

State and local officials was not necessary.

#### *Environmental Impact Statement*

We have analyzed this final rule for purposes of compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and have concluded that under the categorical exclusions provision in section 4.05 of Maritime Administrative Order ("MAO") 600-1, "Procedures for Considering Environmental Impacts," 50 FR 11606 (March 22, 1985), the preparation of an Environmental Assessment, and an Environmental Impact Statement, or a Finding of No Significant Impact for this final rule is not required. This final rule involves administrative and procedural regulations that have no environmental impact.

#### *Executive Order 13175*

MARAD does not believe that this final rule will significantly or uniquely affect the communities of Indian tribal governments when analyzed under the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Therefore, the funding and consultation requirements of this Executive Order would not apply.

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

This final rule does not impose an unfunded mandate under the Unfunded Mandates Reform Act of 1995. It does not result in costs of \$100 million or more, in the aggregate, to any of the following: State, local, or Native American tribal governments, or the private sector. This final rule is the least burdensome alternative that achieves the objective of the rule.

#### *Paperwork Reduction Act*

This final rule does not contain information collection requirements covered by 5 CFR Part 1320 (specifically 5 CFR 1320.3(c)) in that appellants choose the information to be provided in their appeal and may choose to interpret the collection of information differently.

#### *Regulation Identifier Number (RIN)*

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number is contained in the heading of this document to cross-reference this action with the Unified Agenda.

#### **List of Subjects in 46 CFR Part 205**

Administrative practice and procedure, Government contracts.

Accordingly, 46 CFR part 205 is revised to read as follows:

#### **PART 205—AUDIT APPEALS; POLICY AND PROCEDURE**

Sec.

- 205.1 Purpose.
- 205.2 Policy.
- 205.3 Procedure.
- 205.4 Finality of decisions.
- 205.5 Contracts containing disputes article.

**Authority:** Sec. 204, 49 Stat. 1987, 1998, 2004, 2011; 46 U.S.C. 1114, 1155, 1176, 1212.

##### **§ 205.1 Purpose.**

This part establishes the policy and procedure for parties to use when seeking redress and appeals of audit decisions involving contracts with the Maritime Subsidy Board or the Maritime Administration (MARAD, we, our, or us). A party to a contract (you or your) may appeal MARAD's findings, interpretations, or decisions of annual or special audits.

##### **§ 205.2 Policy**

If you disagree with audit findings and fail to settle any differences with the appropriate Office Director, you may ask the appropriate office Associate Administrator to review the audit findings. If you disagree with the Associate Administrator, you may appeal to the Maritime Administrator (Administrator).

##### **§ 205.3 Procedure.**

(a) You have 90 days from the date you receive the initial audit findings to file a written request for review of the audit findings with the appropriate Associate Administrator. Your written request must state the legal or factual bases for your disagreement. The appropriate Associate Administrator will issue a written determination.

(b) You have 30 days following the Associate Administrator's final audit determination to submit your appeal in writing to the Administrator. Your written appeal must set forth the legal and factual bases for your appeal. The Administrator may, at his or her discretion, extend the time limitation in the case of extenuating circumstances.

(c) We will notify you, in writing, if you must submit additional facts for our consideration of the appeal. We will notify you, in writing, once the Administrator has made a decision regarding your appeal.

##### **§ 205.4 Finality of decisions.**

The Administrator's decision will be the final administrative action on all audit appeals.

##### **§ 205.5 Contracts containing disputes article.**

When a contract contains a disputes article, the disputes article will govern the bases for negotiating disputes regarding audit findings, interpretations, or decisions made by MARAD and any appeals.

Dated: May 2, 2001.

By Order of the Acting Deputy Maritime Administrator.

**Joel C. Richard,**

*Secretary, Maritime Administration.*

[FR Doc. 01-11578 Filed 5-9-01; 8:45 am]

**BILLING CODE 4910-81-P**

#### **FEDERAL COMMUNICATIONS COMMISSION**

#### **47 CFR PART 73**

[MM Docket No. 99-25; FCC 01-100]

#### **Creation of a Low Power Radio Service**

**AGENCY:** Federal Communications Commission

**ACTION:** Final rule.

**SUMMARY:** This document amends our Low Power Radio Service ("LPRM") regulations to implement section 632(a) of the "Making Appropriations for the Government of the District of Columbia for FY 2001" Act (the "Act"). Specifically, the Second Report and Order codifies the Act's requirements that the Commission prescribe LPRM station third adjacent channel interference protection standards and prohibit the grant of an LPRM station license if the applicant has engaged in the unlicensed operation of a station in violation of section 301 of the Communications Act of 1934, as amended. This document also defines the scope of permissible minor amendments that may be filed by LPRM applicants outside window filing periods.

**DATES:** Effective June 11, 2001.

**FOR FURTHER INFORMATION CONTACT:** Peter Doyle, Federal Communications Commission, Mass Media Bureau, Audio Services Division, 445 12 Street, SW., Washington, DC 20554 (202) 418-2700, Internet address: pdoyle@fcc.gov.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Second Report and Order, adopted March 22, 2001, and released April 2, 2001. The complete text of the Second Report and

Order is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY-A257), 445 12 Street, SW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 1231 20th Street, NW., Washington, DC 20036. The Commission believes that these actions are exempt from the notice and comment requirements of section 553 of the Administrative Procedure Act, and that the minor amendment rule is a rule of procedure to which notice and comment requirements are inapplicable.

### Synopsis of Order

1. With this Second Report and Order, the Commission implements the Act's requirement that the Commission prescribe LPFM station third adjacent channel interference protection standards. We accomplish this requirement by including in our rules minimum distance separations which LPFM applicants must meet with respect to full power FM and FM translator stations on third adjacent channels. We also, in accordance with the Act, prohibit any applicant from obtaining an LPFM station license if the applicant has engaged in the unlicensed operation of a station in violation of section 301 of the Communications Act of 1934, as amended.

2. The third adjacent channel protection standards affect 652 otherwise technically acceptable LPFM applications that were filed in the first two LPFM filing windows, rendering them short-spaced to existing full power FM and/or FM translator stations operating on third adjacent channels. Under well-established processing policies, only minor amendments may be filed outside the window period. Although the LPFM rules define the permissible scope of minor changes in authorized facilities, they do not define the scope of minor amendments to pending applications, an issue now critical to the large group of newly short-spaced applicants. The Second Report and Order adds new rule § 73.871 to permit LP100 applicants to file minor change technical amendments for site relocations of less than two kilometers and to permit LP10 applicants to file minor change technical amendments for site relocations of less than one kilometer. Section 73.871 will permit the filing after the close of the pertinent filing window of non-technical minor amendments that do not improve an applicant's comparative position. Amendments adversely affecting an applicant's comparative position will be

accepted and considered as part of the mutually exclusive application selection procedures. Ownership amendments will be limited to changes where the original parties to an application retain more than a fifty percent ownership interest in the application as originally filed.

3. Applications impacted by the new third adjacent channel spacing requirements are listed in Appendices A and B of the Second Report and Order. Appendix A lists those applications which involve short spacings of less than two kilometers. These applicants may be able to file minor amendments to eliminate the prohibited short spacings. The staff is prepared to assist, if requested, each of these applicants to determine whether a feasible site exists which would meet both the Commission's distance separation requirements and the applicant's service needs. Curative minor amendments (site relocations of less than two kilometers) must be filed within thirty days of the publication of this Summary in the **Federal Register**. Appendix B lists those applications that have third adjacent short spacings of two or more kilometers. These cannot be cured by permissible minor amendments filed outside an LPFM window. The Commission therefore directs the staff to open an additional remedial filing window following the completion of the currently scheduled window process for those applicants listed in Appendices A and B. We will retain these applications in pending status. The remedial filing window will provide these applications with the opportunity to submit major amendments specifying technical facilities that meet the new spacing requirements.

4. Appendix C of the Second Report and Order lists those LPFM applications that stated that either the applicant and/or any party to the application engaged in the unlicensed operation of any station in violation of section 301 of the Communications Act of 1934, as amended. Prior to the Second Report and Order, the Commission's rules permitted the grant of an LPFM station application if the party engaged in illegal broadcast operations but certified that it ceased such unlicensed operations within 24 hours of a Commission directive to do so or, in the alternative, that it voluntarily ceased engaging in such operations if no directive was issued no later than February 26, 1999. The Second Report and Order modifies § 73.854 of the LPFM rules and instructs the staff to modify FCC Form 318 to conform the statutory language prohibiting any applicant from obtaining an LPFM

license if the applicant engaged in any manner in the unlicensed operation of any station in violation of section 301 of the Communications Act of 1934, as amended. All applications responding "No" to FCC Form 318, Section III, Question 8(a) will be dismissed.

5. The Commission does not believe that the notice and comment requirements of section 553 of the Administrative Procedure Act ("APA") apply to the rule revisions adopted herein. We find that the amendments of the interference protection and unlicensed operations rules are exempt from notice and comment under the APA's "good cause" exemption. The third adjacent channel protection requirements adopted were proposed in the LPFM NPRM, are consistent with current full power FM station third adjacent channel protection levels, and implement a Congressional requirement. Amendment of the unlicensed operation rule is a non-discretionary action codifying a Congressional requirement. The minor amendment rule is one of procedure to which notice and comment requirements are inapplicable.

### Supplemental Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act ("RFA")<sup>1</sup> requires that an agency prepare a regulatory flexibility analysis for notice-and-comment rulemaking proceedings. In the Notice of Proposed Rulemaking, Report and Order, and Memorandum Opinion and Order, the Commission included, respectively, an Initial Regulatory Flexibility Analysis, Final Regulatory Flexibility Analysis, and Supplemental Final Regulatory Flexibility Analysis. *Creation of Low Power Radio Service*, MM Docket No. 99-25, *Notice of Proposed Rule Making*, 64 FR 7577 (February 16, 1999), 14 FCC Rcd 2471 (1999); *Report and Order*, 65 FR 7616 (February 15, 2000), 15 FCC Rcd 2205 (2000); *Memorandum Opinion and Order*, 65 FR 67289 (November 9, 2000), \_\_ FCC Rcd \_\_ (2000). In this Order, however, the rule changes adopted on our own motion in response to the Act's mandate do not require a regulatory flexibility analysis.

### Minimizing Impact on Small Business LPFM Applicants

LP100 and LP10 stations will be noncommercial, educational stations, and so will not compete with small

<sup>1</sup> See 5 U.S.C. 603. The RFA, see 5 U.S.C. 601, has been amended by the Contract with America Advancement Act of 1996, Public Law No. 104-121, 110 Stat. 847 (1996) ("CWAAA"). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA").

business commercial broadcasters for advertising revenue.

*Need For and Objectives of the Memorandum Opinion and Order*

In the Report and Order, the Commission established technical standards based on minimum distance requirements to co-channel, first and second-adjacent channel, and IF channel spacings to full power FM and FM translator stations, and co-channel and first adjacent channel spacings to other LPFM stations. The Report and Order also provided to a limited extent that applicants previously engaging in unlicensed operations in violation of section 301 of the Communications Act of 1934, as amended, would be able to receive grant of their applications. The Act modifies the Commission's prior approach, requiring that the LPFM rules be expanded to provide protection to third adjacent channel full power FM and FM translator stations and that the rules be modified to reject any relief to applicants previously in violation of the unlicensed station provisions of section 301 of the Communications Act.

*Significant Alternative Considered*

The Commission considered an alternative to its rule governing the amendment of pending LPFM applications that such applicants be permitted to amend their technical proposals to specify a different channel that might resolve conflicts with co and first adjacent channel LPFM new station applications filed in the same filing window. This alternative was rejected in the interest of administrative orderliness. The expeditious processing of the hundreds of applications filed in the initial LPFM windows requires a relatively fixed database of technical proposals. Providing the opportunity to amend to different channels after the close of a window makes staff determinations of mutual exclusivity and the administration of the selection procedure for these applications inherently subject to duplicative reevaluations.

*Report to Congress*

The Commission will send a copy of the Second Report and Order to Congress pursuant to the Congressional Review Act. See 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of this Second Report and Order, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Second Order and Order (or summary thereof) will also be published in the **Federal Register** pursuant to 5 U.S.C. 604(b).

**List of Subjects in 47 CFR Parts 73**

Radio broadcasting.

Federal Communications Commission

**Magalie Roman Salas,**  
*Secretary.*

**Regulatory Text**

For the reasons discussed in the preamble, the Federal Communications Commission amends 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, 336.

2. Section 73.807 is amended by revising the last sentence in the introductory text as set forth and by revising the fourth column headings of the tables in paragraphs (a), (b), (c), and (d) which previously read "Second-adjacent channel minimum separation (km) required" to read "Second- and third-adjacent channel minimum separation (km) required."

**§ 73.807 Minimum distance separation between stations.**

\* \* \* For second- and third-adjacent channels and IF channels, the required minimum distance separation is sufficient to avoid interference received from other stations.

\* \* \* \* \*

3. Section 73.854 is revised to read as follows:

**§ 73.854 Unlicensed operations.**

No application for an LPFM station may be granted unless the applicant certifies, under penalty of perjury, that neither the applicant, nor any party to the application, has engaged in any manner including individually or with persons, groups, organizations or other entities, in the unlicensed operation of any station in violation of Section 301 of the Communications Act of 1934, as amended, 47 U.S.C. 301.

4. Add § 73.871 to subpart G to read as follows:

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

(a) New and major change applications may be amended without limitation during the pertinent filing window.

(b) Amendments that would improve the comparative position of new and major change applications will not be accepted after the close of the pertinent filing window.

(c) Only minor amendments to new and major change applications will be accepted after the close of the pertinent filing window. Subject to the provisions of this section, such amendments may be filed as a matter of right by the date specified in the FCC's Public Notice announcing the acceptance of such applications. For the purposes of this section, minor amendments are limited to:

(1) Site relocations of less than one kilometer for LP10 stations;

(2) Site relocations of less than two kilometers for LP100 stations;

(3) Changes in ownership where the original party or parties to an application retain more than a 50 percent ownership interest in the application as originally filed; and

(4) Other changes in general and/or legal information.

(d) Unauthorized or untimely amendments are subject to return by the FCC's staff without consideration.

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