

Rule 33.4 Part 70—Permits—Operational Flexibility (Adopted 4/10/01)

Rule 33.5 Part 70—Permits—Time frames for Applications, Review and Issuance (Adopted 10/12/93)

Rule 33.6 Part 70—Permits—Permit Term and Permit Reissuance (Adopted 10/12/93)

Rule 33.7 Part 70—Permits—Notification (Adopted 4/10/01)

Rule 33.8 Part 70—Permits—Reopening of Permits (Adopted 10/12/93)

Rule 33.9 Part 70—Permits—Compliance Provisions (Adopted 4/10/01)

Rule 33.10 Part 70—Permits—General Part 70—Permits (Adopted 10/12/93)

Rule 34 Acid Deposition Control (Adopted 3/14/95)

Rule 35 Elective Emission Limits (Adopted 11/12/96)

Rule 36 New Source Review—Hazardous Air Pollutants (Adopted 10/6/98)

Rule 42 Permit Fees (Adopted 4/11/06)

Rule 44 Exemption Evaluation Fee (Adopted 9/10/96)

Rule 45 Plan Fees (Adopted 6/19/90)

Rule 45.2 Asbestos Removal Fees (Adopted 8/4/92)

Rule 47 Source Test, Emission Monitor, and Call-Back Fees (Adopted 6/22/99)

Rule 50 Opacity (Adopted 4/13/04)

Rule 52 Particulate Matter-Concentration (Adopted 4/13/04)

Rule 53 Particulate Matter-Process Weight (Adopted 4/13/04)

Rule 54 Sulfur Compounds (Adopted 6/14/94)

Rule 56 Open Burning (Revised 11/11/03)

Rule 57 Incinerators (Adopted 1/11/05)

Rule 57.1 Particulate Matter Emissions From Fuel Burning Equipment (Adopted 1/11/05)

Rule 62.7 Asbestos—Demolition and Renovation (Adopted 6/16/92)

Rule 63 Separation and Combination of Emissions (Adopted 11/21/78)

Rule 64 Sulfur Content of Fuels (Adopted 4/13/99)

Rule 67 Vacuum Producing Devices (Adopted 7/5/83)

Rule 68 Carbon Monoxide (Adopted 4/13/04)

Rule 71 Crude Oil and Reactive Organic Compound Liquids (Adopted 12/13/94)

Rule 71.1 Crude Oil Production and Separation (Adopted 6/16/92)

Rule 71.2 Storage of Reactive Organic Compound Liquids (Adopted 9/26/89)

Rule 71.3 Transfer of Reactive Organic Compound Liquids (Adopted 6/16/92)

Rule 71.4 Petroleum Sumps, Pits, Ponds, and Well Cellars (Adopted 6/8/93)

Rule 71.5 Glycol Dehydrators (Adopted 12/13/94)

Rule 72 New Source Performance Standards (NSPS) (Adopted 9/13/05)

Rule 73 National Emission Standards for Hazardous Air Pollutants (NESHAPS) (Adopted 9/13/05)

Rule 74 Specific Source Standards (Adopted 7/6/76)

Rule 74.1 Abrasive Blasting (Adopted 11/12/91)

Rule 74.2 Architectural Coatings (Adopted 11/13/01)

Rule 74.6 Surface Cleaning and Degreasing (Revised 11/11/03—effective 7/1/04)

Rule 74.6.1 Batch Loaded Vapor Degreasers (Adopted 11/11/03—effective 7/1/04)

Rule 74.7 Fugitive Emissions of Reactive Organic Compounds at Petroleum Refineries and Chemical Plants (Adopted 10/10/95)

Rule 74.8 Refinery Vacuum Producing Systems, Waste-water Separators and Process Turnarounds (Adopted 7/5/83)

Rule 74.9 Stationary Internal Combustion Engines (Adopted 11/8/05)

Rule 74.10 Components at Crude Oil Production Facilities and Natural Gas Production and Processing Facilities (Adopted 3/10/98)

Rule 74.11 Natural Gas-Fired Residential Water Heaters—Control of NO_x (Adopted 4/9/85)

Rule 74.11.1 Large Water Heaters and Small Boilers (Adopted 9/14/99)

Rule 74.12 Surface Coating of Metal Parts and Products (Adopted 11/11/03)

Rule 74.15 Boilers, Steam Generators and Process Heaters (Adopted 11/8/94)

Rule 74.15.1 Boilers, Steam Generators and Process Heaters (Adopted 6/13/00)

Rule 74.16 Oil Field Drilling Operations (Adopted 1/8/91)

Rule 74.20 Adhesives and Sealants (Adopted 1/11/05)

Rule 74.23 Stationary Gas Turbines (Adopted 1/08/02)

Rule 74.24 Marine Coating Operations (Revised 11/11/03)

Rule 74.24.1 Pleasure Craft Coating and Commercial Boatyard Operations (Adopted 1/08/02)

Rule 74.26 Crude Oil Storage Tank Degassing Operations (Adopted 11/8/94)

Rule 74.27 Gasoline and ROC Liquid Storage Tank Degassing Operations (Adopted 11/8/94)

Rule 74.28 Asphalt Roofing Operations (Adopted 5/10/94)

Rule 74.30 Wood Products Coatings (Revised 6/27/06)

Rule 75 Circumvention (Adopted 11/27/78)

Rule 101 Sampling and Testing Facilities (Adopted 5/23/72)

Rule 102 Source Tests (Adopted 4/13/04)

Rule 103 Continuous Monitoring Systems (Adopted 2/9/99)

Rule 154 Stage 1 Episode Actions (Adopted 9/17/91)

Rule 155 Stage 2 Episode Actions (Adopted 9/17/91)

Rule 156 Stage 3 Episode Actions (Adopted 9/17/91)

Rule 158 Source Abatement Plans (Adopted 9/17/91)

Rule 159 Traffic Abatement Procedures (Adopted 9/17/91)

Rule 220 General Conformity (Adopted 5/9/95)

Rule 230 Notice to Comply (Adopted 11/9/99)

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standards; Denial of Petition for Rulemaking

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

ACTION: Denial of petition for rulemaking.

SUMMARY: This document responds to a petition for rulemaking regarding the Federal motor vehicle safety standard on lighting. Mr. Richard Fairall petitioned the agency to amend the standard to incorporate performance requirements for a “stroboscopic lighting system” that can be installed on the front and rear of a motorcycle as a collision avoidance system. NHTSA is denying this petition because the petitioner did not demonstrate or provide any quantitative data showing that implementation of his recommended lighting system would result in a reduction of death and injury to motorcyclists or other motorists. However, notwithstanding the absence of detailed safety data in Mr. Fairall’s submission, because NHTSA has a continued interest in identifying potential countermeasures to reduce motorcycle crashes, the agency conducted a preliminary evaluation of the petitioner’s recommended auxiliary “stroboscopic lighting system.” The preliminary evaluation did not persuade NHTSA that the stroboscopic lighting system would result in fewer motorcycle crashes.

FOR FURTHER INFORMATION CONTACT: Kenneth O. Hardie, Office of Crash Avoidance Standards, NHTSA, 400 Seventh Street, SW., Washington, DC 20590, telephone (202)–366–6987, facsimile (202)–493–2739.

SUPPLEMENTARY INFORMATION:

Background

Mr. Richard “Scott” Fairall petitioned NHTSA to amend Federal motor vehicle safety standard (FMVSS) No. 108 to incorporate performance requirements for a flashing front and rear motorcycle collision avoidance lighting system. Mr. Fairall devised an auxiliary “stroboscopic lighting system” for motorcycles to be used by the motorcyclist with the intent of reducing the incidences of other motorists violating the right-of-way of motorcyclists. The rider of the motorcycle would activate and

deactivate the system (usually when approaching an intersection) using a rocker switch.

The forward facing portion of Mr. Fairall's system is comprised of two turn signal housings with clear lenses, each having a strobe light in it. The rearward facing portion has red lenses and is also comprised of two turn signal housings, each with a strobe inside. The strobe controller flashes each side's strobe twice (at 2 Hz) before alternating to the other side. The duration that the lighting system remains activated would depend on the speed of the motorcycle and the width of the intersection. Mr. Fairall stated the maximum length of time of use for the lighting system would be approximately four seconds.

Mr. Fairall claimed his auxiliary "stroboscopic lighting system" would warn motorists of the potential for collision, and has effectively prevented accidents involving his motorcycle for over 11,000 miles. In addition, he also provided numerous anecdotes regarding the effectiveness of his and other, similar, modulating headlamp designs. In his petition, Mr. Fairall claimed that his recommended lighting system would enhance the conspicuity of the motorcycle and produce a significant and immediate downward trend in crashes and injuries to motorcyclists. Finally, Mr. Fairall cited NHTSA statistics showing a substantial increase in motorcycle accidents and fatalities.

FMVSS No. 108; *Lamps, Reflective Devices, and Associated Equipment*, specifies requirements for original and replacement lamps, reflective devices, and associated equipment. The purpose of the standard is to reduce traffic collisions, by providing adequate illumination of the roadway, and by enhancing the conspicuity of motor vehicles on the public roads so that their presence is perceived and their signals understood, both in daylight and in darkness or other conditions of reduced visibility. Among the many aspects of vehicle lighting that are covered by FMVSS No. 108 are the conditions under which lamps on a vehicle are wired and permitted to flash.

Paragraph S5.5.10 of FMVSS No. 108 states:

The wiring requirements for lighting equipment in use are:

- (a) Turn signal lamps, hazard warning signal lamps, and school bus warning signal lamps shall be wired to flash;
- (b) Headlamps and side marker lamps may be wired for signaling purposes;
- (c) A motorcycle headlamp may be wired to allow either its upper beam or lower beam, but not both to modulate from a higher

intensity to a lower intensity in accordance with section S5.6;¹

Steady means free from change or variation. This means that they must not modulate, flash, or vary in size, area, intensity or appearance.

Motorcycle headlamp systems that modulate, as permitted under S7.9.4 of FMVSS No. 108, enhance the conspicuity of motorcycles without having other negative safety impacts (e.g., causing confusion with emergency vehicles). Currently, motorcycle headlamp modulation systems or other lighting systems that deviate from these requirements are not permitted under FMVSS No. 108 and may not be installed on new vehicles or sold in the aftermarket as replacement equipment.

NHTSA notes that based upon the agency's policy statements published in the **Federal Register** on November 4, 1998 (Volume 63, Number 213, pages 59482–59492) in order to be treated as a petition, the Fairall submission must have substantive data purporting to show positive safety benefits for the recommended idea. As the NHTSA policy statement makes clear, NHTSA has neither the budget nor the time to sponsor exhaustive research (such as fleet testing) of most lighting ideas presented to it. Because Mr. Fairall's submission did include some data, we treated it as a petition. NHTSA is denying this petition because the petitioner did not demonstrate or provide sufficient quantitative data showing that implementation of his recommended lighting system would result in a reduction of death and injury motorcyclists or other motorists.

Paragraph 5.5.10 of FMVSS No. 108 restricts lamps that may flash to certain ones. The reason for restricting flashing lamps is to ensure that the signal is instantly recognized and unambiguous to drivers, as explained in our November 4, 1998 Statement of Policy. There is a positive safety benefit to the public from clear and unambiguous signals. Mr. Fairall's recommended lamps, which would be considered auxiliary because they are not required equipment, are not among those permitted to flash.

We do not believe Mr. Fairall's data are sufficient to show positive safety benefits from changing our current standardized requirements. The petitioner's primary support for his contention that his recommended system is effective in reducing motorcyclists' death and injury is to

refer to an "11,000 mile benchmark test;" i.e., operating the system while he rode his motorcycle. The petitioner stated, "It has been 100 percent effective in stopping motorist from violating my right-of-way throughout the testing period of more than 11,000 miles."

Based on statistical considerations, the 11,000 vehicle-miles-driven is insufficient to form a valid estimate for the impact this system might have on motorcycle safety. Mr. Fairall's numerous anecdotal examples of drivers noticing his lighting system do not qualify as sufficient data. Moreover, the petitioner did not provide data to support his contention that the use of the "stroboscopic lighting system" was the reason that motorists did not violate his right-of-way. Data addressing the behavior of other motorists who encountered the lighting system was not provided.

Additional Data Analysis

NHTSA is aware that since 1999, motorcycle injuries and fatalities have continued to rise and the majority of fatalities are multi-vehicle crashes. Frequently, crashes are the result of a right-of-way violation at an intersection, where the motorcycle is traveling straight when it collides with another vehicle that has either turned or pulled out in front of it. The agency has ongoing research efforts focusing on ways to increase motorcycle conspicuity. One such research effort, a study done by Calspan Corporation, examines whether the use of Daytime Running Lamps (DRLs) on motorcycles would improve their conspicuity.

Despite the previously stated consideration of a lack of supporting data, NHTSA decided to undertake some additional testing of Mr. Fairall's recommended stroboscopic lighting system on an investigatory basis. The agency conducted a preliminary evaluation of the petitioner's recommended concept at our Vehicle Research & Test Center (VRTC) in East Liberty, Ohio. We made this decision based upon our continued interest in identifying potential countermeasures to reduce motorcycle crashes.

The prevalence of right-of-way collisions near intersections guided this research. Researchers have hypothesized that the majority of frontal crashes are attributable to either poor speed-spacing judgment of other motorists or insufficient front motorcycle conspicuity. Speed-spacing judgment refers to the accuracy that a driver can estimate the distance at which it is safe to turn left at an intersection in front of an oncoming motorcycle. Conspicuity is the extent to

¹ We note that the reference to S5.6 is an error, and that the reference should point to S7.9.4. NHTSA will issue a technical amendment to correct this error shortly.

which an object can be distinguished from its surroundings. Because most fatal multi-vehicle crashes involving motorcycles are the result of a right-of-way violation in the proximity of an intersection, three intersection-type test scenarios were utilized to examine potential conspicuity improvements to a motorcycle equipped with the forward facing portion of the "stroboscopic lighting system". The test scenarios included a gap acceptance test that was initiated with the motorcycle taking a position in the adjacent, opposing traveling lane. The other two were right side and left side peripheral field-of-view scenarios.

Since the majority of motorcycle fatalities involve other vehicles impacting the motorcycle from the front, the agency evaluated the front portion of Mr. Fairall's system. This evaluation involved three intersection-type tests. The agency did not find any safety benefits in a speed-spacing judgment test (gap acceptance test) nor in a peripheral detectability test involving motorcyclists at 90° to a stationary vehicle driver's line-of-sight. While potential limited benefits were associated with the system in a peripheral detectability test at 45°, it is unclear whether they would outweigh safety disbenefits such as the system providing a false sense of security to motorcyclists and the impact on the driving behavior of other drivers who may react to the strobing light in unexpected manners. A common concern with auxiliary lamps and lighting systems is their potential to distract other drivers sharing the roadway from understanding and responding to the lighting devices requires by the standard. In order to initiate rulemaking to allow a system such as the one identified by Mr. Fairall, the agency would need clear data demonstrating safety benefits.

Agency Conclusion

After a thorough review of Mr. Fairall's petition, the agency has decided to deny Mr. Fairall's petition for rulemaking. The agency notes that the limited data the petitioner provided, consisting of the petitioner's own experiences in driving approximately 11,000 miles as well as anecdotal evidence, are insufficient to support a rulemaking. Despite the petitioner's attempt to demonstrate the effect of the new lighting system, NHTSA would require substantially more data demonstrating the effectiveness of such a system to initiate a rulemaking.

A "stroscopic" or flashing lighting system operated by the motorcyclist near intersections to increase his or her

conspicuity is an interesting concept. Our preliminary evaluation showed that the recommended "stroboscopic lighting system" does not appear to enhance motorcycle conspicuity if the driver of the car is directly observing the motorcycle, or if the motorcycle approaches the car at 90 degrees or greater to the driver's line of sight. While limited improvements were found in motorcycle conspicuity when the motorcyclist approaches a vehicle at approximately 45 degrees to the driver's line of sight, the data are insufficient to warrant rulemaking activity. Therefore, the agency is denying the petition.

The agency remains interested in finding effective ways to increase motorcycle conspicuity and reduce the number of crashes involving motorcycles.

Dated: May 23, 2007.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AU48

Endangered and Threatened Wildlife and Plants; Revised Designation of Critical Habitat for the Wintering Population of the Piping Plover

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period, notice of availability of draft economic analysis and draft environmental assessment, and announcement of public hearing.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of the draft economic analysis and draft environmental assessment, the reopening of the public comment period, and a public hearing on the proposed revised designation of critical habitat for the wintering population of the piping plover (*Charadrius melodus*) under the Endangered Species Act of 1973, as amended (Act). We are reopening the public comment period to allow all interested parties an opportunity to comment simultaneously on the proposed rule and the associated draft economic analysis and draft environmental assessment. The draft economic analysis finds that costs associated with conservation activities

for the wintering population of the piping plover in North Carolina are forecasted to range from \$0 to \$12.2 million in lost consumer surplus and \$0 to \$21.1 million in lost trip expenditures in undiscounted dollars over the next 20 years, with an additional \$32,000 to \$79,000 in administrative costs. Discounted impacts are estimated to range from \$0 to \$6.2 million in lost consumer surplus and \$0 to \$10.6 million in lost trip expenditures over 20 years using a real rate of seven percent, with an additional \$17,000 to \$42,000 in administrative costs. This amounts to \$0 to \$503,000 in lost consumer surplus and \$0 to \$861,000 in lost trip expenditures, annually. Using a real rate of three percent, discounted impacts are estimated at \$0 to \$8.9 million in lost consumer surplus and \$0 to \$15.4 million in lost trip expenditures over the next 20 years, with an additional \$24,000 to \$59,000 in administrative costs. This amounts to \$2,000 to \$600,000 in lost consumer surplus and \$0 to \$1.0 million in lost trip expenditures, annually. The draft environmental assessment finds that designation of critical habitat would not impose any physical alteration of the physical or biological communities used by the wintering population of the piping plover, nor would it alter any social, cultural, or recreational resources or the use of such resources beyond current conditions or existing management strategies. Comments previously submitted need not be resubmitted as they will be incorporated into the public record and fully considered in preparation of the final rule.

DATES: *Written comments:* We will accept public comments until July 30, 2007.

Public hearing: We will hold a public hearing on the proposed revised designation of critical habitat, and the draft economic analysis and draft environmental assessment, from 5 p.m. to 7 p.m. on June 20, 2007. The public hearing will be preceded by a public information session from 4 p.m. to 5 p.m. at the same location (see *Public hearing* under **ADDRESSES**).

ADDRESSES: *Written comments:* If you wish to comment, you may submit your comments and information concerning this proposal, identified by "Attn: Wintering Piping Plover Critical Habitat," by any one of the following methods:

1. Mail to Pete Benjamin, Field Supervisor, U.S. Fish and Wildlife Service, Raleigh Field Office, P.O. Box 33726, Raleigh, NC 27636-3726.