

major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined in 5 U.S.C. 804(2). This action will be effective immediately upon today's publication in the **Federal Register**.

This rule does not impose any information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

**Authority:** RCRA sections 2002 and 3006, 42 U.S.C. 6912 and 6926.

Dated: September 4, 2004.

**Robert W. Varney,**

*Regional Administrator, EPA New England.*  
[FR Doc. 04-21495 Filed 9-27-04; 8:45 am]

**BILLING CODE 6560-50-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

#### 42 CFR Part 493

#### Laboratory Requirements

##### *CFR Correction*

In Title 42 of the Code of Federal Regulations, Part 430 to End, revised as of October 1, 2003, on page 1027, in § 493.945, in the table in paragraph (b)(3)(ii)(C), the entry in row D, column B is corrected to read – 5.

[FR Doc. 04-55517 Filed 9-27-04; 8:45 am]

**BILLING CODE 1505-01-D**

## FEDERAL COMMUNICATIONS COMMISSION

#### 47 CFR Part 15, 76 and 78

[MB Docket No. 03-50; FCC 04-75]

### Extend Interference Protection to the Marine and Aeronautical Distress and Safety Frequency 406.025 MHz

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document the Commission adopts rules that extend interference protection to all of the

international digital search and rescue frequencies in the 406 MHz band. These frequencies are used to detect and locate emergency position indicating radio beacons (EPIRBs) and emergency locator transmitters (ELTs) in the event of an emergency. Previously, the Commission extended protection to the analog search and rescue frequencies at 121.5 and 243.0 MHz. Digital beacons are said to be more effective and give off fewer false alerts than analog beacons. As digital beacons become increasingly popular, the need to protect them becomes more important. This Report and Order protects these newer digital beacons from interference from cable systems. At the same time, this Report and Order avoids placing undue burden on the cable operators by providing a new digital measurement technique for systems with digital channels. In addition, this document streamlines and cleans up our rules by removing some outdated rules and correcting others to maintain consistency through the different rule parts.

**DATES:** Effective October 28, 2004. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register, as of October 28, 2004.

#### FOR FURTHER INFORMATION CONTACT:

Sarah Mahmood,  
[sarah.mahmood@fcc.gov](mailto:sarah.mahmood@fcc.gov), (202) 418-7009 of the Engineering Division, Media Bureau. For additional information concerning the information collection(s) contained in this document, contact Leslie Smith, Federal Communications Commission, Room 1-A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet at [Leslie.Smith@fcc.gov](mailto:Leslie.Smith@fcc.gov), or at 202-418-0217.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Federal Communications Commission's Report and Order, FCC 04-75, adopted on March 30, 2004 and released on April 14, 2004. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. The full text may also be downloaded at: <http://www.fcc.gov>. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418-7426 or TTY (202) 418-7365 or at [Brian.Millin@fcc.gov](mailto:Brian.Millin@fcc.gov).

### Paperwork Reduction Act

The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995 and found to impose no new or modified reporting and recordkeeping requirements or burdens on the public.

### Summary of the Report and Order

1. In the *Report and Order* the Commission is adopting measurement techniques that both protect safety of life and permit the operation of analog and digital cable systems. By further defining the measurement techniques for digital signals to protect EPIRBs and ELTs, cable operators with digital cable systems will be able to deploy new digital services without undue power limitations on cable channel 54. By extending interference protection to all frequencies in the COSPAS-SARSAT 406 MHz Management Plan, the Commission is protecting all current beacon models as well as known future beacon models. These modifications will protect public safety interests while adapting to changes in digital technology.

2. Digital cable systems must limit their average power levels between 405.925 MHz and 406.176 MHz to  $10^{-5}$  watts, measured using an RMS detector, over any 30 kHz bandwidth in any 2.5 millisecond interval. This rule is tailored specifically for the protection of EPIRBs and ELTs only. Should the Commission adopt measurement standards for digital cable signals in the broader context in the future, we will consider the full set of parameters surrounding digital signals. Analog signals, however, are prohibited from delivering peak power levels equal to or greater than  $10^{-5}$  watts from 405.925 MHz to 406.176 MHz.

3. *Paperwork Reduction Act:* The action contained in this *Report and Order* has been analyzed with respect to the Paperwork Reduction Act of 1995 and found to impose no new or modified reporting and recordkeeping requirements or burdens on the public.

4. *Final Regulatory Flexibility Analysis:* As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice. The Commission sought written public comments on the possible significant economic impact of the proposed policies and rules on small entities in the Notice, including comments on the IRFA. Pursuant to the RFA, a Final Regulatory Flexibility Analysis is contained herein.

5. *Ordering Clauses:* Accordingly, *it is ordered* that, pursuant to authority

found in Sections 4(i)–(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i)–(j), 303(c), (f), and (r), and 309(j), the Commission's rules are hereby amended as set forth herein, and shall become effective 30 days after publication in the **Federal Register**.

6. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

#### Final Regulatory Flexibility Analysis

7. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking (NPRM) in MB Docket No. 03–50, FCC 03–37. The Commission sought written public comment on the proposals in the Notice, including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

8. *Need for, and Objectives of, this Report and Order.* We have adopted rules to provide interference protection to the international digital emergency and distress frequencies in the COSPAS–SARSAT 406 MHz Frequency Management Plan. Digital distress beacons are becoming more widely used as the analog beacons are slowly being phased out. In the interest of public safety, our rules will eliminate potential interference from cable systems to the frequencies used by these digital beacons. All frequencies used by the digital beacons, according to the 406 Frequency Management Plan, will be added to those frequencies which are already protected from cable signal leakage. This addition covers all foreseeable digital beacon frequencies and should not pose any greater burden on small businesses. In addition to these rules, this Order updates, streamlines, and revises parts 76 and 78 of the Commission's rules by fixing typographical errors, removing grandfathered dates that have already passed, etc. These changes should have no differential impact on small businesses.

9. *Summary of Significant Issues Raised by Public Comments in Response to IRFA.* No one commented in direct response to the IRFA. We received comments from the NCTA, RCN, NOAA, and RTCM and reply comments from the NTIA and NCTA. None of the parties commented on the IRFA. Many of the comments concerned extending the interference protection as well as differentiating between analog and

digital cable systems. No parties commented on small business related issues.

10. *Description and Estimate of the Number of Small Entities to Which the Rules Will Apply.* The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the rules adopted herein. The RFA defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction” under Section 3 of the Small Business Act. Under the Small Business Act, a small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

11. *Cable and Other Programming Distribution.* The SBA has developed a definition of small entities for cable and other pay television services, which includes such companies generating \$12.5 million or less in annual receipts. This definition includes cable system operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems, and subscription television services. According to the Census Bureau data for 1997, there were a total of 1,311 firms in this category, total, that had operated for the entire year. Consequently, the Commission estimates that the majority of providers in this service category are small businesses that may be affected by the rules and policies adopted herein. We address below services individually to provide a more precise estimate of small entities.

12. *Open Video System (OVS).* The Commission has certified eleven OVS operators. Of these eleven, only two are providing service. Affiliates of residential Communications Network, Inc. (RCN) received approval to operate OVS systems in New York City, Boston, Washington, DC, and other areas. RCN has sufficient revenues to assure us that they do not qualify as small business entities. Little financial information is available for the other entities authorized to provide OVS service that are not yet operational. Given that other entities have been authorized to provide OVS service but have not yet begun to generate revenues, we conclude that at least some of the OVS operators qualify as small entities.

13. *Cable System Operators (Rate Regulation Standard).* The Commission has developed a size standard for small cable system operators for the purposes

of rate regulation. Under the Commission's rules, a “small cable company” is one serving fewer than 400,000 subscribers nationwide. Based on our most recent information, we estimate that there were 1439 cable operators that qualified as small cable companies at the end of 1995. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. The Commission's rules define a “small system,” for the purposes of rate regulation, as a cable system with 15,000 or fewer subscribers. The Commission does not request nor does the Commission collect information concerning cable systems serving 15,000 or fewer subscribers and thus is unable to estimate, at this time, the number of small cable systems nationwide.

14. *Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, also contains a definition of a small cable system operator, which is “a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000.” The Commission has determined that there are 61,700,000 subscribers in the United States. Therefore, a cable operator serving fewer than 617,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed \$250 million in the aggregate. Based on available data, we find that the number of cable operators serving 617,000 subscribers or less totals approximately 1450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under definition in the Communications Act of 1934.

15. *Private Cable Operators.* Based on our most recent information, we estimate that there are 3400 private cable operators serving multiple dwelling units that qualify as small cable companies as characterized by the standard set forth in the Telecommunications Act. Some of those companies may have grown to serve from 800,000 to 1.6 million subscribers, and others may have been involved in transactions that caused them to be

combined with other cable operators. Consequently, we estimate that there are fewer than 3,400 small entity private cable system operators that may be affected by the decisions and rules we are adopting.

16. *Description of Projected Reporting, Record Keeping and other Compliance Requirements.* This Report and Order creates no additional reporting, record keeping, or other compliance requirements. Rather, makes reporting easier and more efficient by permitting filing by electronic means via the Internet. It also simplifies reporting by standardizing forms and deleting duplicate and unnecessary data collections.

17. *Steps Taken to Minimize the Impact on Small Entities, and Significant Alternatives Considered.* The RFA requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): “(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”

18. It was considered whether providing interference protection to the digital beacons would differentially affect small businesses. However, examination of the record shows that the restricted power levels would still allow operations to continue without causing any harm or loss to smaller entities. No alternative power levels were considered because on this issue there were no questions raised in the NPRM or comments regarding small businesses, and because there is no evidence that the rules establishing these power levels would affect smaller entities either adversely or differently than larger entities.

19. *Report to Congress.* We will send a copy of this Report and Order, including this FRFA, in a report to Congress pursuant to the Congressional Review Act of 1996, 5 U.S.C. 801(a)(1)(A). A copy of this Report and Order and FRFA (or summary thereof) will also be published in the **Federal Register**, pursuant to 5 U.S.C. 604(b), and will be sent to the Chief Counsel for Advocacy of the Small Business Administration.

20. Accordingly, *it is ordered* that, pursuant to authority found in Sections

4(i)–(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i)–(j), 303(c), (f), and (r), and 309(j), the Commission’s rules are *hereby amended* as set forth in Appendix A, and shall become effective 30 days after publication in the **Federal Register**.

21. *It is further ordered* that the Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

#### List of Subjects in 47 CFR Part 15, 76 and 78

Administrative practice and procedure, Cable television, Incorporation by reference.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

#### Final Rule

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Parts 15, 76 and 78 as follows:

#### PART 15—RADIO FREQUENCY DEVICES

■ 1. The authority citation for part 15 continues to read as follows:

**Authority:** 47 U.S.C. 154, 302(a), 303, 304, 307, 336, and 554a.

■ 2. Section 15.38 is amended by revising paragraph (b)(7) to read as follows:

##### § 15.38 Incorporation by reference.

\* \* \* \* \*

(b) \* \* \*

(7) CEA–542–B: “CEA Standard: Cable Television Channel Identification Plan,” July 2003, IBR approved for § 15.118.

\* \* \* \* \*

■ 3. Section 15.118 is amended by revising paragraph (b) to read as follows:

##### § 15.118 Cable ready consumer electronics equipment.

\* \* \* \* \*

(b) Cable ready consumer electronics equipment shall be capable of receiving all NTSC or similar video channels on channels 1 through 125 of the channel allocation plan set forth in CEA–542–B: “CEA Standard: Cable Television Channel Identification Plan,” (incorporated by reference, *see* § 15.38).

\* \* \* \* \*

#### PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

■ 4. The authority citation for part 76 continues to read as follows:

**Authority:** 47 U.S.C. 151, 152, 153, 154, 301, 302a, 303, 303a, 307, 308, 309, 312, 317, 325, 338, 339, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, and 573.

■ 5. Section 76.5 is amended by revising paragraph (v) and by removing the Note following paragraph (v) to read as follows:

##### § 76.5 Definitions.

\* \* \* \* \*

(v) *Subscriber terminal.* The cable television system terminal to which a subscriber’s equipment is connected. Separate terminals may be provided for delivery of signals of various classes. Terminal devices interconnected to subscriber terminals of a cable system must comply with the provisions of part 15 of this Chapter for TV interface devices.

\* \* \* \* \*

■ 6. Section 76.602 is amended by revising paragraph (b)(9) to read follows:

##### § 76.602 Incorporation by reference.

\* \* \* \* \*

(b) \* \* \*

(9) CEA–542–B: “CEA Standard: Cable Television Channel Identification Plan,” July 2003, IBR approved for § 76.605.

■ 7. Section 76.605 is amended by revising paragraphs (a) introductory text, (a)(1)(ii) and (a)(6) and by removing paragraphs (a)(6)(i) and (a)(6)(ii); by revising paragraph (a)(7) introductory text and by removing paragraphs (a)(7)(i) through (a)(7)(iv) and by redesignating paragraphs (a)(7)(iv)(A) through (a)(7)(iv)(C) as paragraphs (a)(7)(i) through (a)(7)(iii); and in paragraph (b) by revising Note 3 to read as follows:

##### § 76.605 Technical standards.

(a) The following requirements apply to the performance of a cable television system as measured at any subscriber terminal with a matched impedance at the termination point or at the output of the modulating or processing equipment (generally the headend) of the cable television system or otherwise as noted. The requirements are applicable to each NTSC or similar video downstream cable television channel in the system:

(1) \* \* \*

(ii) Cable television systems shall transmit signals to subscriber premises equipment on frequencies in accordance with the channel allocation plan set

forth in CEA-542-B: "Standard: Cable Television Channel Identification Plan," (Incorporated by reference, *see* § 76.602).

\* \* \* \* \*

(6) The amplitude characteristic shall be within a range of  $\pm 2$  decibels from 0.75 MHz to 5.0 MHz above the lower boundary frequency of the cable television channel, referenced to the average of the highest and lowest amplitudes within these frequency boundaries. The amplitude characteristic shall be measured at the subscriber terminal.

(7) The ratio of RF visual signal level to system noise shall not be less than 43 decibels. For class I cable television channels, the requirements of this section are applicable only to:

\* \* \* \* \*

**Note 3:** The requirements of this section shall not apply to devices subject to the TV interface device rules under part 15 of this chapter.

\* \* \* \* \*

■ 8. Section 76.610 is revised to read as follows:

**§ 76.610 Operation in the frequency bands 108–137 and 225–400 MHz—scope of application.**

The provisions of §§ 76.605(a)(12), 76.611, 76.612, 76.613, 76.614, 76.616, 76.617, 76.1803 and 76.1804 are applicable to all MVPDs (cable and non-cable) transmitting carriers or other signal components carried at an average power level equal to or greater than  $10^{-4}$  watts across a 25 kHz bandwidth in any 160 microsecond period, at any point in the cable distribution system in the frequency bands 108–137 and 225–400 MHz for any purpose. Exception: Non-cable MVPDs serving less than 1000 subscribers and less than 1000 units do not have to comply with § 76.1803.

■ 9. Section 76.616 is revised to read as follows:

**§ 76.616 Operation near certain aeronautical and marine emergency radio frequencies.**

(a) The transmission of carriers or other signal components capable of delivering peak power levels equal to or greater than  $10^{-5}$  watts at any point in a cable television system is prohibited within 100 kHz of the frequency 121.5 MHz, and is prohibited within 50 kHz of the two frequencies 156.8 MHz and 243.0 MHz.

(b) At any point on a cable system from 405.925 MHz to 406.176 MHz analog transmissions are prohibited from delivering peak power levels equal to or greater than  $10^{-5}$  watts. The

transmission of digital signals in this range is limited to power levels measured using a root-mean-square detector of less than  $10^{-5}$  watts in any 30 kHz bandwidth over any 2.5 millisecond interval.

**§ 76.618 [Removed and Reserved]**

■ 10. Remove and reserve § 76.618.

**§ 76.619 [Removed and Reserved]**

■ 11. Remove and reserve § 76.619.

**§ 76.620 [Removed and Reserved]**

■ 12. Remove and reserve § 76.620.

■ 13. Section 76.1510 is revised to read as follows:

**§ 76.1510 Application of certain Title VI provisions.**

The following sections within part 76 shall also apply to open video systems: §§ 76.71, 76.73, 76.75, 76.77, 76.79, 76.1702, and 76.1802 (Equal Employment Opportunity Requirements); §§ 76.503 and 76.504 (ownership restrictions); § 76.981 (negative option billing); and §§ 76.1300, 76.1301 and 76.1302 (regulation of carriage agreements); § 76.611 (signal leakage restrictions); § 76.1803 and 76.1804 (signal leakage monitoring and aeronautical frequency notifications); provided, however, that these sections shall apply to open video systems only to the extent that they do not conflict with this subpart S. Section 631 of the Communications Act (subscriber privacy) shall also apply to open video systems.

**PART 78—CABLE TELEVISION RELAY SERVICE**

■ 14. The authority citation for part 78 continues to read as follows:

**Authority:** Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085; 47 U.S.C. 152, 153, 154, 301, 303, 307, 308, 309.

■ 15. Section 78.19 is amended by revising paragraph (f)(2)(ii) to read as follows:

**§ 78.19 Interference.**

\* \* \* \* \*

(f) \* \* \*

(2) \* \* \*

(ii) Within the rectangular areas defined as follows (vicinity of Denver, CO):

Rectangle 1:

41°30'00" N. Lat. on the north  
103°10'00" W. Long. on the east  
38°30'00" N. Lat. on the south  
106°30'00" W. Long. on the west

Rectangle 2:

38°30'00" N. Lat. on the north

105°00'00" W. Long. on the east  
37°30'00" N. Lat. on the south  
105°50'00" W. Long. on the west

Rectangle 3:

40°08'00" N. Lat. on the north  
107°00'00" W. Long. on the east  
39°56'00" N. Lat. on the south  
107°15'00" W. Long. on the west

\* \* \* \* \*

■ 16. Section 78.27 is amended by revising paragraph (b)(1) to read as follows:

**§ 78.27 License conditions.**

\* \* \* \* \*

(b) \* \* \*

(1) The licensee of a CARS station shall notify the Commission in writing when the station commences operation. Such notification shall be submitted on or before the last day of the authorized one year construction period; otherwise, the station license shall be automatically forfeited.

\* \* \* \* \*

■ 17. Add § 78.30 to read as follows:

**§ 78.30 Forfeiture and termination of station authorizations.**

(a) A CARS license will be automatically forfeited in whole or in part without further notice to the licensee upon the voluntary removal or alteration of the facilities, so as to render the station not operational for a period of 30 days or more.

(b) If a station licensed under this part discontinues operation on a permanent basis, the licensee must cancel the license. For purposes of this section, any station which has not operated for one year or more is considered to have been permanently discontinued.

[FR Doc. 04–21513 Filed 9–27–04; 8:45 am]

BILLING CODE 6712–01–P

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 73**

[DA 03–2704]

**Radio Broadcasting Services; Birmingham, AL**

**AGENCY:** Federal Communications Commission.

**ACTION:** Correcting amendments.

**SUMMARY:** This document editorially amends 47 CFR 73.202(b), the Table of FM Allotments for Birmingham, Alabama, which was published in the **Federal Register** of Friday, September 19, 2003, (68 FR 54855). The Federal Communications Commission published in the **Federal Register**, of