

**FEDERAL COMMUNICATIONS COMMISSION****47 CFR Part 73**

[DA 09-833; MB Docket No. 08-58; RM-11425]

**Radio Broadcasting Services; Laramie, WY**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; dismissal.

**SUMMARY:** The Audio Division, at the request of Superior Broadcasting of Denver, LLC, and White Park Broadcasting, Inc., the petitioner and counterproponent, respectively, in this proceeding, dismisses the petition for rulemaking and the counterproposal and terminates the proceeding.

**FOR FURTHER INFORMATION CONTACT:** Deborah Dupont, Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Memorandum Opinion and Order*, MB Docket No. 08-58, adopted April 15, 2009, and released April 17, 2009. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. The complete text of this decision also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554, (800) 378-3160, or via the company's Web site, <http://www.bcpweb.com>. The *Memorandum Opinion and Order* is not subject to the Congressional Review Act. (The Commission, is, therefore, not required to submit a copy of this Report and Order to GAO, pursuant to the Congressional Review Act, see U.S.C. 801(a)(1)(A) because the proposed rule was dismissed.)

**List of Subjects in 47 CFR Part 73**

Radio, Radio broadcasting.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. E9-10197 Filed 5-1-09; 8:45 am]

**BILLING CODE 6712-01-P**

**FEDERAL COMMUNICATIONS COMMISSION****47 CFR Part 73**

[DA 09-836; MB Docket No. 09-50; RM-11515]

**Radio Broadcasting Services; Cut Bank, MT**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Audio Division, at the request of College Creek Media, LLC, proposes the substitution of Channel 265C1 for Channel 274C1 at Cut Bank, Montana, to resolve a short-spacing to FM Station KEAU's authorized transmitter site. Channel 265C1 can be allotted consistent with the minimum distance separation requirements of the Commission's Rules with the imposition of a site restriction located 39.4 kilometers (24.5 miles) east of Cut Bank. The proposed reference coordinates for Channel 265C1 at Cut Bank are 48-39-28 NL and 111-47-29 WL. The proposed allotment of Channel 265C1 at Cut Bank is located 320 kilometers (199 miles) from the Canadian Border. Therefore, Canadian concurrence has been requested.

**DATES:** Comments must be filed on or before June 8, 2009, and reply comments on or before June 23, 2009.

**ADDRESSES:** Secretary, Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner as follows: Lee J. Peltzman, Esq., c/o College Creek Media, LLC, Shainis & Peltzman, Chartered, 1850 M Street, NW., Suite 240, Washington, DC 20036.

**FOR FURTHER INFORMATION CONTACT:** Rolanda F. Smith, Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 09-50, adopted April 15, 2009, and released April 17, 2009. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY-A257, 445 Twelfth Street, SW., Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractors, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 1-800-378-3160 or via e-mail <http://www.BCPWEB.com>. This document

does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4).

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, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

**PART 73—RADIO BROADCAST SERVICES**

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

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

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Montana, is amended by removing Channel 274C1 and adding Channel 265C1 at Cut Bank.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. E9-10194 Filed 5-1-09; 8:45 am]

**BILLING CODE 6712-01-P**

**DEPARTMENT OF TRANSPORTATION****National Highway Traffic Safety Administration****49 CFR Part 571**

[Docket No. NHTSA-2009-0064]

**Federal Motor Vehicle Safety Standards; Occupant Crash Protection**

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

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

**SUMMARY:** This document denies a petition for rulemaking submitted by the Alliance of Automobile Manufacturers (the Alliance) requesting that the agency amend the provisions of Federal Motor Vehicle Safety Standard (FMVSS) No. 208, "Occupant crash protection," that apply to the selection of child restraint systems for testing advanced air bag systems. Among other things, the Alliance requested that the agency commit to amending the list of child restraints in Appendix A of FMVSS No. 208 every three years and allow manufacturers the option of certifying vehicles to any edition of Appendix A for five model years after the edition first becomes effective. We are denying these requests because they are not conducive to maintaining the appendix, do not ensure child restraints are representative of the current fleet for testing with advanced air bag systems, and are unnecessarily restrictive.

**FOR FURTHER INFORMATION CONTACT:** Carla Rush, Office of Crashworthiness Standards (telephone 202-366-4583, fax 202-366-2739). For legal issues, contact Deirdre Fujita, Office of Chief Counsel (telephone 202-366-2992, fax 202-366-3820). You may send mail to these officials at the National Highway Traffic Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:**

**I. Background on Appendix A Lead Time**

On May 12, 2000, NHTSA issued a final rule for advanced air bags ("Advanced Air Bag Rule"), that amended FMVSS No. 208 to, among other things, minimize injuries to small adults and young children due to air bag deployment (65 FR 30680; Docket No. NHTSA-00-7013). Under the Advanced Air Bag Rule, in order to minimize the risk to infants and small children from deploying air bags, vehicle manufacturers may suppress an air bag in the presence of a child restraint system (CRS) or provide a low risk deployment (LRD) system. To minimize the risk to children, manufacturers relying on an air bag suppression or LRD system must ensure that the vehicle complies with the suppression or LRD requirements when tested with the CRSs specified in Appendix A of the standard. As part of ensuring the robustness of automatic air bag suppression and LRD systems, the CRSs in the appendix represent a large portion of the CRS market and CRSs

with unique size and weight characteristics. NHTSA stated in the Advanced Air Bag Rule that the list will be updated periodically to subtract restraints that are no longer in production and to add new restraints (65 FR at 30724).

On December 18, 2001, NHTSA published a final rule that responded to petitions for reconsideration of the Advanced Air Bag Rule (66 FR 65376; Docket No. NHTSA 01-11110). Among other matters, to provide sufficient lead time for vehicle compliance, NHTSA stated in that document:

[W]e will specify in the text of any updated appendix that its effective date shall be at least one year from the date of publication. All vehicles certified on or after that effective date will need to comply with the standard using the restraints on the updated list. We believe this one-year leadtime will provide manufacturers with sufficient time to ensure that their vehicles comply \* \* \*.

NHTSA received petitions for reconsideration of amendments made in that December 18, 2001 final rule, including those from the Alliance and from several vehicle manufacturers concerning Appendix A. Among other matters, Mitsubishi requested a two-year phase-in for changes to Appendix A.

NHTSA responded on November 19, 2003 (final rule responding in part to petitions for reconsideration, 68 FR 65179; Docket No. NHTSA-03-16476). The agency stated that it has decided to perform an annual review of Appendix A "with the objective of making appropriate updates" and discussed factors that the agency will consider in deciding whether Appendix A should be updated (68 FR at 65188.) These factors included such things as whether a particular restraint has been a high sales volume model, whether its mass and dimensions are representative of many restraints on the market, whether its mass and dimensions represent outliers,<sup>1</sup> and whether a variety of restraint manufacturers are represented in the appendix. We explained that, by conducting these reviews we ensure that the spectrum of CRSs in the appendix is representative of the CRS population at that time. It would also enable NHTSA to determine the availability of the CRSs and determine any substantial change in design. NHTSA also stated: "Although NHTSA will review the appendix every year, we may not amend it annually." *Id.*<sup>2</sup>

<sup>1</sup> An outlier would be an exceptionally large or small and/or heavy or light CRS that is significantly different than most seats in its class.

<sup>2</sup> NHTSA also amended Appendix A by adding two CRSs that are equipped with components that attach to a vehicle's LATCH system ("Lower Anchors and Tethers for Children"). LATCH is a

The November 19, 2003 final rule also slightly changed the agency's earlier position on lead time, which had been that we would make any change to the appendix effective after one year. The November 2003 final rule stated that, in recognition that manufacturers need to know what CRSs will be included as they design their new models, any change to Appendix A would become effective the next model year introduced one year after publication of the final rule modifying the appendix. The agency expressed concern that "a two-year lead time could result in a greater percentage of the CRSs in Appendix A being removed from production before the amended appendix takes effect," and acknowledged that "the one-year lead time is consistent with the agency's intent that occupant protection detection systems be robust and able to detect any CRS, including those that are relatively new to the market." *Id.* Subsequently, the agency denied Mitsubishi's petition requesting a two-year lead time (February 9, 2005; 70 FR 6777; Docket No. NHTSA-04-18905).

On November 12, 2008, the agency published a final rule that updated Appendix A to replace a number of older CRSs with those that were more available and more representative of the CRSs currently on the market (73 FR 66786; Docket No. NHTSA-08-0168). The final rule continued to call the current appendix "Appendix A," and established an "Appendix A-1" consisting of the updated appendix. The revisions made to establish Appendix A-1 included the deletion of seven existing CRSs, the addition of five new CRSs, and cosmetic replacements for seven existing CRSs. The final rule phased-in the use of the Appendix A-1 CRSs in compliance testing. Under the phase-in, 50 percent of vehicles manufactured on or after September 1, 2009 will be subject to testing by NHTSA using Appendix A-1, and all vehicles tested by NHTSA that are manufactured on or after September 1,

term developed by industry to refer to the standardized user-ready child restraint anchorage system that vehicle manufacturers must install in vehicles under FMVSS No. 225, *Child Restraint Anchorage Systems* (49 CFR 571.225). FMVSS No. 225 (paragraph S5(d)) does not permit vehicle manufacturers to install LATCH systems in front designated seating positions unless the vehicle has an air bag on-off switch. Therefore, only a few vehicles will be tested with LATCH CRSs.

A few other final rules amending Appendix A are not discussed in this section, some of which pertained to extending the lead time for testing vehicles with LATCH-equipped CRSs. For instance, on September 25, 2007 (72 FR 54402), NHTSA published a final rule establishing a test procedure for LATCH-equipped CRSs. That final rule set a compliance date of September 1, 2008, for testing vehicles using the procedure.

2010 will be tested using Appendix A–1.

The agency believed that the phase-in effectively balanced the competing considerations in updating the appendix, namely, the need to have a representative list that ensures the compatibility of suppression and LRD systems with CRSs in the field, while maintaining some stability to minimize the certification burden on vehicle manufacturers. Importantly too, the phase-in accounted for the agency's determination that there was not a significant shift in the CRS characteristics pertinent to air bag occupant sensing performance that compelled an expedited compliance date because of real-world safety benefits that could be gained.<sup>3</sup>

## II. Petition for Rulemaking

On April 27, 2007, the Alliance of Automobile Manufacturers (Alliance),<sup>4</sup> submitted a petition for rulemaking requesting that the agency "amend the provisions of FMVSS No. 208 that apply to the selection of specific CRSs for testing under the provisions of the standard that are intended to protect children from air bag-induced injuries—S19, S21, S23, and S24—and to amend Appendix A to the standard." The petition first suggested that the agency "commit itself to amending Appendix A every three years (rather than annually)." The Alliance stated its belief that three years is a reasonable compromise between the goal of assuring "that the listed CRSs are representative of the CRSs on the market" and the "certification burdens faced by manufacturers" when the appendix is updated. It stated that even though the appendix (at the time of the petition) had not been updated for several years, "the Alliance is not aware of any incidents in which a child in a CRS in the front seat of a vehicle equipped with advanced air bags received a serious injury due to the deployment of an air bag." It also stated that this time frame could have its exceptions if an unanticipated safety need arose, e.g., the introduction of "an entirely new type of CRS that captures a significant portion of the market."

Second, the Alliance requested that the agency allow manufacturers the option of certifying vehicles to any

edition of the appendix for five model years after the edition first becomes effective. It suggested that such a time frame is consistent with the six-year CRS expiration date established by many CRS manufacturers, and the time frames within which vehicle models are redesigned. The Alliance also stated that this would allow manufacturers to reasonably forecast how many of each type of CRS they will need to acquire for compliance and certification purposes. The Alliance stated its belief that the approach will not adversely affect the safety of children.

The agency is denying the petition, for the reasons discussed below.<sup>5</sup> In considering the petition, we have reviewed our earlier views about lead time from the perspective we have gained from experience with advanced air bag sensing systems since the Advanced Air Bag Rule was published. We generally confirm those views, but do simplify our view of lead time issues.

## III. Agency Analysis

### a. Request To Have the Agency Commit To Amending the Appendix Every Three Years

We are denying the petitioner's request that NHTSA amend the appendix every three years "rather than annually." First, the agency has not said that it would amend the appendix annually. NHTSA made clear in the November 19, 2003 document that "Although NHTSA will review the appendix every year, we may not amend it annually."

Second, we confirm our view that annual reviews to the appendix are important and that we intend to continue to review the appendix annually. Annual reviews help us keep the appendix up to date and representative of CRSs currently in the market. The review includes careful consideration of information received by NHTSA in the agency's Ease-of-Use (EOU) consumer information program, which evaluates all CRSs available for sale at retail outlets, and data from NHTSA's FMVSS No. 213 compliance program. An annual review keeps the agency informed of CRS trends and poised to identify new CRSs with unique characteristics that could

possibly challenge an advanced air bag system.

Finally, to the extent that the Alliance requests that we commit to amending the appendix not more frequently than every three years in the absence of "an unanticipated safety need (such as the introduction of an entirely new type of CRS that captures a significant portion of the market)," that request is denied. A commitment of the kind suggested by the petitioner interferes with the agency's ability to manage its rulemaking resources as it deems appropriate, and could hamper our ability to respond quickly to changes in CRS or air bag system designs. The agency would best be able to respond to a safety need if it continues to have full ability to decide when to initiate rulemaking on the appendix to address changes in CRS design or availability, changes in air bag occupant sensing systems, or any other factor that warrants the initiation of rulemaking. Thus, we will not agree to the suggested change.

### b. Request To Allow Manufacturers the Option of Certifying Vehicles to an Edition of the Appendix for Five Model Years After the Edition First Becomes Effective

We are denying the petitioner's request to allow a manufacturer-option of certifying vehicles to any edition of the appendix for five model years after that edition first becomes effective. We anticipate there could be safety issues associated with adopting a set five-year lead time period. A five-year lead time could encumber the agency's ability to ensure that a vehicle advanced air bag system is compatible with a changing CRSs market. The allowance of a five-year certification period, on top of a one to two year rulemaking, could provide an inordinate and potentially unsafe six to seven year time period where a new CRS introduced into the marketplace could be incorrectly identified by a vehicle's advanced air bag system.

Conversely, the agency may find through the annual review process that the CRS market has remained relatively unchanged in design characteristics, yet the appendix should be updated to enhance the availability of the listed CRSs. In that instance, a lead time period of less than five years might be appropriate to facilitate the agency's acquisition and use of CRSs in the appendix. In addition, the request to allow certification to either a current list or one becoming effective in five years would require maintaining two lists of CRSs, which is more burdensome on our enforcement program than maintaining a single list. However, we

<sup>3</sup> There are pending petitions for reconsideration of this final rule. The petitions primarily ask for more lead time to test and certify vehicles to the amended appendix.

<sup>4</sup> The Alliance members at the time of this petition include: BMW Group, DaimlerChrysler, Ford Motor Company, General Motors, Mazda, Mitsubishi Motors, Porsche, Toyota, and Volkswagen.

<sup>5</sup> The Alliance's petition included other requests to amend provisions in FMVSS No. 208 relating to Appendix A. These have been addressed in prior agency documents. For example, a request that we issue a final rule establishing test procedures for LATCh-equipped CRSs was addressed in the July 24, 2007 final rule, *supra*. A request to delete the Britax Expressway ISOFIX from Appendix A was addressed in the November 12, 2008 final rule, *supra*.

do not find the concept of early compliance with an updated list to be without merit.<sup>6</sup> Moreover, flexibility in setting a period in which manufacturers may use either of two lists would enable NHTSA to better manage the resources of its enforcement program. Given the spectrum of potential reasons the appendix might be changed, we do not agree on the appropriateness of standardizing a set lead time period of five years for all future updates of the appendix.

In reviewing the petition, we have noted that the agency's views concerning the appropriate lead time for Appendix A amendments have changed over the years. Originally, at the time of the Advanced Air Bag rule the agency had generally envisioned providing only a one-year lead time for amendments to the appendix (66 FR at 65390). A short time later, in recognition that vehicle manufacturers need to know what CRSs are included in the appendix as they design new model vehicles, NHTSA said that any changes to Appendix A will be effective for the next model year introduced one year after publication of the final rule modifying the appendix (68 FR at 65188). More recently, based in part on more experience with the capabilities of advanced air bag sensing systems recognizing CRSs in the field, in the November 2008 final rule the agency adopted a lead time schedule that allowed extra flexibility for completing certification, permitting a phase-in to assist in the transition from the CRSs in Appendix A to those in Appendix A-1. In doing so, the agency exercised its ability and willingness to achieve a balance between keeping advanced air bag sensing systems current and lessening the certification testing burdens on the vehicle manufacturers.

In future rulemakings on the appendix, we intend to continue the approach taken in the November 2008 final rule that established an implementation date for the new edition of Appendix A (A-1) based on the unique circumstances of the particular rulemaking. We believe that there no longer is a need to have a set one-year lead time for any amendment to the appendix; we believe, moreover, that a determination of lead time is best made within the context of the rulemaking that would amend the appendix, taking into account the circumstances involved

in the particular rulemaking action. While a lead time of five years may be too long for an Appendix A rulemaking in the future, a lead time of just one year may be inappropriate under the circumstances surrounding the rulemaking. In addition, we will also consider the need for the allowance of early and/or phased compliance with a new list against the burden to the agency of maintaining two lists. The agency will address the lead time and early/phased compliance needs and concerns for future Appendix A amendments on a rulemaking-by-rulemaking basis, within the notice and comment rulemaking forum appropriate for making those decisions.

#### IV. Conclusion

NHTSA will continue its process of reviewing the appendix annually to minimize problems with CRS availability and to identify emerging trends in CRS design characteristics. Although NHTSA will review Appendix A annually, we will not necessarily amend Appendix A annually. We will make the determination of whether to engage in rulemaking by considering information such as the factors discussed in the 2003 final rule, including emerging design trends or safety issues that may arise. To the extent that the Alliance requested that the agency commit to a 3-year timeframe for amending Appendix A, we are denying that request. NHTSA is also denying the Alliance's request to allow certification to any version of Appendix A for a fixed five-year time period after a new edition of Appendix A becomes effective. We believe that the agency should maintain its ability to make the determination of lead time in the context of the Appendix A rulemaking proceedings.

In accordance with 49 CFR part 552, this completes the agency's review of the petition. The agency has concluded that there is no reasonable possibility that the amendment requested by the petitioner would be issued at the conclusion of the rulemaking proceeding. Accordingly, the petition is denied.

**Authority:** 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

Issued on: April 28, 2009.

**Stephen R. Kratzke,**  
Associate Administrator for Rulemaking.  
[FR Doc. E9-10098 Filed 5-1-09; 8:45 am]

**BILLING CODE 4910-59-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

RIN 0648-AS25

### Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Tilefish; Amendment 1

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

**ACTION:** Notice of availability of a fishery management plan amendment; request for comments.

**SUMMARY:** NMFS announces that the Mid-Atlantic Fishery Management Council (Council) has submitted Amendment 1 to the Tilefish Fishery Management Plan (FMP) (Amendment 1), incorporating the Final Environmental Impact Statement (FEIS) and the Initial Regulatory Flexibility Analysis (IRFA), for review by the Secretary of Commerce. NMFS is requesting comments from the public on Amendment 1. The proposed measures in Amendment 1 would address issues and problems that have been identified since the FMP was first implemented. These measures are considered a means to achieve the management objectives of the FMP, and include measures to implement an IFQ program.

**DATES:** Comments must be received on or before July 6, 2009.

**ADDRESSES:** An FEIS was prepared for Amendment 1 that describes the proposed action and its alternatives and provides a thorough analysis of the impacts of proposed measures and their alternatives. Copies of Amendment 1, including the FEIS and the IRFA, are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904-6790. You may submit comments, identified by 0648-AS25, by any one of the following methods:

- **Electronic Submissions:** Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>.
- **Fax:** (978) 281-9135, Attn: Timothy Cardiasmenos.
- **Mail:** Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the

<sup>6</sup>Early compliance is permitted in the November 2008 Final Rule with an effective date of January 12, 2009. Furthermore, during the production year beginning September 1, 2009, a manufacturer may certify any percentage above 50 percent of their production to Appendix A-1 and the remainder to Appendix A.