

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98-52; RM-9239]

Radio Broadcasting Services; Hague, NY, Addison, VT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of John Anthony Bulmer, substitutes Channel 229C3 for Channel 229A, reallocates Channel 229C3 from Hague, NY, to Addison, VT, as the community's first local aural service, and modifies Station WWFY's construction permit accordingly. See 63 FR 20562, April 27, 1998. Channel 229C3 can be allotted to Addison, Vermont, in compliance with the Commission's minimum distance separation requirements, with respect to all domestic allotments, with a site restriction of 14.2 kilometers (8.8 miles) west, at coordinates 44-02-30 North Latitude; 73-28-00 West Longitude, to accommodate petitioner's desired transmitter site. Addison is located within 320 kilometers of the U.S.-Canadian border and the allotment will result in a short-spacing to Station CBM-FM, Channel 228C1, Montreal, Quebec, Canada. Therefore, the allotment has been concurred in by the Canadian Government as a specially-negotiated short-spaced allotment. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 14, 1998.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 98-52, adopted October 21, 1998, and released October 30, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New York, is amended by removing Hague, Channel 229A.

3. Section 73.202(b), the Table of FM Allotments under Vermont, is amended by adding Addison, Channel 229C3.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98-30072 Filed 11-9-98; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98-127; RM-9303]

Radio Broadcasting Services; Boulder, MT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 299A to Boulder, Montana, in response to a petition filed by Boulder Broadcasting Company. See 63 FR 39805, July 24, 1998. The coordinates for Channel 299A at Boulder are 46-14-18 and 112-07-06. Canadian concurrence has been obtained for this allotment. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 14, 1998.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 98-127, adopted October 21, 1998, and released October 30, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International

Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857-3800, facsimile (202) 857-3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Montana, is amended by adding Boulder, Channel 299A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98-30071 Filed 11-9-98; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 385

[FHWA Docket Nos. MC-94-22 and MC-96-18; FHWA-97-2252]

RIN 2125-AC71

Safety Fitness Procedures

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule; corrections.

SUMMARY: The FHWA is making corrections to the November 6, 1997, final rule on Safety Fitness Procedures. The final rule established a means of determining whether a motor carrier has complied with the fitness requirements of the Motor Carrier Safety Act of 1984. The final rule included several minor errors which this document corrects.

DATES: Effective November 10, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. William C. Hill, Vehicle and Operations Division, Office of Motor Carrier Research and Standards, (202) 366-4009, or Mr. Charles Medalen, Office of the Chief Counsel, (202) 366-1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:**Electronic Access**

Internet users can access all comments received by the U.S. DOT Dockets, Room PL-401, by using the universal resource locator (URL): <http://dms.dot.gov>. It is available 24 hours a day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512-1661. Internet users may reach the Federal Register's home page at: <http://www.nara.gov/fedreg> and the Government Printing Office's database at: <http://www.access.gpo.gov/nara>.

Background

On November 6, 1997, the FHWA published a final rule incorporating the agency's safety fitness rating methodology (SFRM) as an appendix to 49 CFR part 385, Safety Fitness Procedures (62 FR 60035). The SFRM is used to measure the safety fitness of motor carriers against the standard contained in 49 CFR Part 385. The final rule also included a procedure which provides motor carriers with a 45-day period during which a proposed rating can be challenged before it becomes effective. The final rule included several minor errors.

Errors in Final Rule

There are references to commercial motor vehicles used to transport "15 or more passengers, including the driver," in the Summary, Discussion of Comments, Rulemaking Analysis, and Appendix B to Part 385. The definition of a "commercial motor vehicle" in § 390.5 includes a passenger-carrying threshold which reads as follows: "The vehicle is designed to transport more than 15 passengers, including the driver." Therefore, the wording used in the rule includes vehicles that are not subject to the FMCSRs. To correct this problem, the agency is replacing "15 or more passengers, including the driver" with "more than 15 passengers, including the driver."

In addition, the vehicle out-of-service (OOS) rate was omitted from section II.A.2 of Appendix B. The first sentence in this section currently reads "If a carrier's vehicle OOS rate is less than percent, the initial factor rating will be *satisfactory*." The sentence is being revised to read "If a carrier's vehicle OOS rate is less than 34 percent, the initial factor rating will be *satisfactory*."

The motor carrier Rating Table in section III.A. of the Appendix is being

revised to replace "0" with "1" on the third line of the first column. As revised, the table indicates that 1 unsatisfactory factor rating and 2 or fewer conditional factor ratings, will result in an overall safety rating of conditional.

Under section III.B. of the Appendix, Proposed Safety Rating, the word "OR" was omitted between "Your proposed safety rating is SATISFACTORY" and "Your proposed safety rating is CONDITIONAL." The words "safety" and "days" were omitted from the sentence following "Your proposed safety rating is CONDITIONAL." The sentence is being revised to read as follows: "The proposed safety rating will become the final safety rating 45 days after you receive this notice."

Under section VII of the Appendix, List of Acute and Critical Regulations, §§ 391.87(f)(5) through 391.115(c) are being deleted to conform to a final rulemaking for technical amendments which was published on July 11, 1997 (62 FR 37150). That rule removed Subpart H (Controlled Substances Testing) of 49 CFR Part 391 because the FHWA's alcohol and controlled substances regulations are now codified at 49 CFR Part 382. Subpart H included §§ 391.81-391.125, and the list of acute and critical regulations is therefore being amended to remove the references to these sections.

It has been brought to our attention that the discussion of preventable accidents in section II.B.(e) of Appendix B may be subject to misinterpretation. If a carrier has a proposed or current unsatisfactory accident factor rating, and the carrier believes the accident factor would not be unsatisfactory if evaluated on the basis of a preventable accident rate, it should seek an administrative review under § 385.15. Some readers apparently believe that motor carriers who contend that an accident was not preventable are required to present the FHWA with a very detailed analysis or investigation of the incident, perhaps based on the work of accident reconstructionists and attorneys. That was not the agency's intention. Although there is nothing to prevent a carrier from submitting extensive evidence of non-preventability, the FHWA believes that a copy of an accident report prepared by a government agency would generally be sufficient, providing the report did not identify any actions the driver could have taken to prevent the accident. The carrier could offer any additional information or explanation it considered appropriate. For example, the driver of a commercial motor vehicle (CMV) that is struck from behind when it stops at a toll booth, or from the side when

crossing an intersection on a green light, has no realistic opportunity to avoid the accident.

Rulemaking Analyses and Notices

This final rule makes minor corrections to the November 6, 1997, final rule concerning safety fitness procedures. Since the amendments to the final rule are simply corrections, the FHWA finds good cause pursuant to 5 U.S.C. 553(b)(3)(B) to promulgate this final rule without notice and comment rulemaking and to make it effective on the date of publication in the **Federal Register** pursuant to 5 U.S.C. 553(d)(3).

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866. The agency has also determined that this action is not a significant regulatory action under the Department of Transportation's regulatory policies and procedures. This final rule is clerical in nature and does not include substantive changes to the November 6, 1997, final rule concerning safety fitness procedures.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601-612), the FHWA has evaluated the effects of this rule on small entities and has determined that it will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (the Act) (Pub. L. 104-4) requires each agency to assess the effects of its regulatory actions on State, local, and tribal governments and the private sector. Any agency promulgating a rule likely to result in a Federal mandate requiring expenditures by a State, local, or tribal government or by the private sector of \$100 million or more in any one year must prepare a written statement incorporating various assessments, estimates, and descriptions that are delineated in the Act. The FHWA has determined that the changes in this rule will not have an impact of \$100 million or more in any one year.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that

this rulemaking does not have sufficient Federalism implications to warrant the preparation of a Federalism assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for the purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501-3520.

National Environmental Policy Act

The agency has analyzed this rulemaking for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4347), and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned 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. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 385

Highway safety, Motor carriers, and Safety fitness procedures.

Issued on: October 29, 1998.

Gloria J. Jeff,

Deputy Administrator.

In consideration of the foregoing, the FHWA is amending title 49, Code of Federal Regulations, Chapter III, Appendix B to Part 385 as set forth below:

PART 385—SAFETY FITNESS PROCEDURES

1. The authority citation for part 385 continues to read as follows:

Authority: 49 U.S.C. 104, 504, 521(b)(5)(A), 5113, 31136, 31144, and 31502; 49 CFR 1.48.

2. Appendix B to Part 385 is amended by revising section II.A.(a)2., the motor carrier safety table in section III.A., and sections III.B.(a) and III.B.(c); and in section VII by removing the citations

and text for §§ 391.87(f)(5) through 391.115(c), to read as follows:

Appendix B to Part 385—Explanation of Safety Rating Process

* * * * *

II. Converting CR Information Into A Safety Rating

* * * * *

A. Vehicle Factor

(a) * * *

2. If a carrier's vehicle OOS rate is less than 34 percent, the initial factor rating will be *satisfactory*. If noncompliance with an acute regulation or a pattern of noncompliance with a critical regulation is discovered during the examination of Part 396 requirements, the factor rating will be lowered to *conditional*. If the examination of Part 396 requirements discovers no such problems with the systems the motor carrier is required to maintain for compliance, the Vehicle Factor remains *satisfactory*.

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III. Safety Rating

A. Rating Table

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MOTOR CARRIER SAFETY RATING TABLE

Factor ratings		Overall Safety rating
Unsatisfactory	Conditional	
0	2 or fewer	Satisfactory
0	more than 2	Conditional
1	2 or fewer	Conditional
1	more than 2	Unsatisfactory
2 or more	0 or more	Unsatisfactory

B. Proposed Safety Rating

(a) The proposed safety rating will appear on the CR. The following appropriate information will appear after the last entry on the CR, MCS-151, part B.

"Your proposed safety rating is SATISFACTORY."

OR

"Your proposed safety rating is CONDITIONAL." The proposed safety rating will become the final safety rating 45 days after you receive this notice.

OR

"Your proposed safety rating is UNSATISFACTORY." The proposed safety rating will become the final safety rating 45 days after you receive this notice

* * * * *

(c) Proposed *unsatisfactory* safety ratings will indicate that, if the *unsatisfactory* rating becomes final, the motor carrier will be subject to the provision of § 385.13, which prohibits motor carriers rated *unsatisfactory* from transporting hazardous materials

requiring placarding or more than 15 passengers, including the driver.

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[FR Doc. 98-30105 Filed 11-9-98; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 217 and 227

[Docket No. 950427117-8275-04; I.D. No. 100598B]

RIN 0648-AH97

Sea Turtle Conservation; Shrimp Trawling Requirements

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; request for comments.

SUMMARY: NMFS notifies fishermen that it has extended the authorization for shrimp trawlers to use limited tow times in the inshore waters of Alabama as an alternative to the otherwise required use of Turtle Excluder Devices (TEDs) through November 30, 1998. Without this extension, the authorization would have expired November 6, 1998. NMFS has been notified by the Director of the Marine Resources Division of the Alabama Department of Conservation and Natural Resources (Alabama Director) that debris conditions in Alabama's inshore waters resulting from the passage of Hurricane Georges have persisted or even worsened. Because the use of TEDs may continue to be impracticable, NMFS has extended the authorization to use limited tow times. The intent of this extension is to provide adequate protection for threatened and endangered sea turtles when debris conditions may make TED-use impracticable.

DATES: This extension is effective from November 5, 1998 through November 30, 1998. Comments on this notification are requested, and must be received by December 7, 1998.

ADDRESSES: Comments on this action should be addressed to the Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Charles A. Oravetz, 813-570-5312, or Barbara A. Schroeder, 301-713-1401.