

incumbent LEC interoffice transmission facilities that have a total digital signal speed of 44.736 megabytes per second and are dedicated to a particular customer or carrier.

(A) *General availability of DS3 transport.* Incumbent LECs shall unbundle DS3 transport between any pair of incumbent LEC wire centers except where, through application of tier classifications described in paragraph (e)(3) of this section, both wire centers defining the route are either Tier 1 or Tier 2 wire centers. As such, an incumbent LEC must unbundle DS3 transport if a wire center on either end of a requested route is a Tier 3 wire center.

(B) *Cap on unbundled DS3 transport circuits.* A requesting telecommunications carrier may obtain a maximum of 12 unbundled DS3 dedicated transport circuits on each route where DS3 dedicated transport is available on an unbundled basis.

(C) *Transition period for DS3 transport circuits.* For a 12-month period beginning on the effective date of the *Triennial Review Remand Order*, any DS3 dedicated transport UNE that a competitive LEC leases from the incumbent LEC as of that date, but which the incumbent LEC is not obligated to unbundle pursuant to paragraphs (e)(2)(iii)(A) or (e)(2)(iii)(B) of this section, shall be available for lease from the incumbent LEC at a rate equal to the higher of 115 percent of the rate the requesting carrier paid for the dedicated transport element on June 15, 2004, or, 115 percent of the rate the state commission has established or establishes, if any, between June 16, 2004, and the effective date of the *Triennial Review Remand Order*, for that dedicated transport element. Where incumbent LECs are not required to provide unbundled DS3 transport pursuant to paragraphs (e)(2)(iii)(A) or (e)(2)(iii)(B) of this section, requesting carriers may not obtain new DS3 transport as unbundled network elements.

(iv) *Dark fiber transport.* Dedicated dark fiber transport shall be made available to requesting carriers on an unbundled basis as set forth below. Dark fiber transport consists of unactivated optical interoffice transmission facilities.

(A) *General availability of dark fiber transport.* Incumbent LECs shall unbundle dark fiber transport between any pair of incumbent LEC wire centers except where, through application of tier classifications described in paragraph (e)(3) of this section, both wire centers defining the route are either Tier 1 or Tier 2 wire centers. As such, an

incumbent LEC must unbundle dark fiber transport if a wire center on either end of a requested route is a Tier 3 wire center.

(B) *Transition period for dark fiber transport circuits.* For an 18-month period beginning on the effective date of the *Triennial Review Remand Order*, any dark fiber dedicated transport UNE that a competitive LEC leases from the incumbent LEC as of that date, but which the incumbent LEC is not obligated to unbundle pursuant to paragraphs (e)(2)(iv)(A) or (e)(2)(iv)(B) of this section, shall be available for lease from the incumbent LEC at a rate equal to the higher of 115 percent of the rate the requesting carrier paid for the dedicated transport element on June 15, 2004, or, 115 percent of the rate the state commission has established or establishes, if any, between June 16, 2004, and the effective date of the *Triennial Review Remand Order*, for that dedicated transport element. Where incumbent LECs are not required to provide unbundled dark fiber transport pursuant to paragraphs (e)(2)(iv)(A) or (e)(2)(iv)(B) of this section, requesting carriers may not obtain new dark fiber transport as unbundled network elements.

(3) *Wire center tier structure.* For purposes of this section, incumbent LEC wire centers shall be classified into three tiers, defined as follows:

(i) Tier 1 wire centers are those incumbent LEC wire centers that contain at least four fiber-based collocators, at least 38,000 business lines, or both. Tier 1 wire centers also are those incumbent LEC tandem switching locations that have no line-side switching facilities, but nevertheless serve as a point of traffic aggregation accessible by competitive LECs. Once a wire center is determined to be a Tier 1 wire center, that wire center is not subject to later reclassification as a Tier 2 or Tier 3 wire center.

(ii) Tier 2 wire centers are those incumbent LEC wire centers that are not Tier 1 wire centers, but contain at least 3 fiber-based collocators, at least 24,000 business lines, or both. Once a wire center is determined to be a Tier 2 wire center, that wire center is not subject to later reclassification as a Tier 3 wire center.

(iii) Tier 3 wire centers are those incumbent LEC wire centers that do not meet the criteria for Tier 1 or Tier 2 wire centers.

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA 05-299; MM Docket No. 02-63, RM-10398]

### Radio Broadcasting Service; Burbank and Walla Walla, WA

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Audio Division, at the request of New Northwest Broadcasters, LLC, reallocates Channel 256C1 from Walla Walla to Burbank, Washington, and modifies Station KUJ-FM's license accordingly. See 67 FR 17669, April 11, 2002. We also dismiss the one-step upgrade application (File No. BPH-20041008ACV) filed by New Northwest Broadcasters, LLC, requesting the substitution of Channel 256C1 for 256C2 at Walla Walla, Washington, as moot. Channel 256C1 can be reallocated to Burbank in compliance with the Commission's minimum distance separation requirements at petitioner's presently licensed site. The coordinates for Channel 256C1 at Burbank are 45-57-22 North Latitude and 118-41-11 West Longitude.

**DATES:** Effective March 21, 2005.

**ADDRESSES:** Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

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

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Report and Order*, MM Docket No. 02-63, adopted February 2, 2005, and released February 4, 2005. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY-A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 1-800-378-3160 or <http://www.BCPIWEB.com>. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

### List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

## 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 and 336.

### § 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Washington, is amended by adding Burbank, Channel 256C1 and by removing Channel 246C, Channel 256C2, and Channel 265A and adding Channel 246C0 at Walla Walla.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

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## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

#### 49 CFR Part 171

[Docket No. PHMSA-00-7762 (HM-206C)]

RIN 2137-AD29

### Hazardous Materials: Availability of Information for Hazardous Materials Transported by Aircraft

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** This final rule adopts without change the April 1, 2005, mandatory compliance date for the notification and record retention requirements for aircraft operators transporting hazardous materials, as adopted in an interim final rule in this proceeding published on September 1, 2004.

**DATES:** *Effective Date:* The effective date of these amendments is February 24, 2005.

**FOR FURTHER INFORMATION CONTACT:** John A. Gale or Gigi Corbin, Office of Hazardous Materials Standards, telephone (202) 366-8553, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On March 25, 2003, the Research and Special Programs Administration (RSPA, the predecessor agency of the Pipeline and Hazardous Materials Safety

Administration (PHMSA)) published a final rule under this docket (68 FR 14341) amending the Hazardous Materials Regulations (HMR) to require an aircraft operator to: (1) Place on the notification of pilot-in-command (NOPC) or in the cockpit of the aircraft a telephone number that can be contacted during an in-flight emergency to obtain information about any hazardous materials aboard the aircraft; (2) retain and provide upon request a copy of the NOPC, or the information contained in it, at the aircraft operator's principal place of business, or the airport of departure, for 90 days, and at the airport of departure until the flight leg is completed; and (3) make readily accessible, and provide upon request, a copy of the NOPC, or the information contained in it, at the planned airport of arrival until the flight leg is completed. The March 25, 2003, rule which became effective October 1, 2003, required compliance on October 1, 2004.

On June 22, 2004, the Air Transport Association (ATA) requested that RSPA extend the compliance date from October 1, 2004, to April 1, 2005, to allow its member air carriers additional time to prepare for and implement these new requirements. In response to this request, RSPA published an interim final rule (IFR) on September 1, 2004, delaying the compliance date to April 1, 2005. We invited interested parties to participate in this rulemaking by submitting comments on the IFR.

We received two comments. Neither comment addressed the issue of delayed compliance discussed in this IFR. One commenter submitted comments dealing with issues discussed in the NPRM; the other commenter questioned the length of the retention period for the NOPC (*see* § 175.33(c)) in comparison to the retention period for shipping papers in § 172.201. Both comments are outside the scope of this rulemaking, and are not addressed here. PHMSA is adopting the amendments as presented in the IFR.

##### II. Regulatory Analyses and Notices

###### A. Statutory/Legal Authority for This Rulemaking

This interim final rule is published under the authority of Federal hazardous materials transportation law (Federal hazmat law; 49 U.S.C. 5101 *et seq.*) and 49 U.S.C. 44701. Section 5103(b) of Federal hazmat law authorizes the Secretary of Transportation to prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce. Title 49 United States Code

§ 44701 authorizes the Administrator of the Federal Aviation Administration to promote safe flight of civil aircraft in air commerce by prescribing regulations and minimum standards for practices, methods, and procedures the Administrator finds necessary for safety in air commerce and national security. Under 49 U.S.C. 40113, the Secretary of Transportation has the same authority to regulate the transportation of hazardous material by air, in carrying out § 44701, that he has under 49 U.S.C. 5103.

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

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and was not reviewed by the Office of Management and Budget (OMB). This final rule is not considered significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). This final rule adopts without change a compliance date adopted in an interim final rule published on September 1, 2004. The compliance date extension adopted in this final rule does not alter the cost-benefit analysis and conclusions contained in the Regulatory Evaluation prepared for the March 25, 2003, final rule.

###### C. Executive Order 13132

This final rule was analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This rulemaking preempts State, local and Indian tribe requirements but does not impose any regulation that has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

Federal hazardous material transportation law, 49 U.S.C. 5101-5127, contains an express preemption provision (49 U.S.C. 5125(b)) preempting State, local, and Indian tribe requirements on the following subjects:

- (1) The designation, description, and classification of hazardous material;
- (2) The packing, repacking, handling, labeling, marking, and placarding of hazardous material;
- (3) The preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents;
- (4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or