

and (3) lagoons that are required to have no discharge. The effluent limitations for lagoons coming under categories 1 and 2 are based on the Federal Secondary Treatment Regulation (40 CFR part 133) and best professional judgement (BPJ). There are provisions in the general permits for adjusting the effluent limitations on total suspended solids (TSS) and pH in accordance with the provisions of the Secondary Treatment Regulation. If more stringent and/or additional effluent limitations are considered necessary to comply with applicable water quality standards, etc., those limitations may be imposed by written notification to the permittee. Lagoon systems under category 3 are required to have no discharge except in accordance with the bypass provisions of the permit. Self-monitoring requirements and routine inspection requirements are included in the permits. The permits do not authorize the discharge of wastewater from land application sites, but they do require that the land application of wastewater from the lagoon systems be done in accordance with a written operational plan for the land application of the wastewater. The objectives of the operational plan are to minimize the potential for the discharge of wastewater from the land application site and to avoid applying excessive amounts of nitrogen to the land application site.

With the exception of the Flathead Indian Reservation and the Fort Peck Indian Reservation, where the Tribes have Clean Water Act section 401(a)(1) certification authority, EPA intends to certify that the permits comply with the applicable provisions of the Clean Water Act as long as the permittees comply with all permit conditions. The permits will be issued for a period of five years, with the permit effective date and expiration date determined at the time of issuance.

#### Paperwork Reduction Act

The information collection requirements of these permits were previously approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act, 40 U.S.C. 3501, *et seq.* and assigned OMB control numbers 2040-0250 (General Permits) and 2040-0004 (Discharge Monitoring Reports).

#### Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant

regulatory action" as one that is likely to result in a rule that may have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

OMB has waived review of NPDES general permits under the terms of Executive Order 12866.

#### Regulatory Flexibility Act

Issuance of an NPDES general permit is not subject to rulemaking requirements, including the requirement for a general notice of proposed rulemaking, under section 535 of the Administrative Procedures Act (APA) or any other law, and is, thus, not subject to the Regulatory Flexibility Act (RFA) requirement to prepare an Initial Reg Flex Analysis (IRFA).

The APA defines two broad, mutually exclusive categories of agency action—"rules" and "orders." Its definition of "rule" encompasses "an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency \* \* \*" APA section 551(4). Its definition of "order" is residual: "a final disposition \* \* \* of an agency in a matter other than rulemaking but including licensing." APA section 551(6) (emphasis added). The APA defines "license" to "include \* \* \* an agency permit \* \* \*" APA section 551(8). The APA thus categorizes a permit as an order, which by the APA's definition is not a rule. Section 553 of the APA establishes "rulemaking" requirements. The APA defines "rulemaking" as "the agency process for formulating, amending, or repealing a rule." (APA section 551(5)). By its terms, then, section 553 applies only to "rules" and not also to "orders," which include permits.

#### Unfunded Mandates Reform Act

Section 201 of the Unfunded Mandates Reform Act (UMRA), Public Law 104-4, generally requires Federal agencies to assess the effects of their

"regulatory actions" on State, local, and tribal governments and the private sector. UMRA uses the term "regulatory actions" to refer to regulations. (See, e.g., UMRA section 201, "Each agency shall \* \* \* assess the effects of Federal regulatory actions \* \* \* (other than to the extent that such regulations incorporate requirements specifically set forth in law)" (emphasis added)). UMRA section 102 defines "regulation" by reference to 2 U.S.C. 658 which in turn defines "regulation" and "rule" by reference to section 601(2) of the Regulatory Flexibility Act (RFA). That section of the RFA defines "rule" as "any rule for which the agency publishes a notice of proposed rulemaking pursuant to section 553(b) of [the Administrative Procedure Act (APA)], or any other law. \* \* \*"

As discussed in the RFA section of this notice, NPDES general permits are not "rules" under the APA and thus not subject to the APA requirement to publish a notice of proposed rulemaking. NPDES general permits are also not subject to such a requirement under the CWA. While EPA publishes a notice to solicit public comment on draft general permits, it does so pursuant to the CWA section 402(a) requirement to provide "an opportunity for a hearing." Thus, NPDES general permits are not "rules" for RFA or UMRA purposes.

**Authority:** Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: October 24, 2003.

**Stephen S. Tuber,**

*Assistant Regional Administrator, Office of Partnerships and Regulatory Assistance.*

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**BILLING CODE 6560-50-P**

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

October 7, 2003.

**SUMMARY:** The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid 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 (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written comments should be submitted on or before December 1, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all comments to Les Smith, Federal Communications Commission, Room 1-A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to [Leslie.Smith@fcc.gov](mailto:Leslie.Smith@fcc.gov) or Kim A. Johnson, Office of Management and Budget (OMB), Room 10236 NEOB, Washington, DC 20503, (202) 395-3562 or via the Internet at [Kim\\_A\\_Johnson@omb.eop.gov](mailto:Kim_A_Johnson@omb.eop.gov).

**FOR FURTHER INFORMATION CONTACT:** For additional information or copy of the information collection(s) contact Les Smith at (202) 418-0217 or via the Internet at [Leslie.Smith@fcc.gov](mailto:Leslie.Smith@fcc.gov).

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060-0059.

*Title:* Statement Regarding the Importation of Radio Frequency Devices Capable of Harmful Interference, FCC Form 740.

*Form Number:* FCC 740.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit entities; Not-for-profit institutions; Individuals or households; and State, Local, or Tribal Governments.

*Number of Respondents:* 5,077.

*Estimated Time per Response:* 1-5 minutes.

*Frequency of Response:* On occasion reporting requirement; Third party disclosure.

*Total Annual Burden:* 28,030 hours.

*Total Annual Costs:* None.

*Needs and Uses:* The FCC, working in conjunction with the U.S. Customs Service, is responsible for the regulation of both authorized radio services and devices that can cause interference. FCC Form 740 must be completed for each

radio frequency device, which is imported into the United States, and is used to keep non-compliant devices from being distributed to the general public, thereby reducing the potential for harmful interference being caused to authorized communications. FCC Form 740 may now be filed on paper or by electronic means.

*OMB Control Number:* 3060-0341.

*Title:* Section 73.1680, Emergency antennas.

*Form Number:* N/A.

*Type of Review:* Extension of currently approved collection.

*Respondents:* Business or other for-profit entities; Not-for-profit institutions.

*Number of Respondents:* 142.

*Estimated Time per Response:* 0.5 hours.

*Frequency of response:* On occasion reporting requirements.

*Total Annual Burden:* 71 hours.

*Total Annual Costs:* \$28,400.

*Needs and Uses:* 47 CFR 73.1680 requires that licensees of AM, FM, or TV stations submit an informal request to the FCC (within 24 hours of commencement of use) to continue operation with an emergency antenna. An emergency antenna is one that is erected for temporary use after the authorized main and auxiliary antennas are damaged and cannot be used. FCC staff use the data to ensure that interference is not caused to other existing stations.

*OMB Control Number:* 3060-0580.

*Title:* Operator Interests in Video Programming, Sections 76.504 and 76.1710.

*Form Number:* N/A.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business or other for-profit entities.

*Number of Respondents:* 1,500.

*Estimated Time per Response:* 15 hours.

*Frequency of Response:* Recordkeeping.

*Total Annual Burden:* 22,500 hours.

*Total Annual Costs:* None.

*Needs and Uses:* 47 CFR 76.1710 (formerly 76.504) requires cable operators to maintain records in their public file for a period of three years regarding the nature and extent of their attributable interests in all video programming services. 47 CFR 76.504, Note 2 states that the information collection requirements are found in Section 76.1710. These records must be maintained in operators' public files for a period of three years and must be made available to members of the public, local franchising authorities, and

the Commission on reasonable notice and during regular business hours. The Commission and local franchising authorities will review the information to monitor compliance with channel occupancy limits in respective local franchise areas. (OMB Control No. 3060-0581 contains the remaining information collections for this rule.)

*OMB Control Number:* 3060-0773.

*Title:* Marketing of RF Devices Prior to Equipment Authorization, Section 2.803.

*Form Number:* N/A.

*Type of Review:* Extension of currently approved collection.

*Respondents:* Businesses or other for-profit entities.

*Number of Respondents:* 6,000.

*Estimated Time per Response:* 0.5 hours.

*Frequency of Response:* One time reporting requirement; Third party disclosure.

*Total Annual Burden:* 3,000 hours.

*Total Annual Costs:* None.

*Needs and Uses:* FCC rules permit the display and advertising of radio frequency (RF) devices prior to equipment authorization or a determination of compliance, providing that the advertising or display contains a conspicuous notice as specified at 47 CFR 2.803(c). A notice must also accompany RF prototype equipment devices offered for sale, as stated in 47 CFR 2.803(c)(2), prior to equipment authorization or a showing of compliance, that the equipment must comply with FCC rules prior to delivery. This information informs third parties of the FCC's requirement for the responsible party to comply with its rules.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

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**BILLING CODE 6712-01-P**

**FEDERAL COMMUNICATIONS COMMISSION**

[CC Docket No. 96-45; DA 03-3112]

**Wireline Competition Bureau Seeks Comment on Western Wireless Corporation Petition To Reject Rural Telephone Company Self-Certification Filed by Valor Telecommunications of Texas, LP, for the State of Oklahoma**

**AGENCY:** Federal Communications Commission

**ACTION:** Notice; solicitation for comments.

**SUMMARY:** In this document the Commission invites comment on