

covered by typical self-insured group health plans.

(c) *MV percentage*—(1) *In general.* An eligible employer-sponsored plan's MV percentage is—

(i) The plan's anticipated covered medical spending for benefits provided under a particular essential health benefits (EHB) benchmark plan described in 45 CFR 156.110 (EHB coverage) for the MV standard population based on the plan's cost-sharing provisions;

(ii) Divided by the total anticipated allowed charges for EHB coverage provided to the MV standard population; and

(iii) Expressed as a percentage.

(2) *Wellness incentives*—(i) *In general.* Nondiscriminatory wellness program incentives offered by an eligible employer-sponsored plan that affect deductibles, copayments, or other cost-sharing are treated as earned in determining the plan's MV percentage to the extent the incentives relate to tobacco use. These wellness program incentives that do not relate to tobacco use are treated as not earned.

(ii) *Example.* The following example illustrates the rules of this paragraph (c)(2):

Example. (i) Employer X offers an eligible employer-sponsored plan that reduces the deductible by \$300 for employees who do not use tobacco products or who complete a smoking cessation course. The deductible is reduced by \$200 if an employee completes cholesterol screening within the first six months of the plan year. Employee B does not use tobacco and his deductible is \$3,700. Employee C uses tobacco and her deductible is \$4,000.

(ii) Under paragraph (c)(2)(i) of this section, only the incentives related to tobacco use are considered in determining the plan's MV percentage. C is treated as having earned the \$300 incentive for attending a smoking cessation course. Thus, the deductible for determining for the MV percentage for both Employees B and C is \$3,700. The \$200 incentive for completing cholesterol screening is disregarded.

(3) *Health savings accounts.* Employer contributions for the current plan year to health savings accounts that are offered with an eligible employer-sponsored plan are taken into account for that plan year towards the plan's MV percentage.

(4) *Health reimbursement arrangements.* Amounts newly made available for the current plan year under a health reimbursement arrangement that is integrated with an eligible employer-sponsored plan are taken into account for that plan year towards the plan's MV percentage if the amounts may be used only to reduce cost-sharing for covered medical expenses.

(5) *Expected spending adjustments for health savings accounts and health reimbursement arrangements.* The amount taken into account under paragraph (c)(3) or (c)(4) of this section is the amount of expected spending for health care costs in a benefit year.

(d) *Methods for determining MV.* An eligible employer-sponsored plan may use one of the following methods to determine whether the plan provides MV—

(1) The MV Calculator made available by HHS and IRS, with adjustments permitted by paragraph (e) of this section;

(2) One of the safe harbors established by HHS and IRS and described in published guidance, see § 601.601(d) of this chapter;

(3) Actuarial certification, as described in paragraph (f) of this section, if an eligible employer-sponsored plan has nonstandard features that are not compatible with the MV Calculator and may materially affect the MV percentage; or

(4) For plans in the small group market, conformance with the requirements for a level of metal coverage defined at 45 CFR 156.140(b) (bronze, silver, gold, or platinum).

(e) *Scope of essential health benefits and adjustment for benefits not included in MV Calculator.* An eligible employer-sponsored plan may include in calculating its MV percentage all benefits included in any EHB benchmark (as defined in 45 CFR part 156). An MV percentage that is calculated using the MV Calculator may be adjusted based on an actuarial analysis that complies with the requirements of paragraph (f) of this section to the extent of the value of these benefits that are outside the parameters of the MV Calculator.

(f) *Actuarial certification*—(1) *In general.* An actuarial certification under paragraph (d)(3) of this section must satisfy the requirements of this paragraph (f).

(2) *Membership in American Academy of Actuaries.* The actuary must be a member of the American Academy of Actuaries.

(3) *Actuarial analysis.* The actuary's analysis must be performed in accordance with generally accepted actuarial principles and methodologies and specific standards that may be provided in published guidance, see § 601.601(d) of this chapter.

(4) *Use of MV Calculator.* The actuary must use the MV Calculator to determine the plan's MV percentage for coverage the plan provides that is measurable by the MV Calculator. The actuary may perform an actuarial

analysis of the plan's EHB coverage for the MV standard population for benefits not measured by the MV Calculator to determine the effect of nonstandard features that are not compatible with the MV Calculator. The actuary may certify the plan's MV percentage based on the MV percentage that results from use of the MV Calculator and the actuarial analysis of the plan's coverage that is not measured by the MV calculator.

(g) *Effective/applicability date.* This section applies for taxable years ending after December 31, 2013.

■ **Par. 7.** Section 1.6011-8 is amended by revising paragraph (a) to read as follows:

§ 1.6011-8 Requirement of income tax return for taxpayers who claim the premium tax credit under section 36B.

(a) *Requirement of return.* A taxpayer who receives advance payments of the premium tax credit under section 36B must file an income tax return for that taxable year on or before the due date for the return (including extensions of time for filing).

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Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 2, 15 and 68

[ET Docket No. 13-44; FCC 13-19]

Authorization of Radiofrequency Equipment

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes certain changes to the Commission's equipment authorization processes to ensure that they continue to operate efficiently and effectively. In particular, it addresses the role of TCBs in certifying RF equipment and post-market surveillance, as well as the Commission's role in assessing TCB performance. It also addresses the role of test laboratories in the RF equipment approval process, including accreditation of test labs and the Commission's recognition of laboratory accreditation bodies, and measurement procedures used to determine RF equipment compliance. The Commission believes that the changes proposed will enable new and

innovative products to be brought to market as quickly as possible, thus promoting competition in the provision of RF equipment, while at the same time protecting against interference among radio services and devices using the RF spectrum.

DATES: Comments must be filed on or before June 17, 2013, and reply comments must be filed on or before July 17, 2013.

FOR FURTHER INFORMATION CONTACT:

Hugh Van Tuyl, Office of Engineering and Technology, (202) 418-7506, email: Hugh.VanTuyl@fcc.gov, TTY (202) 418-2989.

ADDRESSES: You may submit comments, identified by ET Docket No. 13-44 and RM-11652, by any of the following methods:

- *Federal Communications Commission's Web site:* <http://fjallfoss.fcc.gov/ecfs2/>. Follow the instructions for submitting comments.

- *Mail:* Hugh Van Tuyl, Office of Engineering and Technology, Room 7-A162, Federal Communications Commission, 445 12th SW., Washington, DC 20554.

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

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making*, ET Docket No. 13-44, FCC 13-19, adopted February 12, 2013, and released February 15, 2013. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY-A257), 445 12th Street SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room, CY-B402, Washington, DC 20554. The full text may also be downloaded at: www.fcc.gov.

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of*

Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.

- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

Summary of Notice of Proposed Rulemaking

1. The Commission is responsible for an equipment authorization program for radiofrequency (RF) devices under part 2 of its rules. This program is one of the primary means that the Commission uses to ensure that the multitude of RF devices used in the United States operate effectively without causing harmful interference and otherwise comply with the Commission rules. All RF devices subject to equipment authorization must comply with the Commission's technical requirement before they can be imported or marketed. The Commission or a Telecommunication Certification Body

(TCB) must approve some of these devices before they can be imported or marketed, while others do not require such approval. The Commission last comprehensively reviewed its equipment authorization program more than ten years ago. The rapid innovation in equipment design since that time has led to ever-accelerating growth in the number of parties applying for equipment approval. The Commission therefore believes that the time is now right for us to comprehensively review our equipment authorization processes to ensure that they continue to enable this growth and innovation in the wireless equipment market. In May of 2012, the Commission began this reform process by issuing an Order to increase the supply of available grantee codes. With this Notice of Proposed Rulemaking (NPRM), the Commission continues its work to review and reform the equipment authorization processes and rules.

2. The NPRM proposes certain changes to the Commission's part 2 equipment authorization processes to ensure that they continue to operate efficiently and effectively. In particular, it addresses the role of TCBs in certifying RF equipment and post-market surveillance, as well as the Commission's role in assessing TCB performance. The NPRM also addressed the role of test laboratories in the RF equipment approval process, including accreditation of test labs and the Commission's recognition of laboratory accreditation bodies, and measurement procedures used to determine RF equipment compliance. Finally, it proposes certain modifications to the rules regarding TCBs that approve terminal equipment under part 68 of the rules that are consistent with our proposed modifications to the rules for TCBs that approve RF equipment. Specifically the Commission proposes to recognize the National Institute for Standards and Technology (NIST) as the organization that designates TCBs in the United States and to modify the rules to reference the current International Organization for Standardization and International Electrotechnical Commission (ISO/IEC) guides used to accredit TCBs.

3. The current RF equipment authorization procedures have evolved over the course of more than 35 years. The last complete review of the equipment authorization procedures was conducted more than 10 years ago. In the *Equipment Authorization Procedures Order* of 1998, 63 FR 36591, July 7, 1998, the Commission reduced and consolidated the equipment approval processes for RF equipment to

three types—certification, Declaration of Conformity (DoC), and verification; relaxed the equipment authorization requirement from certification to Declaration of Conformity for certain part 15 unintentional radiators and part 18 consumer industrial, scientific, and medical (ISM) equipment; relaxed the equipment authorization requirement from notification to verification for certain transmitters operated in licensed services; and provided for electronic filing of applications for equipment authorization. These actions were designed to reduce the burden of the equipment authorization program on manufacturers.

4. Subsequently, in the *Streamlining II Order*, the Commission amended its equipment authorization rules to further streamline the equipment authorization process by allowing accredited independent certification bodies, called Telecommunication Certification Bodies (TCBs), to approve most types of equipment that require certification. The Commission took this action pursuant to its authority under Section 302(e) of the Communications Act, which permits it to delegate equipment testing and certification to private organizations. It established the TCB program to provide manufacturers with an alternative to obtaining certification from the Commission, and to facilitate the more rapid introduction of RF equipment in the market. TCBs approve equipment under the certification procedure based on an application that provides all of the information specified in part 2. The TCB processes the application to determine whether the product meets the Commission's requirements and issues a grant of equipment authorization through the Commission's Equipment Authorization System (EAS). The grant identifies the approving TCB and the Commission as the issuing authority. While the Commission continues to process most types of certification applications, TCBs now issue the vast majority of grants of certification. In order to ensure that the TCBs' evaluations are properly performed, the Commission holds mandatory monthly conference calls and semi-annual workshops with all TCBs to discuss recent interpretations, policy changes and any other issues or concerns related to the TCB program. The Commission also performs audits on TCB approvals to ensure that TCBs operate in accordance with our rules. If such audits reveal concerns about a particular TCB's performance, the Commission may initiate action to verify the TCB's technical competence and may revoke the recognition of a

TCB that does not operate in accordance with the rules.

5. TCBs, which may be located in the United States or in certain foreign countries, all have the same responsibilities regardless of their location. However, their location dictates the method by which they are designated. TCBs within the United States are designated by the Commission after demonstrating that they are accredited to meet the applicable requirements by NIST or its designated accrediting organization. Certification bodies located outside of the United States can be recognized as a TCB only under the terms of a Mutual Recognition Agreement (MRA) between a foreign country and the United States government. Each MRA specifies an authority, typically a government entity that designates TCBs in the country or countries covered by the MRA. The Commission then recognizes the designated TCBs. No TCBs are designated in countries that do not have an MRA with the United States. Manufacturers in such countries have to obtain product certification at a designated TCB in another country.

6. The specific provisions of the three current RF equipment authorization procedures are described below.

Certification is an equipment authorization issued by the Commission or by a designated TCB based on an application and test data submitted by the responsible party (e.g., the manufacturer or importer). The Commission or a TCB may re-test a sample of a device to verify that it complies with the rules before granting approval for the equipment to be marketed. The certification procedure is typically applied to RF equipment that has a greater risk of non-compliance, such as equipment employing new technology for which the testing methodology is not well defined, or that poses a higher risk of interference. Examples of devices subject to certification include, but are not limited to, mobile phones; wireless local area networking equipment, remote control transmitters; land mobile radio transmitters; wireless medical telemetry transmitters; cordless telephones; and walkie-talkies. All certified equipment is listed in a Commission database, regardless of whether it is approved by the Commission or a TCB.

Declaration of Conformity (DoC) is a procedure that requires the party responsible for compliance to follow certain measurement requirements and/or take other necessary steps to ensure that the equipment complies with the appropriate technical standards. A compliance information statement must

be supplied with the product, identifying the product and a responsible party within the United States, and containing the statement specified in § 15.19(a)(3). The responsible party is not required to file an equipment authorization application with the Commission or a TCB, or to submit a sample unit or test data unless specifically requested. However, the responsible party must submit to the Commission upon request records of the original design drawings and specifications, the procedures used for production inspection and testing, a report of RF emission measurements, the compliance information statement, and a sample of the device. The DoC authorization procedure is typically required for types of RF equipment that have a good record of compliance, where the testing methodology is clearly defined and recognized by the Commission, and there is a low risk of interference. Examples of devices subject to a DoC include personal computers and peripherals, consumer ISM equipment such as microwave ovens and RF light bulbs, radio receivers and TV interface devices. Equipment authorized under the DoC procedure is not listed in a Commission database.

Verification is a procedure under which the party responsible for compliance relies on measurements that it or another party makes to ensure that the equipment complies with the appropriate technical standards. Under the verification procedure, the responsible party is not required to file an application with the Commission. Submission of a sample unit or representative data to the Commission demonstrating compliance is not required unless specifically requested by the Commission. The responsible party must submit to the Commission upon request records of the original design drawings and specifications, the procedures used for production inspection and testing, a report of RF emission measurements, and a sample of the device. Verification, which is the least burdensome equipment authorization procedure, is applied to types of RF equipment that have an excellent record of compliance, the testing methodology is well known and understood, and there is low risk of interference. Examples of devices subject to verification include non-consumer ISM equipment; TV and FM receivers; and business computer equipment. Devices subject to verification must be uniquely identified in a format which cannot be confused with the FCC identifier required on

certified equipment. Equipment authorized under the verification procedure is not listed in a Commission database.

7. RF equipment subject to any of the equipment authorization procedures described must generally be tested for compliance with the Commission's technical rules. The Commission has general requirements on the qualifications of laboratories that perform compliance testing, and certain specific requirements on laboratories that test equipment under particular rule parts or authorization procedures. For example, equipment authorized under the DoC procedure must be tested by a laboratory that is accredited as meeting the requirements of ISO/IEC Standard 17025, *General Requirements for the Competence of Calibration and Testing Laboratories*, by a Commission-recognized accreditation organization. Laboratories that test equipment subject to certification under parts 15 and 18 of the rules are not required to be accredited, but must be on a list maintained by the Commission. Equipment authorized pursuant to certification under rule parts other than parts 15 or 18, or any equipment authorized under verification, may be tested by the manufacturer or by an independent testing laboratory that is not required to be accredited or listed with the Commission. The Commission may conduct post-market testing of equipment authorized under any of the three procedures to ensure that equipment on the market complies with the Commission's technical requirements. Additionally, TCBs are required to perform post-market surveillance on a certain percentage of products they have certified.

Given the changes in RF devices, technologies, and manufacturing methods that have occurred since the Commission last comprehensively reviewed its equipment authorization procedures, we believe that it is time to revisit the equipment authorization procedures to ensure that they are appropriate for the types of equipment being marketed today and for the increasingly intensive use of the airwaves. We are initiating this proceeding to explore improvements that can be made to our RF equipment authorization processes to efficiently achieve the goals of preventing interference to communications services without hindering the rapid introduction of new and innovative products to the market.

8. In particular, the Commission proposed that it will no longer conduct evaluations for initially approving RF equipment requiring certification under

the procedures in part 2 of the rules, and that TCBs will approve all such equipment in the first instance, including equipment on the "exclusion list" that only the Commission may currently approve. The Commission also proposed to clarify and modify the rules on TCB responsibilities. Specifically, it proposed to codify the "permit-but-ask" procedure that TCBs must use when certifying new technologies when testing protocols have not been established, clarify the responsibility of TCBs to perform post-market surveillance of products they have approved, and specify steps that can be taken if a TCB's performance were found to be deficient. The Commission also proposed to require accreditation of all laboratories that test equipment subject to the part 2 certification procedure, and to codify the existing procedure through which the Commission can recognize new laboratory accreditation bodies. In addition, it proposed to incorporate the latest versions of the industry standards for measuring equipment into the rules and address how to update these standards more quickly in the future. Finally, the Commission proposed to modify the rules to reference the current ISO/IEC standards used to accredit TCBs that approve RF equipment under part 2 of the Commission's rules and terminal equipment under part 68 of the Commission's rules. The specific issues and proposals on which it seeks comments are discussed in detail in the *NPRM*. The Commission believes that the changes proposed will enable new and innovative products to be brought to market as quickly as possible, thus promoting competition in the provision of RF equipment, while at the same time protecting against interference among radio services and devices using the RF spectrum.

9. Many of the changes proposed herein are administrative in nature and the Commission believes that there would be minimal or no costs associated with them. It recognizes that certain proposed changes, such as requiring laboratories to become accredited, would result in some increased costs. The Commission expects that the benefits of the proposed changes would be greater than the additional costs that would be incurred. The Commission seeks comment on the costs and benefits of the rule changes proposed, along with data supporting commenters' assessments.

A. TCB Program

1. Certification of RF Equipment

10. One goal of the Commission in allowing TCBs to perform equipment approvals was to enable it to discontinue processing routine applications when TCBs were available to perform the work. The Commission, however, did not commit to ending its role in issuing equipment authorizations altogether. The Commission concluded at that time that it was unnecessary for it to continue approving certification applications for personal computers and peripherals, since that equipment could be authorized through the DoC procedure. It found that processing these voluntarily filed applications was not an efficient use of its resources, and stated that once domestic TCBs were available to process applications for personal computer equipment for those applicants who chose to use the certification process rather than DoC, the Commission would stop accepting these applications. The Commission issued a public notice in September 2000 announcing that it would no longer accept applications for personal computer equipment. However, the Commission has continued to accept applications for all other types of equipment during the implementation of the TCB program. This practice has provided a smooth transition to TCB certification of equipment authorization applications, and ensured that at least one entity is available to certify all types of equipment.

11. Under the current rules, a TCB is not permitted to certify equipment for which Commission rules or requirements do not exist or for which the application of the rules or requirements are unclear. In some rulemaking proceedings, the Commission has identified specific categories of equipment that TCBs are not allowed to certify, such as TV bands devices and split modular transmitters. OET maintains an up-to-date list of the types of equipment that a TCB is not allowed to certify and publishes this "exclusion list" on the Commission's Knowledge DataBase (KDB) system. To enable TCBs to certify more types of devices, OET has established a "permit-but-ask" procedure that allows TCBs to review applications for certification of equipment that would otherwise be excluded from approval by a TCB. These procedures allow the prospective applicant and TCB to seek guidance prior to filing the application for certification. Based on information submitted from the initiating party in a permit-but-ask request, the Commission provides guidance on test methods and

the applicability of the Commission's technical requirements specific to the device for which authorization is to be requested. This is an electronic inquiry/response process that is linked to the electronic equipment authorization system. The TCB then reviews the application for certification based on the guidance received from the Commission. Once a TCB has completed a review of equipment covered by the permit-but-ask procedure, it confirms with OET that appropriate measures have been taken to demonstrate compliance with the guidance provided by OET prior to issuing a grant of certification. The appropriate measures include seeking guidance on proper test procedures, applying interpretations of technical rules or applying specific review procedures as provided by the Commission staff prior to the final approval.

12. The Commission maintains a database of all RF equipment certified by the Commission and TCBs. This database allows the Commission to verify that a device is approved without having to contact the TCB that approved the device to obtain the records demonstrating compliance with the FCC requirements. The database also allows the Commission to monitor the activities of TCBs to determine how many approvals are issued for each type of equipment. Further, this database provides a single publicly available source of information that parties can use to verify approvals and obtain copies of applications for and grants of certification.

13. *Proposals.* Now that the TCB program is well-established, the Commission proposes that the Commission no longer directly issue any grants of equipment authorization, and instead allow TCBs to authorize all products subject to certification. This proposal will allow the Commission staff to concentrate on enforcing the rules, providing the necessary oversight and guidance to the TCBs, performing post-market surveillance and auditing random samples of products approved by the TCBs. The Commission notes that during Fiscal Year 2011, TCBs certified approximately 98% of the products submitted for approval under the Commission's RF equipment authorization program. It also proposes to provide TCBs with specific authority to dismiss equipment authorization applications under the same circumstances that the Commission may dismiss applications. Specifically, the Commission proposes that a TCB shall dismiss an application that is not in accordance with the provisions of Subpart 2 or if requested by the

applicant, and the TCB may dismiss an application if the applicant fails to provide additional information or test samples requested by the TCB. The dismissal of an application would be without prejudice to the applicant filing a new application under the same FCC identification number with additional or corrected information. An applicant could appeal a TCB's dismissal of an application to the Commission if it believed that the TCB acted in error, and the Commission could change a TCB's action that it finds erroneous. However, the Commission is not proposing to provide TCBs with authority to deny applications, which it believes is a function that should be reserved for the Commission. A TCB could recommend denial of an application to the Commission which would determine if such action is warranted. A TCB would continue to have authority to rescind a grant within 30 days as the rules currently allow for both TCBs and the Commission, but we are proposing to change the term "rescind" to "set aside" for consistency with the part 1 rules. The Commission does not expect that this proposal will have any impact on applicant's costs because TCBs already certify approximately 98% of all RF equipment. Further, the benefits are significant because applicants for equipment certification would be able to have all types of devices approved by a TCB and obtain approvals more quickly. The Commission seeks comment on these proposals.

14. The Commission proposes to eliminate the exclusion list and instead codify a procedure that TCBs will use when they require guidance from the Commission to certify a product for which the rules, requirements or measurement procedures are not clear. It proposes to call this the pre-approval guidance procedure. Under this procedure, the Commission will identify the types of devices or types of testing for which a TCB will be required to consult with the Commission before granting certification. These may include, for example, devices operating under the Dynamic Frequency Selection (DFS), Ultra Wide Band (UWB) and TV Bands Device (TVBD) rules under which the Commission is the only equipment approval body at the present time. Under our proposed procedure, the Commission would have to give its concurrence before a TCB could grant an application. The Commission also would advise a TCB if additional information or equipment testing is required or if the equipment cannot be approved because it does not comply with the Commission's rules. In this

manner, although ultimately the authorization is granted by a TCB, the Commission will continue to exercise the necessary control and oversight of particular areas of the rules until such time that it determines these areas can be considered routine and these additional oversight procedures will not be needed. The Commission expects that having TCBs process applications for equipment currently on the exclusion list under the proposed pre-approval guidance procedure will speed processing because TCBs will perform all of the routine application review, while OET will need to review only those portions of an application that require additional oversight. We seek comment on this proposal.

15. The current permit-but-ask process does not fully integrate the inquiry/response function in the KDB with the application processing function in the Equipment Authorization System (EAS). This process requires a TCB to first send a request through the KDB for Commission guidance on processing an application on the permit-but-ask list. The TCB then uploads files for Commission review using the EAS, which is a separate system from the KDB. Any further communications between the Commission and a TCB are made using the KDB. Therefore, both the Commission and TCBs must cross reference application files and related communications that are stored on different electronic systems. As a result, the process has sometimes been time consuming for applicants and TCBs. The Commission intends to fully integrate the pre-approval guidance procedure with the EAS, thereby improving Commission response time while continuing to provide necessary guidance for new equipment representing new technologies.

16. Under the present process, the Commission may test a sample of certain types of equipment before it gives a TCB permission to issue a grant of certification. For example, for equipment subject to the Dynamic Frequency Selection (DFS) requirements in part 15, subpart E, the Commission requires a sample of the equipment being considered for certification be tested at the Commission's Laboratory prior to the grant of certification being issued. The Commission proposes to provide that the pre-approval guidance procedure include the option for the Commission to conduct pre-grant sample testing to ensure that the Commission is able to request samples of devices to verify their compliance with the rules. The Commission seeks comment on this proposal.

17. In summary, the proposed pre-approval guidance procedure would function as follows:

1. The Commission will issue a KDB publication identifying the categories of equipment or types of testing that come under the pre-approval guidance procedure. This list will include devices currently on the exclusion and permit-but-ask lists.

2. The TCB will perform an initial review of the application and determine the issues on which it needs to obtain guidance from the Commission. It will then contact the Commission to obtain guidance on those issues by electronically submitting relevant exhibits.

3. The TCB will review the application in accordance with the Commission's guidance to determine whether the equipment complies with the Commission's rules.

4. The Commission may request and test a sample before the application can be granted.

5. The TCB will electronically submit all exhibits to the Commission along with a recommendation to grant or dismiss the application.

6. The Commission will give its concurrence for the TCB to grant the application if it determines that the equipment complies with the rules. The Commission will advise the TCB if additional information or equipment testing is required, or if the equipment cannot be approved because it does not comply with the Commission's rules. The Commission seeks comment on this proposed procedure and on any additions or modifications that may be required.

18. Under the current rules, an application for certification of RF equipment is made by filing FCC Form 731 and the supporting information required by the rules, including a measurement report, instruction manuals, and equipment photographs and diagrams. For equipment certified by the Commission, the application form and supporting information must be filed electronically with the EAS at the URL specified in the rules. For equipment certified by TCBs, the applicant files the information required by Form 731 and all required exhibits directly with a TCB. The Commission's rules also require that applicants, to be eligible for any instrument of authorization from the Commission, must certify that they comply with the Implementation of the Anti-Drug Abuse Act of 1988 and are responsible for ensuring that statements made in an application for authorization are true and correct to the best of their

knowledge and belief. Signatures required on the application may be in electronic format.

19. The Commission proposes to modify its rules to clarify the responsibilities of applicants for equipment authorization and of the TCBs that will process these applications through the Commission's electronic systems. It proposes to modify § 2.911 to state that applicants shall send a written, signed request for equipment authorization to a TCB. The Commission would continue to permit signatures in electronic format. It also proposes to modify the rule to make explicit that applicants provide the TCB with the information required by Form 731 in writing or electronic format, including all exhibits that the TCB requires to process the application and to complete Form 731 in the Commission electronic system. For example, applicants would have to provide the TCB with an FCC Registration Number (FRN) and a grantee code if these have already been assigned to the applicant by the Commission. The Commission further proposes that an applicant must provide the TCB with signed written certifications stating that it complies with Implementation of the Anti-Drug Abuse Act of 1988 and that all statements made in the application are correct to the best of its knowledge and belief. Additionally, the Commission proposes that the TCB must submit the applicant's certifications as exhibits when it uploads Form 731 applications to the Commission. The Commission is also proposing to incorporate into § 2.911 the requirement from § 2.913 that applications must be accompanied by the appropriate fees since new applicants for certification must submit a fee to obtain a grantee code, and this function could be handled by a TCB if an applicant authorizes a TCB to do so. However, because that is the only equipment authorization fee listed in § 1.1103 of the rules that a TCB or an applicant might need to submit to the Commission, the Commission proposes to modify § 1.1103 to eliminate equipment authorization fees that would no longer be collected by the Commission if TCBs approve all equipment subject to certification. The Commission does not expect that these proposals will be burdensome because TCBs should already be obtaining the required certifications and any other information that they need from applicants to complete their Form 731. The Commission seeks comment on these proposals.

20. The rules currently require that a TCB supply the Commission with

electronic copies of FCC Form 731 and the grant of equipment authorization for each RF device certified by the TCB. The rules do not require TCBs to submit other supporting information from the certification application, but they specify that the Commission can request the complete application and exhibits from a TCB if it needs additional information about a particular device. In order for the Commission to effectively perform its program oversight and enforcement role, it is necessary to have the TCB submit a complete copy of the certification application to the database, including all the photographs, user manuals and test reports. The Commission therefore routinely request that TCBs submit complete information for each certification application that they approve.

21. The Commission proposes to amend § 2.926(g)(1) of the rules to require that TCBs provide the Commission with a complete copy of each certification application that they process, including all exhibits required by the Commission's rules, prior to issuance of a grant of certification or dismissal of the application. The TCB would grant or dismiss equipment authorization applications through the Commission's electronic EAS. The Commission also proposes to move to this section the language concerning the confidentiality of application exhibits from § 2.962(g)(4) and remove the remainder of § 2.962(g)(4) as unnecessary since it refers to full applications being sent to the Commission upon request. These proposed changes will codify the current Commission practice of obtaining complete information for all equipment certified by TCBs prior to the issuance of a grant, and will provide notice to the Commission and other TCBs concerning which applications were dismissed. The changes would not result in any significantly increased burden for TCBs because they already supply the complete application and all exhibits to the Commission for equipment that they approve, and the Commission expects that the number of dismissed applications that they would have to submit to the Commission will be small in comparison to those they grant. The Commission seeks comment on these proposals.

22. The Commission also proposes to make a number of minor revisions to the part 2 rules to reflect the fact that TCBs would approve all RF equipment subject to the part 2 certification requirement. In particular, the Commission notes that the following sections refer to certification applications being processed by the Commission and

propose to modify the language in these sections to reflect the Commission's proposals that TCBs will process all certification applications: 2.901 (Basis and purpose), 2.907 (Certification), 2.909 (Responsible party), 2.915 (Grant of application), 2.917 (Dismissal of application), 2.919 (Denial of application), 2.921 (Hearing on application), 2.924 (Marketing of electrically identical equipment * * *), 2.925 (Identification of equipment), 2.926 (FCC identifier), 2.927 (Limitations on grants), 2.929 (Changes in name, address, ownership or control of grantee), 2.932 (Modification of equipment), 2.933 (Change in identification of equipment), 2.947 (Measurement procedure), and 2.1043 (Changes in certificated equipment). The Commission seeks comment on this proposal and whether there are any other sections in part 2 or other rule parts that need to be modified if TCBs approve all RF equipment requiring certification.

2. Post Market Surveillance

23. TCBs must be accredited to demonstrate that they comply with the Commission's TCB qualification criteria based on ISO/IEC Guide 65, *General requirements for bodies operating product certification systems*. Section 2.962(g)(2) states that, in accordance with ISO/IEC Guide 65, a TCB is required to conduct appropriate post-market surveillance activities on equipment that it certifies. This rule section requires that these activities be based on "type testing" (*i.e.*, sample testing) of samples of the product types that the TCB has certified. Other types of surveillance activities of a product that has been certified are permitted provided they are no more onerous than type testing. This rule section also states that the Commission may at any time request a list of products certified by a certification body and request copies of product evaluation reports. In addition, the Commission may request that a TCB perform post-market surveillance of a specific product it has certified. The Commission has authority to require grantees of certification to submit samples for testing at the FCC Laboratory, but there is no rule that specifically states that a TCB may request samples directly from the grantee of certification.

24. OET has delegated authority under the Commission's rules to develop the procedures that TCBs will use for performing post-market surveillance. OET has provided information to TCBs on performing post-market surveillance in KDB Publication No. 610077. This

publication requires TCBs to develop a sample test plan and describes the criteria TCBs must use in selecting samples. TCBs must perform post-market surveillance testing on at least five percent of the products that they certify each year. This publication also describes how TCBs should obtain and evaluate samples and requires that they submit a report on their findings to OET.

25. *Proposals*. The Commission proposes to modify the rules on post-market surveillance to more clearly define the responsibilities of TCBs. Specifically, it proposes to modify § 2.962 to indicate that OET publishes a KDB on TCB post-market surveillance requirements, and that this document provides specific information such as the number and types of samples that a TCB must test. The Commission also proposes to provide TCBs with clear authority to request samples of equipment that they have certified directly from the grantee of certification. In this regard, the Commission notes that there are currently six different sections in part 2 of the rules that address the submission of equipment samples for testing, so it is proposing to merge these and create a single rule section that addresses equipment sample requests.

26. OET may want TCBs to perform post-market surveillance on specific devices or categories of equipment due to concerns about interference or equipment non-compliance. In such cases, the Commission proposes that OET would send a sample request directly to the grantee of certification and request that the grantee submit the sample directly to the TCB that performed the original certification for evaluation. OET will also notify the TCB that it has requested that the grantee submit a sample, and that the TCB must test the device. Any equipment samples requested by the Commission for testing by a TCB would be included in the minimum required post-market surveillance testing by the TCB. The Commission also proposes that failure of a grantee to submit a sample to a TCB within 21 days may be cause for the Commission to take actions such as suspending action on other applications for equipment authorization submitted by that grantee or issuing monetary forfeitures pursuant to § 1.80 of this chapter. The Commission may consider extensions of time upon submission of a showing of good cause.

27. The Commission proposes that, if the TCB determines that the equipment does not comply with the Commission's requirements for such devices, the TCB shall immediately notify the grantee and

the Commission in writing. The Commission also proposes that the grantee must provide the TCB with information on the corrective action that it has taken to bring the equipment into compliance and that the TCB will have 30 days to submit a report on these actions to the Commission. It further proposes to require that TCBs submit periodic reports of their post-market surveillance activities and findings by a date determined by OET, but the Commission is not proposing to specify the date in the rules to provide OET with the flexibility to modify it if necessary. The Commission does not expect that these proposals will impose any new costs on TCBs or grantees of certification because TCBs must already perform post-market surveillance testing on at least 5% of the devices they approve, and grantees are already required to supply a test sample upon request.

28. The Commission seeks comment on these proposals. It also seeks comment on how we would coordinate sample requests to ensure that the Commission and TCBs do not send duplicate requests for the same device or requests for more samples than the TCB is required to test. The Commission further seek comment on whether there should be cross-checking among TCBs, so that a TCB would test some equipment that another TCB approved. If so, how would it determine which sampled equipment is to be tested by which TCB? If a TCB is required to test a sample device approved by a different TCB, who should bear the cost of testing and reporting? The Commission we also seeks comment on ways that the Commission could obtain samples from the retail market that are part of the oversight process. For example, could the grantee provide a voucher that the Commission could use to obtain a sample from a retail outlet of its choosing, or could the grantee arrange for the Commission to pick a sample at random from a distributor? The Commission notes that in some cases, it may need special test software so that it can verify a device's compliance with the rules. The Commission seeks comment on how it should obtain any special test software for use with unmodified production devices that it obtains from the market. The Commission further seeks comment on whether its proposals would impose any new costs on TCBs or grantees, and if so, whether the benefits of the proposals outweigh the costs.

3. Assessing TCB Performance

29. Because the Commission is proposing to allow TCBs to approve all

RF equipment that is subject to certification, it will become increasingly important to ensure that recognized TCBs continue to meet all relevant Commission requirements and that we minimize the possibility that equipment could be certified without fully complying with our technical rules. For an organization to be recognized as a TCB, the Commission requires that it be accredited to demonstrate compliance with ISO/IEC Guide 65 for operating a certification body. The rules currently provide that TCBs within the United States may be designated by the Commission after demonstrating that they are accredited in accordance with this guide by NIST or its recognized accrediting organization. NIST recognizes ANSI and A2LA to accredit prospective TCBs. TCBs outside the United States must be accredited and designated by an authority recognized under the terms of an MRA, and their designation must be recognized by the Commission. In addition, a TCB must demonstrate expert knowledge of the regulations for each product type for which it seeks recognition; recognize when interpretations of the rules or test procedures are necessary and demonstrate knowledge of how to obtain current and correct interpretations; and participate in consultative activities identified by the Commission to establish a common understanding and interpretation of the regulations. A prospective TCB must demonstrate its knowledge and expertise to the organization that performs the accreditation for compliance with ISO/IEC Guide 65. The Commission has prepared a checklist of the subject areas that accreditors must assess.

30. If the Commission has concerns regarding the performance of a TCB, it may initiate action to verify the TCB's current technical competence and conformity with the designation and recognition requirements. In particular, the rules state that the Commission will withdraw designation of a domestic TCB if the TCB's accreditation is withdrawn, if the Commission determines there is just cause for withdrawing the designation, or if the TCB no longer wants the designation. The rules state that the Commission will provide a domestic TCB with a 30-day notice of its intention to withdraw the TCB's designation and provide it with an opportunity to respond. In the case of TCBs recognized pursuant to an MRA, each MRA describes a procedure for the Commission to follow to challenge a TCB's technical competence with the specified designating authority.

The Commission's rules state that it will provide a TCB recognized under an MRA at least 30 days to respond in cases of disputes with respect to its designation or recognition and that it will consult with the United States Trade Representative (USTR) as necessary. The Commission's Enforcement Bureau may also investigate cases involving possible misconduct by TCBs and will take appropriate actions as required.

31. At present, the rules describe procedures only for the withdrawal of the designation or recognition of a TCB and do not specify any less severe actions that the Commission could take if it has concerns about the performance of a particular TCB. If an organization wishes to reapply to be a TCB following withdrawal of its designation or recognition, it must complete a new evaluation and accreditation process to determine if it meets the designation criteria, which can be a lengthy and complex process. Based on the Commission's experience with the TCB program, it has found cases where it has had concerns about a TCB's performance, but did not believe that revoking its authority to certify equipment would be an appropriate remedy. For example, such cases could result when a TCB misinterpreted the rules or measurement procedures, failed to familiarize itself with the latest Commission guidance documents, or did not realize when it needed to obtain additional guidance from the Commission. The Commission may discover concerns about TCB performance when auditing granted applications and discovering that applications are missing required exhibits or that the Commission can not determine whether the equipment complies with all requirements in the rules. The Commission believes that cases such as these could be appropriately addressed in some instances by simply having the TCB take corrective action, such as additional consultation with the Commission and better staff training.

32. *Proposals.* As an initial matter, the Commission proposes to modify the rules to clarify the role of NIST in designating domestic TCBs. By way of background, there are three steps that an entity must follow to become a TCB. First, a prospective TCB must obtain accreditation from a Commission-recognized organization to demonstrate that it complies with the requirements of ISO/IEC Standard 17025 and Guide 65. Second, a prospective TCB must apply to the government agency that has the authority to designate TCBs ("designating authority") in the country

where the TCB is located and demonstrate that it complies with all of the Commission's requirements to become a TCB. Third, the designation of the prospective TCB must be recognized by the Commission, which places the names of TCBs acceptable for performing equipment certification on a publicly available list. Under the current rules, NIST is the accreditor for TCBs in the United States, and the Commission is the designating authority. NIST may also allow other qualified organizations to accredit TCBs.

33. The current practice for designating TCBs in the United States is for prospective TCBs to apply directly to NIST after being accredited to ISO/IEC Standard 17025 and Guide 65 by a recognized accreditor. NIST evaluates the qualifications of prospective TCBs to ensure that they comply with all of the Commission's TCB requirements. NIST then forwards to the Commission information about the TCBs it found compliant with the Commission's requirements. Therefore, NIST effectively operates as the designating authority for TCBs within the United States. Consistent with this practice, the Commission proposes to modify §§ 2.960(b) and 68.160(b) of the rules to recognize NIST as the designating authority for TCBs within the United States. NIST would continue to have authority to designate other organizations to accredit TCBs as it does now. To ensure effective oversight of the TCB program, the Commission proposes that an organization designated by NIST as a TCB would have to be recognized by the Commission before it could function as a TCB, and that the Commission could withdraw its recognition of a TCB designated by NIST that does not operate in accordance with the rules. This change would make the designation and recognition requirements for domestic and foreign TCBs more consistent, in that in both cases the Commission would rely on other organizations to accredit and designate TCBs, but the Commission would have to recognize the designated TCBs before they could operate, and the Commission could withdraw its recognition of a TCB that exhibits serious performance problems. The Commission does not expect that these proposals would result in any additional costs on TCBs or other parties since the proposals would merely codify the existing practices that have evolved over time. The Commission seeks comment on these proposals.

34. The Commission also proposes to amend the rules to provide additional measures that the Commission could

take to address TCB performance issues that are less severe than the complete withdrawal of a TCB's designation or recognition. These proposed measures are designed to address performance issues that can be resolved through relatively simple corrective measures by a TCB, and are not intended to limit the Commission's ability to act quickly if serious misconduct by a TCB were to occur. Specifically, the Commission proposes that it will first notify a TCB in writing when it has evidence that the TCB is not approving equipment in accordance with the Commission's rules and policies and request that it correct any apparent deficiencies. The Commission may monitor all grants by a TCB during the time it provides for it to respond to us, and the Commission would set aside any grants found to be in error within the 30 day time period provided in the rules. If a TCB does not demonstrate that it has satisfactorily resolved the performance issues identified by the Commission, it proposes that the Commission may temporarily require that all certification applications filed with that TCB be processed using the pre-approval guidance procedure for a period of at least 30 days. This would provide the Commission an opportunity to review all of that TCB's applications prior to grant to ascertain whether it has corrected the identified performance deficiencies. The Commission further proposes that it will provide a TCB with a 30-day notice of its intent to require that applications be processed under the pre-approval guidance procedure unless the Commission finds good cause to require a more immediate implementation of this protective measure. A shorter time frame may be appropriate, for example, in cases where the Commission discovers that a TCB has a pattern of approving equipment that is non-compliant with the rules, particularly equipment that has a high potential for causing harmful interference. The Commission also proposed that when a TCB demonstrates to the Commission that it is processing equipment approval applications in accordance with the rules, it would no longer be required to use the pre-approval guidance procedure for all equipment, just the equipment on the pre-approval guidance list. The Commission further proposed that these procedures would apply equally to both domestic and foreign TCBs.

35. In cases where a TCB continues to exhibit performance deficiencies after the Commission requests that it take corrective action, it has been proposed that the Commission may request that

the designating authority and accreditation body investigate and take appropriate steps as needed. This could include, for example, limiting the scope of the TCB's accreditation, or withdrawing the accreditation. The Commission proposes that in such cases it would limit the scope of equipment that a TCB could approve if the accrediting body limited the scope of a TCB's accreditation, and that the Commission would no longer recognize a TCB if its accreditation is withdrawn. The Commission further proposes that it would no longer recognize the designation of a TCB, either foreign or domestic, if good cause exists, *e.g.*, a TCB shows a pattern of approving equipment that is clearly not in compliance with the rules. It is also proposed that the Commission would provide a TCB with at least 60 days notice of its intention to withdraw or limit the scope of its recognition and provide the TCB with an opportunity to respond. During that time, the Commission would monitor all grants issued by the TCB and would set aside any grants within 30 days that were issued in error. In the case of a TCB recognized pursuant to the terms of an MRA, the Commission would provide more than 60 days notice if required by the MRA and consult with the Office of the United States Trade Representative (USTR) as necessary concerning any trade issues that arise. In addition, the Commission proposed that if a TCB's status is revoked, any equipment certifications previously approved by the TCB would continue to be valid unless specifically set aside or revoked by the Commission. However, a TCB would not be permitted to act on any certification applications that it was processing but had not yet approved at the time its operating status was revoked.

36. The Commission also proposed certain other modifications to clarify the part 2 rules for TCBs. Specifically, it proposed to modify § 2.962(e)(1) to specify the recognition requirements for both foreign and domestic TCBs. This section currently specifies the recognition requirements for only domestic TCBs. The Commission also proposed to move the text in § 2.962(h) concerning disputes over the recognition of foreign TCBs to § 2.962(e) because it more appropriately fits in that paragraph which addresses the recognition of TCBs.

37. The Commission seeks comment on these proposals. In particular, it seeks comment on whether the steps being proposed are appropriate, and whether there are other measures the Commission could take to ensure that

TCBs operate in accordance with the rules. For example, should the Commission instead prohibit a TCB from approving any equipment for a limited time period when performance issues arise? If the Commission were to prohibit a TCB from approving equipment for a certain time, it seeks comment on how it could determine when the TCB has corrected its performance problems. The Commission also seeks comment on whether it needs to more clearly define the circumstances under which it would take actions such as requiring all of a TCB's applications to be processed under the pre-approval guidance procedure. If so, what should those circumstances be?

4. TCB Accreditation

38. The Commission's rules require that TCBs that approve either RF equipment under part 2 or terminal equipment under part 68 of the Commission's rules meet the accreditation standards in specific ISO/IEC standards. An entity recognized as a TCB must be accredited as meeting all appropriate specifications in ISO/IEC Guide 65, *General requirements for bodies operating product certification systems*, for the scope of equipment that it will certify. An organization accrediting a prospective TCB to Guide 65 must be capable of meeting the requirements and conditions of ISO/IEC Guide 61, *General requirements for assessment and accreditation of certification/registration bodies*. TCBs also must be accredited as meeting the requirements of ISO/IEC Standard 17025, *General Requirements for the Competence of Calibration and Testing Laboratories*. The organization accrediting a TCB or testing laboratory to ISO/IEC 17025 must be approved by OET to perform such accreditation based on ISO/IEC Guide 58, *Calibration and testing laboratory accreditation systems—General requirements for operation and recognition*. A TCB that approves RF equipment under part 2 must be reassessed for continuing accreditation at intervals not to exceed two years.

39. Subsequent to the adoption of the rules specifying these requirements, several ISO/IEC guides were updated. Specifically, ISO/IEC Guides 58 and 61 were updated and combined into a single new standard, ISO/IEC 17011, *Conformity assessment—General requirements for accreditation bodies accrediting conformity assessment bodies*. ISO/IEC 17011 was prepared by the ISO Committee on conformity assessment (CASCO) because the work performed by accreditation bodies accrediting testing laboratories and

certification bodies is quite similar, and the two separate standards had two sets of largely repetitious but slightly differing requirements for evaluating laboratory and certification body functions. In addition, ISO/IEC Guide 65 was replaced with a revised version designated ISO/IEC 17065, *Conformity assessment—Requirements for bodies certifying products, processes and services*.

40. *Proposal.* The Commission proposes to modify the rules in parts 2 and 68 to replace the references to Guide 58 and Guide 61 with references to ISO/IEC 17011, and to replace the references to Guide 65 with references to ISO/IEC 17065. Consistent with the revised ISO/IEC 17065, the Commission also proposed to change the term “sub-contractors” with “external resources” in the parts 2 and 68 rules. The Commission believes that these changes will not have any significant impact on accrediting organizations or TCBs because the revised guides are substantially similar to the ISO/IEC guides currently specified in the rules. The Commission also proposed to update § 68.162 to correct the outdated references to ISO/IEC Guide 25 which is now designated ISO/IEC 17025. The Commission is not, however, proposing to change the requirement that TCBs that approve RF equipment must be reassessed every two years. The Commission seeks comment on these proposals. The Commission is also proposing to give OET delegated authority to update references to measurement procedures and other industry standards in parts 2, 5, 15 and 18 of the rules in the future.

B. Test Laboratories

1. Accreditation of Test Laboratories

41. Equipment subject to certification under parts 15 and 18 of the rules—*i.e.* unlicensed devices and industrial, scientific and medical equipment—must be tested at a laboratory that meets one of two criteria: the laboratory must have either (a) filed a description of its facilities with the Commission in accordance with the requirements of § 2.948 of the rules, or (b) been accredited under ISO/IEC 17025 and recognized by the Commission. The § 2.948 filing process requires a party to submit a description of its facilities to the Commission that includes the location of the test site, a physical description of the site that includes drawings and photographs, a description of the structures that support the device being measured and test instrumentation, the measuring equipment used and information on its

calibration, a statement as to whether the site is available to do measurements for the public for a fee, and site attenuation data taken in accordance with ANSI C63.4–2001. The § 2.948 listing is based solely on a Commission review of the documentation submitted.

42. In contrast to the § 2.948 filing process, laboratory accreditation involves an extensive review of documentation and onsite visits by representative(s) of the accrediting body. Laboratory accreditation bodies assess a variety of aspects of a laboratory, including the technical competence of staff; the validity and appropriateness of test methods; traceability of measurements and calibration to national standards; suitability, calibration and maintenance of the testing environment; sampling, handling and transportation of test items; and quality assurance of test and calibration data. The accreditation of a laboratory outside the United States is considered acceptable only if it is located in a country that has an MRA with the United States or is accredited by an organization that has entered into an arrangement between accrediting organizations that is recognized by the Commission. The Commission maintains a list of laboratories that includes those that have filed a description under § 2.948 and those laboratories accredited under ISO/IEC 17025 for which the accrediting organization has submitted information to the Commission. An accredited test laboratory must be reassessed at intervals not to exceed two years.

43. Unlike parts 15 and 18 equipment rules, the Commission’s rules do not require that equipment authorized to operate in licensed services be tested at either a § 2.948 listed laboratory or at an accredited and recognized laboratory. However, because many of the testing laboratories that perform measurements on equipment operating under the licensed radio service requirements also test equipment subject to parts 15 and 18, their test facilities are already accredited.

44. *Proposal.* The Commission proposed to end the listing program for laboratories that test equipment certified under parts 15 and 18 of the rules. Instead, it proposed to require that all laboratories that test equipment subject to certification and DoC under any rule part be accredited to ISO/IEC 17025. This would be a change from the current rules under which only devices subject to DoC must be tested at an accredited laboratory. The Commission believes that this change is appropriate for several reasons. First, because it is proposing to cease Commission

certification of RF devices and rely on TCBs to approve all such equipment, the Commission believes that it should at the same time take measures to continue to ensure the quality of the TCB program. Requiring laboratories that perform certification testing to be accredited will provide a higher degree of confidence for both the Commission and TCBs that testing was done in accordance with the applicable standards than the current listing procedure provides. As noted, laboratory accreditation is based on a rigorous third party review of laboratory functions and capabilities, including the technical competence of its staff and quality assurance methods, and includes onsite inspections by the accrediting organization. In contrast, the § 2.948 listing program is based solely on a desk review of certain laboratory characteristics. The Commission expects that requiring all laboratories that perform certification testing to be accredited will improve both the quality and consistency of test results. The Commission therefore believes that requiring laboratory accreditation is part of a balanced approach in allowing TCBs to certify all RF equipment while ensuring the quality of the results.

45. The Commission is proposing to retain the requirement in § 2.948 that test laboratories compile a description of their measurement facilities, and propose to require that they supply this information to a laboratory accreditation body or to the Commission upon request. This description will assist a laboratory accreditation body in evaluating the suitability of a laboratory’s facilities for performing measurements. It will also help the Commission determine whether a laboratory that tests equipment subject to verification, and which is not required to be accredited, has suitable measurement facilities. The Commission also proposed to retain the requirement that accredited laboratories must be reassessed at least every two years to ensure continued compliance with the accreditation requirements.

46. It is also proposed that the Commission will maintain a list of accredited laboratories that are acceptable for testing equipment subject to our certification and DoC procedures. Under this proposal, laboratories will be accredited to test certain scopes of equipment, such as low power transmitters, unintentional radiators and transmitters used in various licensed services. The Commission believes that a list of accredited laboratories and the types of equipment they can test will assist us in our oversight of TCBs and will assist manufacturers in selecting an

appropriate testing facility. The Commission proposed to include accredited laboratories outside the United States on the list only if it recognizes their accreditation under the terms of an MRA or other agreement. The Commission is aware that some test laboratories are located in countries that do not have an MRA with the United States. In this regard, it proposes to modify § 2.948(e)(2) to provide that if a laboratory is located in a country that does not have an MRA with the United States, then it must be accredited by an organization recognized by the Commission for performing accreditations in the country where the laboratory is located. The Commission describes proposals for Commission recognition of additional laboratory accreditation bodies in the following information.

47. The Commission seeks comment on these proposals. In particular, it seeks comment on whether it is appropriate and necessary to require accreditation of laboratories that perform certification testing and whether such a requirement would be unduly burdensome. The Commission also seeks comment on whether it should allow an accredited laboratory to subcontract part of its work to another laboratory. If so, is there any reason why it should not also require the subcontractor to be accredited? The Commission also seeks comment on whether it should eliminate the § 2.948 test site listing process. The Commission further seeks comment on the information that should be included in the list of accredited laboratories if it requires accreditation of laboratories that perform certification testing. In addition, the Commission seeks comment on steps it could take to recognize the accreditation of test laboratories outside of the United States in countries that do not have an MRA with the United States. For example, should the Commission recognize accreditations made through an organization such as the International Laboratory Accreditation Cooperation (ILAC) for laboratories in countries without an MRA with the United States?

48. The Commission recognizes that there is a cost in terms of time and money for a laboratory to become accredited, but it believes the benefits of increased certainty that equipment tested by an accredited laboratory will comply with the Commission's technical requirements outweigh this burden. As noted, many laboratories that perform certification testing of part 15 and part 18 equipment as well as many laboratories that test equipment used in licensed services are already

accredited. Thus, our proposal will not impact those laboratories. However, the Commission seeks comment on the costs that its proposals would impose on currently unaccredited laboratories, and whether the benefits of our proposals outweigh the costs. The Commission further seeks comment on the impact of this proposal on laboratories outside the United States, particularly those in countries without an MRA with the United States.

2. Selection of New Laboratory Accreditation Bodies

49. Under § 2.948(d) of the rules, any entity seeking recognition from the Commission as an accreditation body for test laboratories must obtain the approval of OET. OET considers recognition of entities as accreditation bodies based on requirements established by ISO and IEC. The rules currently refer to requirements in ISO/IEC Guide 58 for laboratory accreditation, but as discussed, the Commission is proposing modify the rules to reference ISO/IEC Guide 17011 that superseded Guide 58. Under Guide 17011, the accrediting entity must be competent to (1) assess a test laboratory's compliance with applicable ISO/IEC standards for operating a testing laboratory and conducting tests; and (2) assess the laboratory's ability to perform testing in support of the applicable technical regulations. The accreditation body is required to (1) Review the qualifications of a test laboratory's test personnel, management systems, recordkeeping and reporting practices; (2) send recognized experts to observe testing at the laboratory; and (3) verify the testing laboratory's competence to perform tests in accordance with Commission-related measurement procedures.

50. On August 12, 2010 OET issued a public notice providing guidance on the type of information that an applicant that desires to be recognized by the Commission as a laboratory accreditation body should provide in support of its application. Specifically, OET stated that an applicant must submit to the Chief of OET a letter requesting such recognition and that the letter must include information on the applicant's qualifications; OET further indicated that it will make a determination based on the information provided in support of the letter of request. It stated that the following types of information would provide the "best evidence" of an applicant's credentials and qualifications to perform accreditation of laboratories that test equipment to Commission requirements, consistent with the

requirements of § 2.948(d) of the Commission's rules for accreditation bodies and for test laboratories:

1. Successful completion of a ISO/IEC 17011 peer review, such as being a signatory to the International Laboratory Accreditation Cooperation (ILAC) Mutual Recognition Arrangement or other equivalent laboratory accreditation agreement;

2. Experience with the accreditation of electromagnetic compatibility (EMC), radio and telecom testing laboratories to ISO/IEC 17025. This can be demonstrated by having OET staff participate in a witness audit of the accreditation body performing an assessment of an EMC/Radio/Telecom testing laboratory; or by having OET staff review the report generated by the NIST laboratory accreditation evaluation program conducted to support the Asia Pacific Economic Cooperation (APEC) Mutual Recognition Arrangement for Conformity Assessment of Telecommunications Equipment. An applicant that offers other evidence has the burden of demonstrating that the information would enable OET to evaluate its experience with the accreditation of EMC, radio and telecom testing laboratories to ISO/IEC 17025.

3. Accreditation personnel/assessors with specific technical experience in the Commission equipment authorization rules and requirements; and

4. Procedures and policies developed for the accreditation of testing laboratories for FCC equipment authorization programs.

51. *Proposal.* The Commission proposes to codify the criteria from the August 12, 2010 public notice into the rules as the method that OET will use to determine the acceptability of new laboratory accreditation bodies. OET developed these criteria during the process of selecting a new laboratory accreditation body, and we believe they represent an appropriate method for determining the acceptability of new accreditation bodies. The Commission seeks comment on this proposal.

3. Test Site Validation

52. A measurement facility that is used for measuring radiated emissions from equipment subject to parts 15 and 18 of the rules must meet the site validation requirements in ANSI C63.4–2001. Radiated emission measurements above 1 GHz are required for many devices subject to parts 15 and 18. However, ANSI C63.4–2001 does not have specific site validation criteria for test facilities used for making radiated emissions above 1 GHz. Rather, it states that facilities determined to be suitable

for performing measurements in the frequency range 30 MHz to 1 GHz are considered suitable for performing measurements in the frequency range 1 GHz to 40 GHz.

53. ANSI C63.4–2009, *American National Standard for Methods of Measurement of Radio-Noise Emissions from Low-Voltage Electrical and Electronic Equipment in the Range of 9 kHz to 40 GHz*, provides two options for test site validation for facilities used to make radiated emission measurements above 1 GHz. Specifically, it states that facilities suitable for measurements in the frequency range 30 MHz to 1 GHz are considered suitable for measurements in the frequency range 1 GHz to 40 GHz when used with RF absorbing material covering the ground plane such that either: (1) The site validation criterion called out in CISPR 16–1–4:2007 (CISPR 16) is met; or (2) a minimum area of the ground plane is covered, *i.e.*, 2.4 m by 2.4 m (for a 3 m test distance), between the antenna and the Equipment Under Test (EUT) using RF absorbing material with a minimum-rated attenuation of 20 dB (for normal incidence) up to 18 GHz.

54. *Proposal*. The Commission proposed to require that test facilities used to make radiated emission measurements on equipment authorized under any rule part meet the site validation requirements in sections 5.4.4 through 5.5 of ANSI C63.4–2009. The Commission also proposed that if the measurement site will be used for measuring radiated emissions in the range of 1 GHz to 40 GHz, the site must meet the first alternative specified in § 5.5 of this procedure which states that RF absorbing material must cover the ground plane such that the site validation criterion called out in CISPR 16 is met. The Commission believes that requiring a site to meet the CISPR 16 site validation criteria at frequencies above 1 GHz will provide better accuracy and repeatability of measurements than simply covering a minimum area of its ground plane. Consistent with § 5.4.4.2 of ANSI C63.4–2009 and § 2.948(a)(2), the Commission proposed that compliance with the site validation criterion shall be confirmed no less than once every three years. The Commission believes that these proposals will ensure that a test site is suitable for performing accurate, repeatable measurements at all frequencies for which measurements are required. The Commission seeks comment on these proposals. It also seeks comment on how many laboratories would need to modify their sites to comply with the ANSI C63.4–2009 and CISPR 16 site validation

criteria that we are proposing, and the costs of implementing this change.

C. Measurement Procedures

1. Part 15 Devices

55. The Commission requires that most devices subject to the part 15 technical requirements be tested to demonstrate compliance with these requirements before they can be imported into or marketed within the United States. Section 15.31(a) of the rules specifies the measurement procedures that the Commission uses to determine equipment compliance with the part 15 technical requirements. This section states that the Commission will measure emissions from most intentional and unintentional radiators using the standard published by the American National Standards Institute, Inc. Accredited Standards Committee C63 (ANSI ASC 63), titled ANSI C63.4–2003, *American National Standard for Methods of Measurement of Radio-Noise Emissions from Low-Voltage Electrical and Electronic Equipment in the Range of 9 KHz to 40 GHz* (ANSI C63.4 standard).

56. The Commission has issued a number of public notices, interpretations and advisories on measurement standards for intentional radiators to supplement the test procedures given in the ANSI C63.4 standard. This additional guidance has been necessitated by the growing number of intentional radiators being developed and the resulting number of questions from test laboratories seeking guidance on how to properly measure these devices for FCC compliance. To assist manufacturers in complying with the Commission's rules, the Commission staff worked with ANSI ASC C63 and its members, including manufacturers, the Telecommunication Certification Body Council (TCBC), telecommunication industry representatives and test laboratory staff, to develop a new standard, ANSI C63.10–2009, *American National Standard for Testing Unlicensed Wireless Devices* (ANSI C63.10–2009), for use in the measurement of intentional radiators in a wide range of frequency bands. This new standard consolidates the various measurement procedures that the Commission staff has already allowed for intentional radiators without substantive modification and does not add any new requirements for compliance testing.

57. ANSI ASC C63 also released a revised version of the ANSI C63.4 standard, ANSI C63.4–2009, *American National Standard for Methods of Measurement of Radio-Noise Emissions*

from Low-Voltage Electrical and Electronic Equipment in the Range of 9 KHz to 40 GHz. Because ANSI ASC C63 developed a separate document that contains the measurement procedures for intentional radiators (ANSI C63.10–2009 as discussed above), the new ANSI C63.4–2009 addresses only unintentional radiators, rather than both intentional and unintentional radiators as did the previous version. The other changes to this standard from the 2003 version are discussed in more detail. OET issued a public notice on November 25, 2009, indicating that it would accept applications for certification of equipment tested either to the ANSI C63.4–2003 procedure currently specified in the rules or to the revised ANSI C63.4–2009 and new ANSI C63.10–2009 procedures.

58. On September 27, 2011, ANSI ASC C63 filed a petition for rule making requesting that the Commission modify §§ 15.31(a)(3) and 15.38(b)(6) of the rules to remove the references to C63.4–2003 and replace them with references to C63.4–2009 and C63.10–2009. It argues that continued use of the C63.4–2003 standard will lead to confusion, inconsistency and a lack of repeatability in product testing. It states that its reasons for developing the 2009 version of the standard were to remove ambiguities, clarify the text in response to requests for interpretations, and to add new material concerning the calibration of test equipment and testing new types of devices. ANSI ASC C63 states that the following changes are incorporated into the new version:

- Specifying a single method of antenna calibration, rather than the two different methods specified in the 2003 version. Because the method specified in the 2009 version is different than either of the previous two methods, test laboratories may need to recalibrate their antennas if the Commission requires use of the new version.

- Clarifying the requirements that receivers and spectrum analyzers must meet and providing more detailed information on the proper use of spectrum analyzers.

- Requiring test laboratories to document any special software used to exercise the equipment under test.

- Requiring test laboratories to determine the effect of temperature changes on measurement cable losses.

- Eliminating the requirement for minimum measuring equipment sensitivity.

- Providing more guidance on testing wall-mounted and ceiling-mounted devices.

- Moving the test site validation procedure from the body of the document to an appendix.
- Specifying criteria for determining measuring site validity at frequencies above 1 GHz.
- Updating the requirement for the information to be displayed on a video display during testing.

On January 12, 2012, the Commission released a public notice inviting comment on the ANSI ASC C63 petition. The Information Technology Industry Council (ITI) filed comments, and ANSI ASC C63 filed reply comments.

59. *Proposal.* The Commission proposes to incorporate ANSI C63.10–2009 into the rules as the procedure the Commission will use for determining the compliance of intentional radiators and ANSI C63.4–2009 as the procedure the Commission will use for determining the compliance of unintentional radiators. The Commission believes that the various clarifications and improvements from the previous version of ANSI C63.4 will advance the Commission's objective of ensuring compliance with its technical requirements as well as decreasing the burden on equipment manufacturers, thus promoting the timely introduction of innovative new products. Consistent with the Commission's previous actions with respect to ANSI C63.4, the Commission is proposing to exclude the use of the sections in C63.4–2009 that allow the use of rod antennas for electric field measurements below 30 MHz, an artificial hand for holding handheld devices, an absorber clamp for radio noise power measurements, and relaxation of the limits for transient emissions. The Commission previously found that there was insufficient evidence that rod antennas, artificial hands or absorber clamps produce accurate, repeatable measurements, and it found that short duration emissions can produce as much nuisance to radio communications as continuous emissions. The Commission seeks comment on these proposals.

60. The Commission is not proposing to incorporate CISPR 22 into the rules for measuring equipment subject to part 15 as requested by ITI. CISPR 22 addresses measurements only up to 6 GHz, whereas our rules require measurements at higher frequencies in some cases. Also, CISPR 22 is applicable only to information technology equipment (called digital devices in the Commission's rules), while C63.4–2009 is applicable to all types of unintentional radiators under part 15 of our rules, including digital devices. The

Commission also believes that the C63.4–2009 measurement procedure for frequencies above 1 GHz is more appropriate than the CISPR 22 procedure. Specifically, at frequencies above 1 GHz, C63.4–2009 requires varying the receive antenna height to determine the maximum level of emissions from a device under test, whereas CISPR 22 specifies a fixed receive antenna height that may not determine the maximum emission levels. However, the Commission recognizes that ITI has raised certain specific concerns about C63.4–2009 that merit consideration and it seeks comment on these concerns.

Specifically, is the 2009 version of C63.4 more burdensome than previous editions as ITI alleges, and if so, do the benefits of these increased burdens (*e.g.*, increased accuracy and/or consistency of test results) outweigh their costs? Do certain changes in the 2009 revision cause problems for manufacturers and/or test laboratories, such as a restriction on the use of hybrid antennas or the 2 dB rule? Would the references to undated standards in C63.4–2009 force parties to comply with future changes to those standards with no opportunity for comment and no transition period? Should the Commission accept the interpretations of C63.4–2009 and C63.10–2009 on ANSI's Web site? Could the Commission address ITI's concerns about C63.4–2009 and C63.10–2009 by not incorporating certain sections of these standards into the rules? If so, which particular sections should not be incorporated and why? In addition, the Commission notes that ANSI ASC C63 is currently working on revised versions to both C63.4–2009 and C63.10–2009. The Commission seeks comment on whether there are any significant differences between the 2009 versions of these standards and the latest drafts, and whether any of the changes in these drafts would address ITI's concerns.

2. Delegated Authority To Update Measurement Procedures

61. The Commission incorporates industry standards into parts 2 and 15 of the rules for various purposes. For example, § 15.38 lists the measurement procedures and other standards that are incorporated by reference into part 15 of the rules. In addition, part 2 references various ISO/IEC standards related to the accreditation of laboratories and certification bodies. Industry groups that develop standards revise them periodically. In some cases revisions could contain major changes from a previous version, while in other cases revisions of standards may contain only minor updates that pose no significant

changes for evaluation of compliance with the rules. The Commission's part 0 rules delegate authority to the Chief of OET to perform certain functions, but require that orders making non-editorial revisions to the rules be referred to the Commission for action. Updating a rule to reference a revised standard is not considered an editorial revision, so such a change requires a Commission action.

62. The Commission proposes to delegate to the Chief of OET the authority to update references to industry standards in parts 2, 5, 15 and 18 of the rules, for which OET is responsible. It further proposes that this authority be limited to updating versions of standards that are already referenced into the rules and not to incorporate a new standard into the rules, and that it be further limited to the approval of changes to the technical standards that do not raise major compliance issues. To meet the statutory requirements of the Administrative Procedure Act (APA), OET would first issue a notice that would be published in the **Federal Register** seeking comment on the proposed change to the rules. The Commission would continue to act on rule changes that incorporate a new standard into the rules or raise major compliance issues. The Commission believes that these proposals would allow us to more quickly update the rules to reflect the release of revised industry standards. The Commission seeks comment on these proposals.

3. Other Issues

63. *Test set-up information.* The Commission is proposing to amend § 2.1033 of the rules to require that applications for certification include photographs or diagrams of the test set-up for each of the required types of tests applicable to the device for which certification is requested. These tests may include, for example, radiated emissions, AC line conducted emissions, conducted power, RF safety (SAR), or compliance with the hearing aid compatibility (HAC) requirements. The rules do not currently require that a certification application include this information, while test set-up photographs or diagrams are required with the information that responsible parties must retain for equipment subject to DoC or verification. The Commission believes that photographs or diagrams of the test set-up should be required with an application for certification for consistency with our other authorization processes and to allow us to determine whether a test laboratory or TCB tested equipment in accordance with the applicable

measurement procedures. The Commission proposed that diagrams or photographs must show enough detail to confirm other information contained in the test report, and that any photographs must be focused originals without glare or dark spots and must clearly show the test configuration used. The Commission believes that the cost of this proposed requirement is negligible because it merely requires a test laboratory or TCB to take a minimal number of additional photographs during testing or draw some relatively simple diagrams and include those with the test report submitted with the application for certification. The Commission seeks comment on this proposal.

64. *Rule corrections.* The Commission is proposing to correct two minor discrepancies in part 15 concerning measurement procedures. Specifically, it is proposing to remove § 15.109(g)(4) as unnecessary because it merely references former § 15.107(e) that was deleted in 2002. The Commission is also proposing to delete as unnecessary the note in § 15.31(a)(3) that states digital devices meeting the limits in §§ 15.107(e) and 15.109(g) must be tested using the ANSI C63.4 procedure. As noted, § 15.107(e) is no longer in the rules, and § 15.109(g) already makes clear that digital devices tested for compliance with the limits in that section must be tested in accordance with the ANSI C63.4 procedure. The Commission seeks comment on these proposals.

D. Transition Period

65. Two of the proposals in this Notice would make changes to the requirements for test laboratories that the Commission believes may take some time for currently operating laboratories to meet. These proposals are that: (1) All laboratories must be accredited if they test equipment authorized through the certification procedure, and (2) laboratories that perform measurements at frequencies above 1 GHz must comply with the site validation criteria in ANSI C63.4–2009. The Commission proposes several provisions to implement these changes and to facilitate the transition for currently listed laboratories that do not meet these proposed requirements. First, it proposes that we will cease accepting applications for unaccredited laboratories under the § 2.948 listing program as of the effective date of final rules. After that date, any new laboratory that wishes to be added to our list of laboratories that can perform testing in support of certification applications must be accredited. The

Commission would continue processing applications for § 2.948 listing of unaccredited laboratories that were pending as of the effective date of the rules. If such applications were approved, the laboratories would be treated in the same manner as laboratories that were already listed on the effective date of the rules. Second, the Commission proposed that unaccredited laboratories that are listed as of the effective date of the rules may continue to perform testing in support of certification applications until one year after the publication of final rules in the **Federal Register**. After that date, they must be accredited or cease performing testing in support of certification applications unless they become accredited. Third, the Commission proposes that all laboratories listed with the Commission as of the effective date of the rules, both accredited and unaccredited, must comply with the site validation criteria in ANSI C63.4–2009 no later than one year after publication of final rules in the **Federal Register**. New laboratories that wish to be listed after the effective date of the rules must comply with the ANSI C63.4–2009 site validation criteria, and must be accredited as described. The Commission seeks comment on these proposals.

Initial Regulatory Flexibility Analysis

66. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this *Notice of Proposed Rule Making* (NPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM* provided in the item. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).² In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.³

A. Need for, and Objectives of, the Proposed Rules

67. The Commission operates an equipment authorization program for

radiofrequency (RF) devices under part 2 of its rules. This program is one of the primary means that the Commission uses to ensure that the multitude of RF devices used in the United States operate effectively without causing harmful interference and otherwise comply with the Commission's rules. Certain radio frequency (RF) devices must be approved by the Commission or a Telecommunication Certification Body (TCB) before they can be imported or marketed, while other RF devices do not require approval by the Commission or a TCB.

68. The Commission last comprehensively reviewed its equipment authorization program over ten years ago. The rapid innovation in equipment design since that time has led to ever-accelerating growth in the number of parties applying for equipment approval. We therefore believe that the time is now right for us to review our equipment authorization processes to ensure that they continue to enable this growth and innovation in the wireless equipment market.

B. Legal Basis

69. The proposed action is taken pursuant to Sections 4(i), 301, 302, 303(e), 303(f), 303(r), 304 and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 301, 302, 303(e), 303(f), 303(r), 304 and 307.

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

70. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.⁴ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁵ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.⁶ A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field

⁴ See 5 U.S.C. 603(b)(3).

⁵ See 5 U.S.C. 601(6).

⁶ See 5 U.S.C. 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**."

¹ See 5 U.S.C. 603. The RFA, see 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, 110 Stat. 857 (1996).

² See 5 U.S.C. 603(a).

³ See 5 U.S.C. 603(a).

of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).⁷ *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."⁸ 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 2007, there were a total of 939 establishments in this category that operated for part or all of the entire year. Of this total, 912 had less than 500 employees and 17 had more than 1000 employees.⁹ Thus, under that size standard, the majority of firms can be considered small.

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

71. RF equipment must be authorized through one of three authorization procedures described below. The Notice does not propose to change these authorization procedures, but it does propose changes in the administrative requirements for laboratories that test equipment and TCBs that approve equipment. These changes are described in the following.

Certification is an equipment authorization issued by the Commission or by a designated TCB based on an application and test data submitted by the responsible party (e.g., the manufacturer or importer).¹⁰ The Commission or a TCB may test a sample of a device to verify that it complies with the rules before granting approval for the equipment to be marketed. Examples of devices subject to

certification include, but are not limited to, mobile phones; wireless local area networking equipment, remote control transmitters; land mobile radio transmitters; wireless medical telemetry transmitters; cordless telephones; and walkie-talkies.

Declaration of Conformity (DoC) is a procedure that requires the party responsible for compliance to follow certain measurement requirements and/or take other necessary steps to ensure that the equipment complies with the appropriate technical standards.¹¹ A compliance information statement must be supplied with the product which identifies the product and a responsible party within the United States and which contains the statement specified in Section 15.19(a)(3).¹² The responsible party is not required to file an equipment authorization application with the Commission or a TCB, or to submit a sample unit or test data unless specifically requested.¹³ Examples of devices subject to DoC include personal computers and peripherals, consumer ISM equipment such as microwave ovens and RF light bulbs, radio receivers and TV interface devices.¹⁴

Verification is a procedure under which the party responsible for compliance relies on measurements that it or another party makes to ensure that the equipment complies with the appropriate technical standards.¹⁵ Under the verification procedure, the responsible party is not required to file an application with the Commission. Submittal of a sample unit or representative data to the Commission demonstrating compliance is not required unless specifically requested by the Commission.¹⁶ Examples of devices subject to verification include non-consumer ISM equipment; TV and FM receivers; and business computer equipment.¹⁷ Devices subject to verification must be uniquely identified in a format which cannot be confused

with the FCC identifier required on certified equipment.¹⁸

72. RF equipment subject to any of the equipment authorization procedures described above must be tested for compliance with the Commission's technical rules. Equipment authorized under the DoC procedure must be tested by a laboratory that is accredited as meeting the requirements of the International Organization for Standardization/International Electrotechnical Commission (ISO/IEC) Standard 17025, *General Requirements for the Competence of Calibration and Testing Laboratories*, by a Commission-recognized accreditation organization.¹⁹ Laboratories that test equipment subject to certification under Parts 15 and 18 of the rules are not required to be accredited, but must be on a list maintained by the Commission.²⁰ Equipment authorized pursuant to certification under rule parts other than Parts 15 or 18, or any equipment authorized under verification, may be tested by the manufacturer or by an independent testing laboratory that is not required to be accredited or listed with the Commission.²¹ The Commission may conduct post-market testing of equipment authorized under any of the three procedures to ensure that equipment on the market complies with the Commission's technical requirements.²² Additionally, TCBs are required to perform post-market surveillance on a certain percentage of products they have certified.²³

73. The Notice proposes that the Commission will cease approving RF equipment authorized under the certification procedure and allow TCBs to perform all equipment certification. Equipment manufacturers would therefore have to obtain equipment approval through a TCB and would no longer have the option of obtaining equipment approval from the Commission. The Notice also proposes to give TCBs clear authority to request samples of equipment from the

¹¹ See 47 CFR 2.906. The party responsible for compliance is defined in 47 CFR 2.909.

¹² See 47 CFR 2.1077 and 15.19(a)(3).

¹³ See 47 CFR 2.956.

¹⁴ See 47 CFR 15.101(a) and 18.203(a). Although the Commission rules require Class B personal computers and peripherals to be authorized under either the DoC or certification procedure, the Commission does not certify such equipment. Manufacturers may only obtain certification for Class B personal computers and peripherals through a TCB. See *FCC Will No Longer Accept Equipment Authorization Applications For Class B Computers and Peripherals That Can Be Self-Approved*, Public Notice, 15 FCC Rcd. 25484 (rel. September 29, 2000).

¹⁵ See 47 CFR 2.909(b) and 2.953.

¹⁶ See 47 CFR 2.956.

¹⁷ See 47 CFR 15.101(a) and 18.203(b).

¹⁸ See 47 CFR 2.954.

¹⁹ See 47 CFR 2.948(a)(3), (d). DoC-authorized devices must be tested by a test laboratory that has been accredited by the National Voluntary Laboratory Accreditation Program (NVLAP) or the American Association of Laboratory Accreditation (A2LA), or by an accredited laboratory designated by the Commission under the terms of a negotiated MRA. See 47 CFR 2.948(a)(3), (d), (e).

²⁰ See 47 CFR 2.948(a)(2). To become listed with the Commission, a testing laboratory must file a description of its measurement facilities with the Commission's Laboratory. An accredited laboratory may become listed by filing certain information about itself, but does not need to file a complete description of its measurement facilities.

²¹ See 47 CFR 2.947, 2.948(a)(1).

²² See 47 CFR 2.946 and 2.1076.

²³ See 47 CFR 2.962(g)(2).

⁷ See 15 U.S.C. 632.

⁸ The NAICS Code for this service 334220. See 13 CFR 121/201. See also http://factfinder.census.gov/servlet/IBQTable?_bm=y&-jds_name=EC0700A1&-geo_id=&-_skip=300&-ds_name=EC0731SG2&-lang=en.

⁹ See http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-jds_name=EC0700A1&-skip=4500&-ds_name=EC0731SG3&-lang=en.

¹⁰ See 47 CFR 2.907.

manufacturer, so manufacturers would be required to provide a sample of equipment to TCBs upon request.

74. The Notice proposes that all laboratories that test equipment that will be approved under the certification procedure must be accredited by a Commission-recognized organization. This would be a change from the current requirement under which only laboratories that test equipment under the DoC procedure must be accredited. Thus, parties wishing to obtain equipment certification would have to ensure that their equipment is tested at an accredited laboratory. The Commission plans to publish a list of accredited laboratories that may test RF equipment that will be certified.

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

75. The RFA requires an agency to describe any significant, specifically small business, 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 and reporting requirements under the rule for such 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 such small entities.”²⁴

76. The Commission proposed several modifications to the administrative requirements for test laboratories and TCBs that it believes will make the equipment authorization program more efficient and effective, thus benefiting small entities. Specifically, the Commission proposed that TCBs will approve all equipment, including equipment that TCBs may not currently approve because it incorporates new technology or requires measurements for which the procedures are not yet clearly defined. To more efficiently implement this change, it also proposes to integrate a new procedure into our equipment authorization system that will enable TCBs to obtain guidance from the Commission on testing or other certification issues. The Commission expects that these changes will reduce the time required for manufacturers to obtain equipment approval.

77. Our proposals to require accreditation of test laboratories that

perform certification testing and establish additional measures to address TCB performance will ensure the continuing quality of the TCB program. This will benefit equipment manufacturers by ensuring that all TCBs operate in accordance with the Commission’s rules, thus providing a clear path to market and a level playing field for all manufacturers, both large and small.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

78. None.

Ordering Clauses

79. Pursuant to Sections 1, 4(i), 7(a), 301, 303(f), 303(g), 303(r), 307(e) and 332 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 151, 154(i), 157(a), 301, 303(f), 303(g), 303(r), 307(e), and 332, this Notice of Proposed Rule Making *is adopted*.

80. The Commission’s Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Notice of Proposed Rule Making, including the Initial Regulatory Flexibility Analysis to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 0

Organization and functions (Government agencies), Reporting and recordkeeping requirements.

47 CFR Part 2

Communications equipment, Incorporation by reference, Reporting and recordkeeping requirements.

47 CFR Part 15

Communications equipment, Radio, and Reporting and recordkeeping requirements.

47 CFR Part 68

Communications equipment and Reporting and recordkeeping.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

Proposed Rules

For the reasons set forth in the preamble, the Federal Communications Commission proposes to amend parts 0, 2, 15 and 68 of Title 47 of the Code of Federal Regulations as follows:

PART 0—COMMISSION ORGANIZATION

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

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

■ 2. Section 0.241 is amended by revising paragraphs (a)(1) and (f) to read as follows:

§ 0.241 Authority delegated.

(a) * * *

(1) Notices of proposed rulemaking and of inquiry and final orders in rulemaking proceedings, inquiry proceedings and non-editorial orders making changes, except that:

(i) The Chief of the Office of Engineering and Technology is delegated authority, together with the Chief of the Wireless

Telecommunications Bureau, to adopt certain technical standards applicable to hearing aid compatibility under § 20.19 of this chapter, as specified in § 20.19(k) of this chapter.

(ii) The Chief of the Office of Engineering and Technology is delegated authority, by notice-and-comment rulemaking if required by statute or otherwise in the public interest, to issue an order amending parts 2, 5, 15, and 18 of this chapter that reference industry standards to specify revised versions of the standards. This delegation is limited to modifying rules to reference revisions to standards that are already in the rules and not to incorporate a new standard into the rules, and is limited to the approval of changes to the technical standards that do not raise major compliance issues.

* * * * *

(f) The Chief of the Office of Engineering and Technology is authorized to enter into agreements with the National Institute of Standards and Technology and other accreditation bodies to perform accreditation of test laboratories pursuant to § 2.948(e) of this chapter. In addition, the Chief is authorized to make determinations regarding the continued acceptability of individual accrediting organizations and accredited laboratories.

* * * * *

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

■ 3. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

■ 4. Section 2.906 is amended by revising paragraph (a) to read as follows:

§ 2.906 Declaration of Conformity.

(a) A Declaration of Conformity is a procedure where the responsible party, as defined in § 2.909, makes

²⁴ See 5 U.S.C. 603(c)(1)–(c)(4).

measurements or takes other necessary steps to ensure that the equipment complies with the appropriate technical standards. Submittal of a sample unit or representative data to the Commission demonstrating compliance is not required unless specifically requested pursuant to § 2.945.

* * * * *

■ 5. Section 2.910 is added to read as follows:

§ 2.910 Incorporation by reference.

(a) The materials listed in this section are incorporated by reference in this part. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they exist on the date of the approval, and notice of any change in these materials will be published in the Federal Register. The materials are available for purchase at the corresponding addresses as noted, and all are available for inspection at the Federal Communications Commission, 445 12th St. SW., Reference Information Center, Room CY-A257, Washington, DC 20554, (202) 418-0270, and at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

(b) The following material is available for purchase from at least one of the following addresses: Global Engineering Documents, 15 Inverness Way East, Englewood, CO 80112, (800) 854-7179, or at <http://global.ihs.com>; or American National Standards Institute, 25 West 43rd Street, 4th Floor, New York, NY 10036, (212) 642-4900, or at <http://webstore.ansi.org/ansidocstore/default.asp>.

(1) ANSI C63.4-2009: "Methods of Measurement of Radio-Noise Emissions from Low-Voltage Electrical and Electronic Equipment in the Range of 9 kHz to 40 GHz," 2009, sections 5.4.4 through 5.5 IBR approved for § 2.948.

(2) CISPR 16-1-4:2007: "Specification for radio disturbance and immunity measuring apparatus and methods—Part 1-4: Radio disturbance and immunity measuring apparatus—Ancillary equipment—Radiated disturbances", IBR approved for § 2.948.

(c) The International Organization for Standardization (ISO), 1, ch. De la Voie-Creuse, CP 56, CH-1211, Geneva 20, Switzerland; www.iso.org; Tel.: +41 22 749 01 11; Fax: +41 22 733 34 30; email: central@iso.org. (ISO publications can also be purchased from the American

National Standards Institute (ANSI) through its NSSN operation (www.nssn.org), at Customer Service, American National Standards Institute, 25 West 43rd Street, New York NY 10036, telephone (212) 642-4900.)

(1) ISO/IEC 17011:2004, "Conformity assessment—General requirements for accreditation bodies accrediting conformity assessment bodies," IBR approved for §§ 2.948, 2.949, and 2.960.

(2) ISO/IEC 17025:2005, "General Requirements for the Competence of Calibration and Testing Laboratories," IBR approved for §§ 2.948, 2.949, and 2.962.

(3) ISO/IEC 17065:2012, "Conformity assessment—Requirements for bodies certifying products, processes and services," IBR approved for §§ 2.960 and 2.962.

■ 6. Section 2.911 is revised to read as follows:

§ 2.911 Application requirements.

(a) All requests for equipment authorization shall be submitted in writing to a Telecommunication Certification Body (TCB) in a manner prescribed by the TCB.

(b) A TCB shall submit an electronic copy of each equipment authorization application to the Commission pursuant to § 2.962(f)(6) on a form prescribed by the Commission at <http://www.fcc.gov/eas>.

(c) Each application that a TCB submits to the Commission shall be accompanied by all information required by this subpart and by those parts of the rules governing operation of the equipment, the applicant's certifications required in paragraphs (d)(1) and (2) of this section, and by requisite test data, diagrams, photographs, etc., as specified in this subpart and in those sections of rules under which the equipment is to be operated.

(d) The applicant shall provide to the TCB all information that the TCB requests to process the equipment authorization request and to submit the application form prescribed by the Commission and all exhibits required with this form.

(1) The applicant shall provide a written and signed certification to the TCB that all statements it makes in its request for equipment authorization are true and correct to the best of its knowledge and belief.

(2) The applicant shall provide a written and signed certification to the TCB that the applicant complies with the requirements in § 1.2002 of this chapter concerning the Anti-Drug Abuse Act of 1988.

(3) Each request for equipment authorization submitted to a TCB, including amendments thereto, and related statements of fact and authorizations required by the Commission, shall be signed by the applicant if the applicant is an individual; by one of the partners if the applicant is a partnership; by an officer, if the applicant is a corporation; or by a member who is an officer, if the applicant is an unincorporated association: Provided, however, that the application may be signed by the applicant's authorized representative who shall indicate his title, such as plant manager, project engineer, etc.

(4) Information on the Commission's equipment authorization requirements can be obtained from the Internet at <http://www.fcc.gov/eas>.

(e) Technical test data submitted to the TCB and to the Commission shall be signed by the person who performed or supervised the tests. The person signing the test data shall attest to the accuracy of such data. The Commission may require such person to submit a statement showing that he is qualified to make or supervise the required measurements.

(f) Each application submitted by a TCB to the Commission shall be accompanied by any processing fee prescribed in subpart G of part 1 of this chapter. Unless otherwise directed, any fees required for equipment approval services pursuant to § 1.1103 of this chapter must be submitted either electronically via the Internet at <http://www.fcc.gov/eas> or by following the procedures described in § 0.401(b) of this chapter. The address for fees submitted by mail is: Federal Communications Commission, Equipment Approval Services, P.O. Box 979095, St. Louis, MO 63197-9000. If the applicant chooses to make use of an air courier/package delivery service, the following address must appear on the outside of the package/envelope: Federal Communications Commission, c/o Lockbox 979095, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

(g) Signed, as used in this section, means an original handwritten signature; however, the Office of Engineering and Technology may allow signature by any symbol executed or adopted by the applicant or TCB with the intent that such symbol be a signature, including symbols formed by computer-generated electronic impulses.

§ 2.913 [Removed]

■ 7. Section 2.913 is removed.

§ 2.936 [Removed]

■ 8. Section 2.936 is removed.

§ 2.943 [Removed]

■ 9. Section 2.943 is removed.

■ 10. Section 2.945 is revised to read as follows:

§ 2.945 Submission of equipment for testing and equipment records.

(a) *Prior to equipment authorization.*

(1) The Commission or a Telecommunication Certification Body (TCB) may require an applicant for certification to submit one or more sample units for measurement at the Commission's laboratory or the TCB.

(2) If the applicant fails to provide a sample of the equipment, the TCB may dismiss the application without prejudice.

(3) In the event the applicant believes that shipment of the sample to the Commission's laboratory or the TCB is impractical because of the size or weight of the equipment, or the power requirement, or for any other reason, the applicant may submit a written explanation why such shipment is impractical and should not be required.

(4) The Commission may take administrative sanctions against a grantee of certification that fails to respond within 21 days to a Commission or TCB request for an equipment sample, such as suspending action on applications for equipment authorization submitted by that party while the matter is being resolved. The Commission may consider extensions of time upon submission of a showing of good cause.

(b) *Subsequent to equipment authorization.* (1) The Commission may request that the responsible party or any other party marketing equipment subject to this chapter submit a sample of the equipment to determine the extent to which production of such equipment continues to comply with the data filed by the applicant or on file with the responsible party for equipment subject to verification or Declaration of Conformity. The Commission may request that a sample be submitted to the Commission, or in the case of equipment subject to certification, to the TCB that certified the equipment.

(2) A TCB may request samples of equipment that it has certified from the grantee of certification for the purpose of performing post-market surveillance as described in § 2.962. TCBs must document their sample requests to show the date they were sent and provide this documentation to the Commission upon request.

(3) The cost of shipping the equipment to Commission's laboratory

or a TCB and back to the party submitting the equipment shall be borne by the party from which the Commission or TCB requested the equipment.

(4) In the event a party believes that shipment of the sample to the Commission's laboratory or the TCB is impractical because of the size or weight of the equipment, or the power requirement, or for any other reason, that party may submit a written explanation why such shipment is impractical and should not be required.

(5) Failure of a responsible party or other party marketing equipment subject to this chapter to comply with a request from the Commission or TCB for equipment samples within 21 days may be cause for actions such as suspending action on applications for equipment authorization submitted by a grantee or forfeitures pursuant to § 1.80 of this chapter. The Commission may consider extensions of time upon submission of a showing of good cause.

(c) *Submission of records.* Upon request by the Commission, each responsible party shall submit copies of the records required by §§ 2.938, 2.955, and 2.1075 to the Commission. Failure of a responsible party or other party marketing equipment subject to this chapter to comply with a request from the Commission for records within 21 days may be cause for forfeiture, pursuant to § 1.80 of this chapter. The Commission may consider extensions of time upon submission of a showing of good cause.

(d) *Inspection by the Commission.* Upon request by the Commission, each responsible party shall make its manufacturing plant and facilities available for inspection.

§ 2.946 [Removed]

■ 11. Section 2.946 is removed.

■ 12. Section 2.948 is revised to read as follows:

§ 2.948 Measurement facilities.

(a) Equipment authorized under the certification or Declaration of Conformity (DoC) procedure shall be tested at a laboratory that is accredited in accordance with paragraph (e) of this section.

(b) A laboratory that makes measurements of equipment subject to an equipment authorization under the certification, DoC or verification procedure shall compile a description of the measurement facilities employed.

(1) The description of the measurement facilities shall contain the following information:

(i) Location of the test site.

(ii) Physical description of the test site accompanied by photographs of size A4

(21 cm × 29.7 cm) or 8×10 inches (20.3 cm × 25.4 cm). Smaller photographs may be used if they clearly show the details of the test site and are mounted on full size sheets of paper.

(iii) A drawing showing the dimensions of the site, physical layout of all supporting structures, and all structures within 5 times the distance between the measuring antenna and the device being measured.

(iv) Description of structures used to support the device being measured and the test instrumentation.

(v) List of measuring equipment used.

(vi) Information concerning the calibration of the measuring equipment, i.e., the date the equipment was last calibrated and how often the equipment is calibrated.

(vii) For a measurement facility that will be used for testing radiated emissions, a plot of site attenuation data taken pursuant paragraph (d) of this section.

(2) The description of the measurement facilities shall be provided to a laboratory accreditation body upon request.

(3) The description of the measurement facilities shall be retained by the party responsible for verification of equipment and provided to the Commission upon request.

(i) The party responsible for verification of equipment may rely upon the description of the measurement facilities retained by an independent laboratory that performed the tests. In this situation, the party responsible for verification of the equipment is not required to retain a duplicate copy of the description of the measurement facilities.

(ii) No specific site calibration data is required for equipment that is verified for compliance based on measurements performed at the installation site of the equipment. The description of the measurement facilities may be retained at the site at which the measurements were performed.

(c) The Commission will maintain a list of accredited laboratories for which the accrediting organization (or designating authority in the case of foreign laboratories) submits the information listed in paragraphs (c)(1) through (8) of this section to the Commission's laboratory. The Commission will make publicly available a list of those laboratories that indicate they will perform testing on a contract basis. Inclusion of a facility on the Commission's list does not constitute Commission endorsement of that facility. The Commission will list the following information:

(1) Laboratory name, location of test site(s), mailing address and contact information;

(2) Name of accrediting organization;

(3) Scope of laboratory accreditation;

(4) Date of expiration of accreditation;

(5) Designation number;

(6) FCC Registration Number (FRN);

(7) A statement as to whether or not the laboratory performs testing on a contract basis;

(8) For laboratories outside the United States, the name of the mutual recognition agreement or arrangement under which the accreditation of the laboratory is recognized.

(d) For a measurement facility that will be used for testing radiated emissions, the site attenuation must comply with the requirements of Sections 5.4.4 through 5.5 of the following procedure: American National Standards Institute (ANSI) C63.4–2009, “American National Standard for Methods of Measurement of Radio-Noise Emissions from Low-Voltage Electrical and Electronic Equipment in the Range of 9 kHz to 40 GHz” (incorporated by reference, see § 2.910). This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. If the measurement site will be used for measuring radiated emissions in the range of 1 GHz to 40 GHz, the site must meet the first alternative specified in Section 5.5 of C63.4–2009 which states that RF absorbing material must cover the ground plane such that the site validation criterion called out in CISPR 16–1–4:2007 is met. Test site revalidation shall occur on an interval not to exceed three years.

(e) A laboratory that has been accredited with a scope covering the measurements required for the types of equipment that it will test shall be deemed competent to test and submit test data for equipment subject to verification, Declaration of Conformity, and certification. Such a laboratory shall be accredited by an approved accreditation organization based on the International Organization for Standardization/International Electrotechnical Commission (ISO/IEC) Standard 17025, “*General Requirements for the Competence of Calibration and Testing Laboratories*.” The organization accrediting the laboratory must be approved by the Commission’s Office of Engineering and Technology, as indicated in § 0.241 of this chapter, to perform such accreditation based on ISO/IEC Standard 17011, “*Conformity assessment—General requirements for accreditation bodies accrediting conformity assessment bodies*.” The

frequency for re-assessment of the test facility and the information that is required to be filed or retained by the testing party shall comply with the requirements established by the accrediting organization, but shall occur on an interval not to exceed two years.

(f) The accreditation of a laboratory located outside of the United States, or its possessions, will be acceptable only under one of the following conditions:

(1) If the accredited laboratory has been designated by a foreign designating authority and recognized by the Commission under the terms of a government-to-government Mutual Recognition Agreement/Arrangement (MRA); or

(2) If the laboratory is located in a country that does not have an MRA with the United States, then it must be accredited by an organization recognized by the Commission under the provisions of § 2.949 for performing accreditations in the country where the laboratory is located.

■ 13. Section 2.949 is added to read as follows:

§ 2.949 Selection of laboratory accreditation bodies.

(a) A party wishing to become a laboratory accreditation body recognized by OET must submit a written request to the Chief of OET requesting such recognition. OET will make a determination based on the information provided in support of the request for recognition.

(b) Applicants shall provide the following information as evidence of their credentials and qualifications to perform accreditation of laboratories that test equipment to Commission requirements, consistent with the requirements of § 2.948(e) of the Commission’s rules. OET may request additional information, as needed, to determine the applicant’s credentials and qualifications.

(1) Successful completion of an ISO/IEC 17011 peer review, such as being a signatory to the International Laboratory Accreditation Cooperation (ILAC) Mutual Recognition Arrangement or other equivalent laboratory accreditation agreement.

(2) Experience with the accreditation of electromagnetic compatibility (EMC), radio and telecom testing laboratories to ISO/IEC 17025. This can be demonstrated by having OET staff participate in a witness audit of the accreditation body performing an assessment of an EMC/Radio/Telecom testing laboratory; or by having OET staff review the report generated by the National Institute of Standards and Technology (NIST) laboratory

accreditation evaluation program conducted to support the Asia Pacific Economic Cooperation (APEC) Mutual Recognition Arrangement (MRA) for Conformity Assessment of Telecommunications Equipment. An applicant that offers other evidence has the burden of demonstrating that the information would enable OET to evaluate its experience with the accreditation of electromagnetic compatibility (EMC), radio and telecom testing laboratories to ISO/IEC 17025.

(3) Accreditation personnel/assessors with specific technical experience on the Commission equipment authorization rules and requirements.

(4) Procedures and policies developed for the accreditation of testing laboratories for FCC equipment authorization programs.

■ 14. Section 2.953 is amended by revising paragraph (b) to read as follows.

§ 2.953 Responsibility for compliance.

* * * * *

(b) The importer of equipment subject to verification may upon receiving a written statement from the manufacturer that the equipment complies with the appropriate technical standards rely on the manufacturer or independent testing agency to verify compliance. The test records required by § 2.955 however should be in the English language and made available to the Commission upon a reasonable request, in accordance with § 2.945.

* * * * *

§ 2.956 [Removed]

■ 15. Section 2.956 is removed.

■ 16. Section 2.960 is amended by revising paragraphs (a), (b), and (c)(1) to read as follows:

§ 2.960 Recognition of Telecommunication Certification Bodies (TCBs).

(a) The Commission may recognize designated Telecommunication Certification Bodies (TCBs) to approve equipment for certification as required under this part. Certification of equipment by a TCB shall be based on an application with all the information specified in this part. The TCB shall process the application to determine compliance with the Commission’s requirements and shall issue a written grant of equipment authorization. The grant shall identify the approving TCB and the Commission as the issuing authority.

(b) In the United States, TCBs shall be accredited and designated by the National Institute of Standards and Technology (NIST) under its National Voluntary Conformity Assessment Evaluation (NVCASE) program, or other

recognized programs based on ISO/IEC 17065, to comply with the Commission's qualification criteria for TCBs. NIST may, in accordance with its procedures, allow other appropriately qualified accrediting bodies to accredit TCBs. TCBs shall comply with the requirements in § 2.962.

(c) * * *

(1) The organization accrediting the prospective telecommunication certification body shall be capable of meeting the requirements and conditions of ISO/IEC 17011.

* * * * *

■ 17. Section 2.962 is revised to read as follows:

§ 2.962 Requirements for Telecommunication Certification Bodies.

Telecommunication certification bodies (TCBs) designated by NIST, or designated by another authority pursuant to an effective bilateral or multilateral mutual recognition agreement or arrangement to which the United States is a party, shall comply with the following requirements:

(a) *Certification methodology.* (1) The certification system shall be based on type testing as identified in ISO/IEC 17065.

(2) Certification shall normally be based on testing no more than one unmodified representative sample of each product type for which certification is sought. Additional samples may be requested if clearly warranted, such as when certain tests are likely to render a sample inoperative.

(b) *Criteria for designation.* (1) To be designated as a TCB under this section, an entity shall, by means of accreditation, meet all the appropriate specifications in ISO/IEC 17065 for the scope of equipment it will certify. The accreditation shall specify the group of equipment to be certified and the applicable regulations for product evaluation.

(2) The TCB shall demonstrate expert knowledge of the regulations for each product with respect to which the body seeks designation. Such expertise shall include familiarity with all applicable technical regulations, administrative provisions or requirements, as well as the policies and procedures used in the application thereof.

(3) The TCB shall have the technical expertise and capability to test the equipment it will certify and shall also be accredited in accordance with ISO/IEC 17025 to demonstrate it is competent to perform such tests.

(4) The TCB shall demonstrate an ability to recognize situations where interpretations of the regulations or test

procedures may be necessary. The appropriate key certification and laboratory personnel shall demonstrate knowledge of how to obtain current and correct technical regulation interpretations. The competence of the TCB shall be demonstrated by assessment. The general competence, efficiency, experience, familiarity with technical regulations and products included in those technical regulations, as well as compliance with applicable parts of the ISO/IEC 17025 and ISO/IEC 17065, shall be taken into consideration.

(5) A TCB shall participate in any consultative activities, identified by the Commission or NIST, to facilitate a common understanding and interpretation of applicable regulations.

(6) The Commission will provide public notice of the specific methods that will be used to accredit TCBs, consistent with these qualification criteria.

(7) A TCB shall be reassessed for continued accreditation on intervals not exceeding two years.

(c) *External resources.* (1) In accordance with the provisions of ISO/IEC 17065, the evaluation of a product, or a portion thereof, may be performed by bodies that meet the applicable requirements of ISO/IEC 17025 and ISO/IEC 17065, in accordance with the applicable provisions of ISO/IEC 17065 for external resources (outsourcing) and other relevant standards.

(2) A recognized TCB shall not subcontract certification decision activities.

(3) When a subcontractor is used to provide testing of equipment subject to certification, the TCB shall be responsible for the test results and shall maintain appropriate oversight of the subcontractor to ensure reliability of the test results. Such oversight shall include periodic audits of products that have been tested and other activities as required in ISO/IEC 17065 when a certification body uses external resources for evaluation.

(d) *Recognition of a TCB.* (1)(i) The Commission will recognize as a TCB any organization in the United States that meets the qualification criteria and is accredited and designated by NIST or NIST's recognized accreditor as provided in § 2.960(b).

(ii) The Commission will recognize as a TCB any organization outside the United States that meets the qualification criteria and is designated pursuant to an effective bilateral or multilateral MRA as provided in § 2.960(c).

(2) The Commission will withdraw its recognition of a TCB if the TCB's designation or accreditation is withdrawn, if the Commission

determines there is just cause for withdrawing the recognition, or if the TCB requests that it no longer hold its designation or recognition. The Commission will limit the scope of equipment that can be approved by a TCB if its accreditor limits the scope of its accreditation or if the Commission determines there is good cause to do so. The Commission will notify a TCB in writing of its intention to withdraw or limit the scope of the TCB's recognition and provide at least 60 days for the TCB to respond. In the case of a TCB designated and recognized pursuant to an effective bilateral or multilateral mutual recognition agreement or arrangement (MRA), the Commission shall consult with the Office of the United States Trade Representative (USTR), as necessary, concerning any disputes arising under an MRA for compliance with the Telecommunications Trade Act of 1988 (Section 1371–1382 of the Omnibus Trade and Competitiveness Act of 1988).

(3) The Commission will notify a TCB in writing when it has evidence that the TCB is not approving equipment in accordance with the Commission's rules and policies and request that it correct any apparent deficiencies. The Commission may require that all applications for the TCB be processed under the pre-approval guidance procedure in § 2.964 for at least 30 days, and will provide a TCB with 30 day notice of its intent to do so unless good cause exists for providing shorter notice. The Commission may request that a TCB's designating authority or accreditation body investigate and take appropriate corrective actions as required, and the Commission may initiate action to limit or withdraw the recognition of the TCB as described in § 2.962(e)(2).

(4) If the Commission withdraws its recognition of a TCB, all equipment approvals issued by that TCB will remain valid unless specifically set aside or revoked by the Commission under paragraph (f)(5) of this section.

(5) A list of recognized TCBs will be published by the Commission.

(e) *Scope of responsibility.* (1) A TCB shall certify equipment in accordance with the Commission's rules and policies.

(2) A TCB shall accept test data from any Commission-recognized accredited test laboratory, subject to the requirements in ISO/IEC 17065, and shall not unnecessarily repeat tests.

(3) A TCB may establish and assess fees for processing certification applications and other Commission-required tasks.

(4) A TCB shall dismiss an application which is not in accordance with the provisions of this subpart or when the applicant requests dismissal, and may dismiss an application if the applicant does not submit additional information or test samples requested by the TCB.

(5) The Commission or TCB may set aside a grant of certification within 30 days of grant. A TCB shall notify the applicant and the Commission when a grant is set aside. After 30 days, the Commission may revoke a grant of certification through the procedures in § 2.939.

(6) A TCB shall follow the procedures in § 2.964 for equipment on the pre-approval guidance list.

(7) A TCB shall supply an electronic copy of each equipment authorization application form and all necessary exhibits to the Commission prior to grant or dismissal of the application. Where appropriate, the application must be accompanied by a request for confidentiality of any material that may qualify for confidential treatment under the Commission's rules.

(8) A TCB shall grant or dismiss each equipment authorization application through the Commission's electronic system.

(9) A TCB may not:

- (i) Grant a waiver of the rules.
- (ii) Take enforcement actions; or
- (iii) Authorize a transfer of control of a grantee.

(10) All TCB actions are subject to Commission review.

(f) *Post-market surveillance requirements.* (1) In accordance with ISO/IEC 17065, a TCB shall conduct appropriate post-market surveillance activities. These activities shall be based on type testing a certain number of samples of the total number of product types which the certification body has certified. Other types of surveillance activities of a product that has been certified are permitted, provided they are no more onerous than type testing.

(2) The Chief of the Office of Engineering and Technology (OET) has delegated authority under § 0.241(g) of this chapter to develop procedures that TCBs will use for performing post-market surveillance. OET will publish a document on TCB post-market surveillance requirements, and this document will provide specific information such as the number and types of samples that a TCB must test.

(3) OET may request that a grantee of equipment certification submit a sample directly to the TCB that performed the original certification for evaluation. Any equipment samples requested by the Commission and tested by a TCB will be

counted toward the minimum number of samples that the TCB must test.

(4) TCBs may request samples of equipment that they have certified directly from the grantee of certification in accordance with § 2.945.

(5) If during post market surveillance of a certified product, a TCB determines that a product fails to comply with the technical regulations for that product, the TCB shall immediately notify the grantee and the Commission in writing of its findings. The grantee shall provide a report to the TCB describing the actions taken to correct the situation, and the TCB shall provide a report of these actions to the Commission within thirty days.

(6) TCBs shall submit periodic reports to OET of their post-market surveillance activities and findings in the format and by the date specified by OET.

■ 18. Section 2.964 is added to read as follows:

§ 2.964 Pre-approval guidance procedure for Telecommunication Certification Bodies.

(a) The Commission will publish a "pre-approval guidance list" identifying the categories of equipment or types of testing for which TCBs must request guidance from the Commission before approving equipment on the list.

(b) TCBs shall use the following procedure for approving equipment on the Commission's pre-approval guidance list.

(1) A TCB shall perform an initial review of the application and determine the issues on which it needs to obtain guidance from the Commission. It shall then contact the Commission to obtain guidance on those issues by electronically submitting relevant exhibits.

(2) The TCB shall complete the review of the application in accordance with the Commission's guidance.

(3) The Commission may request and test a sample of the equipment before the application can be granted.

(4) The TCB shall electronically submit the application and all exhibits to the Commission along with a request to grant the application.

(5) The Commission will give its concurrence for the TCB to grant the application if it determines that the equipment complies with the rules. The Commission will advise the TCB if additional information or equipment testing is required, or if the equipment cannot be approved because it does not comply with the Commission's rules.

■ 19. Section 2.1033 is amended by adding paragraph (b)(13), revising paragraph (c) introductory text and adding paragraph (c)(19) to read as follows:

§ 2.1033 Application for certification.

* * * * *

(b) * * *
(13) Contain at least one drawing or photograph showing the test set-up for each of the required types of tests applicable to the device for which certification is requested. These drawings or photographs must show enough detail to confirm other information contained in the test report. Any photographs used must be focused originals without glare or dark spots and must clearly show the test configuration used.

(c) Applications for equipment other than that operating under parts 15, 11 and 18 of this chapter shall be accompanied by a technical report containing the following information:

* * * * *

(19) Contain at least one drawing or photograph showing the test set-up for each of the required types of tests applicable to the device for which certification is requested. These drawings or photographs must show enough detail to confirm other information contained in the test report. Any photographs used must be focused originals without glare or dark spots and must clearly show the test configuration used.

* * * * *

■ 20. Section 2.1073 is amended by revising paragraph (b) to read as follows:

§ 2.1073 Responsibilities.

* * * * *

(b) The responsible party, if different from the manufacturer, may upon receiving a written statement from the manufacturer that the equipment complies with the appropriate technical standards rely on the manufacturer or independent testing agency to determine compliance. However, the test records required by § 2.1075 shall be in the English language and shall be made available to the Commission upon a reasonable request in accordance with the provisions of § 2.945.

* * * * *

■ 21. Section 2.1075 is amended by revising paragraph (c) to read as follows:

§ 2.1075 Retention of records.

* * * * *

(c) The records listed in paragraphs (a) and (b) of this section shall be retained for two years after the manufacture or assembly, as appropriate, of said equipment has been permanently discontinued, or until the conclusion of an investigation or a proceeding if the responsible party is officially notified that an investigation or any other administrative proceeding

involving the equipment has been instituted. Requests for the records described in this section and for sample units also are covered under the provisions of § 2.945.

§ 2.1076 [Removed]

■ 22. Section 2.1076 is removed.

PART 15—RADIO FREQUENCY DEVICES

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

Authority: 47 U.S.C. 154, 302a, 303, 304, 307, 336, 544a, and 549.

■ 24. Section 15.31 is amended by revising paragraph (a)(3) and adding paragraph (a)(4) to read as follows:

§ 15.31 Measurement standards.

(a) * * *

(3) Other intentional radiators are to be measured for compliance using the following procedure: ANSI C63.10–2009: “American National Standard for Testing Unlicensed Wireless Devices” (incorporated by reference, § 15.38). This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(4) Unintentional radiators are to be measured for compliance using the following procedure excluding sections 4.5.2, 6.2.12, 8.2.2, 9 and 14: ANSI C63.4–2009: “Methods of Measurement of Radio-Noise Emissions from Low-Voltage Electrical and Electronic Equipment in the Range of 9 kHz to 40 GHz” (incorporated by reference, see § 15.38). This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

* * * * *

■ 25. Section 15.38 is amended by revising paragraph (b)(1) and by adding paragraph (b)(4) to read as follows:

§ 15.38 Incorporation by reference.

* * * * *

(b) * * *

(1) ANSI C63.4–2009: “Methods of Measurement of Radio-Noise Emissions from Low-Voltage Electrical and Electronic Equipment in the Range of 9 kHz to 40 GHz,” 2009, IBR approved for § 15.31 except sections 4.5.2, 6.2.12, 8.2.2, 9 and 14.

* * * * *

(4) ANSI C63.10–2009, “American National Standard for Testing Unlicensed Wireless Devices,” 2009, IBR approved for § 15.31.

* * * * *

§ 15.109 [Amended]

■ 26. Section 15.109 is amended by removing paragraph (g)(4).

PART 68—CONNECTION OF TERMINAL EQUIPMENT TO THE TELEPHONE NETWORK

■ 27. The authority citation for part 68 continues to read as follows:

Authority: Secs. 4, 5, 303, 48 Stat., as amended, 1066, 1068, 1082, (47 U.S.C. 154, 155, 303).

■ 28. Section 68.160 is amended by revising paragraphs (a), (b), and (c)(1) to read as follows:

§ 68.160 Designation of Telecommunication Certification Bodies (TCBs).

(a) The Commission may recognize designated Telecommunication Certification Bodies (TCBs) to approve equipment for certification as required under this part. Certification of equipment by a TCB shall be based on an application with all the information specified in this part. The TCB shall process the application to determine compliance with the Commission’s requirements and shall issue a written grant of equipment authorization. The grant shall identify the approving TCB and the Commission as the issuing authority.

(b) In the United States, TCBs shall be accredited and designated by the National Institute of Standards and Technology (NIST) under its National Voluntary Conformity Assessment Evaluation (NVCASE) program, or other recognized programs based on ISO/IEC 17065, to comply with the Commission’s qualification criteria for TCBs. NIST may, in accordance with its procedures, allow other appropriately qualified accrediting bodies to accredit TCBs. TCBs shall comply with the requirements in § 68.162.

(c) * * *

(1) The organization accrediting the prospective telecommunication certification body shall be capable of meeting the requirements and conditions of ISO/IEC 17011.

* * * * *

■ 29. Section 68.162 is amended by revising paragraphs (a), (b)(1), (c)(1), (c)(3), (c)(4), (d), (f)(2), and (g)(2) to read as follows:

§ 68.162 Requirements for Telecommunication Certification Bodies.

(a) Telecommunication certification bodies (TCBs) designated by NIST, or designated by another authority pursuant to an effective bilateral or multilateral mutual recognition agreement or arrangement to which the

United States is a party, shall comply with the following requirements.

(b) Certification methodology. (1) The certification system shall be based on type testing as identified in ISO/IEC 17065.

* * * * *

(c) Criteria for designation. (1) To be designated as a TCB under this section, an entity shall, by means of accreditation, meet all the appropriate specifications in ISO/IEC 17065 for the scope of equipment it will certify. The accreditation shall specify the group of equipment to be certified and the applicable regulations for product evaluation.

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(3) The TCB shall have the technical expertise and capability to test the equipment it will certify and shall also be accredited in accordance with ISO/IEC 17025 to demonstrate it is competent to perform such tests.

(4) The TCB shall demonstrate an ability to recognize situations where interpretations of the regulations or test procedures may be necessary. The appropriate key certification and laboratory personnel shall demonstrate knowledge of how to obtain current and correct technical regulation interpretations. The competence of the telecommunication certification body shall be demonstrated by assessment. The general competence, efficiency, experience, familiarity with technical regulations and products included in those technical regulations, as well as compliance with applicable parts of the ISO/IEC 17025 and ISO/IEC 17065, shall be taken into consideration.

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(d) External resources. (1) In accordance with the provisions of ISO/IEC 17065, the evaluation of a product, or a portion thereof, may be performed by bodies that meet the applicable requirements of ISO/IEC 17025 and ISO/IEC 17065, in accordance with the applicable provisions of ISO/IEC 17065 for external resources (outsourcing) and other relevant standards.

(2) A recognized TCB shall not subcontract certification decision activities.

(3) When a subcontractor is used to provide testing of equipment subject to certification, the TCB shall be responsible for the test results and shall maintain appropriate oversight of the subcontractor to ensure reliability of the test results. Such oversight shall include periodic audits of products that have been tested and other activities as required in ISO/IEC 17065 when a certification body uses external resources for evaluation.

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(f) * * *
(2) A TCB shall accept test data from any source, subject to the requirements in ISO/IEC 17065, and shall not unnecessarily repeat tests.

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(g) * * *
(2) In accordance with ISO/IEC 17065, a TCB is required to conduct appropriate surveillance activities.

These activities shall be based on type testing a few samples of the total number of product types which the certification body has certified. Other types of surveillance activities of a product that has been certified are permitted, provided they are no more onerous than testing type. The Commission may at any time request a list of products certified by the

certification body and may request and receive copies of product evaluation reports. The Commission may also request that a TCB perform post-market surveillance, under Commission guidelines, of a specific product it has certified.

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