

Columbus area, the State submitted a 2002 base year emissions inventory. This inventory is discussed above and summarized in Table 3. EPA is proposing to approve this 2002 base year inventory as meeting the section 172(c)(3) emissions inventory requirement.

### VII. What Action Is EPA Taking?

EPA is proposing to make a determination that the Columbus area has attained the 8-hour ozone NAAQS. EPA is also proposing to approve the maintenance plan SIP revision for the Columbus area. EPA's proposed approval of the maintenance plan is based on Ohio's demonstration that the plan meets the requirements of section 175A of the CAA, as described more fully above. After evaluating Ohio's redesignation request, EPA believes that it meets the redesignation criteria set forth in section 107(d)(3)(E) of the CAA. Therefore, EPA is proposing to approve the redesignation of the Columbus area from nonattainment to attainment for the 8-hour ozone NAAQS. The final approval of this redesignation request would change the official designation for the Columbus area from nonattainment to attainment for the 8-hour ozone standard. EPA is proposing to approve the 2002 base year emissions inventory for the Columbus area as meeting the requirements of section 172(c)(3) of the CAA. Finally, EPA also finds adequate and is proposing to approve the State's 2012 and 2020 MVEBs for the section 172(c)(3) area.

### VIII. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities

under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

### List of Subjects

#### 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen oxides, Ozone, Volatile organic compounds.

#### 40 CFR Part 81

Air pollution control, Environmental protection, National parks, Wilderness areas.

Dated: June 4, 2009.

**Walter W. Kovalick, Jr.,**

*Acting Regional Administrator, Region 5.*

[FR Doc. E9-13855 Filed 6-11-09; 8:45 am]

BILLING CODE 6560-50-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[MM Docket No. 99-325; DA 09-1127]

### FM Digital Power Increase and Associated Technical Studies

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Federal Communications Commission seeks comment on four issues, discussed below in the Synopsis, that are related to a request by certain private parties, identified below, that the technical specifications for FM digital audio broadcasting ("DAB") set forth in the Commission's rules be amended to increase the maximum permissible operating power from the current level of 1 percent of a station's authorized analog power (-20 dB) up to a maximum of 10 percent of a station's authorized analog power (-10 dB). This document establishes a period for public comment on these issues and on two related technical studies.

**DATES:** Comments for this proceeding are due on or before July 6, 2009. Reply comments are due on or before July 17, 2009.

**ADDRESSES:** You may submit comments, identified by MM Docket No. 99-325, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Federal Communications Commission's Web site:* <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.
- *Mail:* 445 12th Street, SW., Washington, DC 20554, with a copy to the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554.

- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by *e-mail:* [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or *phone:* 202-418-0530 or TTY: 202-418-0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

### FOR FURTHER INFORMATION CONTACT:

Peter H. Doyle, Chief, Audio Division, Media Bureau, at (202) 418-2700.

**SUPPLEMENTARY INFORMATION:** This is a summary of a Public Notice released by

the Media Bureau on May 22, 2009. The full text of this document is available for public inspection and copying during regular business hours in the Commission's Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone (202) 488-5300, facsimile (202) 488-5563 or via e-mail [FCC@BCPIWEB.com](mailto:FCC@BCPIWEB.com). The full text may also be downloaded at: <http://www.fcc.gov>. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the Web site for submitting comments.

- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

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

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service

mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington DC 20554.

**People with Disabilities:** To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (Voice), 202-418-0432 (TTY).

#### Summary of Public Notice

On October 23, 2008, the Media Bureau released the "October 23, 2008, *Public Notice*" soliciting comment on both a request filed June 10, 2008, asking the Commission to modify the technical specifications for FM digital audio broadcasting (DAB), and on two related technical studies. *Comment Sought on Joint Parties Request for FM Digital Power Increase and Associated Technical Studies*, MM Docket No. 99-325, Public Notice, DA 08-2340 (MB rel. Oct. 23, 2008). The request was filed by a group consisting of 18 broadcasters that operate over 1200 commercial and noncommercial educational ("NCE") FM radio stations throughout the United States and the 4 largest manufacturers of broadcast transmission equipment, collectively identifying themselves as the "Joint Parties." The Joint Parties requested that the Commission increase the maximum permissible digital operating power of FM stations from the current level of 1 percent of a station's authorized analog power (-20 dB) to a maximum of 10 percent of a station's authorized analog power (-10 dB) (the "Joint Parties' Request").

The October 23, 2008, *Public Notice* also sought comment on two related technical studies. Filed concurrently with and in support of the Joint Parties' Request was a technical report prepared by iBiquity Digital Corporation

("iBiquity"). In addition, National Public Radio ("NPR") submitted on July 18, 2008, its Corporation for Public Broadcasting ("CPB")-supported research on digital radio coverage and interference. The October 23, 2008, *Public Notice* sought comment on the Joint Parties' Request and these related technical studies.

Developments since the release of the October 23, 2008, *Public Notice* prompt the solicitation of further public comment. Specifically, in response to the October 23, 2008, *Public Notice*, the Media Bureau has received comments and reply comments both supporting and opposing the Joint Parties' Request. The Joint Parties have urged the Commission to move expeditiously on its request to ameliorate the coverage shortfalls and reception difficulties that result from digital transmissions at currently authorized power levels. NPR has announced the commencement of additional CPB-supported testing of FM DAB. NPR, *NPR Labs Launches CPB-Funded Study on Power Increase for HD Radio* (press release), <http://www.npr.org/about/press/2009/040209.CPBLabs.html>, Apr. 2, 2009. See also NPR *ex parte* filings, MM Docket No. 99-325. NPR states that its additional testing will result in a recommendation of the amount of power increase needed to improve digital radio coverage while also protecting analog FM signals, including subcarrier transmissions, from interference. The study also proposes to consider the minimum spacing distances needed to protect analog signals from higher powered digital operations. NPR states that the findings of its study will be presented in September 2009. Letter from Gregory A. Lewis, Counsel for NPR, to Marlene H. Dortch, Secretary, FCC, Attach. (Mar. 30, 2009). In response to the record before the Commission, as well as NPR's plans for additional testing of FM DAB, the Media Bureau solicits further comment on the previously submitted iBiquity and NPR technical studies and on the following issues: (1) Whether the Bureau should defer consideration of the Joint Parties' requested power increase until the completion of and comment on the further NPR studies; (2) whether the record in this proceeding, the real world experience gained from over 1,400 FM stations operating for several years in the hybrid mode and the record of experimental authorizations at higher digital power levels warrant an increase in maximum digital operating power as proposed by the Joint Parties or support a provisional power increase of some lesser extent

than that requested by the Joint Parties; (3) if the Commission does adopt a power increase, whether it should also establish standards to ensure the lack of interference to the analog signals of stations operating on first adjacent channels; and whether such standards should apply to, i.e., require the protection of, LPFM stations operating on first adjacent channels; and (4) if the Commission does adopt a power increase, whether it should also establish more explicit procedures to resolve digital-into-analog interference complaints.

The Joint Parties' Request and the iBiquity and NPR technical studies are available electronically at [http://fjallfoss.fcc.gov/prod/ecfs/comsrch\\_v2.cgi](http://fjallfoss.fcc.gov/prod/ecfs/comsrch_v2.cgi) under MM Docket No. 99–325, or from the Commission's duplicating contractor, Best Copy and Printing, Inc. ("BCPI"), 445 12th Street, SW., Room CY–B402, Washington, DC 20554, 1–800–378–3160. The Media Bureau seeks comment on the issues identified above. The Bureau also seeks comment on the Initial Regulatory Flexibility Analysis below. This action is taken under delegated authority pursuant to §§ 0.61 and 0.283 of the Commission's rules, 47 CFR 0.61, 0.283, and the *Second Report and Order*, 22 FCC Rcd at 10383, ¶ 99.

#### Paperwork Reduction Act

The proposal under consideration may result in a new or revised information collection requirement being adopted by the Commission when the final rules are adopted. If the Commission adopts any new or revised information collection requirement, the Commission will publish a separate notice in the **Federal Register** inviting the public to comment on the requirement, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501–3520). In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the Commission will seek specific comment on how it might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

#### Ex Parte Restrictions

This proceeding has been designated "permit but disclose" for purposes of the Commission's ex parte rules, 47 CFR 1.1200–1.1216. Ex parte presentations will be governed by the procedures set forth in 47 CFR 1.1206 applicable to non-restricted proceedings.

#### Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>1</sup> the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the proposed rule as provided in the "Dates" paragraph of the item. The Commission will send a copy of the proposed rule, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).<sup>2</sup> In addition, the proposed rule and IRFA (or summaries thereof) will be published in the **Federal Register**.<sup>3</sup>

##### A. Need for and Objectives of the Proposed Rules

2. This document seeks comment on issues, discussed *infra* in paragraph 4, concerning the Joint Parties' proposed increase in maximum permissible digital operating power for FM stations utilizing DAB from the current level of 1 percent of a station's authorized analog power (–20 dB) up to a maximum of 10 percent of a station's authorized analog power (–10 dB). The proposed voluntary increase by FM stations to any digital power level up to 10% of a station's authorized analog power would serve to facilitate the ability of FM stations to achieve digital replication of their analog signals and to overcome in-building digital reception problems.

3. This document seeks comment on relevant technical studies submitted by iBiquity and NPR. The iBiquity study, filed in support of the Joint Parties' Request, examined the benefits to digital broadcasting, the compatibility with analog broadcasting, and the potential interference effects resulting from the proposed increase in maximum permissible FM digital operating power. The iBiquity study concluded that an increase in authorized FM digital power levels to 10 percent of a station's authorized analog power would significantly improve digital coverage while avoiding, in the majority of instances, increased interference to reception of analog signals of FM

stations operating on first adjacent channels. The NPR study concluded that, although such an increase in authorized FM digital power levels would improve digital coverage in most instances, it could also result in substantial interference to reception of the analog signals of FM stations operating on first and second adjacent channels, and that further testing would be necessary to determine if increased digital operating power should be permitted for FM stations.

4. In response to the record before the Commission in MM Docket 99–325, as well as NPR's announced plans for additional testing of FM DAB,<sup>4</sup> the Media Bureau also solicits comment on the following issues: (1) Whether the Bureau should defer consideration of the Joint Parties' requested power increase until the completion of and comment on the further NPR studies; (2) whether the record in this proceeding, the real world experience gained from over 1,400 FM stations operating for several years in the hybrid mode and the record of experimental authorizations at higher digital power levels warrant an increase in maximum digital operating power as proposed by the Joint Parties or support a provisional power increase of some lesser extent than that requested by the Joint Parties; (3) if the Commission does adopt a power increase, whether it should also establish standards to ensure the lack of interference to the analog signals of stations operating on first adjacent channels, and whether such standards should apply to, i.e., require the protection of, LPFM stations operating on first adjacent channels; and (4) if the Commission does adopt a power increase, whether it should also establish more explicit procedures to resolve digital-into-analog interference complaints.

##### B. Legal Basis

5. The authority for this notice is contained in Sections 1, 2, 4(i) and (j), 301, 302, 303, 307, 308, and 309 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i) and (j), 301, 302, 303, 307, 308, and 309.

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

6. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the

<sup>1</sup> See 5 U.S.C. 603. The RFA, see 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, 110 Stat. 857 (1996).

<sup>2</sup> See 5 U.S.C. 603(a).

<sup>3</sup> See *id.*

<sup>4</sup> See Letter from Gregory A. Lewis, Counsel for NPR, to Marlene H. Dortch, Secretary, FCC (Mar. 30, 2009).

proposed rules.<sup>5</sup> The RFA generally defines the term “small entity” as encompassing the terms “small business,” “small organization,” and “small governmental entity.”<sup>6</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>7</sup> 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”).<sup>8</sup> The proposed rules and policies potentially will apply to all FM radio broadcasting licensees and potential licensees.

7. The SBA defines a radio broadcasting station that has \$7 million or less in annual receipts as a small business.<sup>9</sup> A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public.<sup>10</sup> Included in this industry are commercial, religious, educational, and other radio stations.<sup>11</sup> Radio broadcasting stations which primarily are engaged in radio broadcasting and which produce radio program materials are similarly included.<sup>12</sup> However, radio stations that are separate establishments and are primarily engaged in producing radio program material are classified under a separate NAICS number.<sup>13</sup> According to Commission staff review of the BIA Financial Network, Inc. Media Access Radio Analyzer Database as of February 19, 2009, about 10,600 (96 percent) of 11,050 commercial radio stations in the United States have revenues of \$7 million or less. We note that many radio stations are affiliated with much larger corporations having much higher revenue. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action.

<sup>5</sup> 5 U.S.C. 603(b)(3).

<sup>6</sup> 5 U.S.C. 601(6).

<sup>7</sup> 5 U.S.C. 601(3) (incorporating by reference the definition of “small business concern” in the Small Business Act, 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.”

<sup>8</sup> 15 U.S.C. 632.

<sup>9</sup> See 13 CFR 121.201, NAICS Code 515112 (changed from 513112 in October 2002).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

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

8. In the *Second Report and Order*, the Commission declined to establish a deadline for radio stations to convert to digital broadcasting, 22 FCC Rcd at 10351. Presently, radio stations may choose to commence DAB operation pursuant to Section 73.404 of the Commission’s rules, 47 CFR 73.404, which requires in part that licensees provide notification to the Commission within 10 days of commencing DAB operation. The proposed rule change may impose additional reporting or recordkeeping requirements on FM radio stations choosing to upgrade DAB operating power above the current limitation of 1 percent of a station’s authorized analog power. For example, licensees choosing to increase DAB operating power above 1 percent of authorized analog power could be required to notify the Commission of the increase in power.

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

9. 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.<sup>14</sup> This document has proposed for commenter evaluation the issue of taking steps to minimize significant impact on small entities, focusing on the four issues, enumerated *supra* in paragraph 6, relevant to the Joint Parties’ Request, as well as on any issues raised by the technical studies previously submitted by iBiquity and NPR. To assist in the analysis, commenters are requested to provide information, studies, and/or opinions regarding how small entities would be affected if the Commission were to adopt an increase in maximum digital operating power as proposed by the Joint Parties or a provisional power increase of some lesser extent than that requested by the Joint Parties, and whether such adoption could result in

the disparate treatment of small entities with limited financial and/or technical resources. Commenters should also provide information, studies, and/or opinions on alternative approaches to alleviate any potential burdens on small entities.

#### *F. Federal Rules Which Duplicate, Overlap, or Conflict With, the Commission’s Proposals*

10. None.

Federal Communications Commission.

**Robert H. Ratcliffe,**

*Acting Chief, Media Bureau.*

[FR Doc. E9–13865 Filed 6–11–09; 8:45 am]

**BILLING CODE 6712–01–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 226

[Docket No. 0809161218–9950–02]

RIN 0648–AX23

#### Endangered and Threatened Species: 12–Month Finding for a Petition to Revise Critical Habitat for Hawaiian Monk Seal

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of 12–month finding.

**SUMMARY:** On July 9, 2008, we (NMFS) received a petition dated July 2, 2008, requesting that we revise the present critical habitat designation for the Hawaiian monk seal (*Monachus schauinslandi*) under the Endangered Species Act (ESA) by expanding the current critical habitat in the Northwestern Hawaiian Islands, and by designating additional critical habitat in the main Hawaiian Islands. We have reviewed, and here provide a summary of the best available information regarding Hawaiian monk seal biology and habitat use. Based on our review, we intend to revise the monk seal’s critical habitat, and we are providing our initial thoughts on the habitat features that are essential to the conservation of this species and describing how we intend to proceed with the requested critical habitat revision.

**ADDRESSES:** Requests for copies of this determination should be addressed to the Assistant Regional Administrator, Protected Resources Division, NMFS, 1601 Kapiolani Blvd, Honolulu, HI 96814.

<sup>14</sup> 5 U.S.C. 603(b).