

enforce its requirements. See section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 8, 1997.

Lynda F. Carroll,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation of part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart GG—New Mexico

2. Section 52.1620 is amended by adding paragraph (c)(66) to read as follows:

§ 52.1620 Identification of plan.

* * * * *

(c) * * *

(66) Recodified and revised regulations of the New Mexico Administrative Code submitted by the Governor on January 8, and July 18, 1996.

(i) Incorporation by reference.

(A) New Mexico Administrative Code, Title 20, Chapter 2, Parts 1 and 2, adopted by the New Mexico Environmental Improvement Board September 22, 1995, and filed with the State Records and Archives Center on September 27, 1995.

(B) New Mexico Administrative Code, Title 20, Chapter 2, Parts 3, 5, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 30, 31, 32, 33, 34, 40, 41, 60, 61, 70, 71, 72 (Subparts I, II and, III; Subpart V, Sections 501 and 502), 73, 75, 79, and 80; adopted by the New Mexico Environmental Improvement Board on October 20, 1995, and filed with the State Records and Archives Center on October 30, 1995.

(C) Revised New Mexico Administrative Code, Title 20, Chapter 2, Part 3, Sections 109 and 111 and; Part 61, Section 111 and; repeal of Part 3, Section 112, adopted by the New Mexico Environmental Improvement Board December 8, 1995, and filed with the State Records and Archives Center on December 11, 1995.

(D) New Mexico State Records Center transmittals repealing Air Quality

Control Regulations 705 and 706; adopted by the New Mexico Environmental Improvement Board December 8, 1995; and filed with the State Records and Archives Center on December 11, 1995.

(E) Revised New Mexico Administrative Code, Title 20, Chapter 2, Part 72, Section 103; adopted by the New Mexico Environmental Improvement Board on June, 18, 1996, and filed with the State Records and Archives Center on June 19, 1996.

(ii) Additional material. None.

[FR Doc. 97–25502 Filed 9–25–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–5897–7]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of the Northwest Transformer South Harkness Street site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA), Region 10, announces the deletion of the Northwest Transformer South Harkness Street Site, located in Everson, Whatcom County, Washington from the National Priorities List (NPL). The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. EPA and the State of Washington Department of Ecology have determined that no further cleanup under CERCLA is appropriate and that the selected remedy has been protective of human health and the environment.

EFFECTIVE DATE: September 26, 1997.

FOR FURTHER INFORMATION CONTACT: Timothy H. Brincefield, U.S. EPA Region 10, 1200 Sixth Avenue, Mail Stop ECL–111, Seattle, Washington 98101, (206) 553–2100.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is: Northwest Transformer (South Harkness Street), Everson, Washington.

A notice of intent to delete for this site was published on August 15, 1997

(62 FR 43684). The closing date for comments was September 14, 1997. EPA received no comments.

EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substance Response Trust Fund-financed remedial actions. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.425 of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL. Deletion of a site from the NPL does not affect responsible party liability or impede Agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: September 17, 1997.

Randall F. Smith,

Acting Regional Administrator, Region 10.

For the reasons set out in the preamble, 40 CFR Part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for Part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B [Amended]

2. Table 1 of Appendix B to Part 300 is amended by removing site for “Northwest Transformer (South Harkness St), Everson, Washington.”

[FR Doc. 97–25339 Filed 9–25–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96–120; FCC 97–276]

Grandfathered Short-Spaced FM Stations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This *Report and Order (R&O)* in MM Docket No. 96-120 modifies a current rule to permit certain short-spaced stations to make changes based on a showing that no interference is caused or received, or if interference already exists, based on the total of such interference not being increased. The *R&O* also permits certain stations short-spaced to a second-adjacent-channel or a third-adjacent-channel station to change transmitter location or other station facilities without regard to such short-spacing, and to eliminate the need to obtain agreements by grandfathered stations proposing increased facilities. The types of modifications for this revised rule are expected to have no potential to increase interference to other stations.

EFFECTIVE DATE: November 25, 1997.

ADDRESSES: Office of the Secretary, Federal Communications Commission, 1919 M Street, NW., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: James Bradshaw, Mass Media Bureau, Audio Services Division, (202) 418-2720, or via the Internet at jbradsha@fcc.gov. For additional information concerning the information collections contained in the *R&O*, contact Judy Boley at (202) 418-0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is the synopsis of the Commission's *Report and Order* in MM Docket No. 96-120, adopted August 4, 1997, and released August 8, 1997.

The complete text of this *R&O*, which was adopted in MM Docket No. 96-120, is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, DC, and may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., at (202) 857-3800, 2100 M Street, N.W., Suite 140, Washington, DC 20037.

Synopsis of the Report and Order

1. In the *R&O*, the Commission streamlines the Commission's rules specifically dealing with modifications of commercial FM stations that became short-spaced in 1964, and have remained short-spaced since that time. The *R&O* modifies portions of part 73 of the rules to lift restrictions which unnecessarily impede flexibility as to site selection for grandfathered stations and substitute the currently required interference showings in applications, which have proven ineffective, with showings that directly relate to the impact such modification proposals have on other stations and the public.

2. In the *R&O*, the Commission changes three aspects of the rule section dealing with grandfathered short-spaced stations. First, the Commission approves use of predicted interference area analysis based on field strength protection ratios, instead of the current limitation based on the relative locations of the 1 mV/m (60 dBu) service contour of the short-spaced stations. Second, the Commission eliminates the second-adjacent-channel and third-adjacent-channel protection criteria for grandfathered short-spaced stations. Finally, the Commission eliminates the provision for agreements between grandfathered short-spaced stations.

3. The rules set forth in the *R&O* puts the focus on more accurately evaluating and controlling interference. The rules also return some flexibility when stations with second-adjacent-channel or third-adjacent-channel grandfathered short-spacings propose modifications. And for stations with co-channel or first-adjacent-channel grandfathered short-spacings, the rules allow for a more accurate determination of predicted interference. In addition, the rules eliminate the Commission's policy regarding agreements between grandfathered stations.

Final Paperwork Reduction Act of 1995 Analysis

4. This *R&O* contains new or modified information collections subject to the Paperwork Reduction Act of 1995 ("PRA"). It has been submitted to the Office of Management and Budget ("OMB") for review under the PRA.

OMB Control Number: 3060-0727.

Title: R&O: Grandfathered Short-Spaced FM Stations.

Form Number: 301/340.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit, not-for-profit institutions.

Number of Respondents: 15 FM broadcast licensees.

Estimated time per response: 5 hours per showing (0.5 hours consultation time/4.5 hours contracting time); 0.083 hours per disclosure.

Annual Burden: 9 hours.

Needs and Uses: This *R&O* eliminates unnecessary regulations and streamlines the current method of modifying pre-1964 grandfathered short-spaced FM stations. This *R&O* lifts restrictions which unnecessarily impede flexibility as to site selection for grandfathered stations and substitutes the currently required interference showings in applications with showings that directly relate to the impact such modification proposals have on other stations and the

public. The data are used by Commission staff to determine if the public interest will be served and that existing levels of interference will not be increased to other stations. The Commission adopted two of the proposals as set forth in the *NPRM*. The third proposal was adopted as proposed but a disclosure requirement was added that requires that a copy of any application for co-channel or first-adjacent channel stations proposing predicted interference caused in any area where interference is not currently predicted to be caused must be served upon the licensee(s) of the affected short-spaced station(s).

Final Regulatory Flexibility Analysis

5. As required by the Regulatory Flexibility Act¹ (RFA), the Commission considered regulatory flexibility issues in the *NPRM* in this proceeding, *Grandfathered Short-Spaced FM Stations*.² The Commission sought written public comments on the proposals in the *NPRM*. The Commission's Final Regulatory Flexibility Analysis (FRFA) in this *R&O* conforms to the RFA as amended.³

A. Need For and Objectives of the Rules

6. The Commission's Rules currently require pre-1964 grandfathered short-spaced stations proposing transmitter site changes or facility modifications to demonstrate that the proposed 1 mV/m field strength contour is not extended toward the 1 mV/m field strength contour of any station to which it is short-spaced. This rule was found to be overly restrictive, and open to multiple interpretations. The Commission therefore proposed revisions to its broadcast regulations to replace the current rule with a simple rule based on straight-forward interference prediction methods, and to eliminate spacing requirements for second and third-adjacent channel grandfathered stations.

7. By making these changes, grandfathered stations will have the maximum flexibility when changing transmitter site or proposing facility modifications. Any such changes must be made by filing a minor change application. The new regulations should expedite new and improved service to

¹ See 5 U.S.C. 603.

² *Notice of Proposed Rulemaking* in MM Docket No. 96-120, 61 FR 33474 (June 14, 1996).

³ See 5 U.S.C. 604. The Regulatory Flexibility Act, see 5 U.S.C. 601 *et. seq.* has been amended by the Contract with America Advancement Act of 1996, Public Law 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the "Small Business Regulatory Enforcement Fairness Act of 1996" (SBREFA). We note that the *NPRM* was issued prior to enactment of the amendments to the RFA in the SBREFA.

the public, with minimal impact on existing stations. The specified changes require prior authorization from the Commission. The exact circumstances in which the Commission will allow modifications are listed in 47 CFR 73.213(a) (see Rule Changes at the end of this document).

B. Summary of Significant Issues Raised by Public Comments in Response to the Regulatory Flexibility Analysis

8. No comments were received specifically in response to the regulatory flexibility issues contained in the *NPRM*. However, commenters generally addressed the effects of the proposed rule changes on FM licensees, including small businesses. Generally, commenters favored the rule changes proposed, with minor changes, some of which have been incorporated into the rules specified in the Rule Changes at the end of this document.

C. Description and Estimate of the Number of Small Entities To Which the Rule Will Apply

9. The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction" and the same meaning as the term "small business concern" under the Small Business Act unless the Commission has developed one or more definitions that are appropriate for its activities.⁴ 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).⁵ According to the SBA's regulations, entities engaged in radio broadcasting (Standard Industrial Classification ("SIC") Code 4832 for radio) may have a maximum of \$10.5 million in annual receipts in order to qualify as a small business concern. 13 CFR 121.201. This standard also applies in determining whether an entity is a small business for purposes of the Regulatory Flexibility Act.

10. Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency after

⁴ 5 U.S.C. 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**.

⁵ Small Business Act, 15 U.S.C. 632 (1996).

consultation with the Office of Advocacy of the SBA 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**."⁶ While we tentatively believe that the foregoing definition of "small business" greatly overstates the number of radio broadcast stations that are small businesses and is not suitable for purposes of determining the impact of the new rules on small business, we did not propose an alternative definition in the Regulatory Flexibility Analysis. Accordingly, for purposes of this *R&O*, we utilize the SBA's definition in determining the number of small businesses to which the rules apply, but we reserve the right to adopt a more suitable definition of "small business" as applied to radio broadcast stations and to consider further the issue of the number of small entities that are radio broadcasters in the future. Further, in this FRFA, we will identify the different classes of small radio stations that may

⁶ We tentatively conclude that the SBA's definition of "small business" greatly overstates the number of radio and television broadcast stations that are small businesses and is not suitable for purposes of determining the impact of the proposals on small radio and television stations. However, for purposes of this *R&O*, we utilize the SBA's definition in determining the number of small businesses to which the proposed rules would apply, but we reserve the right to adopt a more suitable definition of "small business" as applied to radio and television broadcast stations or other entities subject to the rules adopted in this *R&O* and to consider further the issue of the number of small entities that are radio and television broadcasters or other small media entities in the future. See *R&O* in MM Docket 93-48 (*Children's Television Programming*), 11 FCC Rcd 10660, 10737-38 (1996), 61 FR 43981 (August 27, 1996), citing 5 U.S.C. 601(3). In our *Notice of Inquiry* in GN Docket No. 96-113B, *In the matter of Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses*, 11 FCC Rcd 6280 (1996), 61 FR 33066 (June 26, 1996), we requested commenters to provide profile data about small telecommunications businesses in particular services, including television and radio, and the market entry barriers they encounter, and we also sought comment as to how to define small businesses for purposes of implementing Section 257 of the Telecommunications Act of 1996, which requires us to identify market entry barriers and to prescribe regulations to eliminate those barriers. Additionally, in our *Order and Notice of Proposed Rulemaking* in MM Docket 96-16, *In the Matter of Streamlining Broadcast EEO Rules and Policies, Vacating the EEO Forfeiture Policy Statement and Amending Section 1.80 of the Commission's Rules to Include EEO Forfeiture Guidelines*, 11 FCC Rcd 5154 (1996), 61 FR 9964 (March 12, 1997), we invited comment as to whether relief should be afforded to stations: (1) Based on small staff and what size staff would be considered sufficient for relief, e.g., 10 or fewer full-time employees; (2) based on operation in a small market; or (3) based on operation in a market with a small minority work force.

be impacted by the rules adopted in this *R&O*.

Commercial Radio Services

11. The rules and policies adopted in this *R&O* will apply to radio broadcasting licensees and potential licensees. The SBA defines a radio broadcasting station that has no more than \$5 million in annual receipts as a small business.⁷ A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public.⁸ Included in this industry are commercial, religious, educational, and other radio stations.⁹ Radio broadcasting stations which primarily are engaged in radio broadcasting and which produce radio program materials are similarly included.¹⁰ However, radio stations which are separate establishments and are primarily engaged in producing radio program material are classified under another SIC number.¹¹ The 1992 Census indicates that 96 percent (5,861 of 6,127) radio station establishments produced less than \$5 million in revenue in 1992.¹² Official Commission records indicate that 11,334 individual radio stations were operating in 1992.¹³ As of March, 1997, official Commission records indicate that 12,128 radio stations were operating.¹⁴

12. It is estimated that the rules will affect about 450 radio stations, approximately 432 of which are small businesses.¹⁵ These estimates are based on cursory studies performed by the staff and may overstate the number of small entities since the revenue figures on which they are based do not include aggregate revenues from non-radio affiliated companies.

Alternative Classification of Small Stations

13. An alternative way to classify small radio stations is the number of employees. The Commission currently applies a standard based on the number of employees in administering its Equal

⁷ 13 CFR 121.201, SIC 4832.

⁸ Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, *supra* note 78, Appendix A-9.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² The Census Bureau counts radio stations located at the same facility as one establishment. Therefore, each co-located AM/FM combination counts as one establishment.

¹³ FCC News Release No. 31327, January 13, 1993.

¹⁴ FCC News Release No. 64958, September 6, 1996.

¹⁵ We use the 96% figure of radio station establishments with less than \$5 million revenue from the Census data and apply it to the 12,088 individual station count to arrive at 11,605 individual stations as small businesses.

Employment Opportunity Rule (EEO) for broadcasting.¹⁶ Thus, radio stations with fewer than five full-time employees are exempted from certain EEO reporting and record keeping requirements.¹⁷ We estimate that the total number of grandfathered broadcast stations with 4 or fewer employees is approximately 120.¹⁸

D. Projected Compliance Requirements of the Rule

14. Applicants filing a modification application will be required to provide similar exhibits to those currently required for a construction permit. This information may consist of an interference analysis showing that no area previously receiving interference-free service would receive co-channel or first-adjacent channel interference using the desired to undesired signal strength ratio interference calculation method.

15. Alternatively, for co-channel and first-adjacent channel applicants, a showing that the public interest would be served by the changes proposed in an application must include exhibits demonstrating that the total area and population subject to co-channel or first-adjacent channel interference, caused and received, would be maintained or decreased. In addition, the showing must include exhibits demonstrating that the area and the

population subject to co-channel or first-adjacent channel interference caused by the proposed facility to each short-spaced station individually is not increased. In all cases, the applicant must also show that any area predicted to lose service as a result of new co-channel or first-adjacent-channel interference has adequate aural service remaining. For these purposes, adequate service is defined as 5 or more aural services (AM or FM). Finally, any applicant proposing interference caused in an area where interference is not caused must serve its application upon the licensee(s) of the affected short-spaced station(s). The above-listed requirements are similar to the interference exhibits required by the previous rule section.

16. Second-adjacent and third-adjacent channel grandfathered stations will no longer be required to submit interference exhibits, therefore reducing the filing burden.

17. The information required with a modification application generally is the minimum necessary for the Commission to verify compliance with its rules and regulations. In most instances, the new procedures will reduce the time and expense required to implement certain modifications to grandfathered broadcast stations. Most permittees and licensees retain professional consulting engineers or legal counsel, or both in preparing construction permit applications. We do not expect this to change significantly by the adoption of the new rules and procedures. However, the time needed for the preparation of the simplified applications will be reduced as a result of fewer necessary waiver requests, translating into time and money savings for the broadcast applicant.

E. Significant Alternatives Considered Minimizing the Economic Impact on Small Entities and Consistent with the Stated Objectives

18. The burdens on co-channel and first-adjacent-channel grandfathered applicants will be similar to the requirements under the previous rule section. The burden on second-adjacent and third-adjacent grandfathered applicants will be reduced. Modification applications will typically require that lesser amounts of information be submitted to the Commission as compared to an application submitted under the previous rules. The rule and policy changes will have a positive economic impact, as eligible entities, including small entities, will be able to increase their service or make transmitter site changes that were previously inhibited

by the rules. All entities will still be able to file informal objections against a modification application, just as they may do now. In addition, any applicant proposing to cause interference in an area previously receiving interference must serve its application on the licensee(s) of the affected station(s).

F. Report to Congress

19. The Secretary shall send a copy of this Final Regulatory Flexibility Analysis along with this *R&O* in a report to Congress pursuant to Section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, codified at 5 U.S.C. 801(a)(1)(A). A copy of this RFA is also published earlier in this document.

Ordering Clauses

20. Accordingly, *it is ordered* that pursuant to the authority contained in Sections 4(i), 303(r), and 307(c) of the Communications Act of 1934, as amended, 47 CFR part 73 is *amended* as set forth below.

21. *It is further ordered* that the requirements and regulations established in this *Report and Order* will become effective November 25, 1997.

22. For further information contact Jim Bradshaw of the Audio Services Division, Mass Media Bureau at (202) 418-2740, or by e-mail at jbradsha@fcc.gov.

List of Subjects in 47 CFR Part 73

Radio broadcasting, Reporting and recordkeeping requirements, Television broadcasting.

Federal Communications Commission.

Shirley S. Suggs,
Chief, Publications Branch.

Rule Changes

Part 73 of title 47 of the Code of Federal Regulations is amended 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, 336.

2. Section 73.213(a) is revised to read as follows:

§ 73.213 Grandfathered short-spaced stations.

(a) Stations at locations authorized prior to November 16, 1964 that did not meet the separation distances required by § 73.207 and have remained continuously short-spaced since that time may be modified or relocated with respect to such short-spaced stations,

¹⁶The Commission's definition of a small broadcast station for purposes of applying its EEO rules was adopted prior to the requirement of approval by the SBA pursuant to Section 3(a) of the Small Business Act, 15 U.S.C. 632(a), as amended by Section 222 of the Small Business Credit and Business Opportunity Enhancement Act of 1992, Public Law 102-366, section 222(b)(1), 106 Stat. 999 (1992), as further amended by the Small Business Administration Reauthorization and Amendments Act of 1994, Public Law 103-403, section 301, 108 Stat. 4187 (1994). However, this definition was adopted after the public notice and the opportunity for comment. See *R&O* in Docket No. 18244, 23 FCC 2d 430 (1970), 35 FR 8925 (June 6, 1970).

¹⁷See, e.g., 47 CFR 73.3612 (Requirement to file annual employment reports on Form 395 applies to licensees with five or more full-time employees); *First Report and Order* in Docket No. 21474 (*Amendment of Broadcast Equal Employment Opportunity Rules and FCC Form 395*), 70 FCC 2d 1466 (1979), 50 FR 50329 (December 10, 1985). The Commission is currently considering how to decrease the administrative burdens imposed by the EEO rule on small stations while maintaining the effectiveness of our broadcast EEO enforcement. *Order and Notice of Proposed Rule Making in MM Docket 96-16 (Streamlining Broadcast EEO Rule and Policies, Vacating the EEO Forfeiture Policy Statement and Amending Section 1.80 of the Commission's Rules to Include EEO Forfeiture Guidelines)*, 11 FCC Rcd 5154 (1996), 61 FR 9964 (March 12, 1996). One option under consideration is whether to define a small station for purposes of affording such relief as on with ten or fewer employees.

¹⁸Compilation of 1994 Broadcast Station Annual Employment Reports (FCC Form 395B), Equal Opportunity Employment Branch, Mass Media Bureau, FCC.

provided that no area previously receiving interference-free service would receive co-channel or first-adjacent channel interference as predicted in accordance with paragraph (a)(1) of this section, or that a showing is provided pursuant to paragraph (a)(2) of this section that demonstrates that the public interest would be served by the proposed changes.

(1) The F(50,50) curves in Figure 1 of § 73.333 are to be used in conjunction with the proposed effective radiated power and antenna height above average terrain, as calculated pursuant to § 73.313(c), (d)(2) and (d)(3), using data for as many radials as necessary, to determine the location of the desired (service) field strength. The F(50,10) curves in Figure 1a of § 73.333 are to be used in conjunction with the proposed effective radiated power and antenna height above average terrain, as calculated pursuant to § 73.313(c), (d)(2) and (d)(3), using data for as many radials as necessary, to determine the location of the undesired (interfering) field strength. Predicted interference is defined to exist only for locations where the desired (service) field strength exceeds 0.5 mV/m (54 dBu) for a Class B station, 0.7 mV/m (57 dBu) for a Class B1 station, and 1 mV/m (60 dBu) for any other class of station.

(i) Co-channel interference is predicted to exist, for the purpose of this section, at all locations where the undesired (interfering station) F(50,10) field strength exceeds a value 20 dB below the desired (service) F(50,50) field strength of the station being considered (e.g., where the protected field strength is 60 dBu, the interfering field strength must be 40 dBu or more for predicted interference to exist).

(ii) First-adjacent channel interference is predicted to exist, for the purpose of this section, at all locations where the undesired (interfering station) F(50,10) field strength exceeds a value 6 dB below the desired (service) F(50,50) field strength of the station being considered (e.g., where the protected field strength is 60 dBu, the interfering field strength must be 54 dBu or more for predicted interference to exist).

(2) For co-channel and first-adjacent channel stations, a showing that the public interest would be served by the changes proposed in an application must include exhibits demonstrating that the total area and population subject to co-channel or first-adjacent channel interference, caused and received, would be maintained or decreased. In addition, the showing must include exhibits demonstrating that the area and the population subject to co-channel or first-adjacent channel

interference caused by the proposed facility to each short-spaced station individually is not increased. In all cases, the applicant must also show that any area predicted to lose service as a result of new co-channel or first-adjacent-channel interference has adequate aural service remaining. For the purpose of this section, adequate service is defined as 5 or more aural services (AM or FM).

(3) For co-channel and first-adjacent-channel stations, a copy of any application proposing interference caused in any areas where interference is not currently caused must be served upon the licensee(s) of the affected short-spaced station(s).

(4) For stations covered by this paragraph (a), there are no distance separation or interference protection requirements with respect to second-adjacent and third-adjacent channel short-spacings that have existed continuously since November 16, 1964.

* * * * *

§ 73.4235 [Removed]

3. Section 73.4235 is removed.

[FR Doc. 97-25272 Filed 9-25-97; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Chapter X

[STB Ex Parte No. 571]

Revision of Authority Citations

AGENCY: Surface Transportation Board, DOT.

ACTION: Final rules.

SUMMARY: The Surface Transportation Board amends its regulations by updating its authority citations.

EFFECTIVE DATE: These rules are effective September 26, 1997.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565-1600. (TDD for the hearing impaired: (202) 565-1695.)

SUPPLEMENTARY INFORMATION: The Surface Transportation Board (Board) is revising certain authority citations in the Code of Federal Regulations (CFR) to reflect statutory changes made by the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (1995) (ICCTA) and previous statutes.¹ The ICCTA abolished the Interstate Commerce Commission (ICC),

¹ An authority citation denotes what statutory provision(s) authorize the agency to adopt or change the regulation(s) involved.

established the Board to assume many of the functions of the ICC, and made substantial revisions to 49 U.S.C. Subtitle IV. The revisions to subtitle IV included both substantive changes and a wholesale renumbering of individual sections within subtitle IV. See H.R. Rep. No. 104-422, 104th Cong., 1st Sess. 241-47 (1995) (table showing disposition of individual statutory provisions). Under section 204(a) of the ICCTA, the regulations that had been promulgated and administered by the ICC, located at 49 CFR chapter X, were transferred to the Board (except for parts relating to functions transferred to the Secretary of Transportation under the ICCTA, which were transferred to the Secretary of Transportation and have since been moved to other chapters).² In an ongoing effort to update the regulations in chapter X, the Board has removed many parts that had been rendered obsolete by changes in the governing statute; revised other parts to conform to substantive changes in the governing statute; and made wholesale changes to the nomenclature of yet other parts to reflect the elimination of the ICC and the substitution of the Board. The Board is now updating the authority citations, as required by 1 CFR 21.41, for most parts within chapter X—those which are not obsolete and have not been addressed in other proceedings—to reflect renumbering of the underlying provisions in the governing statute.

Under 1 CFR 21.40, the authority citation must include the general or specific authority delegated by statute. We are deleting references to the Administrative Procedure Act (APA), because the APA does not provide an independent basis of authority.³

Some authority citations include only a general or a specific authority, but not both. See 49 CFR 1037 and 49 CFR 1302. We believe these to be legally sufficient; as noted, under 1 CFR 21.40, a general or specific authority is required. Because we are merely updating the authority citations to remove obsolete statutory references, we will generally not add authorities.⁴

² See 61 FR 54706 (October 21, 1996).

³ Cf. *Cousins v. Secretary of Transp.*, 880 F.2d 603, 605 (1st Cir. 1989). We do not believe, however, that it is necessary at this time to delete APA references in authority citations that are otherwise up-to-date.

⁴ In some cases, however, we have added statutory authorities. In part 1246 (Number of railroad employees), we are including a citation to 49 U.S.C. 11145 that pertains to rail carrier reports. In part 1253 (rate-making organization; records and reports), we are also adding a reference to 49 U.S.C. 11144, rail carrier records. We are also changing the headings in parts 1037 and 1331, and have modified part 1220 to remove obsolete references.