

laboratory chemicals, many of which were reactive, corrosive, flammable, and/or potentially shock-sensitive.

In July 1988, at the request of the State of New York, the U.S. Environmental Protection Agency (EPA) undertook a limited emergency removal action under CERCLA, et seq., to secure the facility and remove the radioactive sources. EPA provided 24-hour security and initiated measures to stabilize the site. By August 1988, EPA had erected fencing around the perimeter and installed remote monitoring surveillance, a foam fire suppressant system, special vents, and other safety measures. In February 1989, EPA contracted with Chem-Nuclear Systems, Inc. to remove the radium sources and other hazardous materials from the site and transport them to approved disposal facilities. The removal action was completed in October 1989. Approximately 120 Ci of radium in the form of sources, contaminated debris, and loose radium salts and luminous compounds were removed from the site. This material was disposed of at facilities located in Richland, Washington and Beatty, Nevada, both operated by U.S. Ecology.

On February 10, 1989, at EPA's request, the U.S. Agency for Toxic Substances and Disease Registry (ATSDR) issued a Public Health Advisory to alert the public, EPA, and the State of New York of a serious threat to human health, based on the threatened release of radium-226 from the RCC site. In an August 1989 special NPL update, EPA proposed the RCC site for the NPL based on the ATSDR advisory. On November 21, 1989, the RCC site was added to the National Priorities List.

EPA completed a Focused Feasibility Study (FFS) of the site in April 1990. Excessive levels of Rn-222 and Ra-226 remained in the RCC facility, along with various radium contaminated hazardous chemicals. On June 21, 1990, EPA signed a Record of Decision (ROD) selecting a remedy for the RCC site. The ROD called for the following remedial activities at the site: decontamination of the RCC facility; dismantlement of the RCC building; excavation of contaminated soils and subsurface structures; and transport and disposal of wastes to an approved waste disposal facility.

The EPA community relations activities at the site included a public meeting in May 1990 to present the results of the FFS and the preferred alternative for remediation of the site. All public comments received were addressed. A major concern of the public was the disruption to the local

businesses caused by street closings. EPA held subsequent meetings with the local business owners to determine the least obtrusive method for achieving our needs.

The remedial action at the site began in September 1990 with limited mobilization of the Site for surveying purposes. On-site decontamination began on November 16, 1990 and the first shipment of radioactive wastes left the Site on July 11, 1991. The RCC building was decontaminated and dismantled. A portion of an adjoining building, leased by RCC, was fully decontaminated and restored. Dismantling, excavation, and restoration activities were essentially completed by January 1993. Removal of all wastes from the site and revegetation was completed in August 1993. A limited excavation of soils surrounding a sewer line adjacent to the RCC property was conducted during July 1994.

Approximately 812 tons of radioactive soil and debris and 92 cubic feet of radium-contaminated hazardous wastes were transported to the Envirocare of Utah, Inc. facility in Clive, Utah for disposal. Approximately 862 tons of uncontaminated masonry and concrete building debris were transported to the Fresh Kills Landfill on Staten Island, New York for disposal. Other wastes, including approximately 45 tons of elemental lead and 20 tons of structural steel, were transported to the Scientific Ecology Group (SEG), Inc. facility in Oak Ridge, Tennessee for decontamination and recycling to the nuclear industry. Approximately 2.5 Ci of tritium watch faces were transported to the Chem-Nuclear Systems, Inc. facility in Barnwell, South Carolina for disposal. Approximately 36.7 kilograms of radium-contaminated elemental mercury were transported to the University of Tennessee for decontamination, followed by ultimate disposal of the treated residuals at the Chem-Nuclear facility in Barnwell, South Carolina and recycling of the decontaminated elemental mercury. Approximately 1.03 millicuries, associated with a radium calibration source, was transported to Rutgers University for use in radon-generation research. Confirmatory sampling showing the site has been decontaminated below the required levels, that contaminated soils have been excavated and disposed of off-site, and that the site has been backfilled with clean soil, provide further assurance that the site no longer poses any threats to human health or the environment.

EPA, with concurrence of the State of New York, has determined that all

appropriate Fund-financed responses under CERCLA at the Radium Chemical Company site have been completed, and that no further cleanup is necessary.

Dated: September 21, 1994.

Jeanne M. Fox,
Regional Administrator, USEPA Region II.
[FR Doc. 94-24806 Filed 10-5-94; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 94-133, RM-8514]

Radio Broadcasting Services; Cape Girardeau, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Kevin G. Greaser proposing the allotment of Channel 230A to Cape Girardeau, Missouri, as that community's third FM broadcast service. The channel can be allotted to Cape Girardeau without a site restriction at coordinates 37-18-21 and 89-31-05.

DATES: Comments must be filed on or before November 25, 1994, and reply comments on or before December 12, 1994.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Jeffrey D. Southmayd, Southmayd & Miller, 1220 Nineteenth Street NW., Suite 400, Washington, D.C. 20036.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 534-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 94-113 adopted September 23, 1994, and released October 3, 1994. 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, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street NW., Suite 140, Washington, D.C. 20037, (202) 857-3800.

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* 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.

John A. Karousos,

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

[FR Doc. 94-24765 Filed 10-5-94; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 94-114, RM-8515]

Radio Broadcasting Services; Ettrick, VA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Hoffman Communications, Inc., proposing the allotment of Channel 226A to Ettrick, Virginia, as the community's first local aural transmission service. Channel 226A can be allotted to Ettrick in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.3 kilometers (7.6 miles) northwest in order to avoid a short-spacing conflict with Station WFOG(FM), Channel 225B, Suffolk, Virginia. The coordinates for Channel 226A at Ettrick are 37-17-53 and 77-32-53.

DATES: Comments must be filed on or before November 25, 1994, and reply comments on or before December 12, 1994.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: David M. Silverman, Esq., Cole, Raywid & Braverman, 1919 Pennsylvania Avenue NW., Suite 200, Washington, D.C. 20006 (Counsel for petitioner).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 94-114, adopted September 21, 1994, and released October 3, 1994. 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, D.C. The complete text of this decision may also be purchased from the Commission's cop contractor, ITS, Inc., (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 1.1204(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,

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

[FR Doc. 94-24766 Filed 10-5-94; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 391

[FHWA Docket No. MC-91-1]

Qualification Of Drivers; Vision Deficiencies; Waivers

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Determination; request for comments.

SUMMARY: The FHWA announces a Determination which will extend, for thirty days, waivers issued to certain vision-impaired drivers as part of a study instituted in July, 1992. The purpose of the study is to gather information and data to determine whether there should be a change in the current vision standards for operators of commercial motor vehicles (CMVs) in interstate commerce, or provision for individualized waivers. This action is

directed solely at those drivers who had been granted temporary waivers to participate in the previously authorized vision waiver study, who numbered 2,411 as of September 30, 1994. This Notice also proposes to revalidate the waivers, allowing the aforementioned drivers to continue to participate in the study until its conclusion, which will occur on or before March 31, 1996. This revalidation would be based upon the Determination made in this document. This action follows, and is consistent with, the decision of the U.S. Court of Appeals for the D.C. Circuit in the case captioned *Advocates for Highway and Auto Safety v. Federal Highway Administration*, 28 F.3d 1288, D.C. Cir. 1994, which vacated the rule authorizing the temporary waivers and remanded the matter to the agency for further action not inconsistent with the Court's ruling.

DATES: Comments must be received on or before October 21, 1994.

ADDRESSES: Submit written, signed comments to FHWA Docket No. MC-91-1, Room 4232, HCC-10, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: The FHWA has established a special telephone number to receive inquiries regarding this notice. The number is 1-800-832-5660. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal Federal holidays. No Further Waiver Applications Are Required To Be Submitted, Nor Will Any New Waiver Applications For Participation In This Study Be Considered As A Result Of This Action.

SUPPLEMENTARY INFORMATION: Section 206(f) of the Motor Carrier Safety Act of 1984, (MCSA) Pub. L. No. 98-554, 98 Stat. 2832 (codified at 49 U.S.C. 31136(e), formerly 49 U.S.C. app. 2505(f)) allows the Secretary of Transportation to grant waivers from the Federal Motor Carrier Safety Regulations only after a determination that such waivers are not contrary to the public interest and are consistent with the safe operation of CMVs. Historically, except for a limb-handicap waiver program established in 1979 (49 CFR 391.49), the agency had granted no individual waivers to drivers who did

not meet the physical qualification requirements set forth at 49 CFR 391.41.

Current Vision Standard

The current Federal vision standard for CMV drivers requires:

Distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70 degrees in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber.

49 CFR 391.41(b)(10).

This standard has been applied absolutely in the sense that any individual who does not meet the standard is determined to be physically unqualified to drive a CMV in interstate commerce without further consideration of individual ability. Public policy enunciated in the Rehabilitation Act of 1973 (Pub. L. 93-112, 87 Stat. 355, as amended) and the Americans with Disabilities Act of 1991 (Pub. L. 101-336, 104 Stat. 327, as amended) indicates that a preferable standard would allow drivers to demonstrate their individual ability to drive safely, in spite of their vision deficiency. However, because no practical means of testing the ability of an individual with various vision deficiencies to safely operate a CMV were known to exist, except actual driving experience, the agency could not grant waivers and be certain that such waivers were "consistent with the safe operation of commercial motor vehicles" as required by the MCSA. The FHWA determined that a group of drivers did exist who, although they did not meet the standard, had already demonstrated their ability to drive safely. These drivers were either operating in intrastate commerce and subject to a less stringent State vision standard, or were operating, unwittingly or otherwise, in contravention of the existing interstate standard. Adoption of the Federal standard by many States, along with stepped-up enforcement at both the State and Federal levels, exposed these drivers to disqualification determinations. This was not inadvertent, however. Laws enacted over the past ten years have effectively increased resources dedicated to the enforcement of the Federal safety regulations or compatible State regulations by a factor of ten. Congress has insisted on uniform standards consistent with Federal regulations issued pursuant to the MCSA of 1984, and has authorized programs to

encourage states to adopt those standards. Moreover, Federal regulations implementing the Commercial Motor Vehicle Safety Act of 1986 and its commercial driver's license provisions, have further helped detect drivers operating in interstate commerce who did not meet the Federal physical qualification requirements. Because of these efforts, more than 5,000 unqualified drivers have been identified and removed from interstate driving positions. That is, in fact, the intent of establishing minimum Federal standards and insuring they are enforced.

Vision Waiver Study

At the same time that these enforcement efforts were increasing, heightened awareness of the rights of disabled individuals, and the fact that some of the physical qualification standards were absolute in that they permitted no demonstration of ability notwithstanding the physical deficit, caused the FHWA to reexamine its vision standard. Several research studies, although acknowledging that visual capacity was an essential element of safe commercial vehicle operation, had failed to fully resolve the issue of what level of visual capacity would be required to assure safety. The FHWA decided to conduct a further study in an attempt to gather essential information that would lead to an improved standard. The difficulties with some of the previous studies included insufficient subjects and the absence of exposure data. The FHWA believed these difficulties could be overcome, in part, by using as subjects drivers who, although they did not meet the Federal vision standards, had been safely operating CMVs for some time and were now, for the reasons mentioned above, becoming more readily identifiable.

The FHWA announced its vision waiver study in a Notice of Intent to accept applications for waivers on March 25, 1992, (57 FR 10295). The intent of the proposed program was to obtain valuable information on the relationship between visual capacity and the ability to operate a CMV safely. This vision waiver study was initiated as part of an overall regulatory review of the medical qualification standards applicable to interstate CMV drivers. It was also responsive to several Congressional Committee reports accompanying the Americans With Disabilities Act directing the Secretary within two years to "undertake a thorough review of (the driver qualification) regulations to ascertain whether the standards conform with current knowledge * * * and whether

such regulations are valid under this Act." (42 U.S.C. 12101, Pub. L. 101-336, 104 Stat. 327). (See H. Rep. 596, 101st Cong., 2d Sess. 60-61 (1990) (conference report); H. Rep. 485, Part 2, 101st Cong., 2d Sess. 57 (1990) (House Committee on Education and Labor); H. Rep. 458, Part 3, 101st Cong., 2d Sess. 34 (1990) (House Committee on the Judiciary); S. Rep. 116, 101st Cong., 1st Sess. 27-28 (1989) (Senate Committee on Labor and Human Resources).

A further notice with request for comments was published on June 3, 1992, (57 FR 23370), and a notice of final disposition was published on July 16, 1992, (57 FR 31458). The period during which applications for participation in this waiver program would be considered expired on December 31, 1992, after having been extended from September 21, 1992 (57 FR 45002, September 30, 1992). Over 3,700 applications were received.

To assure consistency with safety, the FHWA set minimum requirements which a driver would have to meet before being considered eligible for a waiver. These included visual acuity of at least 20/40 (Snellen) in the better eye, three years driving experience with the vision deficiency, a safe driving record for that period, and a report on the condition of the applicant's vision from an ophthalmologist or optometrist, including an opinion as to the driver's ability to operate a CMV safely with the condition. A safe driving record was defined as the absence of chargeable accidents, no convictions for serious traffic offenses, and no more than two convictions for other moving violations. The agency based its requirement that drivers participating in the study have a three-year safe driving history with their vision impairment upon studies (discussed more fully in "Rationale for the Determination") indicating that past experience can be used to predict future performance, especially when combined with other predictive factors such as geographic location, mileage driven, and conviction history. The agency also relied upon opinions from the medical community that individuals with vision impairments are often able to compensate for that impairment over a period of time. Because of the discrepancy as to how much time is necessary to allow an individual to compensate for an impairment (which generally ranged from several months to a full year), the agency's choice of three years provided added assurance that drivers would have had sufficient time to develop compensatory behavior. It was also the longest period for which driver histories were uniformly

available from State motor vehicle departments (MVD).

Court Decision

The Advocates for Highway and Auto Safety (Advocates) filed suit in the United States Court of Appeals for the D.C. Circuit, requesting a review of the FHWA's notice of final disposition granting waivers to individuals who otherwise did not meet the Federal vision standard required for the qualification of CMV drivers in interstate commerce. The Advocates asserted that the waiver program was in violation of the Administrative Procedures Act (5 U.S.C. 553) because the rule implementing the program was not issued with opportunity for meaningful comment and was otherwise arbitrary, capricious, or not in accordance with law.

A three-judge panel for the D.C. Circuit issued its opinion in the case on August 2, 1994. The Court found that the FHWA's notices of the program did provide for meaningful comment and that the comments received were given consideration. The Court also held that the FHWA's approach, given the apparently conflicting demands, was reasonable, and therefore not arbitrary and capricious. The Court observed, however, that the FHWA "initiated a program to issue temporary waivers to visually impaired drivers in order to procure the hard evidence needed to determine the effect of visual deficiencies on safety. Yet, before it may grant a waiver, the Safety Act required the agency to determine that such waiver * * * is consistent with the safe operation of commercial motor vehicles." 28 F.3d at 1294. The Court found that the agency's "determination that the waiver program will not adversely affect the safe operation of CMVs is devoid of empirical support in the record," 28 F.3d at 1294, and that "the FHWA has failed to meet the exacting requirements of section 2505(f) (now 49 U.S.C. 31136(e))." 28 F.3d at 1294. Consequently, the Court concluded that the FHWA's adoption of the waiver program was contrary to law, and vacated and remanded the rule to the agency.

Rationale for the Determination

This notice of determination is issued in response to the Court's remand. The FHWA has analyzed the Court's decision and its effect on the vision waiver study, and has evaluated evidence that was not before the Court, including considerable data gathered through the vision waiver study during its two years of operation. As of September 30, 1994, there were 2,411

individuals participating in the vision waiver study. Unless the agency acts on the D.C. Circuit Court's remand, the waivers, without which most of these drivers would not be qualified, would have to be rescinded immediately because the decision of the Court, when mandated, will invalidate the existing rule authorizing the waivers.

Generally, a truck driver's ability to operate is demonstrated by possession of a currently valid commercial driver's license or other authorized license, and based upon other safety-related information pertaining to the type of vehicle to be operated. A commercial driver's license or other authorized license is issued after subjecting the driver to knowledge and performance tests usually administered in the course of a few hours. Some employers may add a performance test, or a safe driving probationary period before permanent employment. How safely the driver may operate thereafter is based on compliance with traffic laws and regulations and involvement in accidents.

The drivers accepted for the waiver study had to meet the licensing requirement of their States and any employer-mandated prerequisites, in addition to demonstrating beforehand a safe driving record for three years as required by the Vision Waiver Program.

By allowing these drivers to continue to drive under a waiver program, i.e., in effect, grandfathering them, the FHWA placed itself in the position of receiving information on the relationship between visual capacity and the ability to operate a CMV safely. Because they did not meet existing vision standards, these drivers could not be allowed to operate in interstate commerce, unless they obtained waivers. The Court acknowledged that "this approach may be entirely reasonable," but it found that the FHWA lacked data to support the conclusion that the conditions it imposed on the granting of waivers assured consistency with the safe operation of CMVs.

In order to revalidate the waivers, and to remain consistent with the Court's remand, the FHWA is relying upon several research studies demonstrating the effectiveness of methods to ascertain the probability of an individual experiencing accidents in the future based on accident history. The first major effort in this area was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that accident rates for the same individual exposed to certain risks for two different time periods vary only slightly. (See Bates and Neyman, University of California

Publications in Statistics, April 1952.) Other studies demonstrated theories of predicting accident proneness from accident history coupled with other factors. These factors, such as age, sex, geographic location, mileage driven and conviction history, are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future accidents. (See Weber, Donald C., "Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process," Journal of American Statistical Association, June, 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall accident predictor for both concurrent and nonconcurrent events is the number of single convictions. This California study used three consecutive years of data, comparing the experience of drivers in the first two years with the experience of those same drivers the final year. Copies of the several studies relied upon here have been added to the docket.

Based upon the studies and practices noted above, the FHWA has determined that three years safe driving experience with the vision deficiency not only allowed for sufficient adjustment by drivers to the condition, but also provided for the longest period of experience for which records were uniformly available from which to predict future performance. As noted above, the California study was limited to a two-year base period because, like many jurisdictions, the accumulation of accurate driver histories does not exceed three years. The use of a three-year base period improves the predictability of the future period because the longer the period, the more likely the elimination of random anomalies. (See Bates and Neyman, University of California Publications in Statistics, April 1952.) Therefore, the FHWA believes it has required and applied a sufficiently long period of safe driving to project continued safe driving over a future period of the same duration.

The FHWA accepted only those drivers with no chargeable accidents for the three-year period of most recent driving experience. This translated into no chargeable accidents, as verified through motor vehicle records, in approximately 300 million vehicle miles travelled (VMT), as reported by the applicants. Although the FHWA certainly could not conclude that this rate would remain at zero, some of the studies noted above concluded that the correlation between the accident

experience of the same individual over two different time periods was strongest when the rate of accidents was lowest. Moreover, the FHWA is confident that the chargeable accident rate of the general commercial driving population over three years could not be less than 0. In fact, the chargeable accident rate for the year 1991, the year prior to the inception of the vision study, for the general truck driving population was 0.46 per 1 million vmt.

If the waived drivers were not permitted to continue to drive, they would have to be replaced by other drivers. These "replacement" drivers come from the general commercial driving population, which includes new, inexperienced commercial drivers. The FHWA has established that the chargeable accident rate for the general commercial driving population for the year 1992 well exceeds that of the drivers participating in the vision waiver program. Information about the past performance of new, inexperienced commercial drivers, many of whom are younger in age, does not exist. Studies have shown, however, that younger drivers of passenger vehicles produce the highest accident rates.

Consequently, the agency required a three-year experience factor for applicants to the waiver program as a means of eliminating a similar risk posed by inexperienced commercial drivers. See Wyckoff, D. *Truck Drivers in America*, D.C. Heath & Co., Lexington, Mass. 1979.

The good driving record demonstrated by the waiver applicants not only required the absence of chargeable accidents over a three-year period, but also the absence of serious traffic violations and no more than two minor traffic violations. According to the California Driver Record Study mentioned above, this is the best predictor of future safe driving.

The requirement of three years safe driving experience with the vision deficit severely limited participation by the highest accident-risk age group. Each driver's application was individually examined, any missing information was required to be furnished, and each driver was measured against the waiver standards to assure that all the conditions were met, i.e., individualized determinations were made on the basis of complete data submitted by each applicant, to determine eligibility for participation in the waiver program.

The FHWA now has new, significant data, which had also not been considered by the Court in reaching its decision, to support its present determination. The vision waiver study

has now been in effect since July 1992, and has collected driver safety and performance data periodically for approximately two years. Individuals driving pursuant to waivers are required to submit reports of vehicle miles travelled monthly. They are also required to report any citation for a moving violation involving a CMV and the judicial or administrative disposition of such charge, and, within 15 days of occurrence, any accident involvement whatsoever while operating a CMV. All accident information is verified periodically through each driver's State motor vehicle record (MVR) by the FHWA's contractor, Conwal, Inc. of Falls Church, Virginia. Participants in the waiver program also submitted, prior to their acceptance, detailed information of their individual vital statistics, employment history, current status of driving privilege as recorded on the licensing State's MVR and the license status for the past three years, and expert medical opinion by an ophthalmologist or optometrist as to current visual acuity and its effect on his or her ability to perform the driving task safely. Participating drivers are required to submit annual reports from an ophthalmologist or optometrist attesting to the present condition of their vision. Any loss of vision bringing them below the waiver standard of 20/40 in the better eye results in immediate discharge from the program.

Drivers participating in the program are subject to revocation of their waiver for failure to meet certain reporting requirements or if the vision in their better eye falls below the required standard. The agency strictly holds waived drivers to these requirements and standards. As of September 30, 1994, a total of 201 drivers have had their waivers revoked. Of that number, 21 drivers were revoked for failing to submit an annual medical exam. The remaining 180 drivers were revoked for failing to submit monthly driving reports on time. No drivers have had their waivers revoked for decreasing visual acuity; however, two drivers have voluntarily withdrawn from the program on this basis.

Based upon statistical analysis of this information conducted by the contractor, the agency can conclude that the driving performance of individuals participating in the vision waiver program is better than the driving performance of all CMV drivers collectively, based on data obtained from the General Estimates Service (GES). The GES is a national survey conducted by the National Highway Traffic Safety Administration, and was

selected for use as the best measure of the prevailing national norm relative to large truck accidents.

The Third Interim Monitoring Report, prepared by the contractor responsible for FHWA's vision waiver program, dated June 27, 1994, reported on the cumulative driving performance of those individuals participating in the waiver group between July 1992 and February 1994. During that period, a total of 211 accidents were reported and a total of 136.4 million VMT had been recorded. The number of accidents in this period divided by the VMT give an accident rate of 1.547 accidents per million VMT. The national accident rate for large truck accidents, as reported by the GES for the year 1992, is 2.531 accidents per million VMT. A copy of this report is contained in the docket.

The reports submitted by the drivers are independently verified through periodic records checks with State MVDs. While drivers in the study are required to report all accident involvement, the State MVDs only record accidents warranting reports under existing State requirements. Similarly, the GES data only contain accidents recorded by State MVDs. Therefore, the drivers in the waiver study are held accountable for more accidents than those included in GES statistics.

The FHWA's contractor, which is performing the data collection, the statistical analysis and preparation of the interim reports, was subjected to a peer review of its procedures and methodology, a summary of which is included in the docket. A Fourth Interim Report is in preparation at this time, and covers cumulative activities and mileage through June 30, 1994. A review of the data indicates that the performance of the study group remains relatively unchanged, as the accident rate is only slightly higher than previously reported, i.e. 1.636 accidents per one million VMT. The completed report will be placed in the docket along with all preceding Interim Reports.

FHWA's Determination

Statistical studies mentioned above support the proposition that accident-free performance coupled with low numbers of traffic violations over a three-year period is a reliable predictor of continued safe performance over a similar period in the future. As a condition of admission into the waiver program, each applicant had to demonstrate a three-year period of safe driving performance prior to being admitted into the study group. The performance data obtained from the waived drivers since the study began

confirms the FHWA's determination that the continued operation of the waived group, as provided for in this notice, will not diminish safety. The data also show that this class of drivers performed and is performing more safely than the pool of drivers from which its replacements would have to be drawn, that is, the general driving population. Accordingly, the FHWA has determined that to revalidate waivers, as stated in this notice, for drivers in the class of drivers defined by the study and operating under the conditions of the study is consistent with the safe operation of CMVs.

This evidence, examined in conjunction with the previously available medical and scientific evidence, and detailed driving records provided prior to acceptance into the waiver program and periodically thereafter by each individual participating in the waiver group, clearly indicates that the continued operation of CMVs by the group of drivers currently participating in the waiver program will not adversely affect CMV safety.

The FHWA has also determined that to conduct the waiver study program under the conditions prescribed herein is consistent with the public interest of assuring the physical condition of operators of CMVs is adequate to enable them to operate the vehicles safely and of providing opportunities for drivers with real or perceived visual disabilities to demonstrate their ability to drive safely and continue in their chosen field of occupation.

Finally, the FHWA believes that the information contained in this notice provides a sufficient degree of empirical evidence to satisfy the safety requirement mandated by both the MCSA and the D.C. Circuit Court.

Revalidation of Waivers and Request for Comments

In view of the above, the agency is revalidating the vision waivers possessed by drivers as of September 30, 1994, for thirty days from the date of this notice.

The FHWA is also proposing that this evidence is sufficient to allow those drivers currently participating in the vision waiver study (2,411 as of September 30, 1994) to continue operating CMVs with waivers, subject to the same standards and conditions applicable to the original waivers, for the duration of the study, which shall conclude not later than March 31, 1996. By that date, approximately 93 percent of the drivers presently participating in the study will have completed at least

three years driving in the study program.

The FHWA is requesting comments on this proposal. A short comment period is necessitated by the precarious position in which the drivers participating in the study, as well as the FHWA, are placed by virtue of the Court's decision. If this determination is delayed, individuals who have received a waiver from the application of certain regulations will immediately be subject to irreparable harm in the form of job loss and financial hardship. Moreover, if the agency allows the waiver program to continue without presenting a reasoned analysis and justification, it could be found to be acting contrary to the order of the Court. Finally, this additional period of 15 days for comments will allow for the submission of persuasive reasons why the FHWA should not complete its study by revalidating waivers to the study participants subject to the same standards or conditions.

Public Hearing on the Vision Standard and Waiver Program

Due to the strong public interest surrounding this matter, the FHWA will conduct a public hearing within six months of the date of this notice of determination to explore the remaining issues surrounding the vision standard and the vision waiver program. Examples of issues to be addressed at the public hearing include:

- (1) The relationship of visual capacity to the commercial driving task;
- (2) Identification of research and data helpful in defining the vision standard;
- (3) What additional research is needed to help the FHWA define its vision standard;
- (4) Upon conclusion of the Vision Waiver Program, what should be the driving status of waived drivers, assuming continued safe driving performance.

The FHWA is eager to gain a broader perspective of the public's viewpoint concerning other studies, data and experiences which will enhance the agency's knowledge on the subject. The FHWA is also interested in sharing its data with other researchers and modes which may undertake useful analysis and initiate studies leading to more enlightened approaches to establishing future physical qualification standards, standards that are both necessary and valid to increasing opportunities in the truck-driving profession while ensuring that society's high expectations of CMV safety are realized. Notice of the hearing will be published in the **Federal Register** and will contain further questions to which the agency seeks responses, as well as directions on how

to obtain information about the data collected during the vision waiver study.

Conclusion

The FHWA will publish, within 30 days of the date of publication of this notice, its determination regarding the continuation of the vision waiver program through the proposed March 31, 1996 deadline. This determination will be based upon comments received in response to this notice, as well as all empirical evidence gathered to date.

If the FHWA determines, based upon comments and related information, not to extend the program to such date, the agency will publish its rationale for such determination and the date upon which waived drivers may no longer operate in interstate commerce. Additionally, waived drivers will be notified directly of the agency's decision to terminate the program.

If the FHWA determines, based upon comments and related information, that the waiver program may continue until March 31, 1996, the agency will also publish that determination as well in the **Federal Register**.

Appendix—The Vision Waiver Standards and Conditions

The vision waiver application procedure, standards and conditions are being reproduced here for informational purposes only. The agency is *not* accepting applications for vision waivers at this time.

Applicants for a waiver from the vision qualification requirement were required to submit their applications on plain paper (there is no application form), include all supporting documents, and use the format set forth below. Each information item must have been completed by an appropriate answer or marked "None", or "NA" if not applicable.

Vital Statistics

Name of applicant (first name, middle initial, last name);
Address (street number and name);
City, State, and Zip Code;
Telephone Number (area code and number);
Sex (male or female);
Date of Birth (month, day, and year);
Age;
Social Security Number;
State Driver's License Number (List all licenses held during the three-year period either immediately preceding the date of application, or the three-year period immediately preceding the date you last held a license (after April 1, 1990) to operate a CMV.);
Issuing State;

Driver's License Expiration Date; and Driver's License Classification Code (If not a CDL classification code, specify what vehicles may be operated under such code).

Experience

Note: List separately the number of years and the number of miles driving for each type of vehicle specified below. If you have no experience in a particular type of vehicle, indicate with "0" or "None."

Total number of years driving a commercial motor vehicle;

Number of years driving straight trucks;

Approximate number of miles driving straight trucks;

Number of years driving tractor/trailer combinations;

Approximate number of miles driving tractor/trailer combinations;

Number of years driving buses; and

Approximate number of miles driving buses.

Anticipated Operations After Waiver is Issued

Your employer's/prospective employer's name, address, and telephone number;

The type of vehicle you will operate (straight truck, tractor/trailer combination, bus);

The commodities that will be transported (e.g., general freight, liquids in bulk (in cargo tanks), steel, dry bulk, large heavy machinery, refrigerated products);

The States in which you will drive;

The estimated number of miles you will drive per year;

The estimated number of daylight driving hours per week; and

The estimated number of nighttime driving hours per week;

Experience Factor

An applicant must have accumulated at least three years of experience operating a CMV on a regular basis. If the applicant does not currently hold a commercial license, that experience must have been accumulated during the three years that the applicant most recently held a commercial license after April 1, 1990.

Note: To qualify for a waiver, an applicant must have been vision-impaired during the period from the date of the application back through the date the documented cumulative three-years of driving experience began.

Supporting Documents

The application must include supporting documents for each of the four areas listed below:

(1) You must submit one of the following:

(a) A legible photostatic copy of both sides of the commercial driver's license (CDL) you now possess; or

(b) A legible photostatic copy of both sides of the driver's license (non-CDL) you now possess; or

(c) A legible photostatic copy of both sides of the driver's license you last possessed to operate a CMV after April 1, 1990; or

(d) A certification from the State licensing agency showing the type and effective dates of your last license;

(2) That you have operated a CMV for the three-year period immediately preceding:

(a) The date of the application, if you are currently licensed to drive a CMV; or

(b) The date (after April 1, 1990) you last held a valid license to operate a CMV by submitting the following:

(i) A signed statement from all your present and/or past employer(s) on company letterhead. If letterhead is unavailable, you must obtain a notarized statement from the employer(s). In the event your previous employer(s) are no longer in business, or you were operating as an independent motor carrier, submit a notarized statement, signed by you;

(ii) Information in the statements must indicate if your job was driving a CMV; the type of vehicles you operated; whether it was full-time or part-time employment (part-time employment must be explained in detail); and the dates (month and year) you started and stopped driving a CMV;

(3) A State-issued motor vehicle driving record (MVR) for the period from the date of the application back to the date the documented cumulative three-years of driving experience began, which:

(a) Contains no suspensions, cancellations, or revocations of your driver's license for the operation (moving violations) of any motor vehicle (including your personal vehicle);

(b) Contains no involvement in an accident, as defined in 49 CFR 390.5, for which you received a citation and were subsequently convicted for a moving traffic violation while operating a CMV;

(c) Contains no convictions for a disqualifying offense, as defined in 49 CFR 383.51(b)(2), or more than one serious traffic violation, as defined in 49 CFR 383.5, while driving a CMV which disqualified, or should have disqualified, you in accordance with the driver disqualification provisions of 49 CFR 383.51; and

(d) Contains no more than two convictions for any other moving traffic violations in a CMV; (You must submit an MVR from each State in which you

were licensed during that cumulative three-year period);

Note: The driving record must be furnished by an official State agency, on its letterhead, bear the State seal, or official stamp and be signed by an authorized State official. No other documentation will be accepted. If the MVR shows either convictions for moving violations or accident involvement but does not indicate the type of vehicle operated or the number of miles above the posted speed limit, additional official documentation must be provided by you (e.g., a copy of the citation or accident report, or copies of court records).

Special Note: Any waiver applicant who is arrested or cited for, or convicted of, any disqualifying offense or other moving violation during the period of time the application is pending must immediately report such arrests, citations, or convictions to the Vision Waiver Program, 400 Seventh Street, SW., Washington, DC 20590. Failure to do so may result in a denial or rescission of the waiver. No waiver will be issued while any charge against an applicant, for what would be a disqualifying offense, is still pending. Convictions occurring during the processing of the application will be considered in the overall driving record.

(4) That you have been examined by an ophthalmologist or an optometrist after the FHWA reaches its decision on the reopening of the vision waivers program, and a notice of final disposition announcing such decision has appeared in the Federal Register; and that ophthalmologist or optometrist, in writing, has:

(a) Identified and defined the visual deficiency;

(b) Certified that the visual deficiency has not worsened since the last vision examination required by your State's driver licensing agency;

(c) Certified that your visual acuity is at least 20/40 (Snellen), corrected or uncorrected, in the better eye; and

(d) Certified that in his/her professional opinion, you are able to perform the driving tasks required to operate a commercial motor vehicle.

Note: Do not submit other medical records, bills, etc.

Conditions for Retaining A Vision Waiver Once Issued

There would be special requirements attached to any waiver issued to a vision-impaired driver. These requirements would be imposed to ensure that the FHWA receives the data needed to complete the research effort. The reporting requirements, a six month verification of every waived driver's MVR, and the CDL standards applicable to waived drivers will ensure that unsafe, vision-impaired drivers are removed from operation in the same manner as other unsafe drivers. Waived

drivers will not be afforded any additional privileges that would allow them to operate differently from other CMV drivers in interstate commerce. Each driver would be required to:

(a) Report, in writing, any citation for a moving violation involving the operation of a CMV to the Vision Waiver Program within 15 days following issuance (a photostatic copy of the citation issued must accompany the written report);

(b) Report, in writing, the judicial or administrative disposition of any citation for a moving violation involving the operation of a CMV to the Vision Waiver Program within 15 days following the notice of disposition;

(c) Report, in writing, any accident involvement whatsoever while operating a CMV to the Vision Waiver Program within 15 days following the accident (include State, insurance company, and/or motor carrier accident reports);

(d) Report, in writing, any change of residential address or telephone number to the Vision Waiver Program within 15 days after such a change;

(e) Report, in writing, any change of employer, (include name, address, and telephone number of new employer), or type of vehicle operated to the Vision Waiver Program within 15 days after such a change.

(f) Submit documentation of an annual examination by an ophthalmologist or an optometrist to the FHWA at least 15 days before each anniversary of the waiver issuance date, that you have been reexamined within the past 6 weeks. The documentation must contain the medical specialist's certification that the individual is still eligible under the waiver's vision criteria and the vision deficiency has not worsened since the last vision examination required by the waiver; and

(g) Report to the Vision Waiver Program, by the 15th calendar day of each month (not including the month in which the waiver becomes effective), the following information:

(1) The number of interstate/intrastate miles you drove a commercial motor vehicle (CMV) during the preceding month. For example, if you drove 3,000 miles for the preceding month (July), you must report that information by the 15th day of the next month (August);

(2) The number of daylight hours and the number of nighttime hours you

drove a CMV during the preceding month. For example, if you drove 170 daylight hours and 50 nighttime hours during the preceding month (July), you must report that information by the 15th day of the next month (August); and

(3) The number of days you did not drive a CMV during the preceding month. For example, if you did not drive a CMV a total of 9 days during the preceding month (July), you must report that information by the 15th day of the next month (August).

Note: The monthly report should be mailed within the first few days of each month in order to ensure that the report will be received at the office of the Vision Waiver Program by the 15th day of each month.

If the answer to one or all of the above questions is 0, then state "0" or "none", do not leave any question unanswered or it will be considered "Failure to report," and your waiver is in jeopardy. All documentation described in items (a) through (g) above, must be mailed to the Vision Waiver Program, 400 Seventh Street, SW., Washington, DC 20590. Failure to submit reports within the time periods described above may be cause for revocation of the waiver.

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

Issued on: September 30, 1994.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 94-24802 Filed 10-5-94; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[I.D. 092694A]

Groundfish of the Bering Sea and Aleutian Islands Area

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

ACTION: Notice of availability of an amendment to a Fishery Management Plan (FMP) and request for comments.

SUMMARY: NMFS announces that the North Pacific Fishery Management Council (Council) has submitted Amendment 21a to the FMP for the Groundfish Fishery of the

Bering Sea and Aleutian Islands Area (BSAI) for Secretarial review and is requesting comments from the public. The amendment would establish an area around the Pribilof Islands closed to trawl fishing to protect crab, seabird and marine mammal populations.

DATES: Comments on the FMP amendment should be submitted by November 29, 1994.

ADDRESSES: Comments on the FMP amendment should be submitted to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802 Attn: Lori Gravel, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. Copies of Amendment 21a and the environmental assessment/regulatory impact review prepared for the amendment are available from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510.

FOR FURTHER INFORMATION CONTACT: Ellen R. Varosi, 907-586-7228.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act) requires that each Regional Fishery Management Council submit any FMP or amendment it prepares to the Secretary of Commerce (Secretary) for review and approval, disapproval, or partial disapproval. The Magnuson Act also requires that the Secretary, upon receiving an FMP or amendment, immediately publish a notice that the FMP or amendment is available for public review and comment. The Secretary will consider the public comments received during the comment period in determining whether to approve the FMP or amendment.

If approved, Amendment 21a would establish an area closed to fishing with trawl gear. The area surrounds the waters off St. Paul, St. George, Walrus and Otter Islands (the Pribilof Islands in the BSAI), to protect habitat areas of importance to blue king and Korean hair crab, seabird and marine mammal populations.

Dated: September 29, 1994

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94-24683 Filed 9-30-94; 4:11 pm]

BILLING CODE 3510-22-P