PART 706—EMPLOYEE RESPONSIBILITES AND CONDUCT

Authority: 5 U.S.C. 7301; 42 U.S.C. 1975b(d).

§ 706.1 Cross-references to employee ethical conduct standards, financial disclosure and financial interests regulations and other conduct rules.

Employees of the United States Commission on Civil Rights are subject to the executive branch standards of ethical conduct contained in 5 CFR part 2635, the Commission regulations at 5 CFR part 7801 which supplement the executive branchwide standards, the executive branch financial disclosure regulations contained in 5 CFR part 2634, and the executive branch financial interests regulations contained in 5 CFR part 2640, as well as the executive branch employee responsibilities and conduct regulations contained in 5 CFR part 735.

[FR Doc. E8–13171 Filed 6–12–08; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[WT Docket No. 02–55; DA 08–1094]

Public Safety and Homeland Security Bureau Establishes Post-Reconfiguration 800 MHz Band Plan for the U.S.-Canada Border Regions

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document the Federal Communications Commission's Public Safety and Homeland Security Bureau (PSHSB), on delegated authority, establishes reconfigured 800 MHz band plans in the U.S.-Canada border regions in order to accomplish the Commission's goals for band reconfiguration.

DATES: Effective August 12, 2008.

ADDRESSES: Federal Communications Commission, 445–12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Brian Marenco, Policy Division, Public Safety and Homeland Security Bureau, (202) 418–0838.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Report and Order, DA 08–1094, released on May 9, 2008. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 863–2893, facsimile (202) 863–2898, or via e-mail at *http://www.bcpiweb.com.* It is also available on the Commission's Web site at *http://www.fcc.gov.*

1. In a July 2004 Report and Order, the Commission reconfigured the 800 MHz band to eliminate interference to public safety and other land mobile communication systems operating in the band, 69 FR 67823, November 22, 2004. However, the Commission deferred consideration of band reconfiguration plans for the border areas, noting that ''implementing the band plan in areas of the United States bordering Mexico and Canada will require modifications to international agreements for use of the 800 MHz band in the border areas.'' The Commission stated that ''the details of the border plans will be determined in our ongoing discussions with the Mexican and Canadian governments.''

2. In a Second Memorandum Opinion and Order, adopted in May 2007, the Commission delegated authority to PSHSB to propose and adopt border area band plans once agreements are reached with Canada and Mexico, 72 FR 39756, July 20, 2007.

3. In July 2007, the U.S. and Canada reached an agreement on a process that will enable the U.S. to proceed with band reconfiguration in the border region. Consequently, on November 1, 2007, PSHSB issued a Further Notice of Proposed Rulemaking seeking comment on specific proposals for reconfiguring the eight U.S.-Canada border regions. The Commission received ten comments and eight reply comments in response to the FNPRM

4. On May 9, 2008, PSHSB issued a Second Report and Order establishing reconfigured band plans in the U.S.-Canada border regions. The band plans adopted in the Second Report and Order are designed to separate-to the greatest extent possible-public safety and other non-cellular licensees from licensees that employ cellular technology in the band.

Procedural Matters

A. Final Regulatory Flexibility Analysis

5. The Final Regulatory Flexibility Analysis required by section 604 of the Regulatory Flexibility Act, 5 U.S.C. 604, is included in Appendix A of the Second Report and Order.

B. Final Paperwork Reduction Act of 1995 Analysis

6. The Second Report and Order does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore it does not contain any new or modified ''information burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198.

Final Regulatory Flexibility Analysis

7. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Further Notice of Proposed Rulemaking (FNPRM), 72 63869, November 13, 2007, in WT Docket 02–55. PSHSB sought written public comment on the proposals in the FNPRM, including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

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

8. This Second Report and Order continues the Commission's efforts to reconfigure the 800 MHz band to eliminate an ongoing and growing problem of interference to public safety and other land mobile communications systems in the 800 MHz band. Specifically, in this order, PSHSB adopts post-rebanding band plans for the regions of the U.S. immediately adjacent to the U.S.-Canada border. These post-rebanding band plans include region specific variations. The reconfiguration of the 800 MHz band in the U.S.-Canada border regions is in the public interest because it will allow the Commission to eliminate interference in these regions to public safety and other land mobile communication systems. Interference is eliminated by separating—to the greatest extent possible—public safety and other non-cellular licensees from licensees that employ cellular technology in the 800 MHz band.

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

9. No parties have raised significant issues in response to the IRFA.

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

10. 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. 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).

11. Nationwide, there are a total of approximately 22.4 million small businesses, according to SBA data. A ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 2002, there were approximately 1.6 million small organizations. The term ''small governmental jurisdiction'' is defined generally as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States. We estimate that, of this total, 84,377 entities were ''small governmental jurisdictions.'' Thus, we estimate that most governmental jurisdictions are small. Below, we further describe and estimate the number of small entities—applicants and licensees—-that may be affected by our action.

12. *Wireless Telecommunications Carriers (except Satellite).* Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category. Prior to that time, such firms were within the now-superseded categories of ''Paging'' and ''Cellular and Other Wireless Telecommunications.'' Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. Because Census Bureau data are not yet available for the new category, we will estimate small business prevalence using the prior categories and associated data. For the category of Paging, data for 2002 show that there were 807 firms that operated for the entire year. Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more. For the category of Cellular and Other Wireless Telecommunications, data for 2002 show that there were 1,397 firms that operated for the entire year. Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more. Thus, we estimate that the majority of wireless firms are small.

13. *Public Safety Radio Licensees.* Public safety licensees who operate 800 MHz systems in the U.S.-Canada border region will be required to relocate their station facilities according to the post-rebanding plans listed in this Second Report and Order. As indicated above, all governmental entities with populations of less than 50,000 fall within the definition of a small entity.

14. *Business, I/LT, and SMR licensees.* Business and Industrial Land Transportation (B/ILT) and Special Mobile Radio (SMR) licensees who operate 800 MHz systems in the U.S.-Canada border region will be required to relocate their station facilities according to the band plans proposed in this Second Report and Order. Neither the Commission nor the SBA has developed a definition of small businesses directed specifically toward these licensees. Therefore we will use the SBA size standard for wireless firms, supra, and incorporate that analysis by reference here.

15. Also, Sprint Nextel Corporation (Sprint) will be affected by the post-rebanding band plans in this Second Report and Order but it is not a small carrier.

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

16. We adopt no new reporting, recordkeeping or other compliance requirements in this Second Report and Order. As noted in Section B of the Second Report and Order, public safety, B/ILT, SMR licensees and wireless service providers who operate 800 MHz systems in the U.S.—Canada border region will be required to relocate their station facilities according to the post-rebanding band plans specified in this Second Report and Order. Also, Sprint Corporation will pay the cost of relocating incumbent licensees.

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

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

18. *Non-NPSPAC Public Safety Systems in the 806–809/851–854 MHz Band.* In the FNPRM, we proposed that in the border areas, the 806–809/851–854 MHz block would be shared by non-NPSPAC public safety licensees that were originally licensed in the block and NPSPAC licensees relocating from the former NPSPAC block at 821–824/866–869 MHz. Because non-NPSPAC public safety systems operate on channels with 25 kHz spacing, while NPSPAC systems operate on 12.5 kHz-spaced channels, we sought comment on alternatives for accommodating both NPSPAC and non-NPSPAC public safety systems in the same spectrum block. Our proposed channel plan for this portion of the band provided for a combination of 25 kHz and 12.5 kHz spaced channels. The overwhelming majority of commenters in the record oppose non-uniform channelization of the 806–809/851–854 MHz band, and instead urge us to adopt a uniform band plan of 12.5 kHz-spaced channels for this block with the tighter emission masks applicable to NPSPAC channels. These commenters argue that a uniform band plan would improve spectrum efficiency, avoid the complexities caused by intermingling public safety licensees operating on differing channel plans with differing emission masks, and would be more compatible with the NPSPAC channelization plan in adjacent non-border regions. Commenters suggest that non-NPSPAC licensees operating with 25 kHz channel spacing should either be relocated above the 806–809/851–854 MHz bloc or should be converted to 12.5 kHz spacing.

19. Based on the comments received in response to our proposal, we have decided to create a uniform 12.5 kHz-spaced channel plan for the 806–809/851–854 MHz block in the border regions. Thus, public safety licensees will benefit from the increased spectrum efficiency created by a uniform channel plan for this portion of the band. Furthermore, Sprint will bear the cost of any changes needed to accommodate public safety licensees with equipment capable of operating according to the channel plan for the 806–809/851–854 MHz portion of the band.

20. *NPSPAC Facilities on Canada Primary Channels.* In the FNPRM, we

sought comment on how to accommodate U.S. NPSPAC licensees that currently operate on a secondary basis to licensees in Canada in the Canadian primary portion of the NPSPAC band. We suggested placing these licensees on the lowest available Canada primary channels in the band. Many NPSPAC commenters, however, advocate relocating these facilities to U.S. primary spectrum, i.e. , relocating them 15 megahertz downward to the 806–809/851–854 MHz band, which is U.S. primary spectrum. These commenters note that many NPSPAC licensees in the border regions use both U.S. primary and Canada primary NPSPAC channels in their systems and operate seamlessly across the entire NPSPAC block despite the fact that some of their channels are on Canada primary spectrum. Consequently, we have instructed the Transition Administer (TA) to accommodate these systems on U.S. primary spectrum in the 806–809/851–854 MHz portion of the band whenever possible. Relocating these systems to U.S. primary spectrum in the 806–809/851–854 MHz portion of the band will provide border area public safety NPSPAC licensees with the capability to interoperate with public safety NPSPAC licensees outside the border area. In addition, Sprint will bear the cost of relocating these systems.

21. *Separation of Non-ESMR (High-Site B/ILT and SMR) and ESMR Systems.* In the FNPRM, we sought to separate non ESMR (high-site B/ILT and SMR) from ESMR systems to the extent feasible, but noted that some continued interleaving of non-ESMR and ESMR systems might be necessary in the border regions (Regions 1–6) due to the limited amount of available U.S. primary spectrum. We sought comment on the degree to which the new band plan should accommodate such interleaving, and whether other technical rules would be required to mitigate potential interference. Commenters overwhelmingly oppose continued interleaving of B/ILT and high site SMR systems with ESMR systems. Consequently, we have instructed the Transition Administrator to assign replacement channels to B/ILT and high-site SMR licensees in Canada Border Regions 1 through 6 in a manner which separates these licensees from ESMR systems. B/ILT and high-site SMR licensees will benefit from our decision because these licensees will be subject to less interference then if they remained interleaved with ESMR systems. In making this decision, we have reminded Sprint of its obligation to provide all relocating licensees with comparable facilities including B/ILT and high site SMR licensees in the Canada border even if this means replacing some combiners in order to compensate for the decreased frequency separation between channels for these licensees.

22. *B/ILT, High-Site SMR and ESMR Operations on Canada Primary Channels.* U.S. licensees may continue to be licensed on Canada primary channels, provided the maximum power flux density (PFD) per 25 kHz from their systems does not exceed −107 dB(W/m2) at or beyond the border. Accordingly, B/ILT and high-site SMR licensees that currently use Canada primary channels in Regions 1 through 6 may remain on these channels subject to the above PFD limits. B/ILT and high-site SMR licensees will benefit from our decision here because these licensees will continue to have access to Canada primary spectrum along the border.

23. In the FNPRM, we also sought comment on whether Sprint should be permitted to remain on Canada primary spectrum below 817/862 MHz. Sprint states that it extensively relies on these channels to provide wireless services to its subscribers and to provide access to spectrum for its roaming partner in Canada TELUS. Other commenting parties state that they would not object to Sprint's continued operation in the Canadian primary portion below 817/862 MHz as long as full interference protection is provided to adjacent non-ESMR operations. We will permit Sprint to remain grandfathered on these channels in the non-ESMR portion of the band as long as they provide full interference protection to all non-ESMR licensees. Public safety, B/ILT and high-site SMR licensees will benefit from our decision because they will be eligible for interference protection from these grandfathered facilities.

24. *Mutual Aid Channels.* As proposed in the FNPRM, we establish new mutual aid channels with 25 kHz spacing in the new border area NPSPAC band plan to match the mutual aid channels in the non-border NPSPAC band plan. Public safety licensees in the Canada border will benefit from this decision because they will be able to interoperate with public safety licensees outside the Canada border region.

25. *TELUS Operations on U.S. Primary Channels.* In the FNPRM, we noted that Commission had reached an agreement with Industry Canada on a process that enables the U.S. to proceed with rebanding in the border region. As part of this agreement, we noted that the U.S. and Canada will discuss whether certain Canadian facilities authorized on U.S. primary spectrum under SCP can be grandfathered. Several commenting parties expressed concern about the impact to U.S. licensees from grandfathering stations in Canada on U.S. primary spectrum. Therefore, in this Second Report and Order, we clarify that once the TA has assigned replacement channels to all U.S. licensees, we will examine whether certain TELUS facilities operating today on U.S. primary spectrum under SCP can be grandfathered without negatively impacting U.S. licensees. Only those TELUS stations which would create no conflicts with reconfigured U.S. licensees will be considered for grandfathering. Consequently, the grandfathering of TELUS stations on U.S. primary spectrum will have no negative impact on public safety, B/ILT or high-site SMR licensees.

26. *Region-Specific Band Plans.* In the FNPRM, we sought comment on region specific band plans for reconfiguring the 800 MHz band in the Canada Border in order to eliminate an ongoing and growing problem of interference to public safety and other land mobile communications systems in this band. Commenting parties generally supported our band plan proposals. Consequently, in this Second Report and Order, we adopt reconfigured band plans for licensees in the 800 MHz band along the U.S.—Canada border. Under these band plans, public safety systems will relocate to U.S. primary spectrum in the lower portion of the band. Commenting parties supported relocating public safety systems to the lowest portion of the band to maximize the spectral separation between public safety and ESMR systems. In addition, B/ILT, high-site SMR and ESMR systems will relocate higher in the band on U.S. primary spectrum above 815/860 MHz. These band plans contain certain region-specific variations. Because the reconfiguration of the 800 MHz band in the U.S.—Canada border regions seeks to eliminate interference to public safety, B/ILT and high-site SMR licensees, these band plans will minimize the cost that these licensees would otherwise incur to resolve interference. Further, Sprint will pay the cost of relocating incumbent licensees.

27. *Planning, Negotiation, and Mediation.* In the FNPRM, we proposed establishing expedited timelines for planning, negotiations, and mediation similar to those established in the Commission's September 2007 Public Notice for non-border licensees. While some commenters supported a 12 month planning period, we are not persuaded that rebanding in the Border areas requires such a lengthy period that

could unduly delay rebanding implementation. We establish planning limits of 90, 100, and 110 days which correspond to the number of units in a licensee's system. We also establish a process under which licensees may request additional planning time. With regard to negotiation and mediation, we establish a 30 day period for licensees to negotiate Frequency Reconfiguration Agreements with Sprint and if necessary a 20 day period within which licensees and Sprint may mediate unresolved issues. If licensees are unable to resolve issues with Sprint after the 20 day mediation period, then the 800 MHz Transition Administrator shall transmit such matters to the Public Safety and Homeland Security Bureau for review within 10 days after the end of the mediation period. Sprint, however, bears the costs of band reconfiguration.

28. *Rebanding Implementation.* In the FNPRM, we sought comment on the sequence and timing of rebanding activity in the Canadian border region once a final band plan is adopted and the 800 MHz Transition Administrator issues replacement channel assignments to border area licensees. In this Second Report and Order, we envision the sequence of band reconfiguration in all Regions will occur in two-stage process that will take into account regional variations. All of the relocations will occur through spectrum swaps with Sprint and Sprint will bear the costs of reconfiguration.

F. Report to Congress

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

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

Ordering Clauses

31. Accordingly, *it is ordered*, pursuant to sections 4(i) and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 332, this Second Report and Order *is adopted.*

32. *It is further ordered* that the amendments of the Commission's rules set forth in Appendix D are adopted, effective August 12, 2008.

33. *It is further ordered* that the Final Regulatory Flexibility required by section 604 of the Regulatory Flexibility Act, 5 U.S.C. 604, and as set forth in Appendix A herein is adopted.

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

List of Subjects in 47 CFR part 90

Radio.

Federal Communications Commission.

Timothy A. Peterson,

Chief of Staff, Public Safety and Homeland Security Bureau.

Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 90 as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

■ 1. The authority citation for part 90 continues to read as follows:

Authority: Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

■ 2. Section 90.619 is amended by revising paragraph (c) to read as follows:

§ 90.619 Operations within the U.S./Mexico and U.S./Canada border areas.

* * * * *

(c) *Use of 800 MHz Band in Canada Border Region.* All operations in the 806–824/851–869 MHz band within 140 km (87 miles) of the U.S./Canada border (''U.S./Canada border area'') shall be in accordance with international agreements between the U.S. and Canada.

(1) The U.S./Canada border area is divided into the following geographical regions (''Canada Border Regions''). U.S. primary channels are shown in the table by region. The remaining channels are primary to Canada (''Canada Primary channels'').

TABLE C1.—GEOGRAPHICAL REGIONS

Region	Location (longitude)	U.S. primary channels
1	66° W–71° W (0–100 km from border)	1–260, 561–710, 772–790 and 792–830.
2	71° W–80°30′ W (0–100 km from border)	1–170, 621–710 and 795–830.
3	80°30′ W–85° W (0–100 km from border)	1–320, 501–710, 729–730, 732–750, 752–770, 772–790 and 792–830.
4	85° W–121°30′ W (0–100 km from border)	1–260, 561–710, 772–790 and 792–830.
5	121°30′ W–127° W (0–140 km from border)	1–260, 561–710, 772–790 and 792–830.
6	127° W–143° W (0–100 km from border)	1–260, 561–710, 772–790 and 792–830.
7A	66° W–71° W (100–140 km from border)	1–830.
7A	80°30′ W–121°30′ W (100–140 km from border)	1–830.
7B	71° W–80°30′ W (100–140 km from border)	1–830.
8	127° W–143° W (100–140 km from border)	1–830.

(2) Stations authorized on U.S. primary channels in all Canada Border Regions, except Region 5, will be subject to the Effective Radiated Power (ERP) and Effective Antenna Height (EAH) limitations listed in Table C2. The Effective Antenna Height is calculated by subtracting the Assumed Average Terrain Elevation (AATE) listed in Table C3 from the antenna height above mean sea level.

TABLE C2.—LIMITS OF EFFECTIVE RADIATED POWER (ERP) CORRESPONDING TO EFFECTIVE ANTENNA HEIGHTS (EAH) FOR REGIONS 1, 2, 3, 4, 6, 7 AND 8

Effective Antenna Height (EAH)		ERP watts (maximum)
Metres	Feet	
0–152	0–500	500
153–305	501–1000	125
306–457	1001–1500	40
458–609	1501–2000	20
610–914	2001–3000	10
915–1066	3001–3500	6
Above 1967	Above 3501	5

TABLE C3.—ASSUMED AVERAGE TERRAIN ELEVATION (AATE) ALONG THE U.S.-CANADA BORDER

Longitude (Φ) (°West)	Latitude (Ω) (°North)	Assumed Average Terrain Elevation			
		United States		Canada	
		Feet	Metres	Feet	Metres
65 ≤ Φ < 69	Ω ≤ 45	0	0	0	0
″	45 ≤ Ω < 46	300	91	300	91
″	Ω ≤ 46	1000	305	1000	305
69 ≤ Φ < 73	All	2000	609	1000	305
73 ≤ Φ < 74	″	500	152	500	152
74 ≤ Φ < 78	″	250	76	250	76
78 ≤ Φ < 80	Ω ≤ 43	250	76	250	76
″	Ω ≤ 43	500	152	500	152
80 ≤ Φ < 90	All	600	183	600	183
90 ≤ Φ < 98	″	1000	305	1000	305
98 ≤ Φ < 102	″	1500	457	1500	457
102 ≤ Φ < 108	″	2500	762	2500	762
108 ≤ Φ < 111	″	3500	1066	3500	1066
111 ≤ Φ < 113	″	4000	1219	3500	1066
113 ≤ Φ < 114	″	5000	1524	4000	1219
114 ≤ Φ < 121.5	″	3000	914	3000	914
121.5 ≤ Φ 127	″	0	0	0	0
Φ ≥ 127	54 ≤ Ω < 56	0	0	0	0
″	56 ≤ Ω < 58	500	152	1500	457
″	58 ≤ Ω < 60	0	0	2000	609
″	60 ≤ Ω < 62	4000	1219	2500	762
″	62 ≤ Ω < 64	1600	488	1600	488
″	64 ≤ Ω < 66	1000	305	2000	609
″	66 ≤ Ω < 68	750	228	750	228
″	68 ≤ Ω < 69.5	1500	457	500	152
″	Ω ≥ 69.5	0	0	0	0

(3) Stations authorized on U.S. primary channels in Canada Border Region 5 will be subject to the Effective Radiated Power (ERP) and Antenna Height Above Mean Sea Level limitations listed in Table C4.

TABLE C4.—LIMITS OF EFFECTIVE RADIATED POWER (ERP) CORRESPONDING TO ANTENNA HEIGHT ABOVE MEAN SEA LEVEL FOR REGION 5

Antenna Height Above Mean Sea Level		ERP Watts (maximum)
Metres	Feet	
0–503	0–1650	500
504–609	1651–2000	350
610–762	2001–2500	200
763–914	2501–3000	140
915–1066	3001–3500	100
1067–1219	3501–4000	75
1220–1371	4001–4500	70
1372–1523	4501–5000	65
Above 1523	Above 5000	5

(4) Stations may be authorized on Canada Primary channels in the Canada Border Regions provided the maximum power flux density (PFD) per 25 kHz at or beyond the border does not exceed −107 dB(W/m2). Stations authorized on Canada Primary channels will be secondary to stations in Canada unless otherwise specified in an international agreement between the U.S. and Canada.

(5) Stations authorized to operate within 30 kilometers of the center city coordinates listed in Table C5 are considered to fall outside of the U.S./Canada border area and may operate according to the non-border band plan listed in § 90.617.

TABLE C5.—CITIES THAT ARE CONSIDERED TO FALL OUTSIDE THE CANADA BORDER REGION

Location	Coordinates	
	Latitude	Longitude
Akron, Ohio	41°05′00.2″ N.	81°30′39.4″ W.
Youngstown, Ohio	41°05′57.2″ N.	80°39′01.3″ W.
Syracuse, New York	43°03′04.2″ N.	76°09′12.7″ W.

(6) The channels listed in Table C6 and paragraph (c)(6)(i) of this section are available in the Canada Border Regions for non-cellular operations to eligible applicants in the Public Safety Category which consists of licensees eligible in the Public Safety Pool of subpart B of this part. 800 MHz high density cellular systems as defined in § 90.7 are prohibited on these channels.

TABLE C6.—PUBLIC SAFETY POOL 806–816/851–861 MHZ BAND CHANNELS IN THE CANADA BORDER REGIONS

Canada Border Region	Channel Nos.	Total
Regions 1, 4, 5 and 6	231–260	30 Channels.
Region 2	See paragraph (c)(6)(i) of this section.	
Region 3	231–320, 501–508	90 Channels.
Regions 7A and 8	269, 289, 311, 399, 439, 270, 290, 312, 400, 440, 279, 299, 319, 339, 359, 280, 300, 320, 340, 360, 309, 329, 349, 369, 389, 310, 330, 350, 370, 390, 313, 353, 393, 441, 461, 314, 354, 394, 448, 468, 321, 341, 361, 381, 419, 328, 348, 368, 388, 420, 351, 379, 409, 429, 449, 352, 380, 410, 430, 450, 391, 392, 401, 408, 421, 428, 459, 460, 469, 470.	70 Channels.
Region 7B	231–260, 269, 289, 311, 399, 439, 270, 290, 312, 400, 440, 279, 299, 319, 339, 359, 280, 300, 320, 340, 360, 309, 329, 349, 369, 389, 310, 330, 350, 370, 390, 313, 353, 393, 441, 461, 314, 354, 394, 448, 468, 315, 355, 395, 435, 475, 316, 356, 396, 436, 476, 317, 357, 397, 437, 477, 318, 358, 398, 438, 478, 321, 341, 361, 381, 419, 328, 348, 368, 388, 420, 331, 371, 411, 451, 491, 332, 372, 412, 452, 492, 333, 373, 413, 453, 493, 334, 374, 414, 454, 494, 335, 375, 415, 455, 495, 336, 376, 416, 456, 496, 337, 377, 417, 457, 497, 338, 378, 418, 458, 498, 351, 379, 409, 429, 449, 352, 380, 410, 430, 450, 391, 392, 401, 408, 421, 428, 459, 460, 469, 470, 431, 432, 433, 434, 471, 472, 473, 474, 479, 480.	170 Channels.

(i) Channel numbers 1–230 are also available to eligible applicants in the Public Safety Category in the Canada Border Regions. The assignment of these channels will be done in accordance with the policies defined in the Report and Order of Gen. Docket No. 87–112 (See § 90.16). The following channels are available only for mutual aid purposes as defined in Gen. Docket No. 87–112: Channels 1, 39, 77, 115, 153.

(ii) [Reserved]

(7) The channels listed in Table C7 are available in the Canada Border Regions for the General Category. All entities will be eligible for licensing on these channels. 800 MHz high density cellular systems as defined in § 90.7 are permitted on these channels only as indicated in Table C7. The channels noted for Regions 1, 2, 3, 4, 5 and 6 where high density cellular systems are prohibited are all frequencies that are primary to Canada. Stations may be licensed on these Canada Primary channels according to paragraph (c)(4) of this section.

TABLE C7.—GENERAL CATEGORY 806–821/851–866 MHZ BAND CHANNELS IN THE CANADA BORDER REGIONS

Canada Border Region	General Category channels where 800 MHz high density cellular systems are prohibited	General Category channels where 800 MHz high density cellular systems are permitted
Regions 1, 4, 5 and 6	261–560	561–710.
Region 2	172–620	621–710.
Region 3	321–500	509–710.
Regions 7A and 8	231–260, 511–550	None.
Region 7B	511–550	None.

(8) The channels listed in Table C8 are available in the Canada Border Regions to applicants eligible in the Industrial/Business Pool of subpart C of this part but exclude Special Mobilized Radio Systems as defined in § 90.603(c). 800 MHz cellular high density systems as defined in § 90.7 are prohibited on these channels.

TABLE C8.—BUSINESS/INDUSTRIAL/LAND TRANSPORTATION POOL 806–816/851–861 MHZ BAND CHANNELS IN THE CANADA BORDER REGIONS

Canada Border Region	Channel Nos.	Total
Regions 1, 2, 3, 4, 5 and 6	None	0 Channels.
Regions 7A, 7B and 8	261, 271, 281, 291, 301, 262, 272, 282, 292, 302, 263, 273, 283, 293, 303, 264, 274, 284, 294, 304, 265, 275, 285, 295, 305, 266, 276, 286, 296, 306, 267, 277, 287, 297, 307, 268, 278, 288, 298, 308, 322, 362, 402, 442, 482, 323, 363, 403, 443, 483, 324, 364, 404, 444, 484, 325, 365, 405, 445, 485, 326, 366, 406, 446, 486, 327, 367, 407, 447, 487, 342, 382, 422, 462, 502, 343, 383, 423, 463, 503, 344, 384, 424, 464, 504, 345, 385, 425, 465, 505, 346, 386, 426, 466, 506, 347, 387, 427, 467, 507.	100 Channels.

(9) The channels listed in Table C9 are available in the Canada Border Regions to applicants eligible in the SMR category—which consists of Specialized Mobile Radio (SMR) stations and eligible end users. 800 MHz high density cellular systems, as defined in § 90.7, are prohibited on these channels.

TABLE C9.—SMR CATEGORY 806–816/851–861 MHZ CHANNELS AVAILABLE FOR SITE-BASED LICENSING IN THE CANADA BORDER REGIONS

Canada Border Region	Channel Nos.	Total
Regions 1, 2, 3, 4, 5 and 6	None	0 Channels.
Regions 7A and 8	315, 355, 395, 435, 475, 316, 356, 396, 436, 476, 317, 357, 397, 437, 477, 318, 358, 398, 438, 478, 331, 371, 411, 451, 491, 332, 372, 412, 452, 492, 333, 373, 413, 453, 493, 334, 374, 414, 454, 494, 335, 375, 415, 455, 495, 336, 376, 416, 456, 496, 337, 377, 417, 457, 497, 338, 378, 418, 458, 498, 431, 432, 433, 434, 471, 472, 473, 474, 479, 480, 481, 488, 489, 490, 499, 500, 501, 508, 509, 510.	80 Channels.
Region 7B	481, 488, 489, 490, 499, 500, 501, 508, 509, 510	10 Channels.

(10) The channels listed in Table C10 are available in the Canada Border Regions to applicants eligible in the SMR category—which consists of Specialized Mobile Radio (SMR) stations and eligible end users. ESMR licensees who employ 800 MHz high density cellular systems, as defined in § 90.7, are permitted to operate on these channels. Some of the channels listed in Table C10 are primary to Canada as indicated in paragraph (c)(1) of this section. ESMR systems may be authorized on these Canada Primary channels according to paragraph (c)(4) of this section.

TABLE C10.—ESMR CATEGORY 817–824/862–869 MHZ CHANNELS AVAILABLE FOR 800 MHZ HIGH DENSITY SYSTEMS

Canada Border Region	Channel Nos.	Total
Regions 1, 2, 3, 4, 5 and 6	711–830	120 Channels.
Regions 7A, 7B and 8	551–830	280 Channels.

(11) In Canada Border Regions 1, 2, 3, 4, 5 and 6, the following General Category channels are available for licensing to all entities except as described in paragraphs (c)(11)(i) and (c)(11)(ii) of this section: In Regions 1, 4, 5 and 6, channels 261–560; in Region 2, channels 172–620 and in Region 3, channels 321–500.

(i) In a given 800 MHz NPSPAC region, the General Category channels listed paragraph (c)(11) of this section which are vacated by licensees relocating to channels 711–830 and which remain vacant after band reconfiguration will be available for licensing as follows:

(A) Only to eligible applicants in the Public Safety Category until three years after the release of a public notice announcing the completion of band reconfiguration in that region;

(B) Only to eligible applicants in the Public Safety or Critical Infrastructure Industry Categories from three to five years after the release of a public notice announcing the completion of band reconfiguration in that region; and

(C) To all entities five years after release of a public notice announcing the completion of band reconfiguration in that region.

(ii) The General Category channels listed in paragraph (c)(11) of this section are primary to Canada. Stations may be authorized on these Canada Primary channels according to paragraph (c)(4).

(12) In Canada Border Regions 7A, 7B and 8, the following channels will be available as described in paragraphs (c)(12)(i) and (c)(12)(ii) of this section: for Canada Border Regions 7A and 8, channels 231–260 and channels below 471 in Tables C8 and C9; for Canada Border Region 7B all channels in Tables C8 and C9.

(i) In a given 800 MHz NPSPAC region, the channels listed paragraph (c)(12) of this section which are vacated by licensees relocating to channels 511–830 and which remain vacant after band reconfiguration will be available as follows:

(A) Only to eligible applicants in the Public Safety Category until three years after the release of a public notice announcing the completion of band reconfiguration in that region; and

(B) Only to eligible applicants in the Public Safety or Critical Infrastructure Industry Categories from three to five years after the release of a public notice

announcing the completion of band reconfiguration in that region.

(ii) Five years after the release of a public notice announcing the completion of band reconfiguration in a given 800 MHz NPSPAC region, the channels listed in paragraph (c)(12) of this section will revert back to their original pool categories.

* * * * *

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 40

[Docket OST–2008–0184]

RIN OST 2105–AD67

Procedures for Transportation Workplace Drug and Alcohol Testing Programs: State Laws Requiring Drug and Alcohol Rule Violation Information

AGENCY: Office of the Secretary, DOT.

ACTION: Interim final rule.

SUMMARY: The Office of the Secretary (OST) is amending its drug and alcohol testing procedures to authorize employers to disclose to State commercial driver licensing (CDL) authorities the drug and alcohol violations of employees who hold CDLs and operate commercial motor vehicles (CMVs), when a State law requires such reporting. This rule also permits third-party administrators (TPAs) to provide the same information to State CDL licensing authorities where State law requires the TPAs to do so for owner-operator CMV drivers with CDLs.

DATES: The rule is effective June 13, 2008. Comments to this interim final rule should be submitted by August 12, 2008. Late-filed comments will be considered to the extent practicable.

ADDRESSES: You may file comments identified by the docket number DOT–OST–2008–0184 by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave., SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Ave., SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal Holidays.
- *Fax:* (202) 493–2251.

Instructions: You must include the agency name and docket number DOT–OST–2008–0184 or the Regulatory Identification Number (RIN) for the rulemaking at the beginning of your comment. All comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: For program issues, Bohdan Baczara or Patrice M. Kelly, Office of Drug and Alcohol Policy and Compliance, 1200 New Jersey Avenue, SE., Washington, DC 20590; (202) 366–3784 (voice), (202) 366–3897 (fax), *bohdan.baczara@dot.gov* or *patrice.kelly@dot.gov* (e-mail). For legal issues, Robert C. Ashby, Deputy Assistant General Counsel for Regulations and Enforcement, 1200 New Jersey Avenue, SE., Washington, DC 20590; (202) 366–9310 (voice), (202) 366–9313 (fax) or *bob.ashby@dot.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

Confidentiality of an employee's test results is a cornerstone of the balance between public safety and employee privacy that is crucial to the Department of Transportation's testing program. Early in the Department of Transportation's drug testing program, we recognized the need for confidentiality of employee testing information and reflected this in our December 1, 1989 **Federal Register** notice (54 FR 49854). This rule required the Medical Review Officer (MRO) to disclose positive drug test result information only to employers. The rule also required laboratories to maintain employee test records in confidence, but permitted laboratories to disclose a positive drug test result to the employee, employer, or the decision maker in a lawsuit, grievance or other proceeding initiated by or on behalf of the employee as a result of the employee's positive drug test.

Congress passed the Omnibus Transportation Employee Testing Act of 1991, which directed the Department to implement significant changes to its substance abuse testing program, and specifically referenced providing for the confidentiality of employee test results. The Department amended its drug and alcohol testing regulations to implement these statutory requirements. (59 FR 7340; February 15, 1994). As provided in the original 1989 DOT rules and the 1994 amendments, Part 40 includes strict and specific provisions for maintaining the confidentiality of employee testing records. Specifically, employers are permitted to release employee drug and alcohol testing records to other employers only upon written consent from the employee, and only when the consent authorized the release to a specifically identified individual.

In 2000, the Department revised its drug and alcohol testing regulations (65 FR 79462). In this revision, the Department prohibited MROs from disclosing employee drug testing information to other employers and prohibited service agents and employers from using blanket releases. We intended in 2000 for State safety agencies with regulatory authority over employers to be provided with certain testing information about an individual employee with no signed releases necessary. In recent years, several States have passed legislation requiring the release of certain test result and refusal information for all CDL holders without the employees' consent. Specifically, the States have required employers and/or their service agents to report to their respective State CDL issuing and licensing authorities the drug and alcohol violations of employees who are CMV drivers with CDLs. We do not want our regulations to have the effect of prohibiting employers and TPAs of owner-operators from providing the drug and alcohol test results of CMV drivers with CDLs. Consequently, the Department must take rapid action to avoid any such conflict.

The Department believes that State action to suspend or revoke the CDLs of CMV drivers who violate DOT rules until they demonstrate that they have successfully completed the SAP process can have important safety benefits. We support State legislation that can reliably provide State CDL licensing authorities with the information they need to take such action. In particular, the Department is concerned that, in the absence of such action, CMV drivers with CDLs who do not seek required Substance Abuse Professional (SAP) evaluations, yet continue to perform safety-sensitive duties after they violate the Department's drug and alcohol regulations (so-called ''job hoppers''), pose an unacceptable safety risk to the public. We believe measures taken by States to suspend or revoke the CDL licenses of CMV drivers who violate DOT drug and alcohol rules will enhance the Department's efforts to ensure that such drivers are evaluated by SAPs and receive treatment or education before they resume safety-sensitive duties.

To be consistent with our policy in enforcing the existing regulations and because we want to ensure that 49 CFR Part 40 is supportive of such State