Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 13, 2021.

Marietta Echeverria,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, for the reasons stated in the preamble, EPA is amending 40 CFR chapter I as follows:

PART 180—TOLERANCES AND EXEMPTIONS FOR PESTICIDE CHEMICAL RESIDUES IN FOOD

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.582, amend the table in paragraph (a)(1) by adding in alphabetical order the commodity ''Pomegranate'' and a footnote 1 at the end of the table to read as follows:

§ 180.582 Pyraclostrobin; tolerances for residues.

(a) * * *

(1) * * *

Commodity	Parts per million
* * * * *	
Pomegranate	0.3
* * * * *	

[1] There is no U.S. registration on coffee, bean, green as of September 30, 2009.

* * * * *

[FR Doc. 2021–20251 Filed 9–17–21; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 95

[ET Docket No. 20–382; FCC 21–72; FR ID 43219]

Allowing Earlier Equipment Marketing and Importation Opportunities

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commission (Commission) adopts targeted enhancements that will modernize the Commission's marketing and importation rules to allow radiofrequency (RF) equipment manufacturers to better gauge consumer interest and prepare for new product launches. These steps will further the communications sector's ability to drive innovation that will advance America's global competitiveness and promote economic growth. As product development cycles have accelerated, new marketplace models and assessment tools have emerged that rely on individual interest to fund products, optimize production, and match imports to anticipated sales. The rules the Commission is adopting will allow manufacturers to better use these tools to quickly deploy new technologies and devices to consumers while ensuring that communications equipment subject to equipment authorization continues to meet the Commission's stringent program requirements.

DATES: Effective October 20, 2021, except for §§ 2.803(c)(2)(i) and 2.1204(a)(11), which contain information collection requirements that are not effective until approved by the Office of Management and Budget. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date for those sections.

FOR FURTHER INFORMATION CONTACT: Jamie Coleman, Spectrum Policy Branch Chief, Policy and Rules Division, Office of Engineering and Technology, at (202) 418–2705 or *Jamie.Coleman@FCC.gov.* For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Nicole Ongele, Office of Managing Director, at (202) 418–2991 or *Nicole.Ongele@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order,* ET Docket No. 20–382, FCC 21–72, adopted and released June 17, 2021. The complete text of this document is available by downloading the text from the Commission's website at *https://www.fcc.gov/document/allowing-earlier-equipment-marketing-and-importation-opportunities-1.* When the FCC Headquarters reopens to the public, the full text of this document also will be available for public inspection and copying during regular business hours in the FCC Reference Center, 45 L Street NE, Washington, DC 20554. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format) by sending an email to *FCC504@fcc.gov* or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Final Regulatory Flexibility Analyses

The Regulatory Flexibility Act of 1980, as amended (RFA) requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' As required by the RFA, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking (*NPRM*) (86 FR 2337, Jan. 12, 2021). The Commission sought written public comment on the proposals in the *NPRM,* including comments on the IRFA. No comments were filed addressing the IRFA. Accordingly, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of the rule changes contained in this document on small entities. This present FRFA conforms to the RFA.

Paperwork Reduction Act

This document contains modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens will invite the general public to comment on the information collection requirements contained in this document as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

In this present document, we have assessed the effects of requiring marketing disclosures on RF equipment manufacturers, some of which may be small entities, to market and import RF equipment, and find that the Commission's rules are not unduly burdensome. We believe the regulatory burdens the Commission is implementing are necessary to ensure that the public receives the benefits of innovative products and technologies in a prompt and efficient manner, and those burdens apply equally to large and small entities without differential impact.

Congressional Review Act

The Commission has determined, and Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs, that this rule is ''non-major''

under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of the *First Report and Order* and *Order of Proposed Modification* to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

Synopsis

I. Background

The Commission's rules generally require that RF devices may be marketed within or imported to the United States only after they have been subjected to the appropriate equipment authorization procedure—certification or supplier's declaration of conformity (SDoC). These procedures require, among other things, that RF devices are tested to show compliance with the Commission's rules and technical standards. Currently the Commission's rules include some exceptions that provide for limited marketing and importation of RF devices that have not yet been subject to a complete equipment authorization process. For example, some marketing prior to equipment authorization is permitted in the form of conditional sales contracts between manufacturers and retailers of RF devices; and, in the early stages of the production process, such devices may be marketed to business, commercial, industrial, scientific, or medical users. In both instances, marketing to the general public is not permitted and the devices may not be delivered prior to equipment authorization. Similarly, limited quantities of unauthorized devices may be imported, but not marketed, for testing, demonstration, or personal use.

In June 2020, the Consumer Technology Association (CTA) filed a petition seeking to modify the rules pertaining to RF device marketing and importation. *See* Petition of Consumer Technology Association to Expand Marketing Opportunities for Innovative Technologies, RM–11857 (filed June 2, 2020) (CTA Petition). CTA asserted that the Commission's current equipment authorization rules can slow the process of developing and deploying new products and services, and it proposed rule revisions targeting the prohibition on conditional sales to consumers and the limited ability to import devices prior to authorization. In December 2020, after considering the petition, and the general support expressed in the associated record, the Commission initiated this proceeding, in which it proposed changes to the Commission's equipment marketing and importation rules that were informed to a large extent by the CTA Petition.

In the *NPRM,* the Commission proposed to broaden the existing conditional sales contract marketing exception beyond the limitation of ''retailers and wholesalers.'' The Commission acknowledged that new sales models increasingly involve online marketplaces that provide product developers and manufacturers direct access to consumers, thus involving customers in the product development process to a greater extent than before. As a result, device developers are provided with investment and incentive to produce innovative products and consumers benefit by seeing new products and features rolled out in a much shorter timeframe. While the Commission proposed the new marketing rule to allow manufacturers to better leverage this new development paradigm, it nonetheless recognized the continued importance of keeping unauthorized RF devices from becoming available, and it proposed that, even under the new rule, delivery or physical transfer of devices to consumers prior to equipment authorization would still be prohibited.

In addition, acknowledging industry's desire to speed the launch of new products to keep pace with the increasingly compressed innovation cycle, the Commission also proposed to broaden the conditions under which RF devices can be imported prior to equipment authorization. The Commission proposed to allow up to 4,000 RF devices to be imported prior to equipment authorization for the purposes of certain pre-sale activities, such as packaging and physical transfer to retail locations. Under this proposal, the RF devices could not be displayed to consumers prior to equipment authorization and the party responsible for importation would be required to take steps to ensure that appropriate device control is maintained until authorization is obtained.

Sixteen comments and one reply comment were filed in response to the *NPRM.* While some commenters suggest modifications to the Commission's proposals, all filers are generally supportive of the overall marketing and importation proposals.

II. Discussion

The Commission recognizes that, in some instances, developments in the modern device marketplace have outpaced those in the Commission's equipment authorization regime. As a result, the Commission's rules may limit the ability to market and import RF devices in new efficient and cost-effective ways. The Commission therefore takes this opportunity to adopt the rule changes proposed in the *NPRM,* with clarifying revisions, which will provide additional options for taking advantage of modern product development practices while ensuring against the use of unauthorized RF devices. Accordingly, the Commission modifies its rules to include an additional option that will allow for more importation of RF devices prior to equipment authorization. Further, the Commission modifies its rules to allow conditional sales of RF devices prior to authorization, subject to certain requirements. In both instances, the Commission is adopting rules that are crafted in a manner to not undermine the Commission's equipment authorization program by continuing to prevent end users from having access to unauthorized RF devices. The Commission also makes targeted changes to its proposals to clarify its intent regarding the interaction between the revised marketing and importation rules. These changes eliminate a potential conflict between the proposed importation and marketing provisions, whereby imported and domestically-produced devices could be subject to disparate requirements. The rules the Commission are adopting remove this disparity and provide more consistent treatment by permitting similar opportunities prior to equipment authorization regardless of the device's country of origin.

In summary, the Commission is adopting a new condition under § 2.1204 and a revised exception under § 2.803 of the Commission's rules to allow the importation and marketing of certain RF devices, under specified constraints, prior to equipment authorization. In general, the Commission is allowing the importation of a maximum of 12,000 RF devices for pre-sale activity if those devices: (1) Are subject to a certification application that has been submitted to a Telecommunication Certification Body (TCB); (2) include an externally-visible temporary label prohibiting display to consumers, operation, and delivery of the device prior to the grant of certification; and, (3) remain under legal ownership of the device manufacturer, developer, importer or ultimate consignee, or their designated customs broker (who has a device retrieval process in place). Further, the Commission is revising an existing exception in the Commission's rules to expand to consumers the limited marketing and conditional sales of certain RF devices prior to equipment authorization. The existing exception generally allows conditional sales

contracts between manufacturers and wholesalers or retailers provided that delivery is made contingent upon compliance with the applicable equipment authorization and technical requirements. The Commission's revisions to this condition expand conditional sales, and advertisements for such sales, to include other entities, including consumers, provided that the prospective buyer is advised at the time of marketing that delivery of the device is conditional upon successful completion of the applicable equipment authorization process. All devices must remain under the legal ownership of the initiating party (*i.e.,* the manufacturer or developer), but physical transfer may be permissible depending on the applicable device authorization requirement. Physical transfer is prohibited for devices subject to the Supplier's Declaration of Conformity equipment authorization process. Devices subject to certification can be physically transferred to contracting parties, other than the end user, for pre-sale activity if the devices include a temporary label and the initiating party has retrieval processes in place. The Commission also adopts the proposed revision to § 95.391, which prohibits the manufacturing, importation, and sales of non-certified equipment for the Personal Radio Services, to reflect the marketing exception the Commission adopts and adds an additional reference to reflect the import condition the Commission adopts.

A. Importation of RF Devices Prior to Equipment Authorization

The Commission is adopting the proposal to modernize its rules to allow a limited number of RF devices to be imported into the United States prior to equipment authorization for pre-sale activities, including packaging and transferring physical possession to retail locations, if those devices are subject to equipment authorization via the certification process. The rule the Commission adopt adds a new condition to § 2.1204 of the Commission's rules to allow the importation of up to 12,000 RF devices for pre-sale activity before the equipment successfully completes certification. The imported devices must be subject to the equipment authorization certification process (*i.e.,* excluding devices subject to Supplier's Declaration of Conformity process) for which an application has been submitted to a TCB. As noted above, the imported devices must include an externally-visible temporary label noting the prohibition of display to consumers, operation, and delivery of the device prior to the issuance of certification. The devices must also remain under legal ownership of the device manufacturer, developer, importer or ultimate consignee, or their designated customs broker, who must have in place a device retrieval process to be implemented in the event that the certification process is not successfully completed. The Commission believes this action will allow device manufacturers to better prepare for new product launches while guarding against a proliferation of unauthorized and non-compliant devices that might increase the risk of causing harm to consumers or other radio operations.

The rule proposed by the Commission in the *NPRM* largely reflected the proposal made by CTA in its petition. The Commission proposed to allow up to 4,000 RF devices to be imported for pre-sale activities prior to being certified. In this case, such pre-sale activities would include imaging, packaging, and delivery of devices to retail locations, but ''exclude the displaying of the device to consumers prior to equipment authorization.'' CTA Petition at 12, n. 44. Under the proposal, limited importation could occur if the manufacturer has a reasonable belief that the device would receive authorization within thirty days of importation. Additionally, the Commission proposed that the device include a temporary label regarding related compliance restrictions and the manufacturer would be required to maintain legal ownership of the devices, even after delivery to retail locations, until authorization is received, and have a process in place to retrieve the devices in the event that authorization is not obtained.

While all comments received support the proposal's intent, they include several requests to modify specific aspects, including the numerical limitation on the devices imported, the requirement that a manufacturer have a reasonable belief that authorization will be granted within 30 days of importation, and labeling requirements. The Commission addresses the various issues below and modifies the Commission's proposed rules, as appropriate, based on the comments received.

Numerical Limitation. The Commission is adopting rules that limit to 12,000 the number of RF devices that can be imported for pre-sale activities. While the Commission proposed to limit this new import condition to 4,000 devices, it asked whether a higher level, such as 8,000, would be more appropriate, whether a smaller number of devices would provide less risk of unauthorized devices becoming available to the general public, and whether any safeguards beyond a simple numerical limit would be necessary in this regard. Only HP Enterprise supports the proposed 4,000 device limit. Otherwise, commenters generally suggest that the Commission increases the device limit. Suggestions ranged from a non-specific increase, to a 10,000 device limit, and a more widely supported 12,000 device limit. Comments proposing 12,000 devices generally state the larger limit would account for the number of potential retailers throughout the country based upon the estimated numbers of ''big box'' stores and wireless provider locations, among others. Comments also note that a limit greater than 10,000 devices would increase the likelihood of more even distribution to both urban and rural areas while still being small enough to mitigate the potential risk of unauthorized widescale distribution.

Based on the record, the Commission finds that the proposed importation limit of 4,000 devices would not be sufficient to achieve the intended benefits. The Commission therefore adopts rules permitting up to 12,000 units of a particular device to be imported for pre-sale activities prior to the equipment being certified. As proposed, the Commission also adopts a provision to allow the importation of devices in excess of 12,000 subject to prior written approval from the Chief of the Office of Engineering and Technology. Overall, the Commission finds that a device limit of 12,000 will meet manufacturer and importer needs while not compromising the integrity of the Commission's equipment authorization program. The 12,000-unit limit is a maximum limit for a particular device across all ports of entry into the United States. Importation in excess of 12,000 units without prior written approval of the FCC is prohibited and may subject the manufacturer or importer to enforcement action.

The Commission's proposal did not specifically address how to differentiate devices when determining compliance with the maximum import quantity. Garmin provided comments suggesting that, in defining the importation limit for a device, the Commission applies the permissible quantity based on SKU number rather than to general product names or model brands. The Commission notes that restricting the importation limit to product name or model brand would restrict manufacturers from importing the full range of a new product, such as different sizes and product options. The Commission agrees with Garmin that

additional clarification is necessary to provide certainty to manufacturers and importers that take advantage of the additional flexibility the Commission is providing regarding importation for pre-sale activity. As such, the Commission is adopting an additional provision to clarify that devices with different FCC IDs are considered to be separate devices; *i.e.,* up to 12,000 devices with the same FCC ID number may be imported for pre-sale activities. The Commission adopts this requirement as opposed to a SKU number-based requirement as suggested by Garmin because FCC ID is the officially recognized method for identifying equipment, is required by FCC rules to be labelled on the device, and can be tracked through the FCC equipment authorization system database; SKU numbers, on the other hand, have no regulatory meaning under FCC rules. Moreover, use of FCC ID will not be burdensome for manufacturers and importers because, as discussed below, devices subject to the Commission's new rules may not be imported until an application for certification has been submitted and therefore an FCC ID will already be associated with such equipment.

Submission of Application for Certification. In the *NPRM,* the Commission proposed to require that manufacturers importing devices under the proposed exception have ''a reasonable belief that authorization will be granted within 30 days of importation.'' The Commission asked several questions related to how manufacturers could comply with this requirement. Most commenters stating that 30 days would not be sufficient suggest that 90 days would be more appropriate. Two filers, Information Technology Industry Council and the Joint Commenters (Telecommunications Industry Association, Association of Home Appliance Manufacturers, Engine, The internet Association, INCOMPAS, the Rural & Agriculture Council of America, and TechFreedom), suggest that 60–90 days would be generally sufficient and, for devices that require a TCB to coordinate with the OET Lab prior to taking action on the certification application, via the pre-approval guidance procedure, 120–180 days would be ''reasonable.'' One commenter, Information Technology and Innovation Foundation, states that the increased complexity of devices would make enforcing an expectation requirement difficult and suggests that the Commission allow manufacturers options for ''demonstrating reasonable belief of imminent authorization,'' such as relying on process milestones. Similarly, Samsung suggests that delivery to an accredited test lab or TCB for testing would be an appropriate basis for a reasonable expectation of authorization. R Street Institute (R Street) also notes that determining compliance with the criterion would be difficult and suggests that the Commission provides manufacturers flexibility in this regard, provided that they maintain documentation ''demonstrating their internal logic regarding authorization.''

The Commission believes that parties who avail themselves of the new importation exception should be permitted to do so only if they reasonably believe that a certification will be issued as close to the importation date as is possible. However, based upon the record, the Commission declines to adopt the 30-day timeframe. As many commenters suggest that the timeframe needed for certification can be unpredictable depending on device complexity and other factors, the Commission is adopting a rule that does not include a specific timeframe but is instead based on the submission of the equipment certification application. As the commenters' recommendations are informed by their experiences with the equipment authorization process, requiring a reasonable belief of completion of certification activities within a specific timeframe would not accurately reflect the ''real world'' process in many circumstances. Similarly, if the Commission were to specify multiple timeframes to cover different situations, there would still be numerous scenarios not covered, thus adding an unnecessary level of complexity to the rule that could limit its utility and result in confusion and inconsistent applicability.

Accordingly, the Commission is adopting a requirement that importation for pre-sale activities prior to the device receiving certification can only occur after compliance testing is complete and an application for certification has been submitted, in good faith, to a TCB. At that point, an applicant will have expended considerable time, effort, and money to develop a product as well as entered into a testing and approval process that requires expending additional resources. The Commission finds that this specific milestone reflects a point in the certification process by which the applicant can reasonably expect a grant. Allowing importation prior to the completion of compliance testing would increase the risk associated with distributing the unauthorized devices because the testing could reveal compliance issues that require device modification. The Commission will not require any additional process milestones to be tracked to demonstrate compliance with the adopted rule. The Commission notes that some aviation and maritime devices subject to the equipment certification process require additional reviews and approvals, such as from the Federal Aviation Administration and the United States Coast Guard. In some cases those additional approvals from other agencies must be done prior to submitting an application for FCC equipment certification and in some instances approval may be obtained concurrently. The rule the Commission adopts here has no impact on those requirements, but entities intending to avail themselves of this new import condition should consider the processing time and technical requirements of those reviews and approvals in relation to the certification process to determine when to begin importation under the new condition. Further, the Commission notes that parties must satisfy all conditions required for their equipment and comply with all conditions imposed by all relevant agencies under which the equipment is regulated; permission to market devices under FCC rules does not provide similar approval from other relevant agencies and all requirements must be satisfied in accordance with those agencies' rules. The Commission expects applications to be filed in good faith, with accurate data and as completely as possible, and applicants must be responsive to any TCB requests for additional data.

B. Marketing of RF Devices Prior to Equipment Authorization

The Commission is adopting its proposal to allow expanded conditional sales of RF devices prior to authorization, with appropriate clarifications regarding applicability and conditions. The internet provides today's consumer with numerous opportunities to obtain innovative new products both directly—via crowd-funding platforms at the developmental stages, and through sales and distribution services offered by manufacturers and developers—and indirectly, through third party marketplaces, both online and in person. This new-found ability to more easily obtain the latest products has led to savvier consumers, who have a greater awareness of technological developments and expect to obtain the newest products as soon as possible. At the same time, the ability to deal directly with consumers at the earliest

stages of development has created new efficiencies and investment opportunities that provide smaller entities a chance to enter the competitive marketplace. The Commission's new rule will allow innovators to take advantage of modern product development practices and better satisfy the expectations of today's consumer without diminishing the protections that the Commission's overall marketing rules provide.

In the *NPRM,* the Commission proposed to modify its marketing rules in a manner that would allow consumers to participate in the conditional sales of devices that have not received authorization. The Commission did not receive any comments objecting to its overall marketing proposal. Commenters did note generally that, in addition to allowing consumers to receive new devices sooner, the proposal would provide benefits throughout the supply chain that would allow production to better match expected demand, thus providing efficiencies that would lower costs and reduce waste in raw materials and energy. One comment suggests that the new marketing exception apply to the broadest category of devices and no commenters suggest excluding any devices.

The Commission remains mindful that it must continue to protect against the possibility of unauthorized RF devices making their way to consumers and adopt rules intended to prevent such occurrences while expanding marketing opportunities for innovators. Additionally, the rules the Commission proposed in the *NPRM* to allow pre-sale activities for imported devices would not have permitted similar flexibility for domestically-produced devices. Thus, in adopting rules to permit marketing activities prior to equipment certification, the Commission also provides flexibility in the Commission's marketing provisions to allow for pre-sale activities similar to those that the Commission is allowing for imported devices. This action implements more consistent measures for similarly-situated devices with similar safeguards to prevent unauthorized devices from getting to consumers. Further, the Commission's action will also benefit consumers, who will be able to see and examine devices earlier so that they can make more timely purchase decisions, and retailers, who will gain the opportunity to become familiar with the features associated with new devices to better prepare those devices for display and sale once they are certified and may be operated.

As proposed in the *NPRM,* the Commission is broadening the applicability of the prior conditional sales contract provision found in § 2.803(c) of the Commission's rules, which now will allow for conditional sales to consumers. Specifically, the Commission is modifying § 2.803(c)(2)(i) to allow conditional sales contracts and advertising for RF devices that have not yet received authorization, under particular delivery and physical transfer conditions and a requirement that the contracting party advises the buyer at the time of marketing that the equipment is subject to FCC rules and delivery is conditional upon successful completion of the applicable equipment authorization process.

In the *NPRM,* the Commission proposed to allow conditional sales contracts between manufacturers and potential customers. The intent was to broaden the rule that originally limited conditional sales to contracts between manufacturers and wholesalers or retailers, which was based on a concern that unauthorized devices that made their way to consumers could cause harmful interference to radio communications. Ensuring that unauthorized RF devices do not cause harm remains among the Commission's highest concerns. However, recognizing that product marketing and distribution methods have evolved due to the internet and new crowd-funding practices which bring the consumer into direct contact with the developer or manufacturer, and based on the comments received in response to the *NPRM,* the Commission is adopting a more flexible rule that does not limit conditional sales contracts to transactions only between manufacturers and potential customers.

In the *NPRM,* the Commission declined to propose a rule that included the term ''responsible party'' in lieu of ''manufacturer'' as suggested by CTA, and instead proposed conditional sales contracts between manufacturers and potential customers. The Commission explained its concerns that, given the specific meaning of the term, ''responsible party'' would not be appropriate in this context. Further, the Commission asked for comment on this determination and asked questions about more suitable alternatives. While no commenter suggests replacing ''manufacturer'' with ''responsible party,'' Samsung Electronics America (Samsung) suggests that the Commission clarifies that affiliates and related corporate entities should be considered acceptable in the context of ''manufacturer.'' Additionally, while not providing specific rule changes, Samsung and CTA suggest the Commission clarifies that the rule would also cover contracts between manufacturers and retailers/wholesalers.

The Commission's intent in proposing to expand conditional sales contract to ''manufacturers and potential customers'' was to broaden the pool of parties allowed to enter into conditional sales contracts with manufacturers, specifically to include consumers. Considering the information in the record, the Commission finds that inclusion of the phrase ''between manufacturers and potential customers'' would raise confusion as to who may enter into conditional sales contracts. The Commission recognizes that modern product development and distribution systems can be complex and involve multiple entities in various roles. As discussed in the *NPRM,* the Commission understands that, with the proliferation of internet-based direct-to-consumer sales and e-commerce platforms, various entities can access multiple distribution models to reach consumers. To ensure that the language of the Commission's revised marketing regulation does not hinder innovation or provide unfair advantage or disadvantage to particular entities, the Commission finds that it is not necessary to specify the permissible parties to the conditional sales contracts. Thus, manufacturers, developers, or other entities responsible for new device creation, development, or production will be able to define their own role in the distribution and supply chain of their devices. The Commission finds this to be particularly important for smaller or new device developers who may not manufacture their devices but wish to engage in the sale and distribution process so they can appropriately plan for manufacturing and distribution. By expanding the pool of parties to the conditional sales contracts, the Commission is implementing rules that encourage and expand opportunities for innovation and allow developers or other parties that are not themselves a manufacturer to participate in the sale and marketing of a device. At the same time, as noted below, the Commission continues to prohibit delivery to consumers prior to completion of the equipment authorization process.

In this regard, the Commission modifies § 2.803(c)(2)(ii), a separate provision that allows limited marketing, in the form of sales, to a narrow class of specialized entities. As noted in the *NPRM,* CTA had asked that the provision be deleted or replaced with language specifically addressing

manufacturers' ability to engage in activities related to the Commission's importation proposal. The Commission in the *NPRM* sought comment on whether a change to the provision was necessary to achieve the proposal's discrete objective and whether doing so could eliminate an important avenue for limited marketing that exists outside the conditional sales contract context. In response to the *NPRM,* CTIA requests that the Commission deletes § 2.803(c)(2)(ii), as it believes the new rule would eliminate the need for this section and retaining it in the rules would be confusing.

In light of the information in the record and the changes the Commission is making to § 2.803(c)(2)(i) by expanding applicability to all parties, the Commission finds that § 2.803(c)(2)(ii) is no longer necessary and the Commission removes it. The language that the Commission is adopting in § 2.803(c)(2)(i) encompasses conditional sales to all parties, including business, commercial, industrial, scientific, or medical users, thereby negating the need for a separate exception targeted at those users.

The Commission also clarifies the conditions under which conditional sales contracts may be made. The proposed rule would have provided that delivery of devices subject to conditional sales contracts would be conditional upon *a determination* that the equipment complies with the applicable equipment authorization and technical requirements. To clarify the requirement, the rule the Commission is adopting instead states that delivery is conditional upon ''successful completion of the equipment authorization process.'' This change does not eliminate the need for determining compliance with the Commission's technical requirements, but it more accurately reflects both of the Commission's equipment authorization processes and the required milestone for delivery. This better conveys the Commission's intent by removing the ambiguity of a subjective condition referenced only to ''a determination that the equipment complies with the applicable equipment authorization and technical requirements'' rather than the actual completion of the equipment authorization process.

C. Device Delivery and Possession

While the Commission now will permit conditional sales of RF devices prior to equipment authorization, the Commission reiterates the importance of continuing to ensure that unauthorized RF devices do not reach consumers. No commenter suggests otherwise and several explicitly express support for retaining the prohibition. Thus, the rule the Commission is adopting continues to prohibit delivery of RF devices to consumers prior to completion of the equipment authorization process. The Commission expects that the disclosure requirements discussed below will ensure that there is no consumer expectation of early delivery. Likewise, the other process safeguards the Commission discusses below should ensure that sellers take all necessary steps to prevent operation of unauthorized devices and delivery to consumers. These safeguards include provisions, previously introduced in the *NPRM's* proposed importation provision, to allow devices subject to certification to physically move through the supply chain as far as the retailer, stopping short of the consumer.

In the *NPRM,* the Commission noted that the proposed rule could be seen as lessening the barriers between device developers, manufacturers, distributers, and consumers and asked whether any additional safeguards would be warranted to protect against harmful interference. Specifically, the Commission asked, with regard to both marketing and importation, whether there are certain types of devices for which conditional sales to consumers would not be appropriate, citing as examples devices that would operate in bands that are subject to rigorous coordination or installation requirements and devices that operate to ensure safety of life onboard ships and aircraft. The Commission also asked whether there are ways to prevent devices from being marketed that have no likelihood of being approved due to compliance issues and whether equipment that could operate only under a Commission waiver should be prohibited from marketing prior to the Commission granting a waiver. One comment suggests that the new rule permitting conditional sales apply to the broadest category of devices and no commenters suggest excluding any devices.

Equipment authorization of RF devices can be completed by one of two processes. Certification involves rigorous testing by an FCC-recognized accredited testing laboratory and listing in a Commission database. By contrast, SDoC is a self-certification process that gives the manufacturer substantially greater control over determining when a product meets the Commission's equipment authorization requirements. While not adopting any specific device exclusions at this time, the Commission finds that requiring devices to complete the existing equipment authorization processes will facilitate movement of devices through the supply chain while maintaining controls to ensure against unauthorized use and delivery to consumers. Specifically, the Commission sees the two equipment authorization processes as providing a means by which to distinguish between types of devices in implementing various controls to limit physical access to unauthorized RF devices.

Upon further analysis of its proposals, the Commission observes that the proposal to permit conditional sales prior to completion of the applicable equipment authorization process applied to all devices whether they originated from domestic or foreign sources. However, the Commission's new importation rules as adopted herein allow for pre-sale activities where certain imported devices can be physically transferred to retail locations, but the same flexibility was not specifically proposed for other devices. Allowing transfer of physical possession of certain imported devices to retailers, but not other devices, would result in a disparity in the treatment of similar devices based on whether they are imported or manufactured or developed in the U.S. To ensure consistent measures between similarly situated devices regardless of their origin, the Commission will permit devices subject to the equipment authorization certification process to engage in the same pre-sale activities and under similar conditions the Commission adopts for imported devices. Specifically, the Commission will allow the physical possession of devices subject to certification to be transferred to distributers and retailers. Neither in the Commission's import nor marketing provision does it extend this flexibility to devices subject to SDoC because, unlike the more rigorous requirements associated with the certification process, the SDoC process provides manufacturers more flexibility in determining compliance with the FCC's technical requirements.

The marketing rule provision the Commission is adopting will permit physical transfer of devices subject to certification procedures, and for which an application has been submitted to a TCB and compliance testing is complete, for the sole purpose of pre-sale activity, which includes packaging and transferring physical possession of devices to distribution centers and retailers. Pre-sale activity does not include display or demonstration of devices to consumers. This provision prohibits physical transfer of RF devices subject to Supplier Declaration of

Conformity prior to completion of that process. It also requires that the party initiating the first conditional sales contract maintain legal ownership of the relevant devices.

The *NPRM* proposed to require manufacturers that engage in pre-sale activities to maintain legal ownership of imported RF devices that had not received equipment authorization, even after physically transferring them to retailers. When it made the proposal, the Commission asked whether the requirement would further the Commission's goal of keeping unauthorized devices from causing harm to consumers or other radio operations, whether additional restrictions related to the delivery and location of devices after importation would be necessary, and about the manufacturer's responsibility in the event of unauthorized operation. The Commission also asked several questions related to the specific process of complying with the requirement and whether the benefits of the rule would outweigh any burdens that it would place on those involved in the process, such as manufacturers and retailers.

Samsung states that requiring manufacturers to retain legal ownership of imported RF devices will incentivize manufacturers to ensure that retailers and other partners abide by the labeling rules and other safeguards. Samsung recommends that the Commission clarify that agreements exercising the new importation condition to deliver devices to retail locations prior to authorization do not violate the § 2.803 marketing rules. Samsung argues that the current text of § 2.803(c)(2) may constrain the ability of manufacturers and retailers (as well as others in the distribution chain) to exercise the new importation condition to deliver devices to retail locations while extracting representations and warranties to abide by the Commission's safeguards. As an alternative to adding a new subsection to § 2.803, Samsung recommends that the Commission clarifies that contracts exercising the new condition, including physical transfer to retail partner locations, do not constitute marketing pursuant to § 2.803. Similarly, CTA recommends that the Commission clarifies that the proposed new importation condition does not violate the Commission's marketing rules, but rather allows physical transfer of RF devices to retail locations with the safeguard of a manufacturer retaining legal ownership of those devices. CTA observes that manufacturers and retailers must have agreements in place to ensure that those devices are properly labeled, delivered, and stored until they are authorized for consumer use.

The intent of the Commission's proposed rule on ownership of imported RF devices was to protect consumers by ensuring that devices that have not yet been authorized are not operated. The Commission finds that it can achieve that important goal for both marketed and imported devices that have completed certification testing and been submitted to a TCB for approval by providing a process that allows for physical transfer of marketed devices while legal ownership is maintained by the first party to initiate a conditional sales contract (*i.e.,* a developer or manufacturer, or similar party) or, in the case of imported devices, by the device manufacturer, developer, importer or ultimate consignee, or their designated customs broker.

By permitting the physical transfer of devices, the Commission will allow entities to take full advantage of modern marketing and importation practices while still protecting against unauthorized use of devices that have not completed the equipment authorization process. The Commission is adding a new subsection to § 2.803 of the Commission's rules establishing the requirements applicable to ownership and physical transfer of such devices.

D. Disclosures and Labeling

The Commission believes that most consumers today are generally familiar with conditional sales and delayed delivery of new devices. However, it needs to ensure that consumers purchasing devices that have not yet received authorization are aware of the conditions for delivery before entering into a conditional sales agreement. The Commission is therefore adopting, as proposed, a requirement that the prospective buyer be advised at the time of marketing, through a prominent disclosure, that the equipment is subject to FCC rules and delivery to the end user is conditional upon successful completion of the applicable equipment authorization process.

In the *NPRM,* the Commission asked several questions regarding the implementation and scope of this disclosure requirement. For example, the Commission asked whether additional disclosures should be required throughout the equipment authorization process and, in the event that authorization is not obtained, how consumers would be notified, and whether the Commission should require refund information to be provided in the required disclosure. The Commission also asked about the responsibility of online retailers to ensure that all device advertisements involving conditional sales include the required disclosures, and whether unique identifying information (*e.g.,* model numbers, expected FCC ID) that may be known at the time of marketing, should be required in online advertisements. Finally, the Commission asked whether it should require manufacturers to include a label on device packaging noting that it must not be delivered to consumers prior to obtaining equipment authorization and, if so, what additional information to require on the label.

While two commenters suggest that the Commission provide specific disclosure language, most commenters suggest a more general requirement. However, INCOMPAS suggests that the Commission specifically require a refund for consumers when device authorization is not obtained. Information Technology Industry Council also argues in favor of a refund requirement and disclosures on how consumers can obtain refunds. The Public Interest Organizations (New America's Open Technology Institute, Public Knowledge, Consumer Reports, and Access Humboldt) went further, requesting the Commission require companies utilizing the marketing exception to establish escrow funds for such refunds. On the other hand, regarding a consumer refund process, many commenters state the Commission should not adopt specific requirements or, generally, that no additional requirements beyond the proposal are necessary.

The Commission finds that it is necessary and appropriate for parties initiating conditional sales contracts to advise buyers at the time of marketing, through a prominent disclosure, that the equipment is subject to FCC rules and delivery is conditional upon successful completion of the appropriate equipment authorization process. To ensure that the Commission's new rules for conditional sales to consumers do not lead to unanticipated problems, the Commission will also require this disclosure to make clear that these rules do not address the applicability of consumer protection, contractual, or other provisions under federal or state law. The contractual nature of these conditional sales, along with the relevant contractual remedies available to the buyers, should provide sufficient incentive for the sellers to ensure that buyers are adequately informed of the conditions of sale, including a refund process, if device authorization is not successfully completed. Nevertheless, the Commission will require the initiating party to include in their disclosure notification of any

responsibility of the initiating party to the buyer in the event that the applicable equipment authorization process is not successfully completed, including information regarding any applicable refund policy. While most consumers are familiar with conditional sales, the Commission finds that requiring this information will minimize potential confusion for consumers who are unfamiliar with conditional sales. Although CTA suggests that such disclosure could confuse consumers who are already aware of the applicable refund policy, the Commission finds such confusion unlikely, and finds on balance that the public interest is better served by making this information available to all consumers as part of the disclosure the Commission is requiring here. The Commission does not find that it is necessary to require standardized language for the disclosures nor does the Commission believes that it needs to take any additional measures to ensure that buyers are informed of the conditional nature of the sales contracts.

However, the Commission does find that it is important to ensure that devices are not delivered to consumers and that distributers, retailers, consumers, and other relevant entities are aware that the devices must not be operated before equipment authorization is complete. In addition to disclosures, the Commission is adopting the temporary labeling requirement for RF devices when parties engage in pre-sale activities that the Commission proposed for imported devices and extending that requirement to devices under the marketing provisions adopted by this document for those same pre-sale activities. In the *NPRM,* the Commission requested comment about requiring a temporary label on device packaging and what information that label should include. The Commission went on to propose that devices imported prior to certification under the new exception include a temporary removable label that includes a specific warning against premature operation, display, offers for sale, marketing, or sales and asked whether additional information should be incorporated into such a label. Garmin, INCOMPAS, and Hewlett Packard Enterprise specifically opposed such a requirement, generally stating that it would not be worth the investment in time and material. While R Street agreed with the requirement, other supportive comments generally suggested that existing labeling requirements would be sufficient, or pointed to Commission guidance for temporary physical labels under the e-labeling procedures for RF devices. No comments supported a temporary labeling requirement beyond that proposed by the Commission.

The Commission continues to believe that a temporary label indicating the status of RF devices will provide a necessary safeguard against the inadvertent transfer of such devices to consumers and the Commission is adopting the rule in both the importation and marketing provisions with some modifications to the required language for consistency with other provisions in the new rules. Specifically, when parties engage in pre-sale activities, the Commission clarifies that the device or its packaging must prominently display a visible temporary label. This will ensure that the temporary label is not hidden inside the device packaging where it would not be visible. The Commission also clarifies that the device cannot be displayed to consumers, operated, or delivered to end users until successful completion of the applicable FCC equipment authorization process. The Commission is not adopting the Commission's proposal that the label on imported devices include language prohibiting offers of sale and marketing, thus ensuring consistency in labeling for both imported and domestic devices. The devices must not be available to consumers until after the successful completion of the certification process and the Commission expects that at the time of sale they will be in compliance with all pertinent information, technical, labeling, and other requirements within the Commission's rules. Because the labels are temporary, the Commission finds that it would be unduly burdensome to require the inclusion of any additional information such as authorization status or specific contact information or otherwise include any specific compliance guidance with the rules. As to compliance via the Commission's existing requirements for electronic labeling (e-labeling) of RF devices, it appears likely that commenters are referring to § 2.935(f) of the Commission's rules which requires an external removable label that addresses compliance with any applicable Commission requirements. However, in this case, as the temporary label requirement is specifically codified in the Commission's new rule, strict compliance with § 2.935(f) is not necessary and would likely not be desirable.

Once authorization has been completed, the RF devices must comply with all pertinent Commission labeling and disclosure requirements. The Commission adopts its proposal to allow, but not require, the anticipated FCC ID to be included if obscured by a temporary label until equipment authorization is successfully completed. Otherwise, the Commission is not adopting requirements that specifically detail actions required to ensure compliance in this regard.

E. Retrieval and Tracking of Unauthorized Devices

As proposed in the importation provision of the *NPRM,* the Commission is requiring processes to retrieve equipment to be in place prior to the commencement of pre-sale activities, and clarifying that those processes must be implemented, in the event that authorization is not successfully completed. In this regard, the Commission also asked several questions about the level of detail of the process that should be codified and the requirements for records retention and submission. With the exception of R Street, commenters do not offer any specific suggestions regarding retrieving equipment if authorization were to be denied, but generally indicate that existing Commission processes are adequate, and advocate a ''light touch'' regulatory approach. R Street recommends that the Commission require RF device manufacturers to submit formal plans to retrieve devices to limit the ability for bad actors to let devices simply remain in the public sphere, rather than bear the cost of retrieving the devices. R Street suggests that these risks could be further limited by features such as a remote shutdown requirement on the devices, but notes that the benefits of such an approach may be limited by the costs of implementing it. The Commission had asked about this remote shutdown approach, noting some similarity to scenarios in which unauthorized devices operate under a part 5 experimental authorization.

In light of the expanded physical transfer provisions the Commission is adopting in its marketing rule, the Commission finds it necessary that the marketing provisions also require a process for retrieval of devices, and completion of that process, in the event that authorization is not successfully completed when parties engage in pre-sale activities. Although the Commission is adopting this retrieval requirement in both the Commission's importation and marketing rules, the language of the two provisions varies slightly to accurately designate the party responsible for the retrieval activities. For marketed devices, the burden is on the first party to initiate a conditional

sales contract or to physically transfer devices, while for imported devices, the burden is on the device manufacturer, developer, importer or ultimate consignee, or their designated customs broker. In both instances, this will ensure that the party in legal ownership of the devices, regardless of the devices' physical location, will be responsible for maintaining and implementing a process for retrieval if the applicable equipment authorization cannot be successfully completed. The language the Commission adopts in the importation provision, which was limited to the manufacturer in the Commission's proposal, is consistent with party designations referenced in the Commission's other existing importation conditions.

F. Recordkeeping

In the *NPRM,* the Commission proposed a recordkeeping requirement for devices imported prior to equipment authorization that would require manufacturers to maintain, for a period of 5 years, records identifying the recipient of the devices along with information about the devices and the shipping. The Commission asked several questions related to the need for recordkeeping and related reporting and responsibility issues. The Commission's recordkeeping questions were informed by its concerns about situations where pre-ordered devices are not ultimately authorized and enforcement actions may be required. Commenters generally recommend either no new recordkeeping or minimal requirements. No commenter supports additional reporting requirements. Samsung states that adopting new record retention requirements is not necessary because manufacturers regularly retain records related to equipment authorization that must be presented to the Commission upon request. Amazon states that an overly prescriptive approach or burdensome reporting and recordkeeping requirements are not necessary to protect consumers.

The Commission finds that the recordkeeping requirement proposed in the NPRM is the minimal required to ensure that, should it become necessary, the Commission will have access, as needed for enforcement or other purposes, to information regarding devices imported prior to authorization. The Commission therefore adopts the recordkeeping requirement with a change to the party responsible for recordkeeping. Specifically, recordkeeping will be the responsibility of the device manufacturer, developer, importer or ultimate consignee, or their designated customs broker. In addition to being consistent with other importation recordkeeping requirements in the Commission's rules, this change also acknowledges that entities other than a device manufacturer may be responsible for the importation of these devices.

Because the new marketing exception the Commission adopts here expressly prohibits the delivery to end users any of the subject devices prior to authorization, it follows that compliant entities would maintain legal or physical possession, as appropriate, of the pre-ordered devices as provided in the Commission's rules. Thus, the Commission does not see a benefit to imposing reporting requirements, as they would not directly further the Commission's underlying goal of keeping unauthorized devices from becoming available to the general public. Further, the Commission believes that it is good business practice to maintain sales documentation and thoroughly track customers, particularly when, as with the Commission's marketing exception, sales are conducted through conditional sales contracts. The Commission expects that sellers, through the normal course of business, will maintain records of the conditional sales contract permitted by the marketing rule the Commission is adopting through this Report and Order. So, the Commission is not adopting any new reporting requirements, but the it is adopting a recordkeeping requirement consistent with that adopted for devices imported prior to equipment authorization. The party initiating a conditional sales contract or physically transferring devices under the Commission's new marketing exception must maintain, for a period of five years, records identifying each entity to whom a device is conditionally sold or physically transferred, the device name and product identifier, the quantity conditionally sold or physically transferred, the date on which the device authorization was submitted, and the expected FCC ID number. The party initiating the conditional sales contract or physically transferring devices must provide these records upon the request of Commission personnel.

G. Enforcement

In the *NPRM,* the Commission asked several questions about the appropriate enforcement actions that should be taken in the event of non-compliance with any of the new importation requirements and the effect the marketing proposal would have on enforcement activities. It specifically asked questions about appropriate sanctions for instances where unauthorized devices are delivered to consumers prior to receipt of the equipment authorization, including, for example, whether the base forfeiture for such violations should be based on the number of units delivered and whether the Commission should deny future equipment authorization applications from grantees who deliver unauthorized devices to consumers. Additionally, the Commission asked about how to hold online vendors accountable and what penalties would apply to any consumer who operates an unauthorized device that was obtained through a violation of the Commission's conditional sale procedure.

Commenters did not specifically address enforcement related to the importation proposal. While some commenters expressed concerns about risks to consumers in the event that equipment authorization is not ultimately obtained, none cited this concern as a reason to not adopt the proposed rule. No commenters provided specific recommendations regarding the consideration of violations or the determination of appropriate penalties. Any comments that addressed enforcement generally stated that existing enforcement tools would provide sufficient means to address compliance issues without any modification.

Commenters generally concurred that the FTC and state agencies and courts would be appropriate venues for consumer contractual complaints. Information Technology and Innovation Foundation states that there is always a risk of bad actors knowingly flouting regulations or small, unsophisticated parties unknowingly failing to comply, but that the risk of non-compliant radios becoming publicly available does not seem to increase with the Commission's proposed rule changes. However, Information Technology and Innovation Foundation recommends that the Commission should always view enforcement as a primary concern. Information Technology Industry Council notes existing safeguards that are currently in place via not only the Commission, but also the FTC and states' attorneys general, and argues that new Commission enforcement mechanisms are not necessary. Similarly, CTA argues that consumer redress mechanisms are in place, if necessary, and that if a manufacturer does not deliver a device where a customer remitted some consideration, the FTC and state consumer protection agencies are experts in redressing such harms.

The Commission finds that other agencies, including the Federal Trade

Commission and the various states' attorneys general, would be the appropriate venues for consumer complaints about these issues and the Commission will not implement additional enforcement measures at this time. The Commission's rules already include exceptions for marketing prior to equipment authorization. Although the exception that the Commission adopts today provides for a greater scale of pre-authorization device marketing, the Commission believes that its existing enforcement measures will be sufficient to mitigate and address potential harm.

H. Open Proceeding

In the *NPRM,* the Commission acknowledged an open equipment authorization proceeding, ET Docket 15–170, which also asked questions about importation, and tentatively concluded that the Commission's new marketing and importation proposals may be acted upon separately. *See* Amendment of Parts 0, 1, 2, 15 and 18 of the Commission's Rules regarding Authorization of Radiofrequency Equipment, ET Docket No. 15–170, Notice of Proposed Rulemaking, 30 FCC Rcd 7725 (2015) (*2015 Equipment Authorization Notice*); and Amendment of Parts 0, 1, 2, 15 and 18 of the Commission's Rules regarding Authorization of Radiofrequency Equipment, ET Docket No. 15–170, First Report and Order, 32 FCC Rcd 8746 (2017) (*2017 Equipment Authorization Order*). Two commenters specifically requested that the Commission also take action on two proposals from ET Docket 15–170.

In the context of the Commission's importation exception, Garmin suggests that the Commission revisit its outstanding proposal for ''provisional certification.'' In the *2015 Equipment Authorization Notice,* the Commission discussed the idea of a ''provisional certification'' as a potential method for addressing the confidentiality concerns of applicants for certification in which granted certifications would not be included in the Commission's public database before the RF device is made available for sale. The Commission also suggested that a provisionally certified device could also be imported prior to acknowledgement in the Commission's database. Garmin submitted several filings in support of the proposal in ET Docket 15–170. As a provisional grant of certification procedure would affect all stakeholders in the equipment authorization process, it goes beyond the narrow focus of this proceeding, the marketing and importation rules. Thus, the Commission does not believe that this Report and Order provides an appropriate venue for the proposal's consideration. Additionally, as an alternative to the provisional grant proposal, Garmin also includes an entirely new proposal for a ''deferred grant eligibility confirmation letter'' which would be issued by a TCB prior to the grant of certification. Such a letter would indicate the device has met the equipment authorization requirements and the grant would not occur until a date specified by the applicant. This proposal would similarly impact many aspects of the equipment authorization process, and the responsibilities of TCBs, in particular, so the Commission likewise believes it is beyond the scope of this proceeding.

Additionally, one commenter, CTIA suggested that the Commission also act on outstanding proposals related to the certification of modular transmitters. A modular transmitter is a completely self-contained RF transmitter device that typically is incorporated into another product and is subject to, among others, the requirements of § 15.212 of the Commission's rules. The *2015 Equipment Authorization Notice* included proposed changes to these requirements and compliance with such requirements in the context of the certification process. These proposals relate to the certification process and it is not necessary for us to take action at this time to allow us to adopt the instant marketing and importation rules.

III. Final Regulatory Flexibility Analysis

A. Need for, and Objectives of, the Report and Order

In June 2020, the Consumer Technology Association (CTA) filed a petition for rulemaking seeking modification of the Commission's rules pertaining to the marketing and importation of radiofrequency (RF) devices. CTA argued that those rules were out-of-date and may hinder development and deployment of state-of-the-art RF products and services. In December 2020, after considering the petition, and the general support expressed in the associated record, the Commission initiated this proceeding, proposing changes to the Commission's marketing and equipment rules that were informed to a large extent by the CTA Petition.

In this Report and Order the Commission adopts targeted enhancements to the Commission's marketing and importation rules that will allow equipment manufacturers to better gauge consumer interest and prepare for new product launches. Given the rapid and widespread deployment of the radiofrequency (RF) devices integral to nearly all aspects of modern life, these steps will further the communications sector's ability to drive innovation and promote economic growth. As product development cycles have accelerated, new marketplace models and assessment tools have emerged that rely on individual interest to fund products and allow sellers to optimize the number of products they produce or import to match anticipated sales. The rules the Commission adopts will allow manufacturers to better utilize these tools to speed the newest technologies and must-have devices to consumers. The Commission has crafted these rules in a manner that will not harm the underlying goals of the Commission's equipment authorization program: Ensuring that the communications equipment Americans rely on every day, such as their cellphones and Wi-Fi devices, comply with the Commission's technical rules; and providing assurance to all spectrum users that their devices will work as intended and operate free from harmful interference.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

There were no comments filed that specifically addressed the rules and polices proposed in the IRFA.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

D. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

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. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the

Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

Small Businesses, Small Organizations, Small Governmental Jurisdictions. The Commission's actions, over time, may affect small entities that are not easily categorized at present. The Commission therefore describes here, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration's (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States, which translates to 30.7 million businesses.

Next, the type of small entity described as a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' The Internal Revenue Service (IRS) uses a revenue benchmark of $50,000 or less to delineate its annual electronic filing requirements for small exempt organizations. Nationwide, for tax year 2018, there were approximately 571,709 small exempt organizations in the U.S. reporting revenues of $50,000 or less according to the registration and tax data for exempt organizations available from the IRS.

Finally, the small entity described as a ''small governmental jurisdiction'' is defined generally as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' U.S. Census Bureau data from the 2017 Census of Governments indicate that there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number there were 36,931 general purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,040 special purpose governments—independent school districts with enrollment populations of less than 50,000. Accordingly, based on the 2017 U.S. Census of Governments data, the Commission estimates that at least 48,971 entities fall into the category of ''small governmental jurisdictions.''

Radio Frequency Equipment Manufacturers (RF Manufacturers). Neither the Commission nor the SBA has developed a small business size standard applicable to Radio Frequency Equipment Manufacturers (RF Manufacturers). There are several analogous SBA small entity categories applicable to RF Manufacturers—Fixed Microwave Services, Other Communications Equipment Manufacturing, and Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing. A description of these small entity categories and the small business size standards under the SBA rules are detailed below.

Fixed Microwave Services. Microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. They also include the Upper Microwave Flexible Use Service, Millimeter Wave Service, Local Multipoint Distribution Service (LMDS), the Digital Electronic Message Service (DEMS), and the 24 GHz Service, where licensees can choose between common carrier and non-common carrier status. There are approximately 66,680 common carrier fixed licensees, 69,360 private and public safety operational-fixed licensees, 20,150 broadcast auxiliary radio licensees, 411 LMDS licenses, 33 24 GHz DEMS licenses, 777 39 GHz licenses, and five 24 GHz licenses, and 467 Millimeter Wave licenses in the microwave services. The Commission has not yet defined a small business with respect to microwave services. The closest applicable SBA category is Wireless Telecommunications Carriers (except Satellite) and the appropriate size standard for this category under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1,000 employees or more. Thus under this SBA category and the associated size standard, the Commission estimates that a majority of fixed microwave service licensees can be considered small.

The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are up to 36,708 common carrier fixed licensees and up to 59,291 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies discussed herein. The Commission notes, however, that the microwave fixed licensee category includes some large entities.

Other Communications Equipment Manufacturing. This industry comprises establishments primarily engaged in manufacturing communications equipment (except telephone apparatus, and radio and television broadcast, and wireless communications equipment). Examples of such manufacturing include fire detection and alarm systems manufacturing, Intercom systems and equipment manufacturing, and signals (*e.g.,* highway, pedestrian, railway, traffic) manufacturing. The SBA has established a size standard for this industry as all such firms having 750 or fewer employees. U.S. Census Bureau data for 2012 shows that 383 establishments operated in that year. Of that number, 379 operated with fewer than 500 employees and 4 had 500 to 999 employees. Based on this data, the Commission concludes that the majority of Other Communications Equipment Manufacturers are small.

Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing. This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: Transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment. The SBA has established a small business size standard for this industry of 1,250 employees or less. U.S. Census Bureau data for 2012 show that 841 establishments operated in this industry in that year. Of that number, 828 establishments operated with fewer than 1,000 employees, 7 establishments operated with between 1,000 and 2,499 employees and 6 establishments operated with 2,500 or more employees. Based on this data, the Commission concludes that a majority of manufacturers in this industry are small.

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

In the Report and Order, the Commission adopts rules that affect reporting, recordkeeping, and other

compliance requirements for small entities. Regarding marketing of RF devices, the Report and Order will require that the seller of a conditionally-purchased RF device advise the conditional purchaser that the device is subject to FCC rules, and that delivery of the device to the purchaser is contingent upon device compliance with applicable FCC equipment authorization and technical requirements. Regarding importation of RF devices into the United States prior to equipment authorization for pre-sale activities—including imaging, packaging, and delivery to retail locations—the Report and Order will require that each imported RF device display a temporary removable label stating that it cannot be displayed, operated, offered for sale, marketed to consumers, or sold prior to proper FCC equipment authorization has been granted, and will further require that importing manufacturers have processes in place to retrieve any equipment transferred to a conditional purchaser, in the event that such authorization is denied by the FCC. Moreover, importing manufacturers will be required to maintain, for a period of 60 months, records identifying the recipients of RF devices imported for pre-sale activities. Such records must identify several factors such as the device name and product identifier, the quantity shipped, the date on which the device authorization was sought, the expected FCC ID number, and the identity of the recipient, including address and telephone number.

The Report and Order also particular recordkeeping requirements that will be imposed on RF manufacturers so that RF equipment that is conditionally sold can be accounted for if equipment authorization is ultimately not granted or enforcement action needs to be taken, and the period of time that manufacturers should be required to retain those records and provide them to the FCC upon request. Additionally, the Report and Order requests that a manufacturer that imports an RF device should be required to document (and provide such documentation to the FCC upon request) the basis for its belief that the FCC will authorize that device.

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

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

The Report and Order rules set forth are minimal, and the Commission believes would significantly assist RF equipment manufacturers, some of which may be small entities, to market and import RF equipment. Although the Commission believe that the Commission's rules are not unduly burdensome, the Commission sought comment on a number of alternatives or supplements to those rules and procedures, such as whether the Commission should require marketing disclosures at all or just some points of the pre-authorization process, whether the Commission should require specific language or instead permit parties to choose how they word their disclosures, and whether all or only certain importation safeguards are needed.

The Commission believes that the regulatory burdens that the Commission is implementing are necessary in order to ensure that the public receives the benefits of innovative products and technologies in a prompt and efficient manner, and those burdens apply equally to large and small entities, thus without differential impact. The Commission will continue to examine alternatives in the future with the objectives of eliminating unnecessary regulations and minimizing any significant impact on small entities.

IV. Ordering Clauses

It is ordered that, pursuant to sections 4(i), 301, 302, 303(c), 303(f), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 301, 302a, 303(c), 303(f), and 303(r), this Report and Order *is adopted* as set forth above.

It is further ordered that the amendments of the Commission's rules as set forth in Appendix A *are adopted*, effective thirty days from the date of publication in the **Federal Register**, except for §§ 2.803(c)(2) and 2.1204(a)(11), which contain new or modified information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act and *will become effective* after the Commission publishes a notice in the **Federal Register** announcing such approval and the relevant effective date.

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

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

List of Subjects in 47 CFR Parts 2 and 95

Communications equipment, Radio, Telecommunications.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 2 and 95 as follows:

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

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

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

■ 2. Amend § 2.803 by revising paragraph (c)(2)(i) and removing and reserving paragraph (c)(2)(ii) to read as follows:

§ 2.803 Marketing of radio frequency devices prior to equipment authorization.

* * * * *

(c) * * *

(2) * * *

(i) Conditional sales contracts (including agreements to produce new devices manufactured in accordance with designated specifications), and advertisements for such sales, are permitted under the following conditions:

(A) The initiating party must provide to the prospective buyer at the time of marketing, through a prominent disclosure:

(*1*) Notification that the equipment is subject to the FCC rules and delivery to the end user is conditional upon successful completion of the applicable equipment authorization process;

(*2*) Notification that FCC rules do not address the applicability of consumer protection, contractual, or other provisions under federal or state law; and

(*3*) Notification of any responsibility of the initiating party to the buyer in the event that the applicable equipment authorization process is not successfully completed, including information regarding any applicable refund policy.

(B) For devices subject to Supplier Declaration of Conformity procedures under subpart J of this chapter, physical transfer of equipment from the initiating party to other entities, including delivery to the end user, prior to successful completion of the equipment authorization process is prohibited.

(C) For devices subject to Certification procedures under subpart J of this chapter, delivery to the end user prior to successful completion of the equipment authorization process is prohibited; transfer of physical possession of devices to other entities for the sole purpose of pre-sale activity is permitted only after compliance testing by an FCC-recognized accredited testing laboratory is completed and an application for Certification is submitted to an FCC-recognized Telecommunication Certification Body pursuant to § 2.911. Pre-sale activity includes packaging and transferring physical possession of devices to distribution centers and retailers. Pre-sale activity does not include display or demonstration of devices.

(*1*) Each device, or its packaging, physically transferred for the purpose of pre-sale activity must prominently display a visible temporary removable label stating: ''This device cannot be delivered to end users, displayed, or operated until the device receives certification from the FCC. Under penalty of law, this label must not be removed prior to receiving an FCC certification grant.''

(*2*) The first party to initiate a conditional sales contract under paragraph (c)(2)(i) of this section or to physically transfer devices must have processes in place to retrieve the equipment in the event that the equipment is not successfully certified and must complete such retrieval immediately after a determination is made that the equipment certification cannot be successfully completed.

(D) Notwithstanding § 2.926, radiofrequency devices marketed pursuant to paragraph (c)(2)(i) of this section may include the expected FCC ID if obscured by the temporary label described in paragraph (c)(2)(i)(B)(*1*) of this section or, in the case of electronic labeling, if the expected FCC ID cannot be viewed prior to authorization.

(E) All radiofrequency devices marketed under paragraph (c)(2)(i) of this section must remain under legal ownership of the first party to initiate a conditional sales contract.

(F) The first party to initiate a conditional sales contract or any party that physically transfers devices under paragraph (c)(2)(i) of this section must maintain, for a period of sixty (60) months, records of each conditional sale contract. Such records must identify the device name and product identifier, the quantity conditionally sold, the date on which the device authorization was sought, the expected FCC ID number, and the identity of the conditional buyer, including contact information. The first party to initiate a conditional sales contract or any party that physically transfers devices under paragraph (c)(2)(i) of this section must provide these records upon the request of Commission personnel.

* * * * *

■ 3. Amend § 2.1204 by adding paragraph (a)(11) to read as follows:

§ 2.1204 Import conditions.

(a) * * *

(11) The radio frequency device is subject to Certification under § 2.907 and is being imported in quantities of 12,000 or fewer units for pre-sale activity. For purposes of this paragraph, quantities are determined by the number of devices with the same FCC ID.

(i) The Chief, Office of Engineering and Technology, may approve importation of a greater number of units in a manner otherwise consistent with paragraph (a)(11) of this section in response to a specific request.

(ii) Pre-sale activity includes packaging and transferring physical possession of devices to distribution centers and retailers. Pre-sale activity does not include display or demonstration of devices. Except as provided in § 2.803(c)(2)(i), the devices must not be delivered to end users, displayed, operated, or sold until equipment Certification under § 2.907 has been obtained.

(iii) Radiofrequency devices can only be imported under the exception of paragraph (a)(11) of this section after compliance testing by an FCC-recognized accredited testing laboratory is completed and an application for certification is submitted to an FCC-recognized Telecommunication Certification Body pursuant to § 2.911 of this part;

(iv) Each device, or its packaging, imported under this exception must prominently display a visible temporary removable label stating: ''This device cannot be delivered to end users, displayed, or operated until the device receives certification from the FCC. Under penalty of law, this label must not be removed prior to receiving an FCC certification grant.''

(v) Notwithstanding § 2.926, radiofrequency devices imported pursuant to paragraph (a)(11) of this section may include the expected FCC ID if obscured by the temporary label described in paragraph (a)(11)(iv) this section or, in the case of electronic labeling, if it cannot be viewed prior to authorization.

(vi) The radiofrequency devices must remain under legal ownership of the device manufacturer, developer, importer or ultimate consignee, or their designated customs broker, and only transferring physical possession of the devices for pre-sale activity as defined in paragraph (a)(11) of this section is permitted prior to Grant of Certification under § 2.907. The device manufacturer, developer, importer or ultimate consignee, or their designated customs broker must have processes in place to retrieve the equipment in the event that the equipment is not successfully certified and must complete such retrieval immediately after a determination is made that certification cannot be successfully completed.

(vii) The device manufacturer, developer, importer or ultimate consignee, or their designated customs broker must maintain, for a period of sixty (60) months, records identifying the recipient of devices imported for pre-sale activities. Such records must identify the device name and product identifier, the quantity shipped, the date on which the device authorization was sought, the expected FCC ID number, and the identity of the recipient, including contact information. The device manufacturer, developer, importer or ultimate consignee, or their designated customs broker must provide records maintained under this provision upon the request of Commission personnel.

* * * * *

PART 95—PERSONAL RADIO SERVICES

■ 4. The authority citation for part 95 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 307.

■ 5. Revise § 95.391 to read as follows:

§ 95.391 Manufacturing, importation, and sales of non-certified equipment prohibited.

No person shall manufacture, import, sell, or offer for sale non-certified equipment for the Personal Radio Services except as provided for in §§ 2.803(c)(2)(i) and 2.1204(a)(11) of this

chapter. *See* § 302(b) of the Communications Act (47 U.S.C. 302a(b)). *See also* part 2, subpart I (§ 2.801 *et seq.*) of this chapter for rules governing marketing of radiofrequency devices; part 2, subpart K (§ 2.1201 *et seq.*) of this chapter for rules governing import conditions.

[FR Doc. 2021–19385 Filed 9–17–21; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 5 and 97

[IB Docket No. 18–313, FCC 20–54; FR ID 48757]

Mitigation of Orbital Debris in the New Space Age

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Commission announces that the Office of Management and Budget (OMB) has approved, for a period of three years, the information collections associated with certain rules adopted in the Report and Order, *Mitigation of Orbital Debris in the New Space Age,* which stated that the Commission would publish a document in the **Federal Register** announcing the effective date of those rules.

DATES: The amendments to 47 CFR 5.64(b) and 97.207(g)(1), published at 85 FR 52422 on August 25, 2020, are effective October 20, 2021.

FOR FURTHER INFORMATION CONTACT: Merissa Velez, International Bureau, Satellite Division, at (202) 418–0751. For information regarding the PRA information collection requirements contained in the PRA, contact Cathy Williams, Office of Managing Director, at (202) 418–2918 or *Cathy.Williams@fcc.gov*.

SUPPLEMENTARY INFORMATION: This document announces that OMB approved the information collection requirements in 47 CFR 5.64(b) and 97.207(g)(1), on July 21, 2021. These rules were modified in the Report and Order in IB Docket No. 18–313, FCC 20–54, *Mitigation of Orbital Debris in the New Space Age,* published at 85 FR 52422 on August 25, 2020. The Commission publishes this document as an announcement of the compliance date of the rules. The Report and Order also modified rules in part 25 and there is a separate PRA information collection review for the part 25 rules. Rule amendments adopted in the Report and Order which did not require OMB approval became effective on September 24, 2020.

If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Cathy Williams at *Cathy.Williams@fcc.gov* or Office of Managing Director, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, regarding OMB Control Number 3060–1013. Please include the applicable OMB Control Number(s) in your correspondence. The Commission will also accept your comments via email at *PRA@fcc.gov*.

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 and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received final OMB approval on July 21, 2021, for the information collection requirements contained in 47 CFR 5.64(b) and 97.207(g)(1). Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number. The OMB Control Number for the information collection requirements in these rules is 3060–1013.

The foregoing notice is required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, and 44 U.S.C. 3507.

The total annual reporting burdens and costs for the respondents are as follows:

OMB Control Number: 3060–1013.

OMB Approval Date: July 21, 2021.

OMB Expiration Date: July 31, 2024.

Title: Mitigation of Orbital Debris.

Form Number: N/A.

Respondents: Business or other for-profit, not-for-profit institutions.

Number of Respondents: 46 respondents; 46 responses.

Estimated Time per Response: 8 hours.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in 47 U.S.C. 151, 154(i), 301, 303, 307, 308, 309, and 310.

Total Annual Burden: 368 hours.

Annual Cost Burden: $88,550.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: In general, there is no need for confidentiality with this collection of information.

Needs and Uses: On April 24, 2020, the Commission released a Report and Order in IB Docket No. 18–313, FCC 20–54, *Mitigation of Orbital Debris in the New Space Age,* (Orbital Debris Report and Order). In this Orbital Debris Report and Order, the Commission updated its rules related to orbital debris mitigation, including application requirements. The new rules are designed to ensure that the Commission's actions concerning radio communications, including licensing U.S. spacecraft and granting access to the U.S. market for non-U.S. spacecraft, mitigate the growth of orbital debris, while at the same time not creating undue regulatory obstacles to new satellite ventures. The action will help to ensure that Commission decisions are consistent with the public interest in space remaining viable for future satellites and systems and the many services that those systems provide to the public. The rule revisions also provide additional detail to applicants on what information is expected under the Commission's rules, which can help to increase certainty in the application filing process. While this information collection represents an overall increase in the burden hours, the information collection serves the public interest by ensuring that the Commission and public have necessary information about satellite applicants' plans for mitigation of orbital debris.

Specifically, FCC 20–54 contains the new or modified information collection requirements listed below, applicable to applicants seeking experimental licenses for satellite operations under part 5 of the Commission's rules, as well as to license grantees under part 97 submitting notifications to the Commission prior to launch of a satellite amateur station:

(1) Existing disclosure requirements have been revised to include specific metrics in several areas, including: Probability that the space stations will become a source of debris by collision with small debris and meteoroids that would cause loss of control and prevent disposal; probability of collision between any non-geostationary orbit (NGSO) space station and other large objects; and casualty risk associated