

Dated: May 29, 2008.

**Jon W. Dudas,**

*Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.*

[FR Doc. E8-12364 Filed 6-2-08; 8:45 am]

**BILLING CODE 3510-16-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R05-OAR-2007-1097; FRL-8572-7]

### Approval and Promulgation of Air Quality Implementation Plans Minnesota; Maintenance Plan Update for Dakota County Lead Area

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing an update to the lead maintenance plan for Dakota County, Minnesota. This plan update demonstrates that Dakota County will maintain attainment of the National Ambient Air Quality Standard for lead through 2014. Minnesota has verified that the emission limits adopted to demonstrate modeled attainment continue to be met, that there are no new significant sources of lead or increases in background emissions, and that the state has in place a comprehensive program to identify sources of violations and address any violation through enforcement and implementation of a contingency plan.

**DATES:** Comments must be received on or before July 3, 2008.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R05-OAR-2007-1097, by one of the following methods:

1. *www.regulations.gov*: Follow the on-line instructions for submitting comments.
2. *E-mail*: [aburano.douglas@epa.gov](mailto:aburano.douglas@epa.gov).
3. *Fax*: (312) 886-5824.
4. *Mail*: Doug Aburano, Acting Chief, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery*: Doug Aburano, Acting Chief, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of

business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

#### FOR FURTHER INFORMATION CONTACT:

Kathleen D'Agostino, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-1767, [dagostino.kathleen@epa.gov](mailto:dagostino.kathleen@epa.gov).

**SUPPLEMENTARY INFORMATION:** In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: May 12, 2008.

**Bharat Mathur,**

*Acting Regional Administrator, Region 5.*

[FR Doc. E8-12242 Filed 6-2-08; 8:45 am]

**BILLING CODE 6560-50-P**

## 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), Department of Transportation.

**ACTION:** Denial of petition for rulemaking.

**SUMMARY:** This document denies a petition for rulemaking from the Center for Auto Safety (CAS) asking that we initiate rulemaking to require that any vehicle integrated personal communication systems including cellular phones and text messaging systems be inoperative when the vehicle is in motion.

**FOR FURTHER INFORMATION CONTACT:** For non-legal issues, you may call Ms. Gayle Dalrymple of the NHTSA Office of Crash Avoidance Standards, at 202-366-5559.

For legal issues, you may call Ms. Dorothy Nakama of the NHTSA Office of Chief Counsel at 202-366-2992.

You may send mail to both of these officials at the National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

#### SUPPLEMENTARY INFORMATION:

#### Petition for Rulemaking

The Center for Auto Safety (CAS) submitted a petition for rulemaking asking that we "initiate rulemaking to prohibit the use of integrated cellular telephones and other interactive communication and data transmission devices that can be used for personal conversations and other interactive personal communication or messaging while a vehicle is in motion." CAS stated that the purpose of the petition was to "make the driving environment safer by reducing the availability of devices that have been proven to be traffic hazards." CAS specifically petitioned NHTSA to undertake the following:

First, CAS petitioned NHTSA to issue a notice of proposed rulemaking (NPRM) to amend Federal Motor Vehicle Safety Standard (FMVSS) No. 102, *Transmission shift lever sequence, starter interlock, and transmission braking effect*, by adding a new provision that would state:

Any vehicle integrated personal communication systems including cellular phones and text messaging shall be inoperative when the transmission shift lever is in a forward or reverse drive position.

Second, CAS petitioned NHTSA to issue an advance notice of proposed rulemaking (ANPRM) to consider "subjecting other vehicle integrated telematic<sup>1</sup> systems that significantly

<sup>1</sup> At *AskOxford.com*, the online edition of the Oxford Dictionary of the English language, "telematics" is defined as "the branch of information technology which deals with the long-distance transmission of computerized information."

increase vehicle crash rates to be included in the scope of the above proposed amendment to FMVSS No. 102.”

Finally, CAS asked that NHTSA increase efforts to support state programs to limit cell phone use by drivers in moving vehicles in the same manner it supports state programs against drunk driving.

In its petition, CAS provided background concerning increasing use by the automotive industry of in-vehicle technologies with telematic options, which it stated results in distracted driving. CAS asserted that research shows that operating a motor vehicle while talking on a cell phone (hand-held or hands-free) “increases the risk of an accident to three to four times the experience of attentive drivers.”

CAS cited a number of States that have enacted legislation designed to restrict cell phone use as a response to the problem of distracted driving caused by cell phones. It stated that the highest of these standards prohibits the use of any hand-held cell phone but permits drivers to use hands-free wireless devices.

CAS stated that even if States were to extend the regulations to hands-free cell phones, enforcing such regulations would be a problem, as it would be virtually impossible for a traffic officer to see a driver using a hands-free cell phone. The petitioner stated that the solution to stopping hands-free talking and driving in a vehicle with an integrated cell phone is “through a Federal Motor Vehicle Safety Standard prohibiting the use of cell phone communications while the vehicle is in motion.”

CAS provided accounts of motor vehicle crashes resulting in deaths in which it asserted cell phone use was a crash causation factor. CAS concluded by urging the government “to intervene on this dangerous practice, to ensure basic protection for those who use public roads and sidewalks.”

General Motors and Ford submitted comments opposing the CAS petition.<sup>2</sup>

### Analysis and Decision

We begin by noting that NHTSA has issued the following policy statement concerning cell phone use while driving, which is included on the agency’s Web site:

The primary responsibility of the driver is to operate a motor vehicle safely. The task of driving requires full attention and focus. Cell phone use can distract drivers from this task, risking harm to themselves and others.

Therefore, the safest course of action is to refrain from using a cell phone while driving.

CAS’s petition for rulemaking specifically requests that the agency address the issue of driver distraction related to the use of cell phones and other telematic devices by requiring such devices, when integrated into the vehicle, to be inoperative whenever the vehicle may be in motion. After carefully considering the available data and the petitioner’s request, we have decided to deny the request.

By way of background, NHTSA and others recognize that driver distraction due to use of phones or other devices while driving can increase the crash risk.<sup>3</sup> As such, NHTSA has and will continue to address the issue.

Our initial work on this topic was published in 1997.<sup>4</sup> In 2000, NHTSA sponsored an Internet Forum, a Public Meeting, and Expert Working Groups aimed at providing an extensive resource of information on research findings, industry initiatives, public comments, and research needs on driver distraction.<sup>5</sup>

Both the 1997 study and the 2000 meetings provided information that helped identify the research goals NHTSA should pursue to help minimize the distraction safety problem. Since then, the focus of our research has been to:

1. Understand the magnitude and characteristics of the safety problem.
2. Develop measurement methods to quantify the impacts of device designs on driver performance.
3. Evaluate reducing distraction related crash risk through driver assistance technologies, such as collision warning systems.

We have worked with researchers in universities, private organizations, and industry to address these issues. As a result, we have gained insights about the risks of multitasking,<sup>6</sup> developed methods to quantify the effect of operating various devices while driving,<sup>7</sup> worked to better understand

the importance of device interface design on driving performance,<sup>8</sup> and evaluated several countermeasures that can reduce the risk of distraction by warning drivers of imminent dangers.<sup>9</sup> In anticipation of the emergence of multiple, potentially distracting technologies, NHTSA has also undertaken a research program to evaluate the potential of a system that could monitor the level of distraction of drivers, control the information flow to the driver, and adjust the parameters on collision warning systems to increase their effectiveness.<sup>10</sup>

Additional NHTSA research on Intelligent Transportation Systems (ITS), such as the Integrated Vehicle Based Safety Systems (IVBSS) Initiative, may also lead to countermeasures for driver distraction. Significant human factors work is underway in IVBSS to design an integrated Driver-Vehicle Interface (DVI) that minimizes distraction and provides effective warnings to drivers.<sup>11</sup>

CAS’s petition for rulemaking specifically asks us to address the problem of driver distraction related to use of cell phones and other telematic devices by requiring such devices, when integrated into the vehicle, to be inoperative when the transmission shift lever is in a forward or reverse drive position, i.e., whenever the vehicle may be in motion.

Federal motor safety standards are required to “meet the need for motor vehicle safety.” 49 U.S.C. 30111(a). However, CAS has not provided information or analysis showing that the rule it requests would result in safety benefits.

If integrated cell phones and other telematic devices were required to be inoperative, drivers could instead use portable devices such as their regular cell phones. Given the number of drivers who currently use cell phones, the agency believes this would be the likely result. The agency estimates that

<sup>2</sup> McCart *et al.*, “Cell Phones and Driving: Review of the Research.” Traffic Injury Prevention No 7, 89–106, 2006.

<sup>3</sup> An Investigation of the Safety Implications of Wireless Communications in Vehicles, <http://www.nhtsa.dot.gov/people/injury/research/wireless/>.

<sup>4</sup> NHTSA Driver Distraction Internet Forum: Summary and Proceedings, <http://www-nrd.nhtsa.dot.gov/pdf/nrd-13/FinalInternetForumReport.pdf>.

<sup>5</sup> The Impact of Driver Inattention on Near-Crash/ Crash Risk: An Analysis Using the 100-Car Naturalistic Driving Study Data, <http://www.nhtsa.gov/staticfiles/DOT/NHTSA/NRD/Multimedia/PDFs/Crash%20Avoidance/Driver%20Distraction/810594.pdf>.

<sup>6</sup> Driver Workload Metrics, 2006, <http://www.nhtsa.gov/staticfiles/DOT/NHTSA/NRD/>

[Multimedia/PDFs/Crash%20Avoidance/Driver%20Distraction/Driver%20Workload%20Metrics%20Final%20Report.pdf](http://www.nhtsa.gov/staticfiles/DOT/NHTSA/NRD/Multimedia/PDFs/Crash%20Avoidance/Driver%20Distraction/Driver%20Workload%20Metrics%20Final%20Report.pdf).

<sup>7</sup> Examination of the Distraction Effects of Wireless Phone Interfaces Using the National Advanced Driving Simulator, 2004, [http://www.nhtsa.gov/staticfiles/DOT/NHTSA/NRD/Multimedia/PDFs/VRTC/ca/capubs/Wireless1F\\_PrelimReport.pdf](http://www.nhtsa.gov/staticfiles/DOT/NHTSA/NRD/Multimedia/PDFs/VRTC/ca/capubs/Wireless1F_PrelimReport.pdf).

<sup>8</sup> Driver distraction, warning algorithm parameters, and driver response to imminent rear-end collisions in a high-fidelity driving simulator, 2002, <http://www.nhtsa.gov/staticfiles/DOT/NHTSA/NRD/Multimedia/PDFs/Human%20Factors/Driver%20Assistance/DOT%20HS%20809%20448.pdf>.

<sup>9</sup> <http://www.volpe.dot.gov/hf/roadway/saveit/index.html>.

<sup>10</sup> <http://www.its.dot.gov/ivbss/>.

<sup>11</sup> Docket # NHTSA 2007–28442.

in 2005, six percent of drivers at any given moment were using hand-held cell phones.<sup>12</sup> The estimate is from the National Occupant Protection Use Survey (NOPUS), which is the only source of probability-based observed data on cell phone use by drivers in the United States.

For the above reasons, we conclude that there is no reason to believe that the rule requested by the petitioner would result in safety benefits. Accordingly, we are denying the petition.

We note that even putting aside the issue of drivers substituting portable devices for integrated devices, the information provided by CAS would not lead us to grant its petition.

In the rulemaking advocated by the petitioner, the agency would need to consider, among other things, the specific safety impacts associated with current integrated systems and reasonably foreseeable integrated systems. It would be necessary to consider reasonably foreseeable integrated systems given that the requested rule would prohibit all systems that can be used while the vehicle is in motion. CAS has not provided specific data or analysis along these lines.

We also note that in the rulemaking advocated by the petitioner, the agency would need to consider costs as well as benefits.

Given the lack of specific data and analysis and also considering the resources needed to conduct rulemaking, we would not initiate rulemaking in this area based on the information provided by CAS.

Finally, as noted earlier, CAS asked that NHTSA increase efforts to support state programs to limit cell phone use by drivers in moving vehicles in the same manner it supports state programs against drunk driving. This particular request is not amenable to being addressed by rulemaking.

States have recognized the need to discourage driver distractions such as cell phone use and texting and many State legislatures have taken action to restrict those practices.

While various legislative and educational approaches have been utilized, little evaluation has been completed and best practices have yet to be demonstrated. NHTSA has solicited potential options for a demonstration project in this area to begin in Fiscal Year 2008 or 2009.

Pursuant to Section 2003(d) of Public Law 109-59 (August 10, 2005), the Safe,

Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), NHTSA will be conducting multiple demonstration programs to evaluate new and innovative means of combating traffic system problems caused by distracted, inattentive or fatigued drivers.

**Authority:** 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

Issued on: May 27, 2008.

**Stephen R. Kratzke,**

*Associate Administrator for Rulemaking.*

[FR Doc.E8-12285 Filed 6-2-08; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[FWS-R6-ES-2007-0014; 92210-1117-0000-FY08-B4]

**RIN 1018-AT79**

#### **Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Salt Creek Tiger Beetle (*Cicindela nevadica lincolni*)**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; reopening of comment period and announcement of a public hearing.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period and the scheduling of a public hearing on our December 12, 2007 proposed rule (72 FR 70715) to designate critical habitat for the Salt Creek tiger beetle (*Cicindela nevadica lincolni*) under the Endangered Species Act of 1973, as amended (Act). The December 12, 2007 **Federal Register** document also announced the availability of a draft economic analysis of the designation and a draft environmental assessment prepared in accordance with the National Environmental Policy Act of 1969. The reopened comment period will provide the public, other concerned governmental agencies, Tribes, and any other interested parties with an additional opportunity to submit written comments and information on this subspecies and associated habitat, the proposed critical habitat designation, draft economic analysis, and draft environmental assessment. Comments previously submitted need not be resubmitted as they have already been incorporated into the public record

and will be fully considered in any final decision.

**DATES:** *Written Comments:* The original comment period on the Salt Creek tiger beetle proposed critical habitat rule closed on February 11, 2008. We are reopening the comment period and will accept information from all interested parties at the public hearing or until July 11, 2008.

*Public Hearing:* We announce a public open house, followed by a public hearing, to be held on July 1, 2008, at the Lower Platte South Natural Resources District, 3125 Portia Street, Lincoln, NE 68501-3581. The public open house, open to all who wish to discuss the proposed critical habitat with the Service, will be held from 4 to 6 p.m., central time. The public hearing, open to all who wish to provide formal, oral comments regarding the proposed rule, will be held from 6 to 8 p.m., central time.

**ADDRESSES:** If you wish to comment on the proposed rule, draft economic analysis, or draft environmental assessment, you may submit comments by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS-R6-ES-2007-0014; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.
- *Public Hearing:* A public hearing will be held (see **DATES**) at the Lower Platte South Natural Resources District, 3125 Portia Street, Lincoln, NE 68501-3581.

We will not accept e-mail or faxes. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

#### **FOR FURTHER INFORMATION CONTACT:**

Mike LeValley, Field Supervisor, Nebraska Ecological Services Field Office, Federal Building, Second Floor, 203 West Second Street, Grand Island, NE 68801; telephone (308) 382-6468. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800-877-8339.

#### **SUPPLEMENTARY INFORMATION:**

##### **Public Comments**

We intend that any final action resulting from the proposed rule will be as accurate and as effective as possible. Therefore, we request comments or

<sup>12</sup> "Driver Cell Phone Use in 2005—Overall Results," Research Note DOT HS 809 967, National Center for Statistics and Analysis, NHTSA, December 2005.