

inflation adjustment, took effect on April 21, 2020. NEH notified the public that it would accept comments on the interim final rule for thirty (30) days after publication, until May 21, 2020. By that date, NEH did not receive any comments. Therefore, NEH is adopting the interim final rule as final, without change.

#### **Executive Order 12866, Regulatory Planning and Review, and Executive Order 13563, Improving Regulation and Regulatory Review**

This action is not a significant regulatory action and was therefore not submitted to OMB for review. NEH conducted the required assessment under Executive Orders 12866 and 13563 for the interim final rule and this rule finalizes that regulation without change.

#### **Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs**

This action is not expected to be an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

#### **Executive Order 13132, Federalism**

This rulemaking does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government.

#### **Executive Order 12988, Civil Justice Reform**

This rulemaking meets the applicable standards set forth in section 3(a) and 3(b)(2) of Executive Order 12988. Specifically, this rule is written in clear language designed to help reduce litigation.

#### **Executive Order 13175, Indian Tribal Governments**

Under the criteria in Executive Order 13175, NEH evaluated this rule and determined that it will not have any potential effects on federally recognized Indian Tribes.

#### **Executive Order 12630, Takings**

Under the criteria in Executive Order 12630, this rulemaking does not have significant takings implications. Therefore, a takings implication assessment is not required.

#### **Regulatory Flexibility Act of 1980**

This rulemaking will not have a significant adverse impact on a substantial number of small entities,

including small businesses, small governmental jurisdictions, or certain small not-for-profit organizations.

#### **Paperwork Reduction Act of 1995**

This rulemaking does not impose an information collection burden under the Paperwork Reduction Act. This action contains no provisions constituting a collection of information pursuant to the Paperwork Reduction Act.

#### **Unfunded Mandates Reform Act of 1995**

This rulemaking does not contain a Federal mandate that will result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year.

#### **National Environmental Policy Act of 1969**

This rulemaking will not have a significant effect on the human environment.

#### **Small Business Regulatory Enforcement Fairness Act of 1996**

This rulemaking will not be a major rule as defined in section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of \$100 million or more, a major increase in costs or prices, significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

#### **E-Government Act of 2002**

All information about NEH required to be published in the **Federal Register** may be accessed at [www.neh.gov](http://www.neh.gov). The website <https://www.regulations.gov> contains electronic dockets for NEH's rulemakings under the Administrative Procedure Act of 1946.

#### **Plain Writing Act of 2010**

To ensure this final rule was written in plain and clear language so that it can be used and understood by the public, NEH modeled the language of this rule on the Federal Plain Language Guidelines.

#### **List of Subjects in 45 CFR Part 1168**

Administrative practice and procedure, Lobbying, Penalties.

#### **PART 1168—NEW RESTRICTIONS ON LOBBYING**

■ Accordingly, NEH adopts the interim final rule amending 45 CFR part 1168,

which was published at 85 FR 22025 on April 21, 2020, as final without change.

Dated: May 22, 2020.

**Caitlin Cater,**

*Attorney-Advisor, National Endowment for the Humanities.*

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**BILLING CODE 7536–01–P**

## **FEDERAL COMMUNICATIONS COMMISSION**

### **47 CFR Parts 11, 73, and 74**

**[MB Docket Nos. 19–193 and 17–105; FCC 20–53; FRS 16740]**

#### **Low Power FM Radio Service Technical Rules**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Federal Communications Commission (Commission) adopts a Report and Order (Order) to improve technical rules that primarily affect Low Power FM (LPFM) radio stations.

**DATES:** Effective July 13, 2020, except for the changes to §§ 73.816, 73.850, and 73.870, which are delayed. The Commission will published a document in the **Federal Register** announcing the effective date.

**FOR FURTHER INFORMATION CONTACT:** Irene Bleiweiss, Media Bureau, Audio Division, (202) 418–2785, or via the internet at [Irene.Bleiweiss@fcc.gov](mailto:Irene.Bleiweiss@fcc.gov). Direct press inquiries to Janice Wise at (202) 418–8165, or via the internet at [Janice.Wise@fcc.gov](mailto:Janice.Wise@fcc.gov). For additional information concerning the Paperwork Reduction Act (PRA) information collection requirements contained in this document, contact Cathy Williams at 202–418–2918, or via the internet at [Cathy.Williams@fcc.gov](mailto:Cathy.Williams@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Order, in MB Docket Nos. 19–193 and 17–105, FCC 20–53, adopted and released on April 23, 2020. The full text of this document is available electronically via the FCC's Electronic Document Management System (EDOCs) website <https://www.fcc.gov/ecfs/filing/0423300323576> or by downloading the text from the Commission's website at website at <http://fjallfoss.fcc.gov/ecfs2/>. (Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.) Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by

sending an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

### Final Paperwork Reduction Act of 1995 Analysis

The Report and Order in document FCC 20-53 contains modified information collection requirements, which are not effective until approval is obtained from OMB. The Commission, as part of its continuing effort to reduce paperwork burdens, has invited the general public to comment on these information collection requirements as required by the PRA (85 FR 34440, June 4, 2020). The Commission will publish a separate document in the **Federal Register** announcing approval of the information collection requirements. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, 44 U.S.C. 3506(c)(4), the Commission previously sought comment on how the Commission might "further reduce the information burden for small business concerns with fewer than 25 employees." See *Amendments of Parts 73 and 74 to Improve the Low Power FM Radio Service Technical Rules*, MB Docket Nos. 19-193, 17-105, Notice of Proposed Rulemaking, 84 FR 49205 (Sept. 19, 2019), 34 FCC Rcd 6537 (2019) (NPRM).

### Congressional Review Act

The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs that this rule is "non-major" under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of this Report & Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

### Synopsis

1. *Introduction.* On April 23, 2020, the Commission adopted a Report and Order (Order), Amendment of Parts 73 and 74 of the Commission's Rules to Improve the Low Power FM Radio Service Technical Rules; Modernization of Media Regulation Initiative; FCC 20-53, MB Docket Nos. 19-193, 17-105. The Order revises the technical rules governing the Low Power FM (LPFM) service in order to improve LPFM reception and increase flexibility in transmitter siting while maintaining interference protection and the core LPFM goals of diversity and localism.

2. The Commission proposed to modify the LPFM technical rules in an NPRM published at 84 FR 49205 (Sept.

19, 2019). The rule changes adopted in the Order modify the rules in four main ways: (1) Expanding the permissible use of directional antennas; (2) expanding the definition of minor change applications for LPFM stations; (3) allowing LPFM stations to own FM boosters; and (4) permitting LPFM and Class D FM stations operating on the FM reserved band (channels 201 to 220) reserved band (channels 201 to 220) to propose facilities short-spaced to television stations operating on channel 6 (TV6) with the consent of the potentially affected stations. With respect to TV6, the Order also establishes an interim process for reserved channel LPFM, noncommercial educational (NCE) FM, Class D (10 watt) FM, and FM translator stations to request waivers of TV6 protections upon showing of no interference, until the Commission further addresses TV6 protection requirements in a separate proceeding. The Order also adopts several other rule revisions and clarifications. Specifically, the Order allows co-located LPFM stations to share Emergency Alert System decoders; clarifies silent station notification requirements; affirms that LPFM transmitters must be certified; and makes small, non-substantive wording changes to the rules. The goal of the Order is to provide LPFM stations with greater flexibility, to improve their service, to remove regulatory burdens, and to continue efforts to modernize media regulations.

3. *Directional Antennas.* The Commission amends § 73.816 of its rules (Rules) to expand the optional use of directional antennas in the LPFM service, including custom-designed models. In response to concerns by some full-power broadcasters about potential interference to their stations from directional LPFM antennas, the Order requires LPFM stations using directional antennas to submit proof of performance studies with their license applications to verify proper installation and operation. However, in response to concerns of LPFM stations that proof studies are costly and sometimes unnecessary, the Order exempts three types of proposals that have other, existing interference protections. The Commission expects that expanded use of directional antennas would primarily assist LPFM licensees constructing stations near the borders with Canada and Mexico, and exempts such applications from the proof of performance requirement because existing international agreements contain provisions for interference remediation.

4. *Redefine Minor Changes.* The Order amends § 73.870 to expand the definition of a "minor" LPFM facility change. An LPFM station making a "minor" change to its transmitter site may relocate without awaiting the opening of a filing window. Prior to the rule change, LPFM modifications qualified as minor if they did not exceed 5.6 kilometers, based on the fact that LPFM stations typically have 60 dBu service contours with a radius of slightly more than 5.6 kilometers and that a station moving 5.6 kilometers would, thus, continue to serve at least part of the same area. The Order recognizes that because the contours of two such facilities can also be expected to overlap at double that distance (11.2 kilometers), LPFM site changes should be allowed up to 11.2 kilometers, or up to any greater distance that would result in overlapping 60 dBu service contours between the existing and relocated facilities. This approach will provide LPFM stations more opportunities to relocate, provided that the relocated station would continue to serve part of the area served by the existed station.

5. *Cross-Ownership of FM Booster Stations.* The Commission amends § 73.860 to allow cross-ownership of LPFM stations and FM boosters. Generally, LPFM licensees may not own non-LPFM stations. There is, however, a limited exception allowing non-Tribal LPFM licensees to operate up to two FM translator stations if they meet certain requirements. The amendment to § 73.860 establishes guidelines for potential booster use by LPFM stations in lieu of use of an FM translator. Under the revised rule, an LPFM station can rebroadcast its signal on up to two FM translators, up to two FM boosters, or one of each, provided that the LPFM station's service area must overlap that of a co-owned FM translator, and must entirely encompass that of a co-owned booster. Booster stations could receive the signal of the commonly-owned LPFM station by any means authorized in § 74.1231(i), the rule that applies to all FM booster stations. Use of FM boosters may improve LPFM reception in areas with irregular terrain.

6. *Protecting TV Channel 6 Television Stations.* The Commission defers to a separate proceeding whether to eliminate entirely the requirements that LPFM, Class D, NCE FM, and FM translator stations on the FM reserved band protect television stations operating on adjacent television channel 6 (TV6). The Commission will be in a better position to reach an informed decision on TV6 issues when there is a more developed record about what impact, if any, eliminating TV6

protections would have once all television stations have transitioned from analog to digital, an ongoing process that will not be complete until July 13, 2021. Consistent with the Commission's proposal to grant some earlier relief, the Order amends §§ 73.825 and 73.512 to exempt reserved band LPFM and Class D applicants from TV6 protection requirements where the applicant provides an agreement indicating the concurrence of all potentially affected TV6 stations. That revision will afford LPFM and Class D applicants the same opportunity for exemption that currently exists for NCE FM and FM translator applicants. Also, until the Commission issues a TV6 decision in a separate proceeding, the Commission will consider waiver requests from LPFM, Class D, NCE FM, and FM translator applicants seeking to construct facilities that are short-spaced to TV6. Applicants will be required to certify that they served the application and waiver request on the affected TV6 station. The Commission will review these waiver requests and any petitions to deny and informal objections on a case-by-case basis and grant such requests if the applicant demonstrates no interference.

7. *Miscellaneous Issues.* The Order makes several additional changes and rejects others. The Order retains the requirement that LPFM stations participate in the Emergency Alert System (EAS) but modifies § 11.52(c) to allow shared EAS decoder use by LPFM stations that are co-located but not co-owned. LPFM licensees seeking to share a decoder must enter into a written agreement that ensures that each has access to the co-located equipment; and acknowledges that each party to the agreement remains fully and individually responsible for compliance with all EAS rules and any EAS violations involving the shared equipment.

8. The Order modifies § 73.850 to clarify that LPFM stations, like all broadcast stations, must notify the Commission if they are silent 10 days and seek consent to remain off the air for 30 days or more. Such notifications allow the Commission to assist stations return to the air before their licenses expire as a matter of law as a result of the extended silence. The Order also makes a non-substantive change to § 73.810, the rule governing LPFM third-adjacent channel interference, so that its language will track changes to FM translator rules made in another proceeding, thereby clarifying that LPFM stations and FM translator stations must protect the same stations. Finally, the Order eliminates repetitive

language from § 73.871(c) concerning "minor" amendments and removes an outdated web page address from § 74.1290.

9. The Commission rejects several additional proposals from LPFM organizations. First, the Commission declines to increase the maximum power of LPFM stations from 100 watts to 250 watts. The Commission had tentatively rejected a power increase proposal in the NPRM, as inconsistent with the Local Community Radio Act (LCRA) and with the simple design of the LPFM service. Commenters submitted two revised power-increase proposals but the Commission found that the first did not fully solve the LCRA/complexity issues and that the second was submitted too late to be considered in the current proceeding.

10. The Order also declines to impose any new requirements on stations hosting radio reading services for the blind. LPFM applicants sought such requirements so that the Commission might compile lists of such stations that LPFM applicants must protect, but the Commission stated that the accuracy of any such list would be short-lived and that other resources exist for obtaining the same information. The Order further rejects a commenter suggestion to allow LPFM stations to protect FM translators in the same way that FM translators protect LPFM stations, *i.e.*, with contour protections and interference remediation requirements. Such a change would alter the simplicity of LPFM licensing.

11. The Commission declines to alter the § 73.1660(a) requirement that LPFM transmitters be certified, *i.e.*, approved by the Commission based on data that is generally submitted by the equipment manufacturer. LPFM transmitters must be specifically certified for LPFM use because not all equipment is suitable to operate at the lower parameters in the LPFM service. The Commission also rejects a suggestion that LPFM stations be permitted to shorten their call signs by dropping the "-LP" suffix. The suffix is important for official Commission purposes because it allows anyone who wishes to contact the Commission about the station's operations to readily ascertain the station's identity, in a format unique to that facility, and to generate information about the correct station from the Commission's online databases.

#### Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA) an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the NPRM to this proceeding. *See* 5 U.S.C.

603. The RFA, *see* 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, 110 Stat. 847 (1996). The SBREFA was enacted as Title II of the Contract With America Advancement Act of 1996 (CWAAA). The Commission sought written public comment on the proposals in the NPRM, including comment on the IRFA. The Commission received one comment referencing language in the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA. *See* 5 U.S.C. 604.

#### A. Need For, and Objectives of, the Report and Order

2. This *Report and Order* adopts several rule changes that are intended to improve the public's reception of Low Power FM (LPFM) broadcast station signals and to provide greater flexibility to LPFM broadcasters. Specifically, in the *Report and Order* the Commission adopts new rules and procedures to: (1) Expand the class of LPFM licensees able to use directional antennas and allows LPFM use of antennas beyond off-the-shelf models; (2) allows LPFM and Class D stations to, like FM translators and full-service FM stations operating on Channels 201 to 220 (reserved band) not protect television stations operating on Television Channel 6 if they obtain concurrence from the TV6 station, or alternatively to request a waiver of the requirement; (3) redefine a "minor change" for LPFM stations as one which either: (a) Does not exceed 11.2 kilometers (doubling the simple standard currently in use); or (b) involves overlapping 60 dBu contours of the station's own existing and proposed facilities (a new standard that would generally be used by stations unable to meet the 11.2 kilometer distance and that would be more costly because it would require an engineering study); (4) permit LPFM stations to retransmit LPFM signals over booster stations (which amplify and reradiate the signal) as a substitute for currently permissible use of FM translators (which retransmits the signal on a different channel without amplification); (5) allow co-located LPFM stations to reduce operating costs by sharing a single Emergency Alert Service (EAS) decoder; (6) update LPFM-related rules in Parts 73 and 74 to make non-substantive changes to conform the rule governing LPFM third-adjacent channel interference, remove repetitive language and outdated information; and (7) require that LPFM stations, like all other broadcast stations, must notify the Commission if they stop broadcasting for ten days and request authority to

remain off-air for longer than 30 days. The new rules and procedures are designed to provide stations with more options to relocate and to improve their signals by having the opportunity to use more sophisticated equipment. These changes may improve the public's ability to receive signals from low-powered stations, especially in areas with irregular terrain and near international borders. The changes may also provide LPFM applicants greater flexibility in identifying initial and modified transmitter locations. The Commission's objectives are to improve LPFM reception and increase flexibility in LPFM siting while protecting primary stations and pre-existing secondary stations from interference and maintaining the core LPFM goals of diversity and localism.

*B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA*

3. Las Vegas Public Radio Inc. (LVPR), licensee of KIOF-LP, Las Vegas, Nevada, filed comments citing to the IRFA's recognition that LPFM stations are small entities. LVPR's primary concern is that the Corporation for Public Broadcasting (CPB) has denied its yearly applications for Community Service Grant funding. LVPR characterizes CPB's actions as "anti-competitive business practices" that favor "dominant" full-power NCE FM stations over smaller LPFM stations. LVPR contends that the IRFA's classification of LPFM stations as small businesses is consistent with that argument. *See* LVPR Comments at 2 (rec. Aug. 22, 2019); LVPR Reply at 2 (rec. Sept. 16, 2019); *see also* LVPR Further Comments at 1–2 (rec. Nov. 5, 2019). The Commission neither provides financial support for broadcasters nor participates in the CPB funding process. LVPR's concern is not related to how the Commission's proposed rules would affect small entities and, therefore, is beyond the scope of this proceeding. LVPR also argues that the Commission's tentative decision not to increase the 100-watt maximum EFR of LPFM stations will prevent business growth. LVPR Comments at 2 (rec. Aug. 27, 2019); LCPR Comments at 2 (rec. Aug. 29, 2019). The reasoning behind the Commission's decision on this matter is fully discussed in section III(F) of the *Report and Order*. *See Report and Order*, *supra* at paras. 36–41.

*C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration*

4. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments. 5 U.S.C. 604(a)(3). The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

*D. Description and Estimate of the Number of Small Entities to Which the Rules Apply*

5. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. 5 U.S.C. 603(b)(3). The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." *Id.* section 601(6). In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. *Id.* section 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**." *Id.* section 601(3). 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 SBA. *Id.* section 632. Application of the statutory criteria of dominance in its field of operation and independence are sometimes difficult to apply in the context of broadcast television. Accordingly, the Commission's statistical account of television stations may be over-inclusive.

6. The new rules will apply primarily to applicants, permittees, and licensees within the LPFM service. Because LPFM stations operate on the same spectrum as FM translator stations but under different technical requirements, the changes to the LPFM requirements could have a secondary impact on FM

translator applicants and licensees. Specifically, the rule changes may enable LPFM stations to operate in more locations, making it necessary for subsequent FM translator applicants to protect those additional locations. Although the Commission is deferring action on a proposal to eliminate the requirement that radio stations in the FM reserved band protect adjacent television stations operating on Television Channel 6 (TV6), it is reducing the burden on small businesses by entertaining requests for waiver of this requirement. Below, we provide a description of these small entities, as well as an estimate of the number of such small entities, where feasible.

7. *Low Power FM Stations.* The *Report and Order* make relatively small rule adjustments that will primarily affect licensees and potential licensees of LPFM stations. LPFM stations are classified as radio broadcast stations. Business concerns included in this industry are those primarily engaged in broadcasting aural programs by radio to the public. *See* 13 CFR 121.201, NAICS Code 515112. The SBA defines a radio broadcast station as a small business if such station has no more than \$41.5 million in annual receipts. *Id.* Given the nature of the LPFM service, in which eligibility is limited to non-profit organizations based in the community (typically small, volunteer-run groups), governments, and tribal applicants, we will presume that all LPFM licensees and applicants qualify as small entities under the SBA definition. 47 CFR 73.853, 73.860.

8. While the U.S. Census provides no specific data for these stations, the Commission has estimated the number of licensed low power FM stations to be 2,169. *Broadcast Station Totals as of December 31, 2019*, FCC News Release (rel. Jan. 3, 2020) (*Broadcast Station Totals*), <https://docs.fcc.gov/public/attachments/DOC-361678A1.pdf>. This estimate may overstate the number of potentially affected licensees because existing LPFM stations that do not seek to modify their facilities would not be affected. The estimate may also be an overstatement because some of the proposals would affect only stations to be located in particular geographic regions (directional antenna use near borders with Canada and Mexico), in certain topography (booster station use to overcome terrain obstacles), or on certain channels (because TV6 protections do not apply to LPFM stations operating on spectrum other than FM Channels 201 to 220). With respect to applicants in future filing windows, we anticipate that we will

receive a number of applications similar to past filing windows and that all applicants will qualify as small entities. The last LPFM filing window in 2013 generated approximately 2,827 applications.

9. *NCE FM Radio Stations.* The potential waiver of TV6 protection policies applies to reserved band NCE FM radio broadcast licensees, and potential licensees of NCE FM radio service. This Economic Census category “comprises establishments primarily engaged in broadcasting aural programs by radio to the public.” U.S. Census Bureau, 2012 NAICS Definitions, “515112 Radio Stations,” at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>. This category description continues: “Programming may originate in their own studio, from an affiliated network, or from external sources.” The SBA has created the following small business size standard for this category: Those having \$41.5 million or less in annual receipts. 13 CFR 121.201; NAICS code 515112. Census data for 2012 show that 2,849 firms in this category operated in that year. U.S. Census Bureau, Table No. EC0751SSSZ4, *Information: Subject Series—Establishment and Firm Size: Receipts Size of Firms for the United States: 2012* (515112), [http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2007\\_US\\_51SSSZ4&prodType=table](http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ4&prodType=table). Of this number, 2,806 firms had annual receipts of less than \$25 million, and 43 firms had annual receipts of \$25 million or more. *Id.* Because the Census has no additional classifications that could serve as a basis for determining the number of stations whose receipts exceeded \$41.5 million in that year, we conclude that the majority of radio broadcast stations were small entities under the applicable SBA size standard. In addition, the Commission has estimated the number of NCE FM radio stations to be 4,135. *Broadcast Station Totals* at 1. Because NCE licensees must be non-profit, we will presume that all are small entities.

10. *FM Translator Stations.* The changes adopted herein will affect licensees of FM translator stations, as well as potential licensees in these stations. The same SBA definition that applies to radio stations applies to FM Translator stations. As noted, the SBA has created the following small business size standard for this category: Those having \$41.5 million or less in annual receipts. 13 CFR 121.201, NAICS Code 515112. In addition, as of December 31, 2019, there were a total of 8,182 FM translator and FM booster stations. *Broadcast Station Totals* at 1. We

anticipate that in future FM Translator filing windows we will receive a number of applications similar to past filing windows and that all applicants will qualify as small entities. The 2003 FM translator filing window generated approximately several hundred applications from NCE applicants.

11. *Channel 6 Television Stations.* The Report and Order modifies the LPFM rules to specify that LPFM and Class D (10 watt) FM stations can propose operations that do not fully protect TV6 stations if the TV6 station concurs. Such language already exists for other types of reserved band FM stations. Thus, the Report and Order would affect Television Broadcasting firms on TV6. This economic Census category “comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public.” U.S. Census Bureau, 2012 NAICS Code *Economic Census Definitions*, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch>. The SBA defines Television Broadcasting firms as small businesses if they have \$41.5 million or less in annual receipts. 13 CFR 121.201; NAICS code 515120. The 2012 economic Census reports that 751 television broadcasting firms operated during that year. Of that number, 656 had annual receipts of less than \$25 million per year. Based on that Census data we conclude that a majority of firms that operate television stations are small. Approximately nine full-power television stations and about 117 LPTV and TV translator stations (54 analog and 63 digital) currently operate on Channel 6. Ten additional low power television stations that were displaced by an Incentive Auction process hold permits to move to Channel 6 in the future, but those operations will be digital rather than analog. We will presume that all of these Channel 6 television stations are small businesses.

#### *E. Description of Projected Reporting, Record Keeping and Other Compliance Requirements*

12. The rule changes adopted in the *Report and Order* will, in some cases, impose different reporting requirements on LPFM applicants for new, modified, and/or licensed but silent facilities. Applicants seeking modifications will be able to demonstrate that their proposals are “minor” by submitting a different type of showing as an alternative to the current distance-based requirement, which will remain available. We expect that the alternative,

while more costly, will enable more organizations to apply for authority to modify their facilities without having to wait for a filing window. LPFM stations that choose to operate co-owned FM boosters would include the booster on bi-annual ownership reports. We expect this additional burden with respect to ownership reports to be minimal because LPFM stations would generally not operate a booster unless they are experiencing unique terrain issues. An LPFM permittee choosing to use a directional antenna not subject to an exception would submit a proof of performance study with its application for a covering license, a safeguard that ensure that the equipment is operating properly and would not cause interference. We expect this additional burden concerning directional antennas to be minimal because it will affect only a small portion of LPFM applicants. It is likely that the new directional antenna option will be used primarily by those constructing stations near the borders with Canada and Mexico to comply with bilateral agreements that already contain interference remediation provisions. Licensed LPFM stations that limit or discontinue operations would have to notify the Commission by the tenth day and request authority for the any limited or discontinued operations exceeding 30 days. The notification could be accomplished by a brief letter. The request for authority exceeding 30 days can be done by letter or brief electronic submission. We expect this additional burden concerning limited or discontinued operations to affect only a small portion of LPFM licensees, *i.e.*, those experiencing significant technical difficulties lasting at least ten or thirty days, respectively. LPFM stations generally already file such requests as a matter of practice, because such information is explicitly required for other broadcast stations.

#### *F. Steps Taken To Minimize Significant Impact on Small Entities, and Significant Alternatives Considered*

13. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed 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 or reporting requirements under the rule for 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 small entities. 5 U.S.C. 603(c)(1)–(c)(4).

14. The rules adopted herein are intended to assist LPFM broadcast stations and applicants, which we presume are all small entities, by providing them with additional options that could increase coverage and choice of sites. For example, doubling the distance that a station can move from its existing site, as a “minor” change will allow the station to consider additional siting options. Allowing stations near international borders to use directional antennas could increase coverage in the direction away from the border while complying with international agreements that limit coverage close to the border. The rules enable LPFM organizations: (1) To use directional antennas including custom and composite antennas; (2) to double (from 5.6 kilometers to 11.2 kilometers) the distance that an LPFM station can move as a “minor change” without awaiting an application filing window or, alternatively, to demonstrate contour overlap between their existing and proposed facilities; (3) to retransmit LPFM signals over booster stations; and (4) to use a single EAS decoder with a co-located LPFM station. The Commission would relieve LPFM and Class D (10 watt) reserved band FM radio stations of the requirement to protect television stations operating on TV6 if the TV6 station concurs. The Commission recognizes that the TV6 stations are also small entities. We believe that there will not be any negative impact on such television stations because the option to concur would be voluntary. The Commission invited and has considered alternatives including alternatives to minimize the burden on small businesses. The majority of the commenters supported the Commission’s proposals. The *Report and Order* adopts one commenter-suggested alternative by doubling the distance that meets the definition of a “minor change” from 5.6 to 11.2 kilometers. That alternative will make it easier for small entities to benefit from the new definition by using a simple, enlarged distance standard that does not require a more costly engineering analysis. With respect to directional antennas the Commission adopted, in part, a commenter suggestion to limit the situations in which directional LPFM facilities would be required to submit a proof of performance. In most situations, the Commission will not require proofs, which can be costly. It will, however, require proof of performance studies for LPFM

directional antennas designed to protect other broadcast stations from interference thereby making sure that the antennas are properly functioning before allowing them to operate. The Commission noted that requiring such proofs before licensure would have a benefit to LPFM applicants because it would be unnecessary for them to become involved in interference disputes.

#### G. Report to Congress

15. The Commission will send a copy of this Report and Order, including this FRFA, in a report to Congress and the Government Accountability Office pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. See *id.* section 801(a)(1)(A). In addition, the Commission will send a copy of the *Report and Order*, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Report and Order* and FRFA (or summaries thereof) will also be published in the **Federal Register**. See *id.* section 604(b).

#### Ordering Clauses

16. Accordingly, *it is ordered* that, pursuant to the authority contained in sections 1, 4(i), 4(j), 301, 303, 307, 308, 309, 316, and 319 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 301, 303, 307, 308, 309, 316, and 319, as well as the Local Community Radio Act of 2010, Public Law 111–371, 124 Stat. 4072 (2011), this Report and Order *is adopted* and *will become effective* 30 days after publication in the **Federal Register**.

17. *It is further ordered* that parts 11, 73, and 74 of the Commission’s Rules *are amended* as set forth in the Final Rules and the rule changes to §§ 11.52, 73.807, 73.810, 73.825, 73.860, 73.871, 74.1201, 74.1263, 74.1283, and 74.1290 adopted herein will become effective 30 days after the date of publication in the **Federal Register**.

18. *It is further ordered* that the rule changes to §§ 73.816, 73.850, and 73.870, which contain new or modified information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, *will become effective* on the date specified in a document published in the **Federal Register** announcing such approval.

19. *It is further ordered* that, should no petitions for reconsideration or petitions for judicial review be timely filed, MB Docket No. 19–193 *shall be terminated*, and its docket *closed*.

20. *It is further ordered* that 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 Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

21. *It is further ordered* that the Commission *shall 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

##### 47 CFR Part 11

Radio, Television.

##### 47 CFR Part 73

Civil defense, Communications equipment, Education, Mexico, Radio, Reporting and recordkeeping requirements, Television.

##### 47 CFR Part 74

Communications equipment, Education, Radio, Reporting and recordkeeping requirements, Television.

Federal Communications Commission.

**Marlene Dortch**,  
Secretary.

#### Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 11, 73, and 74 as follows:

#### PART 11—EMERGENCY ALERT SYSTEM (EAS)

■ 1. The authority citation for part 11 continues to read as follows:

**Authority:** 47 U.S.C. 151, 154(i) and (o), 303(r), 544(g) and 606.

■ 2. Amend § 11.52 by revising paragraph (c) to read as follows:

##### § 11.52 EAS code and Attention Signal Monitoring requirements.

\* \* \* \* \*

(c) EAS Participants that are co-owned and co-located with a combined studio or control facility (such as an AM and FM licensed to the same entity and at the same location or a cable headend serving more than one system) may comply with the EAS monitoring requirements contained in this section for the combined station or system with one EAS Decoder. The requirements of § 11.33 must be met by the combined facilities. Co-located LPFM stations including those operating on a time-sharing basis but which, pursuant to ownership restrictions in § 73.855 of this chapter cannot be co-owned, may

also comply with the EAS monitoring requirements with one EAS Decoder pursuant to a written agreement between the licensees ensuring that each licensee has access to the decoder; that the stations will jointly meet the requirements of § 11.33; and that each licensee remains fully and individually responsible for compliance with all EAS rules and obligations applicable to LPFM EAS participants in this part, and any EAS violations involving the shared, co-located equipment. Each LPFM licensee entering into such an arrangement remains fully and directly liable for enforcement actions involving the shared equipment as well as all other obligations attendant to LPFM EAS Participants in this part, regardless of which party to the agreement took or failed to take the actions giving rise to the violation.

\* \* \* \* \*

## PART 73—RADIO BROADCAST SERVICES

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

**Authority:** 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

■ 4. Amend § 73.512 by adding a sentence at the end of paragraph (d) to read as follows:

### § 73.512 Special procedures applicable to Class D noncommercial educational stations.

\* \* \* \* \*

(d) \* \* \* With respect to Class D (secondary) applications on Channels 201 through 220 required to protect television stations operating on TV Channel 6, the non-interference requirements in the preceding sentences will apply unless the application is accompanied by a written agreement between the Class D (secondary) applicant and each affected TV Channel 6 broadcast station concurring with the proposed Class D facilities.

■ 5. Amend § 73.807 by adding paragraph (g)(5) to read as follows:

### § 73.807 Minimum distance separation between stations.

\* \* \* \* \*

(g) \* \* \*

(5)(i) LPFM stations located within 125 kilometers of the Mexican border are limited to 50 watts (0.05 kW) ERP, a 60 dBu service contour of 8.7 kilometers and a 34 dBu interfering contour of 32 kilometers in the direction of the Mexican border. LPFM stations may operate up to 100 watts in all other directions.

(ii) LPFM stations located between 125 kilometers and 320 kilometers from

the Mexican border may operate in excess of 50 watts, up to a maximum ERP of 100 watts. However, in no event shall the location of the 60 dBu contour lie within 116.3 kilometers of the Mexican border.

(iii) Applications for LPFM stations within 320 kilometers of the Canadian border may employ an ERP of up to a maximum of 100 watts. The distance to the 34 dBu interfering contour may not exceed 60 kilometers in any direction.

■ 6. Amend § 73.810 by revising paragraph (a)(1)(iii) to read as follows:

### § 73.810 Interference.

(a) \* \* \*

(iii) The direct reception by the public of the off-the-air signals of any full-service station or previously authorized secondary station. Interference will be considered to occur whenever reception of a regularly used signal on a third-adjacent channel is impaired by the signals radiated by the LPFM station, regardless of the quality of such reception, the strength of the signal so used, or the channel on which the protected signal is transmitted.

\* \* \* \* \*

■ 7. Amend § 73.816 by revising paragraph (b), removing and reserving paragraph (c), and revising paragraph (d) to read as follows:

### § 73.816 Antennas.

\* \* \* \* \*

(b) Permittees and licensees may employ directional antennas in the LPFM service, in accordance with paragraph (d) of this section.

(c) [Reserved]

(d)(1) Composite antennas and antenna arrays may be used where the total ERP does not exceed the maximum determined in accordance with § 73.811(a).

(2) Either horizontal, vertical, circular, or elliptical polarization may be used provided that the supplemental vertically polarized ERP required for circular or elliptical polarization does not exceed the ERP otherwise authorized. Either clockwise or counterclockwise rotation may be used. Separate transmitting antennas are permitted if both horizontal and vertical polarization is to be provided.

(3) An application that specifies the use of a directional antenna must provide the information identified in § 73.316(c) except that such information shall not be required of:

(i) Public safety and transportation permittees and licensees eligible pursuant to § 73.853(a)(2) using directional antennas in connection with operation of Travelers' Information Service stations;

(ii) LPFM permittees and licensees proposing a waiver of the second-adjacent channel spacing requirements of § 73.807 for the sole purpose of justifying such a waiver; and

(iii) LPFM permittees and licensees using directional antennas solely for the purpose of meeting the international border zone distance requirements of § 73.807(g).

■ 8. Amend § 73.825 by adding introductory text to read as follows:

### § 73.825 Protection to reception of TV channel 6.

The following spacing requirements will apply to LPFM applications on Channels 201 through 220 unless the application is accompanied by a written agreement between the LPFM applicant and each affected TV Channel 6 broadcast station concurring with the proposed LPFM facilities.

\* \* \* \* \*

■ 9. Amend § 73.850 by adding paragraph (d) to read as follows:

### § 73.850 Operating schedule.

\* \* \* \* \*

(d) In the event that causes beyond the control of a permittee or licensee make it impossible to adhere to the operating schedule in paragraph (b) of this section or to continue operating, the station may limit or discontinue operation for a period not exceeding 30 days without further authority from the Commission provided that notification is sent to the Commission in Washington, DC, Attention: Audio Division, Media Bureau, no later than the 10th day of limited or discontinued operation. During such period, the permittee shall continue to adhere to the requirements of the station license pertaining to lighting of antenna structures. In the event normal operation is restored prior to the expiration of the 30 day period, the permittee or licensee will notify the FCC, Attention: Audio Division, of the date that normal operations resumed. If causes beyond the control of the permittee or licensee make it impossible to comply within the allowed period, Special Temporary Authority (see § 73.1635) must be requested to remain silent for such additional time as deemed necessary not to exceed, in total, 12 consecutive months (see § 73.873(b)).

■ 10. Amend § 73.860 by revising paragraph (b) to read as follows:

### § 73.860 Cross-ownership.

\* \* \* \* \*

(b) A party that is not a Tribal Applicant, as defined in § 73.853(c), may hold attributable interests in one



LPFM station and no more than two FM translator stations, two FM booster stations, or one FM translator station and one FM booster station provided that the following requirements are met:

(1) The 60 dBu contour of the LPFM station overlaps the 60 dBu contour of the commonly-owned FM translator station(s) and entirely encompasses the 60 dBu service contour of the FM booster station(s);

(2) The FM translator and/or booster station(s), at all times, synchronously rebroadcasts the primary analog signal of the commonly-owned LPFM station or, if the commonly-owned LPFM station operates in hybrid mode, synchronously rebroadcasts the digital HD-1 version of the LPFM station's signal;

(3) The FM translator station receives the signal of the commonly-owned LPFM station over-the-air and directly from the commonly-owned LPFM station itself. The FM booster station receives the signal of the commonly-owned LPFM station by any means authorized in § 74.1231(i) of this chapter; and

(4) The transmitting antenna of the FM translator and/or booster station(s) is located within 16.1 kilometers (10 miles) for LPFM stations located in the top 50 urban markets and 32.1 kilometers (20 miles) for LPFM stations outside the top 50 urban markets of either the transmitter site of the commonly-owned LPFM station or the reference coordinates for that station's community of license.

\* \* \* \* \*

■ 11. Amend § 73.870 by revising paragraph (a) to read as follows:

**§ 73.870 Processing of LPFM broadcast station applications.**

(a) A minor change for an LPFM station authorized under this subpart is limited to transmitter site relocations not exceeding 11.2 kilometers or where the 60 dBu contour of the authorized facility overlaps the 60 dBu contour of the proposed facility. These distance limitations do not apply to amendments or applications proposing transmitter site relocation to a common location filed by applicants that are parties to a voluntary time-sharing agreement with regard to their stations pursuant to § 73.872(c) and (e). These distance limitations also do not apply to an amendment or application proposing transmitter site relocation to a common location or a location very close to another station operating on a third-adjacent channel in order to remediate interference to the other station; provided, however, that the proposed relocation is consistent with all localism

certifications made by the applicant in its original application for the LPFM station. Minor changes of LPFM stations may include:

(1) Changes in frequency to adjacent or IF frequencies (+/- 1, 2, 3, 53 or 54 channels) or, upon a technical showing of reduced interference, to any frequency; and

(2) Amendments to time-sharing agreements, including universal agreements that supersede involuntary arrangements.

\* \* \* \* \*

■ 12. Amend § 73.871 by revising paragraphs (c)(1) and (2) to read as follows:

**§ 73.871 Amendment of LPFM broadcast station applications.**

\* \* \* \* \*

(c) \* \* \*

(1) Site relocations of 11.2 kilometers or less;

(2) Site relocations that involve overlap between the 60 dBu service contours of the currently authorized and proposed facilities;

\* \* \* \* \*

**PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES**

■ 13. The authority citation for part 74 continues to read as follows:

**Authority:** 47 U.S.C. 154, 302a, 303, 307, 309, 310, 336 and 554.

■ 14. Amend § 74.1201 by revising paragraph (f) and adding paragraph (l) to read as follows:

**§ 74.1201 Definitions.**

\* \* \* \* \*

(f) *FM broadcast booster station.* A station in the broadcasting service operated for the sole purpose of retransmitting the signals of an FM radio broadcast station, by amplifying and reradiating such signals, without significantly altering any characteristic of the incoming signal other than its amplitude. Unless specified otherwise, this term includes LPFM boosters as defined in paragraph (l) of this section.

\* \* \* \* \*

(l) *LPFM booster.* An FM broadcast booster station as defined in paragraph (f) of this section that is commonly-owned by an LPFM station for the purpose of retransmitting the signals of the commonly-owned LPFM station.

■ 15. Amend § 74.1263 by revising paragraph (b) to read as follows:

**§ 74.1263 Time of operation.**

\* \* \* \* \*

(b) A booster station rebroadcasting the signal of an AM, FM, or LPFM primary station shall not be permitted to radiate during extended periods when signals of the primary station are not being retransmitted. Notwithstanding the foregoing, FM translators rebroadcasting Class D AM stations may continue to operate during nighttime hours only if the AM station has operated within the last 24 hours.

\* \* \* \* \*

■ 16. Amend § 74.1283 by revising paragraph (b) to read as follows:

**§ 74.1283 Station identification.**

\* \* \* \* \*

(b) The call sign of an FM booster station or LPFM booster will consist of the call sign of the primary station followed by the letters "FM" or "LP" and the number of the booster station being authorized, *e.g.*, WFCCFM-1 or WFCCLP-1.

\* \* \* \* \*

**§ 74.1290 [Removed and Reserved]**

■ 17. Remove and reserve § 74.1290.

[FR Doc. 2020-10394 Filed 6-10-20; 8:45 am]

BILLING CODE 6712-01-P

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

[Docket No. FWS-R1-ES-2017-0035; FF09E22000 FXES11130900000 201]

RIN 1018-BA43

**Endangered and Threatened Wildlife and Plants; Removing the Borax Lake Chub From the List of Endangered and Threatened Wildlife**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule; availability of post-delisting monitoring plan.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service or USFWS), are removing the Borax Lake chub (currently listed as *Gila boraxobius*), a fish native to Oregon, from the Federal List of Endangered and Threatened Wildlife on the basis of recovery. This final rule is based on a review of the best available scientific and commercial information, which indicates that the threats to the Borax Lake chub have been eliminated or reduced to the point where the species no longer meets the definition of an endangered or threatened species under the Endangered Species Act of 1973, as amended (Act).