from Affiliation Requirements, the holding company must either reduce its ownership interest to below 10 percent of the outstanding voting securities of the company that has issued such securities or file with the Commission an application under section 203 of the Federal Power Act to request authorization to retain such securities, provided that, during the pendency of any application, it shall continue to comply with all of the commitments made in the Affirmation in Support of Exemption from Affiliation Requirements; or

(iii) Any security of a subsidiary company within the holding company system.

* * * * *

(12) A public utility is granted a blanket authorization under section 203(a)(1) of the Federal Power Act to transfer its outstanding voting securities to:

(i) Any holding company granted blanket authorizations in paragraph (c)(2)(ii) of this section if, after the transfer, the holding company and any of its associate or affiliate companies in aggregate will own:

(A) Less than 10 percent of the outstanding voting securities of such public utility, or

(B) 10 percent or more and less than 20 percent of the outstanding voting securities of such public utility, provided that the holding company has complied with all requirements of paragraph (c)(2)(ii)(B) of this section; or

(ii) Any person other than a holding company if, after the transfer, the person and any of its associate or affiliate companies in aggregate will own:

(A) Less than 10 percent of the outstanding voting securities of the public utility and within 30 days after the end of the calendar quarter in which such transfer has occurred the public utility notifies the Commission in accordance with paragraph (c)(17) of this section, or

(B) 10 percent or more but less than 20 percent of the outstanding voting securities of the public utility, provided that the person has filed Form 519–C and continues to abide by the commitments stated in the form.

* * * * *

(17) A public utility granted blanket authorization under paragraph (c)(12)(ii)(A) of this section to transfer its outstanding voting securities shall, within 30 days after the end of the calendar quarter in which such transfer has occurred, file with the Commission a report containing the following information:

(i) The names of all parties to the transaction;

(ii) Identification of the pre- and post-transaction voting security holdings (and percentage ownership) in the public utility held by the acquirer and its associate or affiliate companies;

(iii) The date the transaction was consummated;

(iv) Identification of any public utility or holding company affiliates of the parties to the transaction; and

(v) A statement indicating that the proposed transaction will not result in, at the time of the transaction or in the future, cross-subsidization of a non-utility associate company or pledge or encumbrance of utility assets for the benefit of an associate company as required in § 33.2(j)(1).

PART 35—FILING OF RATE SCHEDULES AND TARIFFS

3. The authority citation for part 35 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

4. In § 35.36, paragraph (a)(9) is revised, and paragraph (a)(10) is added, to read as follows:

§ 35.36 Generally.

(a) * * *

(9) *Affiliate* of a specified company means any person that controls, is controlled by, or is under common control with the specified company.

(i) Owning, controlling or holding with power to vote, less than 10 percent of the outstanding voting securities of a specified company creates a rebuttable presumption of lack of control.

(ii) The Commission may, after appropriate notice and opportunity for hearing, determine that any person is an affiliate of a specified company if it finds that the person exercises directly or indirectly (either alone or pursuant to an arrangement or understanding with one or more persons) such a degree of influence (through ownership of voting securities or otherwise) over the management or policies or operations of the specified company as to make it necessary or appropriate in the public interest that the person be treated as an affiliate.

(10) *Voting security* means any security presently entitling the owner or holder thereof to vote in the direction or management of the affairs of a company.

* * * * *

6. In § 35.43, paragraph (a)(1) is revised and paragraph (a)(6) is added, to read as follows:

§ 35.43 Generally.

(a) * * *

(1) *Affiliate* of a specified company means any person that controls, is controlled by, or is under common control with the specified company.

(i) Owning, controlling or holding with power to vote, less than 10 percent of the outstanding voting securities of a specified company creates a rebuttable presumption of lack of control.

(ii) The Commission may, after appropriate notice and opportunity for hearing, determine that any person is an affiliate of a specified company if it finds that the person exercises directly or indirectly (either alone or pursuant to an arrangement or understanding with one or more persons) such a degree of influence (through ownership of voting securities or otherwise) over the management or policies or operations of the specified company as to make it necessary or appropriate in the public interest that the person be treated as an affiliate.

* * * * *

(6) *Voting security* means any security presently entitling the owner or holder thereof to vote in the direction or management of the affairs of a company.

* * * * *

[FR Doc. 2010–1544 Filed 1–27–10; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

23 CFR Part 1340

[Docket No. NHTSA–2010–0002]

RIN 2127–AK41

Uniform Criteria for State Observational Surveys of Seat Belt Use

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This NPRM proposes amendments to the regulations establishing the criteria for designing and conducting State seat belt use observational surveys, procedures for obtaining NHTSA approval of survey designs, and a new form for reporting seat belt use rates to NHTSA. NHTSA proposes these amendments so that future surveys will give States more accurate data to guide their occupant protection programs.

DATES: Written comments may be submitted to this agency and must be received no later than March 29, 2010.

ADDRESSES: You may submit comments identified by DOT Docket ID Number

NHTSA–2010–0002 by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Management Facility, M–30, U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Eastern Time, Monday through Friday, except Federal holidays.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Participation" section of this document. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the "Privacy Act" heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the complete User Notice and Privacy Notice for Regulations.gov at *http://www.regulations.gov/search/footer/privacyanduse.jsp.*

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Eastern Time, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

For program issues: Mr. Jack Oates, Chief, Program Implementation, Regional Operations and Program Delivery, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., NTI–200, Washington, DC 20590. Telephone number: 202–366–2730; E-mail: *Jack.Oates@dot.gov.*

For statistical issues: Ms. Chou-Lin Chen, Chief, Mathematical Analysis Division, National Center for Statistics and Analysis, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., NVS–421, Washington, DC 20590. Telephone number: 202–366–1048; E-mail: *Chou-Lin.Chen@dot.gov.*

For legal issues: Ms. Jin Kim, Attorney-Advisor, Office of the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., NCC–113, Washington, DC 20590. Telephone number: 202–366–1834; E-mail: *Jin.Kim@dot.gov.*

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I. Background

Section 1403 of the Transportation Equity Act for the 21st Century (TEA–21) (Pub. L. 105–178) authorized a seat belt incentive grant program that awarded grant funds to States based on a State's seat belt use rate. On September 1, 1998, the National Highway Traffic Safety Administration (NHTSA) published as an interim final rule criteria to ensure accurate and representative measurements of a State's seat belt use rate, known as the Uniform Criteria for State Observational Surveys of Seat Belt Use (Uniform Criteria). *See* 63 FR 46389. On March 14, 2000, NHTSA published a final rule, adopting the Uniform Criteria with one clarifying change.[1] *See* 65 FR 13679.

The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59) did not reauthorize the seat belt incentive grant program. However, SAFETEA–LU established new administrative requirements relating to a State's qualification for a highway safety grant under 23 U.S.C. 402. One such requirement is that the State must provide satisfactory assurances that it will conduct an annual Statewide seat belt use survey in accordance with the criteria for State seat belt use rate measurement established by the Secretary of Transportation. In August 2005, NHTSA notified the States and Territories that the Statewide surveys conducted in accordance with the Uniform Criteria for State Observational Surveys of Seat Belt Use, as published at 23 CFR part 1340, would satisfy the administrative requirements of Section 402. In addition, the implementing guidelines for the incentive grant program under 23 U.S.C. 406 provide that seat belt use surveys conducted in accordance with the Uniform Criteria serve as the basis for an award under the seat belt performance provisions of that grant program.

Since the adoption of the Uniform Criteria in 1998, NHTSA and the States have accumulated substantial experience in the design and implementation of seat belt use surveys. This experience has provided insight into factors that could affect survey accuracy and reliability. In addition, technological improvements in road inventories have made it possible to select observation sites in a more cost effective manner. For these reasons, NHTSA proposes to revise the Uniform Criteria so that future surveys will give States more accurate data to guide their occupant protection programs.

As articulated in detail below, NHTSA proposes several key changes to the existing criteria. In particular, the agency proposes to revise the sampling frame from the population-based criterion to a fatality-based criterion and to identify road types to be included in the road inventory. The proposal also changes the precision requirement from a five percent relative error to a 2.5 percentage point standard error. In addition, the agency proposes quality control procedures to help ensure accuracy and consistency across all State surveys. Finally, the agency proposes to require States to submit additional information from the survey results as part of their annual certifications, including data source of the sampling frame, exclusions applied to the sampling frame, procedures for collecting additional data to reduce the nonresponse rates, explanation of imputation methods, procedures to adjust the sampling weight, and procedures to be followed if the standard error is exceeded.

Accordingly, the agency is issuing this NPRM to propose changes to the Uniform Criteria, describe approval

[1] In 2000, NHTSA clarified that States are permitted to group observation sites according to geographic areas to minimize travel time and distance required to conduct the observations.

procedures for seat belt survey designs, and specify the reporting requirements for seat belt use rates.

II. Proposed Amendments to the Uniform Criteria

A. Purpose; Applicability; Definitions (23 CFR 1340.1; 23 CFR 1340.2; 23 CFR 1340.3)

This proposal would amend the purpose and applicability sections to update the statutory reference, specify the effective date for the revised uniform criteria, and note the addition of proposed survey designs approval procedures and administrative requirements. The agency proposes that the revised Uniform Criteria would be effective for seat belt surveys conducted starting in calendar year 2011.

The agency also proposes adding a definition section to define certain terms used in the proposed rule. For example, the agency proposes definitions for road types (access ramp, cul-de-sac, non-public road, service drive, traffic circle, unnamed road, vehicular trail) and "passenger motor vehicle" which are commonly used terms. Although the agency also adds a definition for "nonresponse rate," other statistical terms, such as probability sampling, precision requirement, imputation, sampling weights, variance estimation, are not added as definitions as they have meanings that are generally understood in the field of statistics.

B. Selection of Observation Sites (23 CFR 1340.5)

In § 1340.5(a)(1), the agency proposes to amend the current demographics requirement in the sampling frame. Currently, States must include the most populous counties or other areas accounting for at least 85 percent of the State's population in the sampling frame. Because NHTSA believes that this sampling frame may result in an unintended bias in seat belt use rates, we propose to change from a population-based criterion to a fatality-based criterion. We believe that using a fatality-based sampling frame would enable the States to focus on areas with traffic safety concerns. Under the revised criterion at § 1340.5(a)(1), a State would be able to exclude any counties or county-equivalents accounting for up to 15 percent of the State's motor vehicle crash fatalities during the last three years, as measured by the Fatality Analysis Reporting System (FARS) data. NHTSA believes that this 15 percent exclusion would allow the States to reduce survey costs with minimum impact to the survey result. In other words, States must include counties or county-equivalents in which at least 85 percent of the motor vehicle crash fatalities occurred during the three most recent years for which FARS data are available. Each time a State updates its survey design (at least every five years, or more frequently if the State so elects), the geographic distribution of motor vehicle fatalities from the three most recent years will be re-examined to identify the counties or county-equivalents to be included in the updated survey. To assist States in this effort, FARS data is available on NHTSA's Web site at *http://www.nhtsa.dot.gov.* Also, NHTSA would provide a county-by-county breakout of fatalities during the three most recent years to any State that requested it. Based on a statistical simulation of the impact, the agency believes that the proposed fatality-based criterion would improve State seat belt use estimates by reducing the statistical bias towards urban areas that tend to have higher seat belt use rates. For this reason, we believe that the revised criterion would provide a more representative sample for the survey.

In § 1340.5(a)(2), we propose to add a road coverage requirement to the sampling frame criterion. Specifically, all roads except those explicitly excluded would be required to be eligible for sampling. The existing Uniform Criteria do not specify the types of roads that must be eligible in the sampling frame. At the time the current criteria were adopted, a comprehensive and affordable database of roads was not available to many States. Most States relied on State-provided inventories of roads, which in many cases captured only subsets of roads in the State, such as State-maintained roads. As a result, road inventories used by the States varied widely. In many cases, the resulting observation sites were not representative of all roads. Because all States currently do not have a database of all roads in the State, NHTSA would make a database of roads available for each State. Alternatively, a State could choose to use its own database of roads if approved by NHTSA. The agency believes that using a more comprehensive database would result in more representative and consistent seat belt use estimates.

Under the proposed rule, the following roads would be permitted to be excluded from the sample: Non-public roads, unnamed roads, unpaved roads, vehicular trails, access ramps, cul-de-sacs, traffic circles and service drives. The agency believes that exclusion of these road types from sampling and observation is appropriate for reasons of safety and practicality. These road types are excluded from NHTSA's own nationwide survey of seat belt use, the National Occupant Protection Use Survey (NOPUS).

In § 1340.5(b), the agency's proposal retains the existing requirement that survey designs be probability-based. Specifically, the observation sites and observation schedule (day and time) for the data collection would be required to be selected based on probability sampling, *i.e.,* randomly. The proposal, however, clarifies that deterministic, *i.e.,* non-random, selection would be permitted in the selection of specific locations on the sampled road segments, *i.e.,* the specific location on the road segment where observers are positioned could be chosen based on such factors as safety and visibility. The proposal also would allow alternate observation sites to be used under certain conditions. The proposal identifies "alternate observation site" as a replacement observation site that must (1) be located in the same county or county-equivalent as the observation site; and (2) have the same roadway classification as the observation site (*e.g.,* local road segment, collector road segment).

In § 1340.5(c), the agency proposes that States include a protocol to follow when they cannot collect data at an observation site at the scheduled time. The agency proposes certain minimum conditions depending on whether the observation site is temporarily or permanently unavailable for data collection. Under the existing uniform criteria, there is no requirement for a protocol. However, it is likely that many States have protocols for selecting alternate observation sites even though the protocol is not included in the State's current survey design. The proposed protocol requirement for selecting alternate observation sites would promote efficiency and consistency in data collection.

First, the agency anticipates that observations may not be conducted at some observation sites for temporary reasons. For example, weather conditions, traffic incidents, or road construction may prevent an observer from making observations in a safe manner. Under such temporary conditions, the agency suggests two options for data collection. The State may return to the observation site at another time provided it is on the same day of the week and at the same time of day. The State may also select an alternate observation site provided the data is collected on the same day and approximately at the same time as the originally scheduled observation site.

The agency recommends that the State pre-select alternate observation sites before the start of data collection. Notwithstanding the availability of the protocol, the agency proposes to require that data collection be conducted at the original observation site at all times when it is available. The agency believes that giving States these options will allow them to determine which method is most efficient and convenient for the State while providing greater consistency across State survey collections.

Second, the agency anticipates that some observation sites may become permanently unavailable because the road on which the observation site is located is permanently closed. Under these circumstances, the agency proposes that the State may select a permanent replacement observation site based on probability sampling. However, if the State cannot select a permanent replacement observation site during the current data collection, the agency proposes that it may select an alternate observation site, provided that the data is collected on the same day and at approximately the same time as the originally scheduled observation site. The agency proposes that data collection for future years must be conducted at an observation site that has been selected based on probability sampling. (*See* Section II, B., above for further discussion.) The agency believes that this proposal would provide States flexibility under unexpected circumstances.

In § 1340.5(d), we propose to change the precision requirement from the current 5 percent relative error (standard error divided by the estimate) to a 2.5 percentage point standard error. In some cases, the existing criterion allows margins of error (using 95 percent confidence) up to plus or minus 10 percentage points, and it also requires States with lower seat belt use rates to meet a smaller margin of error than States with higher seat belt use rates. NHTSA believes that a uniform margin of error requirement would be equitable for all States. The proposed criterion would require a standard error not to exceed 2.5 percentage points.

States should closely monitor their survey results to assure that they will be able to meet these more stringent precision requirements. If the standard error proves to be too large, States may need to conduct additional observations to obtain an adequate sample. These additional observations must be conducted in the same calendar year as the sample. Therefore, we encourage States to conduct their surveys early enough in the year to allow for additional sampling if necessary, and to closely monitor the survey results so that they can quickly determine whether extra sampling will be required. Surveys which fail to meet these requirements will not be accepted by NHTSA. NHTSA believes that the likelihood for additional sampling is very small with a well-planned and implemented sample design. NHTSA seeks comment on this requirement, whether it would impose a significant burden on States, and if there are other methods of ensuring the reliability of the results that are equitable to all States.

C. Assignment of Observation Times (23 CFR 1340.6)

The existing Uniform Criteria require all daylight hours and all days of the week to be eligible for data collection.[2] The agency proposes to allow States to restrict their data collection to all daylight hours between 7 a.m. and 6 p.m. Daylight hours during the summer vary, and can begin as early as 5 a.m. and end as late as 9:15 p.m. or later. NHTSA believes it would be more equitable to States if the times eligible for data collection were specified. This proposal does not change the current requirement that all days of the week, including Saturdays, Sundays and holidays, be eligible for data collection.

The existing Uniform Criteria require the schedule for any given data collection to be determined in a random manner. The agency proposes to continue this requirement—States must randomly select both the day of the week and the time of the day. However, NHTSA allows States to group observation sites in close geographic proximity, *i.e.,* cluster assignments of observation sites, for efficiency reasons. The agency proposes to continue to allow cluster assignments of observation sites. For example, after selecting observation sites randomly, the State may identify observation sites in close geographic proximity where data could be collected on the same day by the same survey crew. States must randomly select the day of the week that data will be collected for the geographically-grouped cluster of observation sites. States must randomly select one observation site from the geographically-grouped cluster of observation sites and must randomly assign the time of day for the data collection. Data collection at all other observation sites in the cluster must take place on the same day or adjacent days of the week and at times of the day that ensure efficient use of data collection resources. We believe that this proposal allows for the efficient use of data collection resources and limits the introduction of a judgment bias.

D. Observation Procedures (23 CFR 1340.7)

The existing Uniform Criteria require all survey data to be collected through direct observation and during the calendar year reported for the Statewide seat belt use rate. We propose no change to this requirement in § 1340.7(a).

Under the existing Uniform Criteria, the State may choose to observe data from one or both directions of traffic. We propose no change to this provision in § 1340.7(b), but propose clarifying language. Specifically, if data will be collected from traffic traveling in one direction, that direction should be chosen randomly. If a State chooses to observe traffic from both directions at the same time, the State should provide at least one person to observe traffic from each direction.

In § 1340.7(c), the agency proposes to clarify the requirement regarding the vehicles that must be covered in the survey. The existing Uniform Criteria require that all passenger motor vehicles be included in the survey. The agency's proposal clarifies that this requirement includes passenger motor vehicles being used for commercial purposes, and vehicles that are exempt from the State's seat belt use law or that bear out-of-state license plates.

In § 1340.7(d), the agency proposes to include clarifying language regarding the data that must be collected on occupants in passenger motor vehicles. The existing criteria state that drivers and front seat outboard passengers must be observed. We propose to include language specifying that data on all drivers and right front passengers, except passengers in child safety seats, must be collected. Child safety seats include forward-facing and rear-facing child safety seats, but do not include booster seats. NHTSA believes that children should not be placed in the front seat. However, the agency believes that data on passengers in child safety

[2] Although nighttime observations of seat belt use may provide States with useful data, the agency believes that several factors weigh against extending the sampling requirements under this proposal. First, extending the sampling requirement to nighttime observations would reduce the value of survey results from previous years' data. States and other interested parties use this information to determine the impact of various seat belt use programs and activities. In addition, nighttime observations are more difficult than daytime observations because seat belt use is not as easy to observe in the dark, even in the most well lit sites. Nighttime observations are also less safe for observers than daytime observations because observers are less conspicuous and the increase of impaired drivers makes nighttime observations inherently more dangerous than daytime observations.

seats should be excluded because it is difficult to observe whether a child safety seat is properly installed or the child is properly restrained in the child safety seat. However, right front passengers in booster seats must be included in the survey because booster seats require the use of a readily-observable shoulder belt to secure the passenger.

The existing Uniform Criteria require that shoulder belt use by the driver and right front passenger in passenger vehicles be recorded. In § 1340.7(e), the agency leaves unchanged the survey variables that are existing requirements of the Uniform Criteria—belt status of driver, presence of right front passenger, and belt status of right front passenger if present. However, we propose to clarify when to record an occupant as "belted." We propose that observers record an occupant as "belted" if they see that a shoulder belt is in front of the occupant's shoulder; record an occupant as "unbelted" if they see that a shoulder belt is not in front of the occupant's shoulder; and record the belt use of the occupant as "unknown" if it cannot reasonably be determined that the shoulder belt is in front of the occupant's shoulder. Thus, an occupant using a lap-only belt or using a lap/shoulder belt with the shoulder belt behind the shoulder would be counted as "unbelted." A motorist with a shoulder belt under the arm near the shoulder belt anchor would be counted as "unbelted."

In § 1340.7(f), the agency proposes to specify certain prohibited practices that could artificially raise seat belt use rates at observation sites. Specifically, we propose to prohibit observers from wearing law enforcement uniforms and prohibit the presence of law enforcement vehicles visible to motorists at observation sites. We also propose to prohibit advance specific warning to motorists approaching observation sites that a seat belt use survey is being or will be conducted. NHTSA believes that this will help ensure more accurate estimates of seat belt use rates.

E. Quality Control (23 CFR 1340.8)

The existing Uniform Criteria do not specifically address quality control procedures. Because it is likely that States vary in their use of quality control measures, we propose to add criteria establishing a uniform baseline of quality control procedures to ensure reliability and consistency in State survey results. First, in § 1340.8(a), we propose that States assign quality control monitors to conduct random, unannounced site visits to ensure that observers are conducting the survey properly. NHTSA proposes that States conduct these observation site visits to no less than five percent of the observation sites. The same individual may not serve as both the observer and the quality control monitor at the same observation site at the same time.

Second, in § 1340.8(b), we propose that all observers and quality control monitors must have been trained in data collection protocols, including observation protocols as provided in § 1340.7 and substitution and rescheduling of observation sites as provided in § 1340.5(c), within twelve months prior to data collection. Finally, we propose in § 1340.8(c) that survey results be reviewed by persons knowledgeable in the design of complex probability samples and estimation and variance estimation from such samples. NHTSA believes such uniform measures are necessary for accurate and reliable survey results.

F. Computation of Estimates (23 CFR 1340.9)

In §§ 1340.9(a) and 1340.9(b), NHTSA's proposal specifies that States must use all data collected at observation sites and must not use statistical editing procedures that would alter the values of observed data. NHTSA believes that these requirements are necessary to ensure accurate representation of seat belt use estimates.

In § 1340.9(c), we propose to allow States to employ imputation of unknown values, provided the State's proposed imputation procedure is submitted to and approved by NHTSA in advance. Although NHTSA does not require or encourage the imputation of unknown values, we would allow States to propose methods of imputation for unknown values provided the proposed methods are approved by NHTSA prior to data analysis.

In § 1340.9(d), NHTSA makes no changes to the current requirement that observation site data be weighted by sampling weights (inverses of selection probabilities).

In § 1340.9(e), NHTSA proposes that States include a procedure to adjust for observation sites with no usable data, including observation sites where no data were collected and observation sites where data were discovered to be falsified. If data is discovered to be falsified, the data must be discarded and the observation site treated as if no data were collected. For observation sites for which no data were collected, States should consider the following approaches for adjusting for the lack of data: discard the observation site from data analysis and adjust the remaining observation sites' sampling weights accordingly; return to the observation site on the same day of the week and at the same time of day to collect data; or select an alternate observation site as described in Section II, B. of this preamble. However, the State may propose another procedure to adjust for observation sites with no usable data. NHTSA believes that requiring States to include a minimum protocol is necessary to provide a more accurate seat belt use rate estimate.

In § 1340.9(f)(1), we propose to add a new requirement that the nonresponse rates for (1) the ratio of the total number of recorded unknown values of passenger presence to the number of passenger vehicles observed, and (2) the ratio of the total number of recorded unknown values of belt use to the total number of drivers and right front seat passengers observed not exceed 10 percent. In other words, the presence or absence of a right front seat passenger must not be "unknown" for more than 10 percent of the vehicles observed in the entire survey; and the belt use status must not be "unknown" for more than 10 percent of the drivers and right front seat passengers in the entire survey. NHTSA believes that this new requirement is necessary to reduce potential bias in the survey results.

In § 1340.9(f)(2), we propose to add a new requirement that States include a procedure for collecting additional observations to reduce the nonresponse rates to no more than 10 percent. One possible procedure to adjust for nonresponse rates in excess of 10 percent would be to return to observation sites with the highest numbers of unknown values on the same day of the week and same time of day as the original data collection schedule to observe additional data. States must not discard the data from the original data collection. States may take additional measures to reduce the number of unknown values, such as assigning additional observers to return to those observation sites with the highest numbers of unknown values. As proposed in Section II, D. above, all data collection must be conducted during the calendar year in which the seat belt use rate estimate is reported to NHTSA. States should plan their surveys in order to allow the State sufficient time to conduct additional observations in the event that the nonresponse rate exceeds 10 percent.

In § 1340.9(g), we propose to change the allowable margin of error in the survey from the existing five percent *relative error* to a 2.5 percentage point *standard error.* As discussed in Section II, B. of this preamble above, the

existing criterion allows margins of error up to plus or minus 10 percentage points. NHTSA also proposes to clarify that in the event that the standard error exceeds this threshold, the State must conduct additional observations during the same calendar year until the standard error does not exceed 2.5 percentage points. As discussed in Section II, B. of this preamble, States should conduct surveys early enough in the year to allow for additional sampling if necessary, and to closely monitor the survey results so that they can quickly determine whether extra sampling will be required. NHTSA believes that the likelihood for additional sampling is very small with a well-planned and implemented sample design.

III. Administrative Requirements

A. Submission and Approval of Seat Belt Survey Design (23 CFR 1340.10)

Section 1340.5 of the existing Uniform Criteria details the documentation requirements for proposed sample survey designs and reporting annual seat belt use estimates. We propose to require additional documentation in the proposed sample survey designs submitted to NHTSA for approval. Specifically, we propose to require States to (1) define all sampling units, with their measures of size, (2) identify the data source of the sampling frame; (3) specify any exclusions applied to the sampling frame; (4) identify the name and describe the qualifications of the State seat belt statistician; (5) detail the procedures for collecting additional data to reduce the nonresponse rates that exceed 10 percent; (6) include the number of observers and quality control monitors; (7) explain any imputation methods that will be used; (8) specify any procedures to adjust the sampling weight for observation sites with no usable data; and (9) describe the procedures to be followed if the standard error exceeds 2.5 percentage points.

The agency also proposes to require documentation of data collection and estimation of seat belt use rate. For data collection, we propose to require States to (1) define an observation period; (2) specify the procedures to be implemented to reschedule or substitute observation sites when data collection is not possible on the date and time assigned; (3) specify the procedures for collecting additional data to reduce the nonresponse rate when the nonresponse rates exceeds 10 percent; (4) describe the data recording procedures; and (5) specify the number of observers and quality control monitors. For estimation, we propose to require States to (1) describe how seat belt use rate estimates will be calculated; (2) describe how variances will be estimated; (3) specify imputation methods, if any; (4) specify the procedures to adjust sampling weight for observation sites with no usable data; and (5) specify the procedures to be followed if the standard error exceeds 2.5 percentage points. NHTSA believes that additional documentation is necessary for the agency to determine accurately if the State's proposed survey design meets the Uniform Criteria.

Under the existing Uniform Criteria, States must submit their survey designs to NHTSA in advance of data collection in order for NHTSA to determine whether the designs meet the Uniform Criteria. The agency retains this requirement, but adds a deadline.

Currently, no State survey design meets all the requirements of the proposed Uniform Criteria. Under this proposal, all States would revise their seat belt use survey designs before conducting seat belt use surveys in calendar year 2011, and must submit new survey design proposals to NHTSA no later than January 3, 2011. The agency believes most States conduct seat belt use surveys in the late-spring to early summer of the year. Submission of proposed survey designs by this date will allow the agency sufficient time to review the State design and provide guidance well in advance of States conducting survey data collection.

B. Post-Approval Alterations to Survey Designs (23 CFR 1340.11)

We propose to continue the requirement that States submit proposals to alter their survey design to NHTSA at least three months prior to data collection if the alteration would impact the Statewide seat belt use rate or its standard error. Examples of changes that would impact the Statewide seat belt use rate estimate or its standard error include, but are not limited to, changes in sample design, seat belt use rate estimation method, variance estimation method, and data collection protocols.

C. Re-Selection of Observation Sites (23 CFR 1340.12)

The existing Uniform Criteria do not specify how frequently observation site samples should be refreshed, *i.e.,* updated to reflect new road construction, changes in traffic volume, and population shifts. Accordingly, some States use survey designs that are more than 20 years old. We believe that this diminishes the accuracy of survey results. We propose that the State re-select its sample of observation sites from a NHTSA-provided road database or another road database approved by NHTSA no less than once every five years. We further propose States submit the updated sampling frame data to NHTSA for approval no later than March 1 of the re-selection year. NHTSA believes that this proposal balances the need for a more accurate estimate of seat belt use with the burdens of re-selecting the sample of observation sites.

D. Annual Reporting Requirements (23 CFR 1340.13; Appendix A)

Under the existing Uniform Criteria, States report the annual Statewide seat belt use rate and standard error, and certify that their Statewide seat belt use rates were obtained in accordance with the Uniform Criteria. For oversight purposes, we propose to expand the certification to include additional information. Specifically, we propose that States would provide the following additional information: (1) A spreadsheet in electronic format containing the raw data for each observation site and the observation site weight; (2) nonresponse rates for survey variables—seat belt use and passenger presence; (3) the dates of the data collection; (4) observation sites, identified by type of site (*i.e.,* observation site selected in the original survey design, alternate observation site selected subsequent to the original survey design), and by characteristics of the observation site visit (*i.e.,* at least one vehicle observed, no vehicles observed); and (5) name of the State seat belt survey statistician.

In § 1340.13, NHTSA proposes that the Governor's Highway Safety Representative (GR) or if delegated in writing by the GR, the Coordinator of the State Highway Safety Office sign the certification included in the annual reporting requirement. That individual must certify that (1) [name of GR] has been designated by the Governor as the GR, and if applicable, the GR has delegated the authority to sign the certification in writing to [name of Coordinator], the State Highway Safety Coordinator; (2) the reported Statewide seat belt use rate is based on a survey design that was approved by NHTSA, in writing, as conforming to the Uniform Criteria for State Observational Surveys of Seat Belt Use, 23 CFR part 1340; (3) the survey design has remained unchanged since the survey was approved by NHTSA; and (4) the individual named in the reporting form is a qualified statistician who has reviewed and approved the seat belt use rate and standard error reported.

In addition, NHTSA proposes that the State seat belt survey statistician also sign the reporting form certifying that (s)he meets the qualification requirements in § 1340.8(c), and the information being reported is correct and is in compliance with the Uniform Criteria for State Observational Surveys of Seat Belt Use, 23 CFR part 1340.

NHTSA also proposes that States retain certain records for five years and make them available to NHTSA within four weeks of request. We believe that retention of these records would not pose an additional burden on States because these are records that States would normally retain in the course of designing a seat belt use survey and conducting annual seat belt use surveys.

IV. Public Participation

A. How do I prepare and submit comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your primary comments must not be more than 15 pages long. (49 CFR 553.21). However, you may attach additional documents to your primary comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES**.

Comments may also be submitted to the docket electronically on the Federal eRulemaking Portal at *http://www.regulations.gov.* Follow the online instructions for submitting comments.

B. How can I be sure my comments were received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

C. Will the agencies consider late comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date.

D. How can I read the comments submitted by other people?

You may read the comments received by the Docket Management at the address given under **ADDRESSES**. The hours of the Docket are indicated above in the same location. To read the comments on the Internet, go to *http://www.regulations.gov.* Follow the online instructions for accessing the docket.

Please note that even after the comment closing date, we will continue to file relevant information on the docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the docket for new material.

V. Statutory Basis for This Action

The agency's proposal would implement changes to the uniform criteria for the measurement of State seat belt use rates that a State is required to conduct annually under a grant program in accordance with 23 U.S.C. 402(b)(1)(E)(iii).

VI. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is "significant" and therefore subject to OMB review and to the requirements of the Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This rulemaking document was not reviewed by the Office of Management and Budget under Executive Order 12866. The rulemaking action is not considered to be significant within the meaning of E.O. 12866 or the Department of Transportation's Regulatory Policies and Procedures (44 FR 11034 (Feb. 26, 1979)).

The agency's proposal would not affect amounts over the significance threshold of $100 million each year. The agency's proposal would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities. The agency's proposal would not create an inconsistency or interfere with any actions taken or planned by other agencies. The agency's proposal would not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof. Finally, the agency's proposal does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Currently, States are required to provide satisfactory assurances that they will conduct an annual Statewide seat belt use survey as part of the administrative requirements for a highway safety grant under 23 U.S.C. 402(b)(1)(E)(iii). The outcome of the State's annual Statewide seat belt use survey provides one of the core performance measures—observed seat belt use by drivers and front outboard seat passengers of passenger motor vehicles—that were developed as a collaborative effort by the National Highway Traffic Safety Administration and the Governors Highway Safety Association (GHSA), with assistance from other partners. Through these assurances, every State Highway Safety Office has committed to conducting an annual Statewide seat belt use survey.

The agency's proposal would not change the statutory requirement to provide assurances that the State will conduct an annual Statewide seat belt use survey, but would change the way States collect and report survey data. Specifically, the proposed rule would make two changes to the sampling frame—draw observation sites from a sampling frame based on traffic fatalities instead of population, and include all roads with a few exceptions in the sampling frame. In addition, the proposed rule would change the standard error to not to exceed 2.5 percentage points. The proposed rule also would improve quality control of the data collected by requiring States to train observers before data collection, to have quality control monitors conduct unannounced visits, and to have a statistician review the data collected. Finally, the proposed rule would require States to submit additional

information in their annual certifications.

The agency has determined that if it is made final, this rulemaking action would not be significant. If a State does not provide assurances that it will conduct an annual Statewide seat belt use survey in accordance with the uniform criteria in a given year, Section 402 grant funds could be withheld. However, States rely on statistically valid observational surveys of seat belt use to plan and evaluate their highway safety programs and have committed, through their highway safety offices, to conduct annual Statewide seat belt use surveys as part of the core performance measurement process. The agency believes that no State will decline to provide the required assurances, and that the impacts of the rule would be minimal and not require the preparation of a full regulatory evaluation.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency publishes a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR part 121 define a small business, in part, as a business entity "which operates primarily within the United States." (13 CFR 121.105(a)). No regulatory flexibility analysis is required if the head of an agency certifies the rulemaking action would not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that an action would not have a significant economic impact on a substantial number of small entities.

NHTSA has considered the effects of this proposal under the Regulatory Flexibility Act. This proposal applies to States and they are not considered to be small businesses under the Regulatory Flexibility Act. States may employ contractors to collect survey data (which may be small businesses), but this proposal merely changes the procedures of collecting survey data and will not have a significant impact on the costs or profits of small businesses. Therefore, I certify that this notice of proposed rulemaking would not have a significant economic impact on a substantial number of small entities.

C. Executive Order 13132 (Federalism)

Executive Order 13132, "Federalism" (64 FR 43255, August 10, 1999), requires NHTSA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" are defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, the agency may not issue a regulation with Federalism implications that imposes substantial direct compliance costs and that is not required by statute unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments or the agency consults with State and local governments in the process of developing the proposed regulation. The agency also may not issue a regulation with Federalism implications that preempts a State law without consulting with State and local officials.

The agency has analyzed this rulemaking action in accordance with the principles and criteria set forth in Executive Order 13132 and has determined that this proposed rule would not have sufficient Federalism implications to warrant consultation with State and local officials or the preparation of a Federalism summary impact statement. Moreover, the proposed rule would not preempt any State law or regulation or affect the ability of States to discharge traditional State government functions.

D. Executive Order 12988 (Civil Justice Reform)

Pursuant to Executive Order 12988, "Civil Justice Reform" (61 FR 4729, February 7, 1996), the agency has considered whether this rulemaking would have any retroactive effect. This rulemaking action would not have any retroactive effect. This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

E. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid Office of Management and Budget (OMB) control number. This NPRM, if made final, would result in a new collection of information that would require OMB clearance pursuant to 5 CFR part 1320. Before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected;

(iv) How to minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

In compliance with these requirements, the agencies ask for public comments on the following proposed collections of information:

Title: Uniform Criteria for State Observational Surveys of Seat Belt Use.

OMB Control Number: N/A.

Requested Expiration Date of Approval: Three years from the approval date.

Type of Request: New collection.

Affected Public: State Governments (the 50 States, the District of Columbia, Puerto Rico and 4 territories).

Form Number: N/A.

Abstract: The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59) provides that the Secretary of Transportation may not approve for Section 402 funding a State highway safety program which does not provide satisfactory assurances that the State will implement an annual statewide seat belt use survey in accordance with criteria established by

the Secretary to ensure that the measurements of seat belt use are accurate and representative. In addition, in 2008, the National Highway Traffic Safety Administration (NHTSA) and the Governors Highway Safety Association (GHSA) partnered to develop a voluntary minimum set of performance measures to be used by States and federal agencies in the development and implementation of behavioral highway safety plans and programs, including observed seat belt use of front seat outboard occupants in passenger vehicles.

Currently, States use the information collected in their seat belt use surveys to evaluate the effectiveness of their occupant protection countermeasures programs and to identify relatively low seat belt use areas and sub-populations requiring increased program emphasis. In addition, NHTSA uses the collected information, pooled across the States, to determine the relative impact of various countermeasures and program strategies and to provide guidance to assist the States in achieving the highest possible seat belt use. NHTSA also uses the collected information from individual States to identify those States whose occupant protection programs would most benefit from special management reviews, countermeasure demonstration projects and other forms of technical assistance.

The information collected for the States' seat belt observational surveys is to include a seat belt survey design for approval and any subsequent changes to the seat belt survey design. The survey design will include a description of the methodology used to select the survey observational sites, the selection probability of each site, the survey observational procedures and protocols, observer training and quality control procedures. In addition, each State is to submit the survey results annually, including a certification regarding the survey, name of the State statistician, seat belt use rate, standard error, nonresponse rate and for each observational site, the number of front seat outboard occupants that were observed, the number observed to be wearing the seat belt, and the site weighting factor used to combine the individual site data into the measure of Statewide seat belt use.

Estimated Annual Burden: 19,026 hours.

Estimated Number of Respondents: 56 (50 States, District of Columbia, Puerto Rico, American Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands).

Comments Are Invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. Comments must refer to the docket and notice numbers cited at the beginning of this NPRM and be submitted to one of the addresses identified at the beginning of this NPRM.

F. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or 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 (adjusted for inflation with a base year of 1995 (about $118 million in 2004 dollars)). This proposed rule does not meet the definition of a Federal mandate because the resulting annual State expenditures would not exceed the $100 million threshold.

G. National Environmental Policy Act

NHTSA has reviewed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that this proposal would not have a significant impact on the quality of the human environment.

H. Executive Order 13175 (Consultation and Coordination With Indian Tribes)

The agency has analyzed this proposed rule under Executive Order 13175, and has determined that the proposed action would not have a substantial direct effect on one or more Indian tribes, would not impose substantial direct compliance costs on Indian tribal governments, and would not preempt tribal law. Therefore, a tribal summary impact statement is not required.

I. Regulatory Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

J. Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the complete User Notice and Privacy Notice for Regulations.gov at *http://www.regulations.gov/search/footer/privacyanduse.jsp.*

List of Subjects in 23 CFR Part 1340

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

In consideration of the foregoing, we propose to revise 23 CFR part 1340 to read as follows:

PART 1340—UNIFORM CRITERIA FOR STATE OBSERVATIONAL SURVEYS OF SEAT BELT USE

Subpart A—General

Sec.
1340.1 Purpose.
1340.2 Applicability.
1340.3 Definitions.

Subpart B—Survey Design Requirements

1340.4 In general.
1340.5 Selection of observation sites.
1340.6 Assignment of observation times.
1340.7 Observation procedures.
1340.8 Quality control.
1340.9 Computation of estimates.

Subpart C—Administrative Requirements

1340.10 Submission and approval of seat belt survey design.
1340.11 Post-approval alterations to survey design.
1340.12 Re-selection of observation sites.
1340.13 Annual reporting requirements.
Appendix A to Part 1340—State Belt Use Survey Reporting Form

Authority: 23 U.S.C. 402; delegation of authority at 49 CFR 1.50.

Subpart A—General

§ 1340.1 Purpose.

This part establishes uniform criteria for State surveys of seat belt use conducted under 23 U.S.C. 402, procedures for NHTSA approval of survey designs, and administrative requirements relating to State seat belt surveys.

§ 1340.2 Applicability.

This part applies to State surveys of seat belt use, beginning in calendar year 2011 and continuing annually thereafter.

§ 1340.3 Definitions.

As used in this part—

Access ramp means the segment of a road that forms a cloverleaf or limited access interchange.

Cul-de-sac means the closed end of a road that forms a loop or turn-around.

Non-public road means a road on which members of the general public are not allowed to drive motor vehicles.

Nonresponse rate means, for any survey variable, the percentage of unknown values recorded for that variable.

Observation site means the physical location where survey data are collected.

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

Service drive means the segment of a road that provides access to businesses and rest areas.

Traffic circle means the segment of a road or intersection of roads forming a roundabout.

Unnamed road means a road, public or private, that has no name or number designation and is often a farm or logging road.

Vehicular trail means a road designed or intended primarily for use by motor vehicles with four-wheel drive.

Subpart B—Survey Design Requirements

§ 1340.4 In general.

This subpart sets forth the minimum design requirements to be incorporated in surveys conducted under this part.

§ 1340.5 Selection of observation sites.

(a) *Sampling frame requirements*—(1) *County coverage.* The sampling frame from which observation sites are selected shall include counties or county-equivalents (including tribal territories), as defined by the U.S. Census Bureau, that account for at least 85 percent of the State's passenger vehicle occupant fatalities, provided that the average of the last three years of available Fatality Analysis Reporting System (FARS) data shall be used to determine the State's passenger vehicle occupant fatalities.

(2) *Road coverage.* (i) States shall select observation sites from a database of road inventories approved by NHTSA or provided by NHTSA.

(ii) Except as provided in paragraph (a)(2)(iii) of this section, all roads in the State shall be eligible for sampling. The sampling frame may not be limited only to roads having a stop sign, stop light or State-maintained roads.

(iii) The sampling frame need not include non-public roads, unnamed roads, unpaved roads, vehicular trails, access ramps, cul-de-sacs, traffic circles and service drives.

(b) *Sampling selection requirements.* The set of road segments selected for observation sites shall be chosen based on probability sampling, except that—

(1) The specific observation site locations on the sampled road segments may be deterministically selected;

(2) An alternate observation site may be used to replace an observation site selected based on probability sampling if it is located in the same county or county-equivalent, and has the same roadway classification (*e.g.,* local road segment, collector road segment) when using the protocol of substitution and rescheduling of observation sites pursuant to paragraph (c) of this section.

(c) *Requirements for substitution and rescheduling of observation sites.* The survey design shall include at a minimum the following protocols:

(1) *Protocol when observation site is temporarily unavailable for data collection.*

(i) Observers shall return to the observation site at another time provided that it is on the same day of the week and at the same time of the day or select an alternate observation site, as described in paragraph (b)(2) of this section, provided the data is collected on the same day and at approximately the same time as the originally scheduled observation site.

(ii) The original observation site must be used for future data collections.

(2) *Protocol when observation site is permanently unavailable for data collection.*

(i) Except as provided in paragraph (c)(2)(ii) of this section, another observation site shall be selected in accordance with paragraph (b) of this section.

(ii) If it is not feasible to select another observation site based on probability sampling for the current data collection, an alternate observation site, as described in paragraph (b)(2) of this section, may be selected provided the data is collected on the same day and at approximately the same time as the originally scheduled observation site.

(iii) For future data collections, another observation site must be selected based on probability sampling in accordance with paragraph (b) of this section.

(d) *Precision requirement.* The estimated seat belt use rate must have a standard error of no more than 2.5 percentage points.

§ 1340.6 Assignment of observation times.

(a) *Daylight hours.* All daylight hours between 7 a.m. and 6 p.m. for all days of the week shall be eligible for inclusion in the sample.

(b) *Random assignment.* Except as provided in paragraph (c) of this section, the day-of the week and time-of-the-day shall be randomly assigned to observation sites.

(c) *Grouping of observation sites in close geographic proximity.* Observation sites in close geographic proximity may be grouped to reduce data collection burdens if:

(1) The first assignment of an observation site within the group is randomly selected; and

(2) The assignment of other observations sites within the group is made in a manner that promotes administrative efficiency and timely completion of the survey.

§ 1340.7 Observation procedures.

(a) *Data collection dates.* All survey data shall be collected through direct observation completely within the calendar year for which the Statewide seat belt use rate will be reported. Except as provided in § 1340.5(c), the survey shall be conducted in accordance with the schedule determined in § 1340.6.

(b) *Roadway and direction(s) of observation*—(1) *Intersections.* If an observation site is located at an intersection of road segments, the data shall be collected from the sampled road segment, not the intersecting road segment(s).

(2) *Roads with two-way traffic.* If an observation site is located on a road with traffic traveling in two directions, one or both directions of traffic may be observed, provided that—

(i) If only one direction of traffic is observed, that direction shall be chosen randomly;

(ii) If both directions of traffic are observed at the same time, States shall assign at least one person to observe each direction of traffic.

(c) *Vehicle coverage.* Data shall be collected by direct observation from all passenger motor vehicles, including but not limited to commercial passenger motor vehicles, and vehicles that are exempt from the State's seat belt use law or that bear out-of-State license plates.

(d) *Occupant coverage.* Data shall be collected by direct observation of all drivers and right front passengers, including right front passengers in booster seats, but excluding right front passengers in child safety seats. Observers shall record—

(1) The driver and right front passenger as belted if the shoulder belt is in front of the person's shoulder.

(2) A person as unbelted if the shoulder belt is not in front of the person's shoulder.

(3) The belt status of that person as unknown if it cannot reasonably be determined whether the driver or right front passenger is belted.

(e) *Survey variables.* At a minimum, the seat belt use variables to be collected by direct observation shall include—

(1) Seat belt status of driver;

(2) Presence of right front passenger; and

(3) Seat belt status of right front passenger, if present.

(f) *Data collection environment.* When collecting seat belt survey data—

(1) Observers shall not wear law enforcement uniforms;

(2) Police vehicles and persons in law enforcement uniforms shall not be positioned at observation sites;

(3) No communications by signage or any other means that a seat belt survey is being or will be conducted may be present in the vicinity of the observation site.

§ 1340.8 Quality control.

(a) *Quality control monitors.* Monitors shall conduct random, unannounced visits to no less than five percent of the observation sites for the purpose of quality control. The same individual shall not serve as both the observer and quality control monitor at the same observation site at the same time.

(b) *Training.* Observers and quality control monitors involved in seat belt use surveys shall have received training in data collection procedures within the past twelve months. Observers and quality control monitors shall be trained in the observation procedures of § 1340.7 and in the substitution and rescheduling requirements of § 1340.5(c).

(c) *Statistical review.* Survey results shall be reviewed and approved by a seat belt survey statistician, *i.e.,* a person with knowledge of the design of probability-based multi-stage samples, statistical estimators from such designs, and variance estimation of such estimators.

§ 1340.9 Computation of estimates.

(a) *Data used.* Except as otherwise provided in this section, all data collected for the survey's variables shall be used, without exclusion, in the computation of the Statewide seat belt use rate, standard error, and nonresponse rates.

(b) *Data editing.* Known values of data contributing to the Statewide seat belt use rate shall not be altered or statistically edited in any manner.

(c) *Imputation.* Unknown values of variables shall not be imputed unless NHTSA has approved the State's imputation procedure prior to data analysis.

(d) *Sampling weights.* The estimation formula shall weight observed data by the inverse of the selection probability of the observation site at which the data were obtained.

(e) *Sampling weight adjustments for observation sites with no usable data.* States shall include a procedure to adjust the sampling weights for observation sites with no usable data, including observation sites where no data were collected and observation sites where data were discovered to be falsified.

(f) *Nonresponse rate.* (1) Subject to paragraph (f)(2) of this section, the nonresponse rates, for the entire survey, shall not exceed 10 percent for—

(i) The ratio of the total number of recorded unknown values of passenger presence to the number of passenger vehicles observed; or

(ii) The ratio of the total number of recorded unknown values of belt use to the total number of drivers and passengers observed.

(2) The State shall include a procedure for collecting additional observations in the same calendar year of the survey to reduce the nonresponse rate to no more than 10 percent, in the event the nonresponse rate in paragraph (f)(1)(i) or (f)(1)(ii) of this section exceeds 10 percent.

(g) *Variance estimation.* (1) Subject to paragraph (g)(2) of this section, the estimated standard error, using the variance estimation method in the survey design, shall not exceed 2.5 percentage points.

(2) If the standard error exceeds this threshold, additional observations shall be conducted in the same calendar year of the survey until the standard error does not exceed 2.5 percentage points.

Subpart C—Administrative Requirements

§ 1340.10 Submission and approval of seat belt survey design.

(a) *Contents:* The following information shall be included in the State's seat belt survey design submitted for NHTSA approval:

(1) *Sample design*—The State shall—

(i) Define all sampling units, with their measures of size, as provided in § 1340.5(a)(1);

(ii) Specify the data source of the sampling frame, as provided in § 1340.5(a)(2)(i);

(iii) Specify any exclusions that have been applied to the sampling frame, as provided in § 1340.5(a)(2)(iii);

(iv) Define what stratification was used at each stage of sampling and what methods were used for allocation of the sample units to the strata;

(v) Define an observation site;

(vi) List all observation sites and their probabilities of selection;

(vii) Explain how the sample size at each stage was determined, as provided in § 1340.9(g);

(viii) Describe how observation sites were assigned to observation time periods, as provided in § 1340.6; and

(ix) Identify the name and describe the qualifications of the State seat belt statistician meeting the requirements in § 1340.8(c).

(2) *Data collection*—The State shall—

(i) Define an observation period;

(ii) Specify the procedures to be implemented to reschedule or substitute observation sites when data collection is not possible on the date and time assigned, as provided in § 1340.5(c);

(iii) Specify the procedures for collecting additional data to reduce the nonresponse rate of the variables "passenger presence" and "belt use" if either of those nonresponse rates exceeds 10 percent, as provided in § 1340.9(f)(2);

(iv) Describe the data recording procedures; and

(v) Specify the number of observers and quality control monitors.

(3) *Estimation*—The State shall—

(i) Describe how seat belt use rate estimates will be calculated;

(ii) Describe how variances will be estimated, as provided in § 1340.9(g);

(iii) Specify imputation methods, if any, that will be used, as provided in § 1340.9(c);

(iv) Specify the procedures to adjust sampling weight for observation sites with no usable data, as provided in § 1340.9(e); and

(v) Specify the procedures to be followed if the standard error exceeds 2.5 percentage points, as required in § 1340.5(d).

(b) *Survey design submission deadline.* States shall submit proposed survey designs to NHTSA for approval no later than January 3 of the calendar year during which the survey is to be conducted, beginning in calendar year 2011.

§ 1340.11 Post-approval alterations to survey design.

After NHTSA approval of a survey design, States shall submit for NHTSA approval any proposed alteration to their survey design that would impact the Statewide seat belt use rate estimate or standard error, including, but not limited to, sample design, seat belt use rate estimation method, variance estimation method and data collection protocols, at least three months before data collection begins.

§ 1340.12 Re-selection of observation sites.

(a) *Re-selection of observation sites.* States shall re-select observation sites using an updated sampling frame data, as described in § 1340.5(a), no less than once every five years.

(b) *Re-selection submission deadline.* States shall submit an updated sampling frame data meeting the requirements of § 1340.5(a) for NHTSA approval no later than March 1 of the re-selection year.

§ 1340.13 Annual reporting requirements.

(a) *Survey data.* States shall report the following information no later than March 1 of each year for the preceding calendar year's seat belt use survey, using the reporting form in Appendix A to this part:

(1) A spreadsheet in electronic format containing the raw data for each observation site and the observation site weight;

(2) The Statewide seat belt use rate estimate and standard error;

(3) Nonresponse rates for two variables—belt use and passenger presence—as provided in § 1340.9(g);

(4) Dates of the reported data collection;

(5) Observation sites, identified by type of observation site (i.e., observation site selected in the original survey design, alternate observation site selected subsequent to the original survey design), and by characteristics of the observation site visit (i.e., at least one vehicle observed, no vehicles observed); and

(6) Name of the State seat belt survey statistician meeting the qualification requirements, as provided in § 1340.8(c).

(b) *Certifications by Governor's Highway Safety Representative.* The Governor's Highway Safety Representative (GR) or if delegated in writing, the Coordinator of the State Highway Safety Office, shall sign the reporting form certifying that—

(1) _____has been designated by the Governor as the GR, and if applicable, the GR has delegated the authority to sign the certification in writing to _____, the Coordinator of the State Highway Safety Office;

(2) The reported Statewide seat belt use rate is based on a survey design that was approved by NHTSA, in writing, as conforming to the Uniform Criteria for State Observational Surveys of Seat Belt Use, 23 CFR part 1340;

(3) The survey design has remained unchanged since the survey was approved by NHTSA; and

(4) The individual named in the reporting form is a qualified statistician who has reviewed and approved the seat belt use rate and standard error reported.

(c) *Certification by survey statistician.* The State seat belt survey statistician shall sign the reporting form certifying that —

(1) (S)he meets the qualifications of a State seat belt use survey statistician, as provided in § 1340.8(c), and

(2) The information reported is correct and is in compliance with the Uniform Criteria for State Observational Surveys of Seat Belt Use, 23 CFR part 1340.

(d) *Audits.* NHTSA may audit State survey results and data collection. The State shall retain the following records for five years and make them available to NHTSA in electronic format within four weeks of request:

(1) Computation programs used in the sample selection;

(2) Computation programs used to estimate the Statewide seat belt use rate and standard errors for the surveys conducted since the last NHTSA approval of the sample design; and

(3) Sampling frame(s) for design(s) used since the last NHTSA approval of the sample design.

Appendix A to Part 1340—State Seat Belt Use Survey Reporting Form

PART A: To be completed by the Governor's Highway Safety Representative (GR) or if applicable, the Coordinator of the State Highway Safety Office

State: _____

Calendar Year of Survey: _____

Statewide Seat Belt Use Rate: _____

I hereby certify that:

- _____, has been designated by the Governor as the State's Highway Safety Representative (GR), and if applicable, the GR has delegated the authority to sign the certification in writing to _____, the Coordinator of the State Highway Safety Office.
- The reported Statewide seat belt use rate is based on a survey design that was approved by NHTSA, in writing, as conforming to the Uniform Criteria for State Observational Surveys of Seat Belt Use, 23 CFR Part 1340.
- The survey design has remained unchanged since the survey was approved by NHTSA.
- The individual named below is a qualified Statistician, who has reviewed and approved the seat belt use rate and standard error reported above.

_____

Signature

_____

Date

_____

Printed name of signing official

PART B: To be completed by the State Seat Belt Survey Statistician

I hereby certify that I meet the qualifications of a State seat belt use survey statistician as provided in § 1340.8(c) and the information reported in Part C below is correct and is in compliance with the Uniform Criteria for State Observational Surveys of Seat Belt Use, 23 CFR Part 1340.

_____

Signature of State seat belt survey statistician

_____

Date

_____

Printed name of State seat belt survey statistician

PART C: To be completed by the State Seat Belt Survey Statistician

DATA COLLECTED AT OBSERVATION SITES

Site ID	Site type [1]	Date observed	Sample weight	Number vehicles observed	Number front passengers	Number unknown passengers	Number belted occupants	Number unbelted occupant	Number unknown

[1] Identify if the observation site is an original observation site or an alternate observation site.

DATA COLLECTED AT OBSERVATION SITES—Continued

Site ID	Site type [1]	Date observed	Sample weight	Number vehicles observed	Number front passengers	Number unknown passengers	Number belted occupants	Number unbelted occupant	Number unknown
Total									

Standard Error of Statewide Belt Use Rate [2]: _____

Nonresponse Rates,[3] as provided in § 1340.9(f)

Nonresponse rate for the survey variable seat belt use: _____

Nonresponse rate for the survey variable passenger presence: _____

Issued on: January 21, 2010.

David L. Strickland,

Administrator, National Highway Traffic Safety Administration.

[FR Doc. 2010–1613 Filed 1–27–10; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 367

[Docket No. FMCSA–2010–0009]

Uniform Carrier Registration Plan Board of Directors; Request for Nominations

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice Requesting Public Comment on Motor Carrier Industry Nominations to the Board of Directors.

SUMMARY: The FMCSA solicits nominations and applications from interested persons to serve as motor carrier industry representatives on the Board of Directors of the Unified Carrier Registration Plan, which governs the Uniform Carrier Registration Agreement (UCRA), as authorized by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU). The Agency will appoint five members from the motor carrier industry. The UCRA governs the registration and the collection and distribution of fees paid by for-hire and private motor carriers, brokers, freight forwarders, and leasing companies. The UCRA replaced the Single State Registration System (SSRS), which was repealed January 1, 2008.

DATES: Nominations to the Board of Directors must be received on or before February 12, 2010.

ADDRESSES: You may submit comments to this notice, identified by docket number FMCSA–2010–0009, by any of the following methods—Internet, facsimile, regular mail, or hand-deliver.

Federal eRulemaking Portal: Federal Docket Management System (FDMS) Web site at *http://www.regulations.gov.* The FDMS is the preferred method for submitting comments, and we urge you to use it. In the "Comment" or "Submission" section, type Docket ID Number "FMCSA–2010–0009", select "Go", and then click on "Send a Comment or Submission." You will receive a tracking number when you submit a comment.

Fax: 1–202–493–2251.

Mail, Courier, or Hand-Deliver: U.S. Department of Transportation, Docket Operations (M–30), West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

Docket: Comments and material received from the public, as well as background information and documents mentioned in this preamble, are part of docket FMCSA–2010–0009, and are available for inspection and copying on the Internet at *http://www.regulations.gov.* You may also view and copy documents at the U.S. Department of Transportation's Docket Operations Unit, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

Privacy Act: All comments will be posted without change including any personal information provided to the FDMS at *http://www.regulations.gov.* Anyone can search the electronic form of all our dockets in FDMS, by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). The Department of Transportation's (DOT) complete Privacy Act Statement was published in the **Federal Register** on April 11, 2000 (65 FR 19476), and can be viewed at *http://docketsinfo.dot.gov.* Comments received after the comment closing date will be included in the docket, and we will consider late comments to the extent practicable. FMCSA may, however, issue a final rule at any time after the close of the comment period.

FOR FURTHER INFORMATION CONTACT: Ms. Julie Otto, Office of Enforcement and Program Delivery, (202) 366–0710, FMCSA, Department of Transportation, 1200 New Jersey Ave. SE., Washington, DC 20590 or by e-mail at: *FMCSAregs@dot.gov.*

Background

Section 4305(b) of SAFETEA–LU [Pub. L. 109–59, 119 Stat. 1144, August 10, 2005] enacted 49 U.S.C. 14504a titled "Unified carrier registration system plan and agreement." Under the UCRA, motor carriers, motor private carriers, brokers, freight forwarders, and leasing companies register and pay certain fees. The Unified Carrier Registration Plan Board of Directors must issue rules and regulations to govern the UCR. Section 14504a(a)(9) defines the Unified Carrier Registration Plan as the organization of State, Federal, and industry representatives responsible for developing, implementing, and administering the UCRA. Section 14504a(d)(1)(B) directed the Secretary to establish a Unified Carrier Registration Plan Board of Directors made up of 15 members from FMCSA, State government, and the motor carrier industry. The Board also must recommend initial annual fees to be assessed against carriers, leasing companies, brokers, and freight forwarders under the UCRA, as well as any annual adjustments to those fees. Section 14504a(d) stipulates that the Unified Carrier Registration Plan Board of Directors must consist of directors from the following groups:

U.S. Department of Transportation (the Department): One individual, either the FMCSA Deputy Administrator or such other Presidential appointee from the Department, must represent the Department.

Federal Motor Carrier Safety Administration: One director must be selected from each of the FMCSA service areas (as defined by FMCSA on January 1, 2005) from among the chief administrative officers of the State agencies responsible for administering the UCRA.

State Agencies: The five directors selected to represent State agencies must be from among the professional

[2] The standard error may not exceed 2.5 percent.

[3] Either nonresponse rate may not exceed 10 percent.