, Missouri is directed to the **Federal Register** notice implementing the final rule for the Uniform Criteria (65 FR 13679, March 14, 2000). Missouri can rest assured that the procedures contained in the Uniform Criteria stand as prerequisites for eligibility under this grant program, and that no deviations are permitted.

Missouri made two other recommendations (now moot due to the passage of time) that are not within the agencies' statutory authority. Specifically, Missouri recommended that pickup truck data not be considered for purposes of the FY 1999 grant and that the agencies ''simply disseminate funding to all states [and] fix the problems in the process design * * * in time to implement a valid process for FY 2000.'' As previously discussed, the inclusion of pickup trucks in the determination of seat belt use rates is a statutory requirement and the agencies are not free to disregard it. Similarly, the agencies are not free to disseminate funds to all States, without evaluation. The agencies must comply with the specific requirements defined by statute in making allocations. The agencies do not agree with Missouri that there are ''problems'' in the interim final rule that must be ''fixed.'' Rather, we believe that the process developed under the interim final rule, and continued in today's action, is a reasoned and fair approach to the collection, evaluation, and adjustment of data, and to the allocation of funds under this incentive grant program. Consequently, the agencies have made no changes in response to Missouri's comments.

Regulatory Analyses and Notices

Executive Order 13132 (Federalism): This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, 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 was not prepared.

Executive Order 12988 (Civil Justice Reform): This rule will not have any preemptive or retroactive effect. 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 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. Accordingly, a Final Economic Assessment (FEA) was prepared, which 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).

The FEA recognizes that 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. In FY 1999, 38 States, the District of Columbia, and Puerto Rico received a total of $52,648,000, and in FY 2000, 33 States, the District of Columbia, and Puerto Rico received a total of $54,610,700 in incentive grant funds under this program. Allocations available to the States for the remaining years of this program, provided they meet the statutory criteria, total $102,000,000 for fiscal year 2001 and $112,000,000 for each of fiscal years 2002 and 2003. During the course of this program, 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 rule are considered to be information collection requirements, as defined by the Office of Management and Budget (OMB) in 5

CFR part 1320. This information collection requirement has been submitted to and approved by OMB, pursuant to the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The requirement has been approved through February 2, 2002: OMB Control No. 2127–0597.

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 (Public Law 104–4) requires agencies to prepare a written assessment of the costs, benefits and other effects of 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 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, the interim final rule published in the **Federal Register** on October 29, 1998, 63 FR 57904, adding a new part 1240 to chapter II, subchapter B of the Code of Federal Regulations, is adopted as final.

Issued on: April 19, 2001.

Vincent F. Schimmoller,

Deputy Executive Director.

L. Robert Shelton,

Executive Director, National Highway Traffic Safety Administration.

[FR Doc. 01–10448 Filed 4–25–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–01–047]

RIN 2115–AA97

Safety Zone: Naval Force Protection, Bath Iron Works, Bath, ME

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone to close a portion of the Kennebec River to waterway traffic in a 400 foot radius around Bath Iron Works, Bath, Maine for the protection of Naval Forces, from 7 a.m. April 4, 2001 to 12 p.m. June 16, 2001. Entry into this safety zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATE: This rule is effective from 7 a.m. April 4, 2001 to 12 p.m. June 16, 2001.

ADDRESSES: Comments should be mailed to: Commanding Officer, U.S. Coast Guard Marine Safety Office, 103 Commercial St., Portland Maine 04101–4726. The Response and Planning Department, Coast Guard Marine Safety Office maintains the public docket for this rule making. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the Coast Guard Marine Safety Office between 8 a.m. and 4 p.m., Monday through Friday, except for Holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant E. J. Doucette, Chief of Response and Planning, Captain of the Port, Portland at (207) 780–3251.

SUPPLEMENTARY INFORMATION:

Regulatory History

As authorized by 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation. Good cause exists for not publishing a NPRM and for making this regulation effective in less than 30 days after **Federal Register** publication. Due to the complex planning and coordination involved, final details for the closure were not provided to the Coast Guard until April 2, 2001, making it impossible to publish a NPRM or a final rule 30 days in advance. Any delay encountered in this regulation's effective date would be contrary to public interest since immediate action is needed to safeguard the Naval vessels moored to the Bath Iron Works facility, the public and the surrounding area from sabotage or other subversive acts, accidents, or other causes of a similar nature.

Background and Purpose

The safety zone will occur from 7 a.m. April 4, 2001 to 12 p.m. June 16, 2001 at Bath Iron Works, Bath, Maine. This regulation establishes a safety zone in the waters of the Kennebec River. This safety zone is required to protect the Naval persons, facilities, and vessels from the hazards associated with terrorism. Entry into this zone will be prohibited unless authorized by the Captain of the Port.

Regulatory Evaluation

This temporary final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This safety zone involves only a 400-foot radius around Bath Iron Works. The effect of this regulation will not be significant for several reasons: The safety zone is limited in duration, the safety zone is limited in area, allowing mariners to transit in the river channel outside of the safety zone, and maritime advisories will be made in advance of and during the effective date of the safety zone.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. Small entities may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

For the reasons addressed under the Regulatory Evaluation above, the Coast Guard expects the impact of this regulation to be minimal and certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that