

objectives have been achieved and that all actions specified have been implemented. Pursuant to the Superfund State Contract between EPA and ADEQ executed in March 1992, ADEQ agreed to assume full responsibility for performing Site O&M activities, and the State subsequently agreed to begin those O&M activities after the sampling performed by EPA in 2002. EPA will be providing oversight of all O&M activities.

One of the three criteria for site deletion specifies that EPA may delete a site from the NPL if "all appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate." 40 CFR 300.425(e)(1)(ii). EPA, with the concurrence of the State of Arkansas, believes that this criterion for deletion has been met. Accordingly, EPA is proposing deletion of this Site from the NPL.

Dated: June 23, 2003.

Myron O. Knudson,

P.E., Director, Superfund Division (6SF).

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 03-151; FCC 03-160]

Amendment of the Commission's Rules Regarding AM Directional Antennas

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission issues this document in order to resolve an apparent conflict between §§ 73.62 and 73.1350(d)(2) of the Commission's rules. Both of these rules are invoked when an AM station's directional antenna monitor indications and/or monitoring point field strength measurements exceed the required operating tolerances. Each rule provides for different time periods for AM licensees to take action when their directional antenna operating parameters are found to be out of licensed tolerances. The inconsistent directive leaves AM licensees unclear as to the course of action they must take when they observe excessive monitor measurements. It is important that these rules be clarified because they affect termination of broadcast operation. This document begins a proceeding to harmonize these rules.

DATES: Comments are due August 29, 2003 and reply comments are due September 18, 2003.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. See

SUPPLEMENTARY INFORMATION for filing instructions.

FOR FURTHER INFORMATION CONTACT:

Karen A. Kosar, Media Bureau at (202) 418-1053 or via Internet at kkosar@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making (NPRM), MB Docket No. 03-151, adopted July 1, 2003 and released July 7, 2003. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554, and may be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone (202) 863-2893, facsimile (202) 863-2898, or via e-mail qualexint@aol.com or may be viewed via Internet at <http://www.fcc.gov/mb/>.

1. This Notice of Proposed Rule Making (NPRM) proposes to resolve an apparent conflict between §§ 73.62 and 73.1350(d)(2) of the Commission's rules regarding the operation of AM stations with directional antennas. Both of these rules are invoked when an AM broadcast station's directional antenna operating parameters and/or monitoring point field strengths exceed operating tolerances. Section 73.62 of the rules, which specifically governs directional antenna system tolerances, provides that, whenever the operating parameters of a directional antenna cannot be maintained within the tolerances specified in the rule, an AM broadcast station has twenty-four hours within which to identify any excessive monitoring point field strengths followed by three hours to take corrective action. In contrast, § 73.1350(d)(2) of the rules, which addresses transmission system operation, requires that, in the event of any condition of antenna parameters or monitoring points out of tolerance, station operation be terminated within three minutes unless power is reduced sufficiently to eliminate any excess radiation. This inconsistent directive in our rules leaves AM licensees unclear as to the correct course of action they must take when they observe out-of-tolerance indications. Clarity in our rules is especially necessary when the rules may require that broadcast operations

terminate within a matter of minutes. In such situations, termination of operations would be disruptive to programming and, in some cases, broadcast listeners may be deprived of information regarding hazardous weather or other emergency conditions. Moreover, broadcast stations may be faced with fines and forfeitures if found not to be in compliance with our rules.

2. The NPRM recognizes that almost all AM broadcast station directional antenna arrays experience some amount of instability. Unfavorable weather conditions or other environmental factors occasionally may affect monitoring systems to such an extent that these systems experience short-term out-of-tolerance operation. Such out-of-tolerance indications during heavy rain, snow or icing, or during abrupt and substantial changes in temperature or humidity, may not warrant immediate corrective action. Regardless of whether out-of-tolerance indications were caused by these conditions, § 73.1350(d)(2) arguably requires that stations shut down or reduce power within three minutes. In contrast, § 73.62 of the rules, which is narrowly aimed at directional antenna tolerances, provides a reasonable period of time for corrective action.

3. The NPRM tentatively concludes that § 73.1350(d)(2) is excessively stringent and was not intended to apply to instances of minor out-of-tolerance directional antenna operating parameters. The NPRM tentatively concludes that both §§ 73.62 and 73.1350 should be revised and restructured to delineate clearly those situations that require 24-hour, three-hour and/or three minute responses by AM licensees, as well as by FM and TV licensees. The NPRM tentatively concludes that a requirement to terminate operation within three minutes should apply only to catastrophic events that are likely to cause significant disruption to the operation of other stations or that pose a threat to life or property. The NPRM tentatively concludes that a requirement to terminate operation within three hours should apply to instances of out-of-tolerance operation which are likely to result in minor interference to other stations. The NPRM seeks comment on these tentative conclusions as well as comment on other ways to resolve the problem presented by these rules.

I. Procedural Matters

A. Initial Regulatory Flexibility Analysis

4. As required by the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory

Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. The IRFA is set forth below. These comments must be filed in accordance with the same filing deadlines for comments on the NPRM, and they should have a separate and distinct heading designating them as responses.

B. Paperwork Reduction Act

5. This NPRM contains no proposed or modified information collection.

C. Ex Parte—Permit-But-Disclose Proceedings

6. This is a permit-but-disclose notice and comment rule making 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).

D. Filing of Comments and Reply Comments

7. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before August 29, 2003 and reply comments on or before September 18, 2003. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

8. 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, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. 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, 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.

9. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for

each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW-A325, Washington, DC 20554.

II. Initial Regulatory Flexibility Analysis

10. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this NPRM. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM provided in paragraph 14 of the item. The Commission will send a copy of this NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objectives of, the Proposed Rules Changes

11. The NPRM seeks comment on ways to remedy the apparent conflict between §§ 73.1350(d)(2) and 73.62 of the Commission's rules. Both rules are invoked when an AM station's directional operating parameters and/or monitoring point field strengths exceed the required operating tolerances. Section 73.62 of the rules provides that an AM broadcast station has 24 hours within which to identify any excessive

monitoring point readings followed by three hours to take corrective action. By comparison, § 73.1350(d)(2) of the rules requires that station operation be terminated within three minutes unless power is reduced sufficiently to eliminate any excess radiation. It is important that this apparent conflict in our rules be addressed because these rules affect termination of broadcast operations, which may deprive listeners of necessary information regarding hazardous weather or other emergency conditions. In addition, if broadcasters are found not to be in compliance with these rules, they may face fines or have forfeiture action instituted against them.

B. Legal Basis

12. The authority for the action proposed in this NPRM is contained in sections 1, 4(i) and (j), 301, 303, 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and (j), 301, 303, and 403.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rule Changes Will Apply

13. 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, if adopted. 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). A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide as of 1992, there were approximately 275,801 small organizations. "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000." As of 1997, there were approximately 87,453 governmental entities in the United States. This number includes 39,044 county governments, municipalities, and townships, of which 37,546 (approximately 96.2%) have populations of fewer than 50,000 or more. Thus, we estimate the number of small governmental jurisdictions overall to be approximately 84,098 or fewer.

14. The proposed rule amendments to §§ 73.1350 and 73.62 will primarily apply to certain AM directional radio broadcasting licensees and potential licensees. The proposed amendments to § 73.1350 would also affect FM broadcast stations in the event that any FM broadcast station operates in a manner that poses a threat to life or property or in a manner that is likely to cause significant disruption to the operation of other stations. The SBA defines a radio broadcast entity that has \$6 million or less in annual receipts as a small business. Business concerns included in this industry are those "primarily engaged in broadcasting aural programs by radio to the public." According to Commission staff review of the BIA Publications, Inc., Master Access Radio Analyzer Database, as of May 16, 2003, about 10,427 of the 10,945 commercial radio stations in the United States have revenues of \$6 million or less. We note, however, that many radio stations are affiliated with much larger corporations with much higher revenue, and that in assessing whether a business concern qualifies as small under the above definition, such business (control) affiliations are included. Our estimate, therefore likely overstates the number of small businesses that might be affected by the proposed rules.

15. The proposed amendments to § 73.1350 would also affect television stations in the event that any television station operates in a manner that poses a threat to life or property or is likely to significantly disrupt the operation of other stations. The SBA defines a television broadcasting station that has no more than \$12 million in annual receipts as a small business. Business concerns included in this industry are those "primarily engaged in broadcasting images together with sound." According to Commission staff review of the BIA Publications, Inc. Master Access Television Analyzer Database as of May 16, 2003, about 814 of the 1,220 commercial television stations in the United States have revenues of \$12 million or less. We note, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. Our estimates, therefore, likely overstate the number of small entities that might be affected by the proposed rules because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

We do not expect that the proposed rule changes would impose any additional reporting or recordkeeping requirements.

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

17. 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: (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 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 small entities.

18. As indicated above, the NPRM seeks comment on how to remedy an apparent conflict in the Commission's rules that affect AM broadcast stations that employ directional antennas. Amendment of one of the rules also may affect FM and television broadcast services. No alternatives to our proposal herein are mentioned because we anticipate no differential impact on smaller entities. However, we welcome comment on modifications of proposals if based on potential differential impact.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Commission's Proposals

None.

III. Ordering Clauses

19. *It is ordered* that, pursuant to sections 1, 4(i) and (j), 301, 303, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and (j), 301, 303, and 403, *comment is hereby sought* on the analysis, questions, discussions and statements of issues in the Notice of Proposed Rule Making.

20. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with the Regulatory Flexibility Act.

List of Subjects in 47 CFR Part 73

Administrative practice and procedure and radio broadcast services.

Federal Communications Commission.

William F. Caton,
Deputy Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 154, 303, 334, and 336.

2. Section 73.62 is revised to read as follows:

§ 73.62 Directional antenna system operation and tolerances.

(a) Each AM station operating a directional antenna must maintain the relative amplitudes of the antenna currents, as indicated by the antenna monitor, within 5% of the values specified on the instrument of authorization. Directional antenna relative phases must be maintained within 3 degrees of the values specified on the instrument of authorization.

(b) In the event of a failure of system components, improper pattern switching or any other event that results in operation substantially at variance from the radiation pattern specified in the instrument of authorization for the pertinent time of day, operation must be terminated within three minutes unless power can be reduced sufficiently to eliminate any excessive radiation. *See* § 73.1350(e).

(c) In the event of minor variations of directional antenna operating parameters from the tolerances specified in paragraph (a) of this section, the following procedures will apply:

(1) The licensee shall measure and log every monitoring point at least once for each mode of directional operation. Subsequent variations in operating parameters will require the remeasuring and logging of every monitoring point to assure that the authorized monitoring point limits are not being exceeded. The licensee will be permitted 24 hours to accomplish these actions; provided that, the date and time of the failure to maintain proper operating parameters has been recorded in the station log.

(2) Provided each monitoring point is within its specified limit, operation may continue for a period up to 30 days before a request for Special Temporary Authority (STA) must be filed, pursuant to paragraph (c)(4) of this section, to operate with parameters at variance from the provisions of paragraph (a) of this section.

(3) If any monitoring point exceeds its specified limit, the licensee must either terminate operation within three hours or reduce power in accordance with the applicable provisions of § 73.1350(d), in order to eliminate any possibility of interference or excessive radiation in any direction.

(4) If operation pursuant to paragraph (c)(3) of this section is necessary, or before the 30 day period specified in paragraph (c)(2) of this section expires, the licensee must request a Special Temporary Authority (STA) in accordance with § 73.1635 to continue operation with parameters at variance and/or with reduced power along with a statement certifying that all monitoring points will be continuously maintained within their specified limits.

(d) In any other situation in which it might reasonably be anticipated that the operating parameters might vary out of tolerance (such as planned array repairs or adjustment and proofing procedures), the licensee shall, before such activity is undertaken, obtain a Special Temporary Authority (STA) in accordance with § 73.1635 in order to operate with parameters at variance and/or with reduced power as required to maintain all monitoring points within their specified limits.

3. Section 73.1350 is amended by revising paragraphs (b)(2) and (d); by redesignating paragraphs (e) through (h) as paragraphs (f) through (i); and by adding a new paragraph (e) to read as follows:

§ 73.1350 Transmission system operation.

* * * * *

(b) * * *

(2) The transmitter control personnel must have the capability to turn the transmitter off at all times. If the personnel are at a remote location, the control system must provide this capability continuously or must include an alternate method of acquiring control that can satisfy the requirement of paragraph (e) of this section that operation be terminated within 3 minutes.

* * * * *

(d) In the event that a broadcast station is operating in a manner that is not in compliance with the applicable technical rules set forth elsewhere in this part or the terms of the station authorization, and the condition is not listed in paragraph (e) or (f) of this section, broadcast operation must be terminated within three hours unless antenna input power is reduced sufficiently to eliminate any excess radiation power. Examples of conditions that require termination of operation within three hours include excessive

power, excessive modulation or the emission of spurious signals that do not result in harmful interference.

(e) If a broadcast station is operating in a manner that poses a threat to life or property or that is likely to significantly disrupt the operation of other stations, immediate corrective action is required. In such cases, operation must be terminated within three minutes unless antenna input power is reduced sufficiently to eliminate any excess radiation. Examples of conditions that require immediate corrective action include the emission of spurious signals that cause harmful interference, any mode of operation not specified by the station license for the pertinent time of day, or operation substantially at variance from the authorized radiation pattern.

* * * * *
[FR Doc. 03-19092 Filed 7-25-03; 8:45 am]
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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 219

Docket No. FRA 2001-11068, Notice No. 4

RIN 2130-AB39

Application of FRA Alcohol and Drug Rules to Foreign Railroad Foreign-Based Employees Who Perform Train or Dispatching Service in the United States: Completion of Consultations with Canadian and Mexican Governments and Closure of Comment Period

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Proposed rule.

SUMMARY: Currently, employees of a foreign railroad (a railroad incorporated outside the United States) whose primary reporting point is outside the United States who enter into the United States to perform train or dispatching service (foreign railroad foreign-based employees or "FRFB employees") are subject only to the general conditions, prohibitions, post-accident testing and reasonable suspicion testing requirements in FRA's alcohol and drug regulations (49 CFR part 219). In a December 11, 2001 notice (NPRM) (66 FR 64000), FRA proposed to make FRFB employees, who are presently excepted from the requirements concerning employee assistance programs, random alcohol and drug testing and pre-

employment drug testing, fully subject to part 219 requirements.

In this notice, FRA outlines the likely revisions to the NPRM based, in part, on consultations with the Canadian and Mexican Governments. FRA also announces the closure of the comment period on this rule.

DATES: Written Comments: Written comments must be received by August 27, 2003. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number FRA 2001-11068, Notice No. 4] by any of the following methods:

- *Web site:* <http://dms.dot.gov>.
- *Fax:* 1-202-493-2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-001.

• *Hand Delivery:* Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

• *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to <http://dms.dot.gov> including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to <http://dms.dot.gov> at any time or to Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: For technical issues, Lamar Allen, Alcohol and Drug Program Manager, FRA Office of Safety, RRS-11, 1120 Vermont Avenue, NW., Mail Stop 25, Washington, DC 20590 (telephone 202-493-6313). For legal issues, Patricia V. Sun, Trial Attorney, Office of the Chief