

ENVIRONMENTAL PROTECTION AGENCY

[FRL-52192]

40 CFR Chapter I
Open Meeting of the Negotiated Rulemaking Advisory Committee for Small Nonroad Engine Regulations

AGENCY: Environmental Protection Agency.

ACTION: FACA Committee Meeting—Negotiated Rulemaking on Small Nonroad Engine Regulations.

SUMMARY: As required by section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), EPA is giving notice of the next meeting of the Advisory Committee to negotiate the Phase II rule to reduce air emissions from small nonroad engines. Small nonroad engines are engines which are spark ignited gasoline engines less than 25 horsepower. The meeting is open to the public without advance registration. Agenda items for the meeting include reports from the task groups and discussions of the emissions standard and standard structure. The Committee is hoping to finalize a series of recommendations to EPA regarding the control of emissions in Phase II of the rule.

DATES: The committee will meet on June 27, 1995 from 10:00 a.m. to 6:00 p.m., June 28, 1995 from 9:00 a.m. to 5:00 p.m. and on June 29, 1995 from 8:00 a.m. to 4:00 p.m..

ADDRESSES: The location of the meeting will be the Courtyard by Marriott, 3205 Boardwalk, Ann Arbor, MI 48108; phone: (313) 995-5900.

FOR FURTHER INFORMATION CONTACT: Persons needing further information on the substantive matters of the rule should contact Lisa Snapp, National Vehicle and Fuel Emissions Laboratory, 2565 Plymouth Rd., Ann Arbor, MI 48105, (313) 668-4200. Persons needing further information on committee procedural matters should call Deborah Dalton, Consensus and Dispute Resolution Program, Environmental Protection Agency, 401 M Street, S.W., Washington, DC 20460, (202) 260-5495, or the Committee's facilitators, Lucy Moore or John Folk-Williams, Western Network, 616 Don Gaspar, Santa Fe, NM, 87501, (505) 982-9805.

Dated: June 6, 1995.

Deborah Dalton,

Designated Federal Official.

[FR Doc. 95-14233 Filed 6-8-95; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION
47 CFR Part 73

[MM Docket No. 93-48; DA 95-1191]

Broadcast Services; Children's Television

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Commission granted a request filed jointly by the National Association of Broadcasters and the Association of Independent Television Stations, Inc., for a 90-day extension of time to file comments in this proceeding. The deadline for filing comments was originally June 16, 1995, and the deadline for reply comments was July 17, 1995. The Commission determined that the requested extension was warranted in order to facilitate the development of a full and complete record.

DATES: Comments are now due on September 14, 1995, and reply comments are now due on October 16, 1995.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Diane Conley, Mass Media Bureau, (202) 776-1653.

SUPPLEMENTARY INFORMATION:

Adopted: June 1, 1995.

Released: June 1, 1995.

By the Chief, Mass Media Bureau.

Comment Date: September 14, 1995.

Reply Comment Date: October 16, 1995.

1. On April 5, 1995, the Commission adopted a Notice of Proposed Rule Making seeking comment on proposals to amend the Commission's rules implementing the Children's Television Act of 1990. Notice of Proposed Rule Making in Million Docket No. 93-48, 60 FR 20586 (1995) ("NPRM"). Comments in this proceeding are currently due on June 16, 1995, and reply comments are due on July 17, 1995.

2. On May 30, 1995, the National Association of Broadcasters and the Association of Independent Television Stations, Inc. Filed a joint request for a 90-day extension of time to file comments in this proceeding. Petitioners argue primarily that additional time is needed to conduct and thoroughly evaluate studies relevant to the issues raised by the Commission in the NPRM.

3. As set forth in Section 1.46 of the Commission's Rules, 47 CFR 1.46, it is

our policy that extensions of time for filing comments in rulemaking proceedings shall not be routinely granted. However, we recognize that it may take longer than the initial comment period established in this proceeding to collect the kinds of data sought by the Commission, and we believe that a 90-day extension of time to file comments and reply comments is warranted in order to facilitate the development of a full and complete record.

4. Accordingly, *it is ordered* that the Motion for Extension of Time filed in MM Docket No. 93-48 by the National Association of Broadcasters and the Association of Independent Television Stations, Inc., is granted.

5. *It is further ordered* that the time for filing comments in this proceeding is extended to September 14, 1995, and the time for filing reply comments is extended to October 16, 1995.

6. This action is taken pursuant to authority found in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r), and Sections 0.204(b), 0.283 and 1.45 of the Commission's Rules, 47 CFR 0.204(b), 0.283 and 1.45.

Federal Communications Commission.

Roy J. Stewart,

Chief, Mass Media Bureau.

[FR Doc. 95-14085 Filed 6-8-95; 8:45 am]

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DEPARTMENT OF TRANSPORTATION
National Highway Traffic Safety Administration
49 CFR Part 571

[Docket No. 95-28; Notice 1]

RIN 2127-AF73

Lamps, Reflective Devices and Associated Equipment; Establishment of Negotiated Rulemaking Advisory Committee

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

ACTION: Notice of proposal to form a negotiated rulemaking advisory committee and request for representation.

SUMMARY: NHTSA proposes to establish a Negotiated Rulemaking Advisory Committee under the Negotiated Rulemaking Act of 1990 and the Federal Advisory Committee Act to develop recommended specifications for altering the U.S. lower headlamp beam pattern to be more sharply defined. Such a pattern would facilitate visual

aimability of headlamps and might be the basis for a world-wide lower beam pattern. The Committee would develop its recommendations through a negotiation process. The Committee would be composed of persons who represent the interests affected by the rule such as domestic and foreign manufacturers of motor vehicles, headlamps, and headlamp aimers, motor vehicle inspection facilities, consumers, and State and Federal governments. NHTSA invites interested persons to submit nominations and applications for membership on the Committee, and comments on the subject matter.

DATES: NHTSA must receive written comments and requests for representation or membership not later than July 10, 1995.

ADDRESSES: Comments should mention the docket and notice number shown above and be submitted in triplicate to Docket Clerk, room 5109, 400 Seventh Street, SW, Washington, DC 20590. Docket hours are from 9:00 a.m. to 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Jere Medlin, Office of Vehicle Safety Standards, NHTSA (202-366-5276).

SUPPLEMENTARY INFORMATION:

I. Background

(A) Petition for Rulemaking Submitted by General Motors

General Motors Corporation (GM) petitioned NHTSA for rulemaking to amend Federal Motor Vehicle Safety Standard No. 108 *Lamps, Reflective Devices, and Associated Equipment* to allow fractional balance optical amiability of certain replaceable bulb and integral beam headlamps. GM wants to use headlamps that can not be aimed with external mechanical aimers, or with the on-vehicle mechanical aimers now specified by the standard. Lamps that used fractional balance optical aim could be aimed only by means of a new optical aimer, which is estimated to cost about \$3,000. The cost of a current mechanical aimer capable of achieving accurate headlamp aim is about \$250.

Information submitted by GM with its petition indicates that most facilities performing motor vehicle inspections, whether owned privately or by the State, choose to check and adjust headlamp aim visually, rather than with the more objective mechanical aimers. In the most common form, aim in State inspections is judged subjectively by the eye of an inspector viewing a headlamp beam pattern cast upon a distant vertical surface, such as a wall or screen. Based

on this subjective observation, the inspector decides whether the beam pattern falls in the area (s)he believes is correct. Another form of visual inspection involves the use of optical machines which condense the beam pattern onto an internal aiming screen so that the longer separation distance between lamp and target necessary for the other form of visual aiming is not necessary. The cost of these machines is moderate.

Until 1983, headlamps were required to be sealed beam in construction, of specific shapes and sizes and capable of mechanical aim. There was a standardized location for aiming pads on headlamp lenses, and only four simple adapters were required for the base mechanical aimer to fulfill its function. When Standard No. 108 was amended to permit replaceable bulb headlamps of no specific shape and size, headlamps began growing both smaller and larger for reasons of weight and drag reduction and style, requiring additional, adjustable adapters for aiming by mechanical means. To preclude designing separate adapters for mechanical aimers, and to permit even smaller headlamps not capable of using adapters, manufacturers developed on-board mechanical aiming devices, and Standard No. 108 was further amended to permit these "vehicle headlamp aiming devices" (VHADs). While this added modestly to vehicle cost, it eliminated the need to use external means to mechanically aim the headlamps. However, because of the need to reduce time and costs, the GM data indicate that inspection stations have resorted to judging aim visually, rather than through on-board or exterior mechanical aimers.

NHTSA granted GM's petition in order to engage in a review of the subject of headlamp aim and amiability.

(B) Regulatory Goals

Visual aim of headlamps conforming to Standard No. 108 has a potential negative safety effect because U.S. lower beam patterns lack clearly defined borders which, if present, would permit a more objective visual determination of aim. Visual aiming of U.S. lower beam patterns introduces an element of subjectivity into the inspection process and substantial aim error that does not exist with mechanical or on-board aimers. Beam patterns with clearly defined fiducial marks or cutoffs, such as those typical of European or Japanese market headlamps, permit a more objective and more accurate determination of whether the aim of the headlamp is correct when the headlamp is visually aimed.

For some years, NHTSA has been engaged in harmonization efforts to find and implement windows of overlapping performance between the lighting requirements of Standard No. 108 and those of Europe and Japan. With respect to headlamps, to achieve such a window where a headlamp could comply with regulations worldwide, Standard No. 108 would need to move toward a beam pattern with more clearly defined features in it for visual amiability. Such a move would recognize the current reality of headlamp aiming inspection in the United States, and ultimately enhance safety by increasing the objectivity and accuracy of determining correct headlamp aim with the naked eye.

The Society of Automotive Engineers (SAE) has addressed the issue of a modified beam pattern in SAE Standard J1735 *Harmonized Vehicle Headlamp Performance Requirement*. SAE members from vehicle and lighting manufacturers around the world have participated in this effort for the sole purpose of developing a lower beam pattern that could be the model for a world-wide specification, if not the specification itself. It is similar, but not identical, to the European, Japanese and U.S. lower beam patterns, combining important features of each, while trying not to compromise features deemed essential by those regulatory jurisdictions.

In summary, given the trend away from mechanical aiming by those who aim headlamps and the desire to not offer a mechanically amiable headlamp on vehicles, the optimal solution for improving headlamp aim in the United States appears to be the development of a beam pattern that provides an objective visual determination of the accuracy of that aim.

II. Regulatory Negotiation

Due to the increasing complexity and formalization of the written rulemaking process, it can be difficult for an agency to craft effective regulatory solutions to certain problems. During the rulemaking process, the participants may develop adversarial relationships that prevent effective communication and creative solutions. The exchange of ideas that can lead to solutions acceptable to all interested groups sometimes do not occur in the traditional notice and comment context. As the Administrative Conference of the United States (ACUS) noted in its Recommendation 82-4:

Experience indicates that if the parties in interest work together to negotiate the text of a proposed rule, they might be able in some circumstances to identify the major issues, gauge their importance to the respective

parties, identify the information and data necessary to resolve the issues, and develop a rule that is acceptable to the respective interests, all within the contours of the substantive statute.

ACUS adopted this recommendation in "Procedures for Negotiating Proposed Regulations," 47 FR 30708. The thrust of the recommendation is that representatives of all interests should be assembled to discuss the issue and all potential solutions, reach consensus, and prepare a proposed rule for consideration by the agency. After public comment on any proposal issued by the agency, the group would reconvene to review the comments and make recommendations for a final rule. This inclusive process is intended to make the rule more acceptable to all affected interests and prevent the need for petitions for reconsideration (and litigation) that often follow issuance of a final rule.

The movement toward negotiated rulemaking gained impetus with enactment of the Negotiated Rulemaking Act of 1990 (RegNeg), 5 U.S.C. Sec. 561 *et seq.* In 1993, Executive Order 12866 (58 FR 51735) added to this impetus:

In particular, before issuing a notice of proposed rulemaking, each agency should, where appropriate, seek the involvement of those who are intended to benefit from and those expected to be burdened by any regulation * * * Each agency is also directed to explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking (Sec. 6(a), p. 51740)

Although relatively new, negotiated rulemakings have been used successfully by agencies within DOT: the Federal Aviation Administration, Federal Highway Administration, Federal Railroad Administration, and the United States Coast Guard. NHTSA now intends to begin this process in a formal manner for the first time in promulgating a Federal motor vehicle safety standard. It welcomes the opportunity to work with those who will be affected directly by such a rule, and is confident that the agency, industry, and the public will benefit with the creation of an effective and reasonable regulation.

Pursuant to section 563(a) of RegNeg, an agency considering rulemaking by negotiation should consider whether:

- (1) There is need for the rule;
- (2) There is a limited number of identifiable interests;
- (3) These interests can be adequately represented by persons willing to negotiate in good faith to reach a consensus;
- (4) There is a reasonable likelihood that the committee will reach consensus within a fixed period of time;

(5) The negotiated rulemaking procedure will not unreasonably delay the notice of proposed rulemaking;

(6) The agency has adequate resources and is willing to commit such resources to the process; and

(7) The agency is committed to use the result of the negotiation in formulating a proposed rule if at all possible.

For the reasons stated in this Notice, NHTSA believes that these criteria have been met with regard to headlamp amiability and beam pattern issues.

The regulatory negotiation NHTSA proposes would be carried out by an advisory committee (Committee) created under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. App., and in a manner that reflects appropriate rulemaking directives, including pertinent executive Orders. NHTSA will be represented on the Committee and will take an active part in the negotiations as a Committee member. However, pursuant to section 566(c) of RegNeg, those representing NHTSA would not facilitate or otherwise chair the proceedings.

III. Procedures and Guidelines

The following proposed procedures and guidelines would apply to NHTSA's negotiated rulemaking process, subject to appropriate changes made as a result of comments received on this Notice or as are determined to be necessary during the negotiating process.

(A) *Facilitator:* The Facilitator will not be involved with substantive development of this regulation. This individual will chair the negotiations, may offer alternative suggestions toward the desired consensus, and will determine the feasibility of negotiating particular issues. The Facilitator may ask members to submit additional information or to reconsider their position. NHTSA has contracted with the Federal Mediation and Conciliation Service for a Facilitator.

(B) *Feasibility:* NHTSA has examined the issues and interests involved and has made a preliminary inquiry among representatives of those interests to determine whether it is possible to reach agreement on: (a) individuals to represent those interests; (b) the preliminary scope of the issues to be addressed; and (c) a schedule for developing a notice of proposed rulemaking. The results are sufficiently encouraging to believe that a workable proposal could be developed, and that there are potential participants who could adequately represent the affected interests.

(C) *Participants and Interests:* The number of Committee participants generally should not exceed 25.

However, it is not necessary that each individual or organization affected by a final rule have its own representative on the Committee. Rather, each interest must be adequately represented, and the Committee should be fairly balanced. However, individuals who are not part of the Committee may attend sessions and confer with or provide their views to Committee members.

The following interests have been tentatively identified as those that are likely to be significantly affected by the rule:

- (1) Motor vehicle manufacturers
- (2) Motor vehicle headlamp manufacturers
- (3) Manufacturers of headlamp aiming devices
- (4) International standards organizations
- (5) State and Federal governments
- (6) General public

NHTSA proposes that persons selected by the various interests be named to the Committee. In addition to NHTSA, the following interests have been tentatively identified as those that would supply Committee members:

- (1) American Automobile Manufacturers Association (AAMA)
- (2) Association of International Automobile Manufacturers, Inc. (AIAM)
- (3) Society of Automotive Engineers, Road Illumination Devices Subcommittee
- (4) Hopkins Manufacturing Corporation
- (5) Groupe de Travail Brussels
- (6) Liaison Committee for the Manufacturers of Automobile Equipment and Spare Parts
- (7) Japanese Automobile Standards Internationalization Center
- (8) American Association of Motor Vehicle Administrators (AAMVA)
- (9) National Automobile Dealers Association
- (10) Automotive Service Association
- (11) Advocates for Highway and Auto Safety
- (12) Federal Highway Administration

As indicated previously in this Notice, NHTSA invites applications for representation from any interests that will be affected by a final rule on the subject but are not named in this list or who may not be represented or be able to be represented by the interests on the list. Such applications must be filed within thirty days from the date of publication of this Notice, and must meet the requirements set forth herein. Also, such interests should provide the name(s) of the individual(s) they propose to represent their interest. As noted, the Committee should not exceed 25 members.

(D) *Good Faith:* Participants must be committed to negotiate in good faith. It

is therefore important that senior individuals within each interest group be designated to represent that interest. No individual will be required to "bind" the interest represented, but the individual should be at a high enough level to represent the interest with confidence. For this process to be successful, the interests represented should be willing to accept the final Committee product.

(E) *Notice of Intent to Establish Advisory Committee and Request for Comment:* In accordance with the requirements of FACA, an agency of the Federal government cannot establish or utilize a group of people in the interest of obtaining consensus advice or recommendations unless that group is chartered as a Federal advisory committee. It is the purpose of this Notice to indicate NHTSA's intent to create a Federal advisory committee, to identify the issues involved in the rulemaking, to identify the interests affected by the rulemaking, to identify potential participants who will adequately represent those interests, and to ask for comment on the use of regulatory negotiation and on the identification of the issues, interests, procedures, and participants.

(F) *Requests for Representation:* One purpose of this notice is to determine whether interests exist that may be substantially affected by a rule, but have not been represented in the list of prospective Committee members. Commenters should identify such interests if they exist. Each application or nomination to the Committee should include (i) the name of the applicant or nominee and the interests such person would represent; (ii) evidence that the applicant or nominee is authorized to represent parties related to the interest the person proposes to represent; and (iii) a written commitment that the applicant or nominee would participate in good faith. If any additional person or interest requests membership or representation on the Committee, NHTSA shall determine (i) whether that interest will be substantially affected by the rule, (ii) if such interest would be adequately represented by an individual on the Committee, and (iii) whether the requested organization should be added to the group or whether interests can be consolidated to provide adequate representation.

(G) *Final Notice:* After evaluating the comments received in response to this Notice, NHTSA will issue a further notice announcing the establishment of the Federal advisory committee, unless it determines that such action is inappropriate in light of comments received, and the composition of the

Committee. After the Committee is chartered, the negotiations should begin.

(H) *Administrative Support and Meetings:* Staff support would be provided by NHTSA and meetings would take place in Washington, D.C. unless agreed otherwise by the Committee.

(I) *Tentative Schedule:* If the Committee is established and selected, NHTSA will publish a schedule for the first meeting in the **Federal Register**. The first meeting will focus on procedural matters, including dates, times, and locations of further meetings. Notice of subsequent meetings would also be published in the **Federal Register** before being held.

NHTSA expects that the Committee would reach consensus and prepare a report recommending a proposed rule within ten months of the first meeting. However, if unforeseen delays occur, the Administrator may agree to an extension of that time if it is the consensus of the Committee that additional time will result in agreement. The process may end earlier if the Facilitator so recommends.

(J) *Committee Procedures:* Under the general guidance of the Facilitator, and subject to legal requirements, the Committee would establish the detailed procedures for meetings which it considers appropriate.

(K) *Records of Meetings:* In accordance with FACA's requirements, NHTSA would keep a summary record of all Committee meetings. This record would be placed in Docket No. 95-28. Meetings of the Committee would be open to the public to observe, but not to participate.

(L) *Consensus:* The goal of the negotiating process is consensus. NHTSA proposes that the Committee would develop its own definition of consensus, which may include unanimity, a simple majority, or substantial agreement such that no member will disapprove the final recommendation of the Committee. However, if the Committee does not develop its own definition, consensus shall mean unanimous concurrence.

(M) *Regulatory Approach:* The Committee's first objective is to prepare a report recommending a regulatory approach for resolving the issues discussed in the BACKGROUND section of this notice. If consensus is not obtained on some issues, the report should identify the areas of agreement and disagreement, and explanations for any disagreement. It is expected that participants will be mindful of cost/benefit considerations.

NHTSA will issue a notice of proposed rulemaking based upon the approach recommended by the Committee.

(N) *Key Issues for Negotiation:*

NHTSA has reviewed correspondence, reports, petitions, relevant data, and other information. Based on this information and rulemaking requirements, NHTSA has tentatively identified major issues that should be considered in this negotiated rulemaking. Other issues related to headlamp amiability and beam pattern not specifically listed in this Notice may be addressed as they arise in the course of the negotiation. Comments are invited concerning the appropriateness of these issues for consideration and whether other issues should be added. These issues are:

1. Should NHTSA be involved in specifying headlamp amiability requirements? Standard No. 108 applies only to the manufacture and sale of new vehicles and new equipment. It is the States that specify headlamp aim regulations for vehicles in service. Some States, at present, specify procedures for visually aiming headlamps, even though headlamps are not intended to be visually aimed. Is it appropriate for NHTSA to try to develop a single approach to visual aim or any other aim? Should NHTSA delete amiability requirements from Standard No. 108 and leave this subject to be regulated at the State level?

2. If negotiations produce a result, is it likely that the States and individual inspection stations would follow the results to adjust the aim of headlamps on vehicles in service, or would those groups continue to use inappropriate procedures to aim headlamps? If they would choose not to follow the procedures of the potential solution, is there any reason to proceed with negotiations?

3. Is SAE Standard J1735 *Harmonized Vehicle Headlamp Performance Requirement* acceptable to all parties as a starting point from which to begin negotiating the details of a visual aim provision in Standard No. 108?

IV. Public Participation

NHTSA invites comments on all issues, procedures, guidelines, interests, and suggested participants embodied in this Notice. All comments and requests for participation should be submitted to the Docket Clerk, NHTSA, Room 5109, 400 Seventh Street, S.W., Washington, D.C. 20590.

Issued on: June 7, 1995.

Barry Felrice,

Associate Administrator for Safety

Performance Standards.

[FR Doc. 95-14329 Filed 6-7-95; 12:50 pm]

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