

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Updating Broadcast Radio Technical Rules
MB Docket No. 21-263

NOTICE OF PROPOSED RULEMAKING

Adopted: July 12, 2021

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Comment Date: [30 days after date of publication in the Federal Register]
Reply Comment Date: [45 days after date of publication in the Federal Register]

By the Commission:

I. INTRODUCTION

1. This Notice of Proposed Rulemaking (NPRM) seeks to update the Commission’s rules by eliminating or amending outmoded or unnecessary regulations contained in the Code of Federal Regulations (CFR). The NPRM proposes to update the CFR to better reflect current requirements and eliminate redundant, outdated, or conflicting technical provisions. Such action will ensure that the Commission’s rules are accurate, reducing any potential confusion and alleviating unnecessary burdens.

II. DISCUSSION

2. In this NPRM, we propose the following rule changes: (1) eliminate the maximum rated transmitter power limit rule for AM stations set out in section 73.1665(b) of the rules; (2) update the NCE FM community of license coverage requirement set out in sections 73.316(c)(2)(ix)(B) and 73.1690(c)(8)(i) to match that used in section 73.515; (3) eliminate the requirement that applicants demonstrate the effect of their FM transmitting antenna on nearby FM or TV broadcast antennas, as set out in section 73.316(d); (4) update the signal strength contour overlap requirements for NCE FM Class D stations set out in section 73.509(b) to harmonize with the contour overlap requirements for all other NCE FM stations, set out in section 73.509(a); (5) eliminate the requirement for broadcast services to protect grandfathered common carrier services in Alaska operating in the 76-100 MHz frequency band set out in sections 73.501(b), 74.1202(b)(3), 74.702(a)(1), and 74.786(b); (6) amend the definition of an “AM fill-in area” set out in section 74.1201(j) to conform to section 74.1201(g); and (7) amend allocation and power limitations for broadcast stations within 320 kilometers of the Mexican and Canadian borders, set out in sections 73.207(b) and 74.1235(d), to comply with current treaty provisions.

1 See 47 CFR §§ 73.1665(b).

2 See 47 CFR §§ 73.316(c)(2)(ix)(B), 73.1690(c)(8)(i), and 73.515.

3 See 47 CFR § 73.316(d).

4 See 47 CFR § 73.509(a), (b).

5 See 47 CFR §§ 73.501(b) (NCE FM stations), 74.1202(b)(3) (FM translator stations), 74.702(a)(1) (LPTV and TV translator stations), and 74.786(b) (digital LPTV and TV translator stations).

6 See 47 CFR §§ 74.1201(j), (g).

7 47 CFR § 74.1235(d).

A. Maximum Rated Transmitter Power for AM Stations

3. We propose to amend section 73.1665(b) to remove the maximum rated transmitter power⁸ limit for AM stations.⁹ We tentatively conclude that an equipment limitation on potential transmitter power is outdated and unnecessary given our current reliance on actual operating antenna input power as the most accurate and effective means of ensuring that AM stations adhere to their authorized (nominal) power limits.¹⁰ The restriction on AM transmitter power goes back many decades and was adopted in substantially its current form in 1978.¹¹ We tentatively conclude that based on our reliance on actual operating antenna input power, retaining an equipment-based maximum rated transmitter power rule is unnecessary and inconsistent with the standard set out in section 73.51 governing the operating power of AM stations. Accordingly, we propose to amend section 73.1665(b) by removing the maximum rated transmitter power for AM stations as set out in Appendix A and deleting the corresponding “Table 1 to paragraph (b)” and seek comment on this proposal, and on any other changes to the rules necessary or appropriate to reflect this change.

B. NCE Community of License Coverage

4. We propose to amend sections 73.316(c)(2)(ix)(B) and 73.1690(c)(8)(i)¹² to harmonize with the later-adopted NCE FM community coverage standard set out in section 73.515 of the rules. This change will create consistency across different rules regarding the requirement for community coverage for NCE FM stations. Specifically, we tentatively conclude the requirement in section 73.515 that stations reach 50% of their community of license or 50% of the population in their community should replace the more general requirement in 73.316 and 73.1690 that the station cover “a portion of the community.” Section 73.316(c)(2)(ix)(B) applies to applications for FM directional antennas and states, in relevant part, that a noncommercial educational (NCE) FM station in the reserved band applying for a short-spaced directional antenna must demonstrate that its 60 dBu contour covers “at least a portion of the community of license.” Similarly, section 73.1690(c)(8)(i), which relates to applications for reduced operating power, states that an NCE FM station seeking to reduce power must continue to provide a 60 dBu contour over “at least a portion of the community of license.” Applications covered by these rules must already satisfy the 50% standard because of the requirement in section 73.515. Accordingly, we believe the “portion of the community of license” standard incorporated into these rules is obsolete and conflicts with the later-adopted, more specific, NCE FM community coverage standard set out in section 73.515. Section 73.515 provides that an NCE FM station operating on a reserved channel must provide a

⁸ The maximum rated carrier power is defined as the “maximum power at which the transmitter can be operated satisfactorily and is determined by the design of the transmitter and the type and number of vacuum tubes or other amplifier devices used in the last radio stage.” 47 CFR § 73.14. The maximum rated power is typically set out by the manufacturer in the transmitter technical specifications.

⁹ We also propose to slightly alter the wording of the first sentence of section 73.1665(b) to clarify that “rated” means “manufacturer-rated” and is part of the transmitter’s technical specifications.

¹⁰ See 47 CFR § 73.51 (providing that the antenna input power must be either equal to the nominal power for that station or slightly higher for directional stations); 73.1560(a)(1) (providing that the antenna input power for AM stations must be maintained as near as practicable to the authorized antenna input power and may not be less than 90 percent nor greater than 105 percent of the authorized power); see generally *Additional Technical Information by Standard Broadcast Licensees for Renewals or Modifications of License to Remove or Modify Dissipative Networks*, Public Notice, 35 F.C.C.2d 134, 134-35 (1972).

¹¹ See *Reregulation of Radio and TV Broadcasting*, Order, 69 F.C.C.2d 1373, 1391, para. 51 (1978) (containing a cross-reference to section 73.41, which was subsequently combined with section 73.1665(b) in *Reregulation and Oversight of the Radio and TV Broadcast Rule*, Order, 47 FR 8584 (1982)).

¹² These two sections were adopted in 1997 as part of a proceeding to permit certain minor changes in broadcast facilities using one-step license applications. *Amendments of Parts 73 and 74 of the Commission’s Rules to Permit Certain Minor Changes in Broadcast Facilities Without a Construction Permit*, Report and Order, 12 FCC Rcd 12371, 12431, App. E (1997).

predicted 60 dB μ signal “over at least 50 percent of its community of license or reach 50 percent of the population within the community.”¹³ To bring sections 73.316(c)(2)(ix)(B) and 73.1690(c)(8)(i) into conformity with section 73.515, we propose to amend these two rules to state that an NCE FM station operating on a reserved channel must provide a predicted 60 dB μ signal to at least 50% of its community of license or reach 50% of the population within the community. We seek comment on this proposal.

C. FM Transmitter Interference to Nearby Antennas

5. We propose to eliminate section 73.316(d), which we tentatively conclude is an unnecessary burden on applicants. We seek comment on this conclusion as well as any other applicable considerations we should take into account when eliminating this rule. This is a seldom-used rule, which we tentatively conclude does not prevent interference to any significant degree, if at all. Section 73.316(d) provides that “[a]pplications proposing the use of FM transmitting antennas in the immediate vicinity (i.e. 60 meters or less) of other FM or TV broadcast antennas must include a showing as to the expected effect, if any, of such approximate operation.”¹⁴ Based on our experience, we tentatively conclude that broadcast radio antennas within this physical proximity are unlikely to create interference problems if they are otherwise compliant with the transmission system requirements set out in section 73.317 of the rules,¹⁵ and we are not aware of any industry complaints of such interference during the more than 70 years this rule has been in effect.¹⁶ Therefore, we propose to eliminate section 73.316(d) as an unnecessary application requirement and seek comment on this proposal.

D. NCE FM Class D Second-Adjacent Channel Interference Ratio

6. We propose to amend section 73.509(b), which sets out signal strength contour overlap requirements for NCE FM Class D stations, to harmonize the requirements with the more permissive standard applied to all other NCE-FM stations. This change will create consistency across different NCE FM station classes regarding contour overlap limitations. We tentatively conclude that the current Class D contour overlap requirement is not necessary given the proven efficacy of the less restrictive requirements for other stations and anticipate that this change will allow Class D stations greater site selection flexibility as well as the opportunity to potentially increase their coverage areas. Section 73.509(b) provides that applications by NCE FM Class D station licensees will not be accepted if they propose overlap of the applicant station’s 80 dBu (interfering) contour with the 60 dBu (protected) contour of any second-adjacent channel station (i.e., a 20 dBu interference ratio).¹⁷ In contrast, section 73.509(a) prohibits overlap of any other NCE applicant station’s 100 dBu (interfering) contour with the 60 dBu (protected) contour of any second-adjacent channel station (i.e., a 40 dBu interference ratio).¹⁸ When it adopted section 73.509(a) in 2000, the Commission explained that the 100 dBu standard “is a better gauge of potential second-adjacent channel interference than the 80 dBu standard” and that “adoption of a less preclusive 100 dBu standard would create opportunities for NCE FM and FM translator stations to increase power and coverage, and provide them with greater site selection flexibility.”¹⁹ However, because of a then-pending proceeding to establish the LPFM service, the

¹³ See generally, *1998 Biennial Regulatory Review – Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission’s Rules*, Second Report and Order, 15 FCC Rcd 21649, 21670, para. 42 (2000) (*1998 Biennial Regulatory Review*).

¹⁴ 47 CFR § 73.316(d).

¹⁵ 47 CFR § 73.317.

¹⁶ See, e.g., *Reorganization and Revision of Chapter*, 28 FR 13572, 13645 (1963); 47 CFR § 7.D (1945).

¹⁷ 47 CFR § 73.509(b).

¹⁸ 47 CFR § 73.509(a).

¹⁹ *1998 Biennial Regulatory Review*, 15 FCC Rcd at 21669, para. 39.

Commission deferred any action on proposals involving NCE FM Class D stations.²⁰ The LPFM service has now been established and is currently a relatively mature service, so we tentatively conclude that the time is ripe to extend the otherwise universal 100 dBu contour overlap standard for second-adjacent channels to NCE FM Class D stations. We seek comment on our proposal to amend section 73.509(b) to harmonize with the general NCE FM contour overlap limits set out section 73.509(a).

E. Protection for Grandfathered Common Carriers in Alaska in the 76-100 MHz Band

7. We propose to delete the outdated requirement that radio stations operating in the 76-100 MHz band protect common carrier services in Alaska. This rule is unnecessary and obsolete because our licensing databases indicate that there are no common carrier services remaining in this band in Alaska. Sections 73.501(b), 74.1202(b)(3), the second sentence of 74.702(a)(1), and the second sentence of 74.786(b)²¹ all contain similar language requiring broadcast services to protect grandfathered common carrier services in Alaska operating in the 76-100 MHz frequency band.²² With the exception of section 74.786(b), which was added in 2004 to apply the Alaska rule to digital LPTV and TV translators,²³ this suite of rule provisions was created in 1982 when the Commission reallocated the 76-100 MHz band in Alaska from government and non-government fixed services to broadcast services.²⁴ In doing so, the Commission grandfathered existing common carrier operations, protecting them from new broadcast services in that band.²⁵ At the time, the Commission also anticipated that “[o]ur provision for Fixed use of this band may indeed become obsolete as the common carriers gradually move to other parts of the spectrum. If so, we will then delete the Fixed provisions from these Rules.”²⁶

8. In 2005, the Commission deleted two of the original five rules adopted in 1982, sections 73.220(b) and 73.603(b),²⁷ on the basis that there were no longer any common carrier stations in Alaska in the 76-100 MHz band.²⁸ For the same reason, we propose to delete the remaining sections 73.501(b), 74.1202(b)(3), and portions of 74.702(a)(1) and 74.786(b) of the Commission’s rules as obsolete and unnecessary. We seek comment on this proposal.

F. AM Fill-in Area Definition

9. We propose to amend the definition of “AM fill-in area” set out in section 74.1201(j) of the rules to conform to the requirement in section 74.1201(g) that the “coverage contour of an FM translator rebroadcasting an AM radio broadcast station as its primary station must be contained within

²⁰ See *1998 Biennial Regulatory Review*, 15 FCC Rcd at 21671, paras. 44-45 (citing *Creation of a Low Power Radio Service*, Notice of Proposed Rule Making, 14 FCC Rcd 2471 (1999)).

²¹ Section 73.501(b) applies to NCE stations in the reserved band, section 74.1202(b)(3) applies to translator stations on channels 201-260, section 74.702(a)(1) applies to TV stations on Channels 5 and 6, and section 74.786(b) applies to digital TV stations on Channels 5 and 6.

²² This frequency band contains VHF television channels 5 and 6 (76-88 MHz) and FM radio channels 201-260 (88-100 MHz).

²³ *Amendment of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations*, 19 FCC Rcd 19331, 19425, para. 16 (2004) (establishing rules for digital LPTV and TV translator stations).

²⁴ *Amendment of Part 2 of the Commission’s Rules Governing Frequency Allocations*, Report and Order, 90 F.C.C.2d 507, 508, para. 1 (1982) (conforming Alaska’s broadcast allocations with the rest of the United States’).

²⁵ *Id.* at 509, para. 2.

²⁶ *Id.* at 509, para. 5.

²⁷ See 47 CFR §§ 73.220(b) (FM stations on channels 221-300), 73.603(b) (TV stations on channels 5 and 6).

²⁸ *Amendment of Parts 2, 25, and 73 of the Commission’s Rules to Implement Decisions from the World Radiocommunication Conference (Geneva, 2003) (WRC-03) Concerning Frequency Bands between 5900 kHz and 27.5 GHz and to Otherwise Update the Rules in this Frequency Range*, Report and Order, 20 FCC Rcd 6570, 6629, para. 165 (2005) (deleting 47 CFR §§ 73.220(b), 73.603(b), and 2.106 note NG129 from the rules).

the *greater* of either the 2 mV/m daytime contour of the AM station or a 25-mile (40 km) radius centered at the AM transmitter site.”²⁹ We do not propose any change to section 74.1201(g). The change proposed to section 74.1201(j) will create consistency across different rules governing fill-in translator transmitter siting. In 2009, when it modified the FM translator rules to allow AM stations to retransmit using fill-in FM translators, the Commission adopted new section (j) and amended section (g) to define an AM fill-in area for FM translators as the *lesser* of the 2 mV/m daytime contour of the AM station and a 25-mile (40 km) radius centered at the AM transmitter site.³⁰ When the Commission relaxed this cross-service siting requirement in 2017, it amended section (g) to provide that an FM translator rebroadcasting an AM broadcast station must be located such that the 60 dBu contour is contained within the *greater* of either (a) the 2 mV/m daytime contour of the AM station, or (b) a 25-mile radius centered at the AM station’s transmitter site.³¹ However, it did not update section (j) to reflect this change. We propose to do so now and seek comment on this proposal.

G. International Agreements

10. To update our rules and fully implement the provisions of the relevant agreements with the Canadian and Mexican governments, we propose to revise text governing the licensing of broadcast stations in the border region as set out in sections 73.207(b) and 74.1235(d). We tentatively conclude that the current text should be revised and updated to comport with the requirements set out in the *1992 U.S.-Mexico FM Broadcasting Agreement*³² and the *1991 U.S.-Canada FM Broadcasting Agreement*, as amended.³³

11. First, we propose to update sections 73.207(b)(2) and (3) to reflect treaty requirements. Section 73.207(b)(2) states, “Under the Canada–United States FM Broadcasting Agreement, domestic U.S. allotments and assignments within 320 kilometers (199 miles) of the common border must be separated from Canadian allotments and assignments by not less than the distances given in Table B, which follows.”³⁴ The *1991 U.S.-Canada FM Broadcasting Agreement* contains minimum distance separations but offers contour overlap parameters for short-spaced stations to demonstrate compliance with the Agreement.³⁵ Accordingly, we propose to revise section 73.207(b)(2) to remove the reference to the *1991 U.S.-Canada FM Broadcasting Agreement* and include contour overlap-based protection for short-spaced stations. We also propose to update section 73.207(b)(2) by replacing the current Table B with the superseding minimum distance separations table set out in the *1997 Amendment to the 1991 U.S.-Canada FM Broadcasting Agreement*.³⁶

²⁹ 47 CFR § 74.1201(g) (emphasis added).

³⁰ *Amendment of Service and Eligibility Rules for FM Broadcast Translators*, Report and Order, 24 FCC Rcd 9642, 9661-62, App. A (2009).

³¹ 47 CFR § 74.1201(g); *Revitalization of the AM Radio Service*, Second Report and Order, 32 FCC Rcd 1724, 1726-27, para. 4 (2017).

³² *Agreement Between the Government of the United States of America and the Government of the United Mexican States Relating to the FM Broadcasting Service in the Band 88-108 MHz* (1992), <https://transition.fcc.gov/bureaus/ib/sand/agree/files/mex-bc/fmbc.pdf> (last visited June 15, 2021).

³³ *Exchange of Notes Constituting a Working Arrangement for the Allotment and Assignment of FM Broadcasting Channels under the Agreement between the Government of Canada and the Government of the United States of America relating to the FM Broadcasting Service dated February 1991, effected by Exchange of Notes on November 26, 1990 and February 25, 1991, amended by Exchange of Notes on July 9, 1997*, <https://www.fcc.gov/broadcast-agreements-canada> (last visited June 15, 2021).

³⁴ 47 CFR § 73.207(b)(2).

³⁵ See *1991 U.S.-Canada FM Broadcasting Agreement*, Section 5.2; *1997 Amendment to the 1991 U.S.-Canada FM Broadcasting Agreement*, paras. 9-10 (amending Section 5.2).

³⁶ *1997 Amendment to the 1991 U.S.-Canada FM Broadcasting Agreement*, para. 3 (amending Section 2.4).

12. Similarly, section 73.207(b)(3) provides that “[u]nder the 1992 Mexico–United States FM Broadcasting Agreement, domestic U.S. assignments or allotments within 320 kilometers (199 miles) of the common border must be separated from Mexican assignments or allotments by not less than the distances given in Table C in this paragraph (b)(3).”³⁷ This provision is no longer accurate, as, except for intermediate frequency separations, the *1992 U.S.-Mexico FM Broadcasting Agreement* provides for contour-overlap-based protection as well as minimum spacing protection.³⁸ Therefore, we propose to revise section 73.207(b)(3) to remove the reference to the *1992 U.S.-Mexico Broadcasting Agreement* and include contour overlap-based protection for short-spaced stations. We seek comment on these proposed changes.

13. We also propose to update section 74.1235(d), governing FM translators, to conform with the relevant treaties. With respect to Canada, section 74.1235(d) states, “Applications for FM translator stations located within 320 km of the Canadian border will not be accepted if they specify more than 50 watts effective radiated power in any direction or have a 34 dBu interference contour, calculated in accordance with § 74.1204 of this part, that exceeds 32 km.”³⁹ This provision codifies section 4.3 of the *1991 U.S.-Canada FM Broadcasting Agreement*.⁴⁰ In 1997, the United States and Canada amended section 4.3 of the *1991 U.S.-Canada FM Broadcasting Agreement* to increase the permissible effective radiated power (ERP) for border FM translator stations from 50 to 250 watts and the interference contour from 32 to 60 kilometers.⁴¹ To implement this change, in 1998, the Commission amended section 74.1235 by adding section (d)(3),⁴² which states, “Applications for translator or booster stations within 320 km of the Canadian border may employ an ERP up to a maximum of 250 watts, as specified in § 74.1235(a) and (b). The distance to the 34 dBu interfering contour may not exceed 60 km in any direction.”⁴³ Because the first sentence of section (d) is outdated and conflicts with section (d)(3), we propose to modify the first sentence of section 74.1235(d) to conform to current treaty requirements and eliminate section 74.1235(d)(3).⁴⁴

14. With respect to Mexico, section 74.1235(d) provides, “FM translator stations located within 320 kilometers of the Mexican border must be separated from Mexican allotments and assignments in accordance with § 73.207(b)(3) of this chapter and are limited to a transmitter power output of 10 watts or less. For purposes of compliance with that section, FM translators will be considered as Class D FM stations.” In the *1992 U.S.-Mexico FM Broadcasting Agreement*, translator stations are classified as LPFM stations rather than full service stations, and thus not subject to the distance separations set out in 73.207(b)(3) and the accompanying Table C. Therefore, we tentatively conclude that neither our rules

³⁷ 47 CFR § 73.207(b)(3).

³⁸ *1992 U.S.-Mexico Broadcasting Agreement*, Section 3.

³⁹ See 47 CFR § 74.1235(d).

⁴⁰ See *U.S.-Canada FM Agreement Modified to Permit Added Flexibility for FM Translators in 97-22*, Public Notice, 13 FCC Rcd 4795 (July 28, 1997).

⁴¹ See *Letter from Raymond Chretien, Ambassador, Canadian Embassy, to Madeline K. Albright, Secretary of State*, No. UNEC 0195 (July 9, 1997) (*1997 Amendment to the U.S.-Canada FM Broadcasting Agreement*). In accordance with subsequent consultation between the Commission and its Canadian counterpart at the time, Industry Canada, the Bureau applies the 60-kilometer limitation of section 4.3 only where an FM translator station’s proposed 34 dBu interference contour crosses the U.S.-Canada border. *Colonial Radio Group, Inc.*, Memorandum Opinion and Order, 29 FCC Rcd 9954, 9955, para. 3 (2014).

⁴² 47 CFR § 73.1235(d)(3).

⁴³ See *1998 Biennial Regulatory Review – Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission’s Rules*, Notice of Proposed Rulemaking and Order, 13 FCC Rcd 14849, 14881, para. 71 (1998).

⁴⁴ In the proposed rule changes, we have eliminated the reference to booster stations currently contained in section 74.1235(d)(1) and (3), because the contours of booster stations are wholly within the contours of the primary station and therefore are authorized in conjunction with the primary station.

nor the relevant international agreements require translator stations to adhere to those distance separations. In addition, the 10-watt transmitter power output limitation is a superseded provision originally set out in the *U.S.-Mexican FM Broadcast Agreement of 1972* and is no longer consistent with current treaty requirements.⁴⁵ For these reasons, we propose to delete the above two sentences in the introductory paragraph of section 74.1235(d) as set out in Appendix A. We seek comments on this proposal.

15. Finally, we propose to revise the translator power limitations set out in sections 74.1235(d)(1) and (2). The *1992 U.S.-Mexico FM Broadcasting Agreement* provides in relevant part that a translator's ERP may not exceed 50 watts in the direction of the other country nor produce an interfering contour more than 32 kilometers in the direction of the other country.⁴⁶ Within 125 km of the common border, the maximum distance to the protected contour of a translator must be 8.7 km in the direction of the other country.⁴⁷ However, a translator located more than 125 km from the border may operate with more than 50 watts in the direction of the other country, provided that its protected contour is not greater than, starting from 125 km from the border, 8.7 km in the direction of the other country.⁴⁸ In addition, translators must "protect the allotments and assignments of the other Administration based on their maximum permitted parameters in accordance with the Table of Allotments and Assignments."⁴⁹ To accurately implement these provisions, we propose to amend sections 74.1235(d)(1) and (2) to reflect current treaty requirements, as set out in Appendix A. Because the changes proposed above are intended to codify the existing state of international agreements to which the United States is a party, we request commenters to focus on whether the proposed changes properly implement the relevant treaty provisions rather than suggest changes to any of the agreed-upon limits.

III. PROCEDURAL MATTERS

A. *Ex Parte* Rules

16. The proceeding this *NPRM* initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.⁵⁰ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. Memoranda must contain a summary of the substance of the *ex parte* presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers

⁴⁵ See *Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations*, Notice of Proposed Rulemaking, 5 FCC Rcd 2106, para. 97, n.98 (1990) (noting that although the Commission proposed to rely on ERP and HAAT standards, rather than transmitter power output (TPO), as a more effective means to prevent interference ("[W]e have found that the actual power radiated can bear little relation to the TPO fed into the transmission system"), stations within 320 km of the Mexican border would still be subject under treaty to the 10 watt TPO limit).

⁴⁶ *1992 U.S.-Mexico Broadcasting Agreement*, Section 2.1.2. Because this agreement does not specify 34 dBu as the relevant "interfering contour," and because other signal strength contours are possible while meeting the 32-kilometer limitation, we propose not to retain this reference in the language of section 74.1235(d)(1).

⁴⁷ *Id.*

⁴⁸ *1992 U.S.-Mexico Broadcasting Agreement*, Section 2.1.5.

⁴⁹ *1992 U.S.-Mexico Broadcasting Agreement*, Section 2.1.1.

⁵⁰ 47 CFR §§ 1.1200 *et seq.*

where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with section 1.1206(b) of the rules.⁵¹ In proceedings governed by section 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable.pdf).⁵² Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

B. Comment Filing Procedures

17. Pursuant to sections 1.415 and 1.419 of the Commission's rules,⁵³ interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).⁵⁴

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
 - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington D.C. 20554.
 - Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.⁵⁵

18. *Initial Regulatory Flexibility Act Analysis.* As required by the Regulatory Flexibility Act of 1980 (RFA),⁵⁶ the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA). The IRFA is attached as Appendix B. Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the first page of this document. The Commission will send a copy of this document, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

19. *Initial Paperwork Reduction Act Analysis.* This document does not contain proposed new or modified information collection requirements subject to the Paperwork Reduction Act of 1995

⁵¹ 47 CFR § 1.1206(b).

⁵² 47 CFR § 1.49(f).

⁵³ See 47 CFR §§ 1.415, 1419.

⁵⁴ See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

⁵⁵ *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (2020).

⁵⁶ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601, *et seq.*, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 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).

(PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified information collection for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4).

20. *People with Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

21. *Availability of Documents.* Commission headquarters remains closed due to the COVID-19 pandemic.⁵⁷ When it is open to the public, the comments and reply comments will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, 45 L Street, NE, Washington, DC 20554. These filings may also be viewed in the Commission's Electronic Comment Filing System (ECFS) at <https://www.fcc.gov/ecfs/>.

22. *Additional Information.* For additional information on this proceeding, contact Christine Goepf, christine.goepf@fcc.gov, of the Media Bureau, Audio Division, at (202) 418-7834, or James Bradshaw, james.bradshaw@fcc.gov of the Media Bureau, Audio Division, at (202) 418-2739.

IV. ORDERING CLAUSES

23. 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, this Notice of Proposed Rulemaking **IS ADOPTED**.

24. **IT IS FURTHER ORDERED** that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, **SHALL SEND** a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁵⁷ See *FCC Announces Updated Restrictions on Visitors to its Facilities*, Public Notice (Mar. 12, 2020).

APPENDIX A

Proposed Rule Changes

Part 73 and Part 74 of Chapter 5 of Title 47 of the Code of Federal Regulations are amended as follows:

1. 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.

2. Amend § 73.207 to revise paragraphs (b)(2), Table B, and (b)(3) to read as follows:

§ 73.207 Minimum distance separation between stations.

* * * * *

(b) * * *

(2) Unless demonstrating compliance with the overlap provisions of the 1991 United States-Canada FM Broadcasting Agreement, any domestic U.S. allotment or assignment within 320 kilometers (199 miles) of the common border must be separated from Canadian allotments and assignments by not less than the distances given in Table B, which follows. When applying Table B, U.S. Class C0 allotments and assignments are considered to be Class C; U.S. Class C2 allotments and assignments are considered to be Class B; and U.S. Class C3 allotments and assignments are considered to be Class B1.

TABLE B—MINIMUM DISTANCE SEPARATION REQUIREMENTS IN KILOMETERS

Relation	Co-Channel	Adjacent Channels			I.F.
	0 kHz	200 kHz	400 kHz	600 kHz	10.6/10.8 MHz
A1-A1	78	45	24	20	4
A1-A	131	78	44	40	7
A1-B1	164	98	57	53	9
A1-B	190	117	71	67	12
A1-C1	223	148	92	88	19
A1-C	227	162	103	99	26
A-A	151	98	51	42	10
A-B1	184	119	64	55	12
A-B	210	137	78	69	15
A-C1	243	168	99	90	22
A-C	247	182	110	101	29
B1-B1	197	131	70	57	24
B1-B	223	149	84	71	24
B1-C1	256	181	108	92	40
B1-C	259	195	116	103	40
B-B	237	164	94	74	24
B-C1	271	195	115	95	40

B-C	274	209	125	106	40
C1-C1	292	217	134	101	48
C1-C	302	230	144	111	48
C-C	306	241	153	113	48

(3) Unless demonstrating compliance with the overlap provisions of the 1992 United States-Mexico FM Broadcasting Agreement, any domestic U.S. assignment or allotment within 320 kilometers (199 miles) of the common border must be separated from Mexican assignments or allotments by not less than the distances given in Table C in this paragraph (b)(3). However, the I.F. minimum distance separations in Table C apply regardless of short-spaced status. When applying Table C—

* * * * *

- Amend § 73.316 to remove paragraph (d), redesignate paragraph (e) as paragraph (d), and revise the second sentence of (c)(2)(ix)(B) to read as follows:

§ 73.316 FM antenna systems.

* * * * *

(c) * * *

(2) * * *

(ix) * * *

(B) * * * The application for license must also demonstrate that coverage of the community of license by the 70 dBu contour is maintained for stations authorized pursuant to § 73.215 on Channels 221 through 300, as required by § 73.315(a), while noncommercial educational stations operating on Channels 201 through 220 must show that the proposed transmitter location will provide a minimum field strength of 1 mV/m (60 dBu) over at least 50 percent of its community of license or reach 50 percent of the population within the community.

* * * * *

- Amend § 73.501 to remove and reserve paragraph (b).

§ 73.501 Channels available for assignment.

* * * * *

(b) [Reserved]

- Revise § 73.509(b) to read as follows:

§ 73.509 Prohibited overlap.

* * * * *

(b) An application by a Class D (secondary) station, other than an application to change class, will not be accepted if the proposed operation would involve overlap of signal strength contours with any other station as set forth below:

Frequency separation	Contour of proposed station	Contour of any other station
Co-channel	0.1 mV/m (40 dBu)	1 mV/m (60 dBu).
200 kHz	0.5 mV/m (54 dBu)	1 mV/m (60 dBu).
400/600 kHz	100 mV/m (100 dBu)	1 mV/m (60 dBu).

6. Amend § 73.1665 by revising paragraph (b) and removing Table 1 to paragraph (b) to read as follows:

§ 73.1665 Main transmitters.

* * * * *

(b) There is no maximum manufacturer-rated power limit for AM, FM, TV or Class A TV station transmitters.

* * * * *

7. Amend § 73.1690 to revise the second sentence of paragraph (c)(8)(i) to read as follows:

§ 73.1690 Modification of transmission systems.

* * * * *

(c) * * *

(8) * * *

(i) * * * Noncommercial educational FM stations must continue to provide a 60 dBu contour over at least 50 percent of its community of license or reach 50 percent of the population within the community. * * *

* * * * *

8. 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.

9. Amend § 74.702 to remove the second sentence of paragraph (a)(1) to read as follows:

§ 74.702 Channel assignments.

* * * * *

(a) * * *

(1) Any one of the 12 standard VHF Channels (2 to 13 inclusive) may be assigned to a VHF low power TV or TV translator station.

* * * * *

10. Amend § 74.786 to remove the second sentence of paragraph (b) to read as follows:

§ 74.786 Digital channel assignments.

* * * * *

(b) Any one of the 12 standard VHF Channels (2 to 13 inclusive) may be assigned to a VHF digital low power television or television translator station.

* * * * *

11. Amend § 74.1201 to revise paragraph (j) to read as follows:

§ 74.1201 Definitions.

* * * * *

(j) AM Fill-in area. The area within the greater of the 2 mV/m daytime contour of the AM radio broadcast station being rebroadcast or a 25-mile (40 km) radius centered at the AM transmitter site.

* * * * *

12. Amend § 74.1202 to remove paragraph (b)(3).

13. Amend § 74.1235 to remove paragraph (d)(3) and revise paragraph (d) to read as follows:

§ 74.1235 Power limitations and antenna systems.

* * * * *

(d) Applications for FM translator stations located within 320 km of the Canadian border will not be accepted if they specify more than 250 watts effective radiated power in any direction or have a 34 dBu interference contour that exceeds 60 km. Applications for FM translator stations located within 320 kilometers of the Mexican border must adhere to the following provisions.

(1) Translator stations located within 125 kilometers of the Mexican border may operate with a maximum ERP of 250 watts (0.250 kW) but must not exceed an ERP of 50 watts (0.050 kW) in the direction of the Mexican border. A translator station may not produce an interfering contour in excess of 32 km from the transmitter site in the direction of the Mexican border, nor may the 60 dBu service contour of the translator station exceed 8.7 km from the transmitter site in the direction of the Mexican border.

(2) Translator stations located between 125 kilometers and 320 kilometers from the Mexican border may operate with a maximum ERP of 250 watts in any direction. However, in no event shall the location of the 60 dBu contour lie within 116.3 km of the Mexican border.

APPENDIX B

Initial Regulatory Flexibility Act Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies proposed in the *Notice of Proposed Rulemaking (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 on the first page of the *NPRM*. The Commission will send a copy of this entire *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).² In addition, the *NPRM* and the IRFA (or summaries thereof) will be published in the Federal Register.³

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

2. The Commission initiates this rulemaking proceeding to obtain comments regarding its proposal to update certain of its technical rules to better reflect current requirements and eliminate redundant, outdated, or conflicting provisions. Specifically, the Commission seeks comment on the following proposed rule changes: (1) eliminating the maximum rated transmitter power limit rule for AM stations; (2) updating rule provisions containing an NCE FM community of license coverage requirement; (3) eliminating the requirement that applicants demonstrate the effect of any FM applicant transmitting antenna on nearby FM or TV broadcast antennas; (4) updating the signal strength contour overlap requirements for NCE FM Class D stations to harmonize with the contour overlap requirements for all other NCE FM stations; (5) eliminating the requirement for broadcast services to protect grandfathered common carrier services in Alaska operating in the 76-100 MHz frequency band; (6) harmonizing the definition of an “AM fill-in area” set out in multiple rule sections; and (7) amending the power limits for translators within 320 kilometers of the Mexican and Canadian borders to comply with current treaty provisions.

B. Legal Basis.

3. The proposed action is authorized pursuant to sections 1, 4(i), 4(j), 301, 303, 307, 308, 309, 316, and 319 of the Communications Act, 47 U.S.C. §§ 151, 154(i), 154(j), 301, 303, 307, 308, 309, 316, 319.

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

4. 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.⁴ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”⁵ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁶ A small business

¹ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601-612, was amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² See 5 U.S.C. § 603(a).

³ See *id.*

⁴ 5 U.S.C. § 603(b)(3).

⁵ *Id.* § 601(6).

⁶ *Id.* § 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.* § 601(3).

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.⁷ The rules proposed herein will directly affect small television and radio broadcast stations. Below, we provide a description of these small entities, as well as an estimate of the number of such small entities, where feasible.

5. *Radio Stations.* This Economic Census category “comprises establishments primarily engaged in broadcasting aural programs by radio to the public.”⁸ The SBA has created the following small business size standard for this category: those having \$41.5 million or less in annual receipts.⁹ Census data for 2012 show that 2,849 firms in this category operated in that year.¹⁰ 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.¹¹ 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.

6. Apart from the U.S. Census, the Commission has estimated the number of licensed commercial AM radio stations to be 4,406¹² and the number of commercial FM radio stations to be 6,726 for a total number of 11,132, along with 8,126 FM translator and booster stations. As of September 2019, 4,294 AM stations and 6,739 FM stations had revenues of \$41.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA). In addition, the Commission has estimated the number of noncommercial educational FM radio stations to be 4,195.¹³ NCE stations are non-profit, and therefore considered to be small entities.¹⁴ Therefore, we estimate that the majority of radio broadcast stations are small entities.

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

7. The *NPRM* proposes to amend existing rules to better reflect current requirements and eliminate redundant, outdated, or conflicting provisions. None of the proposed revisions require additional paperwork obligations and in one instance eliminates a currently required application showing.

⁷ *Id.* § 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.

⁸ 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.”

⁹ 13 CFR § 121.201; NAICS code 515112.

¹⁰ 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.

¹¹ *Id.*

¹² This number is derived from subtracting the total number of noncommercial educational AM stations (204) from the total number of licensed AM stations (4610).

¹³ See *Broadcast Station Totals as of December 31, 2020*, available online at <https://www.fcc.gov/document/broadcast-station-totals-december-31-2020>.

¹⁴ 5 U.S.C. § 601(4), (6).

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

8. 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.¹⁵

9. In the *NPRM*, the Commission proposes to amend existing rules to better reflect current requirements and eliminate redundant, outdated, or conflicting provisions. The proposed rules will eliminate the requirement that applicants demonstrate the effect of any FM applicant transmitting antenna on nearby FM or TV broadcast antennas. They will also eliminate the need for small entities and other licensees to comply with outdated technical regulations such as the maximum rated transmitter power limit rule for AM stations, the signal strength contour overlap requirements for NCE FM Class D stations, and the requirement for broadcast services to protect grandfathered common carrier services in Alaska operating in the 76-100 MHz frequency band. In addition, the rules clarify and harmonize provisions such as the definition of an “AM fill-in area,” power limits for FM translators near the Canadian and Mexican borders, and required community of license coverage for NCE FM stations, many of whom are small entities. These revisions will make the rules more transparent and accessible to small entities and thus reduce the need for expert engineering or legal assistance with compliance and reporting requirements.

10. Alternatives considered by the Commission include retaining the existing rules and amending other, related rules to further improve the accuracy of the Code of Federal Regulations. The Commission seeks comment on the effect of the proposed rule changes on all affected entities. The Commission is open to consideration of alternatives to the proposals under consideration, including but not limited to alternatives that will minimize the burden on broadcasters, many of whom are small businesses.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rule

11. None.

¹⁵ 5 U.S.C. § 603(c).