

DEPARTMENT OF TRANSPORTATION**National Highway Traffic Safety Administration****23 CFR Part 1350**

[Docket No. NHTSA–2006–23700]

RIN 2127–AJ86

Motorcyclist Safety Grant Program

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This NPRM proposes implementing regulations for the Motorcyclist Safety grant program authorized under section 2010 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) for fiscal years 2006 through 2009. Eligibility for the section 2010 grants is based on 6 statutorily specified grant criteria.

To be eligible to receive an initial section 2010 grant, a State must demonstrate compliance with at least 1 of the 6 grant criteria. To be eligible to receive a grant in subsequent fiscal years, a State must demonstrate compliance with at least 2 of the 6 grant criteria. This NPRM proposes minimum requirements a State must meet and procedures a State must follow to receive a section 2010 motorcyclist safety grant.

DATES: Written comments may be submitted to this agency and must be received by June 23, 2006.

ADDRESSES: Comments should refer to the docket number and be submitted (preferably in two copies) to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Alternatively, you may submit your comments electronically by logging onto the Docket Management System (DMS) Web site at <http://dms.dot.gov>. Click on “Help” to view instructions for filing your comments electronically. Regardless of how you submit your comments, you should identify the Docket number of this document. You may call the docket at (202) 366–9324. Docket hours are 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT:

For program issues: Marti Miller, Office of Injury Control Operations and Resources, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590; Telephone: (202) 366–2121.

For legal issues: Allison Rusnak, Office of the Chief Counsel, National

Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590; Telephone: (202) 366–1834.

SUPPLEMENTARY INFORMATION:**Table of Contents**

- I. Background
- II. Summary of SAFETEA–LU Requirements
- III. Proposed Qualification Requirements
 - A. Motorcycle Rider Training Courses
 - B. Motorcyclists Awareness Program
 - C. Reduction of Fatalities and Crashes Involving Motorcycles
 - D. Impaired Driving Program
 - E. Reduction of Fatalities and Accidents Involving Impaired Motorcyclists
 - F. Use of Fees Collected From Motorcyclists for Motorcycle Programs
- IV. Administrative Issues
 - A. Application Requirements
 - B. Awards
 - C. Post-Award Requirements
 - D. Uses of Grant Funds
- V. Comments
- VI. Statutory Basis for This Action
- VII. Regulatory Analyses and Notices
 - A. Executive Order 12866 and DOT Regulatory Policies and Procedures
 - B. Regulatory Flexibility Act
 - C. Executive Order 13132 (Federalism)
 - D. Executive Order 12988 (Civil Justice Reform)
 - E. Paperwork Reduction Act
 - F. Unfunded Mandates Reform Act
 - G. National Environmental Policy Act
 - H. Executive Order 13175 (Consultation and Coordination With Indian Tribes)
 - I. Regulatory Identifier Number (RIN)
 - J. Privacy Act

I. Background

An estimated 128,000 motorcyclists have died in traffic crashes since the enactment of the Highway Safety Act of 1966. There are nearly 6 million motorcycles¹ registered in the United States. Motorcycles made up more than 2 percent of all registered vehicles in the United States in 2004 and accounted for an estimated 0.3 percent of all vehicle miles traveled. Per vehicle mile traveled in 2004, motorcyclists were about 34 times more likely to die and 8 times more likely to be injured in a motor vehicle traffic crash than passenger car occupants. Motorcycle rider fatalities reached a high of 5,144 in 1980. After dropping to a low of 2,116 in 1997, motorcycle rider fatalities have increased for 7 consecutive years, reaching a total of 4,008 in 2004, the last full year for which data are available—an increase of 89 percent.

Impaired motorcycle operation contributes considerably to motorcycle

fatalities and injuries. In fatal crashes in 2004, a higher percentage of motorcycle operators than any other type of motor vehicle operator had blood alcohol concentration (BAC) levels of .08 grams per deciliter (g/dL) or higher. The percentages for vehicle operators involved in fatal crashes were 27 percent for motorcycles, as compared to 22 percent for passenger cars, 21 percent for light trucks, and 1 percent for large trucks.

NHTSA traditionally promotes motorcycle safety through highway safety grants and technical assistance to States, data collection and analysis, research, and safety standards designed to contribute to the safe operation of a motorcycle. NHTSA has allocated resources to support these broad initiatives since the agency's inception in the late 1960s and has collected and analyzed data on motorcycle safety since 1975.

II. Summary of SAFETEA–LU Requirements

On August 10, 2005, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) was enacted into law (Pub. L. 109–59). Section 2010 of SAFETEA–LU authorizes the Secretary of Transportation to “make grants to States that adopt and implement effective programs to reduce the number of single- and multi-vehicle crashes involving motorcyclists.” Specifically, SAFETEA–LU authorizes the Secretary to make motorcyclist safety grants available to States that meet certain criteria. Eligibility for the section 2010 grants is based on 6 grant criteria: (1) Motorcycle Rider Training Courses; (2) Motorcyclists Awareness Program; (3) Reduction of Fatalities and Crashes Involving Motorcycles; (4) Impaired Driving Program; (5) Reduction of Fatalities and Accidents Involving Impaired Motorcyclists; and (6) Use of Fees Collected from Motorcyclists for Motorcycle Programs.

SAFETEA–LU specifies that to qualify initially for a section 2010 grant, a State must demonstrate compliance with at least 1 of the 6 grant criteria. To qualify for a grant in subsequent fiscal years, a State must demonstrate compliance with at least 2 of the 6 grant criteria. Under this new four-year grant program, which covers fiscal years 2006 through 2009, a State may use grant funds for a variety of motorcyclist safety training and motorcyclist awareness programs or it may suballocate funds to a nonprofit organization incorporated in the State to carry out grant activities. The term “State” has the same meaning as in section 101(a) of title 23, United States

¹ For the purposes of the section 2010 grants, NHTSA proposes that the term “motorcycle” will have the same meaning as in 49 CFR 571.3, “a motor vehicle with motive power having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground.”

Code, and includes any of the fifty States, the District of Columbia and Puerto Rico.

NHTSA is optimistic that the new section 2010 grant program will lead to improvements in motorcycle rider training and motorcyclist awareness and a reduction in impaired motorcycle operation as well as a decrease in fatalities and injuries resulting from crashes involving motorcycles. The statutory criteria are set forth more fully below, followed by the agency's proposed requirements to implement each of these criteria.

III. Proposed Qualification Requirements

A. Motorcycle Rider Training Courses

To qualify for a grant based on this criterion, SAFETEA-LU requires a State to have "an effective motorcycle rider training course that is offered throughout the State, provides a formal program of instruction in accident avoidance and other safety-oriented operational skills to motorcyclists and that may include innovative training opportunities to meet unique regional needs."

Agency's Proposal (23 CFR 1350.4(a))

To implement this criterion, the agency proposes that a State, at a minimum: (1) Use a training curriculum that is approved by the designated State authority having jurisdiction over motorcyclist safety issues, that includes a formal program of instruction in crash avoidance and other safety-oriented operational skills for both in-class and on-the-motorcycle training to motorcyclists, and that may include innovative training opportunities to meet unique regional needs; (2)(a) Offer at least one motorcycle rider training course in a majority of the State's counties or political subdivisions, or (b) Offer at least one motorcycle rider training course in counties or political subdivisions that account for a majority of the State's registered motorcycles; (3) To teach the curriculum, use motorcycle rider training instructors who are certified by the designated State authority having jurisdiction over motorcyclist safety issues or by a nationally recognized motorcycle safety organization with certification capability; and (4) Use quality control procedures to assess motorcycle rider training courses and instructor training courses conducted in the State.

Basis for Proposal

In developing the proposed requirements for this criterion, the agency was guided by the specific

language of SAFETEA-LU as well as by established motorcycle safety program guidance contained in the agency's highway safety guideline on motorcycle safety. Section 402 of title 23 of the United States Code requires the Secretary of Transportation to promulgate uniform guidelines for State highway safety programs. The motorcycle safety guideline reflects the sound science and the experience of States in motorcycle safety programs and offers direction to States in formulating their highway safety plans supported with section 402 grant funds. The guideline provides a framework for developing a balanced highway safety program and for assessing the effectiveness of motorcycle safety efforts.

In order to provide the formal program of instruction in crash avoidance and other safety-oriented operational skills required by section 2010, NHTSA proposes that the State must use a curriculum approved by the designated State authority having jurisdiction over motorcyclist safety issues. Although SAFETEA-LU uses the term "motorcycle rider training" for this criterion, section 2010(f)(1) of SAFETEA-LU defines the term "motorcyclist safety training" as a "formal program of instruction * * * approved for use in a State by the designated State authority having jurisdiction over motorcyclist safety issues, which may include the State motorcycle safety administrator or motorcycle advisory council appointed by the Governor of the State." Because of the similarity of the terms "motorcycle rider training" and "motorcyclist safety training" and the common use of the words "formal program of instruction" in both sections 2010(d)(2)(A) and (f)(1), NHTSA believes Congress intended the terms to apply synonymously, and that Congress defined "motorcyclist safety training" in order to give additional meaning to the motorcycle rider training courses criterion.

Additionally, because State motorcycle rider training courses typically include both in-class and on-the-motorcycle training and NHTSA believes both are critical to the effectiveness of a motorcycle rider training course, the agency proposes that the curriculum must include both types of training.

To effectuate the SAFETEA-LU requirement that a State offer its effective motorcycle rider training course throughout the State, NHTSA proposes that a State must offer at least one motorcycle rider training course in a majority of the State's counties or

political subdivisions or offer at least one motorcycle rider training course in counties or political subdivisions that account for a majority of the State's registered motorcycles. For the purposes of this criterion, majority would mean greater than 50 percent. NHTSA recognizes that locations for motorcycle rider training courses may vary widely from State to State. Accordingly, the agency believes this proposal would provide flexibility to States seeking to qualify under this criterion. The agency notes that because we read the statutory language ("an effective motorcycle rider training course that is *offered* throughout the State") (emphasis added) to contemplate that a State already offer motorcycle rider training courses when applying for these grants, the proposal would require States to submit information regarding the motorcycle rider training courses offered in the 12 months preceding the due date of the grant application.

Because about half of all motorcycle-related fatalities occur in rural areas, NHTSA believes it is important that training reach motorcyclists in rural areas. Accordingly, in selecting counties or political subdivisions in which to conduct training, NHTSA encourages States to establish training courses and course locations that are accessible to both rural and urban residents. A State may offer motorcycle rider training courses throughout the State at established training centers, using mobile training units, or any other method defined as effective by the designated State authority having jurisdiction over motorcyclist safety issues.

Next, NHTSA proposes that motorcycle rider training instructors be certified by either the designated State authority having jurisdiction over motorcyclist safety issues or by a nationally recognized motorcycle safety organization with certification capability. Requiring instructors to attain certification in order to teach a motorcycle rider training course would contribute to the course's effectiveness by ensuring that instructors have obtained an appropriate level of expertise qualifying them to teach a course.

Finally, NHTSA proposes that to qualify for a grant under this criterion, a State must carry out quality control procedures to assess motorcycle rider training courses and instructor training courses conducted in the State. NHTSA believes quality control procedures promote course effectiveness by encouraging improvements to courses when needed. The agency's proposal does not specify the quality control

procedures a State must use. Instead, the proposal would require the State to describe what quality control procedures it uses and the changes the State made to improve courses. At minimum, a State should gather evaluative information on an ongoing basis (*e.g.*, by conducting site visits or gathering student feedback) and take actions to improve courses based on the information collected.

Demonstrating Compliance (23 CFR 1350.4(a)(2), (3))

To demonstrate compliance with this criterion for the first fiscal year it seeks to qualify, a State would submit: (1) A copy of the official State document identifying the designated State authority having jurisdiction over motorcyclist safety issues; (2) Document(s) demonstrating that the training curriculum is approved by the designated State authority having jurisdiction over motorcyclist safety issues and includes a formal program of instruction in crash avoidance and other safety-oriented operational skills for both in-class and on-the-motorcycle training to motorcyclists; (3)(a) If the State seeks to qualify under this criterion by showing that it offers at least one motorcycle rider training course in a majority of counties or political subdivisions in the State—A list of the counties or political subdivisions in the State, noting in which counties or political subdivisions and when motorcycle rider training courses were offered in the 12 months preceding the due date of the grant application, or (b) If the State seeks to qualify under this criterion by showing that it offers at least one motorcycle rider training course in counties or political subdivisions that account for a majority of the State's registered motorcycles—A list of the counties or political subdivisions in the State, noting in which counties or political subdivisions and when motorcycle rider training courses were offered in the 12 months preceding the due date of the grant application and the corresponding number of registered motorcycles in each county or political subdivision according to official State motor vehicle records; (4) Document(s) demonstrating that the State uses motorcycle rider training instructors to teach the curriculum who are certified by the designated State authority having jurisdiction over motorcyclist safety issues or by a nationally recognized motorcycle safety organization with certification capability; and (5) A brief description of the quality control procedures to assess motorcycle rider training courses and instructor training

courses conducted in the State (*e.g.*, conducting site visits, gathering student feedback) and the actions taken to improve the courses based on the information collected.

To demonstrate compliance with this criterion for the second and subsequent fiscal years it seeks to qualify, a State would submit only information documenting any changes to materials previously submitted to and approved by NHTSA under this criterion, or if there have been no changes to those materials, a statement certifying that there have been no changes and that the State continues to offer the motorcycle rider training course in the same manner.

B. *Motorcyclists Awareness Program*

To qualify for a grant based on this criterion, SAFETEA-LU requires a State to have “an effective statewide program to enhance motorist awareness of the presence of motorcyclists on or near roadways and safe driving practices that avoid injuries to motorcyclists.”

“Motorcyclist Awareness” is defined in section 2010(f)(2) of SAFETEA-LU as “individual or collective awareness of— (A) the presence of motorcycles on or near roadways; and (B) safe driving practices that avoid injury to motorcyclists.”

“Motorcyclist Awareness Program” is defined in section 2010(f)(3) of SAFETEA-LU as “an informational or public awareness program designed to enhance motorcyclist awareness that is developed by or in coordination with the designated State authority having jurisdiction over motorcyclist safety issues, which may include the State motorcycle safety administrator or a motorcycle advisory council appointed by the Governor of the State.”

Agency's Proposal (23 CFR 1350.4(b))

To implement this criterion, the agency proposes that a State have a motorcyclist awareness program that, at a minimum: (1) Is developed by, or in coordination with, the designated State authority having jurisdiction over motorcyclist safety issues; (2) Uses State data to identify and prioritize the State's motorcycle safety problem areas; (3) Encourages collaboration among agencies and organizations responsible for, or impacted by, motorcycle safety issues; and (4) Incorporates a strategic communications plan that supports the overall policy and program, is designed to educate motorists in those jurisdictions where the incidence of motorcycle crashes is highest, includes marketing and educational efforts to enhance motorcyclist awareness, and uses a mix of communication

mechanisms to draw attention to the problem.

Basis for Proposal

As with the Motorcycle Rider Training Course criterion, in developing the proposed requirements for this Motorcyclists Awareness Program criterion, the agency was guided by the specific language of SAFETEA-LU as well as by the highway safety guideline on motorcycle safety.

First, the definition of “motorcyclist awareness program” in SAFETEA-LU specifies that a program under this criterion be developed by or in coordination with the designated State authority having jurisdiction over motorcyclist safety issues.

Before a problem can be effectively addressed, the agency believes that problem identification and prioritization must be performed. Therefore, NHTSA proposes to include as an element under this criterion problem identification and prioritization through the use of State data.

Next, in order to add to the effectiveness of a motorcyclist awareness program, NHTSA proposes that a State's motorcyclist awareness program encourage collaboration among agencies and organizations responsible for, or impacted by, motorcycle safety issues.

Additionally, NHTSA proposes that because this criterion contemplates an informational or public awareness program to enhance motorist awareness of the presence of motorcyclists and because awareness efforts rely heavily on communication strategies and implementation, a State's motorcyclist awareness program should incorporate a strategic communications plan to support the overall policy and program. To ensure that the program is conducted statewide, the agency proposes that the communications plan be designed to educate motorists in those jurisdictions where the incidence of motorcycle crashes is highest (*i.e.*, the majority of counties or political subdivisions in the State with the highest numbers of motorcycle crashes). For the purposes of this criterion, majority would mean greater than 50 percent. Finally, based on NHTSA's experience with dispersing traffic safety messages, the agency proposes that a communications plan should include marketing and educational efforts and should use a variety of communication mechanisms to increase awareness of a problem.

Demonstrating Compliance (23 CFR 1350.4(b)(2), (3))

To demonstrate compliance with this criterion for the first fiscal year it seeks to qualify, a State would submit: (1) A copy of the State document identifying the designated State authority having jurisdiction over motorcyclist safety issues; (2) A letter from the Governor's Highway Safety Representative stating that the State's motorcyclist awareness program was developed by or in coordination with the designated State authority having jurisdiction over motorcyclist safety issues; (3) Data used to identify and prioritize the State's motorcycle safety problem areas, including a list of counties or political subdivisions in the State ranked in order of the highest to lowest number of motorcycle crashes per county or political subdivision (such data would be from the calendar year occurring immediately before the fiscal year of the grant application (e.g., for fiscal year 2006, a State would provide data from calendar year 2005)); (4) A brief description of how the State has achieved collaboration among agencies and organizations responsible for, or impacted by, motorcycle safety issues; and (5) A copy of the strategic communications plan showing that it supports the overall policy and program, is designed to educate motorists in those jurisdictions where the incidence of motorcycle crashes is highest (i.e., the majority of counties or political subdivisions in the State with the highest numbers of motorcycle crashes), includes marketing and educational efforts to enhance motorcyclist awareness, and uses a mix of communication mechanisms to draw attention to the problem (e.g., newspapers, billboard advertisements, e-mail, posters, flyers, mini-planners, computer-led and instructor-led training sessions).

To demonstrate compliance with this criterion for the second and subsequent fiscal years it seeks to qualify, a State would submit only information documenting any changes to materials previously submitted to and approved by NHTSA under this criterion, or if there have been no changes to those materials, a statement certifying that there have been no changes and that the State continues to implement the motorcyclists awareness program in the same manner.

C. Reduction of Fatalities and Crashes Involving Motorcycles

To qualify for a grant based on this criterion, SAFETEA-LU requires a State to experience "a reduction for the

preceding calendar year in the number of motorcycle fatalities and the rate of motor vehicle crashes involving motorcycles in the State (expressed as a function of 10,000 motorcycle registrations)."

Agency's Proposal (23 CFR 1350.4(c))

The agency proposes that to satisfy this criterion in any fiscal year, a State must: (1) Based on *final* Fatality Analysis Reporting System (FARS) data, experience at least a reduction of one in the number of motorcycle fatalities for the preceding calendar year as compared to the calendar year immediately prior to the preceding calendar year; and (2) Based on State crash data expressed as a function of 10,000 motorcycle registrations (using FHWA motorcycle registration data), experience at least a whole number reduction (i.e., at least a 1.0 reduction) in the rate of motor vehicle crashes involving motorcycles for the preceding calendar year as compared to the calendar year immediately prior to the preceding calendar year.

Using the following data sources, NHTSA would perform the computations to determine a State's compliance with this criterion:

- The agency proposes that "preceding calendar year" would mean the calendar year that precedes the beginning of the fiscal year of the grant by one year. The term appears in the agency's proposal to identify the source year of data to be used for determining a State's compliance with this criterion. For example, for grant applications in fiscal year 2006, which began in October 2005, the preceding calendar year would be the 2004 calendar year and final FARS data, State crash data and FHWA motorcycle registration data from the "preceding calendar year" and the "calendar year immediately prior to the preceding calendar year" would, therefore, be such data from calendar years 2004 and 2003.

- NHTSA proposes to use Federal Highway Administration (FHWA) motorcycle registration data to determine motorcycle registrations under this criterion.

- The agency proposes to use State crash data provided by the State to determine the number of motor vehicle crashes involving motorcycles.

Basis for Proposal

NHTSA believes that using the *final* FARS data will ensure that the most accurate fatality numbers are used to determine each State's compliance with this criterion. The FARS contains data derived from a census of fatal traffic crashes within the 50 States, the District

of Columbia, and Puerto Rico. All FARS data on fatal motor vehicle crashes are gathered from the States' own documents and coded into FARS formats with common standards. Final FARS data provide the most comprehensive and quality-controlled fatality data.

The agency's proposed definition of "preceding calendar year" would ensure that the latest available *final* FARS data are used when a State applies for a grant under this criterion. For consistency in determining whether a State meets both statutory prongs of this criterion by experiencing both a reduction in the number of motorcycle fatalities and a reduction in the rate of motor vehicle crashes involving motorcycles, the proposed definition of "preceding calendar year" would apply to the rate calculation portion of this criterion as well. For fiscal year 2006 grants, NHTSA would compare 2003 final FARS data, State crash data and FHWA motorcycle registration data with 2004 data under the proposed rule.

NHTSA proposes to use FHWA motorcycle registration data because it contains reliable motorcycle registration data compiled in a single source for all 50 States, the District of Columbia, and Puerto Rico. The FHWA reports and releases motorcycle registration data annually.

Requiring a whole number reduction (i.e., at least a 1.0 reduction) is consistent with SAFETEA-LU's requirement that there be a reduction in the number of fatalities and the rate of motor vehicle crashes involving motorcycles in the State. The agency believes that such a reduction remains meaningful when viewed in light of the steady increase in motorcycle use and registrations in recent years.

Finally, NHTSA data systems for all 50 States, the District of Columbia and Puerto Rico cover only fatal crashes. No national data system currently exists for all crashes that covers both crashes resulting in injuries and crashes involving property damage. Accordingly, NHTSA proposes to rely on crash data provided by each State for the crash-related portion of this criterion.

Demonstrating Compliance (23 CFR 1350.4(c)(2))

To be considered for compliance under this criterion in any fiscal year it seeks to qualify, a State would submit: (1) State data showing the total number of motor vehicle crashes involving motorcycles in the State for the preceding calendar year and for the year immediately prior to the preceding calendar year; and (2) A description of

the State's methods for collecting and analyzing data showing the number of motor vehicle crashes involving motorcycles in the State for the preceding calendar year and for the calendar year immediately prior to the preceding calendar year, including a description of the State's efforts to make reporting of motor vehicle crashes involving motorcycles as complete as possible. The methods used by the State for collecting this data would be required to be the same in both years or improved in subsequent years. NHTSA would perform the necessary computations using the State-submitted data, final FARS data, and FHWA registration data to determine if the State meets the requirements of this criterion.

D. Impaired Driving Program

To qualify for a grant based on this criterion, SAFETEA-LU requires that a State must "implement a statewide program to reduce impaired driving, including specific measures to reduce impaired motorcycle operation."

Agency's Proposal (23 CFR 1350.4(d))

To satisfy this criterion, the agency proposes that a State must have an impaired driving program that, at a minimum: (1) Uses State data to identify and prioritize the State's impaired driving and impaired motorcycle operation problem areas; and (2) Includes specific countermeasures to reduce impaired motorcycle operation with strategies designed to reach motorists in those jurisdictions where the incidence of impaired motorcycle crashes is highest. NHTSA proposes that for the purposes of this criterion, "impaired" would refer to alcohol-or drug-impaired as defined by State law, provided that the State's legal impairment level does not exceed .08 BAC.

Basis for Proposal

NHTSA recognizes that definitions of impairment differ from State to State, but that all States' definitions of alcohol-impaired driving currently include at most a .08 BAC limit. The agency proposes that each State may use its definition of impairment for the purposes of this criterion, provided that the State maintains at most a .08 BAC limit. In order to implement a program to reduce impaired driving, a State would use its own data to perform problem identification and prioritization to reduce impaired driving and impaired motorcycle operation in problem areas in the State.

NHTSA proposes that if a State's program includes specific

countermeasures to reduce impaired motorcycle operation with strategies designed to reach motorists in those jurisdictions where the incidence of impaired motorcycle crashes is highest (*i.e.*, the majority of counties or political subdivisions in the State with the highest numbers of impaired motorcycle crashes), it will be consistent with the SAFETEA-LU requirement that the impaired driving program under this criterion be implemented statewide. For the purposes of this criterion, majority would mean greater than 50 percent. Finally, as identified in SAFETEA-LU, a State's impaired driving program should include specific countermeasure strategies to reduce impaired motorcycle operation.

Demonstrating Compliance (23 CFR 1350.4(d)(2), (3))

To demonstrate compliance with this criterion for the first fiscal year it seeks to qualify, a State would submit: (1) State data used to identify and prioritize the State's impaired driving and impaired motorcycle operation problem areas, including a list of counties or political subdivisions in the State ranked in order of the highest to lowest number of impaired motorcycle crashes per county or political subdivision (such data would be from the calendar year occurring immediately before the fiscal year of the grant application (*e.g.*, for fiscal year 2006, a State would provide data from calendar year 2005)); (2) A description of the State's impaired driving program as implemented, including a description of its specific countermeasures used to reduce impaired motorcycle operation with strategies designed to reach motorists in those jurisdictions where the incidence of impaired motorcycle crashes is highest (*i.e.*, the majority of counties or political subdivisions in the State with the highest numbers of impaired motorcycle crashes); and (3) A copy of the State's law or regulation defining impairment.

To demonstrate compliance with this criterion for the second and subsequent years it seeks to qualify, a State would submit information concerning any changes to materials previously submitted to and approved by NHTSA under this criterion, or if there have been no changes to those materials, a statement certifying that there have been no changes and that the State continues to implement the impaired driving program in the same manner.

E. Reduction of Fatalities and Accidents Involving Impaired Motorcyclists

To qualify for a grant based on this criterion, SAFETEA-LU requires that a

State must experience "a reduction for the preceding calendar year in the number of fatalities and the rate of reported crashes involving alcohol-or drug-impaired motorcycle operators (expressed as a function of 10,000 motorcycle registrations)."

Agency's Proposal (23 CFR 1350.4(e))

The agency proposes that to satisfy this criterion in any fiscal year, a State must: (1) Based on *final* FARS data, experience at least a reduction of one in the number of fatalities involving alcohol- and drug-impaired motorcycle operators for the preceding calendar year as compared to the calendar year immediately prior to the preceding calendar year; *and* (2) Based on State crash data expressed as a function of 10,000 motorcycle registrations (using FHWA motorcycle registration data), experience at least a whole number reduction (*i.e.*, at least a 1.0 reduction) in the rate of reported crashes involving alcohol- and drug-impaired motorcycle operators for the preceding calendar year as compared to the calendar year immediately prior to the preceding calendar year. Using the following data sources, NHTSA would perform the computations to determine a State's compliance with this criterion:

- As with criterion number 3 above, under this criterion, the agency proposes that "preceding calendar year" would mean the calendar year that precedes the beginning of the fiscal year of the grant by one year.
- The agency also proposes to use FHWA motorcycle registration data to determine motorcycle registrations under this criterion.
- The agency proposes to use State crash data provided by the State to determine the number of reported crashes involving alcohol- and drug-impaired motorcycle operators.

The agency proposes that for the purposes of this criterion, "impaired" would refer to alcohol-or drug-impaired as defined by State law, provided that the State's legal alcohol impairment level does not exceed .08 BAC.

Basis for Proposal

The proposed use of FARS data, FHWA motorcycle registration data, State crash data and the proposed definition of preceding calendar year under this criterion mirror the proposed use of these terms under criterion number 3, as described above, and the rationale is the same. Additionally, the use of FARS data for this criterion will be particularly helpful because one of the limitations of the State crash data files is unknown alcohol use. In order to calculate alcohol-related crash

involvement for a State, NHTSA uses a statistical model based on crash characteristics to impute alcohol involvement in fatal crashes where alcohol use was unknown or not reported.

Because NHTSA recognizes that definitions of impairment differ from State to State, but that all States' definitions of alcohol-impaired driving currently include at most a .08 BAC limit, the agency proposes that each State may use its definition of alcohol- and drug-impairment for the purposes of this criterion, provided that the State maintains at most a .08 BAC limit.

Demonstrating Compliance (23 CFR 1350.4(e)(2))

To be considered for compliance under this criterion in any fiscal year it seeks to qualify, a State would submit: (1) Data showing the total number of reported crashes involving alcohol- and drug-impaired motorcycle operators in the State for the preceding calendar year and for the year immediately prior to the preceding calendar year; (2) A description of the State's methods for collecting and analyzing data showing the number of reported crashes involving alcohol- and drug-impaired motorcycle operators in the State for the preceding calendar year and for the calendar year immediately prior to the preceding calendar year, including a description of the State's efforts to make reporting of crashes involving alcohol- and drug-impaired motorcycle operators as complete as possible (the methods used by the State for collecting this data would be the same in both years or improved in subsequent years); and (3) A copy of the State's law or regulation defining alcohol- and drug-impairment. NHTSA would perform the necessary computations using the State-submitted data, final FARS data, and FHWA registration data to determine if the State meets the requirements of this criterion.

F. Use of Fees Collected From Motorcyclists for Motorcycle Programs

To qualify for a grant based on this criterion, SAFETEA-LU requires that "all fees collected by the State from motorcyclists for the purposes of funding motorcycle training and safety programs will be used for motorcycle training and safety programs."

Agency's Proposal (23 CFR 1350.4(f))

The agency proposes that a State may qualify for a grant under this criterion as a "Law State" or a "Data State." For the purposes of this criterion, NHTSA proposes that a Law State would mean a State that has a law or regulation

requiring that all fees collected by the State from motorcyclists for the purposes of funding motorcycle training and safety programs are to be used for motorcycle training and safety programs. For the purposes of this criterion, NHTSA proposes that a Data State would mean a State that does not have such a law or regulation.

To qualify for a grant under this criterion as a Law State, NHTSA proposes that a State must have in place the law or regulation described above.

To qualify for a grant under this criterion as a Data State, NHTSA proposes that a State must demonstrate that revenues collected for the purposes of funding motorcycle training and safety programs are placed into a distinct account and expended only for motorcycle training and safety programs.

Basis for Proposal

NHTSA's proposal to permit a State to qualify under this criterion as either a Law State or a Data State provides flexibility to States and is consistent with the SAFETEA-LU language requiring that all fees collected by a State from motorcyclists for the purposes of funding motorcycle training and safety programs be used for motorcycle training and safety programs.

Demonstrating Compliance (23 CFR 1350.4(f)(2), (3))

To demonstrate compliance as a Law State under this criterion for the first fiscal year it seeks to qualify, a State would submit a copy of the law or regulation requiring that all fees collected by the State from motorcyclists for the purposes of funding motorcycle training and safety programs are to be used for motorcycle training and safety programs. To demonstrate compliance as a Law State in the second and subsequent years it seeks to qualify, a State would submit a copy of the law or regulation if it has changed since the State submitted its last grant application, or a certification that its law or regulation has not changed since the State submitted its last grant application and received approval.

To demonstrate compliance as a Data State under this criterion, for any fiscal year it seeks to qualify, a State would submit data and/or documentation from official records from the previous State fiscal year showing that all fees collected by the State from motorcyclists for the purposes of funding motorcycle training and safety programs were, in fact, used for motorcycle training and safety

programs. Such data and/or documentation would show that revenues collected for the purposes of funding motorcycle training and safety programs were placed into a distinct account and expended only for motorcycle training and safety programs.

IV. Administrative Issues

A. Application Requirements (23 CFR 1350.5)

The proposed rule outlines certain procedural steps to be followed when States wish to apply for a grant under this program. A State would submit, through its State Highway Safety Agency, an application to the appropriate NHTSA Regional Administrator satisfying the minimum qualification requirements under § 1350.4 and identifying the grant criteria under which it seeks to qualify. Application through a State Highway Safety Agency is consistent with other grant programs administered by NHTSA. To ensure that States have adequate notice and time to prepare and submit their applications for fiscal year 2006, applications for this grant program in fiscal year 2006 would be due no later than August 15. For the remaining fiscal years in which States apply for grant funds under this program, applications would be due no later than August 1.

The Application would include the applicable criteria-specific certifications specified in § 1350.4 and located in Appendix A. Additionally, the State would provide the following general certifications located in Appendix B: (1) It will use the motorcyclist safety grant funds awarded exclusively to implement programs in accordance with the requirements of section 2010(e) of SAFETEA-LU, Public Law 109-59; (2) It will administer the motorcyclist safety grant funds in accordance with 49 CFR part 18 and OMB Circular A-87; and (3) It will maintain its aggregate expenditures from all other sources for motorcyclist safety training programs and motorcyclist awareness programs at or above the average level of such expenditures in fiscal years 2003 and 2004 (a SAFETEA-LU requirement).

A State would submit an original and two copies of its application to the appropriate NHTSA Regional Administrator. To ensure a manageable volume of materials for the agency's review of applications, the proposal provides that States should not submit media samples unless specifically requested.

B. Awards (23 CFR 1350.6)

NHTSA will review each State's application for compliance with the requirements of the implementing regulations and will notify qualifying States in writing of grant awards. Upon initial review of the application, the proposed procedures would allow NHTSA to request additional information from the State prior to making a determination of award, in order to clarify compliance with the statutory criteria and grant application procedures.

SAFETEA-LU specifies that the amount of a grant made to a State for a fiscal year under this grant program may not be less than \$100,000 and may not exceed 25 percent of the amount apportioned to the State for fiscal year 2003 under section 402 of title 23, United States Code. However, the release of the full grant amounts under section 2010 is subject to the availability of funding for each fiscal year. If there are expected to be insufficient funds to award full grant amount to all eligible States in any fiscal year, NHTSA may release less than the full grant amounts upon initial approval of a State's application, and release the remainder, up to the State's proportionate share of available funds, before the end of that fiscal year. If insufficient funds are appropriated to distribute the minimum amount (\$100,000) to all qualifying States, all States would receive the same reduced amount. Project approval, and the contractual obligation of the Federal Government to provide grant funds, would be limited to the amount of funds released.

C. Post-Award Requirements (23 CFR 1350.7)

Consistent with current procedures in other highway safety grant programs administered by NHTSA, the agency's proposal provides that within 30 days after notification of award but in no event later than September 12, a State would be required to submit electronically to the agency a Program Cost Summary (HS Form 217) obligating funds to the Motorcyclist Safety Grant Program. In addition, a State would be required to include documentation in the Highway Safety Plan (or in an amendment to that plan) prepared under 23 U.S.C. 402 indicating how it intends to use the motorcyclist safety grant funds. The State would also be required to detail program accomplishments in the Annual Performance Report required to be submitted under the regulation implementing the section 402 program. These documenting requirements would

continue each fiscal year until all section 2010 grant funds have been expended.

D. Uses of Grant Funds (23 CFR 1350.8)

As specified in SAFETEA-LU, a State may use section 2010 grant funds only for motorcyclist safety training and motorcyclist awareness programs, including: (1) Improvements to motorcyclist safety training curricula; (2) Improvements in program delivery of motorcycle training to both urban and rural areas (including procurement or repair of practice motorcycles; instructional materials; mobile training units; and leasing or purchasing facilities for closed-course motorcycle skill training);² (3) Measures designed to increase the recruitment or retention of motorcyclist safety training instructors; and (4) Public awareness, public service announcements, and other outreach programs to enhance driver awareness of motorcyclists, such as the "share-the-road" safety messages developed using Share-the-Road model language required under section 2010(g) of SAFETEA-LU. As specified in SAFETEA-LU, a State that receives a section 2010 grant may suballocate funds from the grant to a nonprofit organization incorporated in that State to carry out grant activities under section 2010.

SAFETEA-LU places an additional limitation on the use of grant funds. Specifically, a State that receives a section 2010 grant must maintain its aggregate expenditures from all other sources for motorcyclist safety training programs and motorcyclist awareness programs at or above the average level of such expenditures in fiscal years 2003 and 2004. (A State may use either Federal or State fiscal years.) However, because section 2010 of SAFETEA-LU does not include a matching requirement, the Federal share of programs funded under section 2010 will be 100 percent.

V. Comments

The agency finds good cause to limit the period for comment on this notice to 30 days. In order to publish a final rule in time to accommodate the application period for States and a

² In connection with the leasing or purchasing of facilities, grantees should note that the Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act, 2006 (Pub. L. 109-115) places limits on the use of section 2010 funds. Specifically, the Act provides that none of the section 2010 funds "shall be used for construction, rehabilitation, or remodeling costs, or for office furnishings and fixtures for State, local or private buildings or structures."

subsequent review period for the agency, this comment period is deemed necessary. The shortened comment period will assist the agency in ensuring that grant funds under section 2010 are made available to States during the fiscal year.

Interested persons are invited to comment on this notice of proposed rulemaking. It is requested, but not required, that two copies be submitted. All comments must be limited to 15 pages in length. Necessary attachments may be appended to those submissions without regard to the 15-page limit. (See 49 CFR 553.21.) This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

You may submit your comments by one of the following methods:

(1) By mail to: Docket Management Facility, Docket No. NHTSA-2006-23700, DOT, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590;

(2) By hand delivery to: Room PL-401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday;

(3) By fax to the Docket Management Facility at (202) 493-2251; or

(4) By electronic submission: log onto the DMS Web site at <http://dms.dot.gov> and click on "Help" to obtain instructions.

All comments received before the close of business on the comment closing date will be considered and will be available for examination in the docket at the above address before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date. The agency will continue to file relevant material in the docket as it becomes available after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

You may review submitted comments in person at the Docket Management Facility located at Room PL-401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday. You may also review submitted comments on the Internet by taking the following steps:

(1) Go to the DMS Web page at <http://dms.dot.gov>.

(2) On that page, click on "Simple Search".

(3) On the next page (<http://dms.dot.gov/search/searchFormSimple.cfm>) type in the five-digit docket number shown at the

beginning of this document. Example: If the docket number were "NHTSA-2001-12345," you would type "12345." After typing the docket number, click on "search."

(4) On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may also download the comments. Although the comments are imaged documents, instead of word processing documents, the "pdf" versions of the documents are word searchable.

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

VI. Statutory Basis for This Action

The agency's proposal would implement the grant program created by section 2010 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) (Pub. L. 109-59).

VII. 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 (February 26, 1979)).

The agency's proposal does not affect amounts over the significance threshold of \$100 million each year. The proposal sets forth application procedures and showings to be made to be eligible for a grant. The funds to be distributed under the application procedures developed in the proposal would be well below the annual threshold of \$100 million, with authorized amounts of \$6 million in each of FYs 2006-2008 and \$7 million in FY 2009.

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.

In consideration of the foregoing, the agency has determined that if it is made final, this rulemaking action would not be economically significant. The impacts of the rule would be so minimal that a full regulatory evaluation is not required.

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. States are the recipients of funds awarded under the section 2010 program and they are not considered to be small entities under the Regulatory Flexibility Act. 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. In a **Federal Register** document of March 2, 2006 (71 FR 10753), NHTSA sought public comment on the proposed collection of information for the motorcyclist safety grant program. The proposed collection would affect the fifty states, the District of Columbia and Puerto Rico. NHTSA estimates the total annual collection of information burden to be 1560 hours. NHTSA accepted public comment on this proposed collection until May 1, 2006.

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. The program is voluntary and States that choose to apply and qualify would receive grant funds.

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

Please note that 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://dms.dot.gov>.

List of Subjects in 23 CFR Part 1350

Grant programs-transportation, Highway safety, Motor vehicles-motorcycles.

In consideration of the foregoing, the agency proposes to amend chapter III of title 23 of the Code of Federal Regulations by adding part 1350 to read as follows:

PART 1350—INCENTIVE GRANT CRITERIA FOR MOTORCYCLIST SAFETY PROGRAM

Sec.

1350.1 Scope.

1350.2 Purpose.

1350.3 Definitions.

1350.4 Qualification requirements.

1350.5 Application requirements.

1350.6 Awards.

1350.7 Post-award requirements.

1350.8 Use of grant funds.

Appendix A to Part 1350—Certifications

Specific to Grant Criteria for Second and Subsequent Fiscal Years

Appendix B to Part 1350—General Certifications

Authority: Sec. 2010, Public Law 109–59, 119 Stat. 1535; delegation of authority at 49 CFR 1.50.

§ 1350.1 Scope.

This part establishes criteria, in accordance with section 2010 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), for awarding incentive grants to States that adopt and implement effective programs to reduce the number of single- and multi-vehicle crashes involving motorcyclists.

§ 1350.2 Purpose.

The purpose of this part is to implement the provisions of section 2010 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), and to encourage States to adopt effective motorcyclist safety programs.

§ 1350.3 Definitions.

As used in this part—

FARS means NHTSA's Fatality Analysis Reporting System.

Impaired means alcohol- or drug-impaired as defined by State law, provided that the State's legal alcohol-impairment level does not exceed .08 BAC.

Majority means greater than 50 percent.

Motorcycle means a motor vehicle with motive power having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground.

Motorcyclist awareness means an individual or collective awareness of—

(1) The presence of motorcycles on or near roadways; and

(2) Safe driving practices that avoid injury to motorcyclists.

Motorcyclist awareness program means an informational or public awareness program designed to enhance motorcyclist awareness that is developed by or in coordination with the designated State authority having jurisdiction over motorcyclist safety issues, which may include the State motorcycle safety administrator or a motorcycle advisory council appointed by the Governor of the State.

Motorcyclist safety training or *Motorcycle rider training* means a formal program of instruction that is approved for use in a State by the designated State authority having jurisdiction over motorcyclist safety issues, which may include the State motorcycle safety administrator or a motorcycle advisory council appointed by the Governor of the State.

Preceding calendar year means the calendar year that precedes the beginning of the fiscal year of the grant by one year. (For example, for grant applications in fiscal year 2006, which began in October 2005, the preceding

calendar year is the 2004 calendar year and final FARS data, State crash data and FHWA motorcycle registration data from the "preceding calendar year" would, therefore, be such data from calendar year 2004.)

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

§ 1350.4 Qualification requirements.

To qualify for a grant under this part, a State must meet, in the first fiscal year it receives a grant, at least one, and in the second and subsequent fiscal years it receives a grant, at least two, of the following grant criteria:

(a) *Motorcycle rider training course.*

To satisfy this criterion, a State must have an effective motorcycle rider training course that is offered throughout the State, provides a formal program of instruction in accident avoidance and other safety-oriented operational skills to motorcyclists and that may include innovative training opportunities to meet unique regional needs, subject to the following requirements:

(1) The State must, at a minimum:

(i) Use a training curriculum that:

(A) Is approved by the designated State authority having jurisdiction over motorcyclist safety issues;

(B) Includes a formal program of instruction in crash avoidance and other safety-oriented operational skills for both in-class and on-the-motorcycle training to motorcyclists; and

(C) May include innovative training opportunities to meet unique regional needs;

(ii) Offer at least one motorcycle rider training course either—

(A) In a majority of the State's counties or political subdivisions; or

(B) In counties or political subdivisions that account for a majority of the State's registered motorcycles;

(iii) Use motorcycle rider training instructors to teach the curriculum who are certified by the designated State authority having jurisdiction over motorcyclist safety issues or by a nationally recognized motorcycle safety organization with certification capability; and

(iv) Use quality control procedures to assess motorcycle rider training courses and instructor training courses conducted in the State.

(2) To demonstrate compliance with this criterion in the first fiscal year it seeks to qualify, a State must submit:

(i) A copy of the official State document (e.g., law, regulation, binding policy directive, letter from the Governor) identifying the designated State authority over motorcyclist safety issues;

(ii) Document(s) demonstrating that the training curriculum is approved by the designated State authority having jurisdiction over motorcyclist safety issues and includes a formal program of instruction in crash avoidance and other safety-oriented operational skills for both in-class and on-the-motorcycle training to motorcyclists;

(iii)(A) If the State seeks to qualify under this criterion by showing that it offers at least one motorcycle rider training course in a majority of counties or political subdivisions in the State—A list of the counties or political subdivisions in the State, noting in which counties or political subdivisions and when motorcycle rider training courses were offered in the 12 months preceding the due date of the grant application; or

(B) If the State seeks to qualify under this criterion by showing that it offers at least one motorcycle rider training course in counties or political subdivisions that account for a majority of the State's registered motorcycles—A list of the counties or political subdivisions in the State, noting in which counties or political subdivisions and when motorcycle rider training courses were offered in the 12 months preceding the due date of the grant application and the corresponding number of registered motorcycles in each county or political subdivision according to official State motor vehicle records;

(iv) Document(s) demonstrating that the State uses motorcycle rider training instructors to teach the curriculum who are certified by the designated State authority having jurisdiction over motorcyclist safety issues or by a nationally recognized motorcycle safety organization with certification capability; and

(v) A brief description of the quality control procedures to assess motorcycle rider training courses and instructor training courses used in the State (e.g., conducting site visits, gathering student feedback) and the actions taken to improve the courses based on the information collected.

(3) To demonstrate compliance with this criterion in the second and subsequent fiscal years it seeks to qualify, a State must submit:

(i) If there have been changes to materials previously submitted to and approved by NHTSA under this criterion, information documenting any changes; or

(ii) If there have been no changes to materials previously submitted to and approved by NHTSA under this criterion, a statement certifying that there have been no changes and that the

State continues to offer the motorcycle rider training course in the same manner.

(b) *Motorcyclists awareness program.* To satisfy this criterion, a State must have an effective statewide program to enhance motorist awareness of the presence of motorcyclists on or near roadways and safe driving practices that avoid injuries to motorcyclists, subject to the following requirements:

(1) The motorcyclists awareness program must, at a minimum:

(i) Be developed by, or in coordination with, the designated State authority having jurisdiction over motorcyclist safety issues;

(ii) Use State data to identify and to prioritize the State's motorcyclist awareness problem areas;

(iii) Encourage collaboration among agencies and organizations responsible for, or impacted by, motorcycle safety issues; and

(iv) Incorporate a strategic communications plan that—

(A) Supports the overall policy and program;

(B) Is designed to educate motorists in those jurisdictions where the incidence of motorcycle crashes is highest;

(C) Includes marketing and educational efforts to enhance motorcyclist awareness; and

(D) Uses a mix of communication mechanisms to draw attention to the problem.

(2) To demonstrate compliance with this criterion in the first fiscal year it seeks to qualify, a State must submit:

(i) A copy of the State document identifying the designated State authority having jurisdiction over motorcyclist safety issues;

(ii) A letter from the Governor's Highway Safety Representative stating that the State's motorcyclist awareness program was developed by or in coordination with the designated State authority having jurisdiction over motorcyclist safety issues;

(iii) Data used to identify and prioritize the State's motorcycle safety problem areas, including a list of counties or political subdivisions in the State ranked in order of the highest to lowest number of motorcycle crashes per county or political subdivision (such data must be from the calendar year occurring immediately before the fiscal year of the grant application (e.g., for fiscal year 2006, a State must provide data from calendar year 2005));

(iv) A brief description of how the State has achieved collaboration among agencies and organizations responsible for, or impacted by, motorcycle safety issues; and

(v) A copy of the strategic communications plan showing that it:

(A) Supports the overall policy and program;

(B) Is designed to educate motorists in those jurisdictions where the incidence of motorcycle crashes is highest (*i.e.*, the majority of counties or political subdivisions in the State with the highest numbers of motorcycle crashes);

(C) Includes marketing and educational efforts to enhance motorcyclist awareness; and

(D) Uses a mix of communication mechanisms to draw attention to the problem (*e.g.*, newspapers, billboard advertisements, e-mail, posters, flyers, mini-planners, promotional items, or computer-led and instructor-led training sessions).

(3) To demonstrate compliance with this criterion in the second and subsequent fiscal years it seeks to qualify, a State must submit:

(i) If there have been changes to materials previously submitted to and approved by NHTSA under this criterion, information documenting any changes; or

(ii) If there have been no changes to materials previously submitted to and approved by NHTSA under this criterion, a statement certifying that there have been no changes and that the State continues to implement its motorcyclists awareness program in the same manner.

(c) *Reduction of fatalities and crashes involving motorcycles.* To satisfy this criterion, a State must experience a reduction for the preceding calendar year in the number of motorcycle fatalities and the rate of motor vehicle crashes involving motorcycles in the State (expressed as a function of 10,000 registered motorcycle registrations), subject to the following requirements:

(1) As computed by NHTSA, a State must:

(i) Based on *final* FARS data, experience at least a reduction of one in the number of motorcycle fatalities for the preceding calendar year as compared to the calendar year immediately prior to the preceding calendar year; *and*

(ii) Based on State crash data expressed as a function of 10,000 motorcycle registrations (using FHWA motorcycle registration data), experience at least a whole number reduction (*i.e.*, at least a 1.0 reduction) in the rate of motor vehicle crashes involving motorcycles for the preceding calendar year as compared to the calendar year immediately prior to the preceding calendar year.

(2) To be considered for compliance under this criterion in any fiscal year it seeks to qualify, a State must submit:

(i) State data showing the total number of motor vehicle crashes involving motorcycles in the State for the preceding calendar year and for the year immediately prior to the preceding calendar year; and

(ii) A description of the State's methods for collecting and analyzing data showing the number of motor vehicle crashes involving motorcycles in the State for the preceding calendar year and for the calendar year immediately prior to the preceding calendar year, including a description of the State's efforts to make reporting of motor vehicle crashes involving motorcycles as complete as possible (the methods used by the State for collecting this data must be the same in both years or improved in subsequent years);

(d) *Impaired driving program.* To satisfy this criterion, a State must implement a statewide program to reduce impaired driving, including specific measures to reduce impaired motorcycle operation, subject to the following requirements:

(1) The impaired driving program must, at a minimum:

(i) Use State data to identify and prioritize the State's impaired driving and impaired motorcycle operation problem areas; and

(ii) Include specific countermeasures to reduce impaired motorcycle operation with strategies designed to reach motorists in those jurisdictions where the incidence of impaired motorcycle crashes is highest.

(2) To demonstrate compliance with this criterion in the first fiscal year it seeks to qualify, a State must submit:

(i) State data used to identify and prioritize the State's impaired driving and impaired motorcycle operation problem areas, including a list of counties or political subdivisions in the State ranked in order of the highest to lowest number of impaired motorcycle crashes per county or political subdivision (such data must be from the calendar year occurring immediately before the fiscal year of the grant application (*e.g.*, for fiscal year 2006, a State must provide data from calendar year 2005));

(ii) A description of the State's impaired driving program as implemented, including a description of its specific countermeasures used to reduce impaired motorcycle operation with strategies designed to reach motorists in those jurisdictions where the incidence of impaired motorcycle crashes is highest (*i.e.*, the majority of counties or political subdivisions in the State with the highest numbers of impaired motorcycle crashes); and

(iii) A copy of the State's law or regulation defining impairment.

(3) To demonstrate compliance with this criterion in the second and subsequent years it seeks to qualify, a State must submit:

(i) If there have been changes to materials previously submitted to and approved by NHTSA under this criterion, information documenting any changes; or

(ii) If there have been no changes to materials previously submitted to and approved by NHTSA under this criterion, a statement certifying that there have been no changes and that the State continues to implement its impaired driving program in the same manner.

(e) *Reduction of fatalities and accidents involving impaired motorcyclists.* To satisfy this criterion, a State must experience a reduction for the preceding calendar year in the number of fatalities and the rate of reported crashes involving alcohol- or drug-impaired motorcycle operators (expressed as a function of 10,000 motorcycle registrations), subject to the following requirements:

(1) As computed by NHTSA, a State must:

(i) Based on *final* FARS data, experience at least a reduction of one in the number of fatalities involving alcohol- and drug-impaired motorcycle operators for the preceding calendar year as compared to the calendar year immediately prior to the preceding calendar year; *and*

(ii) Based on State crash data expressed as a function of 10,000 motorcycle registrations (using FHWA motorcycle registration data), experience at least a whole number reduction (*i.e.*, at least a 1.0 reduction) in the rate of reported crashes involving alcohol- and drug-impaired motorcycle operators for the preceding calendar year as compared to the calendar year immediately prior to the preceding calendar year.

(2) To be considered for compliance under this criterion in any fiscal year it seeks to qualify, a State must submit:

(i) Data showing the total number of reported crashes involving alcohol- and drug-impaired motorcycle operators in the State for the preceding calendar year and for the year immediately prior to the preceding calendar year;

(ii) A description of the State's methods for collecting and analyzing data showing the number of reported crashes involving alcohol- and drug-impaired motorcycle operators in the State for the preceding calendar year and for the calendar year immediately prior to the preceding calendar year,

including a description of the State's efforts to make reporting of crashes involving alcohol- and drug-impaired motorcycle operators as complete as possible (the methods used by the State for collecting this data must be the same in both years or improved in subsequent years); and

(iii) A copy of the State's law or regulation defining alcohol- and drug-impairment

(f) *Use of fees collected from motorcyclists for motorcycle programs.*

To satisfy this criterion, a State must have a process under which all fees collected by the State from motorcyclists for the purposes of funding motorcycle training and safety programs are to be used for motorcycle training and safety programs, subject to the following requirements:

(1) A State may qualify under this criterion as either a Law State or a Data State.

(2) To demonstrate compliance as a Law State, the State must submit:

(i) In the first fiscal year it seeks to qualify, a copy of the law or regulation requiring that all fees collected by the State from motorcyclists for the purposes of funding motorcycle training and safety programs are to be used for motorcycle training and safety programs.

(ii) In the second and subsequent years it seeks to qualify:

(A) If there have been changes to materials previously submitted to and approved by NHTSA under this criterion, a copy of the law or regulation requiring that all fees collected by the State from motorcyclists for the purposes of funding motorcycle training and safety programs are to be used for motorcycle training and safety programs; or

(B) If there have been no changes to materials previously submitted to and approved by NHTSA under this criterion, a certification by the State that its law or regulation has not changed since the State submitted its last grant application and received approval.

(3) To demonstrate compliance as a Data State, in any fiscal year it seeks to qualify, a State must submit data and/or documentation from official records from the previous State fiscal year showing that all fees collected by the State from motorcyclists for the purposes of funding motorcycle training and safety programs were, in fact, used for motorcycle training and safety programs. Such data and/or documentation must show that revenues collected for the purposes of funding motorcycle training and safety programs were placed into a distinct account and

expended only for motorcycle training and safety programs.

(4) *Definitions.* As used in this section—

(i) A *Law State* is a State that has a law or regulation requiring that all fees collected by the State from motorcyclists for the purposes of funding motorcycle training and safety programs are to be used for motorcycle training and safety programs.

(ii) A *Data State* is a State that does not have a law or regulation requiring that all fees collected by the State from motorcyclists for the purposes of funding motorcycle training and safety programs are to be used for motorcycle training and safety programs.

§ 1350.5 Application requirements.

(a) No later than August 15 in fiscal year 2006 and no later than August 1 of the remaining fiscal years for which the State is seeking a grant under this part, the State must submit, through its State Highway Safety Agency, an application to the appropriate NHTSA Regional Administrator. The State's application must:

(1) Identify the criteria that it meets and satisfy the minimum requirements for those criteria under § 1350.4;

(2) Include the applicable criteria-specific certifications in Appendix A to this part, as specified in § 1350.4; and

(3) Include the general certifications in Appendix B to this part.

(b) A State must submit an original and two copies of its application to the appropriate NHTSA Regional Administrator.

(c) To ensure a manageable volume of materials for the agency's review of applications, a State should not submit media samples unless specifically requested by the agency.

§ 1350.6 Awards.

(a) NHTSA will review each State's application for compliance with the requirements of this part and will notify qualifying States in writing of grant awards. In each Federal fiscal year, grants will be made to eligible States upon submission and approval of the information required by this part.

(b) NHTSA may request additional information from a State prior to making a determination of award.

(c) Except as provided in paragraph (d) of this section, the amount of a grant made to a State for a fiscal year under this program may not be less than \$100,000 and may not exceed 25 percent of the amount apportioned to the State for fiscal year 2003 under section 402 of title 23, United States Code.

(d) The release of grant funds under this part is subject to the availability of

funds for each fiscal year. If there are expected to be insufficient funds to award full grant amounts to all eligible States in any fiscal year, NHTSA may release less than the full grant amount upon initial approval of a State's application and release the remainder, up to the State's proportionate share of available funds, before the end of that fiscal year. If insufficient funds are available to distribute the minimum amount (\$100,000) to all qualifying States, all States would receive the same reduced amount. Project approval and the contractual obligation of the Federal Government to provide grant funds, is limited to the amount of funds released.

§ 1350.7 Post-award requirements.

(a) Within 30 days after notification of award but in no event later than September 12 of each year, a State must submit electronically to the agency a Program Cost Summary (HS Form 217) obligating funds to the Motorcyclist Safety Grant Program.

(b) Each fiscal year until all grant funds have been expended, a State must:

(1) Document how it intends to use the motorcyclist safety grant funds in the Highway Safety Plan (or in an amendment to that plan), required to be submitted by September 1 each year under 23 U.S.C. 402; and

(2) Detail program accomplishments in the Annual Performance Report required to be submitted under the regulation implementing 23 U.S.C. 402.

§ 1350.8 Use of grant funds.

(a) *Eligible uses of grant funds.* A State may use grant funds only for motorcyclist safety training and motorcyclist awareness programs, including—

(1) Improvements to motorcyclist safety training curricula;

(2) Improvements in program delivery of motorcycle training to both urban and rural areas, including—

(i) Procurement or repair of practice motorcycles;

(ii) Instructional materials;

(iii) Mobile training units; and

(iv) Leasing or purchasing facilities for closed-course motorcycle skill training;

(3) Measures designed to increase the recruitment or retention of motorcyclist safety training instructors; and

(4) Public awareness, public service announcements, and other outreach programs to enhance driver awareness of motorcyclists, such as the "share-the-road" safety messages developed using Share-the-Road model language required under section 2010(g) of SAFETEA-LU, Public Law 109-59.

(b) *Suballocation of funds.* A State that receives a grant may suballocate funds from the grant to a nonprofit organization incorporated in that State to carry out grant activities under this part.

(c) *Matching requirement.* The Federal share of programs funded under this part shall be 100 percent.

Appendix A to Part 1350— Certifications Specific to Grant Criteria for Second and Subsequent Fiscal Years

State: _____
Fiscal Year: _____

(CHECK ALL THAT APPLY)

I hereby certify that the State (or Commonwealth) of _____:

- Motorcycle Rider Training Courses criterion—second and subsequent Fiscal Years
 - has made no changes to the materials previously submitted to and approved by NHTSA under this criterion and the State or Commonwealth continues to offer its motorcycle rider training courses in the same manner.
- Motorcyclists Awareness Program criterion—second and subsequent Fiscal Years
 - has made no changes to the materials previously submitted to and approved by NHTSA under this criterion and the State or Commonwealth continues to implement its motorcyclists awareness program in the same manner.
- Impaired Driving Program criterion—second and subsequent Fiscal Years
 - has made no changes to the materials previously submitted to and approved by NHTSA under this criterion and the State or Commonwealth continues to implement its impaired driving program in the same manner.
- Use of Fees Collected from Motorcyclists for Motorcycle Programs criterion (Law State)—second and subsequent Fiscal Years
 - has made no changes to the law or regulation previously submitted to and approved by NHTSA under this criterion requiring that all fees collected by the State from motorcyclists for the purposes of funding motorcycle training and safety programs are to be used for motorcycle training and safety programs.

Governor's Highway Safety Representative
Date: _____

Appendix B to Part 1350—General Certifications

State: _____
Fiscal Year: _____

(APPLIES TO ALL GRANT CRITERIA)

I hereby certify that the State (or Commonwealth) of _____:

- Will use the motorcyclist safety grant funds only for motorcyclist safety training and motorcyclist awareness programs, in accordance with the requirements of section 2010(e) of SAFETEA-LU, Public Law 109-59;

- Will administer the motorcyclist safety grant funds in accordance with 49 CFR part 18 and OMB Circular A-87; and
- Will maintain its aggregate expenditures from all other sources for motorcyclist safety training programs and motorcyclist awareness programs at or above the average level of such expenditures in fiscal years (FY) 2003 and 2004. (A State may use either Federal or State fiscal years).

Governor's Highway Safety Representative
Date: _____

Issued on: May 18, 2006.

Jacqueline Glassman,
Deputy Administrator.

[FR Doc. 06-4792 Filed 5-23-06; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 924

[Docket No. MS-018-FOR]

Mississippi Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing receipt of a proposed amendment to the Mississippi regulatory program (Mississippi program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Mississippi proposes a revision to its statutes regarding valid existing rights as it pertains to designation of lands as unsuitable for surface coal mining operations. Mississippi intends to revise its program to be consistent with SMCRA.

This document gives the times and locations that the Mississippi program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4 p.m., c.t., June 23, 2006. If requested, we will hold a public hearing on the amendment on June 19, 2006. We will accept requests to speak at a hearing until 4 p.m., c.t. on June 8, 2006.

ADDRESSES: You may submit comments, identified by Docket No. MS-018-FOR, by any of the following methods:

- E-mail: aabbs@osmre.gov. Include Docket No. MS-018-FOR in the subject line of the message.
- Mail/Hand Delivery: Arthur W. Abbs, Director, Birmingham Field Office, Office of Surface Mining Reclamation and Enforcement, 135 Gemini Circle, Suite 215, Homewood, Alabama 35209

- Fax: (205) 290-7280
- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Comment Procedures" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to review copies of the Mississippi program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document, you must go to the address listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Birmingham Field Office.

Arthur W. Abbs, Director,
Birmingham Field Office, Office of
Surface Mining Reclamation and
Enforcement, 135 Gemini Circle, Suite
215, Homewood, Alabama 35209.
Telephone: (205) 290-7282. E-mail:
aabbs@osmre.gov.

In addition, you may review a copy of the amendment during regular business hours at the following location:

Department of Environmental Quality,
Office of Geology, 2380 Highway 80
West, Jackson, Mississippi 39289-1307.
Telephone: (601) 961-5500.

FOR FURTHER INFORMATION CONTACT:

Arthur W. Abbs, Director, Birmingham
Field Office. Telephone: (205) 290-
7282. E-mail: aabbs@osmre.gov.

SUPPLEMENTARY INFORMATION:

- I. Background on the Mississippi Program
- II. Description of the Proposed Amendment
- III. Public Comment Procedures
- IV. Procedural Determinations

I. Background on the Mississippi Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program