

2100 M Street, NW., Suite 140,
Washington, DC 20037.

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 contracts are prohibited in
Commission proceedings, such as this
one, which involve channel allotments.
See 47 CFR 1.1231 for rules governing
permissible *ex parte* contact.

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.

Mark N. Lipp,

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

[FR Doc. 86-14266 Filed 6-24-86; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-233, RM-5316]

Radio Broadcasting Services, Fulton, MS

AGENCY: Federal Communications
Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the
substitution of Class C2 Channel 270 for
269A at Fulton, Mississippi, and
modification of the Class A license for
Station WFTA (FM), in response to a
petition filed by Itawamba County
Broadcasting Company, Inc. The
allocation could provide Fulton with a
first Class C2 channel.

DATES: Comments must be filed on or
before August 8, 1986, and reply
comments on or before August 25, 1986.

ADDRESS: Federal Communications
Commission, Washington, D.C. 20554.

In addition to filing comments with
the FCC, interested parties should serve
the petitioners, or their counsel or
consultant, as follows: Ovie E. Sisk,
Sisk Engineering, P.O. Box 549, Fulton,
Mississippi 38843.

FOR FURTHER INFORMATION CONTACT:
Kathleen Scheuerle (202) 634-6530, Mass
Media Bureau.

SUPPLEMENTARY INFORMATION: This is a
summary of the Commission's Notice of
Proposed Rule Making, MM Docket No.
86-233, adopted June 3, 1986, and
released June 17, 1986. The full text of

this Commission decision is available
for inspection and copying during
normal business hours in the FCC
Dockets Branch (Room 230), 1919 M
Street, NW., Washington, DC. The
complete text of this decision may also
be purchased from the Commission's
copy contractors, International
Transcription Service, (202) 857-3800,
2100 M Street, NW., Suite 140,
Washington, DC 20037.

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1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

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

[FR Doc. 86-14268 Filed 6-24-86; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-237, RM-5191]

Radio Broadcasting Services; Greeneville, TN

AGENCY: Federal Communications
Commission.

ACTION: Proposed rule.

SUMMARY: This document requests
comments on a petition by Burley
Broadcasters, Inc., proposing the
allotment of FM Channel 290A to
Greeneville, Tennessee, as that
community's second FM service. A site
restriction of 7.2 kilometers (4.5 miles)
northwest of Greeneville, is required.

DATES: Comments must be filed on or
before August 8, 1986, and reply
comments on or before August 25, 1986.

ADDRESS: Federal Communications
Commission, Washington, DC 20554.

In addition to filing comments with
the FCC, interested parties should serve
the petitioners, or their counsel or
consultant, as follows: Kirk Tollett,
National Communications Consultants,
First National Bank Building, Liberty
Square, Sparta, TN 38583.

FOR FURTHER INFORMATION CONTACT:

Patricia Rawlings (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a
summary of the Commission's Notice of
Proposed Rule Making, MM Docket No.
86-237, adopted June 2, 1986, and
released June 17, 1986. The full text of
this Commission decision is available
for inspection and copying during
normal business hours in the FCC
Dockets Branch (Room 230), 1919 M
Street, NW., Washington, DC. The
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Commission proceedings, such as this
one, which involve channel allotments.
See 47 CFR 1.1231 for rules governing
permissible *ex parte* contact.

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.

Mark N. Lipp,

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

[FR Doc. 86-14269 Filed 6-24-86; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-232, RM-5231]

Radio Broadcasting Services; Omak, WA

AGENCY: Federal Communications
Commission.

ACTION: Proposed rule.

SUMMARY: This document requests
comments on a petition by Okanogan
Valley Broadcasting, Inc., proposing the
substitution of Channel 226C2 for
Channel 224A at Omak, Washington,
and modification of the license of
Station KOMW-FM, Omak,
Washington, to specify operation on
Channel 226C2, as that community's first
wide coverage FM station. A site
restriction of 10 kilometers (6.3 miles)
southwest of the city is required. Also

the proposal requires concurrence by the Canadian government.

DATES: Comments must be filed on or before August 8, 1986, and reply comments on or before August 25, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Okanogan Valley Broadcasting, Inc., P.O. Box 151, Omak, WA 98841.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86-232, adopted June 2, 1986, and released June 17, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

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 1.1231 for rules governing permissible *ex parte* contact.

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.

Mark N. Lipp,

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

[FR Doc. 86-14271 Filed 6-24-86; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-159, RM-4979]

Radio Broadcasting Services; Redfield, SD

AGENCY: Federal Communications Commission.

ACTION: Dismissal of Proposed Rule.

SUMMARY: Action taken herein rescinds the *Notice of Proposed Rule Making* proposing to substitute Channel 279C2 for Channel 279 at Redfield, South Dakota, at the request of Victoria Broadcasting System, Inc. The *Notice* was issued on the premise that no acceptable application specifying Redfield as the community of license was on file. It has now come to the Commission's attention that the application of Mary Verkest (850712TB) was accepted for tendering.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order, MM Docket No. 86-159, adopted June 9, 1986, and released June 17, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Ralph A. Haller,

Acting Chief, Policy and Rules Division Mass Media Bureau.

[FR Doc. 86-14267 Filed 6-24-86; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-236, RM-5187]

Radio Broadcasting Services; Kingston, TN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by William J. Miller proposing the allotment of Channel 241A to Kingston, Tennessee, as that community's first FM service. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Timothy K. Brady, Attorney at Law, 1116 Weisgarber Road, P.O. Box 10566, Knoxville, TN 37939-0566.

DATES: Comments must be filed on or before August 8, 1986, and reply comments on or before August 25, 1986.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86-236, adopted June 2, 1986, and released June 17, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, D.C. 20037.

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 1.1231 for rules governing permissible *ex parte* contact.

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.

Mark N. Lipp,

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

[FR Doc. 86-14274 Filed 6-24-86; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 385

[BMCS Docket No. MC-123; Notice No. 86-6]

Safety Fitness Determination

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: Section 215 of the Motor Carrier Safety Act of 1984 directs the Secretary of Transportation, in

cooperation with the Interstate Commerce Commission, to establish a procedure to determine the safety fitness of owners and operators of commercial motor vehicles, including persons seeking new or additional operating authority as motor carriers. The notice of proposed rulemaking (NPRM) proposes to revise the existing safety rating procedures and add a new procedure that would apply to every motor carrier operating in interstate or foreign commerce who has not previously been assigned a safety rating or who intends to enter the motor carrier industry. Comments are requested regarding the proposed changes. Specific issues where comments are requested are outlined in the "Supplementary Information" section of the preamble to the NPRM.

DATE: Comments must be received on or before August 11, 1986.

ADDRESS: All written comments should refer to the docket number that appears at the top of this document and should be submitted preferably in triplicate to Room 3404, Bureau of Motor Carrier Safety, 400 Seventh Street SW., Washington, DC 20590. The comments received will be available for examination at the above address between 7:45 a.m. and 4:15 p.m. ET, Monday through Friday, except for legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Gary E. Curtis, Bureau of Motor Carrier Safety, (202) 426-1724; or Mrs. Kathleen S. Markman, Office of the Chief Counsel, (202) 426-0346, Federal Highway Administration, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday, except for legal holidays.

SUPPLEMENTARY INFORMATION: On October 11, 1984, Congress passed the Motor Carrier Safety Act of 1984 (Pub. L. 98-554, 98 Stat. 2829)(the Act). The Act was signed into law by the President on October 30, 1984.

This rulemaking action addresses section 215 of the Act, which provides that the Secretary of Transportation, in cooperation with the Interstate Commerce Commission (ICC), shall by rule, after notice and opportunity for comment, establish a procedure to determine the safety fitness of owners and operators of commercial vehicles, including persons seeking new or additional operating authority as motor carriers. The proposed procedure would apply to every motor carrier operating in interstate or foreign commerce.

For those carriers that seek ICC authority, the Act also provides that the

ICC shall find any applicant for motor carrier operating authority unfit if the applicant does not meet the safety fitness requirements established in this rulemaking and shall deny such application.

The FHWA proposes to make revisions to certain sections of the current Part 382 for clarity, to collect safety-related information for all unrated motor carriers, and generally to facilitate implementation of these changes to the Safety Fitness provisions. In addition, FHWA requests comments on whether a separate system should be set-up for ICC applicants particularly those with no previous operating history.

New Program Emphasis for BMCS

The new requirements proposed in this regulation are part of recent enhancements in the Department's motor carrier safety program. BMCS has begun to implement program changes that will significantly broaden its safety monitoring of motor carriers. To better identify problem and high risk motor carriers, BMCS will analyze the available computerized data such as accident reports required to be filed by the carriers with BMCS, and information from: state enforcement audits and roadside inspections of vehicles; contacts and interviews with the carriers by BMCS field personnel, BMCS enforcement actions; and through a questionnaire that will be sent to all unrated carriers. This questionnaire should provide a significant source of information on the estimated 185,000 motor carriers that have never been audited and rated. All unrated carriers will be required to submit the questionnaire as the initial step in the BMCS safety review process to rate and monitor motor carriers.

BMCS will computerize and integrate all the available data from Federal, State, and local sources on the carriers' safety records to assess and monitor the safety performance of all motor carriers—including those that are currently rated and those that are not. BMCS safety specialists will contact and/or visit all unrated carriers whose safety records indicate there may be a safety problem or noncompliance with the safety regulations. This initial contact will be a compliance review of the carrier's safety and maintenance systems—not an in-depth audit of specific records, although examples of records may be requested during a compliance review. As a result of the compliance review, BMCS safety specialists will be able to identify and provide close monitoring and technical assistance to high risk and problem

carriers with the objective of achieving full compliance. Following the on-site visit and based on all available safety information on the carrier, BMCS will assign a safety rating to the carrier. The compliance review and the results of technical assistance and monitoring will also determine if enforcement action is necessary. A separate in-depth audit of the carriers' records will be done to collect evidence for an enforcement action when necessary.

These improvements to the motor carrier program rely heavily on data availability. The Department has proposed to Congress to increase significantly the grant funds available to the States to enhance their motor carrier safety programs. Under this grant program, the Motor Carrier Safety Assistance Program (MCSAP), the States agree to enforce federal or compatible State motor carrier and hazardous materials regulations. This grant program will increase significantly the number of roadside inspections of motor carriers nationwide and will be a major source of standardized, uniform data for BMCS' rating and monitoring processes. A significant part of this program is the electronic sharing of data among States and the BMCS.

Over the next several years a majority of the States will implement fully their enhanced, uniform motor carrier safety programs, set up their computer systems, and make safety data available to BMCS. In the interim, BMCS proposes to issue a one-time questionnaire to collect data on the operations of the unrated carriers. BMCS currently has very little data on the unrated carriers. The questionnaire will help to identify all unrated carriers and provide information on the scope and nature of their operations. The information gathered will be entered into the data system and integrated with any other information on the carrier already in the system to assess and monitor the safety performance of the carrier.

Safety Rating: Current Procedure

The current Part 385, of Title 49, Code of Federal Regulations (cited as 49 CFR Part 385), titled "Safety Ratings," provides that motor carriers, whether or not they are seeking ICC operating authority, are currently assigned a safety rating based upon safety management audits, investigations, and other factors reflecting upon a carrier's compliance with the Federal Motor Carrier Safety and Hazardous Materials Regulations. The rating assigned is primarily based upon evidence of the carrier's current degree of compliance. Consideration is also given to the

carrier's past compliance record, including improvement or lack of improvement over previous audits and roadside inspections, the recommendation of the Federal Highway Administration field staff, the carrier's accident record, and violations of state-related statutes or regulations. In evaluating the foregoing factors, consideration is also given to violations rates, vehicle out-of-service rates, and accident ratios as compared with the average rates for similar motor carriers.

Safety ratings are assigned on a case-by-case basis. While the total number of violations is a factor in assigning safety ratings, greater weight is given to the nature and extent, severity, motive, and the consequences, or possible consequences, of those violations.

Program Goals

Under provisions proposed below, the Bureau of Motor Carrier Safety (BMCS) will begin to acquire information on every motor carrier's operation by requiring each unrated motor carrier to complete a safety fitness questionnaire on a class-by-class basis within the next 3 years. The questionnaire, together with other available information on the carrier's safety record and practices, would help BMCS to assess the safety performance and monitor those carriers and eventually assign them a safety fitness rating.

The goal with respect to the rating scheme is for every motor carrier to have a safety rating assigned following a personal visit and review of its safety procedures and operating results.

The questionnaire is but one part of a broader program to monitor closely motor carriers' compliance through data on the carrier obtained from many sources. This program would be implemented in three phases, as follows: (1) Continue the assignment of safety ratings using information from compliance reviews, enforcement audits, accident reports, and roadside inspection and accident data from the states and BMCS; (2) review the responses to the questionnaire and prioritize BMCS activities toward unrated motor carriers; and (3) enhance and integrate available motor carrier data from all sources for the purpose of continually monitoring the safety records of all carriers.

Proposed Questionnaire

The questionnaire was developed to take advantage of BMCS' analysis of the safety data in its records of the approximately 32,000 motor carriers that have been rated in the past. Using the data on the rated carriers, BMCS is developing safety problem indicators

that are a function of the size of the carrier, total mileage traveled, type of cargoes transported, and accident and violation histories. These indicators will identify carriers whose safety performance is outside the norm (in either direction) for their type, size and location of operation. Based on its program experience, BMCS believes that the information sought will help BMCS establish priorities for on-site compliance reviews of the carriers' safety and maintenance systems. Specific comments are requested on all aspects of the questionnaire, which is attached.

Some of the information requested on the form, such as reportable accidents, is required under the current regulations to be filed with BMCS. Past accident information outside the norms is an indicator of possible systemic problems that could impair a carrier's safety fitness. This information also will bring the carriers that have not previously filed accident reports current with BMCS, and verify the accident history of carriers that have been filing reports. Note, however, that submission of false information on the questionnaire would subject violators to criminal prosecution, and BMCS intends to take action if comparison of the questionnaire data with other information on file indicates such falsification may have taken place.

From a list in the questionnaire, the carrier would check the states in which it operates, the principal types of cargoes and, if applicable, classes of hazardous materials transported. Operational data is requested for each of 3 prior years pertaining to: average number of drivers and power units used, annual commercial vehicle mileage, accident data, number of reportable hazardous materials incidents, citations drivers received for traffic violations, and out-of-service actions against drivers and vehicles by federal, state, or local officials. The annual commercial vehicle mileage and number of accidents meeting the reporting requirements of 49 CFR Part 394 are considered the most critical in this series of data elements. The accident ratio per million miles of travel can be computed from this data and would be an important criterion in establishing the priorities for compliance reviews.

Comments are requested particularly with respect to the reliability of self-reported accident, violation, and mileage data. BMCS intends to make a check of its own and of state files where available to make an independent determination, but there will be cases in which the self-reported information will be the only data available. The recent

accident and violations record will be used principally to determine the priority for the carrier receiving a compliance review. Too many accidents and/or violations, compared to the norm for the carriers' type of operation, could indicate deficiencies in safety systems; too few reported accidents might indicate lack of understanding of or compliance with reporting requirements. No carrier would be rated solely on the basis of this self-reported information, but one whose self-reported record fell outside the norms for its type of operation will receive a higher priority for compliance review. Comments are requested on the value and probable reporting authenticity of these data elements, especially the mileage and accident data. Are there other statistics that should be collected? How can exposure and operational information be gathered in the future? How difficult will it be for a motor carrier to supply this information from its files? Commenters also should suggest alternative methods that could achieve the desired results. In addition, commenters should address whether all carriers, including those already rated, should be required to file the questionnaire.

BMCS is also considering granting some form of amnesty to carriers that provide accident history information in response to the questionnaire to encourage accuracy. This amnesty could be for prior failure to file the required reports. An amnesty provision would "cure" past violators for failure to file the reports. However, it also could affect other enforcement aspects of the BMCS program and commenters should address whether such a provision is appropriate. In addition, the Department also will consider changes to the accident reporting requirements in a separate rulemaking to improve the incidence of accident reporting. Other possible means are available to encourage the submission of accurate reports such as rating a carrier as "unsatisfactory" if it fails to file or giving that carrier a higher priority for a compliance review. In addition, the motor carrier identification number, discussed below, could be used or displayed to indicate that the carrier has filed the questionnaire. Further, and as discussed below, the insurance industry also may provide a source of incentives for carriers to file accurate responses to the questionnaire. Commenters should address these approaches and possible problems or benefits of each and also submit other viable suggestions.

The filing entity is queried about the present amount of financial

responsibility (insurance) in effect to cover public liability, property damage, and environmental restoration. The minimum amount of financial responsibility required can be determined by referring to the types of cargoes transported and the type of motor carrier. Financial responsibility coverage is a prerequisite to commencing and continuing operations. Comments are requested on the necessity and appropriateness of this inquiry and also as to the desirability of requiring carriers to submit copies of their current form MCS-90 or MCS-82 showing compliance with 49 CFR Part 387.

A motor carrier will be required to respond to this questionnaire only one time. After all currently unrated motor carriers have responded to the questionnaire, it will be used only to register and evaluate new entrants into the motor carrier industry.

The BMCS safety specialists will be located in FHWA's Regional and Division field offices. Each safety specialist will be assigned a caseload of motor carriers to track and monitor their compliance. All of the BMCS activities for an individual carrier, such as compliance reviews, complaint investigations, enforcement actions or accident investigations would be channeled through the safety specialist. In addition, as accident data, MCSAP roadside inspection data and other information is collected and analyzed at headquarters, the information pertaining to each safety specialist's caseload will be sent to the safety specialist. This procedure will also give the motor carriers a specific local person to contact with questions or for information on safety regulations and requirements.

If the questionnaire and other information on the carrier indicates a possible safety problem or the need to clarify any information, the carrier would be contacted by the safety specialist. Carriers which appear to have safety problems would be prioritized for compliance review. Other carriers also would be subject to appropriate review.

It is proposed that carriers be classified according to principal cargo transported and assigned a priority basis for receiving the questionnaire. Carriers would generally be assigned to groups based on their potential for a catastrophic accident, the type of commodity being transported and the accident risk factor involved in transporting certain commodities. These accident risks factors were determined from analysis of BMCS accident reports. In some instances, a small segment of

carriers would arbitrarily be included with some other group to maintain the average size of each group. The following groups of carriers have been established in priority order for purposes of receiving the questionnaire.

Group 1 (approximately 21,500)

Carriers Transporting Hazardous materials:

In packages
In bulk
Chemicals, N.O.S.
Passengers
Household goods
New furniture
Motor Vehicles
Mobile Homes
Driveaway-towaway

Group 2 (approximately 14,300)

Carriers Transporting

Produce, fruits
Livestock
Beverages
Meat Products
Grain, feed, hay

Group 3 (approximately 16,100)

Carriers Transporting

Machinery, large
Metal
Building Materials
Oil field equipment
Coal

Group 4 (approximately 16,000)

Carriers Transporting

General freight
Non-refrigerated food
Paper products
Logs, poles, beams
U.S. Mail

Groups 5 through 10

All other categories

Would receive a questionnaire in 6 groups of approximately 20,000 carriers per group.

When the final rule is published in the **Federal Register**, notification will be provided to the first group of carriers required to file the questionnaire. Once the process is implemented, subsequent notices will be issued to notify the industry which group or segment of carriers will next be required to submit the questionnaire. BMCS will send these notices to all known carriers within each grouping and all carriers will be required to file the questionnaire with their appropriate group even if they do not receive a questionnaire from BMCS. For each class of carrier, BMCS also will publish a notice in the **Federal Register** and in other publications to notify carriers of their responsibility to file the questionnaire. Thus, even carriers that do not receive a questionnaire from BMCS will be obligated to file the questionnaire with the appropriate

group. Copies of the form will be available from the state BMCS office. It is suggested that motor carriers be allowed 60 days to complete and return the questionnaire to the BMCS. Since filing the questionnaire is the first step in the BMCS safety review process, we anticipate that carriers that do not respond to the questionnaire could encounter problems with state police, state motor carrier enforcement personnel, insurance companies, and shippers, as well as potential action by BMCS. Comments are requested concerning how we ensure that all carriers become aware of the requirement and file the questionnaire to avoid these problems. We are particularly interested in responses from the insurance industry and state insurance regulatory bodies concerning what steps can and will be taken to help insure that the trucking companies applying for insurance have filed the proposed questionnaire with FHWA. We also are concerned in general about the insurance implications for those carriers that do not respond to the questionnaire, or falsify their responses, or that are rated "unsatisfactory." We anticipate that these carriers may have additional problems with insurance companies and may not be able to meet, where applicable, DOT minimum insurance requirements. Commenters should address the general insurance implications and problems carriers may encounter if they fail to file the questionnaire or falsify responses.

Motor Carrier's Identification Number

Currently when the BMCS discovers and positively identifies a motor carrier operation or a shipper of hazardous materials subject to federal regulation, that entity is immediately entered in the BMCS Computerized Management Information System. The entity is assigned a carrier census identification number (ID Number) or identifier. The ID number serves to provide positive unique identification of the entity and distinguishes among entities having the same or similar names or trade names. This number has previously been used only for internal BMCS recordkeeping. BMCS is proposing using the carrier census number as an industry wide number for all federal and state motor carrier enforcement and monitoring. Comments are requested on this proposal.

The carrier ID number will appear on the questionnaire mailed to a carrier. It would also be shown on each document sent to a carrier. While BMCS will address vehicle identification in a separate rulemaking, comments are

requested on the feasibility and effectiveness of requiring carriers to include the ID number in some fashion, either on certain documents or, where applicable, the exterior of each power unit with its ID number. This would be especially beneficial in coordinating violation data recorded by state and local government enforcement officials. It could serve to authenticate the offender and prevent the violations from being recorded against an innocent carrier. Further, this number could aid in the proper identification of carrier's accidents reported through state or local police to the MCSAP data system. Currently, police accident reports only include the driver's name and it has been difficult in some cases to identify the carrier.

Applicants to ICC for New or Additional Authority

Section 215(d) of the Motor Carrier Safety Act of 1984 requires that the Interstate Commerce Commission (ICC) shall find any applicant for authority to operate as a motor carrier to be unfit if the applicant does not meet established safety fitness requirements and shall deny the application.

For unrated motor carriers applying to ICC for new or additional operating authority, BMCS is considering evaluation of their safety fitness in accordance with the procedures outlined above. That is, such carriers will be required to submit the questionnaire. BMCS also will review information gathered from the BMCS accident reporting system and the states, and in evaluating a carrier's safety fitness.

There are, however, two problem situations on which comments are specifically requested. First, there may be entities applying for new ICC authority who are just starting in business as motor carriers and who may have neither a prior performance record nor a current operation for BMCS to review.

If BMCS required these entities to first obtain a fitness rating this could delay the ICC in granting a safe carrier authority to operate. Such an occurrence would tend to inhibit new entry, and thus be counter to the basic objective of economic deregulation. To break the impasse, BMCS is considering reviewing such an entity's proposed operation along with the experience and qualifications of its management and personnel in order to judge its prospects for becoming a safe motor carrier. BMCS could then make a recommendation to ICC that the entity be issued temporary authority subject to a compliance review after the carrier has been in operation long enough to make such review

meaningful. An applying entity whose proposed operation had safety flaws could be assisted by the BMCS safety specialist to remedy the problem so that a favorable recommendation to the ICC could be made at a later time. Comment is requested on the safety and operational ramification of this concept. Is the number of such new entries likely to be large enough to warrant special treatment? Are they likely to pose sufficient safety problems to warrant such treatment? How could BMCS evaluate their prospects for safety before commencing operations? Should the questionnaire be modified for such carriers, and if so, how? Comments are also requested on whether BMCS should be obligated to complete its initial assessment of the carriers' safety prospects quickly, e.g., within 30 days, to avoid posing an unnecessary barrier to entry.

A second problem area would exist only in the next few years when the questionnaires are being distributed to carriers on a class-by-class basis and BMCS safety specialists are conducting compliance reviews for those carriers identified as presenting the greatest safety risk based on the questionnaire response.

An unrated carrier applying for new or additional ICC authority would also require a high priority for compliance review in order to obtain a safety fitness rating. Would this place them at a competitive disadvantage against the existing carriers in their class who would not yet have been required to answer the BMCS questionnaire? Should such a carrier, particularly one whose class for distribution of questionnaires had not yet come up, be advanced in priority ahead of those carriers who might pose greater safety risks? Should BMCS provide some form of expedited or interim system so that it does not impede safe new entrants from providing service? Should BMCS recommend that ICC grant temporary authority to such carriers based on available information, pending input of additional information? If the ICC is not willing to grant temporary authority, what other approach should BMCS pursue?

Comments are also requested on the feasibility of the ICC issuing limited-term authority conditioned upon the applicant subsequently obtaining a safety rating of satisfactory. After the temporary grant, these carriers would be placed on a priority list for a safety compliance review. If the carrier was subsequently assigned an unsatisfactory safety rating, the operating authority could then be revoked or permanent authority would not be issued.

Comments on this are particularly desired, including whether these procedures should apply to a grant of temporary authority, and opinions as to an appropriate length of time for which temporary authority could be granted. Comments are also requested on whether BMCS should be obligated to conduct a compliance review of such carriers within a short time period, such as 3 months from the carrier's commencement of operations.

In the above discussion, BMCS is considering requiring carriers who seek ICC authority to first obtain a satisfactory rating from BMCS. The proposed rule prohibits carriers who receive an unsatisfactory rating from operating (until they perform remedial action). It does not, however, prohibit other carriers from operating, including the large number of carriers who have not yet been rated. Upon submitting the questionnaire, when due for their class, these carriers could fully comply with the proposed rule, and hence could receive ICC operating authority under section 215(d). BMCS invites comments on whether applicants for ICC authority should be subject to additional restrictions by requiring them to first obtain a satisfactory safety rating. Comments who advocate subjecting these carriers to such a restriction should explain why they feel a safety rating should be required and discuss the competitive effects on the industry of such a requirement.

The FHWA and the ICC established a joint working group to implement section 215 of the Motor Carrier Safety Act of 1984 (the Act). Three members of each agency were designated for this task.

In subsequent meetings and exchange of correspondence, the two agencies provided each other information for use in the rulemaking on safety fitness as well as the ICC's rulemaking under section 226 of the Act concerning certificates of registration for foreign carriers.

The ICC staff has indicated that the filing of a questionnaire with the BMCS for the purpose of obtaining safety rating may create problems in the timely issuance of emergency temporary authorities (ETA's) where the immediacy of transportation need is greatest. The ICC staff are of the opinion that safety rating procedures potentially could impede licensing in a manner not contemplated by the Motor Carrier Safety Act of 1984. The ICC staff suggests that a reasonable accommodation of this concern would be exclusion of ETA applicants from the

safety fitness determination requirements.

Although the BMCS recognizes the urgency and necessity of issuing ETA's in a timely manner, it is of the opinion that an ETA should not be issued, any more so than any other authority, unless the motor carrier is willing and able to conduct a safe operation, nor that the Congress intended otherwise. Therefore, comments are being requested on this issue, and whether there are alternatives that should be considered.

A summary of the revisions referred to above follows: It is proposed that existing Part 385 be given a new heading, Safety Fitness Determination. All proposed sections would be renumbered.

Section-by-Section Discussion

Section 385.1 Purpose and scope. would be a new section containing a brief statement of the purpose of the regulation and a description of the motor carriers to which it applies.

Section 385.3 Definitions. The proposed definition for a safety rating of "conditional" was rewritten for clarification.

The proposed definition for a safety rating of "unsatisfactory" was rewritten to prohibit further operations in interstate or foreign commerce until remedial action has been taken. The carrier is required to certify before operating to the BMCS the remedial action taken and may not operate until such remedial action is taken and certified to BMCS. BMCS states its intention to reaudit a carrier within 6 months of the assignment of an unsatisfactory safety rating to verify compliance with applicable regulations. Operating prior to completing remedial action and notifying BMCS will subject the carrier to criminal or civil sanctions.

Section 385.5. Questionnaire. This is a new section requiring all unrated carriers to file a questionnaire as a first step in the BMCS safety review process. This information will be used to prioritize unrated carriers for compliance reviews leading to safety ratings. The questionnaire will not be incorporated in Part 385; instead, it is attached to this NPRM for the purpose of obtaining comments on the questionnaire from interested parties. Comments are invited on the information that should be solicited in the questionnaire.

Section 385.7 Factors to be considered in determining ratings. This section is amended to include data collected by state enforcement programs and data collected during BMCS compliance reviews. In addition, any failure to file a questionnaire or falsify

answers to the questionnaire will be considered in determining a rating. Comments are invited on the factors proposed for consideration in determining safety.

Section 385.11 Notification of safety ratings. The paragraph advising that carriers would not be furnished notices of their safety ratings except upon request would be deleted since this is covered in § 385.28. The requirement that a requester identify a carrier by its ICC docket number would only apply to ICC authorized carriers.

Section 385.15 Penalty provisions. Carriers must file the questionnaire within 60 days of notification by BMCS, or by the timetable published in the Federal Register for that carriers' class, whichever date is sooner. Carriers will be divided into categories based on their principal cargo and will be notified on a staggered schedule over a three year period. Carriers not on record with BMCS must also file the questionnaire even if a form is not sent to them.

Regulatory Evaluation

The FHWA has determined that this document does not contain a major rule under Executive Order 12291. However, it has been determined that this rulemaking is a significant regulation under the regulatory policies and procedures of the Department of Transportation because of the total estimated indirect benefits. It is anticipated that the direct cost of this rulemaking to the individual applicants will be minimal, since the FHWA proposes to require the reporting of minimum information necessary to make a determination of potential safety fitness. All of the information that will be requested in the questionnaire is information that carriers are already required to keep in their records under current regulations. Commenters should address how easy, difficult, time consuming or expensive the information sought would be to compile and whether any of the proposed questions are ambiguous. The benefits provided by this proposed rule would be lower accident rates and consequently lower insurance premiums. The economic and safety impacts of this proposed rule are further discussed and analyzed in a draft Regulatory Evaluation and Initial Regulatory Flexibility Analysis which have been prepared and are available for inspection in the public docket and may be obtained by contacting Mr. Gary E. Curtis at the address provided under the heading "For Further Information Contact".

Regulatory Flexibility Act

With regard to the assessment of the impact this rule will have on small entities pursuant to the Regulatory Flexibility Act (Pub. L. 96-354), the reasons for, objectives, and legal basis of this action have been previously explained in this notice. In consideration of the potential benefits, it does not appear that this proposed action would have an adverse or disproportionate effect on a number of small entities.

The collection of information requirements contained in this proposed rule is being submitted to the Office of Management and Budget for review under 44 U.S.C. 3504(h).

List of Subjects in 49 CFR Part 385

Highways and roads, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Program Number 20.217 Motor Carrier Safety).

In consideration of the foregoing, the FHWA proposes to revise 49 CFR Part 385 to read as set forth below.

Issued on: June 18, 1986.

Kenneth L. Pierson,
Director, Bureau of Motor Carrier Safety.

PART 385—SAFETY FITNESS DETERMINATION

Subpart A—Safety Ratings

Sec.

- 385.1 Purpose and scope.
- 385.3 Definitions of motor carrier safety rating.
- 385.5 Questionnaire.
- 385.7 Factors to be considered in determining ratings.
- 385.9 Determination of safety ratings.
- 385.11 Notification of safety ratings.
- 385.13 Review of safety ratings.
- 385.15 Penalty provisions.

Authority: Sec. 215, Pub. L. 98-554, 98 Stat. 2829; 49 U.S.C. 504(b) and 3102; 49 CFR 1.48 and 301.60.

Subpart A—Safety Ratings

§ 385.1 Purpose and scope.

This subpart prescribes procedures that apply to the Federal Highway Administration's Bureau of Motor Carrier Safety (BMCS) when:

(a) Assigning safety ratings to motor carriers, including but not limited to applicants for new or additional operating ICC authority who are currently operating as motor carriers

(b) Reporting to the Interstate Commerce Commission (ICC) upon the safety fitness of motor carriers on record with the BMCS having an assigned safety rating of satisfactory, conditional,

insufficient information, or unsatisfactory.

§ 385.3 Definitions of motor carrier safety rating.

For the purposes of this subpart:

Conditional means records indicate noncompliance with one or more safety requirements, but the lack of compliance and the carrier's safety record does not warrant an unsatisfactory rating. The carrier has been informed of areas of noncompliance. The carrier may continue to operate in interstate or foreign commerce but should immediately remedy the deficiencies, and certify to the BMCS the action taken, within 90 days. Continued noncompliance may result in an unsatisfactory rating.

Insufficient information means insufficient information available upon which any other determination can be made.

Questionnaire means a document required to be completed by all unrated motor carriers, including applicants for new or additional operating authority from the Interstate Commerce Commission, as the initial step in the safety review process for obtaining a safety fitness rating.

Satisfactory means records indicate substantial compliance with safety requirements.

Unsatisfactory means records indicate evidence of substantial noncompliance with safety requirements. The entity has been warned of areas of concern. A carrier receiving an unsatisfactory safety rating is prohibited from operating in interstate or foreign commerce until it has taken, and certified to BMCS that it has taken, remedial action. Violators of this requirement will be subject to criminal and/or civil sanctions. BMCS intends to reaudit a carrier within 6 months of the assignment of an unsatisfactory safety rating to verify compliance with applicable federal regulations.

§ 385.5 Questionnaire.

(a) All unrated motor carriers are required to file a questionnaire as the initial step in the BMCS review process. BMCs will use the information submitted in the questionnaire to establish priorities for on-site compliance reviews of the carriers' safety and maintenance systems.

(b) The questionnaire must be in the form and content prescribed by BMCS.

(c) The fully completed questionnaire, form MCS-150, must be filed with the Director, Bureau of Motor Carrier Safety, 400 Seventh Street, SW, Washington, D.C. 20590.

(d) The Chief, Safety Fitness and Enforcement Division, may request clarification of any entry in the questionnaire.

§ 385.7 Factors to be considered in determining ratings.

In determining a carrier's safety rating, the following applicable factors will be considered:

(a) An evaluation of the efficacy of the carrier's systems for assuring safe operation and compliance with the FMCSR, as determined through BMCS carrier compliance reviews.

(b) Violations discovered in BMCS safety management audits during the past 5 years. The BMCS will base its evaluation on the ratio and severity of violations discovered to the extent of the carrier's operation audited, the number of drivers and vehicles checked for compliance, and a comparison of the carrier's record with the records of similar carriers and national data.

(c) Violations discovered during BMCS and state roadside driver/vehicle inspections in the past 5 years. The BMCS will determine and consider the number of out-of-service violations per inspection in comparison with the records of similar carriers and the national average.

(d) The carrier's improvement or lack of improvement over the last 5 years.

(e) Federal violations involving falsification of required safety records.

(f) Federal violations involving failure to submit required reports or to maintain required records.

(g) The recommendations made by the Office of Motor Carrier Safety for the Region in which the motor carrier maintains its principal office address.

(h) The carrier's accident record during the previous 5 years. The BMCS will examine the carrier's reportable accident ratio per million miles of operation in comparison to the accident ratios of similar carriers.

(i) Violations of state safety rules, regulations, standards, and orders applicable to commercial motor vehicle safety when compatible with federal rules, regulations, standards and orders.

(j) Failure to file the questionnaire or falsifying responses to the questionnaire required by this part.

§ 385.9 Determination of safety ratings.

(a) Ratings will be determined by the Chief, Fitness and Enforcement Division, Bureau of Motor Carrier Safety, using the factors established in § 385.5.

(b) The Chief, Fitness and Enforcement Division, will select comparative carriers based on one or more of the following identifiers:

(1) Commodity transported,

(2) Type of operation, and/or
(3) Size of carrier by number of power units operated or drivers used.

§ 385.11 Notification of safety ratings.

(a) Ratings will be made available to the ICC by remote computer terminals by entry of the motor carrier's name or ICC assigned docket number. If the rating is "satisfactory" no written confirmation will be furnished. If the rating is "conditional," "unsatisfactory," or "insufficient information," written confirmation will be furnished to the ICC upon its request.

(b) Anyone wishing to obtain a carrier's safety rating must submit a written request to the BMCS identifying the carrier by name, principal office address, and if holding authority from the ICC, the ICC assigned docket number. The BMCS will provide a written response to each request within ten business days. The BMCS will not respond to nonwritten requests. Requests must be addressed to the Director, Bureau of Motor Carrier Safety, Federal Highway Administration, HMC-12, 400 Seventh Street, SW., Washington, DC 20590.

§ 385.13 Review of safety ratings.

(a) Any carrier may petition the Director, BMCS for a review of its safety rating. The petition for review must be accompanied by data the carrier is relying on as the basis for its petition for a change in safety rating.

(b) The Director shall notify the carrier in writing of a decision on a petition for review of the safety rating.

(c) The Director may request the carrier to submit additional data and attend a conference to discuss the safety rating. Failure to provide information in response to any reasonable or lawful request, or failure to attend the conference will result in dismissal of the petition for review of the carrier's safety rating.

§ 385.15 Penalty provisions.

Failure to file the questionnaire within 60 days of receipt, or furnishing misleading information or making false statements upon the questionnaire will subject the offender to the penalties prescribed in Title 49, United States Code, sections 521(b) or 522(b).

Appendix

Form MCS-150 (6/9/86)

Note.—The following appendix will not appear in the Code of Federal Regulations.

Bureau of Motor Carrier Safety,
Federal Highway Administration, 400
Seventh Street, SW., Washington, DC
20590.

Questionnaire**I. Filing entity**

Legal Name _____

Trade Name (if any) _____

Business Address (Street/P.O. Box/Route Number) _____

City _____

State _____

Zip code _____

Business phone (Include Area Code) _____

Person to contact for safety compliance information: _____

Name _____

Title _____

Do you conduct commercial motor carrier operations in interstate or foreign commerce? Yes _____ No _____

How long have you conducted commercial motor carrier operations in interstate or foreign commerce?

_____ Years.

Pursuant to Section 215 of the Motor Carrier Safety Act of 1984 and the regulations codified in Title 49 C.F.R. Part 385, you are required to complete this questionnaire within 60 days. The purpose of this questionnaire is to provide the Federal Highway Administration (FHWA) information on your motor carrier operation.

New carriers should base answers on anticipated activities and should not answer questions marked with an *.

If you have any questions on this form or questions concerning safety in general please contact your nearest BMCS office. Attached to this form is a list of the addresses and phone numbers of the BMCS offices nationwide.

If you no longer conduct operations in interstate or foreign commerce please complete Section I, sign the verified statement at the end of the form, and return this survey in the enclosed envelope. Your name will be deleted from the motor carrier census of active carriers.

II. Background

In which states do you operate in interstate or foreign commerce?

15. Scope of carrier operations (circle):

United States: (U.S.) or possessions: AL
AK AZ AR CA CO CT DE DC FL
GA HI ID IL IN IA KS KY LA
MA MD ME MI MN MO MS MT
NC ND NE NH NJ NM NV NY
OH OK OR PA RI SC SD TN TX
UT VT VA WA WV WI WY GU
PR VI AS

Canada: AB BC MB NB NF NT NS
ON PE PQ SK YT
Mexico: BN CH CI DF DG NL SO

16. Carrier operates:

A. Inter & intrastate

B. Interstate only

C. Intrastate only

17. ICC Docket Nos.:

A. _____

B. _____

C. _____

Which cargoes do you transport? (circle):

18. Cargo classifications:

- A. General freight
- B. Household goods
- C. Metal: sheets, coils, rolls
- D. Motor vehicles
- E. Driveway/towaway
- F. Logs, poles, beams, lumber
- G. Bldg. materials
- H. Mobile homes
- I. Machinery, large objects
- J. Produce, fruit, seafood
- K. Liquid or gas in cargo tanks
- L. Intermodal containers
- M. Passengers
- N. Oilfield equip. or service
- O. Livestock
- P. Grain/feed/hay
- Q. Coal/coke
- R. Suspended meat
- S. New furniture or fixtures
- T. U.S. mail
- U. Chemicals
- V. Commodities in dry bulk
- W. Non-refrigerated foods
- X. Beverages
- Y. Paper products
- Z. Other

III. Carrier historical data:

For each of the past three calendar years beginning with the current calendar year, complete the following sections (A, B & C) for your operations and including those vehicles and drivers that are leased to you:

A. Operational data:

Average number of drivers used: (1) _____
(2) _____ (3) _____

Average number of power units over 10,000 pounds: (1) _____ (2) _____ (3) _____

Total annual commercial vehicle miles: (1) _____
(2) _____ (3) _____

***B. Accident data:**

Number of accidents that meet the minimum reporting requirements for the FMCSR: (1) _____ (2) _____ (3) _____

Number of incidents involving hazardous materials that are reportable to DOT under 49 C.F.R. 171.16: (1) _____ (2) _____ (3) _____

Number of accidents where your drivers or vehicles were cited for contributory violations or were declared at fault: (1) _____
(2) _____ (3) _____

***C. Violation data:**

Number of state and local traffic violations (other than violations involving only parking) for which your trucks or drivers were cited: (1) _____ (2) _____ (3) _____

Number of times your trucks were placed out of service by federal, state, or local officials: (1) _____ (2) _____ (3) _____

Number of times your drivers were placed out of service by federal, state, or local officials: (1) _____ (2) _____ (3) _____

Do you have proof of financial responsibility for the insurance policy(s)? (Check).

— An endorsement for the policy(s) of insurance on Form MCS-90 (90B).

— A surety bond on Form MCS-82(82B).

— Other.

Verified statement:

I, _____, certify under penalty of perjury under the laws of the United States of America, that the information submitted in this questionnaire and all other evidence filed or to be filed is true and correct. Further, I certify that I know that willful misstatements or omissions of material constitutes federal criminal violations punishable under 49 U.S.C. 522(b) by fines up to \$5,000. Additionally, I know that these misstatements may be punishable as perjury under 18 U.S.C. 1621, which provides for fines up to \$2,000 or imprisonment up to five years for each offense.

Signature _____

Date _____

(Title of authorizing official)

[FR Doc. 88-14121 Filed 6-24-86; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration**49 CFR Part 544**

[Docket No. T86-01; Notice 1]

Motor Vehicle Theft Prevention; Insurer Reporting Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice is issued pursuant to section 612 of the Motor Vehicle Information and Cost Savings Act which requires each subject insurer to furnish annual reports to NHTSA. That section requires NHTSA to periodically compile and publish the information provided by the insurers in these reports. These insurer reports are intended to aid the agency in implementing the anti-motor vehicle theft provisions of Title VI, including the requirement in section 614 that the agency submit one report to Congress not later than October 1987 and another not later than October 1990. The October 1990 report is required to include a detailed evaluation of the effectiveness of the Federal motor vehicle theft prevention standard (49 CFR Part 541) and an assessment of whether that standard should be extended to other classes of motor vehicles, such as trucks, vans, and motorcycles.

To carry out these intended purposes, this notice proposes to require that certain insurers report annually on the thefts and recoveries of stolen vehicles that they insure, the rating rules and plans they use to establish the premiums