

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled "Regulatory Planning and Review" (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate

as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 11, 2014.

Jack Housenger,

Director, 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 180.680 is added to to subpart C to read as follows:

§ 180.680 Fluensulfone; tolerances for residues.

(a) *General.* Tolerances are established for residues of the nematocidal fluensulfone, including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels specified below is to be determined by measuring only 3,4,4-trifluoro-but-3-ene-1-sulfonic acid, calculated as the stoichiometric equivalent of fluensulfone.

Commodity	Parts per million
Vegetables, cucurbits, group 9 ...	0.50
Vegetables, fruiting, group 8–10	0.50

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 1, and 17

[WT Docket No. 10–88; RM 11349; FCC 14–117]

Amendments To Modernize and Clarify the Commission's Rules Concerning Construction, Marking and Lighting of Antenna Structures

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (FCC) streamlines and eliminates outdated provisions of the Commission's rules governing the construction, marking, and lighting of antenna structures.

DATES: Effective October 24, 2014 except for the amendments to 47 CFR 17.4, 17.48, and 17.49, which contain information collection requirements that have not been approved by the Office of Management and Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date of these amendments.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: This is a summary of the *part 17 Report and Order*, RM 11349, WT Docket No. 10–88, FCC 14–117, adopted and released August 8, 2014. The full text of the *part 17 Report and Order* is available for inspection and copying during business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. Also, it may be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554; the contractor's Web site, <http://www.bcpweb.com>; or by calling (800) 378–3160, facsimile (202) 488–5563, or email FCC@BCPIWEB.com. Copies of the *part 17 Report and Order* also may be obtained via the Commission's Electronic Comment Filing System (ECFS) by entering the docket number WT Docket No. 10–88. Additionally, the complete item is available on the Federal Communications Commission's Web site at <http://www.fcc.gov>.

I. Background

1. The Communications Act of 1934, as amended (the Act) grants the Commission authority to require painting and/or lighting of radio towers that may constitute a hazard to air navigation. Part 17 of the Commission's rules prescribes certain procedures for antenna structure registration (ASR) and sets forth standards to determine whether a structure may impact air navigation, consistent with recommendations made by the Federal Aviation Administration (FAA). In particular, the Commission requires antenna structure owners to register and exercise primary responsibility for painting and lighting of antenna structures meeting the registration criteria. To ensure the ongoing compliance of antenna structures with marking and lighting requirements, part 17 also prescribes rules governing the maintenance of the marking and lighting on antenna structures, including routine inspection obligations.

Under the current part 17 rules, any proposed or existing antenna structure that requires notice of proposed construction to the FAA must be registered with the Commission. As a result, the Commission exercises joint, and in some circumstances overlapping oversight with the FAA of certain antenna structures. All antenna structures that are subject to part 17 rules are therefore also subject to the FAA's part 77 rules concerning the safety of the navigable airspace. Under its rules, the FAA requires notification for the construction or alteration of any antenna structure that exceeds 60.96 meters (200 feet) in height above ground level, or where certain other conditions are met, including proximity to an airport runway. Antenna structure owners must file a form with the FAA, and that agency in turn determines whether the construction or alteration is subject to lighting or marking specifications prescribed in the current version of an FAA Advisory Circular entitled *Obstruction Marking, and Lighting*.

Obstruction Marking and Lighting. The FAA sends an acknowledgment to the antenna structure owner describing how the structure should be marked and lighted, which constitutes an FAA study and determination of no hazard to air navigation. This means that the FAA has determined that the structure will not pose a hazard to aircraft provided that the structure is marked and/or lighted consistent with its recommendations.

2. In order to register the structure with the Commission, the antenna

structure owner must submit the FAA's study and a no hazard determination, along with FCC Form 854. The Commission then verifies with the FAA the accuracy of the marking and lighting specifications provided by the applicant. If the Commission accepts the application, it issues an ASR form (Form 854R), which typically incorporates the FAA's no hazard marking and/or lighting specifications and assigns the antenna an ASR number. Once an antenna structure is registered, its owner must ensure that the structure complies with all of the relevant FAA chapters specified on the registration, or the owner may be subject to Commission enforcement action. No changes to the specifications in the ASR are permitted without prior approval from both the FAA and the Commission; owners wishing to change an antenna structure's specifications must first seek FAA approval, and only then may they file a request with the Commission to amend the ASR. Prior to changing the marking or lighting on the structure, antenna structure owners must receive an amended ASR form from the Commission incorporating the change.

3. In 2010, the Commission initiated a proceeding to update and modernize its part 17 rules to improve compliance and enforcement objectives, and to eliminate outdated and burdensome requirements that may no longer serve safety objectives. In the *Notice of Proposed Rulemaking (NPRM)*, the Commission proposed amendments to the part 17 rules, including harmonizing these rules with FAA rules where appropriate. Among other proposals, the Commission sought comment on potential changes to the part 17 rules governing ASR and marking and lighting specifications, as well as inspection and maintenance of lighting and painting requirements. These issues were raised in the 2004 Biennial Review, and in a subsequent Petition for Rulemaking filed by PCIA—The Wireless Infrastructure Association (PCIA) to modernize and clarify the part 17 rules.

II. Discussion

4. In the *part 17 Report and Order*, the Commission adopts numerous revisions to its part 17 rules to simplify procedures and clarify the obligations of antenna structure owners in order to ensure air safety. The steps the Commission takes to streamline its rules will improve efficiency and reduce regulatory burdens, which the Commission anticipates may enhance compliance and air safety. The Commission first streamlines several requirements regarding the ASR process

to remove conflicting or ambiguous rules. Among these changes, the Commission harmonizes its rules with FAA recommendations on antenna structure lighting and marking specifications, construction notification requirements, and the accuracy of data that antenna structure owners must provide. The Commission updates its rules regarding the maintenance of antenna structure painting and lighting. Specifically, the Commission exempts owners that use robust, modern monitoring systems from the quarterly inspection requirement. The Commission also improves its lighting outage notification requirements, standardizes repair timelines, harmonizes its requirements to maintain painting with current FAA publications, and removes outdated provisions from its part 17 rules.

5. To help ensure that its rules continue to reflect current FAA guidelines and publications, the Commission further delegates rulemaking authority to the Wireless Telecommunications Bureau (WTB) to make nonsubstantive, editorial revisions to the Commission's part 17 rules to reflect future FAA rule changes and recommendations after providing an opportunity for notice and comment. The Commission anticipates that this limited delegation of authority will help to mitigate conflicts that may arise as a result of other rulemakings or new recommendations by the FAA, and will allow the Commission to more rapidly address situations where its rules may diverge from FAA requirements.

A. Antenna Structure Registration and Specifications

6. In the (NPRM), the Commission proposed several revisions to its rules governing the ASR process to update and modernize them while ensuring the safety of pilots and aircraft passengers. In particular, the (NPRM) proposed to clarify requirements and harmonize them with current FAA rules. The part 17 rules that the Commission revises overlap in significant respects with FAA rules, reflecting its shared responsibility to ensure that the infrastructure the Commission regulates does not pose a risk to public safety. Diverging requirements create unnecessary ambiguity for antenna structure owners attempting to comply with both sets of rules which ultimately harm the public interest. Accordingly, in the actions the Commission takes, it seeks to provide clarity to antenna structure owners and, where appropriate, defer to the FAA on matters of air safety.

1. Antenna Structure Marking and Lighting Specifications

a. Provisions Governing Specification of Marking and Lighting

7. *Background.* The part 17 rules provide criteria regarding which antenna structures require painting and lighting. Whenever painting or lighting is required, the rules provide that antenna structures must conform to the painting and lighting recommendations provided by the FAA in its determination of no hazard, as referenced in two FAA Advisory Circulars (from 1996 and 1995, respectively). The rules also provide that the Commission will generally conform its lighting and marking specifications to those set forth in these two FAA Advisory Circulars, but that it may specify different requirements for individual structures. In the (NPRM), the Commission proposed to clarify that the FAA's recommended specifications are generally mandatory, but that the Commission may specify additional or different requirements, and that no changes may be made to the lighting or marking specifications on an ASR without prior FAA and Commission approval. The Commission also proposed modifications to these rules to simply reference FAA marking and lighting requirements rather than specifying particular FAA publications.

8. *Discussion.* The Commission revises its rules to eliminate any reference to older FAA Advisory Circulars, and instead require structure owners to comply with the FAA's no hazard determination and associated study for a structure in establishing painting and lighting specifications. The Commission finds that this revision to its rules will serve the public interest because it streamlines and clarifies the requirements applicable to structure owners. The Commission agrees with commenters that reference in its rules, to outdated FAA Advisory Circulars could cause confusion, and that eliminating specific references to FAA publications will clarify the lighting and marking obligations of antenna structure owners should any FAA Advisory Circulars change in the future. Requiring structure owners to comply with the FAA's no hazard determination and associated study when establishing painting and lighting specifications for a structure ensures a level of consistency between the Commission's rules and the FAA's rules and policies. However, consistent with the Commission's proposal in the (NPRM), the Commission modifies 47 CFR 17.4 of its rules to clarify that the Commission retains the right, in its

discretion, to impose additional or different lighting and marking requirements to ensure structures do not pose an air hazard. Further, the Commission clarifies that no changes may be made to the lighting or marking specifications on an ASR without prior approval from both the FAA and the Commission. No commenters opposed either of these proposals. The Commission finds that these clarifications are appropriate in order to limit the possibility of confusion among antenna structure owners and to fulfill its statutory obligation to ensure that antenna structures have appropriate marking and lighting so as not to pose a menace to air navigation.

9. The Commission declines to adopt the proposal from the Conservation Groups to expressly reference any FAA Advisory Circulars or other relevant policy documents that may address antenna structure owners' latitude to adopt lighting configurations that reduce adverse effects to birds and wildlife, consistent with aircraft navigation safety. Notwithstanding concerns regarding the effect of antenna structure lighting on wildlife, referencing particular circulars in the Commission's rules could lead to confusion, given the likelihood that the requirements or policies reflected in these publications will evolve over time. Furthermore, the FAA has not yet revised its Advisory Circulars to reflect the availability of new lighting configurations that do not employ steady-burning lights, and so citing to the current publications will not address the concerns of conservation advocates. Under the Commission's revised rules, antenna structure owners may still be able to change their lighting configurations to those that reduce impact on birds and wildlife, consistent with current or future FAA recommendations. The Commission notes that it previously encouraged antenna structure owners and conservation advocates to work together to reduce negative effects on wildlife, and the Commission's rules specifically require an Environmental Assessment (EA) for avian effects of antenna structures exceeding certain heights pending a final determination as to what, if any, permanent measures should be adopted specifically for the protection of migratory birds.

b. Retroactive Application of New Specifications

10. *Background.* The Commission's rules provide an exemption to the lighting and marking requirements for previously authorized antenna structures, and provide that changes in

the FAA circulars do not impose new restrictions upon existing structures. In the (NPRM), the Commission proposed to delete these exemptions as unnecessary in light of the proposal to remove references to specific circulars, as described above. The (NPRM) also sought comment on a proposal clarifying that lighting and marking requirements do not change unless the FAA recommends new specifications for a particular structure. The Commission asked whether, in the alternative, it should instead have the flexibility to apply any new standards retroactively in the event that the FAA changes its standards.

11. *Discussion.* The Commission revises its rules to clarify that it generally will not require existing antenna structures to comply with any new lighting and marking requirements unless the FAA mandates application of such changes with regard to a particular structure. In addition, the Commission deletes the exemption to the lighting and marking requirements in its current rules for previously authorized structures, because the revisions the Commission adopts make those exemptions unnecessary. The Commission notes that this approach is consistent with the one taken by the FAA, the expert agency on air safety. Moreover, the Commission agrees with commenters that applying new marking and lighting guidelines retroactively to existing structures could be extremely burdensome, both in economic costs to owners that would be required to update existing equipment or purchase new equipment, and in Commission resources that would be necessary to handle the large influx of ASR filings. The Commission finds that, on balance, the costs associated with retroactive application of new lighting and marking specifications outweigh any limited corresponding benefit. The Commission will, however, require antenna structure owners to comply with any new specifications that the FAA recommends for particular structures, consistent with PCIA's proposal. This approach will ensure that particular safety needs are met without unduly burdening industry and agency resources.

12. Conservation Groups is the sole commenter to oppose this proposal. It urges the Commission to retroactively impose new specifications requiring the extinguishment of certain steady burning lights as a result of recommendations from the FAA 2012 Conspicuity Study. While the Commission understands the concerns of Conservation Groups regarding the effect of antenna structure lighting on

wildlife, the FAA has not yet updated its Advisory Circulars to reflect the outcome of the study. The Commission will monitor any future determination that the FAA makes on whether to retroactively apply changes to the Advisory Circular's marking and lighting specifications resulting from the 2012 Conspicuity Study. Moreover, as previously discussed, the Commission will continue to encourage antenna structure owners to mitigate any adverse impact to wildlife and will consider any such impact through its EA review process.

2. Accuracy of Height and Location Data

13. *Background.* Under the existing rules, alteration of an existing antenna structure requires the owner to obtain a new registration prior to alteration. However, the rules do not define what constitutes an alteration requiring registration. In the (NPRM), the Commission proposed to add new language specifying that any change in height of one foot or greater, or any change in coordinates of one second or greater, requires prior approval from both the FAA and the Commission. The Commission also sought comment on whether to require the height and location data to be accurate to within one foot and one second of latitude and longitude, respectively, and whether to require that a specific survey methodology (e.g., GPS) be used when conducting measurements.

14. *Discussion.* The Commission amends the rules to require its prior approval for any change or correction of one foot or greater in height, or one second or greater in location, as compared to the height or location data provided on the antenna structure's ASR form. As NTCIA notes, requiring supplemental notice for such changes in height or location codifies existing industry practice, and the Commission concludes this requirement will reinforce air safety. While some commenters propose different height or location standards, as noted above, changes in height of one foot or greater, or in location of one second or greater, requires a new aeronautical study and determination of no hazard by the FAA. The Commission defers to the FAA's expertise on these matters in finding that these requirements are sufficient to help ensure air safety. On balance, the Commission concludes that harmonizing its standards for when changes in height or location require supplemental notice with the FAA's requirement for when a new study is required is in the public interest, as it provides greater clarity to structure owners without harming air safety.

15. The Commission also declines to impose a requirement that antenna structure owners use specific survey methods when conducting site measurements or that height measurements must be accurate within one foot and coordinates accurate within one second of latitude or longitude. Instead, the Commission will continue to defer to the FAA, and will require antenna structure owners to provide height and location measurements matching those provided to the FAA in their applications. Commenters overwhelmingly oppose both the Commission applying its own accuracy standards, and requiring a particular survey method. The Commission concludes that adopting accuracy standards or survey methods that differ from those required by the FAA may be unduly burdensome and could cause confusion, which in turn could discourage compliance and ultimately harm air safety. While requiring its own accuracy standards, or mandating the use of particular survey methods (e.g., GPS) could improve the accuracy of information that the Commission keeps on file, it is the Commission's goal to harmonize its approach with the FAA's where doing so will not harm air safety. From the record, the Commission is convinced that the standards set by the FAA, as the expert agency on air safety, are sufficient here. Further, generally requiring compliance with existing FAA guidelines rather than codifying the FAA's current standard will avoid confusion and allow the Commission's rules to keep pace with FAA policies as they evolve over time.

3. Notification of Construction or Dismantlement

16. *Background.* The part 17 rules currently require the owner of an antenna structure to notify the Commission within 24 hours of construction or dismantlement, and to notify the Commission immediately of changes in height or ownership. FAA rules generally require owners to file supplemental notice within five days of the time that a construction or alteration of a structure reaches its greatest height, a proposed construction or alteration is abandoned, or a construction or alteration is dismantled or destroyed. In its petition for rulemaking, PCIA proposed that the Commission harmonize its notification requirements with FAA rules, modifying the notification windows to five days. In the (NPRM), the Commission tentatively rejected these proposed changes, noting that commenters had not cited relevant FAA requirements nor explained why

these would be appropriate for the Commission's purposes.

17. *Discussion.* The Commission modifies its rules regarding supplemental notification of construction, changes, or dismantlement to require that the owner of an antenna structure shall notify the Commission within five days of when a construction or alteration of a structure reaches its greatest height, when a construction or alteration is dismantled or destroyed, and when there are changes in structure height or ownership. The Commission notes that commenters unanimously support these timing requirements, and in so doing the Commission harmonizes its requirements with the FAA's rules. Although in the (NPRM), the Commission emphasized that the accuracy and timeliness of information submitted to the Commission is important, on balance the Commission agrees with commenters that compliance with substantially similar requirements that have different filing timelines can be burdensome and confusing. Given that the FAA, as the expert agency on matters of air safety, has determined that allowing a delay of five days between completion of construction, dismantlement, or changes in height is acceptable, the Commission concludes that harmonizing its timing rules with the FAA's requirements eases regulatory burdens without compromising safety.

4. Voluntary Antenna Structure Registration

18. *Background.* Under the Commission's rules, only antenna structures meeting specified height or location criteria must be registered, although the rules do not preclude voluntary registration of antenna structures not meeting those criteria. In the (NPRM), the Commission sought comment on whether the part 17 rules should be enforced against antenna structures that are voluntarily registered. The Commission also asked whether it should prohibit owners from voluntarily registering structures and require owners to remove voluntarily registered structures from the database. As the Commission noted, such action could reduce confusion concerning the regulatory status of these structures. However, the (NPRM) also explained that many owners register antenna structures voluntarily in order to file an Environmental Assessment and obtain a Finding of No Significant Impact under the Commission's environmental rules, or to satisfy other needs.

19. *Discussion.* The Commission will continue to allow owners to voluntarily register antenna structures, but the

Commission changes the registration form to require owners to designate when a particular registration is done voluntarily. All but one commenter advocates continuing to allow voluntary registration of antenna structures. The Commission agrees with commenters that argue that prohibiting voluntary registration would be burdensome for antenna structure owners that may need to register their structures to comply with the Commission's environmental rules to meet regulatory requirements, or for other reasons. The Commission finds that, by modifying the registration form in a minor way to require an antenna structure owner to designate whether a registration is voluntary, the Commission strikes the right balance between administrative efficiency and burdens on antenna structure owners. Further, while the Commission will require owners to designate whether a registration is voluntary for all future registrations, the Commission declines to require antenna structures previously registered to file a new registration with such a designation. The Commission agrees with commenters that contend that forcing owners of previously registered antenna structures to determine which structures were registered voluntarily could be an extremely difficult task given the number of changes in structure ownership, airport locations, and FAA flight paths that have occurred over the years. Thus, for new registrations in the database, it will be clear whether the part 17 rules apply. Although existing registrations will not be marked as voluntary, the Commission finds that the burden of requiring all existing registrations to be updated would outweigh the informational benefit of doing so.

20. The Commission also concludes that it would not serve the public interest to apply part 17 lighting and marking requirements to voluntarily registered antenna structures. Commenters broadly oppose applying the part 17 rules to these antenna structures, and as indicated above, the Commission finds that requiring owners to designate whether a structure is registered voluntarily will resolve any ambiguity or confusion concerning whether such requirements apply. The Commission will permit owners of voluntarily registered structures to withdraw their registrations, but, as the Commission determines that continuing to allow such registrations is in the public interest, the Commission will not require these registrations to be removed from the database or amended to indicate that they were voluntarily filed.

5. Posting of Antenna Structure Registration

21. *Background.* The Commission's rules require that an ASR number must be displayed in a conspicuous place so that it is readily visible near the base of the antenna structure. PCIA, in its petition for rulemaking, argued that it is not always possible to post this number so that it is both readily visible and near the base of the structure, and instead recommended that the Commission expressly permit posting at a compound fence or gate. In the (NPRM), the Commission proposed to modify its rules to require owners to display the ASR number so that it would be visible to a member of the general public who reaches the closest publicly accessible location near the base of the antenna structure. The Commission also tentatively concluded that if two or more such locations exist (e.g., two access roads from different directions), the rules should require posting the registration number at each location.

22. *Discussion.* The Commission amends its rules to require that owners display the ASR number so that it is visible to a member of the general public who reaches the closest publicly accessible location near the antenna structure base. In general, commenters support the proposal in the (NPRM) to clarify the obligations of antenna structure owners regarding where and how to post the ASR number, although some commenters encourage further guidance and clarity in the rules. To address concerns raised by some commenters on the obligations of antenna structure owners where an antenna structure is within an enclosed perimeter, the Commission emphasizes that posting at the closest publicly available access point may, for example, be on a perimeter fence or access gate.

23. In general, the Commission will not require antenna structure owners to post the ASR number at both an access point and the base of the structure. The Commission agrees with the commenters that contend that posting the ASR number at both the base and an access point in cases in which there is only one antenna structure is unnecessary. However, in certain circumstances the informational benefit to the public of posting multiple signs outweighs the burden on antenna structure owners. Where more than one publicly accessible access point exists, the Commission modifies its rules to require posting at each access point location. Likewise, where a single perimeter fence surrounds multiple antenna structures, the Commission will require that owners post the registration

both at any access points, and at the base of the structure. With regard to those commenters that argue that the rules should not require multiple ASR numbers to be posted at a facility, the Commission finds that the burden on antenna structure owners of posting multiple ASR numbers is outweighed by the benefits to the public and to air safety of conspicuously displaying this information. As discussed in the (NPRM), it is important that FAA and Commission personnel, as well as members of the public, can quickly and easily identify a particular structure in order to report a lighting outage or other air safety hazard.

6. Provision of Antenna Structure Registration to Tenants

24. *Background.* The part 17 rules require that antenna structure owners immediately provide copies of the ASR form to each tenant licensee and permittee. In the (NPRM), the Commission proposed to amend the rules to allow owners, as an alternative to providing a paper copy of the form, to provide tenants with the ASR number and a link to the Commission's ASR Online System Web site, via paper mail or email.

25. *Discussion.* The Commission modifies its rules to allow owners to provide tenants the ASR number and link to the Commission's online system via mail, email, or other electronic means, as an alternative to providing a paper copy of Form 854R, which all commenters support. PCIA argues that the requirement to provide a paper copy of the ASR form serves no practical purpose, given that the general public can obtain a copy using the Commission's ASR Online System with just the ASR number. The Commission finds that it is crucial that tenants have complete and timely notice of the contents of Form 854R, and, in keeping with its process reform goal of updating its rules, the Commission finds that allowing a simple, modern alternative to provide this notice is warranted.

B. Maintenance of Marking and Lighting

26. As discussed below, the Commission revises its rules to address certain requirements that concern the maintenance of the marking and lighting on antenna structures, including inspection and maintenance of lighting, records of extinguishment or improper functioning of lights, and maintenance of painting. In particular, the Commission amends its rules to exempt antenna structure owners with network operations center (NOC)-based monitoring systems from quarterly inspection requirements. The

Commission also requires antenna structure owners to provide the FAA with updates of the status of lighting outages so that the FAA can issue accurate Notices to Airmen (NOTAMs) throughout the period that the antenna structure remains unlit. The Commission also adopts a single standard for the repair of antenna structure lighting and automatic indicators or automatic control or alarm systems, and clarify the amount of time that antenna structure owners are required to maintain a record of observed or otherwise known extinguishments or improper functioning of structure lights. Finally, the Commission adopts the FAA's "In Service Aviation Orange Tolerance Chart" as the benchmark for determining whether a structure needs to be cleaned or repainted.

1. Inspection of Structure Lights and Associated Control Equipment

27. *Background.* In the (NPRM), the Commission sought comment on whether to amend its rules governing antenna structure lighting monitoring and inspection obligations, or whether to eliminate these requirements altogether. These rules require the owner of an antenna structure to observe the antenna structure's lights to make sure they are functioning properly at least once every 24 hours either visually or by observing an automatic properly-maintained indicator designed to register any failure of these lights or, in the alternative, to provide an automatic alarm system designed to detect lighting failures and notify the owner of the failure. Owners must also inspect, at least quarterly, all automatic or mechanical control devices, indicators, and alarm systems associated with the antenna structure lighting to ensure that they are functioning properly.

28. The (NPRM) sought comment on whether to eliminate the inspection requirement entirely, noting that the rule may create confusion about the scope of an antenna structure owner's regulatory obligations and lead an owner to incorrectly conclude that if it performs the required inspections, it may not be subject to enforcement action if its lights fail to function. Alternatively, the Commission sought comment on whether to exempt or modify inspection obligations for antenna structures using advanced NOC-based self-monitoring technologies. The Commission has implemented a waiver process in cases where advanced monitoring systems are in place, and has granted a number of partial waivers, permitting the

petitioning antenna structure owners to conduct annual rather than quarterly inspections. Under this process, an antenna structure owner petitioning for relief must demonstrate that the monitoring system it utilizes employs self-diagnostic functions—such as alarm notification, 24-hour polling, and manual contact—and a NOC staffed with trained personnel capable of responding to alarms 24 hours per day, 365 days per year, as well as a backup Operations Center that, in the event of a catastrophic failure at the primary NOC, has specific procedures for transferring the monitoring duties of the system. Once WTB, under delegated authority, has had an opportunity to evaluate a request and determine that a particular monitoring system is sufficiently robust as to justify grant of a waiver, other antenna structure owners utilizing the same monitoring system may petition for relief on an expedited basis. Where an antenna structure owner seeks to utilize a new monitoring system that has not previously been approved, it may petition the Commission for relief, and waivers are generally granted where the petitioner can demonstrate that their system employs the same functionalities as ones previously granted approval. There is a pending request by American Tower Corporation (ATC) seeking a waiver of inspection requirements altogether based on its use of an advanced monitoring system.

29. *Discussion.* The Commission revises its rules to exempt qualifying NOC-based monitoring systems from quarterly inspection obligations. Based on the record, the Commission concludes that it would serve the public interest to eliminate the quarterly inspection obligation for those antenna structures using sufficiently robust monitoring systems. These systems employ self-diagnostic functions (such as alarm notification, 24-hour polling, and manual contact), an operations center staffed with trained personnel capable of responding to alarms 24 hours per day, 365 days per year, and a backup Operations Center that can monitor systems in the event of catastrophic failure. As the Commission has previously determined, these systems are sufficiently robust so as to make quarterly inspections unnecessary to ensure that the control devices, indicators, and alarm systems on the antenna structures are operating properly. Further, completely eliminating the inspection requirement for qualifying systems with these features will lessen the burden on antenna structure owners without

hindering aircraft navigation. The Commission observes that quarterly or even annual inspection obligations require a tremendous expenditure of resources for structures employing these systems, both in terms of dollars and person-hours spent, with no apparent corresponding benefit to aircraft safety. Further, eliminating the burden of inspection requirements for antenna structure owners that use advanced technologies may encourage other owners to adopt state-of-the-art systems.

30. The Commission therefore concludes that, on balance, the public interest would be served by adopting a procedure to exempt qualifying antenna structure owners from quarterly inspection requirements. In doing so, the Commission emphasizes that the Commission's top priority is to ensure that the lighting required under the ASR remains on or, if required lights become extinguished, that the structure owner promptly requests a NOTAM. The Commission reminds antenna structure owners that if these requirements are not met, they may be subject to enforcement action, regardless of how robust their monitoring systems may be.

31. As discussed above, this exemption affects three specific groups of antenna structure owners: (1) those that were previously granted waivers for their antenna structures monitored by approved systems; (2) those that employ approved systems but have not yet sought approval from the Commission; and (3) those that employ new systems for which no antenna structure owner has been granted waiver relief by the Commission. The Commission discusses the application of its decision with respect to each of these groups in turn.

32. Antenna structure owners that were previously granted a waiver for their antenna structures monitored by qualifying systems are exempt from all inspection obligations, as long as they continue to meet the advanced monitoring obligations to which they have already certified. Other antenna structure owners that have not yet sought a waiver but use an advanced monitoring system that has previously been approved by the Commission may also certify that they are eligible for an exemption from the inspection obligations with respect to any antenna structure utilizing a NOC-based system. Specifically, the Commission will modify its ASR system, as Verizon suggests, to allow structure owners to demonstrate that they are eligible for an exemption. Structure owners must provide a certification and supporting documentation demonstrating that they use an advanced monitoring system that has been previously approved by the

Commission, and that their antenna structures are monitored under the same process described in the order granting a waiver for that system. In addition, to qualify for the exemption the antenna structure owners must certify that they maintain a facility to receive notifications of failures from the advanced monitoring system, enabling the owners to carry out their responsibilities under part 17 of the Commission's rules. Finally, antenna structure owners that employ new systems that have not yet been certified by the Commission may continue to petition WTB. Such requests will be evaluated under the standards that have already been established.

33. The Commission declines to eliminate inspection obligations in their entirety. Although some commenters support the elimination of all inspection obligations, the Commission finds that there are important public safety benefits associated with periodic inspection of the control devices, indicators, and alarm systems associated with the lighting for antenna structures that do not employ advanced monitoring systems. The Commission concludes that the quarterly inspection requirement provides a necessary layer of required diligence to protect against lighting failures going unnoticed in cases where antenna structure owners are maintaining structures with older monitoring systems. In the absence of an advanced system that continually monitors lighting and system malfunctions, the Commission finds that quarterly inspections are essential to public safety because they help to ensure the reliable detection of lighting malfunctions. The Commission therefore declines to delete 47 CFR 17.47 in its entirety.

34. The Commission further declines to require registered structures to install monitoring systems as proposed by AFCCE. The Commission finds that such a requirement would be unnecessary because the new exemption will provide adequate incentives for antenna structure owners to adopt technologically advanced systems, and because the use of quarterly inspections should suffice to ensure that the public safety will be adequately protected for those owners that do not employ these advanced systems. The Commission also declines to adopt a third-party certification process for waiver requests. The Commission does not anticipate that the number of new system requests would support the development of a third-party certification process, and the Commission therefore finds that it would serve the public interest to continue with its already established

waiver/exemption process. Thus WTB, under delegated authority, will continue to evaluate petitions for exemption of any new NOC-based systems using the same process it used in granting previous waiver requests.

2. Notification of Extinguishment or Improper Functioning of Lights

35. *Background.* 47 CFR 17.48(a) requires that antenna structure owners promptly report outages of top steady burning lights or flashing antenna structure lights to the FAA. Upon receipt of the outage notification, the FAA will issue a NOTAM, which notifies aircraft of the outage. However, the FAA cancels all such notices within 15 days. Currently, the Commission's rules do not require antenna structure owners to provide any notification to the FAA regarding the status of repairs other than the initial outage report and the resumption of normal operation. Thus, if the repairs to an antenna structure's lights require more than 15 days, the FAA may not have any record of the outage from that 15th day to the resumption of normal operation. The (NPRM) sought comment on proposed modifications to the process by which lighting outages are reported to the FAA. Specifically, the Commission proposed requiring antenna structure owners to contact the FAA to extend the lighting outage date after 15 days, together with an updated estimate of the return-to-service date. In addition, the reporting requirement of 47 CFR 17.48(a) requires that the FAA be notified by telephone or telegraph. The Commission tentatively concluded that this rule should be updated to require notification by means acceptable to the FAA, which currently is by a nationwide toll-free telephone number for reporting lighting outages.

36. *Discussion.* The Commission revises its rules to require antenna structure owners to provide the FAA with regular updates on the status of their repairs of lighting outages so that the FAA can maintain notifications to aircraft throughout the entire period of time the antenna structure remains unlit. Consistent with the current FAA requirements, if a lighting outage cannot be repaired within the FAA's original NOTAM period, the Commission requires the antenna structure owner to notify the FAA of that fact. In addition, the antenna structure owner must provide any needed updates to its estimated return-to-service date to the FAA. Moreover, an antenna structure owner must continue to provide these updates to the FAA every NOTAM period until its lights are repaired. The Commission finds it necessary to ensure

that a NOTAM is reissued every NOTAM period so long as any outage continues, and that a current estimate of the return-to-service date is included in each notification, to clarify the scope of the malfunction and help focus the repair process toward a fixed repair date. The Commission finds that the limited additional burden on antenna structure owners is insignificant compared to the need to have regularly updated and accurate NOTAMs, as pilots rely on the NOTAMs to help ensure air safety.

37. With regard to the reporting requirement of 47 CFR 17.48(a), which provides that the FAA shall be notified by telephone or telegraph, the Commission eliminates the requirement for using a specific means of notification (which currently contains the outdated reference to telegraph) and require instead notification by means acceptable to the FAA. The FAA currently requires notification by a nationwide toll-free telephone number for reporting lighting outages. This change serves the public interest because it harmonizes the Commission's reporting requirement with the FAA's reporting requirements and it clarifies the rule by eliminating a previously specified option that is no longer viable.

3. Lighting Malfunction Repair Timelines

38. *Background.* The Commission requested comment on whether its rules should include specific timeframes for replacing or repairing extinguished lights notwithstanding the issuance of a NOTAM, and if so, what those timeframes should be. 47 CFR 17.48(b) requires the repair of an extinguished or improperly functioning steady burning side intermediate light as soon as possible. In contrast, the general standard for repairing and restoring lights, automatic indicators, and control or alarm systems in 47 CFR 17.56(a) requires repairs to be made as soon as practicable. The Commission tentatively concluded that these provisions should be deleted to avoid confusion with regard to repair timelines, as well as whether diligent efforts to correct lighting malfunctions obviate the need for a NOTAM. However, the Commission noted that the FAA does not accept notifications or issue NOTAMs for extinguished steady burning side intermediate lights, and that the Commission's rules would contain no requirements relating to maintenance of these lights in the absence of 47 CFR 17.48(b). The Commission therefore sought comment on whether it should implement a time limitation for lighting system repairs,

and if so, how such a requirement should be implemented.

39. *Discussion.* The Commission revises its rules by adopting a single standard for the repair of antenna structure lighting, automatic indicators, automatic control systems, and alarm systems. Specifically, the Commission revises its rules to provide that all of the repairs addressed in 47 CFR 17.48(b) and 17.56(a) (i.e., antenna structure lighting repairs, as well as repairs to automatic indicators or automatic control or alarm systems) be made as soon as practicable. This change addresses the inconsistency between these two rules, given that 47 CFR 17.48(b) requires that antenna structure lighting repairs be made as soon as possible, while 47 CFR 17.56(a) requires that repairs to automatic indicators or automatic control or alarm systems be made as soon as practicable. Commenters generally support this revision to the Commission's rules, and the Commission finds that this change serves the public interest because a standard that requires antenna structure owners to make such repairs as soon as practicable will provide them with greater flexibility to fulfill their obligation to complete repairs to lighting system malfunctions in a timely fashion. Antenna structure owners that cannot demonstrate that their efforts to make such repairs are sufficient to meet that standard may face forfeiture liability. In determining whether an antenna structure owner has met the as soon as practicable standard in an enforcement proceeding, the Commission may consider whether the owner has exercised due diligence and has made a good faith effort to repair the outage. Further, antenna structure owners may be subject to enforcement action if they are unable to provide a reasonable explanation of their efforts to make these repairs as soon as practicable.

40. The Commission declines to impose specific timeframes for replacing or repairing extinguished lights. The Commission finds that antenna structure lighting repair does not lend itself to specific repair timelines due in part to the widely varied circumstances and complications that can make certain repairs too difficult or dangerous if a fixed schedule is required. Many of these variables are often beyond the control of the antenna structure owner, because such factors as delivery of replacement equipment, difficulty of repair, and limited structure access due to the location or weather conditions can make the timing of certain repairs difficult to predict. Most commenters do not support the imposition of specific

repair timelines, preferring instead rules that provide antenna structure owners the flexibility to make their repairs in a reasonable period of time. The Commission finds that declining to adopt fixed repair timelines best meets its goals of ensuring timely repairs to lighting malfunctions and consistent enforcement of its rules, without imposing unreasonable burdens on antenna structure owners. In the absence of specific timeframes, the Commission finds that it serves the public interest to require an antenna structure owner to replace or repair extinguished lights as soon as practicable, as discussed above. The Commission's revised rules provide a general, consistent standard that will help ensure that those tasked with timely repairs may undertake them safely and efficiently under widely differing circumstances while still preserving aviation safety.

41. The Commission declines to delete 47 CFR 17.48(b) and 17.56(a), which would eliminate the requirements providing for the repair of antenna structure lighting, as well as automatic indicators or automatic control or alarm systems. The Commission finds that it serves the public interest to retain these rules while revising them to ensure that the Commission provides antenna structure owners with clear guidance and a consistent standard to ensure timely repairs to antenna structure lighting malfunctions. Moreover, because the FAA does not accept notifications or issue NOTAMs for extinguished steady burning side intermediate lights, which are required in many FAA lighting styles, in absence of these rules, the Commission has no requirements applicable to antenna structure owners in connection with their obligations to repair and maintain these lights.

42. The Commission declines to require a second lighting system, for antenna structures in very remote locations, which is consistent with its requirements in other locations. The Commission finds that adopting a special rule for remote locations to require a second lighting system for structures in those areas would impose additional costs on antenna structure owners that the Commission finds to be, on balance, unnecessary, given the effectiveness of other rules requiring timely lighting repair. The Commission finds that its rules requiring antenna structure owners to complete repairs of lighting malfunctions on their antenna structures in a timely manner helps to ensure aviation safety and obviates the need for secondary systems.

4. Recordkeeping Requirements

43. *Background.* 47 CFR 17.49 requires antenna structure owners to maintain a record of observed or otherwise known extinguishments or improper functioning of structure lights, but does not specify the time period for which such records must be maintained. In the (NPRM), the Commission tentatively concluded to amend this provision by adding a requirement to maintain such records for two years and an obligation to provide the records to the Commission upon request. The Commission also sought comment on whether it should eliminate the recordkeeping requirement entirely.

44. *Discussion.* The Commission revises its rules to require antenna structure owners to maintain a record of observed or otherwise known extinguishments or improper functioning of structure lights for two years, and to provide such records to the Commission upon request. The Commission finds that limiting the retention time period to two years serves the public interest because it will lessen the burden on antenna structure owners without hindering the Commission's ability to monitor an antenna structure owner's compliance record. Although one commenter prefers a one-year retention period, all other commenters that address this revision to the rules support it, as antenna structure owners will no longer have to retain the records indefinitely, thereby saving valuable resources. The Commission finds that the two year retention period and the obligation to submit such records to the Commission upon request provide a practical balance between the Commission's need to preserve a record of compliance and costs to industry of retaining and submitting these records.

5. Maintenance of Painting

45. *Background.* 47 CFR 17.50 of the rules specifies that antenna structures requiring painting under part 17 shall be cleaned or repainted as often as necessary to maintain good visibility. In the (NPRM), the Commission sought comment on options for clarifying the rule, as the rule itself provides an ambiguous standard for measuring good visibility. Specifically, the Commission requested comment on whether to amend 47 CFR 17.50 to specifically provide for use of the FAA's In-Service Aviation Orange Tolerance Chart to determine whether a structure needs to be cleaned or repainted. If so amended, the Commission further sought comment on whether a determination as to whether a structure needs to be repainted or cleaned should be assessed

by comparing it to the FAA's In-Service Aviation Orange Tolerance Chart at the base of the antenna structure and/or at a distance of one quarter mile. The FAA's Advisory Circular on Obstruction Marking and Lighting indicates that the color should be sampled on the upper half of the structure, since weathering is greater there.

46. *Discussion.* The Commission revises its rules to adopt the FAA's In-Service Aviation Orange Tolerance Chart as the benchmark for determining whether a structure needs to be cleaned or repainted. In adopting this revision to its rules, the Commission notes that most commenters support the adoption of the FAA's In-Service Aviation Orange Tolerance Chart, and antenna structure owners will now have a standard measurement tool to aid them in deciding when it is necessary to clean or repaint their structures to maintain good visibility pursuant to 47 CFR 17.50 of the Commission's rules. Antenna structure owners must use the chart in a manner consistent with FAA guidelines, which currently provide that the color should be sampled on the upper half of the structure. The Commission agrees with the FAA that the top half of the structure, and not the base of the structure as some commenters have suggested, should be the reference point to which the color chart is compared. The Commission notes that visibility of the top half of the structure is the most important for safe air navigation and that the color of the top half of the structure is likely to fade faster than other parts of the structure due to weather conditions.

47. The Commission decline to prescribe a particular distance from which the chart is to be compared with the top half of the structure. Commenters advocate making this comparison from a number of specific locations, including at the base, at the top half of the structure, or at a distance of one-quarter mile from the structure. Although placing the chart directly over the surface of a portion of the top half of the structure would provide the best results, the Commission recognizes that measurement directly over the surface may not always be practical due to weather or access limitations.

48. The Commission declines to compel painting of antenna structures every ten years. The Commission finds that structure owners are best able to determine how to safely and efficiently comply with the antenna structure maintenance requirements of its rules, and it is unnecessary to prescribe a fixed, ten-year painting mandate for this purpose. A rigid repainting requirement would not materially benefit antenna

structure conspicuity and aviation safety beyond the requirement to clean and repaint as necessary to maintain good visibility. The Commission finds that the use of the FAA's In-Service Aviation Orange Tolerance Chart, in conjunction with the Commission's current cleaning and repainting standards, is the best way to promote aircraft safety, provide clear guidance to antenna structure owners, and ensure consistent enforcement.

C. Other Process Reform Matters

1. Clarifying Definitions

49. *Background.* An antenna structure is defined in the rules as including the radiating and/or receive system, supporting structures and any appurtenances mounted thereon. The rules also define an antenna structure owner as the individual or entity vested with ownership, equitable ownership, dominion, or title to the antenna structure. In the 2004 Biennial Review proceeding, PCIA and other commenters claimed that these definitions and associated compliance obligations of infrastructure providers and licensed carriers were ambiguous, and urged the Commission to revise the definitions to eliminate such ambiguities. In the (NPRM), the Commission proposed to clarify the definition of antenna structure owner to be the owner of the underlying structure that supports or is intended to support antennas and other appurtenances and not a tenant. The Commission also proposed amending the rules to clarify when a structure becomes and ceases to be an antenna structure, noting that the Communications Act requires an owner to maintain painting and lighting until the antenna structure is dismantled. In particular, the Commission proposed to clarify that a structure becomes an antenna structure under the part 17 rules from the time construction begins, regardless of whether the structure is immediately used for its intended purpose, and continues to be an antenna structure until such time as it is dismantled, regardless of whether it continues to be used to transmit or receive radio energy.

50. *Discussion.* Consistent with the proposal in the (NPRM), the Commission revises its definition of antenna structure owner to include the owner of the underlying structure that supports antennas, and its definition of antenna structure to likewise include these underlying structures. The Commission notes that all commenters support these changes, and the revisions clarify that the part 17 rules apply to the actual owner of the structure and not a

tenant. The Commission also notes that some structures are themselves the radiating antenna used to transmit radio energy, such as towers that broadcast AM radio frequencies. To clarify that its new definitions are not meant to exclude such structures, the Commission adopts a modification to the definitions proposed in the (NPRM) so as to specifically include them.

51. In addition, the Commission clarifies that a structure is considered an antenna structure from the start of construction through dismantlement, regardless of when it begins and ceases to transmit radio energy. Commenters generally support this clarification, and the Commission agrees that the scope of the rule does not include the construction of a building on which an antenna may be situated, but refers to the construction of the antenna structure itself. The Commission also emphasizes that an antenna structure owner's obligations do not cease until the structure is dismantled. The record supports clarifying who bears responsibility for compliance with the rules, and when a structure is within the purview of the part 17 rules, and the Commission finds that doing so will help promote air safety and serve the public interest.

52. Some commenters express concern that this proposal could be read to encompass Distributed Antenna Systems (DAS), and urge that the Commission make clear that such systems are exempt from the part 17 review. DAS, as well as small cells and other new wireless technologies, use large numbers of smaller antennas, deployed at lower heights and supported by compact radio equipment to provide broadband services. The benefit of these technologies is that they can be deployed on utility poles, street lamps, water towers, rooftops, or inside buildings to fill in coverage gaps. The Commission declines to expressly exempt such systems from its modification to the part 17 definitions. The Commission does not anticipate that the part 17 rules will ordinarily affect such systems because registration is generally only required for structures of sufficient height to affect air safety, and such heights are significantly greater than that of most DAS antennas.

2. Streamlining and Removing Unnecessary Rules

53. *Background.* The part 17 rules currently set forth which antenna structures require notification to the FAA, and specify certain exemptions from this notification requirement. These rules essentially restate the applicable FAA rules. In the (NPRM),

the Commission proposed to delete these sections and insert cross-references to relevant FAA rules. The Commission also proposed to delete a requirement that applicants proposing new or modified facilities located on land under U.S. Government jurisdiction include a statement indicating that facilities will be so located, and that applicants shall comply with another section of the Commission's rules that was removed in 1977. The (NPRM) tentatively concluded that this section was intended to promote compliance with procedures that no longer exist, and as a result is now unnecessary. In addition, the Commission proposed to delete rules that set forth specific lighting and light maintenance requirements as unnecessary and duplicative, since these requirements are specified in the FAA no hazard determination and study for each structure.

54. *Discussion.* While the majority of commenters support amending the Commission's rules to delete the criteria for when notification to the FAA is required, and the specified exemptions from this notification requirement, the Commission declines to adopt this proposal from the (NPRM). PCIA supports cross-referencing in general, but only for the FAA's physical obstruction rules, due to concerns that the FAA may expand the scope of its notification requirements. The FAA has previously considered whether to broaden its notification requirements to include construction of new antenna support structures in certain frequency bands. In particular, the FAA remains concerned about the possible threat of FM broadcast service transmissions to aircraft navigation and communication facilities. The Commission notes that the FAA has not issued a final decision on its proposal to expand its rules to require notice for antenna structures operating on the FM broadcast frequencies. The Commission will continue to work with the FAA and the National Telecommunications and Information Administration (NTIA) to address concerns about the effect of FM broadcast transmissions on air safety and communications systems.

55. Nevertheless, the Commission declines to cross-reference FAA rules that may expand the scope of its rules in the future. Instead, the Commission adopts modifications to part 17 to clarify that antenna structures must be registered only when notice to the FAA is required due to physical obstruction (as for structures of sufficient height, or proximity to airports). The Commission retains the notification criteria in 47 CFR 17.7, but updates these to reflect

the FAA's current notification criteria and exemptions. The Commission agrees with commenters that these changes will provide clarity and prevent future FAA rulemakings from expanding the scope of its rules without providing parties the opportunity for public comment. As noted above, the Commission delegates authority to WTB to update the part 17 rules to comport with future FAA rule changes regarding what tower constructions or alterations require FAA notification after an opportunity for notice and comment. This delegated authority will help ensure that the Commission's rules can be quickly updated to remain in harmony with the FAA's notification requirement, while providing interested parties an opportunity to comment on any changes before they take effect.

56. The Commission does, however, delete from its rules the notice requirement for applicants proposing new or modified facilities on federal land in its entirety, a proposal supported by all commenters addressing this issue. The procedures that this rule references were abolished in 1977 at the request of the agencies affected, and the Commission concludes that there is no reason to retain this notification requirement. Finally, the Commission deletes the rules regarding exhibiting and maintaining lights as unnecessary and potentially confusing given that these requirements are already contained in each antenna structure's no hazard determination. Commenters generally support these deletions, which will provide clarity by removing requirements that could conflict with the rule changes adopted above.

3. Ministerial Rule Changes

57. The Commission make the following ministerial edits to conform with the other rule amendments adopted in this Order: the Commission adds a heading to the definition of antenna farm area and changes antenna towers to antenna structures in 47 CFR 17.2(b); deletes an outdated provision in 47 CFR 17.4(a)(2) requiring certain registrations by July 1, 1998; and adds a cross-reference to 47 CFR 17.4(f) in 47 CFR 17.4(e).

III. Procedural Matters

A. Paperwork Reduction Act

58. This document contains revised information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and

other Federal agencies are invited to comment on the modified information collection requirements contained in the proceeding. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198 44 U.S.C. *see* 44 U.S.C. 3506(c)(4), the Commission previously sought specific comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees.

59. The Commission has assessed the effects of eliminating and updating particular provisions of part 17 governing the construction, marking, and lighting of antenna structures. Specifically, the Commission updates the means by which antenna structure owners are required to provide tenant licensees a copy of the antenna structure registration, how registration numbers are displayed on or around the antenna structure and, for improper functioning antenna structure lights, how the FAA is notified and for how long the records are retained. The Commission also updates requirements regarding when the FCC should be notified of certain events, what changes in structure height or location require a new Antenna Structure Registration, require a notation when structures are registered voluntarily, and provide a standardized means for registrants to certify that they qualify for the exemption from quarterly inspection requirements. The Commission finds that these updates improve efficiency, reduce regulatory burdens, and enhance compliance with antenna structure painting and lighting requirements, while continuing to ensure aircraft safety. In addition, the Commission has described impacts that might affect small business, which includes most businesses with fewer than 25 employees.

B. Final Regulatory Flexibility Analysis

60. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rule Making (NPRM). The Commission sought written public comment on the proposals in the (NPRM), including comment on the IRFA. Because the Report and Order amends the Commission's rules, this Final Regulatory Flexibility Analysis (FRFA) is included to conform with the RFA.

i. Need for, and Objectives of, the Report and Order

61. Section 303(q) of the Communications Act vests in the Commission the authority to require

painting and/or lighting of radio towers that may constitute a hazard to air navigation. Part 17 of the Commission's rules sets forth procedures for identifying those antenna structures that might affect air navigation, consistent with recommendations made by the Federal Aviation Administration (FAA), and for registering such structures with the Commission. The Commission requires owners of antenna structures to register with the Commission those structures that meet the registration criteria and to exercise primary responsibility for the prescribed painting and lighting. The rule changes seek to achieve the best framework to continue to fulfill the Commission's statutory responsibility to require antenna structure owners, registrants and Commission licensees to do whatever is necessary to prevent antenna structures from being hazards or menaces to air navigation.

62. Streamlining and eliminating outdated provisions of the Commission's part 17 rules governing the construction, marking, and lighting of antenna structures improves efficiency, reduces regulatory burdens, and improves compliance with tower painting and lighting requirements, while continuing to ensure the safety of pilots and aircraft passengers nationwide. This action marks another step in the Commission's process reform efforts, and will allow the Commission to modernize its rules while adhering to its statutory responsibility to prevent antenna structures from being hazards to air navigation.

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

63. One commenter directly responded to the IRFA, raising concerns that the IRFA did not identify rules that might duplicate, overlap, or conflict with the rules proposed in the (NPRM). Specifically, the comments by Hammet & Edison addressed the Commission's proposal to defer to the FAA's criteria for when notice of construction or alteration is required. At the time of the (NPRM), a then-pending FAA rulemaking was considering whether to require notice for structures that emit specific radio frequencies, given the FAA's concerns over the impact of these frequencies on pilot communication. Hammet & Edison request that the Commission reconsider the (NPRM) in light of these concerns.

64. In response to concerns by Hammet & Edison and other commenters about the potential for the scope of the Commission's part 17 rules to expand as a result of an FAA

rulemaking, the Report and Order declines to adopt the proposal from the (NPRM) to defer to the FAA on these criteria. The FAA did not adopt the expanded scope proposed originally, however a decision on that issue remains pending. Instead, the Report and Order adopts modifications to the relevant rules in part 17 to reflect the current FAA notification criteria and exemptions. This accommodation will alleviate concerns raised by commenters about FAA rule changes expanding the scope of the part 17 rules, and are adequately addressed in this FRFA.

65. In addition, a number of commenters raised concerns about the impact on small businesses of the Commission's lighting and marking requirements. This FRFA explains below how the revised rules adopted in the Report and Order will affect antenna structure owners, particularly owners that are small businesses.

iii. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

66. Pursuant to the Small Business Jobs Act of 2010, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

a. Description and Estimate of the Number of Small Entities To Which Rules Will Apply

67. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term small entity as having the same meaning as the terms small business, small organization, and small governmental jurisdiction. In addition, the term small business has the same meaning as the term small business concern under the Small Business Act. 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).

68. *Small Businesses, Small Organizations, and Small Governmental Jurisdictions.* The Commission's action may, over time, affect small entities that are not easily categorized at present. The Commission therefore describes here, at the outset, three comprehensive,

statutory small entity size standards. First, nationwide, there are a total of approximately 27.5 million small businesses, according to the SBA. In addition, a small organization is generally any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. Nationwide, as of 2007, there were approximately 1,621,315 small organizations. Finally, the term small governmental jurisdiction is defined generally as governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand. Census Bureau data for 2011 indicate that there were 89,476 local governmental jurisdictions in the United States. The Commission estimates that, of this total, as many as 88,506 entities may qualify as small governmental jurisdictions. Thus, the Commission estimates that most governmental jurisdictions are small.

69. *Wireless Telecommunications Carriers (except satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular phone services, paging services, wireless Internet access, and wireless video services. The appropriate size standard under SBA rules is for the category Wireless Telecommunications Carriers. The size standard for that category is that a business is small if it has 1,500 or fewer employees. For this category, census data for 2007 show that there were 11,163 establishments that operated for the entire year. Of this total, 10,791 establishments had employment of 99 or fewer employees and 372 had employment of 1000 employees or more. Thus under this category and the associated small business size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities that may be affected by the proposed action. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, PCS, and Specialized Mobile Radio (SMR) Telephony services. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, the Commission

estimates that the majority of wireless firms can be considered small.

70. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS) systems, and wireless cable, transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) (previously referred to as the Instructional Television Fixed Service (ITFS)). In connection with the 1996 BRS auction, the Commission established a small business size standard as designating an entity that had annual average gross revenues of no more than \$40 million in the previous three calendar years. The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, the Commission estimates that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities. After adding the number of small business auction licensees to the number of incumbent licensees not already counted, the Commission finds that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA's or the Commission's rules.

71. In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas. The Commission offered three levels of bidding credits: (i) A bidder with attributed average annual gross revenues that exceed \$15 million and do not exceed \$40 million for the preceding three years (small business) received a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed \$3 million and do not exceed \$15 million for the preceding three years (very small business) received a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed \$3 million for the preceding three years (entrepreneur) received a 35 percent discount on its winning bid. Auction 86 concluded in 2009 with the sale of 61 licenses. Of the ten winning bidders,

two bidders that claimed small business status won 4 licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

72. *Fixed Microwave Services.* Microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. They also include the Local Multipoint Distribution Service (LMDS), the Digital Electronic Message Service (DEMS), and the 24 GHz Service, where licensees can choose between common carrier and non-common carrier status. At present, there are approximately 31,428 common carrier fixed licensees and 79,732 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. There are approximately 120 LMDS licensees, three DEMS licensees, and three 24 GHz licensees. The Commission has not yet defined a small business with respect to microwave services. For purposes of the IRFA, the Commission will use the SBA's definition applicable to Wireless Telecommunications Carriers (except satellite)—i.e., an entity with no more than 1,500 persons. Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. For the category of Wireless Telecommunications Carriers (except Satellite), Census data for 2007 show that there were 11,163 firms that operated that year. Of those, 10,791 had fewer than 1000 employees, and 372 firms had 1000 employees or more. Thus under this category and the associated small business size standard, the majority of firms can be considered small. The Commission notes that the number of firms does not necessarily track the number of licensees. The Commission estimates that virtually all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition.

73. *Private Land Mobile Radio.* Private Land Mobile Radio (PLMR) systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories that operate and maintain switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular phone services, paging services, wireless Internet access, and wireless video services. The SBA has not developed a definition of small entity

specifically applicable to PLMR licensees due to the vast array of PLMR users. However, the Commission believes that the most appropriate classification for PLMR is Wireless Communications Carriers (except satellite). The size standard for that category is that a business is small if it has 1,500 or fewer employees. For this category, census data for 2007 show that there were 11,163 establishments that operated for the entire year. Of this total, 10,791 establishments had employment of 999 or fewer employees and 372 had employment of 1000 employees or more. Thus under this category and the associated small business size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities that may be affected by the proposed action.

74. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, PCS, and Specialized Mobile Radio (SMR) Telephony services. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, the Commission estimates that the majority of wireless firms can be considered small.

75. Other relevant information about PLMRs is as follows. The Commission's 1994 Annual Report on PLMRs indicates that at the end of fiscal year 1994 there were 1,087,267 licensees operating 12,481,989 transmitters in the PLMR bands below 512 MHz. Because any entity engaged in a commercial activity is eligible to hold a PLMR license, the revised rules in this context could potentially impact every small business in the United States.

76. *Personal Radio Services.* Personal radio services provide short-range, low power radio for personal communications, radio signaling, and business communications not provided for in other services. The Personal Radio Services include spectrum licensed under part 95 of the Commission's rules. These services include Citizen Band Radio Service (CB), General Mobile Radio Service (GMRS), Radio Control Radio Service (R/C), Family Radio Service (FRS), Wireless Medical Telemetry Service (WMTS), Medical Implant Communications Service (MICS), Low Power Radio Service (LPRS), and Multi-Use Radio Service (MURS). There are a variety of methods used to license the spectrum in these rule parts, from licensing by rule, to

conditioning operation on successful completion of a required test, to site-based licensing, to geographic area licensing. Under the RFA, the Commission is required to make a determination of which small entities are directly affected by the rules being proposed. Since all such entities are wireless, the Commission applies the definition of Wireless

Telecommunications Carriers (except Satellite), pursuant to which a small entity is defined as employing 1,500 or fewer persons. Many of the licensees in these services are individuals, and thus are not small entities. In addition, due to the mostly unlicensed and shared nature of the spectrum utilized in many of these services, the Commission lacks direct information upon which to base an estimation of the number of small entities under an SBA definition that might be directly affected by the proposed actions.

77. Public Safety Radio Services. Public Safety radio services include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services. There are a total of approximately 127,540 licensees within these services. Governmental entities as well as private businesses comprise the licensees for these services. All governmental entities with populations of less than 50,000 fall within the definition of a small entity.

78. Location and Monitoring Service (LMS). Multilateration LMS systems use non-voice radio techniques to determine the location and status of mobile radio units. For purposes of auctioning LMS licenses, the Commission has defined a small business as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not to exceed \$15 million. A very small business is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not to exceed \$3 million. These definitions have been approved by the SBA. An auction for LMS licenses commenced on February 23, 1999 and closed on March 5, 1999. Of the 528 licenses auctioned, 289 licenses were sold to four small businesses.

79. Multiple Address Systems. Entities using Multiple Address Systems (MAS) spectrum, in general, fall into two categories: (1) those using the spectrum for profit-based uses, and (2) those using the spectrum for private internal uses. With respect to the first category, the Commission defines small entity for MAS licensees as an entity that has average gross revenues of less than \$15 million in the three previous calendar

years. Very small business is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$3 million for the preceding three calendar years. The SBA has approved of these definitions. The majority of these entities will most likely be licensed in bands where the Commission has implemented a geographic area licensing approach that would require the use of competitive bidding procedures to resolve mutually exclusive applications. The Commission's licensing database indicates that, as of April 16, 2010, there were a total of 11,653 site-based MAS station authorizations. Of these, 58 authorizations were associated with common carrier service. In addition, the Commission's licensing database indicates that, as of April 16, 2010, there were a total of 3,330 EA market area MAS authorizations. The Commission's licensing database indicates that, as of April 16, 2010, of the 11,653 total MAS station authorizations, 10,773 authorizations were for private radio service.

80. With respect to the second category, which consists of entities that use, or seek to use, MAS spectrum to accommodate their own internal communications needs, MAS serves an essential role in a range of industrial, safety, business, and land transportation activities. MAS radios are used by companies of all sizes, operating in virtually all U.S. business categories, and by all types of public safety entities. For the majority of private internal users, the definition developed by the SBA would be more appropriate than the Commission's definition. The applicable definition of small entity in this instance appears to be the Wireless Telecommunications Carriers (except satellite) definition under the SBA rules. Under that SBA category, a business is small if it has 1,500 or fewer employees. For this category, census data for 2007 show that there were 11,163 establishments that operated for the entire year. Of this total, 10,791 establishments had employment of 99 or fewer employees and 372 had employment of 100 employees or more. Thus under this category and the associated small business size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities that may be affected by the proposed action.

81. Television Broadcasting. The SBA defines a television broadcasting station that has no more than \$35.5 million in annual receipts as a small business. Business concerns included in this industry are those primarily engaged in

broadcasting images together with sound. 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 the station's own studio, from an affiliated network, or from an external source.

82. According to Commission staff review of the BIA Financial Network, Inc. Media Access Pro Television Database as of March 31, 2013, about 90 percent of an estimated 1,385 commercial television stations in the United States have revenues of \$35.5 million or less. Based on this data and the associated size standard, the Commission concludes that the majority of such establishments are small. The Commission has estimated the number of licensed noncommercial educational (NCE) stations to be 396. The Commission does not have revenue estimates for NCE stations. These stations rely primarily on grants and contributions for their operations, so the Commission assumes that all of these entities qualify as small businesses. In addition, there are approximately 567 licensed Class A stations, 2,227 licensed low power television (LPTV) stations, and 4,518 licensed TV translators. Given the nature of these services, the Commission will presume that all LPTV licensees qualify as small entities under the above SBA small business size standard.

83. The Commission notes that in assessing whether a business entity qualifies as small under the above definition, business control affiliations must be included. The Commission's estimate, therefore, likely overstates the number of small entities affected by the proposed rules, because the revenue figures on which this estimate is based do not include or aggregate revenues from affiliated companies.

84. In addition, an element of the definition of small business is that the entity not be dominant in its field of operation. The Commission is unable at this time and in this context to define or quantify the criteria that would establish whether a specific television station is dominant in its market of operation. Accordingly, the foregoing estimate of small businesses to which the rules may apply does not exclude any television stations from the definition of a small business on this basis and is therefore over-inclusive to that extent. An additional element of the definition of "small business" is that the

entity must be independently owned and operated. It is difficult at times to assess these criteria in the context of media entities, and estimates of small businesses to which they apply may be over-inclusive to this extent.

85. *Radio Broadcasting.* This Economic Census category comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in the station's own studio, from an affiliated network, or from an external source. The SBA defines a radio broadcasting entity that has \$35.5 million or less in annual receipts as a small business. According to Commission staff review of the BIA Kelsey Inc. Media Access Radio Analyzer Database as of June 5, 2013, about 90 percent of the 11,340 of commercial radio stations in the United States have revenues of \$35.5 million or less. Therefore, the majority of such entities are small entities. The Commission has estimated the number of licensed noncommercial radio stations to be 3,917. The Commission does not have revenue data or revenue estimates for these stations. These stations rely primarily on grants and contributions for their operations, so the Commission assumes that all of these entities qualify as small businesses. The Commission notes that in assessing whether a business entity qualifies as small under the above definition, business control affiliations must be included. In addition, to be determined to be a "small business," the entity may not be dominant in its field of operation. The Commission notes that it is difficult at times to assess these criteria in the context of media entities, and its estimate of small businesses may therefore be over-inclusive.

86. *FM translator stations and low power FM stations.* The proposed rules and policies could affect licensees of FM translator and booster stations and low power FM (LPFM) stations, as well as potential licensees in these radio services. The same SBA definition that applies to radio broadcast licensees would apply to these stations. The SBA defines a radio broadcast station as a small business if such station has no more than \$35.5 million in annual receipts. Currently, there are approximately 6,155 licensed FM translator and booster stations and 864 licensed LPFM stations. Given the nature of these services, the Commission will presume that all of these licensees qualify as small entities under the SBA definition.

87. *Cable Television Systems.* Since 2007, these services have been defined within the broad economic census

category of Wired Telecommunications Carriers; that category is defined as follows: This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks.

Transmission facilities may be based on a single technology or a combination of technologies. The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. Census data for 2007 shows that there were 3,188 firms that operated for the duration of that year. Of those, 3,144 had fewer than 1000 employees, and 44 firms had more than 1000 employees. Thus under this category and the associated small business size standard, the majority of such firms can be considered small.

88. *Cable Companies and Systems.* The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a small cable company is one serving 400,000 or fewer subscribers, nationwide. Industry data indicate that of approximately 1,100 cable operators nationwide, all but ten are small under this size standard. In addition, under the Commission's rules, a small system is a cable system serving 15,000 or fewer subscribers. Industry data indicate that of 6,635 systems nationwide, 5,802 systems have fewer than 10,000 subscribers, and an additional 302 systems have 10,000–19,999 subscribers. Thus, under this second size standard, most cable systems are small.

89. *Cable System Operators.* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000. The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate. Industry data indicate that of approximately 1,100 cable operators nationwide, all but ten are small under this size standard. The Commission notes that it neither requests nor collects information on whether cable system

operators are affiliated with entities whose gross annual revenues exceed \$250 million, and therefore it is unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

90. *Satellite Telecommunications.* Two economic census categories address the satellite industry. The first category has a small business size standard of \$30 million or less in average annual receipts, under SBA rules. The second has a size standard of \$30 million or less in annual receipts.

91. The category of Satellite Telecommunications comprises establishments primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications. Census Bureau data for 2007 show that 607 Satellite Telecommunications establishments operated for that entire year. Of this total, 533 establishments had annual receipts of under \$10 million, and 74 establishments had receipts of \$10 million or more. Consequently, the Commission estimates that the majority of Satellite Telecommunications firms are small entities that might be affected by this action.

92. The second category, i.e., All Other Telecommunications, comprises establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry. For this category, Census data for 2007 shows that there were a total of 2,639 establishments that operated for the entire year. Of those 2,639 establishments, 2,333 operated with annual receipts of less than \$10 million and 306 with annual receipts of \$10 million or more. Consequently, the Commission estimates that a majority of All Other Telecommunications establishments are small entities that might be affected by its action.

93. *Non-Licensee Tower Owners.* Although at one time, most

communications towers were owned by the licensee using the tower to provide communications service, many towers are now owned by third-party businesses that do not provide communications services themselves but lease space on their towers to other companies that provide communications services. The Commission's rules require that any entity, including a non-licensee, proposing to construct a tower over 200 feet in height or within the glide slope of an airport must register the tower with the Commission on FCC Form 854. Thus, non-licensee tower owners may be affected by the provisions of this Report and Order.

94. As of June 28, 2013, there are approximately 113,612 registration records in a 'Constructed' status and 13,572 registration records in a 'Granted, Not Constructed' status in the ASR database. This includes both towers registered to licensees and towers registered to non-licensee tower owners. The Commission does not keep information from which it can easily determine how many of these towers are registered to non-licensees or how many non-licensees have registered towers. Regarding towers that do not require antenna structure registration, the Commission does not collect information as to the number of such towers in use and therefore cannot estimate the number of tower owners who would be subject to the proposed rules. Moreover, the SBA has not developed a size standard for small businesses in the category Tower Owners. Therefore, the Commission is unable to determine the number of non-licensee tower owners that are small entities. The Commission believes, however, that when all individuals owning 10 or fewer towers and leasing space for collocation are included, non-licensee tower owners, number in the thousands, and that nearly all of these qualify as small businesses under the SBA's definition for All Other Telecommunications. In addition, there may be other non-licensee owners of other wireless infrastructure, including DAS and small cells, that might be affected by the regulatory measures proposed in this Report and Order. The Commission does not have any basis for estimating the number of such non-licensee owners that are small entities.

b. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

95. The Report and Order adopts several reporting, recordkeeping, and other compliance requirements which could affect small entities. First, the

Report and Order amends the Commission's rules to require that owners display the Antenna Structure Registration (ASR) number so that it is visible to a member of the general public who reaches the closest publicly accessible location near the antenna structure base. Where more than one publicly accessible access point exists, the Commission modifies its rules to require posting at each access point location. Likewise, where a single perimeter fence surrounds multiple antenna structures, the Commission will require that owners post the registration both at any access points, and at the base of the structure. These requirements are necessary to ensure that the FAA and Commission personnel, as well as members of the public, can quickly and easily identify a particular structure in order to report a lighting outage or other air safety hazard in a timely fashion. The Commission also modifies its rules to allow owners to provide tenants the ASR number and link to the Commission's online system via mail, email, or other electronic means, as an alternative to providing a paper copy of Form 854R. This update of the Commission's rules will reduce the compliance burden on all antenna structure owners, including small entities.

96. Further, the Commission revises its rules to require antenna structure owners to provide the FAA with regular updates on the status of their repairs of lighting outages so that the FAA can maintain notifications to aircraft throughout the entire period of time the antenna structure remains unlit. These updates will also include updates to its estimated return-to-service date to the FAA. The Commission concludes that on balance, this limited burden on antenna structure owners, which may include small entities, is insignificant compared to the need to have accurate antenna structure lighting outage information, as pilots rely on this information to ensure air safety. The Commission also eliminates the requirement for using a specific means of notification (which currently contains the outdated reference to telegraph) and requires instead notification by means acceptable to the FAA. This change clarifies the rule by eliminating a previously specified option that is no longer viable, which in turn will lessen the burden on antenna structure owners, including small entities.

97. Finally, the Commission revises its rules to require antenna structure owners to maintain a record of observed or otherwise known extinguishments or improper functioning of structure lights

for two years, and to provide such records to the Commission upon request. Limiting the retention time period to two years lessens the burden on antenna structure owners, which may include small entities, without hindering the Commission's ability to monitor an antenna structure owner's compliance record.

c. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

98. The RFA requires an agency to describe any significant alternatives that it has considered in developing its 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.

99. The rule changes herein are intended both to promote aircraft navigation safety and also to reduce regulatory burdens on small entities by clarifying the relationship between the Commission's rules and procedures and those of the FAA and ensuring continued consistency in those rules and procedures. The Commission asked commenters to suggest alternatives that may further reduce the impact on small entities while achieving the above intended goals. The Commission specifically sought comment on whether to further reduce regulatory burdens on small entities by amending 47 CFR 17.17(b) (redesignated as 47 CFR 17.24) to provide that a revised FAA Circular does not impose new obligations on already-approved antenna structures. The Commission sought comment on whether such deregulatory action would unduly limit the Commission's flexibility and whether it would afford appropriate deference to the FAA's expertise and how possible alternatives could further lessen the burden on small businesses while achieving these goals.

100. For each of the rule changes, the Commission sought discussion, and where relevant, alternative proposals, on the effect that each new requirement, or alternative rules, might have on small entities. For each rule change, the Commission sought discussion about the burden that the rule change would impose on small entities and how the Commission could impose such rule

changes while minimizing the burdens on small entities. For each rule change, the Commission asked whether there were any alternatives that the Commission could implement that could achieve the Commission's goals while at the same time minimizing the burdens on small entities.

101. As a result, the rule modifications the Commission implements in this Report and Order will reduce redundancy, conflicts and ambiguity in antenna marking and lighting regulations. In pursuit of that end, the Commission has: (1) deleted any reference to older FAA Advisory Circulars, instead requiring structure owners to generally comply with the FAA's no hazard determination and associated study for a structure in establishing painting and lighting specifications; (2) eliminated the stated exemptions to the lighting and marking criteria for previously authorized structures and clarified that existing antenna structures will generally not be required to comply with any new lighting and marking requirements unless the FAA mandates application of such changes with regard to a particular structure; (3) amended the rules to provide that any change in height of one foot or greater, or any change in coordinates of one second or greater requires prior approval; (4) lengthened the notification and dismantlement requirements to provide that the owner of an antenna structure shall notify the Commission within five days of when a construction or alteration of a structure reaches its greatest height, when a construction or alteration is dismantled or destroyed, and when there are any changes in structure height or ownership; (5) continued to allow owners to voluntarily register antenna structures and required owners to designate when a particular registration is done voluntarily; (6) modified the rules to allow owners to provide tenants the ASR number and link to the Commission's online system via mail, email, or other electronic means, as an alternative to providing a paper copy of Form 854R; (7) exempted qualifying NOC-based monitoring systems from quarterly inspection obligations, thereby eliminating the quarterly inspection obligation for those towers using sufficiently robust monitoring systems; (8) limited the time period to two years for requiring antenna structure owners to maintain a record of observed or otherwise known extinguishments or improper functioning of structure lights and providing such records to the Commission upon request; and (9) harmonized its tower cleaning and

repainting standards with the FAA's and declined to require tower repainting every ten years. While not specifically targeted at small firms, these numerous measures are intended to lessen the regulatory burden on all tower owners and operators.

d. Federal Rules That Might Duplicate, Overlap, or Conflict With the Rules

102. The IRFA in the (NPRM) of this proceeding omitted reference to the FAA in section F of the IRFA even though the (NPRM) addressed Commission rules that in some cases duplicated, overlapped, or were inconsistent with rules of the FAA. Notwithstanding the omission of Section F, the (NPRM) and the IRFA explained how the Commission's rules overlap and are inconsistent with the FAA's rules. Accordingly, the (NPRM) proposed amendments to the part 17 rules to update and modernize them, including harmonizing them with FAA rules where appropriate. The IRFA noted the overlapping and conflicting rules vis-à-vis the FAA's and Commission's shared responsibility to safeguard air traffic and promote tower safety and visibility. Specifically, the IRFA proposed to eliminate Commission rules that were restatements of FAA rules and to cross reference relevant FAA rules in order to eliminate confusion. The IRFA also proposed changes that were intended to clarify the relationship between the Commission's rules and procedures and those of the FAA to ensure continued consistency in those rules and procedures. The Commission further proposed to require use of the FAA's criteria for tower visibility, including determining when an antenna structure needs to be cleaned and repainted.

103. In the *Report and Order*, the Commission takes the following actions to harmonize Commission rules with overlapping FAA rules by: (1) eliminating any reference to older FAA Advisory Circulars in the Commission's rules, and instead requiring structure owners to generally comply with the FAA's no hazard determination and associated study for a structure in establishing painting and lighting specifications; (2) deciding that it generally will not require existing antenna structures to comply with any new lighting and marking requirements unless the FAA mandates application of such changes with regard to a particular structure; (4) determining that it will continue to defer to the FAA and require antenna structure owners to provide height and location measurements matching those provided to the FAA in their applications; (5)

modifying notification and dismantlement requirements to make them consistent with the FAA's rules by requiring the owner of an antenna structure to notify the Commission within five days of when a construction or alteration of a structure reaches its greatest height, when a construction or alteration is dismantled or destroyed, and when there are any changes in structure height or ownership; (6) revising Commission rules to require antenna structure owners to provide continuously active NOTAM notice to the FAA of lighting outages; (7) requiring that an antenna structure owner notify the FAA that it needs to extend the lighting outage date, as well as provide a return to service date, if a lighting outage cannot be repaired within the FAA's original NOTAM period; (8) changing the requirement that the FAA must be notified of a lighting outage by telephone or telegraph and requiring instead that such notification be made by a means acceptable to the FAA; and (9) adopting the FAA's In-Service Aviation Orange Tolerance Chart as the benchmark for determining whether a structure needs to be cleaned or repainted.

104. The Commission sought extensive public comment on these issues in the (NPRM), and in the attached IRFA. After an exhaustive review of the record and a careful weighing of the costs and benefits, the Commission adopted the proposed regulatory changes to eliminate duplicative, overlapping, or conflicting regulations, thereby achieving improved regulatory harmonization with the FAA.

e. Report to Congress

105. The Commission will send a copy of the Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.

f. Report to Small Business Administration

106. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

C. Congressional Review Act

107. The Commission will send a copy of this Report and Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act.

IV. Ordering Clauses

108. *Accordingly, it is ordered*, pursuant to sections 4(i), 4(j), 11 and 303(q) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i)–(j), 161, 303(q), that this Report and Order is hereby adopted.

109. *It is further ordered* that parts 0, 1, and 17 of the Commission's rules, 47 CFR. 0.331, 1.61, 17.1, 17.2, 17.4, 17.6, 17.7, 17.14, 17.17, 17.21, 17.22, 17.23, 17.24, 17.45, 17.47, 17.48, 17.49, 17.50, 17.51, 17.56, 17.57, and 17.58 *are amended* as specified in, and such rule amendments shall be effective October 24, 2014, except for those rules and requirements which contain new or modified information collection requirements that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA) and *will become effective* after the Commission publishes a notice in the **Federal Register** announcing such approval and the relevant effective date.

110. *It is further ordered* that the American Tower Corporation Request for Modification of Existing Waiver of 47 CFR 17.47(b) *is dismissed* without prejudice.

111. *It is further ordered* that, pursuant to section 801(a)(1)(A) of the Congressional Review Act, 5 U.S.C. 801(a)(1)(A), the Commission *shall send* a copy of this Report and Order to Congress and to the Government Accountability Office.

112. It is further ordered that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 0

Commission organization.

47 CFR Part 1

Administrative practice and procedures, Telecommunications.

47 CFR Part 17

Aviation safety, Communications equipment, Construction, marking, and lighting of antenna structures, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

Final rules

For the reasons discussed in the preamble, the Federal Communications

Commission amends 47 CFR parts 0, 1, and 17 as follows:

PART 0—COMMISSION ORGANIZATION

■ 1. The authority citation for part 0 continues to read as follows:

Authority: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, 225, unless otherwise noted.

■ 2. Section 0.331 is amended by revising paragraph (d) to read as follows:

§ 0.331 Authority delegated.

(d) *Authority concerning rulemaking proceedings.* The Chief, Wireless Telecommunications Bureau shall not have the authority to act upon notices of proposed rulemaking and inquiry, final orders in rulemaking proceedings and inquiry proceedings, and reports arising from any of the foregoing except such orders involving ministerial conforming amendments to rule parts, or orders conforming any of the applicable rules to formally adopted international conventions or agreements where novel questions of fact, law, or policy are not involved. Orders conforming any of the applicable rules in part 17 of this chapter to rules formally adopted by the Federal Aviation Administration also need not be referred to the Commission if they do not involve novel questions of fact, law, or policy. In addition, revisions to the airport terminal use list in § 90.35(c)(61) of this chapter and revisions to the Government Radiolocation list in § 90.371(b) of this chapter need not be referred to the Commission. Adoption of certain technical standards applicable to hearing aid compatibility under § 20.19 of this chapter made together with the Chief of the Office of Engineering and Technology, as specified in § 20.19(k) of this chapter, also need not be referred to the Commission. Also, the addition of new Marine VHF frequency coordination committee(s) to § 80.514 of this chapter need not be referred to the Commission if they do not involve novel questions of fact, policy or law, as well as requests by the United States Coast Guard to:

(1) Designate radio protection areas for mandatory Vessel Traffic Services (VTS) and establish marine channels as VTS frequencies for these areas; or

(2) Designate regions for shared commercial and non-commercial vessel use of VHF marine frequencies.

(3) Designate by footnote to frequency table in § 80.373(f) of this chapter marine VHF frequencies are available

for intership port operations communications in defined port areas.

* * * * *

PART 1—PRACTICE AND PROCEDURE

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

Authority: 15 U.S.C. 79 *et seq.*; 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 227, 303(r), 309, 1403, 1404, and 1451.

■ 4. Section 1.61 is amended by revising paragraph (a)(5) to read as follows:

§ 1.61 Procedures for handling applications requiring special aeronautical study.

* * * * *

(a) * * *

(5) Upon receipt of FCC Form 854, and attached FAA final determination of “no hazard,” the Bureau may prescribe antenna structure painting and/or lighting specifications or other conditions in accordance with the FAA airspace recommendation. Unless otherwise specified by the Bureau, the antenna structure must conform to the FAA's painting and lighting recommendations set forth in the FAA's determination of “no hazard” and the associated FAA study number. The Bureau returns a completed Antenna Structure Registration (FCC Form 854R) to the registrant. If the proposed structure is disapproved the registrant is so advised.

* * * * *

PART 17—CONSTRUCTION, MARKING, AND LIGHTING OF ANTENNA STRUCTURES

■ 5. The authority citation for part 17 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 309, 48 Stat. 1081, 1085 as amended; 47 U.S.C. 301, 309.

■ 6. Section 17.1 is amended by revising paragraph (b) to read as follows:

§ 17.1 Basis and purpose.

* * * * *

(b) The purpose of this part is to prescribe certain procedures for antenna structure registration and standards with respect to the Commission's consideration of proposed antenna structures which will serve as a guide to antenna structure owners.

■ 7. Section 17.2 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 17.2 Definitions.

(a) *Antenna structure.* The term antenna structure means a structure that is constructed or used to transmit radio energy, or that is constructed or used for the primary purpose of supporting antennas to transmit and/or receive radio energy, and any antennas and other appurtenances mounted thereon, from the time construction of the supporting structure begins until such time as the supporting structure is dismantled.

(b) *Antenna farm area.* A geographical location, with established boundaries, designated by the Federal Communications Commission, in which antenna structures with a common impact on aviation may be grouped.

(c) *Antenna structure owner.* For the purposes of this part, an antenna structure owner is the individual or entity vested with ownership, equitable ownership, dominion, or title to the antenna structure that is constructed or used to transmit radio energy, or the underlying antenna structure that supports or is intended to support antennas and other appurtenances. Notwithstanding any agreements made between the owner and any entity designated by the owner to maintain the antenna structure, the owner is ultimately responsible for compliance with the requirements of this part.

* * * * *

■ 8. Section 17.4 is amended by revising paragraphs (a), (b), (e), (f), (g), and adding paragraphs (i), (j), and (k) to read as follows:

§ 17.4 Antenna structure registration.

(a) The owner of any proposed or existing antenna structure that requires notice of proposed construction to the Federal Aviation Administration (FAA) due to physical obstruction must register the structure with the Commission. (See § 17.7 for FAA notification requirements.) This includes those structures used as part of stations licensed by the Commission for the transmission of radio energy, or to be used as part of a cable television head end system. If a Federal Government antenna structure is to be used by a Commission licensee, the structure must be registered with the Commission. If the FAA exempts an antenna structure from notification, it is exempt from the requirement that it register with the Commission. (See § 17.7(e) for exemptions to FAA notification requirements.)

(1) For a proposed antenna structure or alteration of an existing antenna structure, the owner must register the

structure prior to construction or alteration.

(2) For a structure that did not originally fall under the definition of "antenna structure," the owner must register the structure prior to hosting a Commission licensee.

(b) Except as provided in paragraph (e) of this section, each owner of an antenna structure described in paragraph (a) of this section must file FCC Form 854 with the Commission. Additionally, each owner of a proposed structure referred to in paragraph (a) of this section must submit a valid FAA determination of "no hazard." In order to be considered valid by the Commission, the FAA determination of "no hazard" must not have expired prior to the date on which FCC Form 854 is received by the Commission. The height of the structure will be the highest point of the structure including any obstruction lighting or lightning arrester. If an antenna structure is not required to be registered under paragraph (a) of this section and it is voluntarily registered with the Commission after the effective date of this rule, the registrant must note on FCC Form 854 that the registration is voluntary. Voluntarily registered antenna structures are not subject to the lighting and marking requirements contained in this part.

* * * * *

(e) If the owner of the antenna structure cannot file FCC Form 854 because it is subject to a denial of Federal benefits under the Anti-Drug Abuse Act of 1988, 21 U.S.C. 862, the first tenant licensee authorized to locate on the structure (excluding tenants that no longer occupy the structure) must register the structure using FCC Form 854, and provide a copy of the Antenna Structure Registration (FCC Form 854R) to the owner. The owner remains responsible for providing to all tenant licensees and permittees notification that the structure has been registered, consistent with paragraph (f) of this section, and for posting the registration number as required by paragraph (g) of this section.

(f) The Commission shall issue to the registrant FCC Form 854R, Antenna Structure Registration, which assigns a unique Antenna Structure Registration Number. The antenna structure owner shall immediately provide to all tenant licensees and permittees notification that the structure has been registered, along with either a copy of Form 854R or the Antenna Structure Registration Number and a link to the FCC antenna structure Web site: <http://wireless.fcc.gov/antenna/>. This

notification may be done electronically or via paper mail.

(g) Except as described in paragraph (h) of this section, the Antenna Structure Registration Number must be displayed so that it is conspicuously visible and legible from the publicly accessible area nearest the base of the antenna structure along the publicly accessible roadway or path. Where an antenna structure is surrounded by a perimeter fence, or where the point of access includes an access gate, the Antenna Structure Registration Number should be posted on the perimeter fence or access gate. Where multiple antenna structures having separate Antenna Structure Registration Numbers are located within a single fenced area, the Antenna Structure Registration Numbers must be posted both on the perimeter fence or access gate and near the base of each antenna structure. If the base of the antenna structure has more than one point of access, the Antenna Structure Registration Number must be posted so that it is visible at the publicly accessible area nearest each such point of access. Materials used to display the Antenna Structure Registration Number must be weather-resistant and of sufficient size to be easily seen where posted.

* * * * *

(i) Absent Commission specification, the painting and lighting specifications recommended by the FAA are mandatory (see § 17.23). However, the Commission may specify painting and/or lighting requirements for each antenna structure registration in addition to or different from those specified by the FAA.

(j) Any change or correction in the overall height of one foot or greater or coordinates of one second or greater in longitude or latitude of a registered antenna structure requires prior approval from the FAA and modification of the existing registration with the Commission.

(k) Any change in the marking and lighting that varies from the specifications described on any antenna structure registration requires prior approval from the FAA and the Commission.

■ 9. Section 17.6 is amended by revising the section heading and paragraph (c) to read as follows:

§ 17.6 Responsibility for painting and lighting compliance.

* * * * *

(c) If the owner of the antenna structure cannot file FCC Form 854 because it is subject to a denial of Federal benefits under the Anti-Drug Abuse Act of 1988, 21 U.S.C. 862, the

first tenant licensee authorized to locate on the structure (excluding tenants that no longer occupy the structure) must register the structure using FCC Form 854, and provide a copy of the Antenna Structure Registration (FCC Form 854R) to the owner. The owner remains responsible for providing to all tenant licensees and permittees notification that the structure has been registered, consistent with § 17.4(f), and for posting the registration number as required by § 17.4(g).

■ 10. Section 17.7 is amended by revising the introductory text and paragraphs (b) and (d), adding paragraph (e), and designating the note at the end of the section as “Note to § 17.7.”

The revisions and addition read as follows:

§ 17.7 Antenna structures requiring notification to the FAA.

A notification to the FAA is required, except as set forth in paragraph (e) of this section, for any of the following construction or alteration:

* * * * *

(b) Any construction or alteration that exceeds an imaginary surface extending outward and upward at any of the following slopes:

(1) 100 to 1 for a horizontal distance of 6.10 kilometers (20,000 feet) from the nearest point of the nearest runway of each airport described in paragraph (d) of this section with its longest runway more than 0.98 kilometers (3,200 feet) in actual length, excluding heliports.

(2) 50 to 1 for a horizontal distance of 3.05 kilometers (10,000 feet) from the nearest point of the nearest runway of each airport described in paragraph (d) of this section with its longest runway no more than 0.98 kilometers (3,200 feet) in actual length, excluding heliports.

(3) 25 to 1 for a horizontal distance of 1.52 kilometers (5,000 feet) from the nearest point of the nearest landing and takeoff area of each heliport described in paragraph (d) of this section.

* * * * *

(d) Any construction or alteration on any of the following airports and heliports:

(1) A public use airport listed in the Airport/Facility Directory, Alaska Supplement, or Pacific Chart Supplement of the U.S. Government Flight Information Publications;

(2) A military airport under construction, or an airport under construction that will be available for public use;

(3) An airport operated by a Federal agency or the United States Department of Defense.

(4) An airport or heliport with at least one FAA-approved instrument approach procedure.

(e) A notification to the FAA is not required for any of the following construction or alteration:

(1) Any object that will be shielded by existing structures of a permanent and substantial nature or by natural terrain or topographic features of equal or greater height, and will be located in the congested area of a city, town, or settlement where the shielded structure will not adversely affect safety in air navigation;

(2) Any air navigation facility, airport visual approach or landing aid, aircraft arresting device, or meteorological device meeting FAA-approved siting criteria or an appropriate military service siting criteria on military airports, the location and height of which are fixed by its functional purpose;

(3) Any antenna structure of 6.10 meters (20 feet) or less in height, except one that would increase the height of another antenna structure.

* * * * *

§ 17.14 [Removed and Reserved]

■ 11. Remove and reserve § 17.14.

§ 17.17 [Remove and Reserved]

■ 12. Remove and reserve § 17.17.

■ 13. Section 17.21 is amended by revising paragraph (a) and adding paragraph (c) to read as follows:

§ 17.21 Painting and lighting, when required.

* * * * *

(a) Their height exceeds any obstruction standard requiring notification to the FAA (see § 17.4(a) and § 17.7).

* * * * *

(c) An antenna installation is of such a nature that its painting and lighting specifications in accordance with the FAA airspace recommendation are confusing, or endanger rather than assist airmen, or are otherwise inadequate. In these cases, the Commission will specify the type of painting and lighting or other marking to be used for the particular structure.

§ 17.22 [Removed and Reserved]

■ 14. Remove and reserve § 17.22.

■ 15. Section 17.23 is revised to read as follows:

§ 17.23 Specifications for painting and lighting antenna structures.

Unless otherwise specified by the Commission, each new or altered antenna structure must conform to the FAA's painting and lighting

specifications set forth in the FAA's final determination of “no hazard” and the associated FAA study for that particular structure. For purposes of this part, any specifications, standards, and general requirements set forth by the FAA in the structure's determination of “no hazard” and the associated FAA study are mandatory. Additionally, each antenna structure must be painted and lighted in accordance with any painting and lighting requirements prescribed on the antenna structure's registration, or in accordance with any other specifications provided by the Commission.

■ 16. The undesignated center heading “Aviation Red Obstruction Lighting [Reserved]” below § 17.23 is removed.

■ 17. Section 17.24 is added to read as follows:

§ 17.24 Existing structures.

No change to painting or lighting criteria or relocation of airports shall at any time impose a new restriction upon any then existing or authorized antenna structure or structures, unless the FAA issues a new determination of “no hazard” and associated FAA study for the particular structure.

§ 17.45 [Removed and Reserved]

■ 18. Remove and reserve § 17.45.

■ 19. Section 17.47 is amended by adding paragraph (c) to read as follows:

§ 17.47 Inspection of antenna structure lights and associated control equipment.

* * * * *

(c) Is exempt from paragraph (b) of this section for any antenna structure monitored by a system that the Wireless Telecommunications Bureau has determined includes self-diagnostic features sufficient to render quarterly inspections unnecessary, upon certification of use of such system to the Bureau.

■ 20. Section 17.48 is amended by revising paragraphs (a) and (b) to read as follows:

§ 17.48 Notification of extinguishment or improper functioning of lights.

* * * * *

(a) Shall report immediately to the FAA, by means acceptable to the FAA, any observed or otherwise known extinguishment or improper functioning of any top steady burning light or any flashing obstruction light, regardless of its position on the antenna structure, not corrected within 30 minutes. If the lights cannot be repaired within the FAA's Notices to Airmen (NOTAM) period, the owner shall notify the FAA to extend the outage date and report a return-to-service date. The owner shall

repeat this process until the lights are repaired. Such reports shall set forth the condition of the light or lights, the circumstances which caused the failure, the probable date for restoration of service, the FCC Antenna Structure Registration Number, the height of the structure (AGL and AMSL if known) and the name, title, address, and telephone number of the person making the report. Further notification to the FAA by means acceptable to the FAA shall be given immediately upon resumption of normal operation of the light or lights.

(b) An extinguishment or improper functioning of a steady burning side intermediate light or lights, shall be corrected as soon as practicable, but notification to the FAA of such extinguishment or improper functioning is not required.

■ 21. Section 17.49 is amended by revising the introductory text to read as follows:

§ 17.49 Recording of antenna structure light inspections in the owner record.

The owner of each antenna structure which is registered with the Commission and has been assigned lighting specifications referenced in this part must maintain a record of any observed or otherwise known extinguishment or improper functioning of a structure light. This record shall be retained for a period of two years and provided to the FCC or its agents upon request. The record shall include the following information for each such event:

* * * * *

■ 22. Section 17.50 is revised to read as follows:

§ 17.50 Cleaning and repainting.

Antenna structures requiring painting under this part shall be cleaned or repainted as often as necessary to maintain good visibility. Evaluation of the current paint status shall be made by using the FAA's In-Service Aviation Orange Tolerance Chart. This chart is based upon the color requirements contained in the National Bureau of Standards Report NBSIR 75-663, Color Requirements for the Marking of Obstructions.

§ 17.51 [Removed and Reserved]

■ 23. Remove and reserved § 17.51.

■ 24. Section 17.56 is revised to read as follows:

§ 17.56 Maintenance of lighting equipment.

Replacing or repairing of lights, automatic indicators or automatic control or alarm systems shall be accomplished as soon as practicable.

■ 25. Section 17.57 is revised to read as follows:

§ 17.57 Report of radio transmitting antenna construction, alteration, and/or removal.

The owner of an antenna structure for which an Antenna Structure Registration Number has been obtained must notify the Commission within 5 days of completion of construction (FCC Form 854-R) and/or dismantlement (FCC Form 854). The owner must also notify the Commission within 5 days of any change in structure height or change in ownership information (FCC Form 854).

§ 17.58 [Removed and Reserved]

■ 26. Remove and reserved § 17.58.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[ET Docket No. 13-49; FCC 14-30]

Unlicensed National Information Infrastructure (U-NII) Devices in the 5 GHz Band

AGENCY: Federal Communications Commission.

ACTION: Final rules; announcement of effective date.

SUMMARY: In this document, the Commission announces that the Office of Management and Budget (OMB) has approved, for a period of three years, the information collection requirements contained in the regulations in the "Unlicensed National Information Infrastructure (U-NII) Devices in the 5 GHz Band." The information collection requirements were approved on August 27, 2014 by OMB.

DATES: The amendments to 47 CFR 15.407(j), published at 79 FR 24569, May 1, 2014, is effective September 24, 2014.

FOR FURTHER INFORMATION CONTACT: For additional information contact Nancy Brooks on (202) 418-2454 or email Nancy.Brooks@fcc.gov.

SUPPLEMENTARY INFORMATION: This document announces that on August 27, 2014, OMB approved, for a period of three years, the information collection requirements contained in 47 CFR 15.407(j). The Commission publishes this document to announce the effective date of this rule section. See, Revision of Part 15 of the Commission's Rules to Permit Unlicensed National Information Infrastructure (U-NII) Devices in the 5

GHz Band, ET Docket No. 13-49; FCC 14-30, 79 FR 24569, May 1, 2014.

Synopsis

As required by the Paperwork Reduction Act of 1995, (44 U.S.C. 3507), the Commission is notifying the public that it received OMB approval on August 27, 2014, for the information collection requirement contained in 47 CFR 15.407(j). Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid OMB Control Number.

The OMB Control Number is 3060-1199 and the total annual reporting burdens for respondents for this information collection are as follows:

OMB Control Number: 3060-1199.

OMB Approval Date: 8/27/2014.

OMB Expiration Date: 8/31/2017.

Title: Section 15.407(j), U-NII Operator Filing Requirement.

Form Number: N/A.

Type of Review: New collection.

Respondents: Businesses or other for-profit.

Number of Respondents: 17

Respondents: 17 Responses.

Estimated Time per Response: 32 hours.

Frequency of Response: On occasion one time reporting, recordkeeping and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 154(i), 301, 302a, 303(e), 303(f), 303(g), and 303(r).

Total Annual Burden: 544 hours.

Total Annual Costs: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Privacy Act Impact Assessment: N/A.

Needs and Uses: On March 31, 2014, the Commission adopted a First Report and Order, *Revision of Part 15 of the Commission's Rules to Permit Unlicensed National Information Infrastructure (U-NII) in the 5 GHz Band*, ET Docket No. 13-49, FCC 14-30. Section 15.407(j) of the rules established filing requirements for U-NII operators that deploy a collection of more than one thousand outdoor access points with the 5.15-5.25 GHz band, parties must submit a letter to the Commission acknowledging that, should harmful interference to licensed services in this band occur, they will be required to take corrective action. Corrective actions may include reducing power, turning off devices, changing frequency bands, and/