

of Coney Island Channel bound by a line drawn from Sheepshead Bay Buoy "7" (LLNR 31685), thence southwest to Approach Buoy "1" (LLNR 31655), thence due west to Coney Island Channel Buoy "11" (LLNR 32640), thence due north to Norton Point on Coney Island.

(b) *Effective date.* This regulation is effective on 6 and 7 July 1991 from 11 a.m. to 2:30 p.m. local time on those days.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part entry into or movement within this zone is prohibited unless authorized by the Captain of the Port.

Dated: July 2, 1991.

R.M. Larrabee,

*Captain, U.S. Coast Guard, Captain of the Port, New York.*

[FR Doc. 91-16102 Filed 7-8-91; 8:45 am]

BILLING CODE 4910-14-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[MM Docket No. 90-512; RM-7435]

#### Radio Broadcasting Services; Bar Harbor and Skowhegan, MA

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document substitutes Channel 300C3 for Channel 300A at Skowhegan, Maine, and modifies the construction permit for Station WHQO, to specify the higher class channel, in response to a petition filed by Dark Communications, Inc. See 55 FR 47345, November 13, 1990. To accommodate Channel 300C3 at Skowhegan, we shall substitute Channel 299B1 for vacant Channel 299B at Bar Harbor, Maine. Canadian concurrence has been obtained for the allotment of Channel 300C3 at Skowhegan at coordinates 44-42-46 and 69-43-36 and for Channel 299B1 at Bar Harbor at coordinates 44-23-12 and 68-12-42. With this action, this proceeding is terminated.

**DATES:** Effective August 15, 1991; the window period for filing applications for Channel 299B1 at Bar Harbor, Maine, will open on August 16, 1991, and close on September 16, 1991.

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

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 90-512, adopted June 20, 1991, and released July

1, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1714 21st Street NW., Washington, DC 20036 (202) 452-1422.

### List of Subjects in 47 CFR Part 73

Radio broadcasting.

### PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

#### § 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Maine, is amended by removing Channel 300A and adding Channel 300C3 at Skowhegan and by removing Channel 299B and adding Channel 299B1 at Bar Harbor.

Federal Communications Commission.

Andrew J. Rhodes,

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

[FR Doc. 91-16180 Filed 7-8-91; 8:45 am]

BILLING CODE 6712-01-M

### 47 CFR Part 73

[MM Docket No. 90-408; RM-7211]

#### Radio Broadcasting Services; Lake City and Wabasha, MN

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document reallots Channel 273A, Station KQLW (formerly KWMB-FM), from Wabasha, Minnesota to Lake City, Minnesota pursuant to Sections 1.420 (g) and (i) of the Commission's Rules, substitutes Channel 273C3 for Channel 273A at Lake City; and modifies the permit of Radio Instad Minnesota, Inc., permittee of Station KQLW, to specify operation on Channel 273C3. The coordinates for Channel 273C3 at Lake City are 44-17-00 and 92-25-00 with a site restriction 21.9 kilometers (13.6 miles) southeast of the community. With this action, this proceeding is terminated.

**EFFECTIVE DATE:** August 15, 1991.

**FOR FURTHER INFORMATION CONTACT:** Belford V. Lawson, III, Mass Media Bureau (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report

and Order, MM Docket No. 90-408, adopted June 19, 1991, and released July 1, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center (202) 452-1422, 1714 21st Street, NW., Washington DC 20036.

### List of Subjects in 47 CFR Part 73

Radio broadcasting.

### PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

#### § 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Minnesota is amended by removing Channel 273A at Wabasha and adding Channel 273C3 at Lake City.

Federal Communications Commission.

Andrew J. Rhodes,

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

[FR Doc. 91-16181 Filed 7-8-91; 8:45 am]

BILLING CODE 6712-01-M

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

49 CFR Parts 190, 192, 193, 195, and 199

[Docket Nos. PS-114, 190-3, 192-66, 193-7, 195-46, 199-1]

RIN 2137-AB77

#### Amendment of an Operator's Plans or Procedures

**AGENCY:** Research and Special Programs Administration (RSPA).

**ACTION:** Final rule.

**SUMMARY:** RSPA is making changes in the procedures and policy by which its Office of Pipeline Safety (OPS) addresses alleged deficiencies in operators' required plans and procedures. OPS administers a statutory process for amending plans and procedures it finds to be inadequate to achieve safe operations. Until now, this process has required that pipeline operators amend plans and procedures that OPS finds inadequate, but has not subjected operators to other enforcement sanctions. As of the

effective date of this action, operators will be subject to all enforcement sanctions under the Natural Gas Pipeline Safety Act of 1968, as amended, and the Hazardous Liquid Pipeline Safety Act of 1979, as amended, for failure to maintain all plans and procedures in accordance with applicable requirements. This action is necessary to assure that operators' plans and procedures are adequate to achieve safe operations.

**EFFECTIVE DATE:** August 8, 1991.

**FOR FURTHER INFORMATION CONTACT:**

Cesar De Leon, Assistant Director for Regulation, Office of Pipeline Safety, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590, (202) 366-1640.

**SUPPLEMENTARY INFORMATION:**

**Background**

In accordance with section 13 of the Natural Gas Pipeline Safety Act of 1968 (NGPSA) (49 U.S.C. App. 1680), as amended, and section 210 of the Hazardous Liquid Pipeline Safety Act of 1979 (HLPESA) (49 U.S.C. App. 2009), as amended, OPS administers a statutory process for amending operators' plans it finds to be inadequate.

On November 6, 1989, OPS published in the *Federal Register* (54 FR 46684-46685), Docket No. 114, Notice No. 1) a notice of proposed rulemaking to make changes in the procedures and policy by which it addresses deficiencies in operators' plans and procedures. Because the statutory process was implemented in parts 193 and 195 only, OPS proposed to make the procedures and policy in those parts applicable to operators' plans and procedures under parts 192 and 199 as well. To accomplish this, OPS proposed to move the current procedures found in 49 CFR 195.402(b) and 193.2017(b) (with appropriate modification) to a new 49 CFR 190.9, which would be applicable to all plans and procedures in parts 192, 193, 195, and 199. OPS also proposed to strengthen its enforcement of the adequacy of these plans and procedures by subjecting operators to the assessment of civil penalties (and criminal penalties if a violation is committed knowingly and willfully), and any other appropriate sanction. Both civil penalty and criminal sanctions are available under either the NGPSA (49 U.S.C. App. 1671 *et seq.*) or the HLPESA (49 U.S.C. App. 2001 *et seq.*). OPS's enforcement of the adequacy of written plans and procedures had previously been restricted to requiring that pipeline operators amend their plans and procedures. Comments to the notice of

proposed rulemaking were due on or before December 6, 1989.

**Comments Received**

OPS received 19 comments: one from a state agency, three from trade associations, seven from utilities, and eight from pipeline companies. Four commenters supported the proposal.

Three commenters, who suggested changes, asked that an operator be given the opportunity to present evidence of its ongoing program to correct any alleged inadequacies in its plans and procedures before the Director of OPS, (Director) makes a determination concerning adequacy. RSPA is making no changes to the proposed rule based on this comment. If an operator has corrected, or is in the process of correcting, the alleged inadequacies in its plans or procedures when it receives a notice of amendment, the operator need only include this information in its written comments, or present it at a hearing conducted at the operator's request. The final rule states that only after considering all material presented in writing or at the hearing may the Director determine the adequacy of the operator's plans and take further action. Nevertheless, the correction of inadequate plans or procedures subsequent to an OPS inspection does not preclude the Director from making a determination that the original plans were inadequate. The information concerning the operator's correction efforts will be considered by the Director in determining what further action, if any, is necessary to assure the safe operation of the pipeline facility.

These three commenters also questioned the deletion of the phrase "new information" from the proposed revision of 49 CFR 190.211, concerning the issues operators intend to raise when requesting a hearing. RSPA is making no changes based on this comment. The proposed revision reads: "The issues may relate to the allegations in the notice, the proposed corrective action, or the proposed civil penalty amount." Because any "new information" must relate to the allegations in the notice, the proposed corrective action, or the proposed civil penalty amount, including "new information" as a specific category is unnecessary. Operators will not be precluded from providing OPS with additional information at the time a hearing is requested.

Nine commenters considered the proposed rulemaking to be unnecessary. One stated that it would result in changing operator's "user-friendly" procedural manuals into highly technical

documents containing legal jargon, thereby destroying the usefulness of these manuals. RSPA disagrees. Merely strengthening OPS's enforcement of an operator's written plans and procedures should not lead to an elimination of the user-friendly format. Until now, OPS's enforcement of the adequacy of written plans and procedures has been restricted to the amendment process. Restricting enforcement to the amendment process has had the effect of limiting the enforcement tools available to the Department in addressing the quality and effectiveness of operators' plans and procedures, which are the foundation of sound operations. Consequently, RSPA must have the widest latitude to assure that operators develop plans and procedures that comply with applicable safety requirements, and that operators comply with the plans.

Several commenters stated that an operator should be subject to a civil penalty only if it refuses to adjust deficient plans or procedures. RSPA is making no changes to its proposed rule based on this comment. Subjecting operators to civil penalties should provide them with greater incentive to assure that their plans and procedures are adequate to provide safe operations of their systems and to minimize hazards in emergencies. The fact that we can always find something wrong, as one commenter argued, does not convince us that civil penalties are unnecessary; in fact, we reach the opposite conclusion. Moreover, if a civil penalty is proposed, an operator's due process protections will remain substantially the same as those afforded operators under the amendment process, including prior notice and an opportunity for an informal hearing before final agency action is taken. An operator is not automatically assessed a civil penalty pending a hearing, as one commenter feared; a civil penalty is only proposed pending a hearing or other response option chosen by the operator.

One commenter requested that a paragraph be added to the amendment procedures requiring that OPS neither issue a notice of amendment nor undertake enforcement action if the operator, after a routine inspection and at the request of the Region Chief, revises its plans and procedures as requested. RSPA is not adding this paragraph. One of the stated purposes of the present regulatory action is to expand the enforcement tools available to OPS in addressing the quality and effectiveness of an operator's plans and procedures; the commenter's suggested paragraph would actually limit those

tools because even the prior amendment procedures contained in 49 CFR 195.402(b) did not contain the requested restriction. There certainly would be less incentive for an operator to assure the quality and effectiveness of its plans and procedures before an inspection if it knew that no notice of amendment would be issued and no other enforcement action would be taken.

RSPA disagrees with one commenter's argument that subjecting operators to civil penalties promotes form over substance because an operator's actual operating procedure may comply with the regulations whereas its procedural manual may contain errors or omissions. Safe operation of a pipeline is dependent upon adequate and accurate manuals whose provisions are adhered to by the operator's employees and contractor personnel. Allowing inadequate or inaccurate manuals to be operator's guides would not further safe industry practices.

RSPA also disagrees with the comment that the proposal is not in keeping with the intent of performance-type regulations. RSPA has not added to the regulations specific requirements that must be included in an operator's plans and procedures. More detailed procedures are addressed in a different proceeding (Docket No. PS 113; 54 FR 46685 (Nov. 6, 1989)). It is not necessary, however, that substantive rules in the latter proceeding become effective before the procedural rules in this one, as one commenter requested. Strengthening OPS's enforcement of the adequacy of all plans and procedures should not be delayed until specified changes in some procedures are finalized.

One commenter also claimed to be unaware of any accidents that could be attributed to deficient manuals. RSPA, however, is aware of deficiencies in operating procedures which could have contributed to accidents. For example, on December 24, 1988, Shell Pipe Line Company experienced a failure on its Ozark Pipeline System. OPS's review of Shell's written manuals conducted during its investigation of the failure disclosed deficiencies relating to procedures during abnormal operations required by 49 CFR 195.402(d). These deficiencies may have contributed to the failure.

The one state agency commenting argued that moving 49 CFR 193.2017(b) to part 190 would remove that state's authority to require amendments of plans and procedures because it had not adopted part 190. RSPA does not agree that moving the procedures to part 190 would remove the state's authority since that authority is based on statute.

Section 13 of the Natural Gas Pipeline Safety Act and section 210 of the Hazardous Liquid Pipeline Safety Act provide that if the Secretary or appropriate state agency with responsibility for enforcement of compliance with the standards finds that an operator's inspection and maintenance plan is inadequate to achieve safe operation of pipeline facilities, the Secretary or state agency, after notice and opportunity for a hearing, has the authority to require that such plan be revised. Thus, the statute confers this authority. However, this authority may not be clearly expressed in state regulatory schemes except in part 193 as adopted by the state. The provisions contained in part 190 are only applicable to RSPA's enforcement proceedings, are not generally adopted by states and, therefore, would not be useful to the states. Therefore, RSPA will leave this expression of authority to mandate amendment in part 193 and is revising parts 192, 195, and 199 to clarify this authority in those areas.

Since the language in 49 CFR 193.2017(b) is being left in the regulations, RSPA is modifying that section to clarify which state agencies have the authority.

Finally, one commenter argued that if adopted, the proposed rulemaking should be incorporated under 49 CFR part 190, subpart B—Enforcement, rather than subpart A—General. The proposed 49 CFR 190.9 was contained in the general subpart; RSPA agrees that adding the proposed revision to the enforcement subpart is appropriate. The stated purpose and scope of subpart A is to prescribe the procedures, such as service of documents and subpoenas, that are applicable to enforcement proceedings under subpart B. The section added by this final rule subjects operators to enforcement sanctions and should be included in subpart B. Accordingly, in the final rule, we are adding this section to subpart B of part 190 by creating a new § 190.237.

#### Miscellaneous

We are making minor language changes to the proposed rule for clarity and to reflect that the amendment is added to subpart B of part 190 instead of subpart A. Also, to reflect the delegation of authority from the Administrator of RSPA to the Director of OPS, RSPA is adding the latter change to § 190.203(d) in two places.

#### Paperwork Reduction Act

This final rule contains no new information collection or recordkeeping requirements under the Paperwork

Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

#### Effective Date

This rule is effective August 8, 1991.

#### Impact Assessment

RSPA has analyzed this rule and has determined that it is not a "major rule," within the meaning of Executive Order 12291. It will have an effect on the economy of less than \$100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. We have also determined that this rule is not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034-11045 (Feb. 26, 1979)). Because the rule contains no substantive revisions that could be expected to require significant changes in operator procedures or compliance burdens, and because the economic impact will be minimal, a full regulatory evaluation is not required.

Accordingly, I certify, pursuant to 5 U.S.C. 605 regarding the Regulatory Flexibility Act, that this action will not have a significant economic impact on a substantial number of small entities.

RSPA has analyzed this action in accordance with the principles and criteria of Executive Order 12612 (52 FR 41685 (Oct. 26, 1987)) and has determined that it does not have sufficient Federalism implications to warrant preparing a Federalism Assessment.

#### List of Subjects

##### 49 CFR Part 190

Enforcement, Operations and maintenance procedures, Pipeline safety.

##### 49 CFR Part 192

Pipeline safety, Reporting and recordkeeping requirements.

##### 49 CFR Part 193

Pipeline safety, Plans and procedures, Procedural manual.

##### 49 CFR Part 195

Operations and maintenance Procedures, Pipeline safety, Procedural manual.

## 49 CFR Part 199

Drug testing, Pipeline safety, Reporting and recordkeeping requirements, Safety, Transportation.

In consideration of the foregoing, title 49, Code of Federal Regulations, parts 190, 192, 193, 195, and 199 are amended as follows:

**PART 190—[AMENDED]**

1. The authority citation for part 190 continues to read as follows:

Authority: 49 App. U.S.C. 1672, 1677, 1679a, 1679b, 1680, 1681, 1804, 2002, 2006, 2007, 2008, 2009, and 2010; 49 CFR 1.53.

2. In § 190.203, paragraph (d) is revised to read as follows:

**§ 190.203 Inspections.**

(d) To the extent necessary to carry out his responsibilities under the HLPSP, HMTA, or the NGPSA, the Administrator, RSPA, or the Director, OPS, may require testing of portions of pipeline facilities subject to those Acts that have been involved in, or affected by, an accident. However, before exercising this authority, the Administrator, RSPA, or the Director, OPS, shall make every effort to negotiate a mutually acceptable plan with the owner of those facilities and, where appropriate, the National Transportation Safety Board for performing the testing.

3. In § 190.211, paragraph (a) is revised to read as follows:

**§ 190.211 Hearing.**

(a) A request for a hearing provided for in this part must be accompanied by a statement of the issues that the respondent intends to raise at the hearing. The issues may relate to the allegations in the notice, the proposed corrective action (including a proposed amendment, a proposed compliance order, or a proposed hazardous facility order), or the proposed civil penalty amount. A respondent's failure to specify an issue may result in waiver of his right to raise that issue at the hearing. The respondent's request must also indicate whether or not he will be represented by counsel at the hearing.

4. In § 190.233, paragraph (a) is revised to read as follows:

**§ 190.233 Hazardous facility orders.**

(a) Except as provided by paragraph (b) of this section, if the Director, OPS, finds, after reasonable notice and opportunity for hearing in accordance with paragraph (c) of this section and § 190.211(a), a particular pipeline facility

to be hazardous to life or property, he shall issue an order pursuant to this section requiring the owner or operator of the facility to take corrective action. Corrective action may include suspended or restricted use of the facility, physical inspection, testing, repair, replacement, or other action, as appropriate.

5. Section 190.237 is added to read as follows:

**§ 190.237 Amendment of plans or procedures.**

(a) A Region Chief, OPS, begins a proceeding to determine whether an operator's plans or procedures required under parts 192, 193, 195 and 199 of this subchapter are inadequate to assure safe operation of a pipeline facility by issuing a notice of amendment. The notice shall provide an opportunity for a hearing under § 190.211 of this part and shall specify the alleged inadequacies and the proposed action for revision of the plans or procedures. The notice shall allow the operator 30 days after receipt of the notice to submit written comments or request a hearing. After considering all material presented in writing or at the hearing, the Director, OPS, shall determine whether the plans or procedures are inadequate as alleged and order the required amendment if they are inadequate, or withdraw the notice if they are not. In determining the adequacy of an operator's plans and procedures, the Director, OPS, shall consider:

- (1) Relevant available pipeline safety data;
- (2) Whether the plans or procedures are appropriate for the particular type of pipeline transportation or facility, and for the location of the facility;
- (3) The reasonableness of the plans or procedures; and
- (4) The extent to which the plans or procedures contribute to public safety.

(b) The amendment of an operator's plans or procedures prescribed in paragraph (a) of this section is in addition to, and may be used in conjunction with, the appropriate enforcement actions prescribed in this subpart.

**PART 192—[AMENDED]**

8. The authority citation for part 192 continues to read as follows:

Authority: 49 U.S.C. 1672 and 1804; 49 CFR 1.53.

9. Section 192.603 is amended by adding a new paragraph (c) to read as follows:

**§ 192.603 General provisions.**

(c) The Administrator or the State Agency that has submitted a current certification under section 5(a) of the Natural Gas Pipeline Safety Act with respect to the pipeline facility governed by an operator's plans and procedures may, after notice and opportunity for hearing as provided in 49 CFR 190.237 or the relevant State procedures, require the operator to amend its plans and procedures as necessary to provide a reasonable level of safety.

**PART 193—[AMENDED]**

10. The authority citation for part 193 continues to read as follows:

Authority: 49 App. U.S.C. 1671 *et seq.*; and 49 CFR 1.53.

11. Section 193.2017(b) is revised to read as follows:

**§ 193.2017 Plans and procedures.**

(b) The Administrator or the State Agency that has submitted a current certification under section 5(a) of the Natural Gas Pipeline Safety Act with respect to the pipeline facility governed by an operator's plans and procedures may, after notice and opportunity for hearing as provided in 49 CFR 190.237 or the relevant State procedures, require the operator to amend its plans and procedures as necessary to provide a reasonable level of safety.

**PART 195—[AMENDED]**

12. The authority citation for part 195 continues to read as follows:

Authority: 49 App. U.S.C. 2002; and 49 CFR 1.53.

13. Section 195.402(b) is revised to read as follows:

**§ 195.402 Procedural manual for operations, maintenance, and emergencies.**

(b) The Administrator or the State Agency that has submitted a current certification under section 205(a) of the Hazardous Liquid Pipeline Safety Act with respect to the pipeline facility governed by an operator's plans and procedures may, after notice and opportunity for hearing as provided in 49 CFR 190.237 or the relevant State procedures, require the operator to amend its plans and procedures as necessary to provide a reasonable level of safety.

**PART 199—[AMENDED]**

14. The authority citation for part 199 continues to read as follows:

Authority: 49 App. U.S.C. 1672, 1674a, 1681, 1804, 1808, 2002, and 2040; 49 CFR 1.53.

15. Section 199.7 is amended by revising paragraph (b) to read as follows:

§ 199.7 Anti-drug plan.

\* \* \* \* \*

(b) The Administrator or the State Agency that has submitted a current certification under section 5(a) of the Natural Gas Pipeline Safety Act or section 205(a) of the Hazardous Liquid Pipeline Safety Act with respect to the pipeline facility governed by an operator's plans and procedures may, after notice and opportunity for hearing as provided in 49 CFR 190.237 or the relevant State procedures, require the

operator to amend its plans and procedures as necessary to provide a reasonable level of safety.

\* \* \* \* \*

Issued in Washington, DC on July 1, 1991.

Travis P. Dungan,

Administrator, Research and Special Programs Administration.

[FR Doc. 91-16068 Filed 7-8-91; 8:45 am]

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