

northwest at petitioner's licensed site. The coordinates for Channel 249C1 at Garden City are North Latitude 33-35-27 and West Longitude 79-02-53. With this action, this proceeding is terminated.

**EFFECTIVE DATE:** October 20, 1997.

**FOR FURTHER INFORMATION CONTACT:** Sharon P. McDonald, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 96-196, adopted August 27, 1997, and released September 5, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857-3800, 1231 20th Street, NW., Washington, DC 20036.

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

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

#### PART 73—[AMENDED]

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

**Authority:** Sections 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

#### § 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under South Carolina, is amended by removing Channel 249C1 from Georgetown and adding Garden City, Channel 249C1.

Federal Communications Commission.

**John A. Karousos,**

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

[FR Doc. 97-24004 Filed 9-10-97; 8:45 am]

BILLING CODE 6712-01-P

#### FEDERAL COMMUNICATIONS COMMISSION

#### 47 CFR Part 73

[MM Docket No. 96-230; RM-8911, RM-9049]

**Radio Broadcasting Services; Levan and Oakley, UT and Green River, WY**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of Windy Valley Broadcasting, allots Channel 256A to Levan, Utah, as the community's first local aural transmission service. See 61 FR 63810, December 2, 1996. In response to a counterproposal filed by MRF Enterprises, the Commission allots Channel 268C1 to Oakley, Utah. In order to accommodate the new service at Oakley, the Commission also substitutes Channel 221C for Channel 268C at Green River, Wyoming. Channel 256A at Levan and Channel 268C at Green River can be allotted in compliance with the Commission's minimum distance separation requirements using the city references coordinates for the respective communities. Channel 268C1 can be allotted to Oakley with a site restriction of 29.2 kilometers (18.1 miles) east. The coordinates for Channel 256A at Levan, Utah, are 39-33-18 NL and 111-51-42 WL. The coordinates for Channel 221C at Green River, Wyoming, are 41-31-36 NL and 109-28-06 WL. The coordinates for Channel 268C1 at Oakley, Utah, are 40-43-07 NL and 110-57-17 WL. With this action, this proceeding is terminated.

**DATES:** October 20, 1997. The window period for filing applications for Channel 256A at Levan and Channel 268C1 at Oakley, Utah, will open on October 20, 1997, and close on November 20, 1997.

**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 96-230, adopted August 27, 1997, and released September 5, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857-3800, 1231 20th Street, NW, Washington, DC 20036.

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

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

#### PART 73—[AMENDED]

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

**Authority:** Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

#### § 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Utah, is amended by adding Levan, Channel 256A.

3. Section 73.202(b), the Table of FM Allotments under Utah, is amended by adding Oakley, Channel 268C1.

4. Section 73.202(b), Table of FM Allotments under Wyoming, is amended by removing Channel 268C and adding Channel 221C at Green River.

Federal Communications Commission.

**John A. Karousos,**

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

[FR Doc. 97-24003 Filed 9-10-97; 8:45 am]

BILLING CODE 6712-01-P

#### DEPARTMENT OF TRANSPORTATION

#### National Highway Traffic Safety Administration

#### 49 CFR Part 580

[Docket No. 87-09, Notice 16]

RIN 2127-AG83

#### Odometer Disclosure Requirements; Exemptions

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Interim final rule; request for comments.

**SUMMARY:** This interim final rule amends 49 CFR Part 580 by establishing a new § 580.17, by repromulgating the exemptions for certain categories of vehicles from odometer disclosure requirements now located in § 580.6, and by moving the exemptions to the new § 580.17. This interim final rule also revises the authority citation for part 580 to reflect Public Law 104-205.

The agency is taking this action pursuant to recent Federal legislation affirming the agency's exemption authority. Pub. L. 104-205 (Sept. 30, 1996). The repromulgation is necessitated by a recent United States Court of Appeals decision that has raised questions about NHTSA's authority to exempt categories of vehicles from the Federal odometer disclosure requirements.

This document is published as an interim final rule, to be effective immediately on publication in the **Federal Register**. NHTSA is requesting comments on this rule. At the close of the comment period, NHTSA will publish a document responding to the comments and, if appropriate, amending the provisions of this rule.

**DATES:** This rule is effective immediately upon publication in the

**Federal Register.** Comments on this rule are due not later than October 14, 1997.

**ADDRESSES:** Written comments should refer to the docket number of this notice and should be submitted to: Docket Section, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Room 5109, Washington, DC 20590. (Docket hours are 9:30 a.m. through 4 p.m.)

**FOR FURTHER INFORMATION CONTACT:** Eileen Leahy, Office of the Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Room 5219, Washington, DC 20590. 202-366-5263.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

In August 1988, to implement the Truth in Mileage Act of 1986 ("TIMA"), NHTSA amended the Federal odometer disclosure regulations (49 CFR Part 580). 53 FR 29464 (Aug. 5, 1988). Part 580 had first been promulgated in 1973 pursuant to Title IV of the Motor Vehicle Information and Cost Savings Act of 1972. Pub. L. 92-513.

Between 1973 and 1988, NHTSA amended Part 580 in several respects. Among the amendments it adopted were several which exempted certain categories of vehicles from the requirement that there be a written disclosure of the mileage when there was a transfer of ownership of the vehicle. As of 1988, there were five categories of exempt vehicles: those whose Gross Vehicle Weight Rating (GVWR) exceeded 16,000 pounds ("heavy vehicle exemption"); non-self-propelled vehicles (e.g., trailers); vehicles over 25 years old ("older vehicle exemption"); vehicles sold directly by a manufacturer to an agency of the Federal government pursuant to contractual specifications; and vehicles being transferred prior to their first purchase for purposes other than resale. During this time period, several courts ruled on the validity of the heavy vehicle exemption, with mixed results. See *Mitchell v. White Motor Corp.*, 627 F. Supp. 1241 (M. D. Tenn. 1986); *Davis v. Dils Motor Co.* 566 F. Supp. 1360 (S. D. W. Va. 1983); *Lair v. Lewis Service Center*, 428 F. Supp. 778 (D. Neb. 1977); *W. W. Wallwork, Inc. v. Duchscherer*, 501 N.W. 2d 751 (N. D. 1993).

The agency considered these exemptions again when it proposed the amendments to Part 580 to implement TIMA. It adopted them as part of the 1988 amendments to Part 580, with no changes except for a reduction in the age limit for the older vehicle exemption, from 25 to 10 years. This change was adopted after NHTSA

considered a number of the comments on the NPRM that had advocated substantial reductions in the age of vehicles that would qualify for this exemption. 53 FR 49472 (Aug. 5, 1988).

In 1994, the United States Court of Appeals for the Ninth Circuit ruled that NHTSA lacked authority to adopt heavy vehicle exemption in *Orca Bay Seafoods v. Northwest Truck Sales, Inc.*, 32 F.3d 433 (9th Cir. 1994). In response to the *Orca Bay* decision, Congress included as part of the Department of Transportation and Related Agencies Appropriations Act for Fiscal Year 1997 ("1997 DOT Appropriations Act") a provision which states that "notwithstanding any other provision of law, the Secretary may use funds appropriated under this Act, or any subsequent Act, to administer and implement the exemption provisions of 49 CFR 580.6 and to adopt or amend exemptions from the disclosure requirements for any class or category of vehicles that the Secretary deems appropriate." Section 332, Pub. L. 104-205 (Sept. 30, 1996).

On March 31, 1997, the United States Court of Appeals for the Seventh Circuit held that the older vehicle exemption in Part 580 was invalid because NHTSA did not have statutory authority to exempt categories of vehicles from the odometer disclosure requirements. *Diersen v. Chicago Car Exchange*, 110 F.3d 481 (1997), rehearing denied, 1997 USApp LEXIS 11334 (7th Cir. May 13, 1997). The court's opinion did not mention section 332 of the 1997 DOT Appropriations Act.

##### **Discussion**

Since the *Diersen* decision, NHTSA has received a number of inquiries from state motor vehicle administrators, vehicle auction companies, representatives of dealer associations and others asking whether the exemptions in 49 CFR 580.6 are still valid, and whether or not odometer disclosure statements are now required for the vehicles exempted by that Section. These inquiries show that there is widespread confusion among buyers and sellers of vehicles, as well as those responsible for issuing vehicle titles, as to when an odometer disclosure statement is required. The effect is most acute in the states located within the jurisdiction of the Seventh Circuit (Illinois, Indiana and Wisconsin) and Ninth Circuit (...); but given the interstate nature of many vehicle transfers, the uncertainty affects all states.

In view of the potential harm this uncertainty could cause to the effectiveness of TIMA, and to the titling process in general, NHTSA has

concluded that there is an immediate need to clarify the legal status of the exemptions to Part 580. Accordingly, NHTSA is publishing this interim final rule today, and making it effective immediately upon publication. The interim final rule repromulgates the exemptions formerly contained in section 580.6 in a new section (numbered 580.17), relying on the authority of the 1997 DOT Appropriations Act. This legislation evidences Congress intent that NHTSA have the authority to adopt and amend exemptions to the odometer disclosure requirements of Part 580. In repromulgating the exemptions, the agency reaffirms that the exemptions are consistent with the purposes of TIMA and that effective administration of TIMA will be served best both by maintaining continuity in the exemptions that are recognized, and by ensuring consistency among the states. The agency is requesting comments from the public, as well as from entities that are affected by the exemptions, such as state motor vehicle administrators, automobile auctions, vehicle manufacturers, lease companies and dealers. The comments should address such issues as the relative costs and benefits of retaining or eliminating all or some of the exemptions; and the effect, if any, that retaining or eliminating all or some exemptions would have on reducing odometer fraud.

Pursuant to 5 U.S.C. § 553(b)(B), the agency concludes that there is good cause for adopting this interim final rule without prior notice and opportunity for public comment. Prior notice and public comment are unnecessary in this case because the rule merely repromulgates rules that have already been subject to the notice and comment procedures of 5 U.S.C. § 553(b). The need stated above for prompt agency action to clarify the legal status of these exemptions in light of the confusion caused by the Seventh Circuit's decision in *Diersen* also makes prior notice and opportunity for comment impracticable. As the agency has described above, the public interest now lies in immediate resolution of the uncertainty caused by that decision; further delay would only exacerbate the harmful effects of that confusion.

This rule is exempt under 5 U.S.C. § 553(d)(1) from the general requirement that rules be published not less than 30 days prior to their effective date because it grants an exemption. Accordingly, this rule will be effective immediately upon publication in the **Federal Register**.

## Federalism Assessment

The agency has analyzed this rule in accordance with the principles and criteria contained in Executive Order 12612, and has determined that the interim final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The interim final rule merely repromulgates existing exemptions to the odometer disclosure requirements, and does not alter the effect on the states of existing statutory or regulatory requirements.

## Rulemaking Analyses

### A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has analyzed this rule and determined that it is neither "major" nor "significant" within the meaning of Executive Order 12866 or of Department of Transportation regulatory policies and procedures. Because the agency estimates that this rule would not have a significant impact, it has not prepared a regulatory evaluation.

### B. Regulatory Flexibility Act

The agency has also considered the effects of this action under the Regulatory Flexibility Act. I certify that this action will not have a substantial economic impact upon a substantial number of small entities. Because it is limited to amending the statutory authority for existing exemptions to agency regulations, it does not affect the impact of those regulations on small businesses.

### C. National Environmental Policy Act

The agency has analyzed this rule under the National Environmental Policy Act and determined that it will not have a significant impact on the human environment. Accordingly, it has not prepared an environmental impact statement.

### D. Paperwork Reduction Act

The interim final rule is not a collection of information as that term is defined by OMB in 5 CFR Part 1320. It amends the statutory authority for exemptions to the odometer disclosure requirements in 49 CFR Part 580. Those exemptions do not require the collection of any information. The information collection requirements established by Part 580 have been approved by OMB. (OMB 2127-0047).

### E. Civil Justice Reform

This rule will not have any retroactive effect. States may not adopt laws on disconnecting, altering, or tampering with an odometer with intent to defraud

that are inconsistent with 49 U.S.C. Chapter 327. 49 U.S.C. Chapter 327 does not exempt persons from complying with state laws on disconnecting, altering or tampering with an odometer with intent to defraud. Agency regulations issued under 49 U.S.C. Chapter 327 are subject to judicial review under 5 U.S.C. 704. There is no requirement for a petition for reconsideration or other administrative proceeding before a party may file a suit in court.

## List of Subjects in 49 CFR Part 580

Odometers, consumer protection.

In consideration of the foregoing, 49 CFR Part 580 is amended as follows:

## PART 580—ODOMETER DISCLOSURE REQUIREMENTS

1. The authority citation for 49 CFR Part 580 is revised to read as follows:

**Authority:** 49 U.S.C. 32705; Sec. 332, Public Law No. 104-205; delegation of authority at 49 CFR 1.50(f) and 501.8(e)(1).

### § 580.6 [Redesignated as § 580.17]

2. Section 580.6 is redesignated as § 580.17 and republished without change to read as follows:

### § 580.17 Exemptions.

Notwithstanding the requirements of §§ 580.5 and 580.7:

(a) A transferor or a lessee of any of the following motor vehicles need not disclose the vehicle's odometer mileage:

(1) A vehicle having a Gross Vehicle Weight Rating, as defined in § 571.3 of this title, of more than 16,000 pounds;

(2) A vehicle that is not self-propelled;

(3) A vehicle that is ten years old or older; or

(4) A vehicle sold directly by the manufacturer to any agency of the United States in conformity with contractual specifications.

(b) A transferor of a new vehicle prior to its first transfer for purposes other than resale need not disclose the vehicle's odometer mileage.

(c) A lessor of any of the vehicles listed in paragraph (a) of this section need not notify the lessee of any of these vehicles of the disclosure requirements of § 580.7.

Issued: September 5, 1997.

**Ricardo Martinez,**  
Administrator.

[FR Doc. 97-23991 Filed 9-5-97; 4:50 pm]

BILLING CODE 4910-59-P

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

### 50 CFR Part 622

[Docket No. 970804190-7190-01; I.D. 070997A]

RIN: 0648-AJ89

## Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Vermilion Snapper Size Limit

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

**ACTION:** Interim rule with request for comments.

**SUMMARY:** This rule increases the minimum size limit for vermilion snapper. The intended effect is to reduce overfishing of vermilion snapper in the Gulf of Mexico.

**DATES:** This rule is effective September 14, 1997 through March 10, 1998. Comments must be received not later than October 14, 1997.

**ADDRESSES:** Comments on this interim rule must be mailed to, and copies of documents supporting this action may be obtained from, the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

**FOR FURTHER INFORMATION CONTACT:** Robert Sadler, 813-570-5305.

**SUPPLEMENTARY INFORMATION:** The reef fish fishery of the Gulf of Mexico is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council (Council) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

The Council, by non-unanimous vote, requested that NMFS issue this interim rule to increase the vermilion snapper minimum size limit from 8 to 10 inches (20.3 to 25.4 cm) total length, pending NMFS' review and approval of Amendment 15 to the FMP. Amendment 15 contains a 10-inch minimum size limit and additional details regarding such limit. This size limit responds to the 1996 vermilion snapper stock assessment, the 1997 Addendum to that assessment, and the 1996 and 1997 Reef Fish Stock Assessment Panel (RFSAP) Reports. In those documents, scientists concluded