

Dated: July 12, 2011.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.628 is amended as follows:

■ i. Add alphabetically tolerances for beet, sugar, molasses; berry large shrub/tree, subgroup 13–07C; berry, low growing, subgroup at 13–07G; onion, bulb, subgroup 3–07A; tea, dried; Ti, leaves; Ti, root; vegetable, leaves of root and tuber, group 2; vegetable, root and tuber, group 1; to the table in paragraph (a);

■ ii. Revise the tolerances for vegetable, cucurbit, group 9; and vegetable, fruiting, group 8–10 in the table to paragraph (a);

■ iii. Remove the entries for okra, strawberry, and vegetable, tuberous and corm, subgroup 1C from the table in paragraph (a);

■ iv. Remove the entries for shallot and vegetables, leaves of root and tuber, group 2 from paragraph (d); and

■ v. Add alphabetically an entry for shallot, green leaves to the table in paragraph (d).

The added and revised text read as follows:

§ 180.628 Chlorantraniliprole; tolerances for residues.

(a) * * *

Commodity	Parts per million
Beet, sugar, molasses	9.0
Berry, large shrub/tree, subgroup 13–07C	2.5
Berry, low growing, subgroup 13–07G	1.0
Onion, bulb, subgroup 3–07A	0.30
Tea, dried	50.0
Ti, leaves	13.0
Ti, root	0.3
Vegetable, cucurbit, group 9	0.5
Vegetable, fruiting, group 8–10	1.4

Commodity	Parts per million
Vegetable, leaves of root and tuber, group 2	40.0
Vegetable, root and tuber, group 1	0.30

(d) * * *

Commodity	Parts per million	Expiration/revocation date
Shallots, fresh leaves	0.20	04/10/14

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 74

[MB Docket No. 03–185; FCC 11–110]

Digital Low Power Television, Television Translator, and Television Booster Stations and To Amend Rules for Digital Class A Television Stations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In the *Second Report and Order*, the Commission takes steps to resolve the remaining issues in this proceeding in order to allow a timely and successful completion of the low power television digital transition. Although Congress established a hard deadline of June 12, 2009 for full power stations to cease analog operations and begin operating only in digital, the statutory deadline did not apply to low power television stations. Therefore, while all full power television stations have ceased over-the-air analog broadcasting, many low power television stations are continuing to transmit analog signals.

DATES: Effective August 26, 2011, except for the amendment to 47 CFR 73.624(g), which contains information collection requirements that have not been approved by the Office of Management and Budget (“OMB”). The Federal Communications Commission will publish a separate document in the

Federal Register announcing the effective date.

FOR FURTHER INFORMATION CONTACT: Shaun Maher, Shan.Maher@fcc.gov of the Media Bureau, Video Division, (202) 418–1600. For additional information concerning the information collection requirement contained in this *Second Report and Order*, contact the Office of Managing Director (“OMD”), Performance Evaluation & Records Management (“PERM”), Cathy Williams, Cathy.Williams@fcc.gov, at 202–418–2918.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission’s *Second Report and Order*, FCC 11–110, adopted on July 15, 2011, and released on July 15, 2011. The full text of the *Second Report and Order* is available for inspection and copying during regular business hours in the FCC Reference Center, 445 Twelfth Street, SW., Room CY–A257, Portals II, Washington, DC 20554, and may also be purchased from the Commission’s copy contractor, BCPI, Inc., Portals II, 445 Twelfth Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact BCPI, Inc. via their Web site, <http://www.bcpi.com>, or call 1–800–378–3160. This document is available in alternative formats (computer diskette, large print, audio record, and Braille). Persons with disabilities who need documents in these formats may contact the FCC by *e-mail*: FCC504@fcc.gov or *phone*: 202–418–0530 or *TTY*: 202–418–0432.

Executive Summary

In the *Second Report and Order*, the Commission takes steps to resolve the remaining issues in this proceeding in order to allow a timely and successful completion of the low power television digital transition. Specifically, in order to ensure a timely and successful completion to the low power television digital transition, the Commission takes the following steps: (1) Adopts a hard deadline of September 1, 2015 for the termination of all analog low power television facilities; (2) establishes rules permitting those stations needing additional time to complete their digital transition to obtain a “last minute” extension; (3) requires existing analog and digital low power television stations in the 700 MHz band (channels 52–69) to submit displacement applications by September 1, 2011, and to cease operations in the 700 MHz band by December 31, 2011; (4) increases the power limits for VHF low power television channels to 3 kilowatts (the current analog power limit); (5) delegates to the Media Bureau the

authority to establish timeframes and procedures for stations that have not already converted to notify the Commission of their conversion plans; (6) widens the class of low power television broadcasters subject to the Commission's ancillary and supplementary fee rules; (7) modifies the Commission's minor change rule so that it covers a proposed change in a low power television station's transmitter site of up to 30 miles (48 kilometers) from the reference coordinates of the station's transmitting antenna; (8) revises the vertical antenna patterns used in the prediction methodology for the low power television services; and (9) allow low power television stations to use the emission mask used by full power television stations.

Paperwork Reduction Act of 1995 Analysis

The *Second Report and Order* adopts revised information collection requirements subject to the Paperwork Reduction Act of 1995 ("PRA"), Public Law 104-13 (44 U.S.C. 3501 through 3520) pertaining to DTV transition related issues. Specifically, the *Second Report and Order* will: (1) Require all low power television stations with facilities on channels 52-59 to submit a digital displacement application proposing an in-core channel (channels 2-51 excluding channel 37) not later than September 1, 2011;¹ (2) require all low power television stations to provide notice of their upcoming digital transition to their viewers;² (3) require low power television stations that have not taken steps to convert to digital by a date certain to submit a notification of their conversion plan;³ (4) require Class A TV station licensees to file a license application (FCC Form 302-CA) for either the "flash cut" channel on which they are now operating in analog or the digital companion channel they choose to retain for post-transition operations and certify therein that their proposed facilities meet all Class A interference protection requirements;⁴ (5) require permittees of low power television

stations operating pursuant to a digital STA to file the annual ancillary and supplementary services report;⁵ and (6) permit applicants and permittees in the low power television service to submit actual vertical pattern relative field values as part of their applications (FCC Form 346 and 301-CA) on a voluntary basis.⁶

In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

Synopsis

The *Second Report and Order* adopts a hard deadline of September 1, 2015 for the termination of all analog low power television facilities. In adopting this deadline, the Commission took into account all of the factors outlined in the *Further Notice of Proposed Rulemaking (FNPRM)*,⁷ as well as the wide variety of comments provided in this proceeding. In summary, the principal obstacle to establishing a hard deadline for the low power television digital transition—the need to wait for passage of the full power transition deadline in order to increase the number of viewers ready to receive a digital signal—has now been eliminated. Completion of the full power television digital transition on June 12, 2009,⁸ created an incentive for television viewers to transition to digital service (either through a digital receiver or analog converter) in order to be able to continue viewing full power television stations over the air. Furthermore, adoption of the September 1, 2015 date allows low power stations to avoid having to transition to a digital

channel and then transition a second time as a result of the spectrum innovation proposals set forth the National Broadband Plan.⁹ The September 15, 2015 deadline will also be farther removed from the prolonged economic downturn, which began in late 2007, and will provide more time for operators to secure the necessary funding. Additionally, a deadline four years in the future will give these low power television stations time to determine the best location for their digital operation, prepare and file an application, obtain a grant of their construction permit, order equipment, hire an installation crew, complete installation, conduct testing, and carry out other necessary steps toward the transition. Finally, adopting a transition date of September 1, 2015 will allow low power television stations to have a better understanding of the overall spectrum landscape when determining their final transition plans, while also ensuring a date by which analog spectrum must be put to a more efficient digital use.

The *Second Report and Order* also extends all outstanding low power television digital construction permits to September 1, 2015, while dismissing as moot all pending extension applications. Those stations that diligently pursue completion of their digital facilities, but nevertheless face unexpected delays in the months leading up to the September 1, 2015 deadline, will be permitted to submit a "last minute" extension application no later than May 1, 2015 pursuant to 47 CFR 74.788(c) and receive one last six-month extension of their digital construction permit to March 1, 2016. After May 1, 2015, stations will no longer be permitted to seek extensions of their digital construction permits pursuant to 47 CFR 74.788, but will be subject to the stricter tolling provisions in 47 CFR 73.3598. Although the extension provisions of 47 CFR 74.788 provide greater flexibility, the public interest in bringing the low power television transition to a timely conclusion outweighs the need to accommodate permittees who are unable to secure extensions under the tolling provisions in 47 CFR 73.3598.

The *Second Report and Order* provides that the Commission will endeavor to continue its efforts to educate consumers and notify the public of the September 1, 2015 low power television digital transition. However, given the amount of lead time,

¹ The Commission received preapproval from OMB for this requirement. *See* OMB Control No. 3060-0016.

² The Commission received preapproval from OMB for this requirement. *See* OMB Control No. 3060-1086.

³ The Commission will seek approval from OMB for this requirement and will publish a separate document in the *Federal Register* announcing the effective date.

⁴ The Commission has approval from OMB for FCC Form 302-CA. *See* OMB Control No. 3060-0928. The Commission also received preapproval for this requirement as it pertains to 47 CFR 73.3572(h). *See* OMB Control Number 3060-0932.

⁵ The Commission will seek OMB approval for this requirement and will publish a separate document in the *Federal Register* announcing the effective date.

⁶ The Commission received preapproval from OMB for this collection. *See* OMB Control Numbers 3060-0016 and 3060-0932.

⁷ 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, *FNPRM*, 25 FCC Rcd 13833, 13837 (2010) ("FNPRM").

⁸ *See DTV Delay Act*, Pub. L. 111-4, 123 Stat. 112 (2009) ("DTV Delay Act"); Digital Television and Public Safety Act of 2005 ("DTV Act"), which is Title III of the Deficit Reduction Act of 2005, Pub. L. 109-171, 120 Stat. 4 (2006) (codified at 47 U.S.C. 309(j)(14) and 337(e)). *DTV Act* Section 3002(a) amended Section 309(j)(14) of the Communications Act to establish February 17, 2009 as the original hard deadline for the end of analog transmissions by full power stations. 47 U.S.C. 309(j)(14)(A). The *DTV Delay Act* extended the DTV transition date from February 17, 2009 to June 12, 2009.

⁹ *See Connecting America: The National Broadband Plan* at 94 (March 2010); available at <http://broadband.gov/plan/>.

the Commission concludes that it is not necessary to specify the form and extent of our consumer education at this time. However, the Commission shall continue its education and efforts guided by our experience from the full power DTV transition, completed on June 12, 2009, as a guide as to how best to educate consumers about the forthcoming low power change to digital.

The *Second Report and Order* requires low power stations on the “out-of-core” channels (channels 52–69) to transition to an in-core digital channel at an earlier date—December 31, 2011. The *Second Report and Order* finds that low power television stations have had sufficient notice that they would be required to clear the 700 MHz band and that the continued successful development of new commercial wireless and public safety facilities in the 700 MHz band will be greatly facilitated by requiring that all remaining analog and digital low power television stations be cleared from these channels by this date.

The *Second Report and Order* also requires all low power stations with facilities on channels 52–69 to submit a digital displacement application proposing an in-core channel (channels 2–51 excluding channel 37) not later than September 1, 2011. The Commission believes that September 1, 2011 provides time for those remaining low power television stations to identify a feasible in-core channel for permanent use, and to prepare and file a displacement application, considering the prior notice they have received. Those remaining low power television stations that are unable to identify a workable in-core channel and submit a digital displacement application by September 1, 2011 will be required to cease operations altogether by December 31, 2011. In addition, any outstanding construction permit (analog or digital) for an out-of-core channel will be rescinded on December 31, 2011, and any pending application (analog or digital) for an out-of-core channel will be dismissed on December 31, 2011 if the permittee has not submitted a digital displacement application by the September 1, 2011 deadline.

In order to facilitate clearance of the 700 MHz band, the *Second Report and Order* extends the notification and termination provisions contained in 47 CFR 74.703(g) to analog LPTV and TV translator facilities in the 700 MHz band. These provisions provide procedures for a primary wireless licensee in the 700 MHz band to notify affected digital LPTV and TV translator stations of its intent to initiate or change

operations and for the digital LPTV or TV translator station to vacate the band. Upon receipt of such notice, the digital low power television station must cease operation of any interference-causing facility within 120 days, unless it obtains the agreement of the primary licensee to continue operations. This adoption will enable 700 MHz licensees to obtain rapid access to their licensed spectrum.

The *Second Report and Order* modifies the Commission’s rules to permit low power stations operating on VHF channels 2–13 to operate with up to 3 kilowatts of power, which is the maximum power such stations are permitted to operate within analog. Currently the power limit for low power VHF channels is 300 watts, whereas for UHF channels it is 15 kilowatts.¹⁰ As a result of the full power digital television transition, some full power stations on VHF channels have experienced reception problems and such problems have not been alleviated even by allowing these stations to operate with the maximum power permitted under the full power television rules. We expect that the same or even worse problems may arise when low power television stations operating on VHF channels convert to digital given the fact that low power stations operate with considerably less power than full power stations. At 3 kilowatts of power, low power television stations on UHF channels should be able to continue to provide coverage to their community of license without problems.

The *Second Report and Order* dismisses all applications for new analog low power television facilities that remain pending after the May 24, 2010 deadline to amend to specify digital facilities. The staff notified all pending applicants for new analog low power facilities that they must amend their pending applications to specify digital operations by May 24, 2010, and that the staff would not process those analog applications that were not amended by the deadline.

The *Second Report and Order* adopts procedures for the surrender of channels. Stations that have not already taken steps to convert will be required to notify the Commission not later than 30 days before the September 1, 2015 transition date of their decision to either: (1) “Flash cut” their existing analog facilities to digital (at which time their analog license will be replaced by a new digital license) or (2) surrender their analog station license and continue operating their digital companion channel. Stations that have already

completed their digital conversion are not required to submit a notification. The Media Bureau is delegated authority to determine the timetable and procedures for these notifications.

The *Second Report and Order* adopts a policy whereby, if an entity holds a construction permit for an unbuilt analog and unbuilt digital companion channel, and the analog permit expires and is forfeited, the digital construction permit also shall be forfeited notwithstanding the later expiration date on the digital construction permit. The Commission believes that adoption of this policy is necessary to ensure that low power television stations complete construction of their proposed facilities in a timely fashion and to ensure the efficient use of valuable television spectrum. Otherwise, an entity that obtained an analog construction permit with a three-year construction period could effectively extend the duration of that permit by obtaining a corresponding digital construction permit with a deadline beyond the one on its underlying analog permit. Furthermore, the Commission continues to believe that this approach is consistent with our established policy that analog and digital authorizations are part of single, unified authorization.

The *Second Report and Order* requires all stations in the low power television services to notify their viewers of their transition to digital operations. LPTV stations with the technical capability to locally originate programming must provide on-air notification to their viewers at a time when the highest number of viewers is watching, while all others may choose another means of notification such as local publication in a newspaper. In all cases, the actual format and time-frame of viewer notifications is left to the discretion of the stations.

The *Second Report and Order* adopts procedures to enable Class A stations to choose to either “flash cut” to digital on their analog channel or to operate on their digital companion channel, while allowing Class A stations to preserve their primary, protected status for the channel they choose to retain for digital operations. The Commission concludes that it is in the public interest to provide Class A stations a method to select their digital channels because it will give them the opportunity to evaluate the market situation and make a determination as to which channel number, their analog channel or their digital companion channel, will provide the best, interference-free digital service to the public. Class A stations choosing to pursue a flash-cut conversion and Class A stations choosing to transfer

¹⁰ 47 CFR 74.735.

their primary status from their analog channel to their digital companion channel will be required to file FCC Form 302-CA (Application for Class A Television Broadcast Station Construction Permit or License) and certify that their digital companion channel facilities meet all Class A interference protection and eligibility requirements.

The *Second Report and Order* expands the requirements of the Commission's ancillary and supplementary rules to low power television permittees operating pursuant to STA. To ensure compliance with the mandate of Section 336(e) of the Communications Act,¹¹ that the public recover a portion of the value of the public spectrum resource made available for commercial use, as well as to avoid unjust enrichment of broadcasters that use that resource, we conclude that low power television permittees operating pursuant to an STA also should be subject to this rule. Therefore, low power television permittees operating pursuant to an STA will be required to file the annual Ancillary and Supplementary Services Report (FCC Form 317) beginning December 1, 2011, and will be required to pay a fee of five percent of the gross revenues of any ancillary and supplementary services they provide.

The *Second Report and Order* expands the so-called "30-mile" rule to modification applications filed in the low power television services. This change means that any digital low power television modification application that proposes a change in transmitter site of greater than 30 miles (48 kilometers) from the reference coordinates of the existing station's community of license, as provided in 47 CFR 76.53, will be considered a "major change" proposal. Outside of the digital low power television displacement application context, low power television stations can currently file any modification application (both analog and digital) as a "minor change" as long as there is contour overlap between the proposal and the station's existing facilities. There is no limitation as to how far a station may relocate its transmitter site, as long as some contour overlap is demonstrated. Therefore, a station is able to frustrate the intent of the minor change rule by proposing a modified facility that is a substantial distance from the station's existing location while showing only a very slight amount of contour overlap. Viewers of such a station, who have come to rely on its service, may be left

behind. Furthermore, because low power television minor change applications are not subject to a filing fee, stations are able to avoid paying an application filing fee when they seek consent to make these changes. Therefore, the Commission believes that expansion of the 30-mile rule to all modification applications (not just displacement applications) is necessary to enforce the original intent of the minor change rule.

The *Second Report and Order* revises the Commission's rules to allow the acceptance of actual vertical pattern relative field values from applicants and permittees in the low power television service on a voluntary basis. The Commission concludes that by incorporating the actual vertical antenna patterns into its interference analysis, the Commission will achieve a more realistic determination of the service areas of these stations and their potential for interfering with other stations, as well as more accurate determinations of application mutual exclusivity. For applicants and permittees that choose not to submit their actual vertical patterns, the Commission will instead use the assumed vertical patterns set forth in 47 CFR 74.793(d).

Finally, the *Second Report and Order* adopts rules allowing use of full-power DTV emission masks by low power television stations in order to provide more flexibility for low power television stations to secure channels. The Commission concludes that its current approach, using the two different emission masks that are part of the low power television rules, needlessly limits these stations from identifying a workable channel, and that use of the full power television DTV emission mask may be the preferable approach for some low power television stations.

Final Regulatory Flexibility Act Analysis

As required by the Regulatory Flexibility Act of 1980, as amended ("RFA")¹² an Initial Regulatory Flexibility Analysis ("IRFA") was included in the *Further Notice of Proposed Rulemaking (FNPRM)* in this proceeding.¹³ Written public comments were requested on the IRFA. This present Final Regulatory Flexibility Analysis.¹⁴

¹² 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"), Public Law 104-121, Title II, 110 Stat. 847 (1996).

¹³ See *FNPRM*, 25 FCC Rcd 13833.

¹⁴ See 5 U.S.C. 604.

A. Need for and Objectives of the Proposed Rules

In the *Second Report and Order*, the Commission adopts rules to facilitate the low power television digital transition. The Commission takes the following steps as more fully described below: Adopted a September 1, 2015 analog shutoff date for low power television stations; adopted a December 31, 2011 transition date for low power television stations on TV channels 52-69 (the so-called "out-of-core" channels); adopted procedures for stations that have not already completed their transition to notify the Commission of their final digital channel; made low power television permittees subject to the Commission's ancillary and supplementary fee rules; modified the Commission's minor change rule so that it covers a proposed change in a low power television station's transmitter site of up to 30 miles (48 kilometers) from the reference coordinates of the station's transmitting antenna; revised the vertical antenna patterns used in the prediction methodology for the low power television services; and allowed low power television stations to use the emission mask used by full power television stations.

The *Second Report and Order* establishes an analog shutoff date of September 1, 2015 for low power TV, TV translator and Class A TV stations, giving these stations the flexibility of four additional years to convert to digital, *i.e.*, analog station licenses would terminate at that time and analog construction permits would have to be modified for digital operations.

The *Second Report and Order* established a date of December 31, 2011, by which all existing analog and digital low power television stations on channels 52-69 (the so-called "out of core" channels) must terminate operations on their out-of-core channel and requires that those stations that have not already done so must file an application for an in-core channel 2-51 by September 1, 2011.

The *Second Report and Order* increases to 3 kilowatts the maximum amount of power that low power stations operating on VHF channels may specify.

The *Second Report and Order* delegates to the Media Bureau the authority to establish timeframes and procedures for stations that have not already transitioned to notify the Commission as to their final digital channel selection.

The *Second Report and Order* mandates that stations with the

¹¹ 47 U.S.C. 336(e).

technical ability to locally-originate programming provide some type of notification to their viewers prior to ceasing analog operations and transitioning to digital while leaving the format and timeframe for such notification to the station's discretion.

The *Second Report and Order* makes low power television station permittees subject to the Commission's ancillary and supplementary fee rules.

The *Second Report and Order* changes the Commission's minor change rule to limit transmitter site changes in minor change applications to no more than 30 miles (48 kilometers) from the reference coordinates of the existing station's transmitting antenna.

The *Second Report and Order* changes the Commission's rules to allow low power television stations to use the emission mask used by full power television stations.

Finally, the *Second Report and Order* revises the vertical patterns used in the temporary interference prediction methodology for the low power television services that the FCC adopted in its 2004 *Digital LPTV Order*.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

There were no comments received in response to the IRFA.

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

Television Broadcasting The SBA defines a television broadcasting station as a small business if such station has no more than \$14.0 million in annual receipts.¹⁵ Business concerns included in this industry are those "primarily engaged in broadcasting images together with sound."¹⁶ The Commission has estimated the number of licensed commercial television stations to be 1,390.¹⁷ According to Commission staff

¹⁵ See 13 CFR 121.201, NAICS Code 515120 (2007).

¹⁶ *Id.* This category description continues, "These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studios, from an affiliated network, or from external sources." Separate census categories pertain to businesses primarily engaged in producing programming. See Motion Picture and Video Production, NAICS code 512110; Motion Picture and Video Distribution, NAICS Code 512120; Teleproduction and Other Post-Production Services, NAICS Code 512191; and Other Motion Picture and Video Industries, NAICS Code 512199.

¹⁷ See News Release, "Broadcast Station Totals as of December 31, 2010," 2011 WL 484756 (F.C.C.)

review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) as of January 31, 2011, 1,006 (or about 78 percent) of an estimated 1,298 commercial television stations¹⁸ in the United States have revenues of \$14 million or less and, thus, qualify as small entities under the SBA definition. The Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 391.¹⁹ We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations²⁰ must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. The Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

In addition, an element of the definition of "small business" is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. Also, as noted, an additional element of the definition of "small business" is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

Class A TV, LPTV, and TV translator stations. The same SBA definition that applies to television broadcast licensees would apply to these stations. The SBA defines a television broadcast station as a small business if such station has no

(dated Feb. 11, 2011) ("*Broadcast Station Totals*"); also available at http://www.fcc.gov/Daily_Releases/Daily_Business/2011/db0211/DOC-304594A1.pdf.

¹⁸ We recognize that this total differs slightly from that contained in *Broadcast Station Totals*, *supra*, note 15; however, we are using BIA's estimate for purposes of this revenue comparison.

¹⁹ See *Broadcast Station Totals*, *supra*, note 15.

²⁰ "[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has to power to control both." 13 CFR 121.103(a)(1).

more than \$14 million in annual receipts.²¹

Currently, there are approximately 522 licensed Class A stations, 2,191 licensed LPTV stations, 4,527 licensed TV translators, and 11 TV booster stations.²² Given the nature of these services, we will presume that all of these licensees qualify as small entities under the SBA definition. We note, however, that under the SBA's definition, revenue of affiliates that are not LPTV stations should be aggregated with the LPTV station revenues in determining whether a concern is small. Our estimate may thus overstate the number of small entities since the revenue figure on which it is based does not include or aggregate revenues from non-LPTV affiliated companies. We do not have data on revenues of TV translator or TV booster stations, but virtually all of these entities are also likely to have revenues of less than \$14 million and thus may be categorized as small, except to the extent that revenues of affiliated non-translator or booster entities should be considered.

In addition, an element of the definition of "small business" is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. Also as noted, an additional element of the definition of "small business" is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing. The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and

²¹ See 13 CFR 121.201, NAICS Code 515120.

²² See "Broadcast Station Totals as of December 31, 2010," *News Release*, February 11, 2011.

broadcasting equipment.”²³ The SBA has developed a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, which is: All such firms having 750 or fewer employees. According to Census Bureau data for 2007, there were a total of 939 establishments in this category that operated for part or all of the entire year. Of this total, 784 had less than 500 employees and 155 had more than 100 employees.²⁴ Thus, under this size standard, the majority of firms can be considered small.

Audio and Video Equipment Manufacturing. The SBA has classified the manufacturing of audio and video equipment under in NAICS Codes classification scheme as an industry in which a manufacturer is small if it has less than 750 employees.²⁵ Data contained in the 2007 U.S. Census indicate that 492 establishments operated in that industry for part or all of that year. In that year 374 establishments had between 1 and 19 employees; 82 had between 20 and 99 employees; and 36 had more than 100 employees. Thus, under the applicable size standard, a majority of manufacturers of audio and visual equipment may be considered small.

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

The *Second Report and Order* adopts the following new reporting requirements: (1) To require, where technically feasible, low power television services to provide notice of their upcoming digital transition to their viewers; (2) require low power television stations that have not taken steps to convert to digital by a date certain to submit a notification of their conversion plan; and (3) require permittees of low power television stations operating pursuant to a digital STA to file the annual ancillary and supplementary services report. These new reporting requirements will not differently affect small entities.

²³ The NAICS Code for this service 334220. See 13 CFR 121.201. See also http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-skip=300&-ds_name=EC0731SG2&-lang=en.

²⁴ http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-skip=300&-ds_name=EC0731SG2&-lang=en.

²⁵ 13 CFR 121.201, NAICS Code 334310.

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

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.²⁶

The Commission's adoption of an analog shutoff date of September 1, 2015 will minimize impact on small entities by allowing them four additional years from the full power television transition that occurred on June 12, 2009, to complete their transition to digital. Adoption of an earlier low power transition date was rejected as it was felt that many small entities would not be ready to transition any sooner and would be forced off the air.

With respect to the adoption of extending all outstanding low power television station digital construction permits to September 1, 2015, this adoption will minimize the impact on small entities as it will provide them with additional time to complete construction of their digital facilities. Requiring that these outstanding construction permits expire pursuant to their original construction deadlines, prior to the September 1, 2015 low power digital transition deadline, was rejected as digital operations is not required until September 1, 2015. The Commission felt that many small entities may be forced to abandon digital construction and subsequently forced off the air should they unnecessarily be forced to complete construction prior to September 1, 2015, pursuant to their original digital construction permits.

The Commission's dismissal as moot of all pending low power television station digital construction permit extension applications will minimize the impact on small entities as these stations will no longer have to use resources to pursue these applications. Small entities will still receive the benefit of an extension as all outstanding low power television station digital construction permits have

²⁶ 5 U.S.C. 603(c)(1) through (c)(4).

been extended until September 1, 2015. The Commission rejected maintaining these extension applications as these applications are moot and would unnecessarily force small entities to expend resources to continue to pursue them.

With regards to the adoption of the “last minute” extensions for low power stations who demonstrate that they meet the criteria pursuant to 47 CFR 74.788(c), this adoption will minimize the impact on qualified small entities as these small entities will be given one last six-month extension to complete construction of their digital facilities. The Commission rejected disallowing a “last minute” extension for qualified low power stations because without the “last minute” extension, small entities may be forced to abandon construction and to go off the air due to unexpected delays in the months leading up to the September 1, 2015 transition date.

Concerning the Commission's adoption of the hard deadline of May 1, 2015, after which low power stations must meet the stricter tolling criteria established in 47 CFR 73.3598 of the rules, to apply for a “last minute” extension pursuant to the criteria set forth in § 74.788(c) of the rules,²⁷ the Commission found that the burden on small entities is justified. The Commission determined that the burden of requiring small entities to meet the stricter tolling criteria established in 47 CFR 73.3598 after May 1, 2015 is outweighed by the public interest in bringing the low power digital transition to a successful and timely conclusion and by the ample time low power stations will have had to complete their transition to digital.

With respect to requiring stations on out-of-core channels to transition at an earlier date—on December 31, 2011, the Commission found that the burden on small entities of adopting this earlier deadline is more than outweighed by the need to clear out-of-core channels for new uses by commercial wireless (including mobile broadband) and public safety entities. The Commission determined that adoption of a later transition date for low power television stations on these channels would delay progress on clearing these channels.

With regards to requiring all out-of-core low power television stations to file a displacement application for an in-core channel by September 1, 2011, the Commission found that this deadline is necessary to meet the December 31, 2011 out-of-core digital transition deadline. Furthermore, as with the December 31, 2011 transition deadline,

²⁷ 47 CFR 74.788(c).

the burden on small entities to meet the September 1, 2011 out-of-core displacement application deadline is outweighed by the need to clear out-of-core channels for new uses by commercial wireless (including mobile broadband) and public safety entities. Additionally, the Commission determined that adoption of a later out-of-core displacement application deadline would delay progress on clearing these channels.

The Commission adopted streamlined procedures for stations to notify the Commission as to whether they intend to convert to digital on their existing analog channel (a so-called "flash cut") or if they intend to continue to operate their second digital channel and terminate operations on their analog channel help to prevent a significant impact on small entities. As a result of the streamlined procedures, low power stations will not be burdened with having to complete and file a lengthy progress report, as was required of full power television stations, but rather will only have to file a simple informal notification to make their final digital choice known to the Commission.

With respect to requiring all stations in the low power television service, which terminate their analog service after the effective date of the rule provisions in this proceeding, to notify their viewers of their transition to digital operations, the Commission determined that the burden on small entities is outweighed by the public's need to be informed of individual stations' digital transitions. The Commission, however, eased the impact on small entities by giving those low power stations that locally originate programming and would be required to notify their viewers with on-air announcements, the option to notify their viewers by some other reasonable means should compliance cause financial hardship.

The Commission's adoption of streamlined procedures for Class A stations to choose to either "flash cut" to digital on their analog channel or to operate on their digital companion channel, while preserving their primary, protected status on the channel they chose to retain, will aid to prevent a significant impact on small entities. As a result of these streamlined procedures, Class A stations will not be burdened with filing a minor change application with the Commission to transfer their primary protected status from their analog channel to their desired digital channel.

With respect to subjecting low power television station permittees to the Commission's ancillary and

supplementary fee rules, the Commission found that the burden on small entities of having to comply with these rules is outweighed by the need to eliminate ambiguity in the rules and to provide efficient use and administration of spectrum.

The Commission did not find that there would be a significant impact on small entities by its proposed change to its Commission's low power television minor change rule. The change would have little impact and any impact would affect all entities equally.

The Commission did not find that there would be a significant impact on small entities by its decision to permit stations to use the emission mask used by full power television stations. Use would be voluntary and any impact would affect all entities equally.

The Commission's decision to revise the vertical patterns used in the temporary interference prediction methodology for the low power television services would not have a significant impact on small entities. Use of the actual vertical patterns of proposed low power television facilities will simplify the engineering filings on FCC Form 346, making it easier for all applicants to complete the form, and thus saving applicants time and money. Any burden from this requirement would impact all entities equally.

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

None.

G. Report to Congress

The Commission will send a copy of the *Second Report and Order*, including the FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.²⁸ In addition, the Commission will send a copy the *Second Report and Order*, including FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this *Second Report and Order* and FRFA (or summaries thereof) will be published in the **Federal Register**.²⁹

List of Subjects

47 CFR Part 73

Radio broadcast services.

47 CFR Part 74

Auxiliary, Experimental radio, Special broadcast and other program distributional services.

²⁸ See 5 U.S.C. 801(a)(1)(A). The Congressional Review Act is contained in Title II, section 251, of the CWAAA, see Public Law 104-121, Title II, section 251, 110 Stat. 868.

²⁹ See 5 U.S.C. 604(b).

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 73 and 74 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

■ 2. Section 73.624 is amended by revising paragraph (g) introductory text to read as follows:

§ 73.624 Digital television broadcast stations.

* * * * *

(g) Commercial and noncommercial DTV licensees and permittees, and low power television, TV translator and Class A television stations DTV licensees and permittees, must annually remit a fee of five percent of the gross revenues derived from all ancillary and supplementary services, as defined by paragraph (b) of this section, which are *feeable*, as defined in paragraphs (g)(2)(i) and through (ii) of this section.

* * * * *

■ 3. Section 73.3572 is amended by adding paragraph (h) to read as follows:

§ 73.3572 Processing of TV broadcast, Class A TV broadcast, low power TV, TV translators, and TV booster applications.

* * * * *

(h) Class A TV station licensees shall file a license application for either the flash cut channel or the digital companion channel they choose to retain for post-transition digital operations. Class A TV stations will retain primary, protected regulatory status on their desired post-transition digital channel. Class A TV applicants must certify that their proposed post-transition digital facilities meet all Class A TV interference protection requirements.

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

■ 4. The authority citation for Part 74 is revised to read as follows:

Authority: 47 U.S.C. 154, 303, 307, 309, 336 and 554.

■ 5. Section 74.731 is amended by adding paragraph (l) to read as follows:

§ 74.731 Purpose and permissible service.

* * * * *

(l) After 11:59 pm local time on September 1, 2015, low power television, TV translators and Class A television stations may no longer operate any facility in analog (NTSC) mode.

■ 6. Section 74.735 is amended by revising paragraph (b)(1) to read as follows:

§ 74.735 Power limitations.

* * * * *

(b) * * *

(1) 3 kW for VHF channels 2–13; and

* * * * *

■ 7. Section 74.786 is amended by adding paragraph (g) to read as follows:

§ 74.786 Digital channel assignments.

* * * * *

(g) After 11:59 pm local time on December 31, 2011, low power television and TV translator stations may no longer operate any analog (NTSC) or digital facilities above Channel 51.

■ 8. Section 74.787 is amended by revising paragraph (b)(1) and adding paragraph (c) to read as follows:

§ 74.787 Digital licensing.

* * * * *

(b) * * *

(1) Applications for major changes in digital low power television and television translator stations include:

(i) Any change in the frequency (output channel) not related to displacement relief;

(ii) Any change in transmitting antenna location where the protected contour resulting from the change does not overlap some portion of the protected contour of the authorized facilities of the existing station; or

(iii) Any change in transmitting antenna location of greater than 30 miles (48 kilometers) from the reference coordinates of the existing station's antenna location.

* * * * *

(c) Not later than 11:59 pm local time on September 1, 2011, low power television or TV translator stations operating analog (NTSC) or digital

facilities above Channel 51, that have not already done so, must file a digital displacement application for a channel below Channel 52 pursuant to the procedures in subsection (a)(4) of this rule. Low power television and TV translator stations operating analog (NTSC) or digital facilities above Channel 51 that have not submitted a digital displacement application by 11:59 pm local time on September 1, 2011 will be required to cease operations altogether by December 31, 2011. These stations' authorization for facilities above Channel 51 shall be cancelled. Any digital displacement application submitted by a low power television or TV translator station operating analog (NTSC) or digital facilities above Channel 51 that is submitted after 11:59 pm local time on September 1, 2011 will be dismissed. In addition, any outstanding construction permit (analog or digital) for an channel above Channel 51 will be rescinded on December 31, 2011, and any pending application (analog or digital) for a channel above Channel 51 will be dismissed on December 31, 2011, if the permittee has not submitted a digital displacement application by 11:59 pm local on September 1, 2011.

■ 9. Section 74.788 is amended by revising paragraphs (c)(1) and (c)(3) and removing paragraph (c)(4); and adding paragraphs (d), (e) and (f) to read as follows:

§ 74.788 Digital construction period.

* * * * *

(c) * * *

(1) For the September 1, 2015 digital construction deadline, authority is delegated to the Chief, Media Bureau to grant an extension of time of up to six months beyond September 1, 2015 upon demonstration by the digital licensee or permittee that failure to meet the construction deadline is due to circumstances that are either unforeseeable or beyond the licensee's control where the licensee has take all reasonable steps to resolve the problem expeditiously.

* * * * *

(3) Applications for extension of time shall be filed not later than May 1, 2015, absent a showing of sufficient reasons for late filing.

(d) For construction deadlines occurring after September 1, 2015, the tolling provisions of § 73.3598 of this chapter shall apply.

(e) A low power television, TV translator or Class A television station that holds a construction permit for an unbuilt analog and corresponding unbuilt digital station and fails to complete construction of the analog station by the expiration date on the analog construction permit shall forfeit both the analog and digital construction permits notwithstanding a later expiration date on the digital construction permit.

(f) A low power television, TV translator or Class A television station that holds a construction permit for an unbuilt analog and corresponding unbuilt digital station and completes construction of the digital station by the expiration date on the analog construction permit, begins operating and files a license application for the digital station may forego construction of the unbuilt analog station.

■ 10. Section 74.793 is amended by revising paragraphs (c) and (d) to read as follows:

§ 74.793 Digital low power TV and TV translator station protection of broadcast stations.

* * * * *

(c) The following D/U signal strength ratio (db) shall apply to the protection of stations on the first adjacent channel. The D/U ratios for "Digital TV-into-analog TV" shall apply to the protection of Class A TV, LPTV and TV translator stations. The D/U ratios for "Digital TV-into-digital TV" shall apply to the protection of DTV, digital Class A TV, digital LPTV and digital TV translator stations. The D/U ratios correspond to the digital LPTV or TV translator station's specified out-of-channel emission mask.

	Simple mask	Stringent mask	Full service mask
Digital TV-into-analog TV	10	0	Lower (-14)/Upper (-17)
Digital TV-into-digital TV	-7	-12	Lower (-28)/Upper (-26)

(d) For analysis of predicted interference from digital low power TV and TV translator stations, the relative field strength values of the antenna vertical radiation pattern if provided by

the applicant will be used instead of the doubled values in Table 8 in OET Bulletin 69 up to a value of 1.0.

* * * * *

■ 11. Section 74.794 is amended by revising paragraph (a)(1) and by adding paragraph (a)(2)(iii) to read as follows:

§ 74.794 Digital emissions.

(a) (1) An applicant for a digital LPTV or TV translator station construction permit shall specify that the station will be constructed to confine out-of-channel emissions within one of the following emission masks: Simple, stringent or full service.

(2) * * *

(iii) *Full service mask:* (A) The power level of emissions on frequencies outside the authorized channel of operation must be attenuated no less than the following amounts below the average transmitted power within the authorized channel. In the first 500 kHz from the channel edge the emissions must be attenuated no less than 47 dB. More than 6 MHz from the channel edge, emissions must be attenuated no less than 110 dB. At any frequency between 0.5 and 6 MHz from the channel edge, emissions must be attenuated no less than the value determined by the following formula:

Attenuation in dB = $-11.5(|\Delta f| + 3.6)$;

Where:

$|\Delta f|$ = frequency difference in MHz from the edge of the channel.

(B) This attenuation is based on a measurement bandwidth of 500 kHz. Other measurement bandwidths may be used as long as appropriate correction factors are applied. Measurements need not be made any closer to the band edge than one half of the resolution bandwidth of the measuring instrument. Emissions include sidebands, spurious emissions and radio frequency harmonics. Attenuation is to be measured at the output terminals of the transmitter (including any filters that may be employed). In the event of interference caused to any service, greater attenuation may be required.

* * * * *

■ 12. Section 74.798 is added to subpart G to read as follows:

§ 74.798 Digital television transition notices by broadcasters.

(a) Each low power television, TV translator and Class A television station licensee or permittee must air an educational campaign about the transition from analog broadcasting to digital television (DTV).

(b) Stations that have already terminated analog service and begun operating in digital prior to effective date of this rule shall not be subject to this requirement.

(c) Stations with the technical ability to locally-originate programming must air viewer notifications at a time when the highest number of viewers is

watching. Stations have the discretion as to the form of these notifications.

(d) Stations that lack the technical ability to locally-originate programming, or find that airing of viewer notifications would pose some sort of a hardship, may notify their viewers by some other reasonable means, e.g. publication of a notification in a local newspaper. Stations have discretion as to the format and time-frame of such local notification.

[FR Doc. 2011-18742 Filed 7-26-11; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF TRANSPORTATION**National Highway Traffic Safety Administration****49 CFR Part 571**

[Docket No. NHTSA-2009-0175]

RIN 2127-AK84

Federal Motor Vehicle Safety Standards; Air Brake Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: On July 27, 2009, NHTSA published a final rule that amended the Federal motor vehicle safety standard for air brake systems by requiring substantial improvements in stopping distance performance on new truck tractors. In response, the agency received eight petitions for reconsideration. The agency has already responded to most of the issues raised in the petitions. This document responds to the one outstanding issue raised in the petitions, stopping distance performance requirements at lower initial speeds. Based on testing results and our concern that the current requirements might not be practicable, NHTSA is slightly relaxing the stopping distance requirement for typical loaded tractors tested from an initial speed of 20 mph by increasing the distance from 30 feet to 32 feet and for unloaded tractors tested from an initial speed of 20 mph by increasing the distance from 28 feet to 30 feet. We believe no other changes are necessary.

DATES: This final rule is effective August 1, 2011.

Petitions for reconsideration must be received not later than September 12, 2011.

ADDRESSES: Petitions for reconsideration should refer to the docket number and

must be submitted to: Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For technical issues, you may contact Jeffrey Woods, Office of Crash Avoidance Standards, by telephone at (202) 366-6206, and by fax at (202) 366-7002.

For legal issues, you may contact David Jasinski, Office of the Chief Counsel, by telephone at (202) 366-2992, and by fax at (202) 366-3820.

You may send mail to both of these officials at the National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:**Table of Contents**

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I. Background of the Stopping Distance Requirement

On July 27, 2009, NHTSA published a final rule in the **Federal Register** amending Federal Motor Vehicle Safety Standard (FMVSS) No. 121, *Air Brake Systems*, to require improved stopping distance performance for heavy truck tractors.¹ This rule reduced the maximum allowable stopping distance, from 60 mph, from 355 feet to 250 feet for the vast majority of loaded heavy truck tractors. For a small minority of loaded very heavy tractors, the maximum allowable stopping distance was reduced from 355 feet to 310 feet. Having come to the conclusion that modifications needed for “typical three-axle tractors,” to meet the improved requirements were relatively straightforward, NHTSA provided two years lead time for those vehicles to comply with the new requirements. These typical three-axle tractors comprise approximately 82 percent of the total fleet of heavy tractors. The agency concluded that other tractors, which are produced in far fewer numbers and may need additional work to ensure stability and control while braking, would need more lead time to meet the requirements. Due to extra time needed to design, test, and validate these vehicles, which included two-axle tractors and severe service tractors, the agency allowed four years lead time for

¹ 74 FR 37122; Docket No. NHTSA-2009-0083-0001.