

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 73**

[MM Docket No. 98-140, RM-9294]

Radio Broadcasting Services; Pauls Valley, OK**AGENCY:** Federal Communications Commission.**ACTION:** Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Wright & Wright, Inc., seeking the allotment of Channel 283A to Pauls Valley, OK, as the community's first or second local FM service. Channel 283A can be allotted to Pauls Valley in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.9 kilometers (1.8 miles) southwest, at coordinates 34-43-06 North Latitude; 97-14-15 West Longitude, to avoid a short-spacing to Station KMGL, Channel 281C, Oklahoma City, OK.

DATES: Comments must be filed on or before September 21, 1998, and reply comments on or before October 6, 1998.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Roy Floyd, Vice-President, Wright & Wright, Inc., P.O. Box 248, Bonham, TX 75418 (Petitioner).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 98-140, adopted July 22, 1998, and released July 31, 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.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this

one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 98-20814 Filed 8-4-98; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 73**

[MM Docket No. 98-139; RM-9312]

Radio Broadcasting Services; King Salmon, AK**AGENCY:** Federal Communications Commission.**ACTION:** Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Zimin Broadcasting Corp. requesting the allotment of FM Channel 221A to King Salmon, Alaska, as that community's first local aural transmission service. Coordinates used for Channel 221A at King Salmon are 58-41-30 NL and 156-39-30 WL.

DATES: Comments must be filed on or before September 21, 1998, and reply comments on or before October 6, 1998.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: John Wells King, Esq., Haley Bader & Potts, P.L.C., 4350 North Fairfax Dr., Suite 900, Arlington, VA 22203-1633.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 98-139, adopted July 22, 1998, and released July 31, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC'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 contractor, International Transcription Service, Inc., 1231 20th

Street, NW., Washington, DC 20036, (202) 857-3800.

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For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

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DEPARTMENT OF TRANSPORTATION**Federal Highway Administration****49 CFR Parts 390, 391, 392, 393, 395, and 396**

[FHWA Docket No. FHWA-97-2858]

RIN 2125-AE 22

Federal Motor Carrier Safety Regulations; Definition of Commercial Motor Vehicle**AGENCY:** Federal Highway Administration (FHWA); DOT.**ACTION:** Advance notice of proposed rulemaking (ANPRM); request for comments.

SUMMARY: The Federal Highway Administration is considering amending the Federal Motor Carrier Safety Regulations (FMCSRs) in response to the Transportation Equity Act for the 21st Century (hereinafter referred as "TEA-21"). Section 4008(a) of TEA-21 amends the definition of the term "commercial motor vehicle" (CMV) in 49 U.S.C. 31132(1) to cover vehicles "designed or used to transport more than 8 passengers (including the driver) for compensation." The change could make the FMCSRs applicable to a considerable number of entities, including operators of small commuter vans or airport shuttle buses, not now subject to them. This ANPRM requests comment and information to help the FHWA identify such operators and

determine whether the regulations should be applied to all of them or whether exemptions should be granted.

DATES: Comments must be received on or before October 5, 1998.

ADDRESSES: Submit written, signed comments to FHWA Docket No. FHWA-97-2858, the Docket Clerk, U.S. DOT Dockets, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590-0001. All comments received will be available for examination at the above address from 10 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. David M. Lehrman, Office of Motor Carrier Research and Standards, (202) 366-0994, Mr. Charles E. Medalen, Office of the Chief Counsel, (202) 366-1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 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 each 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 Federal Register Electronic Bulletin Board Service at (202) 512-1661. Internet users may reach the Federal Register's home page at: <http://www.nara.gov/nara/fedreg> and the Government Printing Office's database at: http://www.access.gpo.gov/su_docs.

Background

Section 204 of the Motor Carrier Safety Act of 1984 (MCSA) (Pub. L. 98-554, Title II, 98 Stat. 2832, at 2833) defined a "commercial motor vehicle" as one having a gross vehicle weight rating (GVWR) of 10,001 pounds or more; designed to transport more than 15 passengers, including the driver; or transporting hazardous materials in quantities requiring the vehicle to be placarded. This definition, codified at 49 U.S.C. 31132(1), was the basis for the regulatory definition of a CMV in 49 CFR 390.5, which determines the jurisdictional limits and applicability of most of the FMCSRs. The Senate

Committee on Commerce, Science and Transportation, in a report which accompanied the MCSA stated: "The 10,000-pound limit, which is in the current BMCS (Bureau of Motor Carrier Safety, now the FHWA's Office of Motor Carriers) regulations, is proposed to focus enforcement efforts and because small vans and pickup trucks are more analogous to automobiles than to medium and heavy commercial vehicles, and can best be regulated under State automobile licensing, inspection, and traffic surveillance procedures." S. Rep. No. 98-424, at 6-7 (1984), *reprinted in* 1984 U.S.C.C.A.N. 4785, 4790-91.

Although the MCSA demonstrated congressional intent to focus the applicability of the FMCSRs on larger vehicles, Congress did not repeal Sec. 204 of the Motor Carrier Act of 1935 (Chapter 498, 49 Stat. 543, 546). This statute, now codified at 49 U.S.C. 31502, authorizes the FHWA to regulate the safety of all for-hire motor carriers of passengers and property, and private carriers of property without respect to the weight or passenger capacity of the vehicles they operate.

When the Congress enacted the Commercial Motor Vehicle Safety Act of 1986 (CMVSA) (Pub. L. 99-570, Title XII, 100 Stat. 3207-170) to require implementation of a single, classified commercial driver's license program, it also limited the motor vehicles subject to the program to those designed to transport more than 15 passengers, including the driver (now codified at 49 U.S.C. 31301(4)(B) with slightly different wording). This, too, revealed the congressional policy of applying available Federal motor carrier safety resources to larger vehicles.

The ICC Termination Act of 1995 (ICCTA) (Pub. L. 104-88, 109 Stat. 803, 919) changed the MCSA definition of a commercial motor vehicle. As amended, section 31132(1) defined a commercial motor vehicle, in part, as a vehicle that is "designed or used to transport passengers for compensation, but exclude(s) vehicles providing taxicab service and having a capacity of not more than 6 passengers and not operated on a regular route or between specified places; (or) is designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation." The ICCTA authorized, but did not require, the FHWA to change the FMCSRs accordingly; the agency did not incorporate the amended language into the CMV definition in § 390.5.

Section 4008(a)(2) of TEA-21 (Pub. L. 105-178, 112 Stat. 107, June 9, 1998) again amended the passenger-vehicle

component of the CMV definition in 49 U.S.C. 31132(1).

Commercial motor vehicle is now defined to mean a self-propelled or towed vehicle used on the highways in interstate commerce to transport passengers or property, if the vehicle—

(A) Has a gross vehicle weight rating or gross vehicle weight of at least 10,001 pounds, whichever is greater;

(B) Is designed or used to transport more than 8 passengers (including the driver) for compensation;

(C) Is designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation; or

(D) Is used in transporting material found by the Secretary of Transportation to be hazardous under section 5103 of this title and transported in a quantity requiring placarding under regulations prescribed by the Secretary under section 5103.

Under Sec. 4008(b), operators of the CMVs defined by section 31132(1)(B) will automatically become subject to the FMCSRs one year after the date of enactment of TEA-21, if they are not already covered, "except to the extent that the Secretary (of Transportation) determines, through a rulemaking proceeding, that it is appropriate to exempt such operators of commercial motor vehicles from the application of those regulations."

The FHWA views section 4008 of TEA-21 as a mandate to impose the FMCSRs on previously unregulated smaller capacity vehicles. Although the House Conference Report on the ICCTA definitional change directed the agency not to impose on the States (as grant conditions under the Motor Carrier Safety Assistance Program (MCSAP)) the burden of regulating a new population of carriers covered by the definition, no such restriction is included in TEA-21 or its legislative history. The mandate of TEA-21 is thus stricter than that of the ICCTA. Still, the FHWA is authorized to undertake rulemaking to exempt some of these passenger vehicles from the FMCSRs. One of the purposes of this ANPRM is to ask for information about the potential reach of the TEA-21 definition and comments on the question whether any class of vehicles should be exempted. We would also like to determine whether the term "for compensation" may be interpreted to distinguish among the types of van services currently in existence (see question 6 below).

Request for Comments

The purpose of this ANPRM is to gather information from a broad

spectrum of commenters. While some of the questions are intended for specific audiences, all interested parties are encouraged to answer any of the questions posed. In addition, commenters should include a discussion of any other issues that they believe are relevant to this rulemaking.

1. What types and numbers of passenger carriers that are not currently subject to Federal regulation would be covered by the FMCSRs when the new TEA-21 definition of a CMV becomes effective? For example, are there day care centers or senior citizen facilities/communities utilizing for-hire contractors in interstate commerce? How many car or van pools would be subject to the regulations?

2. What would be the safety benefits of applying the FMCSRs to all interstate operations of for-hire vehicles with a seated passenger capacity of more than 8 passengers (including the driver), as in the TEA-21 definition? Please provide data and information to support your position.

3. What would be the economic impact—positive or negative—of extending the applicability of the FMCSRs to businesses engaged in the interstate operation of vehicles designed or used to transport 9–15 passengers? Keep in mind that the FMCSRs include driver qualifications, medical qualifications, hours of service limits, and vehicle requirements (including inspection, repair and maintenance provisions). Would complying with the FMCSRs impact on current daily business operations and procedures?

4. With the exception of FHWA recordkeeping requirements (e.g., driver qualification files, medical reports, records of duty status, etc.), what provisions of the FMCSRs are not currently met by businesses operating small capacity passenger vehicles in interstate commerce? For example, do these businesses, as a matter of good operating practice, require their drivers periodically to undergo a physical examination? Are there limits to the number of hours that a driver may operate a vehicle? Is there a systematic inspection, repair and maintenance program in place for the vehicles?

5. What would be the incremental cost (if any) of complying with the non-recordkeeping provisions of the FMCSRs for interstate operators of small capacity passenger vehicles?

6. Should the FHWA require States receiving MCSAP funds to make the State equivalents of the FMCSRs applicable to for-hire carriers operating passenger vehicles with a capacity of 9–15 in intrastate commerce? Some States may wish to enforce the revised TEA-

21 definition on businesses operating those vehicles either in interstate or intrastate commerce, or both. The FHWA requests each State to indicate whether it already regulates this class of vehicles or whether it would adopt the new TEA-21 definition voluntarily. We recognize that many State MCSAP agencies would need additional legislative authority to adopt the new definition; we are simply asking for their best guess as to the reaction of their legislatures to such a proposition.

An issue which requires clarification is the meaning of “for compensation.” If a hotel offers an airport shuttle service to its paying guests, yet passes the cost of such service on to the guest without itemizing it on the bill, is that transportation “for compensation?” If a van-pool requires each passenger to contribute his/her proportionate share of expenses, is that transportation “for compensation?” States, other governmental entities, and any interested parties are invited to offer their comments regarding an appropriate application of “for compensation.”

7. How would States likely to adopt the new TEA-21 definition enforce it? For example, would the State restrict enforcement to roadside inspections of the vehicles and drivers? Would more personnel be required?

8. For State agencies and industry associations that have statistics on the use of vehicles designed or used to transport between 9 and 15 passengers in interstate commerce, approximately how many additional businesses would be subject to the FMCSRs or State equivalent under the amended statutory definition of a CMV? How many drivers are employed by these businesses and how many vehicles are operated by them?

9. In light of the fact that TEA-21 provides the FHWA with explicit direction to apply the FMCSRs to smaller capacity passenger vehicles designed “or used” to carry passengers, what effect do you foresee if the FHWA’s current regulatory definition at § 390.5 were so changed? (Use the above questions as a reference when evaluating the impact.)

All commenters are asked to provide information, data, and recommendations, based upon their own experience with transportation issues, to assist the FHWA in evaluating the potential safety benefits and the costs of implementing the CMV definition enacted by TEA-21. The FHWA especially encourages the submission of accident data on small passenger vehicles. Since Department of Transportation statistics do not

distinguish between private and commercial light weight vehicles, such data would be useful if available.

Rulemaking Analyses

All comments received before the close of business on the comment closing due date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, the FHWA will also continue to file relevant information in the docket as it becomes available after the comment period closing date, and interested persons should continue to examine the docket for new material.

Executive Order 12866 (Federal Regulation) and DOT Regulatory Policies and Procedures

In this rulemaking, the FHWA is considering changes to the definition of a commercial motor vehicle which would extend the FMCSRs to vehicles designed or used to carry more than 8 passengers (including the driver), for compensation in interstate compensation as mandated by the TEA-21. The regulatory action under consideration is significant under Executive Order 12866 and significant under the regulatory policies and procedures of the Department of Transportation because of the substantial public interest anticipated if the agency expands the applicability of the FMCSRs to an expanded population of regulated commercial motor vehicles as in the previously cited instances. The potential economic impact of expanding the applicability of the FMCSRs is not known at this time. Therefore, a full regulatory evaluation has not yet been prepared. The agency intends to use the information collected from comments to this docket to determine whether a notice of proposed rulemaking should be developed, and, if necessary, a full regulatory evaluation.

Regulatory Flexibility Act

Due to the preliminary nature of this document and the lack of necessary information on costs, the FHWA is unable at this time to evaluate the effects of the potential regulatory changes on small entities. The FHWA solicits comments, information, and data on these potential impacts.

Unfunded Mandates Reform Act

The FHWA will analyze any proposed rule to determine whether it would result in the expenditure by state, local, and tribal governments, in the aggregate,

or by the private sector, of \$100 million or more in any one year, as required by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532).

Executive Order 12612 (Federalism Assessment)

This action will be analyzed in accordance with the principles and criteria contained in Executive Order 12612 to determine if this action has sufficient federalism implications to warrant the preparation of a federalism assessment. Nothing in this document directly preempts any State law or regulation.

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 of Federal programs and activities do not apply to this program.

Paperwork Reduction Act

This action, if taken beyond the ANPRM stage, would in all likelihood impact existing collection of information requirements for the purposes of the Paperwork Reduction Act of 1995 (49 U.S.C. 3501–3520). Office of Management and Budget (OMB) reviews and approvals would be required if regulatory changes were proposed and promulgated.

National Environmental Policy Act

The agency will analyze this action for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) to determine whether would have any effect on the quality of the environment.

Regulation Identification Number

A regulatory 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

49 CFR Part 390

Highway safety, Highways and roads, Motor carriers, Motor vehicle identification and marking, Reporting and record keeping requirements.

49 CFR Part 391

Highways and roads, Motor carriers—driver qualifications, Motor vehicle

safety, Reporting and record keeping requirements.

49 CFR Part 392

Highway safety, Highways and roads, Motor carriers—driving practices.

49 CFR Part 393

Highways and roads, Motor carriers, Motor vehicle equipment, Motor vehicle safety.

49 CFR Part 395

Global positioning systems, Highways and roads, Highway safety, Motor carriers—driver hours of service.

49 CFR Part 396

Highways and roads, Motor carriers, Motor vehicle maintenance, Motor vehicle safety.

(49 U.S.C. 31132, 31136, and 31502; and 49 CFR 1.48)

Issued: July 27, 1998.

Kenneth R. Wykle,

Federal Highway Administrator.

[FR Doc. 98–20920 Filed 8–4–98; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 391

[FHWA Docket No. FHWA–98–3542]

RIN 2125–AC63

Physical Qualification of Drivers; Medical Examination; Certificate

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The FHWA is seeking comments on a proposal to amend its regulation governing the examination to determine the physical condition of drivers. The FHWA takes this action in response to numerous requests from medical examiners to update and simplify the medical examination form that is currently used. This proposed action is intended to reduce the incidence of errors on such forms and to provide more uniform medical examinations of commercial motor vehicle (CMV) drivers under the Federal Motor Carrier Safety Regulations (FMCSRs). The current Federal physical qualification standards tested by medical examiners and recorded on the form would not be revised in this rulemaking. The FHWA is seeking comments on the proposed form.

DATES: Written comments addressing this rule must be received on or before November 3, 1998.

ADDRESSES: Your signed, written comments must refer to the docket number appearing at the top of this document and you must submit the comments to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, D.C. 20590–0001. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mrs. Sandra Zywockarte, (202) 366–1790, Office of Motor Carrier Standards, for information regarding the rulemaking, or Ms. Judith A. Rutledge, (202) 366–0834, Motor Carrier Law Division, Office of the Chief Counsel, for information regarding legal issues. Federal Highway Administration, Department of Transportation, 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:

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

Background

The authority to require medical certification of CMV driver qualification was originally granted to the Interstate Commerce Commission (ICC) in the Motor Carrier Act of 1935. The authority was transferred to the DOT in 1966 and is currently codified at 49 U.S.C. 31502(b).

The importance of physical qualification of commercial drivers was recognized in 1939 when the first regulatory medical standard was established by the ICC. Those