

**§ 372.85 Toxic chemical release reporting form and instructions.**

(a) *Availability of reporting form and instructions.* The most current version of Form R and Form R Schedule 1 may be found on the following EPA Program Web site, <http://www.epa.gov/tri>. Any subsequent changes to the Form R or Form R Schedule 1 will be posted on this Web site. Submitters may also contact the TRI Program at (202) 564-9554 to obtain this information.

(b) *Form elements.* Information elements reportable on EPA Form R and Form R Schedule 1, or equivalent magnetic media format include the following:

\* \* \* \* \*

(14) \* \* \*

(ii) Additional Reporting for the dioxin and dioxin-like compounds category.

(A) For reports pertaining to a reporting year ending on or before December 31, 2007, report a distribution of the chemicals included in the dioxin and dioxin-like compounds category. Such distribution shall either represent the distribution of the total quantity of dioxin and dioxin-like compounds released to all media from the facility; or its one best media-specific distribution.

(B) For reports pertaining to a reporting year ending after December 31, 2007, report the quantity of each member of the dioxin and dioxin-like compounds category in units of grams per year on Form R Schedule 1.

\* \* \* \* \*

(15)(i) \* \* \*

(B) An estimate of the amount of the chemical transferred in pounds (except for dioxin and dioxin-like compounds, which shall be reported in grams) per year (transfers of less than 1,000 pounds per year may be indicated as a range, except for chemicals set forth in § 372.28) and an indication of the basis of the estimate. In addition, for reports pertaining to a reporting year ending after December 31, 2007, report the quantity of each member of the dioxin and dioxin-like compounds category in units of grams per year on Form R Schedule 1.

\* \* \* \* \*

(15)(ii) \* \* \*

(B) An estimate of the amount of the chemical transferred in pounds (except for dioxin and dioxin-like compounds, which shall be reported in grams) per year (transfers of less than 1,000 pounds per year may be indicated as a range, except for chemicals set forth in § 372.28) and an indication of the basis of the estimate. In addition, for reports pertaining to a reporting year ending

after December 31, 2007, report the quantity of each member of the dioxin and dioxin-like compounds category in units of grams per year on Form R Schedule 1.

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BILLING CODE 6560-50-P

**FEDERAL COMMUNICATIONS COMMISSION****47 CFR Part 15**

[MB Docket No. 03-15; RM-9832; FCC 07-69]

**Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion To Digital Television**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Commission adopts rules requiring sellers of analog-only TV equipment to label or post signs at point of sale disclosing limitations after the February 17, 2009 deadline for the transition from analog to digital television service. The Commission states that sellers must advise consumers at point of sale if the television equipment includes only an analog tuner that will require a converter box to receive over-the-air-broadcast-television after the deadline. **DATES:** The rules in 47 CFR 15.117(k) contains information collection requirements that have not been approved by the Office of Management and Budget (OMB). The FCC will publish a document announcing the effective date.

**ADDRESSES:** You may submit comments, identified by MB Docket No. 03-15, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Federal Communications Commission's Web Site:* <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.

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

For additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Eloise Gore, [Eloise.Gore@fcc.gov](mailto:Eloise.Gore@fcc.gov) of the

Media Bureau, Policy Division, (202) 418-2120.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Second Report and Order (Order), FCC 07-69, adopted on, April 25, 2007, and released on May 3, 2007. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY-A257, Washington, DC 20554. These documents will also be available via ECFS (<http://www.fcc.gov/cgb/ecfs/>). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

**Paperwork Reduction Act of 1995 Analysis**

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 will be invited to comment on the new information collection requirements contained in this proceeding. The Commission will publish a separate document in the **Federal Register** at a later date seeking these comments. In addition, we note 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."

**Summary of the Report and Order****I. Introduction**

1. In this *Second Report and Order in the Second DTV Periodic Review*, we take up the issue of labeling of television receiving equipment, which was raised in the *Second DTV Periodic NPRM*, 68 FR 7737-01. This Order applies to televisions, television receivers, and other television receiving equipment, which includes television

sets and other video devices, such as video-cassette recorders and digital video recorders, that are covered by the Commission's digital television reception capability implementation schedule. In light of the fixed deadline—February 17, 2009—established for the end of analog television broadcasting, we now conclude that it is necessary and appropriate to require retailers to provide consumers with information regarding this transition date at the point of sale. Specifically, we will require sellers of television receiving equipment that does not include a digital tuner to disclose at the point-of-sale that such devices include only an analog tuner and therefore will require a converter box to receive over-the-air broadcast television after February 17, 2009. Consumers expect that equipment for sale today that is capable of receiving “television” is and will continue to be able to receive over-the-air broadcast signals, and, if not, then such material information should be disclosed prior to purchase. The successful completion of the digital television (“DTV”) transition depends upon satisfaction of this basic consumer expectation. For these reasons, in this Order we adopt disclosure requirements to ensure that consumers receive this important information regarding the limitations of analog-only television receivers at the point of sale.

## II. Background

2. The *Second DTV Periodic NPRM* asked whether we should require a mandatory label on analog-only sets to inform consumers at the point of sale that a converter or external DTV tuner will be needed to ensure reception of television broadcast signals after stations complete the conversion to digital-only broadcasting. In the *First Report and Order in the Second DTV Periodic Review*, we deferred determination of the need to require labeling to *this Second Report and Order*. With the establishment by Congress of a hard and certain deadline for the end of analog transmissions by full power television stations, we now conclude that it is necessary to ensure that consumers are aware at the point of purchase of that deadline and the impact that it will have on analog-only television receivers.

### *Second DTV Periodic Review*

3. The *Second DTV Periodic NPRM* invited comment on the need for a point of sale disclosure label on analog-only devices or a digital transition fact sheet to inform consumers that a converter or external DTV tuner will be needed to

ensure reception of television broadcast signals after stations complete conversion to digital-only broadcasting. The *NPRM* also asked about plans to manufacture “pure monitors” (without any tuner) that can receive digital format transmissions via cable or satellite but not from signals broadcast over-the-air and requested information on the plans to label such monitors to describe reception limitations.

4. When the Commission issued the *NPRM* for the Second DTV Periodic Review in 2003, concerns about consumer understanding had been heightened by a General Accounting Office (“GAO”) Report to Congress in November 2002 that found that at least 40 percent of the public was unfamiliar with the digital transition. This 2002 GAO Report also found that 68 percent of those surveyed did not know that when the transition ends, consumers with analog-only devices will be unable to continue receiving over-the-air broadcast television without use of an external digital tuner or converter. Only 14 percent of those surveyed by the GAO were “very familiar” with the difference between analog and digital televisions. GAO speculates that even this number may be high because consumers may be confusing current digital television services provided by cable or satellite with DTV. Over 80 percent of consumers were unaware or only somewhat aware of the ongoing transition to digital television. In addition, it concluded that retail sales personnel often provide inaccurate information about both digital programming availability and equipment needed to receive and display digital programming, particularly over-the-air. Another study in 2003 found that 25 percent of Americans thought they owned a high definition television set, while HDTV sales showed that only a small fraction of these consumers could possibly have been correct in their understanding of the capabilities of their televisions.

5. This concern has not been diminished by more recent findings. A study in June 2004 reported that 37 percent of adults were at least somewhat familiar with HDTV and 87 percent expressed vague awareness but lacked clear understanding. In addition, a more recent GAO study in 2005 noted that consumers are still confused about the transition. This 2005 GAO study reported that consumers may be reluctant to buy digital equipment, which is generally more expensive than analog-only devices, because they lack accurate knowledge about the transition and believe they will always have a choice between analog and digital

signals over-the-air. Moreover, a very recent survey by the Association of Public Television Stations (“APTS”) found that 61 percent of those surveyed said that they had “No Idea” that the DTV transition was taking place, 10 percent said they had “Limited Awareness,” while 17 percent said they were “Somewhat Aware” and less than 8 percent said they were “Very Much Aware.” The results from that survey also indicate that awareness of the forthcoming transition—even after enactment of a statutory deadline—remains low. The need for labeling of analog-only televisions also has been mentioned in Congressional hearings, both in testimony and from members on both sides of the aisle. For example, on February 17, 2005, the House Subcommittee on Telecommunications and the Internet held a hearing on “The Role of Technology In Achieving A Hard Deadline for the DTV Transition.” Rep. Bobby Rush (D-IL) and K. James Yager, CEO, Barrington Broadcasting, testifying on behalf of the NAB and MSTV, expressed belief in requiring warning labels on analog-only sets to alert consumers to the limited useful life of their television sets. Both House and Senate Committees have proposed legislation to require labeling of analog-only televisions to address these concerns.

6. In the *Second DTV Periodic NPRM*, most parties who commented on labeling supported the need for Commission action to address consumer expectations, particularly with regard to analog-only television equipment. MSTV and NAB were concerned that a label describing a receiver's functionality may not go far enough to adequately notify consumers of the transition from analog to digital service. NBC and Telemundo expressed concern that consumers will waste money buying equipment that will soon be obsolete and proposed a labeling requirement to notify consumers that after the transition, analog equipment will not deliver television signals without a converter. By contrast, parties opposing any labeling requirement contended that marketplace incentives will ensure that consumers are well-informed, and that there is no evidence that manufacturers would not inform consumers of product limitations. The Consumer Electronics Association (“CEA”) offered to consider voluntary labeling if manufacturers determined there is consumer confusion. The Consumer Electronics Retailers Council (“CERC”) expressed concern that labels describing what equipment does not do will be harmful and interfere with

merchandising efforts. CERC contended that negative formulations are misleading because there is inadequate room to list all the positive formulations on a label.

#### *DTV Tuner Orders*

7. In 2002, the Commission adopted a schedule for the phase-in of television receivers to be equipped with digital tuners. *The DTV Tuner Order* initially required that all TV receivers with screen sizes greater than 13 inches manufactured in the United States or shipped in interstate commerce after July 1, 2007 be capable of receiving DTV signals over-the-air. *The DTV Tuner Order* did not require television receivers that cannot receive over-the-air digital broadcast signals to carry a label informing consumers of this limitation, but the Commission committed to monitoring the marketplace and taking steps if necessary to protect consumers' interests.

8. In 2005, the Commission revised the timing and scope of the DTV tuner phase-in to ensure that all television receivers, including televisions with screens smaller than 13 inches and television reception devices such as VCRs, that are manufactured in the United States or shipped in interstate commerce after March 1, 2007, have the capability to tune and decode digital signals as broadcast over-the-air. The Commission found that consumer awareness of whether television equipment can receive over-the-air DTV signals or only over-the-air analog signals is critical to ensuring that consumer expectations are met. The Commission was hopeful that manufacturers and retailers would educate consumers about the digital transition by providing point-of-sale and other marketing information to consumers or clearly label new television equipment. We also note that in the past, the Commission has expressed concern about adequate disclosures in the analogous *Plug-and-Play Order*, which concluded that the public understanding of "cable ready" in the analog context includes the capability to receive signals over-the-air as well as from a cable system. The *Plug-and-Play Order* implemented a voluntary labeling regime jointly proposed by the consumer electronics ("CE") and cable industries to provide consumers with information pertaining to "digital cable ready" equipment.

### III. Discussion

#### *Labeling is Needed for Analog-Only Televisions*

9. The NPRM solicited comment on proposals for requiring disclosure of information to consumers concerning analog and digital television equipment. We conclude that it is necessary for us to require disclosure of the limitations of analog-only television receiving equipment at the point of sale. By "point of sale" we mean the place where televisions are displayed for consumers prior to purchase. The required label language should be prominently displayed in a manner that is clearly visible to the consumer and associated with the analog-only television model(s) to which it pertains. Therefore, we are adopting a rule to alert consumers that after February 17, 2009, analog-only television equipment will not be able to receive over-the-air television signals unless it is connected to a digital-to-analog converter or a digital subscription service. This will ensure that consumers have the necessary information at the point of purchase to decide if they wish to buy a television that has only an analog tuner. We also conclude that it is not necessary for us to mandate labeling for digital television equipment at this time in light of recent voluntary actions and the increasing availability of information about DTV features and terminology. For example, CEA and several members of CERC co-sponsored a consumer "tip sheet," "Buying a Digital Television" with the Commission. This tip sheet is available on several Web sites and has been distributed at consumer events and industry conventions.

10. In contrast to the information available concerning digital televisions, the record evidence indicates that the consumer electronics industry efforts do not adequately inform consumers how analog-only television equipment purchased now will function when the transition ends. CEA submitted an ex parte filing in October 2006, listing the steps it or its members have taken to improve consumer awareness of the transition in general and to provide information related to the purchase of television equipment in particular. The letter describes the efforts of CEA and its manufacturing and retail members to provide comprehensive information about the digital transition via the Internet. The letter also describes a voluntary labeling program announced in March 2006, intended to begin in July 2006. Unfortunately, it appears that neither manufacturers nor retailers have

implemented this voluntary program on a widespread basis.

11. Therefore, we remain concerned that the continued sale of analog-only television equipment without appropriate disclosure is likely to mislead consumers who are unaware of the upcoming transition. Such consumer confusion is inconsistent with a smooth transition to digital broadcasting. Further, we do not believe we can rely solely on consumer assistance voluntarily given at the retail outlet to address such confusion. There have been reports that retail sales clerks are often confused or unaware of the limitations of analog-only televisions. In addition, many consumers will want to shop for television equipment at discount stores or online, where sales help is less likely to be available to explain analog-only limitations. Thus, confused consumers are often unable to obtain reliable and accurate information about the basic capabilities of television equipment at the point of sale.

12. The government has a strong interest in ensuring a timely conclusion of the digital transition, reducing consumer disruption and confusion, and limiting the number of consumers who are left without over-the-air television service on some or all of their television equipment when the analog broadcast service ends in less than two years. Accurate communication of this impending change is a highly material disclosure for consumers contemplating the purchase of a television. It is also a matter of public safety for consumers who rely on analog-only televisions to obtain critical information in an emergency. Analog-only televisions are currently sold as part of emergency equipment to provide information in a disaster without disclosure that in two years, they will not be able to receive television broadcasts. After the transition, absent a label requirement, even cable and satellite subscribers might be surprised to find that they cannot receive television broadcasts over-the-air on an analog-only television purchased today if they choose to discontinue subscription service or their cable or satellite service is terminated by a disaster, service disruption or for non-payment of their bills.

13. Although the DTV Tuner requirement prohibits manufacture, import or interstate shipment of analog-only television equipment after March 1, 2007, it does not extend to retail sales of analog-only television equipment from inventory. Thus, the passing of this date does not eliminate the need for disclosure by retailers who choose to continue to sell analog-only television equipment after March 1, 2007. In fact,

we are concerned that there is a greater likelihood of confusion if consumers assume that all televisions must have a digital tuner after this date. Without point of sale disclosure, consumers may inadvertently buy analog-only television equipment without understanding that such devices will require some additional equipment for use after analog broadcasting ends. We also believe that the presence of a label or sign concerning the sale of analog-only television equipment will serve an educational function by informing and reminding consumers of the upcoming transition from analog to digital broadcasting.

14. We had been reluctant to require specific labeling in the expectation that manufacturers and retailers would develop clear and uniform terminology to convey to consumers prior to purchase the features as well as the limitations of television products. However, we now conclude that adequate pre-sale information concerning analog-only television equipment will not be provided voluntarily, and the establishment of a date certainly raises the stakes for this continuing failure to disclose. We also recognize that it is currently illegal for any manufacturer to make, import or ship an analog-only television set or other video device with only an analog receiver. The focus now shifts to retailers that are selling such analog-only equipment from pre-March 1, 2007 inventory. We, therefore, require that anyone that sells or offers for sale or rent television receiving equipment that does not contain a DTV tuner after March 1, 2007 must display the following consumer alert, in a size of type large enough to be clear, conspicuous and readily legible, consistent with the dimensions of the equipment and the label, at the point of sale. This consumer alert either must be printed on a transparent material and affixed to the screen, in a manner that is removable by the consumer and does not obscure the picture when displayed for sale, or displayed separately immediately adjacent to each television offered for sale and clearly associated with the analog-only television model to which it pertains. In the case of other analog-only video devices that do not include a display (e.g., a VCR), the consumer alert must be in a prominent location on the device, such as on the top or front, or displayed separately immediately adjacent to and clearly associated with the analog-only model to which it pertains. In addition, to the extent that any persons display or offer for sale or rent via direct mail, catalog,

or electronic means (e.g., the Internet) analog-only television receiving equipment after March 1, 2007, they must prominently display as part of all advertisements or descriptions of such television receiving equipment, in clear and conspicuous print, and in close proximity to any images or descriptions of such equipment, the following text.

#### *Consumer Alert*

This television receiver has only an analog broadcast tuner and will require a converter box after February 17, 2009, to receive over-the-air broadcasts with an antenna because of the Nation's transition to digital broadcasting. Analog-only TVs should continue to work as before with cable and satellite TV services, gaming consoles, VCRs, DVD players, and similar products. For more information, call the Federal Communications Commission at 1-888-225-5322 (TTY: 1-888-835-5322) or visit the Commission's digital television Web site at: [www.dtv.gov](http://www.dtv.gov).

#### *Authority To Require Labeling*

15. We conclude that we have ancillary authority to adopt point of sale disclosure requirements for analog-only television equipment under Titles I and III of the Communications Act of 1934, as amended ("Act"). Courts have long recognized that, even in the absence of explicit statutory authority, the Commission has authority to promulgate regulations to effectuate the goals and provisions of the Act if the regulations are "reasonably ancillary to the effective performance of the Commission's various responsibilities" under the Act. The Supreme Court has established a two-part ancillary jurisdiction test: (1) The subject of the regulation must be covered by the Commission's general grant of jurisdiction under Title I of the Communications Act; and (2) the regulation must be reasonably ancillary to the Commission's statutory responsibilities. The requirements we adopt here regulate devices that fall within the Commission's Title I jurisdiction, advance our statutory obligation to promote the accessibility and universality of radio communication, and serve the public interest. We conclude, therefore, that we have ancillary jurisdiction to adopt point of sale disclosure requirements in this proceeding.

16. Title I authorizes the Commission to regulate devices that receive broadcast communications. Sections 1 and 2(a) of the Act confer on the Commission regulatory jurisdiction over all interstate radio and wire communication. Broadcasting is

interstate in nature, and television receivers are covered by the Act's definition of "radio communication," which includes not only the "transmission of \* \* \* writing, signs, signals, pictures, and sounds" by aid of radio, but also "all instrumentalities, facilities, apparatus, and services (among other things, the receipt, forwarding, and delivery of communications) incidental to such transmission." Television receivers are "apparatus" "incidental to \* \* \* transmission" of television broadcasts and, therefore, are within the scope of our Title I subject matter jurisdiction.

17. The recent decision of the U.S. Court of Appeals for the District of Columbia Circuit in *American Library Ass'n v. FCC* is not to the contrary. The D.C. Circuit held in that case that the Commission lacked jurisdiction over devices that can be used for receipt of wire or radio communications when those devices are not engaged in the process of radio or wire transmission. Thus, the D.C. Circuit held that the Commission lacked jurisdiction to regulate the post-transmission copying of program content. The requirement we adopt here, by contrast, does not involve post-transmission conduct. Rather, it directly concerns the ability (or inability) of television equipment to receive broadcast transmissions. As a result, the subject of the regulation is covered by Title I of the Act.

18. In addition, we conclude that imposing point of sale disclosure requirements for analog-only television equipment is reasonably ancillary to our statutory obligations under the Act. The Commission was established to regulate interstate and foreign communications for the purposes of promoting the accessibility and universality of wire and radio communication, as well as promoting public safety through the use of wire and radio communication. The Commission also is statutorily obligated to promote the orderly transition to digital television, "a critical step in the evolution of broadcast television." The Commission has carried out this mandate, among other things, through implementation of the All Channel Receiver Act, which authorizes it "to require that apparatus designed to receive television pictures broadcast simultaneously with sound be capable of adequately receiving all frequencies allocated by the Commission to television broadcasting." Further, the Commission is authorized to "make such rules and regulations \* \* \* as may be necessary in the execution of its functions," and to "[m]ake such rules and regulations \* \* \* not inconsistent

with law, as may be necessary to carry out the provisions of this Act \* \* \*."

19. The rules we adopt today advance these statutory mandates and serve the public interest. Accurate and timely communication of the impending change from analog to digital transmission is a critical disclosure for consumers contemplating the purchase of television equipment. As discussed above, voluntary industry efforts to date have not been sufficient to ensure consumer awareness of the upcoming transition to digital television or of the limitations of analog-only televisions. Such consumer awareness is critical to our missions of promoting the accessibility and universality of radio communication, public safety, and an orderly digital transition. Without such disclosure, many American consumers may purchase analog-only television equipment without knowing that these devices will be unable to receive over-the-air signals in fewer than two years without the purchase of additional equipment, may be unprepared for the digital transition when it arrives, and may be unable to obtain critical information in emergencies after the transition. Consumer awareness also is necessary to fulfill the Commission's mandate under the ACRA, for analog-only television equipment will be incapable of receiving all television broadcast frequencies after the digital transition. By requiring that consumers be informed at the point of sale that analog-only television equipment will not be able to receive over-the-air signals in 2009, the requirement we adopt today will ensure that consumers who purchase such analog-only equipment are aware of the transition, are able to prepare for it in advance, and are not cut off from broadcast communications in 2009.

20. Exercising ancillary jurisdiction to adopt point of sale disclosure requirements for analog-only television equipment is consistent with prior exercises of the Commission's authority. As noted above, the Commission previously relied on its authority under the ACRA to impose a phased-in digital tuner mandate in order to promote the orderly transition to digital television. In addition, the Commission recently relied on its ancillary jurisdiction in requiring interconnected Voice over Internet Protocol (VoIP) service providers to distribute to their subscribers stickers or labels warning if E911 service may be limited or unavailable, and to instruct subscribers to place them on or near the equipment used in conjunction with the interconnected VoIP service. The Commission also has numerous other

labeling and disclosure requirements designed to further its statutory objectives and to protect consumers. In sum, therefore, we conclude that we have ancillary authority to adopt point of sale disclosure requirements for analog-only television equipment.

#### IV. Procedural Matters

##### 21. *Accessibility Information.*

Accessible formats of this Second Report and Order (computer diskettes, large print, audio recording and Braille) are available to persons with disabilities by contacting Brian Millin, of the Consumer & Governmental Affairs Bureau, at (202) 418-7426, TTY (202) 418-7365, or at [bmillin@fcc.gov](mailto:bmillin@fcc.gov).

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

##### *Final Regulatory Flexibility Analysis*

23. 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. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

##### *Need for, and Objectives of, the Second Report and Order*

24. The rule adopted in this *Second Report and Order* is required to ensure a smooth transition of the nation's television system from analog to digital format. In an earlier proceeding in MM Docket No. 87-268, the Commission stated its intention to hold periodic reviews of the progress of the digital conversion and to make any adjustments necessary to our rules and policies to ensure that the introduction of digital television broadcasting, the end of analog broadcasting, and the recovery of spectrum at the end of the analog-to-digital transition would fully serve the public interest.

25. This *Second Report and Order* focuses on whether labeling on digital television equipment is needed at the point of sale to provide consumers with information they need. The Commission rejects proposals to require that digital television equipment bear labels concerning performance standards or antenna capabilities and limitations. We require that consumers be informed that analog television sets will, after analog broadcasting ends, require additional

equipment (such as a digital-to-analog converter) if they are to continue to receive television service. Accordingly, we require that retailers post a label or sign prior to purchase to inform consumers that analog television receivers will need additional equipment or attachment to a subscription service to continue to receive over-the-air television after analog broadcasting ends.

##### *Summary of Significant Issues Raised by Public Comments in Response to the IRFA*

26. One comment was received on the IRFA. That comment did not concern any subject addressed in this *Second Report and Order*. The comment was discussed in the Final Regulatory Flexibility Analysis ("FRFA") issued as part of the Commission's Report and Order ("*First Report and Order*") in this proceeding (FCC 04-192, released September 7, 2004) and was discussed in paragraphs 12-13 of the Final Regulatory Flexibility Analysis ("FRFA") issued as part of the *First Report and Order*.

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

27. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small government entity." 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").

28. The only entities directly affected by the decisions made and rules adopted in this *Second Report and Order* are retailers and other sellers of television equipment, and electronics equipment manufacturers.

29. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and

receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment." The SBA has developed a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, which is: all such firms having 750 or fewer employees. According to Census Bureau data for 2002, there were a total of 1,041 establishments in this category that operated for the entire year. Of this total, 1,010 had employment of under 500, and an additional 13 had employment of 500 to 999. Thus, under this size standard, the majority of firms can be considered small.

30. *Radio, Television, and Other Electronics Stores.* The Census Bureau defines this economic census category as follows: "This U.S. industry comprises: (1) Establishments known as consumer electronics stores primarily engaged in retailing a general line of new consumer-type electronic products; (2) establishments specializing in retailing a single line of consumer-type electronic products (except computers); or (3) establishments primarily engaged in retailing these new electronic products in combination with repair services." The SBA has developed a small business size standard for Radio, Television, and Other Electronics Stores, which is: all such firms having \$8 million or less in annual receipts. According to Census Bureau data for 2002, there were 10,380 firms in this category that operated for the entire year. Of this total, 10,080 firms had annual sales of under \$5 million, and 177 firms had sales of \$5 million or more but less than \$10 million. Thus, the majority of firms in this category can be considered small.

31. *Electronic Shopping.* According to the Census Bureau, this economic census category "comprises establishments engaged in retailing all types of merchandise using the Internet." The SBA has developed a small business size standard for Electronic Shopping, which is: all such entities having \$23 million or less in annual receipts. According to Census Bureau data for 2002, there were 4,959 firms in this category that operated for the entire year. Of this total, 4,742 firms had annual sales of under \$10 million, and an additional 133 had sales of \$10 million to \$24,999,999. Thus, the majority of firms in this category can be considered small.

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

32. The *Second Report and Order* requires anyone who sells or offers for sale television receiving equipment that has an analog tuner but not a digital tuner to disclose at the point of sale that the television will not receive over-the-air television broadcast signals after February 17, 2009 unless it is attached to a digital-to-analog converter box or a cable or satellite subscription service receiver.

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

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

34. The final decision made in the *Second Report and Order* is to require retailers to place a label or display a sign on or near analog-only television receiving devices (television sets, VCRs, etc.) that discloses the limitations for such equipment in the near future. This requirement applies alike to large and small sellers of television equipment who choose to sell analog-only televisions after March 1, 2007. Due to the phase-in of the DTV tuner requirement cited above, after March 1, 2007, manufacturers and distributors are prohibited from making, importing or shipping in interstate commerce a television set that has an analog tuner but not a digital tuner. This point of sale disclosure requirement ensures that if sellers want to sell analog-only television equipment from existing inventory, they must be sure consumers understand the limitations that will apply when full power analog broadcasting ceases on February 17, 2009. The Commission also considered, and rejected, proposals to require many more disclosures with respect to digital television equipment. The Commission rejected these proposals because, in its opinion, adequate information is being made available to consumers from their own activities, industry efforts,

disclosures encouraged by the Commission, and actions by consumer protection authorities.

35. In conclusion, whatever burdens small entities may incur in complying with the decision made in the *Second Report and Order* are mitigated by the factors discussed in the foregoing paragraphs. They are also warranted by the overall benefit to the public from accomplishing the transition from analog to digital television and reducing the consumer disruption related thereto. These benefits include better television; job creation; economic growth; stimulation of new technology in this country; and the shift of spectrum from television broadcasting to other uses such as new wireless services and public safety and homeland security applications.

#### *Report to Congress*

36. The Commission will send a copy of the *Second Report and Order*, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *Second Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Second Report and Order* and FRFA (or summaries thereof) will also be published in the **Federal Register**.

#### **V. Ordering Clauses**

37. *It is ordered* that, pursuant to the authority contained in Sections 1, 2(a), 3(33), 4(i), 303(r) and (s), and 336 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152(a), 153(33), 154(i), 303(r) and (s), and 336, this *Second Report and Order Is Adopted* and the Commission's rules *Are Hereby Amended* as set forth in Appendix B. Rule section 47 CFR 15.117(k) contains information collection requirements subject to the PRA and is not effective until approved by the Office of Management and Budget. The Commission shall publish an announcement of OMB approval in the **Federal Register**. We find good cause for the rule to be effective by this date because the Order is necessary to minimize harm to consumers. As described in this Order, the Commission has found that retailers are continuing to sell analog-only television receivers without disclosure of the limitations of this equipment after the digital television transition on February 17, 2009. Consumers buying these television receivers may not realize until after the end of the transition that they will no longer receive over-the-air signals without attachment to a

converter or subscription service, may be unprepared for the digital transition when it arrives, and may be unable to obtain critical information in emergencies after the transition. In such instances, consumers would be financially harmed and deprived of service at a critical time. We are concerned that delay in the effective date of the disclosure requirement will result in additional analog-only equipment being sold to uninformed consumers due to the absence of appropriate disclosure, thereby harming consumers and undermining the goal of the rule. Parties subject to the rule will have a reasonable opportunity to comply with it, particularly in light of the fact that it will not be effective until OMB approval. Because delay can result in such harms to consumers and because affected parties will be afforded a reasonable opportunity to comply with the rule, we find that there is good cause to expedite the effective date of this rule. We are also requesting emergency PRA approval from OMB.

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

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

#### List of Subjects in 47 CFR Part 15

Radio frequency devices.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

#### Rule Changes

■ For the reasons discussed in the preamble, the FCC amends 47 CFR part 15 as follows:

#### PART 15—RADIO FREQUENCY DEVICES

■ 1. The authority citation for part 15 continues to read as follows:

**Authority:** 47 U.S.C. 154, 302, 303, 304, 307, 336, and 544A.

■ 2. Section 15.117 is amended by adding paragraph (k) to read as follows:

#### § 15.117 TV broadcast receivers.

\* \* \* \* \*

(k) The following requirements apply to all responsible parties, as defined in § 2.909 of this chapter, and any person that displays or offers for sale or rent television receiving equipment that is not capable of receiving, decoding and tuning digital signals.

(1) Such parties and persons shall place conspicuously and in close proximity to such television broadcast receivers a sign containing, in clear and conspicuous print, the Consumer Alert disclosure text required by paragraph (k)(3) of this section. The text should be in a size of type large enough to be clear, conspicuous and readily legible, consistent with the dimensions of the equipment and the label. The information may be printed on a transparent material and affixed to the screen, if the receiver includes a display, in a manner that is removable by the consumer and does not obscure the picture, or, if the receiver does not include a display, in a prominent location on the device, such as on the top or front of the device, when displayed for sale, or the information in this format may be displayed separately immediately adjacent to each television broadcast receiver offered for sale and clearly associated with the analog-only model to which it pertains.

(2) If such parties and persons display or offer for sale or rent such television broadcast receivers via direct mail, catalog, or electronic means, they shall prominently display in close proximity to the images or descriptions of such television broadcast receivers, in clear and conspicuous print, the Consumer Alert disclosure text required by paragraph (k)(3) of this section. The text should be in a size large enough to be clear, conspicuous, and readily legible, consistent with the dimensions of the advertisement or description.

(3) *Consumer alert.* This television receiver has only an analog broadcast tuner and will require a converter box after February 17, 2009, to receive over-the-air broadcasts with an antenna because of the Nation's transition to digital broadcasting. Analog-only TVs should continue to work as before with cable and satellite TV services, gaming consoles, VCRs, DVD players, and similar products. For more information, call the Federal Communications Commission at 1-888-225-5322 (TTY: 1-888-835-5322) or visit the Commission's digital television Web site at: <http://www.dtv.gov>.

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## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 48 CFR Parts 1804 and 1852

#### RIN 2700-AD26

#### Security Requirements for Unclassified Information Technology (IT) Resources

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Final rule.

**SUMMARY:** NASA is amending the clause at NASA FAR Supplement (NFS) 1852.204-76, Security Requirements for Unclassified Information Technology Resources, to reflect the updated requirements of NASA Procedural Requirements (NPR) 2810, "Security of Information Technology". The NPR was recently revised to address increasing cyber threats and to ensure consistency with the Federal Information Security Management Act (FISMA), which requires agencies to protect information and information systems in a manner that is commensurate with the sensitivity of the information processed, transmitted, or stored.

**EFFECTIVE DATE:** This final rule is effective May 10, 2007.

**FOR FURTHER INFORMATION CONTACT:** Ken Stepka, Office of Procurement, Analysis Division, (202) 358-0492, e-mail: [ken.stepka@nasa.gov](mailto:ken.stepka@nasa.gov).

#### SUPPLEMENTARY INFORMATION:

##### A. Background

NASA published a proposed rule in the **Federal Register** (71 FR 43408-43410) on August 1, 2006. The sixty day comment period expired October 2, 2006. Four comments were received from two respondents. A summary of the comments and NASA responses follows.

*Comment:* The clause is "\* \* \* not appropriate in situations where university contractors develop data and software to which NASA has access and the right to use, but is owned by the university under normal FAR and NFS provisions for university research contracts" and should not "\* \* \* be included when the contractor will simply be delivering software or data in electronic format to the government, unless the government will be the sole and exclusive owner of such delivered software or data \* \* \*."

*NASA Response:* FISMA requires agencies to protect their information and information systems used or operated by an agency or by a contractor of an agency or other organization on behalf of an agency. This is a data protection, and not an ownership, issue.