

DEPARTMENT OF TRANSPORTATION**National Highway Traffic Safety Administration****23 CFR Part 1340****[Docket No. NHTSA–2010–0002]****RIN 2127–AL23****Uniform Criteria for State Observational Surveys of Seat Belt Use**

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

ACTION: Final rule.

SUMMARY: This final rule amends the implementation date for use of the revised uniform criteria for State Observational Surveys of Seat Belt Use. With this change, States may continue in calendar year 2012 to use a survey design that was approved under the old uniform criteria or, at their election, use a survey design approved under the revised uniform criteria. In calendar year 2013, all States must use a survey design approved under the revised uniform criteria.

DATES: This final rule is effective April 5, 2012.

FOR FURTHER INFORMATION CONTACT: 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; Email: Jin.Kim@dot.gov.

SUPPLEMENTARY INFORMATION:**I. Discussion**

On April 1, 2011, the National Highway Traffic Safety Administration (NHTSA) published a final rule setting forth “Uniform Criteria for State Observational Surveys of Seat Belt Use.” 76 FR 18042. That final rule amended the regulation establishing uniform criteria for designing and conducting State observational surveys of seat belt use and the procedures for obtaining NHTSA approval of survey designs, and provided a new form for reporting seat belt use rates to NHTSA.

The final rule specified that beginning with calendar year 2012 surveys, States must use survey designs that have been approved by NHTSA as conforming to the revised uniform criteria. Under the rule, States were required to submit proposed survey designs by January 3, 2012. Almost all States met this deadline. However, in reviewing the proposed survey designs, NHTSA found it necessary to seek clarification from States, in some cases several times. Due

to the unanticipated complexity of the review process, only a few States have survey designs that have been approved at this time by NHTSA.

Most States conduct seat belt use surveys in May and June, during the time of the nationally-supported seat belt enforcement mobilization. NHTSA does not believe that proposed survey designs will be approved in time for all States to train data collectors and conduct seat belt use surveys in May and June of 2012. For this reason, NHTSA is amending the final rule to allow States to conduct calendar year 2012 seat belt use surveys using designs approved by NHTSA under the old uniform criteria or, at a State’s election if its new survey design has been approved, under the revised uniform criteria. Beginning in calendar year 2013, all States must conduct a survey whose design satisfies and is approved by NHTSA under the revised uniform criteria.

II. Rulemaking Analyses and Notices

The Administrative Procedure Act (APA) authorizes agencies to dispense with certain notice procedures for rules when they find “good cause” to do so. See 5 U.S.C. 553(b)(B). Specifically, the requirements for prior notice and opportunity to comment do not apply when the agency for good cause finds that those procedures are “impractical, unnecessary, or contrary to the public interest.”

This final rule would amend only the date by which States must conduct seat belt use surveys using the revised uniform criteria. NHTSA already sought public comment on all other aspects of the revised uniform criteria. See 75 FR 4509 (Jan. 28, 2010). The earlier-published final rule reflects the agency’s consideration of and response to those comments. See 76 FR 18042 (Apr. 1, 2011).

This amendment would relieve a burden on the States and has no safety impact. While most States met the deadline to submit proposed survey designs under the revised criteria, there has been a need for significant consultation during NHTSA’s review of these proposed designs. At this time, only a few States have survey designs that have been approved by NHTSA under the revised uniform criteria. NHTSA does not believe that proposed survey designs will be approved in time for all States to conduct seat belt use surveys during May and June, as is typical practice. Further, notice and comment are “impractical, unnecessary, or contrary to the public interest” given this timeline. This final rule would provide States with sufficient notice so

that States may elect to collect data in May and June 2012 using either the old uniform criteria or the revised uniform criteria.

The APA provides that rules generally may not take effect earlier than thirty (30) days after they are published in the **Federal Register**. See 5 U.S.C. 553(d). However, section 553(d)(1) provides that a substantive rule which grants or recognizes an exemption or relieves a restriction may take effect earlier. Today’s final rule, which relieves a restriction, is effective immediately upon publication.

The agency has discussed the relevant requirements of regulatory analyses and notices in the underlying final rule published at 76 FR 18042 (Apr. 1, 2011). Those discussions are not affected by this amendment.

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.

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 DOT’s complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit <http://www.regulations.gov>.

III. Regulatory Text**List of Subjects in 23 CFR Part 1340**

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

For the reasons discussed in the preamble, the National Highway Traffic Safety Administration amends 23 CFR part 1340 as follows:

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

■ 1. The authority citation for part 1340 continues to read as follows:

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

■ 2. Section 1340.2 is revised to read as follows:

§ 1340.2 Applicability.

This part applies to State surveys of seat belt use beginning in calendar year 2013 and continuing annually thereafter. However, a State may elect to conduct its calendar year 2012 seat belt use survey using a survey design approved under this part.

Issued on: March 28, 2012.

David L. Strickland,
Administrator.

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**FEDERAL COMMUNICATIONS
COMMISSION**

47 CFR Parts 54 and 61

[WC Docket Nos. 10-90, 07-135, 05-337, 03-109; GN Docket No. 09-51; CC Docket Nos. 01-92, 96-45; WT Docket No. 10-208; DA 12-298]

**Connect America Fund; A National
Broadband Plan for Our Future;
Establishing Just and Reasonable
Rates for Local Exchange Carriers;
High-Cost Universal Service Support**

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission clarifies certain rules. The order clarifies, but does not otherwise modify, the *USF/ICC Transformation Order*. The petition for Clarification or, in the Alternative, for Reconsideration of Verizon is granted in part and dismissed in part, and the Petition for Reconsideration of United States Telecom Association is dismissed in part.

DATES: Effective May 7, 2012.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: This is a summary of the Wireline Competition Bureau's Order in WC Docket Nos. 10-90, 07-135, 05-337, 03-109; GN Docket No. 09-51; CC Docket Nos. 01-92, 96-45; WT Docket No. 10-208; DA 12-298, released on February 27, 2012. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY-A257, 445 12th Street SW., Washington, DC 20554. Or at the following Internet address: http://transition.fcc.gov/Daily_Releases/

Daily Business/2012/db0227/DA-12-298A1.pdf.

I. Introduction

1. In the *USF/ICC Transformation Order*, the Commission delegated to the Wireline Competition Bureau (Bureau) the authority to revise and clarify rules as necessary to ensure that the reforms adopted in the *Order* are properly reflected in the rules. In this *Order*, the Bureau acts pursuant to this delegated authority to revise and clarify certain rules, and acts pursuant to authority delegated to the Bureau in §§ 0.91, 0.201(d), and 0.291 of the Commission's rules to clarify certain rules.

II. Discussion

A. Inter-carrier Compensation

2. In the *USF/ICC Transformation Order*, the Commission adopted a prospective transitional inter-carrier compensation framework for VoIP-PSTN traffic. This transitional framework included default compensation rates and addressed a number of implementation issues, including explaining the scope of charges that local exchange carrier (LEC) partners of affiliated or unaffiliated retail VoIP providers are able to include in tariffs. In particular, the Commission determined that it was appropriate to adopt a "symmetric" framework for VoIP-PSTN traffic. This symmetric approach means that "providers that benefit from lower VoIP-PSTN rates when their end-user customers' traffic is terminated to other providers' end-user customers also are restricted to charging the lower VoIP-PSTN rates when other providers' traffic is terminated to their end-user customers."

3. As part of its symmetric regime, the Commission adopted rules that "permit a LEC to charge the relevant inter-carrier compensation for functions performed by it and/or its retail VoIP partner, regardless of whether the functions performed or the technology used correspond precisely to those used under a traditional TDM architecture." The Commission cautioned, however, that "although access services might functionally be accomplished in different ways depending upon the network technology, the right to charge does not extend to functions not performed by the LEC or its retail VoIP service provider partner." The Commission adopted this limitation to address concerns in the record regarding double billing. This limitation was codified as part of the VoIP-PSTN framework in § 51.913(b) of the Commission's rules. The Commission also modified its tariffing rules in Part

61 for competitive LECs to implement the VoIP symmetry rule.

4. On February 3, 2012, YMax Communications Corp. (YMax) filed an *ex parte* letter seeking confirmation of its interpretation that "under [the Commission's] new VoIP-PSTN 'symmetry' rule, a LEC is performing the functional equivalent of ILEC access service, and therefore entitled to charge the full 'benchmark' rate level, whenever it is providing telephone numbers and some portion of the interconnection with the PSTN, and regardless of how or by whom the last-mile transmission is provided." Stated differently, YMax seeks guidance from the Commission as to whether the revised rule language in Part 61, specifically, § 61.26(f) permits a competitive LEC to tariff and charge the full benchmark rate even if it includes functions that neither it nor its VoIP retail partner are actually providing. YMax asserts that the purpose of the Commission's revisions to § 61.26(f) was to "defin[e] the minimum access functionality necessary in order for a CLEC to be allowed to collect access charges at the full benchmark level under the VoIP-PSTN symmetry rule." We disagree. The Commission revised § 61.26(f) to reflect the change in the tariffing process to implement the VoIP symmetry rule, which included limitations to prevent double billing. Interpreting the rule in the manner proposed by YMax could enable double billing. The Commission made clear in adopting the VoIP-symmetry rule that it intended to prevent double billing and charging for functions not actually provided. Indeed, § 51.913(b) expressly states that "[t]his rule does not permit a local exchange carrier to charge for functions not performed by the local exchange carrier itself or the affiliated or unaffiliated provider of interconnected VoIP service or non-interconnected VoIP service."

5. YMax's letter does, however, highlight a potential ambiguity because the amended rule § 61.26(f), which is the tariffing provision intended to implement the VoIP symmetry rule, did not include an express cross reference to § 51.913(b). Although § 51.913(b) makes clear that its terms apply notwithstanding any other Commission rule, to remove any ambiguity regarding the scope of what competitive LECs are permitted to assess in their tariffs, we amend § 61.26(f) to make clear that the ability to charge under the tariff is limited by § 51.913(b). In so doing, we address and reject YMax's interpretation of § 61.26(f).