

and Other Pay Television Services.” 13 CFR 121.201, NAICS codes 513210 and 513220. This definition provides that a small entity is one with \$11.0 million or less in annual receipts. *Id.* Currently, there are four DBS providers, though there are only two DBS companies in operation at this time. We neither request nor collect annual revenue information for DBS services, and are unable to determine the number of DBS operators that would be considered a small business under the SBA definition.

An alternative way to classify small entities is by the number of employees. Based on available data, we estimate that in 1997 the total number of full-service broadcast stations with four or fewer employees was 5186, of which 340 were television stations. We base these estimates on a compilation performed by the Equal Employment Opportunity Staff, Mass Media Bureau, FCC. Similarly, we estimate that in 1997, 1900 cable employment units employed fewer than six full-time employees. Also, in 1997, 296 MVPD employment units employed fewer than six full-time employees. We also estimate that in 1997, the total number of full-service broadcast stations with five to ten employees was 2145, of which 200 were television stations. Similarly, we estimate that in 1997, 322 cable employment units employed six to ten full-time employees. Also, in 1997, 65 MVPD employment units employed six to ten full-time employees.

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

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).

One of the alternatives that this Second NPRM proposes is that broadcasters with station employment units of five to ten full-time employees be provided some relief from EEO program requirements, and that station employment units of fewer than five full-time employees be exempt altogether, with the exception that all

broadcasters be subject to the nondiscrimination requirement and report any employment discrimination complaints filed against them. In addition, cable employment units, including MVPD employment units, employing six to ten full-time employees would be provided some relief from the proposed EEO program requirements, and cable employment units with fewer than six full-time employees would not be required to demonstrate compliance with the proposed EEO program requirements. We consider this alternative because entities with small staffs have limited personnel and financial resources to carry out EEO requirements. Furthermore, these proposed rules streamline and clarify recordkeeping requirements, thereby benefiting all entities, including those with fewer employees. It is our belief that the proposed alternative balances the importance of deterring discrimination and achieving broad outreach in broadcast and cable employment practices against the need to maintain minimal regulatory burdens and the ease and clarity of administration.

#### *F. Federal Rules That Overlap, Duplicate, or Conflict With the Proposed Rules*

The proposed rules do not overlap, duplicate or conflict with any other rules.

#### **List of Subjects**

##### *47 CFR Part 73*

Radio, Equal employment opportunity, Reporting and recordkeeping requirements, Television.

##### *47 CFR Part 76*

Cable television, Equal employment opportunity, Reporting and recordkeeping requirements.

Federal Communications Commission.

**William F. Caton,**

*Deputy Secretary.*

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## **FEDERAL COMMUNICATIONS COMMISSION**

### **47 CFR Parts 95**

**[WT Docket No. 01-339; FCC 01-366]**

#### **Garmin International, Inc.**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this *Notice of Proposed Rule Making (NPRM)*, the FCC proposes

to amend Commission's rules to authorize Family Radio Service (FRS) units to transmit an additional emission type and to revise the permissible communications rule that applies to FRS units. These rule changes could allow a new and incidental use of the FRS, a short-range two-way voice communication service used by small groups of persons.

**DATES:** Written comments by the public on the proposed are due on or before February 13, 2002 and reply comments are due on or before February 28, 2002.

**ADDRESSES:** Federal Communications Commission, Office of the Secretary, Room TW-B204, 445 Twelfth Street, SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** William Cross, Wireless Telecommunications Bureau, at (202) 418-0691.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Federal Communications Commission's Notice of Proposed Rule Making, FCC 01-366, adopted on December 12, 2001 and released on December 20, 2001. The full text of this Notice of Proposed Rule Making is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY-A257, 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 [www.fcc.gov](http://www.fcc.gov). Alternative formats are available to persons with disabilities by contacting Martha Contee at (202) 418-0260 or TTY (202) 418-2555.

1. This *NPRM* seeks comment on a proposal to amend §§ 95.193(a), 95.193(b), and 95.631(d) of the Commission's rules to authorize Family Radio Service (FRS) units to transmit an additional emission type and to revise the permissible communications rule that applies to FRS units. In its Petition, Garmin International, Inc. (Garmin) proposes to allow FRS units to transmit Global Positioning System (GPS) location information using emission type F2D in a digital data burst of not more than one second. Prior to the submission of the Petition, Garmin sought a waiver (Waiver Request) of §§ 95.193(a), 95.193(b), and 95.631(d) of the Commission's rules to allow it to manufacture and market inexpensive handheld FRS transceivers capable of transmitting GPS location information on FRS channels. The Public Safety and Private Wireless Division (Division) of the Wireless Telecommunications Bureau granted a one-year waiver of the

FRS Rules on September 29, 2000. On reconsideration, the Division extended the term of the waiver grant to two years, subject to the resolution of the Petition. We believe that these rule changes could allow a new and incidental use of the FRS, a short-range two-way voice communication service used by small groups of persons. Therefore, we are initiating this rulemaking proceeding to propose a modification of the authorized emission types and permissible communications rules.

### Procedural Matters

2. *Initial Regulatory Flexibility Certification.* The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an initial regulatory flexibility analysis be prepared for notice and comment rule making proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" 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).

3. In this *NPRM*, we propose to authorize an individual to use a FRS unit to satisfy his or her need for non-voice communications for the purpose of providing information about the location of the FRS unit to other FRS units. The proposed rules apply exclusively to individuals who use FRS units. Such modification would be in the public interest because it would allow the public to take advantage of technological developments in equipment and service that have occurred since the authorization of the FRS, availability of equipment at reasonable prices, and the removal of Selective Availability from the GPS signal.

4. In addition, the rules proposed in this *NPRM*, potentially could affect manufactures of FRS units. Based on requests from manufactures for certification of FRS units, we believe that there are between 5 and 10 manufactures of FRS units and that none of these manufactures are small entities. The proposed rule change, if adopted, applies to individuals who use FRS units and does not result in a

mandatory change in manufactured FRS units. Rather, the proposed rule change is permissive and would allow a manufacture, if it so chose, to include additional features in the FRS units it manufactured. Therefore, we certify that the proposals in this *NPRM*, if adopted, will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the *NPRM*, including a copy of this Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the SBA. This initial certification will also be published in the **Federal Register**.

5. *Paperwork Reduction Analysis.* This *NPRM* does not contain either a proposed or modified information collection requirement.

6. *Ex Parte Rules Presentations.* This is a permit-but-disclose notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules. See generally 47 CFR 1.1202, 1.1203, 1.1206(a).

7. *Alternative formats.* Alternative formats (computer diskette, large print, audiocassette, and Braille) are available from Brian Millin at (202) 418-7426, TTY (202) 418-7365, or at [bmillin@fcc.gov](mailto:bmillin@fcc.gov). This *NPRM* can also be downloaded at <http://www.fcc.gov/dtf>.

8. *Comment Dates.* pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments are due on or before February 13, 2002, and reply comments are due on or before February 28, 2002. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.

9. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

10. Parties who chose to file by paper must file an original and four copies of each filing. The docket number appearing in the caption of this

proceeding must appear in each comment or filing. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW-B204, Washington, DC 20554.

11. For further information, contact the Policy and Rules Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, (202) 418-0680, TTY (202) 418-7233, or via e-mail at [fccinfo@fcc.gov](mailto:fccinfo@fcc.gov).

### A. Ordering Clauses

12. Pursuant to sections 4(i), 4(j), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), and 303(r), notice is hereby given of proposed amendment to §§ 95.193(a), 95.193(b), and 95.631(d) of the Commission's Rules, 47 CFR 95.193(a), 95.193(b), and 95.631(d), as described above.

13. The Petition for Rulemaking, RM-10070, submitted by Garmin International, Inc., on December 26, 2000, is granted to the extent indicated herein.

14. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this *Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

### List of Subjects in 47 CFR Part 95

Radio.

Federal Communications Commission.

**William F. Caton,**  
*Deputy Secretary.*

### Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 95 as follows:

1. The authority citation for Part 95 continues to read as follows:

**Authority:** Sections 4, 303, 48 Stat. 1066, 1082 as amended; 47 U.S.C. 154, 303.

2. Section 95.193 is amended by revising paragraphs (a) and (b) to read as follows:

### § 95.193 (FRS Rule 3) Types of communications.

(a) You may use an FRS unit to conduct two-way voice communications with another person. You may use an FRS unit to transmit one-way voice or non-voice communications only to establish communications with another person, send an emergency message, provide traveler assistance, provide

location information, make a voice page, or to conduct a brief test.

(b) The FRS unit may transmit tones to make contact or to continue communications with a particular FRS unit. If the tone is audible (more than 300 Hertz), it must be transmitted continuously no longer than 15 seconds at one time. If the tone is subaudible (300 Hertz or less), it may be transmitted continuously only while you are talking. The FRS unit may transmit digital data containing location information. Digital data transmissions shall not exceed one second, must be initiated by a manual key press, and shall be limited to no more than one digital transmission within a ten-second period.

\* \* \* \* \*

3. Section 95.631 is amended by revising paragraph (d) to read as follows:

**§ 95.631 Emission types.**

\* \* \* \* \*

(d) An FRS unit may transmit only emission type F3E or F2D. A non-voice emission is limited to selective calling or tone-operated squelch tones to establish or continue voice communications or digital data transmission of location information.

\* \* \* \* \*

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**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**RIN 1018-AF84**

**Endangered and Threatened Wildlife and Plants; Reopening of Comment Period on the Proposed Endangered Status of Two Plants, *Lomatium Cookii* (Cook's Lomatium) and *Limnanthes Floccosa* ssp. *Grandiflora* (Large-Flowered Woolly Meadowfoam)**

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

**ACTION:** Proposed rule; reopening of comment period.

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**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the re-opening of the comment period on the proposed listing of *Lomatium cookii* (Cook's lomatium) and *Limnanthes floccosa* ssp. *grandiflora* (large-flowered woolly meadowfoam) as endangered species under the Endangered Species Act of 1973, as amended (Act). We are re-opening the comment period to provide the public an opportunity to

review additional information on the status, abundance, and distribution of these plants, and to request additional information and comments from the public regarding the proposed rule. Comments previously submitted need not be resubmitted as they will be incorporated into the public record as part of this extended comment period; all comments will be fully considered in the final rule.

**DATES:** We will accept public comments until March 15, 2002.

**ADDRESSES:** Comments and materials concerning this proposal should be sent to the State Supervisor, Oregon Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2600 Southeast 98th Avenue, Portland, Oregon, 97266. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Judy Jacobs or Rollie White at the above address, phone: 503/231-6179, facsimile: 503/231-6195.

**SUPPLEMENTARY INFORMATION:**

**Background**

*Lomatium cookii* (Cook's lomatium) and *Limnanthes floccosa* ssp. *grandiflora* (large-flowered woolly meadowfoam) are two plants that inhabit seasonally wet habitats known as vernal pools in the Agate Desert, an area of approximately 83 square kilometers (32 square miles) north of Medford, Jackson County, Oregon. Cook's lomatium also occurs on seasonally wet soils in the adjacent county to the west, Josephine County, Oregon. The continued existence of *Lomatium cookii* and *Limnanthes floccosa* ssp. *grandiflora* is endangered primarily by destruction of their specialized vernal pool habitat by competition with non-native plants and industrial and residential development, including road and powerline construction and maintenance. Agricultural conversion and off-road vehicle (ORV) use also contribute to destruction of the habitat required by these plants. *Lomatium cookii* sites in Josephine County are additionally threatened by habitat alteration associated with gold mining, certain proposed timber projects, and woody species encroachment resulting from fire suppression.

On May 15, 2000, the Service published a proposed rule to list *Lomatium cookii* and *Limnanthes floccosa* ssp. *grandiflora* as endangered species and requested public comment for 60 days (65 FR 30941). On August 28, 2001, Siskiyou Regional Educational

Project filed a citizen suit alleging that the Service had failed to make a timely final determination on the listing and critical habitat designation of these two plants, consistent with the time frames set forth in section 4 of the Act (*Siskiyou Regional Educational Project v. Norton*, Civil No. 01-1208-KI (D. Ore)). We entered into a settlement agreement with the plaintiff and agreed to submit a final listing decision for publication in the **Federal Register** on or before October 31, 2002. By this notice, the Service is seeking updated information regarding the status, abundance, and distribution of these plants, as well as providing updated information now in the possession of the Service regarding the status of these two plants.

**Current Status**

The proposed rule published in May of 2000 did not contain data from surveys for these plants that had been conducted one month prior to publication of the proposed rule, during April of 2000 (David Evans and Associates 2000). Additional survey work was also conducted for both species in April of 2001. These data are provided below.

Each year, plant populations exhibit some natural variation in numbers, related primarily to temperature and rainfall conditions for that year. In general, numbers of annual plants, such as *Limnanthes floccosa* ssp. *grandiflora* may fluctuate more widely than those of perennial plants, such as *Lomatium cookii*. The year 2000 was a banner year for *Limnanthes floccosa* ssp. *grandiflora* populations due to the wet conditions that prevailed that year, but in 2001, a dry year, population numbers of this plant plummeted in many areas. For example, on a protected site owned by The Nature Conservancy (TNC), one *Limnanthes floccosa* ssp. *grandiflora* occurrence declined from 68,000 in 2000 to 39,000 in 2001. A site owned by the City of Medford, contained some 10,000 *Limnanthes floccosa* ssp. *grandiflora* individuals in the year 2000, while only 112 individuals were noted at this site in 2001 (D. Borgias, TNC, pers. comm. 2001). Year-to-year changes of this magnitude may be within the normal range of variation for this annual plant. However, it is possible that a number of consecutive drought years could eliminate some populations of *Limnanthes floccosa* ssp. *grandiflora*. In contrast, numbers of *Lomatium cookii* in the Agate Desert were generally stable or slightly increased from the year 2000 to 2001 (D. Borgias, TNC, pers. comm. 2001).

The Service now possesses information on three status changes that