DC 20036 (202) 857–3800. The document is also available via the internet at http://www.fcc.gov/Bureaus/Wireless/Public Notices/1999/index.html.

**Synopsis of Document**

1. In this document, the Wireless Telecommunications Bureau (''Bureau'') requests comment on the construction requirements that the Commission should impose on 800 MHz Specialized Mobile Radio commercial licensees that are part of a wide area system (''wide-area licensees''). The Bureau seeks comment on this matter following the decision by the U.S. Court of Appeals for the District of Columbia in *Fresno Mobile Radio, Inc.* v. *F.C.C.* (165 F.3d 965, DC Cir., Feb 5, 1999) to remand to the Commission for further analysis its decision to adopt construction requirements for incumbent wide-area licensees that differ from those adopted for Economic Area (''EA'') 800 MHz licensees. The court held that the Commission did not adequately explain whether wide-area licensees are sufficiently different from EA 800 MHz or other geographic based licensees to warrant different construction requirements.

2. In this document, the Bureau seeks comment on whether the Commission should adopt on remand the construction requirements that were in effect for wide-area licensees prior to the *Fresno* decision. Section 90.629 of the Commission's rules states the current construction requirements of wide-area licensees. Initially, 800 MHz licensees were able to apply for a period of up to five years to construct and place their system in operation if an extended implementation period was justified. In 1995, the Commission stopped accepting requests for extended implementation, accelerated the termination date of existing implementation periods, and required licensees seeking to retain extended implementation to demonstrate compliance with section 90.629 of the Commission's rules. Because the court held that the Commission failed to adequately explain its rationale for adopting different construction requirements in the 800 MHz band, parties who support the Commission's decision are encouraged to explain fully why the agency's approach is reasonable.

3. In this document, the Bureau also solicits comment on whether the Commission should adopt for wide-area licensees construction requirements similar to those imposed on EA 800 MHz licensees and other licensees that are licensed on a geographic area basis. Parties who believe that construction requirements should be similar to geographic area licensees are encouraged to take into account the differences in the way the Commission licensed wide-area 800 MHz systems (i.e., by site-specific licensing) and geographic area licenses when addressing what should be the appropriate requirements for wide-area licensees. In order to determine whether a wide-area licensee has met the coverage requirements, these parties are also encouraged to address whether the Commission should measure the relevant population based on the entire wide-area, individual EAs located within a wide-area system, or some other alternative. In addition, interested parties are asked to address how the Commission should determine the new timetable for construction of wide-area systems. The Bureau stated that one option would be to adopt the three and five year benchmarks that were adopted for 800 MHz EA licensees, and begin the construction period as of the effective date of the new construction requirements. The Bureau asked for comment on whether the three and five year benchmarks for wide-area licensees would be fair to EA 800 MHz licensees given that wide-area licensees have already had a number of years to construct their systems. The Bureau also requested comment on alternative construction timetables, and on whether the Commission should require a wide-area licensee to construct a minimum number of frequencies throughout its wide-area system.

4. Additionally in this document, the Bureau also permits interested parties to present alternative proposals for construction requirements for wide-area licensees. Parties that do present alternative proposals are asked to consider that their proposals should balance the need to provide wide-area licensees with construction requirements that are not unduly burdensome with the need to ensure that wide-area licensees do not warehouse spectrum or unreasonably delay service to the public. Moreover, parties are asked to address the specific technical differences and similarities associated with constructing commercial wide-area 800 MHz SMR systems, EA 800 MHz systems, and other wireless services that are licensed on a geographic basis, and how these differences and similarities should affect the construction requirements for wide-area licensees.

Federal Communications Commission.

**Jim Schlichting,**

*Deputy Bureau Chief, Wireless Telecommunications Bureau.*

[FR Doc. 99–14835 Filed 6–10–99; 8:45 am]

BILLING CODE 6712–01–P

## DEPARTMENT OF TRANSPORTATION

## National Highway Traffic Safety Administration

## 49 CFR Part 571

## Denial of Petition for Rulemaking; Federal Motor Vehicle Safety Standards

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

**ACTION:** Denial of petition for rulemaking.

**SUMMARY:** This document denies Mr. W. A. Barr's petition to require warning systems on all vehicles to alert operators and the immediate public when a vehicle is not immobilized and may move after the operator exits the vehicle. Based on our analysis of his petition, we conclude that the cost of requiring the system requested by Mr. Barr would far exceed the potential benefits.

**FOR FURTHER INFORMATION CONTACT:** Mr. Chris Flanigan, Office of Safety Performance Standards, NHTSA, 400 Seventh Street, SW, Washington, DC 20590. Mr. Flanigan's telephone number is: (202) 366–4918. His facsimile number is (202) 366–4329.

**Background**

*1980 Defect Investigation of Ford Vehicles*

In 1980, we conducted an extensive investigation (Office of Defects Investigation (ODI) Case No. C8–02) of alleged safety-related defects in model year 1970 through 1979 Ford vehicles. On June 6, 1980, we made an initial determination that a safety-related defect existed in all of those vehicles. We determined that the park gear may not be securely engaged after an attempt to shift; that the transmission may shift to reverse by itself without warning, allowing the vehicle to move while unattended; and that such uncontrolled vehicle movement may result, and had resulted, in injury or death to vehicle occupants or pedestrians. However, the Secretary of Transportation never made a final determination of the existence of a safety-related defect. Instead, this investigation was terminated by a settlement agreement entered into on

December 30, 1980. The settlement agreement required Ford to send both warning letters and self-sticking labels to all owners of the subject vehicles. These letters and labels informed recipients of our determination and reminded them of proper procedures to follow when parking and leaving their vehicles. The proper procedure includes making sure the transmission is in the park position, setting the parking brake, and shutting off the engine.

**Mid-1980's Petitions for Defect Investigation**

On March 6, 1985, the Center for Auto Safety (CFAS) petitioned us to initiate an expedited defect investigation into the failure of automatic transmissions in 1966 through early 1980 Ford vehicles to hold or engage in park. CFAS stated that these vehicles have been the cause of more fatalities and injuries than any other defect since our 1980 settlement with Ford. CFAS believed that, because the terms of this settlement called for reopening the investigation if the warning labels failed to decrease park to reverse incidents, we should do so. CFAS stated that the reason for the supposed ineffectiveness was that the labels were not being placed in a significant number of vehicles. We denied this petition based mainly on the fact that there was no new technical information presented by CFAS which would alter our findings in the 1980 defect investigation. Also, the data showed that the number and rate of park to reverse incidents involving the subject Ford vehicles had declined in every year since the 1980 settlement. ODI compiled a report discussing the rationale for denying CFAS's petition that was published on July 3, 1985 (P85–15–30) (hereafter referred to as ''the 1985 ODI report'').

Mr. Barr petitioned us on December 4, 1986, and again on June 29, 1989, to commence a formal defect investigation to address not only Ford vehicles, but all vehicles with automatic transmissions. In these petitions, Mr. Barr asserted that any movement of a vehicle with no driver and with an automatic transmission which has been placed in the park position occurred because of an ''illusory park'' unless the shift lever was removed from the latched position after the driver exited the vehicle. He further asserted that the possibility of such an illusory park condition constituted a safety-related defect.

Mr. Barr stated that a vehicle's transmission is in an ''illusory park'' position when either the vehicle operator does not fully move the shift lever into the park position or the transmission components are degraded, broken, or maladjusted. He further states that, if a transmission is in illusory park, it will appear to the vehicle operator that the vehicle is immobilized upon exiting the vehicle. Two modes of park to reverse incidents could result when the vehicle is in illusory park. If the vehicle's engine is running, internal forces in the transmission could cause the park system to migrate to the reverse position. As a result, the vehicle would move rearward in powered reverse. If the vehicle's engine is not running and the transmission comes out of park, the vehicle could move forward or backward, depending on the grade of the roadway. Mr. Barr asserts that, unless the shift lever is manually removed from the latched park position after the operator has left the vehicle, any movement of a vehicle with no operator and an automatic transmission occurs because the vehicle was in the ''illusory park'' position.

We denied both of these petitions because there was no reason to expect that any further investigation of this matter would result in a determination that the vehicles in question contained a safety-related defect, because we had already conducted a thorough investigation on this subject for the 1985 ODI report.

**The Current Petition for Rulemaking**

On June 24, 1998, Mr. Barr petitioned us to conduct rulemaking to require a warning system on all vehicles that would alert operators and the immediate public when a vehicle is not immobilized and may move after the operator exits the vehicle. Mr. Barr states that ''it is reasonable that every empty vehicle with an automatic transmission which moves, does so because the selector lever was not in the park slot or was in the park slot but the park system linkage was broken or maladjusted so that the system could not properly place the pawl in its park position.'' He bases this assertion on analysis provided by Ford in response to our investigation. In Ford's response, it states that, if the driver shifts into park, it is impossible for the transmission to ''jump'' or ''slip'' into reverse unless a transmission component is broken or the control system is grossly maladjusted.

As a result of vehicles being placed into ''illusory park,'' Mr. Barr believes that there are 64 fatalities and 650 injuries annually. He derives these numbers first by citing data obtained from the 1985 ODI report. For this report, Fatality Analysis Reporting System (FARS) data for the period of 1975 through 1984 were searched for all incidents which involved driver-less vehicles and in which a pedestrian was killed. This search produced 443 records for an average of 44.3 fatalities per year. Mr. Barr also cites data submitted to us by Ford regarding the CFAS petition (P85–15) which lists fatalities caused by non-Ford vehicles with automatic transmissions. From this list, Mr. Barr extracted only the vehicles that were not contained in the FARS data used in the 1985 ODI report. From this he found an additional 197 fatalities during the same ten year period for an average of 19.7 per year. Adding the annual averages of 44.3 fatalities found in the FARS data to the 19.7 fatalities found in the list Ford submitted gives Mr. Barr his estimate of 64 fatalities per year.

Mr. Barr estimates the injury rate of 650 per year by using data contained in the 1985 ODI report. The report shows that ODI received reports on 4,597 injuries and 412 fatalities as a result of park to reverse incidents in all model year 1966 through 1979 Ford vehicles. This yields a ratio of 11.2 injuries per fatality. By assuming that this Ford vehicle ratio would be similar when comparing injuries to fatalities in all driver-less vehicle incidents, he estimated that the number of injuries would be approximately ten times the number of fatalities, thus coming up with the value of 650 injuries per year.

Because Mr. Barr believes that there is no feasible mechanical fix that would remedy the perceived problem, he petitioned us to implement new requirements for vehicles with automatic transmissions to have warning systems that alert the driver and/or nearby pedestrians when one of three situations occur. First, when the driver opens the driver side door and the transmission shift lever is not latched in park, a warning of this condition would be activated until the driver latches the shift lever in park or closes the door. Second, when the driver opens the driver side door and the park system linkage is broken or maladjusted, another warning annunciating that condition would be activated until the driver deactivates it by opening a manual switch. This switch would be automatically closed when the ignition is next activated. Third, if the driver ignores either of the first two warnings, a loud, audible, exterior warning would be activated to warn the driver and nearby pedestrians that the vehicle is not properly immobilized.

**Agency Analysis of Mr. Barr's Petition**

Based on our analysis of Mr. Barr's petition, we conclude that he has made

a number of assumptions, many of which cause him to substantially overstate the problem size. For instance, in his petition, Mr. Barr asserted that ''it is reasonable that every empty vehicle with an automatic transmission that moves, does so because the selector lever was not in the park slot or was in the park slot but the park system linkage was broken or maladjusted so that the system could not properly place the pawl in its park position.'' The data obtained from the 1985 ODI report that he cites in the petition refer to vehicles in which there was no *driver* present and a pedestrian was killed. This does not necessarily mean that the vehicles were empty. As discussed below, in many of the cases, while they were driverless, there were other passengers present in the vehicles. One of these other passengers may have caused the transmission to move out of the park position by inadvertently bumping the shift lever. Further, if children are left unattended and unrestrained, they could play with the shift lever and take it out of park.

Cases of children moving the shift lever can be avoided by taking a few simple precautions. First, as required by all States, children should be restrained in a vehicle at all times. This would make it more difficult for them to access the shift lever. Also, children should not be left unattended. Second, most States also require that, when a vehicle is left unattended, the vehicle's transmission must be placed in the park position and the parking brake must be engaged. Moreover, many states require that the key be turned to the position which locks the ignition and must be removed. Most owners' manuals also contain these precautions. When these precautions are taken, it is highly unlikely for a passenger to be able to move the vehicle's shift lever out of the park position. And, if a vehicle's transmission was somehow jostled out of park by some means, the parking brake would be set and the engine would be off which would also make it highly unlikely for the vehicle to be involved in a park to reverse incident.

As stated above, we believe that Mr. Barr's estimates of fatalities caused by park to reverse incidents are substantially overstated. He used FARS data for a time span (1975 through 1984) that includes the vast majority of the Ford vehicles that were subject to the 1980 defect investigation. We believe a fair estimate of the current problem should not include a population of old vehicles that had an unusually high incidence of transmission problems in an analysis of the entire vehicle population. The rate of park to reverse incidents in the non-Ford vehicle population was much lower than that of the Ford vehicles during that time span. In fact, for model year 1970 through 1979 Ford vehicles, there were 72 fatalities reported to ODI between 1981 and 1985 that were apparently caused by a park to reverse incident. During this same period of time, a total of 26 such fatalities was reported to ODI that involved model year 1970 through 1979 General Motors (GM), Chrysler, and American Motors Corporation vehicles combined. Thus, the Ford vehicles apparently were involved in almost three times more park to reverse incidents than the next three largest manufacturers combined. For this reason, we believe that using the 1975 through 1984 FARS data will substantially overestimate the average number of fatalities that could be expected to occur in the late 1990's.

In addition, Mr. Barr's use of the 1975–1984 time period misses the effects of a significant amendment to Standard No. 114, Theft Protection. During the 1975–1984 time period examined by Mr. Barr, Standard No. 114 required that vehicles have a key locking system that prevents the vehicle's steering or forward self-mobility, or both, when the ignition key is removed. Significantly, Standard No. 114 at that time did not prohibit systems in which the transmission lever could be shifted when the vehicle is parked with the ignition locked.

That changed with our May 30, 1990, rule amending Standard No. 114 (55 FR 21868). Since September 1, 1992, when the changes became effective, Standard No. 114 has required the key-locking system to prevent removal of the key unless the transmission or transmission shift lever is locked in ''park'' or becomes locked in ''park'' as the direct result of removing the key. This was a significant change that required many manufacturers to redesign their automatic transmissions. Mr. Barr's use of 1975–1984 data completely misses the impacts of this upgrade of the safety standard. We conclude that the failure to consider this upgrade is another cause of Mr. Barr substantially overestimating the number of rollaway crashes.

Mr. Barr also used an inaccurate method in determining the number of annual injuries which occur as a result of park to reverse incidents. He cites our driverless vehicle injury and fatality reports for Ford's 1966 through 1979 model year vehicles and applies this ratio to all other manufacturers' vehicles. As stated above, the Ford vehicles exhibited an unusually high rate of involvement in park to reverse incidents and, therefore, should not be used to estimate the involvement of other non-Ford vehicles. Based on the significantly lower rate of involvement in park to reverse incidents of the non-Ford vehicles, we believe Mr. Barr's assumptions that the rate of injury will be approximately the same in both Ford and non-Ford vehicles and that data from 1975 through 1984 is still valid in the late 1990's caused him to substantially overestimate the expected injuries.

We do, however, recognize that some transmissions may contain defects that have the ability to create unsafe conditions by allowing vehicles to move after the driver believes that he or she has placed the transmission in park. However, we believe that Mr. Barr's approach to remedy these occasional problems is far too costly. His approach would be expensive as manufacturers would have to redesign transmissions to accommodate a sensor system to detect the multiple situations he describes when the transmission is not adequately placed in the park position. Internal and external annunciators would have to be installed that could produce a clear audible warning. Because transmission control systems can be electronically or mechanically-controlled, it is difficult to estimate an exact cost for the system. However, we believe it would exceed $20 per vehicle. With approximately 16,000,000 million vehicles produced annually in the U.S., this would put the annual cost of such a requirement at a minimum of $320,000,000, which would far exceed the likely anticipated benefits of such a requirement.

We will continue to investigate particular makes and models of vehicles on a case-by-case basis where there is information indicating the existence of a possible safety defect. Using this method, we can focus on a specific vehicle's specific problem. For instance, we have conducted defect investigations regarding defective gear selection indicators that may show that the vehicle is in park when actually it is not, water leakage into transmissions which could cause malfunctions, and broken internal components which could also cause malfunctions. In many cases, these investigations have led manufacturers to recall the vehicles to provide a remedy for the problem.

In accordance with 49 CFR part 552, this completes our review of the petition. We have concluded that there is no reasonable possibility that the amendment requested by the petitioner would be issued at the conclusion of a rulemaking proceeding. Accordingly, we deny Mr. Barr's petition.

**Authority:** 49 U.S.C. 30103, 30162; delegation of authority at 49 CFR 1.50 and 501.8.

Issued on: June 7, 1999.

**L. Robert Shelton,**

*Associate Administrator for Safety Performance Standards.*

[FR Doc. 99–14834 Filed 6–10–99; 8:45 am]

BILLING CODE 4910–59–P

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 622

**[ I.D. 052599C]**

## Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources; Reef Fish Resources of the Gulf of Mexico; Public Hearings

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

**ACTION:** Notice of public hearings; request for comments.

**SUMMARY:** The Gulf of Mexico Fishery Management Council (Council) will convene public hearings to receive comments on its ''Draft Amendment 12 to the Fishery Management Plan for Coastal Migratory Pelagic Resources in the Gulf of Mexico and South Atlantic, Including Environmental Assessment and Regulatory Impact Review,'' and ''Draft Amendment 17 to the Fishery Management Plan for Reef Fish Resources, Including Environmental Assessment and Regulatory Impact Review.''

**DATES:** Written comments on the Draft Amendments will be accepted by the Gulf Council through July 14, 1999, but are preferred by July 1, 1999. The public hearings will be held in June. See **SUPPLEMENTARY INFORMATION** for specific dates and times of the public hearings.

**ADDRESSES:** Written comments should be sent to, and copies of the draft amendments are available from, the Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301, North, Suite 1000, Tampa, Florida 33619. The public hearings will be held in Florida, Alabama, and Texas. See **SUPPLEMENTARY INFORMATION** for specific locations.

**FOR FURTHER INFORMATION CONTACT:** Dr. Richard Leard, Senior Fishery Biologist, Gulf of Mexico Fishery Management Council; telephone: (813) 228–2815.

**SUPPLEMENTARY INFORMATION:** Draft Amendment 12 contains provisions for extending the commercial king mackerel permit moratorium for 3 or 5 years from its current expiration date of October 15, 2000, in order to provide time for the Gulf and South Atlantic Councils to develop and implement a controlled access system for the king mackerel fishery. Draft Amendment 17 contains provisions for extending the commercial reef fish permit moratorium by 3, 4, or 5 years from its current expiration date of December 31, 2000, in order to provide time for the Gulf Council to develop and implement a controlled access system for the reef fish fishery.

A total of 4 public hearings on both draft amendments will be held to obtain public comments on these draft amendments. The public comment period for these draft amendments ends on July 14, 1999; however, the Council prefers to receive written comments by July 1, 1999.

Public hearings will be held from 7:00 p.m. to 10:00 p.m. at all of the following locations:

1. Monday, June 14, 1999—City Hall Auditorium, 3001 Municipal Drive, Madeira Beach, FL;

2. Tuesday, June 15, 1999—National Marine Fisheries Service Panama City Laboratory, 3500 Delwood Beach Road, Panama City FL;

3. Wednesday, June 16, 1999—Orange Beach Community Center, 27235 Canal Road, Orange Beach, AL; and

4. Thursday, June 17—Ellis Memorial Library, 700 West Avenue A, Port Aransas, TX.

Copies of the draft amendments can be obtained by calling 813–228–2815.

### Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by June 7, 1999.

Dated: June 7, 1999.

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 99–14903 Filed 6–10–99; 8:45 am]

BILLING CODE 3510–22–F