

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WT Docket No. 10–18; FCC 10–4]

In the Matter of Procedural Amendments to Commission Part 1 Competitive Bidding Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission makes two procedural amendments to its competitive bidding rules. The Commission amends the rule specifying how to report potential violations of the prohibition on certain communications in order to reduce the risk that bidding-related information might be disseminated to auction applicants. The Commission also amends the rules specifying how quickly applicants must modify pending auction applications in order to enhance the usefulness of application information during the auction process and enable the Commission to respond promptly to changing circumstances if necessary.

DATES: Effective March 1, 2010.

FOR FURTHER INFORMATION CONTACT:

Wireless Telecommunications Bureau, Auctions and Spectrum Access Division: Sayuri Rajapakse at (202) 418–0660.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Part 1 Procedural Amendments Order* adopted January 6, 2010, and released on January 7, 2010. The complete text of the *Part 1—Procedural Amendments Order* is available for public inspection and copying from 8 a.m. to 4:30 p.m. ET Monday through Thursday or from 8 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The *Part 1—Procedural Amendments Order* may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–488–5300, fax 202–488–5563, or you may contact BCPI at its Web site: <http://www.BCPIWEB.com>. When ordering documents from BCPI, please provide the appropriate FCC document number, for example, FCC 10–4. The *Part 1—Procedural Amendments Order* is also available on the Internet at the Commission's Web site: <http://wireless.fcc.gov/auctions>, or by using the search function for WT Docket No. 10–18 on the ECFS Web page at <http://www.fcc.gov/cgb/ecfs/>.

Introduction

1. The Commission makes two procedural amendments to its competitive bidding rules. First, the Commission amends the rule specifying how to report potential violations of 47 CFR 1.2105(c), which prohibits certain communications between auction applicants. The Commission provides that such reports shall be made as directed by public notice or, absent such direction, solely to the Auctions and Spectrum Access Division (Division) of the Wireless Telecommunications Bureau (Bureau) by the most expeditious means available. Currently, such reports are made both to the Division and to the Office of the Secretary of the Commission. This revised procedure will reduce the risk that bidding-related information might be disseminated to auction applicants, which would be contrary to the purpose of 47 CFR 1.2105(c). The Commission also amends the heading of 47 CFR 1.2105(c).

2. Second, the Commission amends the rules specifying how quickly applicants must modify pending auction applications. The Commission provides that such modifications shall be made within five business days after the reportable event occurs, or no more than five business days after the applicant becomes aware of the need to make an amendment or modification, whichever is later. This revision will enhance the usefulness of application information during the auction process and enable the Commission to respond promptly to changing circumstances if necessary.

Reporting Potential Violations of Section 1.2105(c)

3. Subject to specific exceptions, 47 CFR 1.2105(c) of the Commission's rules prohibits applicants from cooperating or collaborating with respect to, discussing with certain other applicants, or disclosing to such other applicants, the substance of any applicant's bids or bidding strategies, or discussing or negotiating settlement agreements. The rule's prohibitions begin at the deadline for filing short-form applications to participate in an auction and end at the post-auction down payment deadline. Applicants making or receiving prohibited communications must report such communications in writing to the Commission immediately. The current rule provides that such reports be filed with the Office of the Secretary, and that a copy be sent to the Chief of the Auctions and Spectrum Access Division, Wireless Telecommunications Bureau.

4. The creation and filing of the required reports unavoidably creates a risk that information that the rule is intended to restrict may be disseminated inadvertently. The reports required under the rule themselves may constitute or contain information that applicants are otherwise barred from sharing. The Bureau has attempted to address this concern by advising applicants to request confidential treatment when filing reports. The Commission concludes that it can further minimize the risk of inadvertent dissemination by requiring parties to file only a single report and to file that report with Commission personnel expressly charged with administering the Commission's auctions. Accordingly, the Commission amends 47 CFR 1.2105(c)(6) of its rules to provide that reports required by that section shall be filed as directed in the public notices that describe the procedures for the bidding that was the subject of the reported communication. If no public notice provides direction, such reports shall be filed with the Chief of the Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, by the most expeditious means available. The Commission delegates to the Bureau the authority to specify how such reports shall be made.

5. The current heading of 47 CFR 1.2105(c) of the Commission's rules is *Prohibition of collusion*. Given that collusion is a term used in many contexts, legal and economic, the Commission recognizes that using it to describe the prohibitions of this section may cause confusion. Accordingly, the Commission amends the heading of 47 CFR 1.2105(c) to read *Prohibition of certain communications*. This amendment makes no change to the substance of the rule, or to its interpretation or application.

Modifying Applications To Participate in Commission Auctions

6. 47 CFR 1.65(a) of the rules currently obligates an applicant to maintain the accuracy and completeness of information furnished in any application pending before the Commission and to notify the Commission as promptly as possible and in any event within 30 days of any substantial change that may be of decisional significance to that application. Failure to comply exposes an applicant to dismissal of its application and, potentially, enforcement action. 47 CFR 1.2105(b) contains additional rules specifically addressing the modification and

dismissal of short-form applications in competitive bidding proceedings.

7. The Commission finds that, in the context of competitive bidding for Commission construction permits and licenses, it is appropriate and reasonable to require that applicants furnish additional or corrected information more quickly than within 30 days. Most, if not all, information in auction applications is made available to the public and all auction participants during the auction. Auction participants may depend on ownership information in other participants' applications when determining whether contact with a third party regarding potential financing is permissible under 47 CFR 1.2105(c). In addition, if a change to an application could raise an issue as to the applicant's continued eligibility to participate, the Bureau needs the information as soon as possible in order to consider whether to take any action and minimize disruption of the auction. Accordingly, through its public notices, the practice of the Bureau has been to require reports or amendments to short-form applications within a shorter interval than 30 days. The Bureau also has long required that any change that causes a loss of or reduction in eligibility for a bidding credit be reported immediately.

8. The Commission amends 47 CFR 1.65(a) and 1.2105(b) of its rules to require applicants in competitive bidding proceedings to furnish additional or corrected information within five days of a significant occurrence, or to amend their short-form applications no more than five days after the applicant becomes aware of the need for amendment. The Commission believes this change will facilitate the auction process, making the information available promptly to all participants and enabling the Bureau to act expeditiously on those changes when such action is necessary. Moreover, the Commission emphasizes that applicants can readily make and submit any changes to their short-form applications electronically using the FCC Auction System.

9. The rule amendments adopted in the Order involve rules of agency organization, procedure, or practice. The notice and comment and effective date provisions of the Administrative Procedure Act are therefore inapplicable.

Paperwork Reduction Act

10. The Order contains a change to previously approved information collection requirements with respect to 47 CFR 1.2105(c). The change is neither material nor substantive and,

accordingly, is not subject to the Paperwork Reduction Act of 1995, Public Law 104-13. More specifically, the rule amendments will modify the provision specifying how parties make reports required pursuant to 47 CFR 1.2105(c)(6) so that parties shall make the reports as directed by public notice or only to the Chief of the Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, rather than to the Chief and the Office of the Secretary of the Commission, as required prior to the modification. Given that this change is neither material nor substantive, this document does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, 44 U.S.C. 3506(c)(4).

Congressional Review Act

11. The Commission will not send a copy of this Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A), because the amended rules are rules of agency organization, procedure or practice that do not substantially affect the rights or obligations of non-agency parties.

Ordering Clause

12. Accordingly, it is ordered, that pursuant to sections 4(i), 4(j), 5(c), 303(r), 47 U.S.C. 154(i), 154(j), 155(c), 303(r) of the Communications Act of 1934, as amended, 47 CFR part 1 is amended effective March 1, 2010.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure, Competitive bidding, Telecommunications.

Federal Communications Commission.

Alethea Lewis,

Federal Register Liaison.

Final Rules

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 1 as follows:

PART 1—PRACTICE AND PROCEDURE

■ 1. The authority of part 1 continues to read as follows:

Authority: 15 U.S.C. 79 *et seq.*; 47 U.S.C. 151, 154(j), 160, 201, 225, and 303.

■ 2. Section 1.65 is amended by revising paragraph (a) to read as follows:

§ 1.65 Substantial and significant changes in information furnished by applicants to the Commission.

(a) Each applicant is responsible for the continuing accuracy and completeness of information furnished in a pending application or in Commission proceedings involving a pending application. Except as otherwise required by rules applicable to particular types of applications, whenever the information furnished in the pending application is no longer substantially accurate and complete in all significant respects, the applicant shall as promptly as possible and in any event within 30 days, unless good cause is shown, amend or request the amendment of the application so as to furnish such additional or corrected information as may be appropriate. Except as otherwise required by rules applicable to particular types of applications, whenever there has been a substantial change as to any other matter which may be of decisional significance in a Commission proceeding involving the pending application, the applicant shall as promptly as possible and in any event within 30 days, unless good cause is shown, submit a statement furnishing such additional or corrected information as may be appropriate, which shall be served upon parties of record in accordance with § 1.47. Where the matter is before any court for review, statements and requests to amend shall in addition be served upon the Commission's General Counsel. For the purposes of this section, an application is "pending" before the Commission from the time it is accepted for filing by the Commission until a Commission grant or denial of the application is no longer subject to reconsideration by the Commission or to review by any court.

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■ 3. Section 1.2105 is amended by revising the section heading, adding paragraph (b)(4), and by revising paragraph (c)(6) to read as follows:

§ 1.2105 Prohibition of certain communications.

* * * * *

(b) * * *

(4) Applicants shall have a continuing obligation to make any amendments or modifications that are necessary to maintain the accuracy and completeness of information furnished in pending applications. Such amendments or modifications shall be made as promptly as possible, and in no case more than five business days after applicants become aware of the need to make any amendment or modification, or five business days after the reportable

event occurs, whichever is later. An applicant's obligation to make such amendments or modifications to a pending application continues until they are made.

(c) * * *

(6) Any applicant that makes or receives a communication of bids or bidding strategies prohibited under paragraph (c)(1) of this section shall report such communication in writing to the Commission immediately, and in no case later than five business days after the communication occurs. An applicant's obligation to make such a report continues until the report has been made. Such reports shall be filed as directed in public notices detailing procedures for the bidding that was the subject of the reported communication. If no public notice provides direction, such notices shall be filed with the Chief of the Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, by the most expeditious means available.

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 213

[Docket No. FRA-2008-0036]

RIN 2130-AB90

Track Safety Standards; Continuous Welded Rail (CWR)

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule; response to petition for reconsideration.

SUMMARY: This document responds to a petition for reconsideration of FRA's final rule published on August 25, 2009, which revised the Track Safety Standards. FRA received one petition questioning the definitions of "adjusting/de-stressing" and "buckling-prone condition" as they are used with regard to continuous welded rail (CWR).

DATES: Effective Date: This final rule is effective on March 30, 2010.

FOR FURTHER INFORMATION CONTACT:

Kenneth Rusk, Staff Director, Office of Railroad Safety, FRA, 1200 New Jersey Avenue, SE., Washington, DC 20590 (telephone: (202) 493-6236); or Sarah Grimmer Yurasko, Trial Attorney, Office of the Chief Counsel, FRA, 1200 New Jersey Avenue, SE., Washington, DC 20950 (telephone: (202) 493-6390).

SUPPLEMENTARY INFORMATION:

Background

Pursuant to (SAFETEA-LU), FRA published a final rule revising the Track Safety Standards on August 25, 2009 (74 FR 42988). FRA published a correcting amendment on October 21, 2009, which added compliance dates for railroads that had been inadvertently omitted from the final rule's compliance schedule. On September 25, 2009, FRA received a petition for reconsideration from the Association of American Railroads (AAR). This publication announces amendments to the final rule in response to the concerns expressed by the petitioner.

"Buckling-Prone Condition" Definition

In the petition, AAR stated that the definition of "buckling prone condition" included in the final rule at § 213.119(l) was not proposed by FRA in the notice of proposed rulemaking. As such, the petitioner did not have an opportunity until the review of the final rule to address the definition. The final rule provides that a "buckling-prone condition" exists "when the actual rail temperature is above the actual rail neutral temperature. This varies given the geographical composition of the track." Section 213.119(g)(2)(ii) requires remedial action to be taken whenever a buckling prone condition exists. AAR argues that, literally interpreted, the final rule requires remedial action whenever the rail neutral temperature is exceeded. AAR states that this is not what FRA intended, as the neutral temperature is supposed to be between the maximum and minimum temperatures the rail is subject to and thus the neutral temperature will commonly be exceeded. AAR suggested that "buckling-prone condition" be defined as follows:

Buckling-prone condition means when track conditions may be insufficient to restrain the track laterally at the rail temperatures actually experienced at that location.

FRA reviewed the definition of "buckling-prone condition" and consulted with the Volpe Center to more narrowly define what is intended by this term. In the railroad industry, "track buckling" refers to the sudden lateral movement of the track due to thermally-generated longitudinal rail forces. As the temperature rises above the actual rail neutral temperature, longitudinal expansion in rail can occur once a critical rail temperature is reached that can cause lateral misalignment of the track. Therefore, FRA concluded that CWR cannot always be considered in a "buckling-prone condition" if the rail

temperature is only above the rail neutral temperature, without reaching the critical temperature that can cause track misalignment. As a result, FRA has determined that the definition in the final rule could be misleading by stating "when the actual rail temperature is above the actual rail neutral temperature."

After consideration, FRA has determined that "buckling-prone condition" means a condition that can result in the track being laterally displaced due to high compressive forces caused by critical rail temperature combined with insufficient track strength and/or train dynamics.

"Adjusting/De-Stressing" Definition

The petition also noted an error in the definition of "adjusting/de-stressing." The final rule defines "adjusting/de-stressing" as a "procedure by which a rail's temperature is re-adjusted to the desired value. It typically consists of cutting the rail and removing rail anchoring devices, which provides for the necessary expansion and contraction, and then re-assembling the track." AAR points out that it is not the temperature of the rail that is adjusted, but rather the rail neutral temperature that is adjusted. AAR suggested that FRA replace "a rail's temperature" with "the rail neutral temperature" in the definition for "adjusting/de-stressing" in § 213.119(l). FRA has also noted this unintended omission in the definition and is amending the first sentence of the definition of "adjusting/de-stressing" to mean "a procedure by which a rail's neutral temperature is re-adjusted to the desired value."

Regulatory Impact and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This action has been evaluated in accordance with existing policies and procedures, and determined to be non-significant under both Executive Order 12866 and DOT policies and procedures (44 FR 11034, Feb. 26, 1979). The original final rule was determined to be non-significant. Furthermore, the amendments contained in this action are not considered significant because they generally clarify requirements currently contained in the final rule or allow for greater flexibility in complying with the rule. These amendments, additions, and clarifications will have a minimal net effect on FRA's original analysis of the costs and benefits associated with the final rule.