State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Buncombe	Unincorporated areas of Buncombe County, (10–04–2274P).	May 13, 2011; May 20, 2011; *The Asheville Citizen-Times*.	Ms. Wanda Greene, Buncombe County Manager, 205 College Street, Suite 300, Asheville, NC 28801.	September 19, 2011	370031
Davidson	Unincorporated areas of Davidson County, (10–04–3473P).	May 6, 2011; May 13, 2011; *The High Point Enterprise*.	Mr. Robert Hyatt, Davidson County Manager, 913 Greensboro Street, Lexington, NC 27292.	September 12, 2011	370307
Guilford	City of High Point, (10–04–3473P).	May 6, 2011; May 13, 2011; *The High Point Enterprise*.	The Honorable Rebecca R. Smothers, Mayor, City of High Point, P.O. Box 230, 211 South Hamilton Street, High Point, NC 27261.	September 12, 2011	370113
Madison	Unincorporated areas of Madison County, (10–04–8485P).	March 30, 2011; April 6, 2011; *The News-Record & Sentinel*.	Mr. Steve Garrison, Madison County Manager, P.O. Box 579, Marshall, NC 28753.	August 4, 2011	370152
Texas: Denton	City of Lewisville, (10–06–3039P).	May 26, 2011; June 2, 2011; *The Denton Record-Chronicle*.	The Honorable Dean Ueckert, Mayor, City of Lewisville, 151 West Church Street, Lewisville, TX 75029.	June 20, 2011	480195
Utah: Salt Lake	City of West Jordan, (11–08–0575P).	April 29, 2011; May 6, 2011; *The Salt Lake Tribune*.	The Honorable Melissa K. Johnson, Mayor, City of West Jordan, 8000 South Redwood Road, West Jordan, UT 84088.	April 25, 2011	490108

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: July 29, 2011.

Sandra K. Knight,

Deputy Federal Insurance and Mitigation Administrator, Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2011–20716 Filed 8–12–11; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[IB Docket No. 06–123; FCC 11–93]

Service Rules and Policies for the Broadcasting Satellite Service (BSS)

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission adopts rules to mitigate space path interference between the 17/24 GHz Broadcasting-Satellite Service (BSS) space-to-Earth transmissions and the feeder link receiving antennas of Direct Broadcast Satellite Service (DBS) space stations that operate in the same frequency band. We adopt an off-axis power flux density (pfd) coordination trigger for 17/24 GHz BSS space stations. We also require a minimum orbital separation of 0.2 degrees between 17/24 GHz BSS space stations and DBS space stations. We place bounds on orbital eccentricity and inclination of 17/24 GHz BSS space stations and condition the protection of DBS networks to certain assumed limits on eccentricity and inclination. By these actions, we facilitate the introduction of the 17/24 GHz BSS and anticipate that it will provide new and innovative services, including video, audio, data, and video-on-demand, to consumers in the United States and promote increased competition among satellite and terrestrial services.

We revised our informational requirements to require 17/24 GHz BSS space station applicants to file pfd calculations (and if the pfd coordination trigger is exceeded, to file coordination information), and to file predicted and measured transmitting antenna off-axis gain information. We also require both 17/24 GHz BSS applicants and DBS applicants to file maximum orbital eccentricity information with their application. Finally, we adopt procedures to enable pending applicants and existing authorization holders to file relevant information related to these rules.

DATES: Effective September 14, 2011, except §§ 25.114(d)(15)(iv), 25.114(d)(18), 25.264(a), (b), (c), (d) and (f), of the Commission's rules. These requirements contained herein are subject to the Paperwork Reduction Act (PRA) and 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 requirements.

FOR FURTHER INFORMATION CONTACT: Lynne Montgomery, Satellite Division, International Bureau, at 202–418–2229 or via e-mail at *Lynne.Montgomery@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Second Order on Reconsideration in IB Docket No. 06–123, FCC 11–93, adopted June 8, 2011 and released June 14, 2011. The full text of the Second Order on Reconsideration is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–488–5300, facsimile 202–488–5563, or via e-mail *FCC@BCPIWEB.com.* When ordering documents from BCPI please provide the appropriate FCC document number (for example, FCC 07–174, Order on Reconsideration). The full text may also be downloaded at: *http://www.fcc.gov.* Alternative formats are available to person with disabilities by sending an e-mail to *fcc504@fcc.gov* or call the Consider & Governmental Affairs Bureau at 202–418–0530 (voice), or 202–418–0432 (tty).

Synopsis

1. We adopt an off-axis power flux density (pfd) coordination trigger for 17/24 GHz BSS space stations, require a minimum orbital separation of 0.2° between 17/24 GHz BSS space stations and DBS space stations, and place bounds on orbital inclination and eccentricity of 17/24 GHz BSS space stations. We also revise our informational requirements to require 17/24 GHz BSS space station applicants to file predicted and measured transmitting antenna off-axis gain information. Finally, we adopt procedures to enable pending applicants and existing authorization holders to

file relevant information related to these rules. By these actions, we facilitate the introduction of the 17/24 GHz BSS and anticipate that it will provide new and innovative services, including video, audio, data, and video-on-demand, to consumers in the United States and promote increased competition among satellite and terrestrial services.

2. *Off-Axis Power Flux Density Coordination Trigger.* We adopt an off-axis pfd trigger level of -117 dBW/m^2/100 kHz at the receiving antenna of any licensed U.S. DBS space station, any foreign DBS space station authorized to provide service in the United States, and any DBS space station proposed in a previously filed application for a U.S. license or U.S. market access. We also recognize that, at some orbital locations, a particular DBS or 17/24 GHz BSS network may not be authorized to operate throughout the entire 17.3–17.8 GHz band. Thus, we make clear that this coordination requirement applies only in the case of co-frequency operations between the DBS network and the 17/24 GHz BSS network. We will require each 17/24 GHz BSS applicant to identify all relevant DBS networks for which the off-axis pfd coordination trigger is exceeded. The off-axis pfd level should be determined for all transmitting beams in the 17.3–17.8 GHz band, over both polarizations, and at a minimum must take into account three key factors: (1) The power level delivered into the 17 GHz transmitting antenna; (2) the off-axis gain of the 17 GHz transmitting antenna in the direction of the DBS space station; and (3) the particular geometric configuration between the 17/24 GHz BSS and DBS space stations.

3. *No Separate Trigger for DBS Telecommand Transmissions.* The pfd coordination trigger value that we are adopting here, in combination with the narrower measurement bandwidth of 100 kHz, provide sufficient protection to DBS telecommand links. The associated information showings and the requirement to coordinate in cases where the pfd of the 17/24 GHz BSS downlink signal at the adjacent DBS space station is in excess of the coordination trigger level will afford the DBS operator sufficient opportunity for detailed examination of the effect of the 17/24 GHz BSS downlink transmissions on its telecommand links, and a mechanism to remedy the situation if it is deemed necessary. Accordingly, we do not adopt a technical showing specific to DBS telecommand links but instead rely upon the off-axis pfd coordination trigger adopted above.

4. *Required Angular Ranges for Antenna Off-Axis Gain Data.* Small variations in satellite orbital eccentricity and inclination can produce significant variation in the geometry occurring between two adjacent spacecraft, particularly as the separation between those spacecraft decreases. Inter-spacecraft geometry is generally more sensitive to variations in orbital inclination than to variations in eccentricity, when typical values for these parameters are taken into account.

5. A review of the orbital parameters of operating DBS space stations reveals that the largest orbital apogee-perigee variation is 26.3 km. Thus, the measurement range of ± 30° from the X axis in the X–Z plane proposed by DIRECTV should be sufficient to address cases where the 17/24 GHz BSS space station is operating with a non-biased configuration (*i.e.,* lying in the X–Z plane and pointed toward the Earth along the Z axis) and is separated in longitude from an adjacent DBS spacecraft by as little as 0.1°.

6. Similarly, a review of DBS orbital parameters indicates that most currently operating DBS satellites are stationkept in the north/south direction to within 0.075° of the equatorial plane. A similar north-south stationkeeping tolerance for a nearby 17/24 GHz BSS space station will yield a worst-case total inclination separation of 0.15° between the two space stations. If we were to adopt a ±20° range for measurements in planes rotated about the Z axis, as proposed by DIRECTV, the submitted transmitting antenna off-axis gain data would cover cases in which DBS and 17/24 GHz BSS spacecraft could be located as close as 0.45° in longitude along the GSO arc. Allowing for a worst-case inclination separation of 0.15° between the two space stations, a ±60° angular range of measurements made in planes rotated about the Z axis, as proposed by EchoStar, would cover space station longitudinal separations as closely spaced as 0.1°.

7. In specifying the angular ranges over which transmitting antenna off-axis gain data must be provided, we attempt to strike a balance among competing, but inter-related factors. Specifically, we seek to provide operators with the flexibility to locate at small orbital separations while adopting data submission requirements that are within ranges considered to be reasonable by commenters. Simultaneously, we seek to provide sufficient flexibility to accommodate typical operating variations in orbital inclination and eccentricity. Thus, we believe that transmitting antenna off-axis gain measurements made over a range of ± 30° from the X axis in the X–Z plane, and over a range of ±60° in planes rotated about the Z axis, should permit accurate off-axis pfd information to be calculated for 17/24 GHz BSS space stations separated in longitude by as little as 0.1° from DBS space stations. EchoStar has advocated extending the measurement range to include a full ±120° in the X–Z plane. We do not believe, however, that the rationale offered by EchoStar justifies adopting a requirement for such a large quantity of measured data. We do, however, concur with EchoStar's assertion that the antenna gain data in the X–Z plane should be measured in 5° rather than 10° increments in light of the potential gain variation within a 10° span. Accordingly, we will require 17/24 GHz BSS applicants to submit transmitting antenna off-axis gain information in both polarizations in the X–Z plane over an angular range of ± 30° from the positive and the negative X axes, at 5° intervals, and through a range of ±60° in planes rotated from the X–Z plane about the Z axis at 10° intervals.

8. We note that antenna off-axis gain is a frequency dependent parameter, and performance characteristics will not be identical when measured at different frequencies within the 17.3–17.8 GHz band. Although commenters were in general agreement regarding the need to provide transmitting antenna off-axis gain data within the 17.3–17.8 GHz band, no commenter provided input regarding the granularity of the frequency steps at which gain measurements should be made. In order to adequately characterize the off-axis gain performance of the 17 GHz transmitting antennas, but without unduly burdening the applicant, we will require that off-axis antenna gain measurements be made at a minimum of three frequencies. These frequencies should be determined with respect to the entire portion of the 17.3–17.8 GHz frequency band over which the space station is designed to transmit. Accordingly, at a minimum, transmitting antenna off-axis gain measurements should be made at the following three frequencies: 5 MHz above the lower edge of the band; at the band center frequency; and 5 MHz below the upper edge of the band.

9. The transmitting antenna off-axis gain data submission requirements discussed above are suitable for a space station that is operating with a non-biased orientation. As DIRECTV correctly points out, however, a space station eventually may be operated at a location different from the one where it was originally designed to operate. As a consequence, it may be rotated relative to the reference coordinate system in order to achieve the desired service area

coverage. DIRECTV suggests that the interference analysis for such scenarios could be best accomplished if the information requirements we adopt take such an eventuality into account, and recommends that sufficient data be provided by the applicant to permit evaluation of potential interference in such instances. Specifically, DIRECTV suggests that applicants should provide sufficient data to allow for interference analysis when the satellite is biased up to ± 30° in the X–Z plane, and up to ± 20° in planes rotated about the Z axis.

10. We agree with DIRECTV that satellite bias must be taken into account in antenna off-axis performance information. We find, however, that the range of bias proposed by DIRECTV is overly large. Rather than presume a likely maximum bias and encumber all 17/24 GHz BSS applicants with information submission requirements intended to address this possible situation, we believe that a more reasonable approach is to require the applicant to take into account any anticipated satellite bias. Thus, we will require that 17/24 GHz BSS applicants submit transmitting antenna off-axis performance information to cover the specified angular measurement ranges that will account for planned bias relative to the reference coordinate system. Therefore, depending upon the direction and magnitude of the planned bias, the applicant must determine whether measurements must be taken over a greater angular range—when compared with the angular range over which measurement is required for a space station operating with zero bias—to accommodate any change of operating orientation. The applicant must submit its antenna performance measurements over this expanded angular range, and must explain its rationale for doing so, and indicate the planned spacecraft orientation bias in its application.

11. In addition, a 17/24 GHz BSS operator seeking to relocate a space station must include in its relocation application a discussion of any planned spacecraft orientation bias and, if necessary, submit additional transmitting antenna off-axis gain information to take into account such biased orientation. We note that if an operator is unable to provide this additional data, the Commission may be prevented from taking a favorable action on the operator's proposed modification. Thus, we caution 17/24 GHz BSS applicants that it is their responsibility to anticipate the possibility of future changes in operating orientation. Thus, while initial antenna performance information may be required over a particular angular range, applicants might consider measuring the antenna performance over a larger range, so that the antenna off-axis performance information will be available in the event the operator seeks a change in operating orientation at some point in the future.

12. *Minimum Orbital Separation Requirement of 0.2° Adopted.* Small variations in satellite orbital eccentricity and inclination can produce significant variation in the geometry occurring between two adjacent spacecraft, particularly as the separation between those spacecraft decreases. The off-axis pfd coordination trigger and consequent transmitting antenna off-axis performance submission requirements are based on analyses that sought to accommodate typical operating variations in orbital inclination and eccentricity, while simultaneously permitting close orbital separation, and while maintaining information measurement requirements within ranges asserted to be reasonable by the commenters. Our analysis determined that these conditions could best be met with a minimum longitudinal separation of 0.1° between the DBS and 17/24 GHz BSS spacecraft. In the event of smaller longitudinal separations, critical assumptions regarding the value chosen for the coordination trigger and the ranges of transmitting antenna off-axis gain information would no longer be valid. Accordingly, to maintain a longitudinal separation of 0.1° between DBS and 17/24 GHz BSS space stations at all times, and taking into account the east/west stationkeeping tolerance of 0.05°, we will require a minimum orbital separation of 0.2° between the assigned locations of 17/24 GHz BSS and DBS space stations, absent an explicit agreement between the two licensees to permit closer operations.

13. *Bounds on Orbital Inclination and Eccentricity.* The range of transmitting antenna off-axis gain measurement defined above assumes that the orbits of the DBS and 17/24 GHz BSS space stations do not exceed certain worst-case values of orbital eccentricity or orbital inclination. To ensure that the geometric assumptions underlying our antenna off-axis angular measurement requirements are valid, some bound must be placed on the orbital eccentricity and orbital inclination of both 17/24 GHz BSS and DBS space stations. Of these two parameters, the geometry between the two spacecraft is most affected by variations in orbital inclination. The Commission's rules do not explicitly specify a stationkeeping limit in the north/south direction. Rather, our rules permit satellite operators to cease north/south stationkeeping maneuvers for the satellite as long as such operations do not increase interference. Specifically, our rules require that while a satellite is in inclined orbit, operators must maintain the interference levels experienced by adjacent satellites at levels that do not exceed those that would be caused by the satellite operating without an orbital inclination. At present, our rules also preclude licensees operating in inclined orbit from claiming protection from interference in excess of that which they would receive in the absence of inclined operations.

14. We anticipate that most DBS and 17/24 GHz BSS satellites will typically operate with orbits that are not highly inclined, in large part to avoid the need for satellite-tracking earth stations. In the reverse-band sharing environment, however, where space path interference occurring between two networks can be significantly influenced by relatively small variations in orbital inclination, we believe that more specificity regarding angular inclination is required. To ensure that the 17/24 GHz BSS space station remains within the range of locations relative to the DBS space station that is assumed by our angular measurement requirements, a maximum permissible orbital inclination must be established. Accordingly, we will require that operating 17/24 GHz BSS space stations be maintained in orbits that do not exceed 0.075° of inclination. Similarly, we will protect DBS networks from space path interference from nearby 17/24 GHz BSS networks only to the extent that the DBS space station is maintained in an orbit with an inclination less than 0.075°.

15. The 30° angular off-axis gain information in the X–Z plane assumes that at a longitudinal separation of 0.1° there will be no more than 40 km difference in the apogee and perigee values of the two adjacent spacecraft. Presuming that this difference can be equally distributed between the DBS and 17/24 GHz BSS space stations, we will require that 17/24 GHz BSS space stations be maintained in orbits whose orbital altitude does not exceed 35,806 km or fall below 35,766 km above the Earth's surface when transmitting 17/24 GHz BSS service-link signals. Similarly, we will protect DBS networks operating in the geostationary orbit from space path interference from nearby 17/24 GHz BSS networks only to the extent that the DBS space station orbit is maintained within these same maximum and minimum altitude

values. While our rules permit DBS operators to operate in orbits with higher inclination or eccentricity values, it is the responsibility of the DBS operator exceeding these inclination or eccentricity values to assess the potential for interference from nearby 17/24 GHz BSS systems, and to accept any such additional interference arising as a result of its inclined or eccentric operations. To best facilitate the calculation of potential off-axis interference between 17/24 GHz BSS and DBS space stations, in addition to the east/west and north/south stationkeeping information already required, we will require applicants in both services to provide predicted maximum orbital eccentricity values with their applications. We adopt these limits on orbital eccentricity and orbital inclination as a logical outgrowth to the off-axis pfd coordination trigger and the transmitting antenna off-axis gain information requirements adopted in this order.

16. *Two-Part Submission Process for Antenna Off-Axis Gain Data.* All 17/24 GHz BSS applicants are required to provide transmitting antenna off-axis gain information. In cases where the 17/24 GHz BSS operator seeks to operate near an established DBS satellite, the transmitting antenna off-axis gain information for the 17 GHz transmitting antenna needs to be available to determine whether the 17/24 GHz BSS network will cause harmful interference into the existing DBS system. It also must be available for the benefit of DBS operators who may eventually seek to launch replacement satellites at that same location. Absent additional information, we cannot determine how far apart two space stations must be in order to conclude that interference will not occur.

17. In addition, it is possible that future new entrants may seek to operate at locations that are not designated in the Region 2 BSS and Feeder Link Plans, but that are in the vicinity of established 17/24 GHz BSS space stations. Thus, we believe that the off-axis gain information of the transmitting 17 GHz band antennas should be publicly available at all locations so that such future DBS operators can make the appropriate system design decisions necessary to avoid receiving harmful interference from an established 17/24 GHz BSS space station. The time between filing an application and launch of the space station can span several years, during which time applicants seeking to operate at locations other than established U.S. DBS cluster locations would have no access to any type of 17/24 GHz BSS antenna performance information upon which to base their choice of orbital location and other system design decisions. Moreover, although at present we have little empirical experience with predicting the off-axis gain performance characteristics of 17/24 GHz BSS space station transmitting antennas in the 17.3–17.8 GHz band, it is our expectation that as familiarity with such systems and the associated analysis increases, we may place more confidence in the predicted characteristics. Accordingly, it is conceivable that in the future, operators may come to rely with increased certainty upon the results of predicted information, thereby lessening the need to wait for measured data as confirmation.

18. We believe that the general two-part approach best addresses the need to make some degree of information publicly available at the time of application, while simultaneously recognizing that the most accurate antenna characterization will not be available until space station construction is nearly complete. We also agree that measured antenna data should be submitted no later than 9 months prior to launch. We believe that requiring measured data no later than 9 months prior to launch best balances the interests of all parties, by providing the Commission and potentially affected DBS operators sufficient time to review the information and to carry out any necessary coordination, while maximizing the time in which space station operator's have to design, construct and test the antennas. We recognize, however, that requiring licensees to submit measured data no later than 9 months prior to launch can create a situation in which the interference environment in the vicinity of the 17/24 GHz BSS space station will not be well characterized until the antenna is built and operational—which could be several years after the predicted data is submitted. This level of uncertainty is not acceptable for subsequent DBS applicants seeking to locate nearby, and is particularly problematic when the 17/24 GHz BSS station locates near or within an existing DBS cluster. Accordingly, we seek an approach that will best balance the needs of both services by providing a reasonable degree of certainty to the DBS operator with regard to interference levels, while simultaneously permitting the 17/24 GHz BSS operator the flexibility to design and build its antenna.

19. To achieve these goals, we adopt the following approach. We will require all 17/24 GHz BSS applicants to submit with their applications predicted transmitting antenna off-axis gain information over the angular ranges described above. Applicants must provide pfd calculations that, on the basis of this predicted antenna gain data, (1) identify all prior-filed DBS networks at whose location that the applicant's pfd level exceeds the coordination trigger of -117 dBW/m^2/100 kHz; and (2) demonstrate to what extent the coordination trigger value is exceeded. If the applicant exceeds the coordination trigger at any prior-filed DBS location, the applicant must also provide certification that all affected DBS operators acknowledge and do not object to the applicant's higher off-axis pfd levels. Although we will not require 17/24 GHz BSS applicants to submit the details of the analytical model used to generate the predicted antenna performance data, applicants should be prepared to provide this information upon our request.

20. Further, at least 9 months prior to launch, we will require the 17/24 GHz BSS licensee to confirm the predicted data by submitting measured off-axis antenna gain information over the same angular ranges described above. Because the presence of the spacecraft body can significantly affect the off-axis antenna gain pattern, to the extent practical these measurements should be made under conditions as close to flight configuration as possible. This could be done with the antenna mounted on the spacecraft or may include the use of simulated spacecraft components. In addition, we require the licensee to: (1) Demonstrate that the pfd level at any prior-filed DBS space station does not exceed the coordination trigger of -117 dBW/m^2/100 kHz; or (2) demonstrate to what extent the coordination trigger is exceeded at any DBS space station location. Where the pfd coordination trigger is exceeded, the licensee must provide a certification that all affected DBS operators acknowledge and do not object to the applicant's higher off-axis pfd levels.

21. We recognize that there is likely to be a number of years between the filing of the initial application containing the predicted off-axis antenna gain information and the filing of the measured data based upon testing of the actual antenna. This could lead to the situation in which a DBS applicant files an application after the 17/24 GHz BSS operator submits predicted data for its antenna, but before the 17/24 GHz BSS licensee submits the measured data. In such a case, the DBS applicant could choose an orbital location and system parameters for its DBS system that are optimized for an environment

defined by the 17/24 GHz BSS antenna's predicted parameters, but not for its actual measured parameters. To provide some protection for DBS systems in these circumstances, we will also require that the 17/24 GHz BSS licensee provide its measured data and accompanying pfd calculations not only with respect to DBS satellites that were filed prior to the time it submitted its original application, but also with respect to any subsequently-filed DBS networks.

22. In the event that the pfd level at any prior-filed or subsequently-filed DBS space station determined from the measured off-axis antenna gain information exceeds that determined from the earlier predicted data, the 17/24 GHz BSS licensee must modify its license (or amend its application, as appropriate) based upon this new information. Further, if the pfd level exceeds the coordination trigger value of −117 dBW/m²/100 kHz at the antenna of any prior-filed DBS space station, the 17/24 GHz BSS licensee must either modify its operations or coordinate its operations with each affected prior-filed DBS licensee or applicant. In the event that coordination is not achieved with the prior-filed DBS space station operators, the 17/24 GHz BSS pfd levels must be reduced to conform to the coordination trigger value of −117 dBW/m²/100 kHz at the DBS location. In the case of subsequently-filed DBS space stations, the 17/24 GHz BSS applicant/licensee must coordinate or modify its operations only if the pfd levels at the location of the subsequently-filed DBS space station calculated from the measured data, exceed both the trigger level of −117 dBW/m²/100 kHz, and the pfd levels that can be calculated on the basis of the predicted off-axis antenna gain data. In such instances, the 17/24 GHz BSS operator must either modify its operations to conform to: (1) The −117 dBW/m²/100 kHz coordination trigger level, or (2) the off-axis pfd level at the victim DBS space station that can be calculated on the basis of the predicted off-axis antenna gain data that were on file with the Commission at the time the DBS application was filed, whichever is greater.

23. Where measured pfd levels exceed those predicted, and the 17/24 GHz BSS licensee is required to coordinate its operations under the above mentioned circumstances, the 17/24 GHz BSS licensee must provide certification that all affected DBS licensees acknowledge and do not object to the higher off-axis pfd levels. If the 17/24 GHz BSS licensee cannot coordinate (or does not wish to coordinate) its operations with affected DBS systems, it must instead adjust its operating parameters (*e.g.,* power levels, orbital location) so that the required pfd level is not exceeded. We wish to make clear to 17/24 GHz BSS applicants and operators that they assume the risk that any required adjustments may affect the 17/24 GHz BSS system's technical and economic viability.

24. *Procedures in the Event of Harmful Interference.* Our experience with reverse band operations—and particularly with reverse-band operations involving close-proximity space stations—is extremely limited. Further, as commenters have indicated, the off-axis receiving antenna performance characteristics of currently operating DBS satellites may not be documented. As both EchoStar and DIRECTV remind the Commission, there are millions of American consumers who depend upon DBS transmissions. The Commission's Part 25 rules currently include several requirements that address harmful interference events. Thus, while we do not adopt a service-specific rule regarding cessation of emissions, we remind operators that our existing rules apply to 17/24 GHz BSS.

25. Further, while we do not adopt service-specific rules regarding the cessation of emissions, our licensing process provides an opportunity to address this issue. While it is our intention that bounding the antenna off-axis pfd levels will ultimately provide the best mechanism for mitigating space path interference, its efficacy depends upon sufficient knowledge of the coordination situation between both space stations. Until such information can be better established for DBS receiving antennas, we believe that affording DBS operators the opportunity to raise concerns during the licensing process provides the best temporary remedy. Specifically, we believe that DBS operators are uniquely positioned to provide useful data regarding what level of interference would be sufficiently detrimental to their operations taking into account the distinct circumstances present at the orbital location and to provide this information to the Commission. Thus, we remain open to the possibility of placing additional operating constraints on a 17/24 GHz BSS space station seeking to operate in close proximity (*i.e.*, within 0.4°) to a U.S.-authorized DBS space station that was placed into service at its current location prior to the release date of this Order. The 0.4° distance is a useful threshold within which we would remain open to additional licensing conditions and is based upon the comments and analysis in the ITU document provided by DIRECTV who, in discussing an orbital separation approach to space path interference mitigation, encourages the Commission to adopt a conservative orbital separation of 0.4°. Any such additional licensing conditions would be determined on a case-by-case basis, and would address the conditions under which the 17/24 GHz BSS operator would be required to modify or terminate its transmissions. DBS operators bear the burden of timely requesting and fully justifying any such additional conditions or requirements through the public notice and comment process.

26. Where the Bureau has determined that a DBS operator has timely requested and fully justified inclusion of additional conditions on the grant of a 17/24 GHz BSS application, the Bureau should narrowly tailor the relief granted. Specifically, the conditions placed on the 17/24 GHz BSS operations should be limited to protecting U.S.-authorized DBS space stations (or non-U.S. authorized DBS space station granted market access to the United States) that were placed into service at their assigned location prior to the release date of this Order, and that are separated by 0.4° or less from the 17/24 GHz BSS space station. In these cases, the condition placed on the 17/24 GHz BSS operator would terminate if the DBS space station is relocated to a new orbital location regardless of whether that new location is within 0.4° of a current or planned 17/24 GHz BSS space station. The condition would also terminate at the end of the license term for the DBS space station at issue. We believe that in the short-term, when used as a temporary measure in combination with our other rules, this approach will provide the most effective means of balancing the competing needs of both services.

27. At present, U.S.-licensed DBS space stations and non-U.S. licensed DBS space stations granted market access to the United States are operating at only a small number of orbital locations. We have authorized 17/24 GHz BSS space stations to operate within 0.4° of a DBS space station at only one of these locations (*i.e.*, 110° W.L.), and one pending application seeks authority to operate within 0.4° of a DBS space station. For this reason, we believe that instances of unforeseen harmful interference will be exceedingly rare. Moreover, complete cessation of emissions is an extreme remedy. For the rare interference event, it will likely be sufficient for the 17/24 GHz BSS operator to correct the problem with

more moderate measures such as reducing its transmitted power levels or redistributing its transponder loading. As required by our existing rules, 17/24 GHz BSS operators are required to coordinate their operations carefully with adjacent DBS systems prior to launch. Further, we strongly encourage, but do not mandate, 17/24 GHz BSS operators to undertake cooperative on-station testing prior to commencing full operations, so that any potential interference problems between the 17/24 GHz BSS and DBS systems can be identified and mitigated at an early stage.

28. *Procedures for Pending Applications and Current Authorizations.* In this Second Report and Order, we amend our rules to require that all 17/24 GHz BSS applicants submit with their applications predicted transmitting off-axis antenna gain information over the angular range described above. In this section, we address how existing licensees and applicants can file new data to conform their licenses and pending applications to these new rules. To implement our decision here, we direct the Bureau to release a Public Notice after publication of the rules in the **Federal Register**, inviting applicants to amend their pending applications consistent with the rules we adopt today. Any application that is not amended by the date specified by the Bureau will be dismissed as defective. The Bureau will review the amended applications to determine whether they are substantially complete and acceptable for filing. The Bureau will return to the applicant as defective any amended applications that are not substantially complete.

29. We recognize that the authorizations issued under these technical rules may not be exactly what the applicants expected. This, by itself, is not a barrier to the adoption of these rules or the requirement that applicants amend their applications to come into compliance with the new rules. The Commission has the authority to apply new procedures to pending applications if doing so does not impair the rights an applicant possessed when it filed its application, increase an applicant's liability for past conduct, or impose new duties on applicants with respect to ''transactions already completed.'' Applicants do not gain any vested right merely by filing an application. Filing an application cannot be considered a ''transaction already completed'' for purposes of this analysis.

30. Similarly, the Public Notice will also require current authorization holders to file a modification application that demonstrates compliance with the rules we adopt here today, and to supplement the file with all required information. The Bureau will review the modification applications to determine whether they are substantially complete and acceptable for filing. The Bureau will return to the applicant as defective any modification applications that are not substantially complete.

31. The Commission may adopt rules that modify any station license of general applicability that affect a class of licensees, ''if in its judgment such action will promote the public interest, convenience and necessity'' and the modification may be accomplished through notice and comment rulemaking. The purpose of the Commission's actions here is to establish revised technical rules that will foster the provision of new services without causing harmful interference to a co-primary service—DBS. Neither DBS nor 17/24 GHz BSS operators possess the right to interfere with co-primary operations. We are not altering the past legal consequences of past actions of 17/24 GHz BSS authorization holders. Rather, the scheme we are adopting in this order is a means of bringing current authorization holders and pending applicants into compliance with general operational requirements. Moreover, the 17/24 GHz BSS authorization holders could not have had any reasonable expectation that the Commission would refrain from exercising its regulatory power to change the operational requirements of a service in cases where the public interest is best served by such change. Commission action that upsets expectations held by current authorization holders based on existing rules is not impermissibly retroactive. This is particularly true given the fact that all 17/24 GHz BSS licensees were aware at the time of grant that they would be subject to any additional requirements adopted as a result of this proceeding. In fact, all such licenses were granted with a condition on the face of the license stating that ''[t]his authorization and all conditions contained herein are subject to the outcome of the Commission's rulemaking in IB Docket No. 06–123 and any requirements subsequently adopted therein.''

32. We invite both 17/24 GHz BSS applicants and authorization holders to file their predicted transmitting antenna off-axis gain data at any time prior to the date that the rules adopted today become effective. We acknowledge that some parties may be close to possessing actual measured data, particularly those who actively participated and commented in this proceeding. If any of these entities have measured data, they are permitted to immediately file a modification (or amendment as appropriate) containing measured data rather than filing predicted data. No fee will be required for amendments or modifications filed for the sole purpose of amending a pending application or modifying a current authorization to comply with the rules adopted here today. Amendments that include changes in requested frequencies, orbital locations, or any other change not required by the rules adopted today, must include the appropriate fee.

Procedural Matters

A. Final Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act (''RFA''), the *FNPRM* incorporated an Initial Regulatory Flexibility Analysis (''IRFA''). The Commission sought written public comments on the possible significant economic impact of the proposed policies and rules on small entities in the *FNPRM,* including comments on the IRFA. No one commented specifically on the IRFA. Pursuant to the RFA, Appendix C provides a Final Regulatory Flexibility Analysis. It assesses the effects of adopting space path interference rules on small business concerns.

B. Final Paperwork Reduction Act of 1995 Analysis

In the *FNPRM*, the Commission analyzed the actions we now adopt in this Report and Order with respect to the Paperwork Reduction Act of 1995. The Report and Order modifies the data collection by requiring 17/24 GHz BSS applicants to provide pfd calculations at the time of application and 9 months prior to launch of the space station that either: (1) Demonstrate that the pfd level at the location of any prior-filed DBS network does not exceed the coordination trigger of -117 dBW/m2/100 kHz; or (2) demonstrate to what extent the coordination trigger is exceeded at the receiver input of any prior-filed DBS network. If the coordination trigger is exceeded, the 17/24 GHz BSS applicant must also provide certification that all affected DBS operators acknowledge and do not object to the applicant's higher off-axis pfd levels. 17/24 GHz BSS applicants are also required to submit transmitting antenna off-axis gain measurements made over a range of $\pm 30°$ from the X axis in the X–Z plane and over a range of $\pm 60°$ in planes rotated about the Z axis that should permit accurate off-axis pfd information to be calculated for DBS and 17/24 GHz BSS space stations

separated in longitude by as little as 0.2 degrees. 17/24 GHz BSS and DBS Applicants seeking to bias their space station orientation are required to file additional information with the Commission in which they provide an explanation of the planned orientation bias and the necessary increased range of antenna off-axis gain measurements. Both 17/24 GHz BSS and DBS applicants are required to file the predicted maximum orbital eccentricity with their application. This document contains new 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 new information collection requirements contained in this proceeding. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

C. Report to Congress

The Commission will send a copy of this Report & Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

Ordering Clauses

Accordingly, *It is ordered* that, pursuant to the authority contained in sections 4(i), 4(j), 7(a), 302(a), 303(c), 303(e), 303(f), 303(g), 303(j), 303(r), and 303(y) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 157(a), 302(a), 303(c), 303(e), 303(f), 303(g), 303(j), 303(r), 303(y), this Report and Order in IB Docket No. 06–123 is adopted.

It is further ordered that part 25 of the Commission's rules is amended as set forth in Appendix B, and such rule amendments shall be effective 30 days after the date of publication in the **Federal Register**, except for §§ 25.114(d)(15)(iv), 25.114(d)(18), 25.264(a), 25.264(b), 25.264(c), 25.264(d), 25.264(f), which contain new information collection requirements that require approval by the Office of Management and Budget (OMB) under the PRA. The Federal Communications Commission will publish a document in the **Federal Register** announcing such approval and the relevant effective date.

It is further ordered that the International Bureau is delegated authority to issue Public Notices consistent with this Report and Order.

It is further ordered that the final regulatory flexibility analysis, as required by section 604 of the Regulatory Flexibility Act, is adopted.

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, in accordance with section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*

It is further ordered that the Commission shall send a copy of this Report and Order in a report to be sent to Congress and the General Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 25

Communications common carriers, Communications equipment, Radio, Reporting and recordkeeping requirements, Satellites, Telecommunications.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

For the reasons discussed, in the preamble, the Federal Communications Commission amends Title 47 of the Code of Federal Regulations, Part 25 as follows:

PART 25—SATELLITE COMMUNICATIONS

■ 1. The authority citation for part 25 continues to read as follows:

Authority: 47 U.S.C. 701–744. Interprets or applies Sections 154, 301, 302, 303, 307, 309 and 332 of the Communications Act, as amended, 47 U.S.C. Sections 154, 301, 302, 303, 307, 309, and 332, unless otherwise noted.

■ 2. Section 25.114 is amended by adding paragraphs (d)(15)(iv) and (d)(18) to read as follows:

§ 25.114 Applications for space station authorizations.

* * * * *

(d) * * *

(15) * * *

(iv) The information required in § 25.264(a) and (b).

* * * * *

(18) For space stations in the Direct Broadcast Satellite service or the 17/24 GHz broadcasting-satellite service, maximum orbital eccentricity.

* * * * *

■ 3. Section 25.264 is added to subpart C to read as follows:

§ 25.264 Requirements to facilitate reverse-band operation in the 17.3–17.8 GHz band of 17/24 GHz Broadcasting-satellite Service and Direct Broadcast Satellite Service space stations.

(a) Each applicant for a space station license in the 17/24 GHz broadcasting-satellite service (BSS) must provide a series of tables or graphs with its application, that contain the predicted transmitting antenna off-axis gain information for each transmitting antenna in the 17.3–17.8 GHz frequency band. Using a Cartesian coordinate system wherein the X axis is tangent to the geostationary orbital arc with the positive direction pointing east, *i.e.*, in the direction of travel of the satellite; the Y axis is parallel to a line passing through the geographic north and south poles of the Earth, with the positive direction pointing south; and the Z axis passes through the satellite and the center of the Earth, with the positive direction pointing toward the Earth, the applicant must provide the predicted transmitting antenna off-axis antenna gain information:

(1) In the X–Z plane, *i.e.*, the plane of the geostationary orbit, over a range of ± 30 degrees from the positive and negative X axes in increments of 5 degrees or less.

(2) In planes rotated from the X–Z plane about the Z axis, over a range of ±60 degrees relative to the equatorial plane, in increments of 10 degrees or less.

(3) In both polarizations.

(4) At a minimum of three measurement frequencies determined with respect to the entire portion of the 17.3–17.8 GHz frequency band over which the space station is designed to transmit: 5 MHz above the lower edge of the band; at the band center frequency; and 5 MHz below the upper edge of the band.

(5) Over a greater angular measurement range, if necessary, to account for any planned spacecraft orientation bias or change in operating orientation relative to the reference coordinate system. The applicant must also explain its reasons for doing so.

(b) Each applicant for a space station license in the 17/24 GHz BSS must provide power flux density (pfd) calculations with its application that are based upon the predicted off-axis transmitting antenna gain information submitted in accordance with paragraph (a) of this section, as follows:

(1) The pfd calculations must be provided at the location of all prior-filed U.S. DBS space stations where the applicant's pfd level exceeds the coordination trigger of −117 dBW/m²/100 kHz in the 17.3–17.8 GHz band. In this rule, the term prior-filed U.S. DBS space station refers to any Direct Broadcast Satellite service space station application that was filed with the Commission (or authorization granted by the Commission) prior to the filing of the 17/24 GHz BSS application containing the predicted off-axis transmitting antenna gain information. The term prior-filed U.S. DBS space station does not include any applications (or authorizations) that have been denied, dismissed, or are otherwise no longer valid. Prior-filed U.S. DBS space stations may include foreign-licensed DBS space stations seeking authority to serve the United States market, but do not include foreign-licensed DBS space stations that have not filed applications with the Commission for market access in the United States.

(2) The pfd calculations must take into account the maximum permitted longitudinal station-keeping tolerance, orbital inclination and orbital eccentricity of both the 17/24 GHz BSS and DBS space stations, and must:

(i) Identify each prior-filed U.S. DBS space station at whose location the coordination threshold pfd level of −117 dBW/m²/100 kHz is exceeded; and

(ii) Demonstrate the extent to which the applicant's transmissions in the 17.3–17.8 GHz band exceed the threshold pfd level of −117 dBW/m²/100 kHz at those prior-filed U.S. DBS space station locations.

(3) If the calculated pfd level is in excess of the threshold level of −117 dBW/m²/100 kHz at the location of any prior-filed U.S. DBS space station, the applicant must also provide with its application certification that all affected DBS operators acknowledge and do not object to the applicants higher off-axis pfd levels. No such certification is required in cases where the DBS and 17/24 GHz BSS assigned operating frequencies do not overlap.

(c) No later than 9 months prior to launch, each 17/24 GHz BSS space station applicant or authorization holder must confirm the predicted transmitting antenna off-axis gain information provided in accordance with § 25.114(d)(15)(iv) by submitting measured transmitting antenna off-axis gain information over the angular ranges, measurement frequencies and polarizations described in paragraphs (a)(1) through (5) of this section. The transmitting antenna off-axis gain information should be measured under conditions as close to flight configuration as possible.

(d) No later than 9 months prior to launch, each 17/24 GHz BSS space station applicant or authorization holder must provide pfd calculations based upon the measured transmitting antenna off-axis gain information that is submitted in accordance with paragraph (c) of this section as follows:

(1) The pfd calculations must be provided:

(i) At the location of all prior-filed U.S. DBS space stations as defined in paragraph (b)(1) of this section, where the applicant's pfd level in the 17.3–17.8 GHz band exceeds the coordination trigger of −117 dBW/m²/100 kHz; and

(ii) At the location of any subsequently-filed U.S. DBS space station where the applicant's pfd level in the 17.3–17.8 GHz band exceeds the coordination trigger of −117 dBW/m²/100 kHz. In this rule, the term subsequently-filed U.S. DBS space station refers to any Direct Broadcast Satellite service space station application that was filed with the Commission (or authorization granted by the Commission) after the 17/24 GHz BSS operator submitted the predicted data required by paragraphs (a) through (b) of this section, but prior to the time the 17/24 GHz BSS operator submitted the measured data required in this paragraph. Subsequently-filed U.S. DBS space stations may include foreign-licensed DBS space stations seeking authority to serve the United States market. The term does not include any applications (or authorizations) that have been denied, dismissed, or are otherwise no longer valid, nor does it include foreign-licensed DBS space stations that have not filed applications with the Commission for market access in the United States.

(2) The pfd calculations must take into account the maximum permitted longitudinal station-keeping tolerance, orbital inclination and orbital eccentricity of both the 17/24 GHz BSS and DBS space stations, and must:

(i) Identify each prior-filed U.S. DBS space station at whose location the coordination threshold pfd level of −117 dBW/m²/100 kHz is exceeded; and

(ii) Demonstrate the extent to which the applicant's or licensee's transmissions in the 17.3–17.8 GHz band exceed the threshold pfd level of −117 dBW/m²/100 kHz at those prior-filed U.S. DBS space station locations.

(e) If the pfd level calculated from the measured data submitted in accordance with paragraph (d) of this section is in excess of the threshold pfd level of −117 dBW/m²/100 kHz:

(1) At the location of any prior-filed U.S. DBS space station as defined in paragraph (b)(1) of this section, then the 17/24 GHz broadcasting-satellite operator must either:

(i) Coordinate its operations that are in excess of the threshold pfd level of −117 dBW/m²/100 kHz with the affected prior-filed U.S. DBS space station operator, or

(ii) Adjust its operating parameters so that at the location of the prior-filed U.S. DBS space station, the pfd level of −117 dBW/m²/100 kHz is not exceeded.

(2) At the location of any subsequently-filed U.S. DBS space station as defined in paragraph (d)(1) of this section, where the pfd level submitted in accordance with paragraph (d) of this section, is also in excess of the pfd level calculated on the basis of the predicted data submitted in accordance with paragraph (a) of this section that were on file with the Commission at the time the DBS space station application was filed, then the 17/24 GHz broadcasting-satellite operator must either:

(i) Coordinate with the affected subsequently-filed U.S. DBS space station operator all of its operations that are either in excess of the pfd level calculated on the basis of the predicted antenna off-axis gain data, or are in excess of the threshold pfd level of −117 dBW/m²/100 kHz, whichever is greater, or

(ii) Adjust its operating parameters so that at the location of the subsequently-filed U.S. DBS space station, either the pfd level calculated on the basis of the predicted off-axis transmitting antenna gain data, or the threshold pfd level of −117 dBW/m²/100 kHz, whichever is greater, is not exceeded.

(3) No coordination or adjustment of operating parameters is required in cases where the DBS and 17/24 GHz BSS operating frequencies do not overlap.

(f) The 17/24 GHz BSS applicant or licensee must modify its license, or amend its application, as appropriate, based upon new information:

(1) If the pfd levels submitted in accordance with paragraph (d) of this section, are in excess of those submitted in accordance with paragraph (b) of this section at the location of any prior-filed or subsequently-filed U.S. DBS space station as defined in paragraphs (b)(1) and (d)(1)of this section, or

(2) If the 17/24 GHz BSS operator adjusts its operating parameters in accordance with paragraphs (e)(1)(ii) or (e)(2)(ii) or this section.

(g) Absent an explicit agreement between operators to permit more closely spaced operations, U.S. authorized 17/24 GHz BSS space stations and U.S. authorized DBS space stations with co-frequency assignments may not be licensed to operate at locations separated by less than 0.2 degrees in orbital longitude.

(h) All operational 17/24 GHz BSS space stations must be maintained in geostationary orbits that:

(1) Do not exceed 0.075° of inclination.

(2) Operate with an apogee less than or equal to 35,806 km above the surface of the Earth, and with a perigee greater than or equal to 35,766 km above the surface of the Earth (*i.e.*, an eccentricity of less than 4.7×10^{-4}).

(i) U.S. authorized DBS networks may claim protection from space path interference arising from the reverse-band operations of U.S. authorized 17/24 GHz BSS networks to the extent that the DBS space station operates within the bounds of inclination and eccentricity listed below. When the geostationary orbit of the DBS space station exceeds these bounds on inclination and eccentricity, it may not claim protection from any additional space path interference arising as a result of its inclined or eccentric operations and may only claim protection as if it were operating within the bounds listed below:

(1) The DBS space station's orbit does not exceed 0.075° of inclination, and

(2) The DBS space station's orbit maintains an apogee less than or equal to 35,806 km above the surface of the Earth, and a perigee greater than or equal to 35,766 km above the surface of the Earth (*i.e.,* an eccentricity of less than 4.7×10^{-4}).

[FR Doc. 2011–20593 Filed 8–12–11; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 383 and 390

[Docket No. FMCSA–2011–0146]

Regulatory Guidance: Applicability of the Federal Motor Carrier Safety Regulations to Operators of Certain Farm Vehicles and Off-Road Agricultural Equipment

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of regulatory guidance.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) sought public comment on three issues related to the applicability of the Federal Motor Carrier Safety Regulations (FMCSRs) to operators of farm vehicles: first, the interpretation of interstate commerce as it applies to movement of farm products; second, whether farmers operating under share-cropping agreements are common or contract carriers; and third, whether FMCSA should issue new guidance on implements of husbandry. After considering comments from the public, FMCSA has determined that no further guidance is needed on interpreting interstate commerce and implements of husbandry. FMCSA is issuing guidance that farmers operating under share-cropping or similar arrangements are not common or contract carriers and, therefore, are eligible for the CDL exemption if a State elects to adopt the exemption.

DATES: August 15, 2011.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Yager, Chief, Driver and Carrier Operations Division, Federal Motor Carrier Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, Phone (202) 366–4325.

SUPPLEMENTARY INFORMATION:

Legal Basis

The Motor Carrier Act of 1935 (74, 49 Stat. 543, August 9, 1935) (1935 Act) provides that the Secretary of Transportation may prescribe requirements for (1) qualifications and maximum hours of service of employees of, and safety of operation and equipment of, a motor carrier; and (2) qualifications and maximum hours of service of employees of, and standards of equipment of, a motor private carrier, when needed to promote safety of operation (49 U.S.C. 31502(b)).

The Motor Carrier Safety Act of 1984 (98, Title II, 98 Stat. 2832, October 30, 1984) (1984 Act) provides concurrent authority to regulate drivers, motor carriers, and vehicle equipment. It requires the Secretary of Transportation to prescribe regulations that ensure that: (1) Commercial motor vehicles (CMVs) are maintained, equipped, loaded, and operated safely; (2) the responsibilities imposed on operators of CMVs do not impair their ability to operate the vehicles safely; (3) the physical condition of operators of CMVs is adequate to enable them to operate the vehicles safely; and (4) the operation of CMVs does not have a deleterious effect on the physical condition of the operators (49 U.S.C. 31136(a)). Section 211 of the 1984 Act also grants the Secretary broad power in carrying out motor carrier safety statutes and regulations to ''prescribe recordkeeping and reporting requirements'' and to ''perform other acts the Secretary considers appropriate'' (49 U.S.C. 31133(a)(8) and (10), respectively).

The Commercial Motor Vehicle Safety Act of 1986 (99, Title XII, 100 Stat. 3207–170, October 27, 1986) (1986 Act) directs the Secretary of Transportation to prescribe regulations on minimum standards for testing and ensuring the fitness of an individual operating a commercial motor vehicle (49 U.S.C. 31305(a)). The States must use those standards in issuing commercial driver's licenses (CDLs) (49 U.S.C. 31311, 31314).

The FMCSA Administrator has been delegated authority under 49 CFR 1.73(L), (g), and (e)(1) to carry out the functions vested in the Secretary of Transportation by the 1935 Act, the 1984 Act, and the 1986 Act, respectively.

Background

On May 31, 2011, FMCSA issued a notice seeking public comment on three issues related to the applicability of the Federal Motor Carrier Safety Regulations (FMCSRs) to operators of farm vehicles (76 FR 31279). Recognizing that changes in regulatory guidance (if implemented by a State) could have an impact on an individual farmer, the Agency sought as much public involvement and comment as possible on these issues.

It is worth repeating that neither the May 31 notice nor today's notice propose or proposed any rule change or new safety requirements. Instead, the Agency sought feedback from farm organizations, farmers, and the public on the agency's long-standing interpretations of existing rules, so it could then determine whether any adjustments were needed to improve understanding of the current safety regulations.

First, the Agency sought comment on whether it needed to provide additional guidance or information to explain the distinction between intra- and interstate commerce in the agricultural industry. Second, the Agency asked whether it should distinguish between indirect and direct compensation in deciding whether a farm vehicle driver is eligible for the exception to the commercial driver's license (CDL) requirements in 49 CFR 383.3(d)(1). Third, the Agency asked for comments on how best to define implements of husbandry so that such equipment is exempted from safety regulations in a uniform, practical