

**FMVSS No. 218, Motorcycle Helmets Alternate Compliance Process
Supporting Statement for Information Collection Request**

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A. Justification

A.1. Explain the circumstances that make the collection of information necessary. Identify any Legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.

a. Circumstances making the collection necessary

The National Highway Traffic Safety Administration (NHTSA) was established by the Highway Safety Act of 1970 (23 U.S.C. 101) to carry out a Congressional mandate to reduce the mounting number of deaths, injuries and economic losses resulting from motor vehicle crashes on the Nation's highways. As part of this statutory mandate, NHTSA is authorized to prescribe motor vehicle safety standards for motor vehicle equipment in interstate commerce.

As shown in NHTSA's research, motorcycle crash-related fatalities have been disproportionately high, compared as a measure of exposure, among all motor vehicle crash fatalities. According to the Fatality Analysis Reporting System (FARS), motorcyclist fatalities increased from 3,270 fatalities in 2002 to 4,612 fatalities in 2011. During this time, motorcyclist¹ fatalities as a percent of motor vehicle occupants and nonoccupants killed in traffic crashes nearly doubled from 8% to 14%.

In part, these fatalities can be attributed to the high number of motorcyclists wearing sub-standard motorcycle helmets. For example, NHTSA's National Occupant Protection Use Survey (NOPUS) has consistently shown that a portion of the motorcycling community wears novelty helmets. Specifically, in states where use is required for all motorcyclists, between 8–27% of motorcyclists have been observed wearing helmets that likely do not comply with FMVSS No. 218.^{2,3} These helmets, frequently marketed as “novelty” helmets, are seldom certified by the manufacturer as meeting Standard No. 218, but are sold to, and used by, on-road motorcycle riders and passengers.³ Data from a study of motorcycle operators injured in crashes and transported to a shock trauma center indicates that 56 percent of those wearing a novelty helmet received head injuries as compared to 19 percent of those wearing a certified helmet.⁴

These novelty helmets are frequently sold as “motorcycle novelty helmets” or otherwise marketed to on-road motorcycle riders. However, these novelty helmets are usually offered along with a disclaimer that the helmet does not meet Standard No. 218, is not a protective device or is not intended for highway use. In States where universal helmet use laws often require riders and passengers to wear helmets meeting Standard No. 218, helmet users

¹ “Motorcyclist” refers to both motorcycle drivers and motorcycle passengers.

² *Motorcycle Helmet Use in XXXX – Overall Results*, Traffic Safety Facts Research Notes, DOT HS 809 867, 809 937, 810 840, 811 254, and 811 610, available at <http://www-nrd.nhtsa.dot.gov/cats/listpublications.aspx?Id=7&ShowBy=Category> (last accessed on 7/29/15).

³ Data represent an aggregation of sampling units located in states where use is required for all motorcyclists.

⁴ *An Analysis of Hospitalized Motorcyclists in the State of Maryland Based on Helmet Use and Outcome*, available at <http://www.nhtsa.gov/Research/Crashworthiness> (last accessed on 7/29/15).

wearing novelty helmets often affix labels to their helmets that mimic the certification labels applied by manufacturers of helmets that are certified as meeting the Standard. Consequently, officials attempting to enforce compulsory helmet use laws in those States requiring that riders use helmets meeting Standard No. 218 currently find it difficult to enforce these laws to prevent the use of these novelty helmets.

To enhance NHTSA's ability to restrict sale and subsequent use of novelty helmets, as well as assisting State law enforcement officials in enforcing laws requiring use of compliant helmets, the NPRM associated with this collection of information proposed, among other things, to add a set of threshold requirements to distinguish helmets that qualify for testing to the existing performance requirements of the Standard. These threshold requirements are hereafter called preliminary screening requirements. These preliminary screening requirements identify helmets which, under the current state of known technologies, are incapable of meeting the minimum performance requirements for impact attenuation currently incorporated in FMVSS No. 218.

NHTSA believes that the aforementioned criteria are very conservative and that constructing a helmet that does not meet these dimensional criteria but would meet other requirements of Standard No. 218 is impossible using known technologies. Nonetheless, because NHTSA does not wish to stifle innovation, the proposed rule contains provisions establishing a procedure by which manufacturers making helmets that do not meet the new dimensional criteria may request that NHTSA test their products to determine if they meet the impact attenuation, penetration and other criteria of Standard No. 218. If NHTSA grants such a petition and find that the helmet at issue meets all the requirements of Standard No. 218 except the new dimensional requirements, it will publish these findings and list the helmet as compliant in an appendix to Standard No. 218.

b. Statute authorizing the collection of information

NHTSA has statutory authority to prescribe motor vehicle safety standards for equipment in interstate commerce. (See 49 U.S.C. 30111(a)).

A.2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

NHTSA is proposing a new requirement in section 571.218 which would permit manufacturers of motorcycle helmets to petition the agency regarding their belief that their helmet meets the requirements of FMVSS No. 218, excluding the proposed S5.1 which contains preliminary screening requirements. This collection of information would be used by the agency to evaluate the manufacturers' claims and determine if confirmation testing of their product is warranted. If the information submitted to the agency by the manufacturer together with confirmation testing, shows the helmet that is the subject of the petition can meet the requirement of FMVSS No. 218, the brand, model, and size of the helmet will be added to an appendix in the standard and the information will be published in the docket for public reference. The information would be provided by manufacturers to NHTSA under a reporting

requirement that allows them an alternate process in lieu of complying with S5.1(a) through S5.1(c). NHTSA would make the manufacturer's submission available to the public via the Internet if it can be supported by NHTSA testing.

A.3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical or other technological collection techniques or other information technology. Also describe any considerations of using information technology to reduce burden.

The collection of information includes submission of test data that is generated by laboratory instrumentation. Manufacturers of motorcycle helmets typically work with independent laboratories, in which case they would not be responsible for collecting the information themselves, but rather would fund the collection of information. In addition, manufacturers may supplement the independent test data with in-house test data that utilizes previously owned equipment. Both methods are usual and customary for helmet manufacturers in performing development and certification of motorcycle helmets.

A.4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.

There is no similar information that is publicly available that could be used for the purposes described in A.2 above. The information is specific to the material and design of individual motorcycle helmets

A.5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.

The collection of information is part of an optional compliance process. This proposal is not anticipated to have an effect on small businesses operating within the United States. Further, the collection of information involved is intended to provide regulatory relief to innovative manufacturers whose products would otherwise be deemed non-compliant.

A.6. Describe the consequences to Federal Program or policy activities if the collection is not collected or collected less frequently.

If the proposed information collection is not approved, the optional alternative compliance process will need to be removed from the proposed rule and manufacturers will be required to comply with the proposed requirements in the Notice of Proposed Rulemaking section S5.1 of FMVSS No. 218.

A.7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with the guidelines set forth in 5 CFR 1320.6.

There are no special circumstances that would cause this collection to be conducted in a manner inconsistent with 5 CFR 1320.6.

A.8. Provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8 (d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Describe efforts to consult with persons outside the agency to obtain their views.

a. Federal Register Notice

NHTSA published a notice in the *Federal Register* on May 21, 2015 (Volume 80, Number 98, pages 29458-29487) with a 60-day public comment period to announce this proposed information collection.

b. Responses to the Federal Register Notice

The Docket is uploading comments and NHTSA is reviewing the responses to the *Federal Register* notice at this time.

A.9. Explain any decisions to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

No payment or gifts will be provided to respondents.

A.10. Describe any assurance of confidentiality provided to respondents.

Respondents may request confidential treatment pursuant to NHTSA regulations (49 CFR Part 512). Confidential treatment will be accorded under those regulations if consistent with applicable law.

A.11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior or attitudes, religious beliefs, and other matters that are commonly considered private.

The information collection does not involve questions of a sensitive nature.

A.12. Provide estimates of the hour burden of the collection of information on the respondents.

The total estimated annual burden hours to manufacturers is based on the time to manufacturers to review regulatory text, conduct testing of their products, complete and review the collection of information, and transmit that information to NHTSA. The collection requirement is documented in FMVSS No. 218, Appendix B which will be publicly available through the internet once the rule is finalized.

The time to review the collection requirement is small. It is estimated that a management level employee will spend less than one hour reviewing the regulatory text pertaining to the

optional reporting requirement. In addition, the time required for technical level employee to complete and review the collection of information is expected to be 15 hours. Therefore, the total estimated time burden to each manufacturer who chooses to pursue this alternate compliance process is 16 hours. An estimated number of respondents on an annual basis is three, therefore the total time to respond is 48 hours.

The cost associated with the burden hours described above is calculated by adding the cost for both staff members to respond. The cost for each staff member is calculated by multiplying the number of hours to complete the collection of information by the fully loaded hourly cost for each staff member, as described below.

It is estimated that a management level employee will spend less than one hour reviewing the regulatory text pertaining to the optional reporting requirement. The labor rate for this type of manager is \$62.19 per hour^[1] to which we have applied a fringe-benefit factor of 0.41^[2] and an overhead factor of 0.17 to obtain a fully loaded staff cost per hour of \$102.59 for engineering managers.

Next, the cost to complete and review the collection of information is expected to require 15 hours of technical labor. Technical labor is estimated to cost \$40.17^[3]/hour to which we have applied a fringe-benefit factor of 0.41 and an overhead factor of 0.17 to obtain a fully loaded hourly cost of \$66.27.

The combined cost for one hour of fully loaded managerial labor (\$102.59/hour x 1 hour) plus 15 hours of fully loaded technical labor (\$66.27/hour x 15 hours) is \$1,096.64. Therefore, the total cost burden for a single submission is \$1096.64 and 16 hours.

An estimated number of respondents on an annual basis is 3, therefore the total cost for burden hours to manufacturers is \$3,289.92 and 48 hours.

A.13. Provide an estimate of the total annual cost to the respondents or record keepers resulting from the collection of information.

The production and carrier cost that contributes to the estimated annual burden to manufacturers for this collection of information results from the need to collect test data and transmit information to NHTSA.

Production cost results from the need to test motorcycle helmets to ensure they meet the minimum standards of FMVSS No. 218. Testing of products is usual and customary for manufacturers of motorcycle helmets wishing to introduce their products into interstate commerce in the United States. Responsible manufacturers conduct tests during the development phase of their product and again prior to the introduction of their product to

^[1] Occupational Employment and Wages, May 2011 for Standard Occupational Classification Code 11-9041 Architectural and Engineering Managers, <http://www.bls.gov/oes/current/oes119041.htm>, (last accessed on 7/29/15).

^[2] BLS, Employer Costs for Employee Compensation, May 2010.

^[3] Occupational Employment and Wages, May 2011 for Standard Occupational Classification Code 17-2141 Mechanical Engineers, <http://www.bls.gov/oes/current/oes172141.htm>, (last accessed on 7/29/15).

market as well as throughout production. Per 49 USC 30115, manufacturers shall exercise reasonable care in certifying that their equipment complies with applicable FMVSS. This testing often serves, in part, as the basis for exercising reasonable care that their products comply with FMVSS 218. However, the proposed process requests that photographic and video documentation of the testing be provided, which is typically more documentation than is obtained during a standard helmet test. A motorcycle helmet test of four samples is estimated to cost \$1,500 and the requirement to submit additional documentation is estimated to cost approximately 7% more than a standard tests. This additional cost can be attributed to initial purchase of video recording equipment and recurring costs associated with recording media, labor to execute the recording, and profit. Since the base cost (\$1,500) is considered usual and customary, it will not be factored into the estimated annual burden; yet, the additional burden (\$100 for each unique shell/liner combination and model) will be included into the burden for the collection requirement.

Finally, the cost to transmit the data to the agency using a contract carrier is expected to be \$10.

Therefore, the total production and carrier cost for each manufacturer who chooses to pursue this alternate compliance process is \$110. An estimated number of respondents on an annual basis is three, therefore the total cost burden to manufacturers is \$330.

A.14. Provide estimates of the annualized cost to the Federal Government

The estimated annual cost to the Federal Government is \$9,500. This cost includes approximately \$4,500 for enforcement testing and approximately \$5,000 annually to process, respond to, and publish determinations for the anticipated respondents.

A.15. Explain the reasons for any program changes or adjustments in Items 13 or 14 of the OMB 83-I

This is a new collection resulting in a program change of adding an additional 48 hours to NHTSA's overall total because of the new alternate compliance process in FMVSS No. 218.

A.16. For collection of information whose results will be published, outline plans for tabulation and publication.

If a petition concerning the submission of information is granted, NHTSA will include the manufacturer's helmet information in an appendix to the rule and will publish the submission in the docket and/or on its website for public review so that consumers will have information on which to base their decision to wear such helmets and law enforcement will have identifying and technical information on which to determine that helmets they inspect are able to comply with FMVSS No. 218.

A.17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

NHTSA plans to incorporate the OMB approval number in the final codified regulatory text as recommended by 5 CFR 1320.3(f)(3). Including an expiration date in codified regulatory text would be inappropriate.

A.18. Explain each exception to the certification statement identified in Item 19, “Certification for Paperwork Reduction Act Submissions” of the OMB Form 83-I

No exceptions to the certification statement are made.