

you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments. When submitting comments, remember to:*

- i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).
- ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- iv. Describe any assumptions and provide any technical information and/or data that you used.
- v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- vi. Provide specific examples to illustrate your concerns and suggest alternatives.
- vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- viii. Make sure to submit your comments by the comment period deadline identified.

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

## II. What action is the agency taking?

EPA is announcing receipt of a *revised* pesticide petition filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), (21 U.S.C. 346a), requesting the establishment or modification of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. The Agency is taking public comment on the request before responding to the petitioner. EPA is not proposing any particular action at this time. EPA has determined that the pesticide petition described in this document contains data or information prescribed in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the pesticide petition. After considering the public comments, EPA intends to evaluate whether and what action may be warranted. Additional data may be needed before EPA can make a final determination on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition that is the subject of this document, prepared by the petitioner, is included in a docket EPA has created for this rulemaking. The docket for this petition is available online at <http://www.regulations.gov>.

As specified in FFDCA section 408(d)(3), (21 U.S.C. 346a(d)(3)), EPA is publishing notice of the petition so that the public has an opportunity to comment on this request for the establishment or modification of regulations for residues of pesticides in or on food commodities.

*PP 2F8053 (Revised)* (EPA-HQ-OPP-2012-0638). BASF Corporation, 26 Davis Drive, P.O. Box 13528, Research Triangle Park, NC 27709-3528 submitted revisions to their initial pesticide petition 2F8053 to establish tolerances in 40 CFR part 180 for residues of the fungicide fluxapyroxad, (BAS 700 F); 1*H*-Pyrazole-4-carboxamide,3-(difluoromethyl)-1-methyl-*N*-(3',4',5'-trifluoro 1,1'-biphenyl-2-yl)-, its metabolites, and degradates, in or on various commodities. Based on EPA's evaluation of the data supporting the original petition, BASF Corporation revised the petition by proposing tolerances for fish-freshwater finfish; fish-shellfish, crustacean; and hog, meat byproducts at 0.01 parts per million (ppm); and by decreasing, increasing, or deleting previously proposed tolerances for various commodities.

Further information on the revised petition may be obtained through the

petition summary referenced in this unit.

## List of Subjects in 40 CFR Part 180

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 14, 2013.

**G. Jeffery Herndon,**

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 2013-28239 Filed 11-26-13; 8:45 am]

**BILLING CODE 6560-50-P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 73 and 76

[MB Docket No. 11-93; FCC 13-141]

### Implementation of the Commercial Advertisement Loudness Mitigation (CALM) Act

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Commission proposes minor rule changes to incorporate by reference into the Commission's rules and make mandatory the Advanced Television Systems Committee's (ATSC) March 12, 2013 A/85:2013 Recommended Practice (Successor RP), replacing the July 25, 2011 A/85:2011 RP (Current RP), incorporated into the Commission's rules in 2011. The Commercial Advertisement Loudness Mitigation (CALM) Act directs the Commission to incorporate by reference and make mandatory "any successor" to the ATSC's A/85 Recommended Practice (RP). This document also seeks comment on the appropriate timing for the 2013 Successor RP to replace the 2011 Current RP, and proposes an effective date of one year from the release date of the Report and Order resulting from this proceeding. The 2013 Successor RP applies an improved loudness measurement algorithm to conform to the International Telecommunication Union's (ITU) updated BS.1770 measurement algorithm, "BS.1770-3."

**DATES:** Comments are due on or before December 27, 2013; reply comments are due on or before January 13, 2014.

**ADDRESSES:** You may submit comments, identified by MB Docket No. 11-93, by any of the following methods:

- *Federal Communications Commission (FCC) Electronic Comment*

*Filing System (ECFS) Web site: <http://fjallfoss.fcc.gov/ecfs2/>. Follow the instructions for submitting comments.*

- *Mail:* U.S. Postal Service first-class, Express, and Priority mail must be addressed to the FCC Secretary, Office of the Secretary, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- *Hand or Messenger Delivery:* All hand-delivered or messenger-delivered paper filings for the FCC Secretary must be delivered to FCC Headquarters at 445 12th Street SW., Room TW-A325, Washington, DC 20554.

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

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

**FOR FURTHER INFORMATION CONTACT:** For additional information on this proceeding, contact Evan Baranoff, [Evan.Baranoff@fcc.gov](mailto:Evan.Baranoff@fcc.gov), of the Media Bureau, Policy Division, (202) 418-2120 or Shabnam Javid, [Shabnam.Javid@fcc.gov](mailto:Shabnam.Javid@fcc.gov), of the Engineering Division, Media Bureau at (202) 418-7000.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Further Notice of Proposed Rulemaking* (FNPRM), FCC 13-141, adopted on October 31, 2013, and released on November 1, 2013. The full text of this document is available electronically via the FCC's Electronic Comment Filing System (ECFS) Web site at <http://fjallfoss.fcc.gov/ecfs2/> or via the FCC's Electronic Document Management System (EDOCS) Web site at [http://fjallfoss.fcc.gov/edocs\\_public/](http://fjallfoss.fcc.gov/edocs_public/). (Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.) This document is also available for public inspection and copying during regular business hours in the FCC Reference Information Center, Federal Communications Commission, 445 12th Street, SW., CY-A257, Washington, DC, 20554. The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW., Room CY-B402,

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](mailto:fcc504@fcc.gov) or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

## Document Summary

### I. Introduction

1. In this Further Notice of Proposed Rulemaking (FNPRM), we propose minor rule changes to incorporate into our rules the Advanced Television Systems Committee's (ATSC) <sup>1</sup> recently published successor document to its July 25, 2011 A/85:2011 Recommended Practice (Current RP).<sup>2</sup> The Commercial Advertisement Loudness Mitigation (CALM) Act directs the Commission to incorporate such successor documents by reference into the rules and make them mandatory.<sup>3</sup> While this proceeding is pending, the Current RP that the Commission incorporated into our rules in 2011 will continue to be mandatory until the proposed rule modifications incorporating the March 12, 2013 A/85:2013 Recommended Practice (Successor RP) take effect, except that we waive this rule as necessary to permit parties the alternative to follow the loudness measurement method contained in the Successor RP, rather than that in the Current RP, prior to the rule modifications taking effect.<sup>4</sup>

### II. Background

2. On December 13, 2011, the Commission released a Report and Order adopting rules implementing the

CALM Act.<sup>5</sup> As mandated by the statute,<sup>6</sup> the Commission incorporated into its rules by reference and made mandatory the 2011 ATSC A/85 RP,<sup>7</sup> which describes how the television industry can monitor and control the loudness level of digital TV programming. The rules took effect on December 13, 2012 and require digital TV broadcasters, digital cable operators, satellite TV providers, and other digital MVPDs to ensure that the commercials they transmit to viewers comply with the A/85 Recommended Practice (RP).<sup>8</sup>

3. Section 2(a) of the CALM Act mandates that the Commission's rules incorporate by reference and make mandatory "any successor" to the RP, affording the Commission no discretion in this regard.<sup>9</sup> On March 12, 2013, the ATSC published a successor document to its 2011 A/85 RP. As described by the ATSC, the Successor RP applies an improved loudness measurement algorithm to conform to the International Telecommunication Union's (ITU) <sup>10</sup> updated BS.1770 measurement algorithm, "BS.1770-3." <sup>11</sup> BS.1770-3 employs "gating" that will exclude very quiet or silent passages of a commercial when

<sup>5</sup> See generally *CALM Act Report and Order*.

<sup>6</sup> 47 U.S.C. 621(a).

<sup>7</sup> See Current RP, which was incorporated as it existed on the date of its approval by the Director of the Federal Register (*i.e.*, Dec. 13, 2012). See 47 CFR 73.8000(a), (b)(5) and 76.602(a), (b)(2); 1 CFR 51.1(f) ("Incorporation by reference of a publication is limited to the edition of the publication that is approved. Future amendments or revisions of the publication are not included."). The Current RP is available at the ATSC Web site: [http://www.atsc.org/cms/standards/a\\_85-2011a.pdf](http://www.atsc.org/cms/standards/a_85-2011a.pdf).

<sup>8</sup> See 47 CFR 73.682(e) and 76.607.

<sup>9</sup> 47 U.S.C. 621(a). See *CALM Act Report and Order*, para. 20 (observing that "Section 2(a) mandates that the required regulation incorporate by reference and make mandatory 'any successor' to the RP, affording the Commission no discretion in this regard.").

<sup>10</sup> The ITU is a specialized agency of the United Nations whose goal is to promote international cooperation in the efficient use of telecommunications, including the use of the radio frequency spectrum. The ITU publishes technical recommendations concerning various aspects of radio communication technology. These recommendations are subject to an international peer review and approval process in which the Commission participates.

<sup>11</sup> See Letter from Mark S. Richer, ATSC President, to Alison Neplokh, Chief Engineer, Media Bureau, FCC, at 1 (dated April 5, 2013) (*ATSC April 5 Letter*) (stating that "the revised version of A/85 includes an update of the reference to the [ITU] recommendation for 'Algorithms to measure audio programme loudness and true-peak audio level.' The revised A/85 now references ITU-R BS.1770-3."). As explained in the *CALM Act Report and Order*, the ITU-R BS.1770 measurement algorithm provides a numerical value that indicates the perceived loudness of the content (measured in units of LKFS—loudness, K-weighted, relative to full scale) by averaging the loudness of audio signals in all channels over the duration of the content. See *CALM Act Report and Order*, para. 5.

<sup>1</sup> According to its Web site, ATSC is an international, non-profit organization developing voluntary standards for digital television. The ATSC member organizations represent the broadcast, broadcast equipment, motion picture, consumer electronics, computer, cable, satellite, and semiconductor industries. ATSC creates and fosters implementation of voluntary Standards and Recommended Practices to advance digital television broadcasting and to facilitate interoperability with other media. See <http://www.atsc.org/aboutatsc.html>.

<sup>2</sup> See ATSC A/85:2013 "ATSC Recommended Practice: Techniques for Establishing and Maintaining Audio Loudness for Digital Television," (March 12, 2013) (Successor RP). The Successor RP, which replaces A/85:2011 "ATSC Recommended Practice: Techniques for Establishing and Maintaining Audio Loudness for Digital Television," (July 25, 2011) (Current RP), is available on the ATSC Web site at: [http://www.atsc.org/cms/standards/A\\_85-2013.pdf](http://www.atsc.org/cms/standards/A_85-2013.pdf).

<sup>3</sup> See 47 U.S.C. 621(a); see also *Implementation of the Commercial Advertisement Loudness Mitigation (CALM) Act*, MB Docket No. 11-93, Report and Order, FCC 11-182, 77 FR 40276, July 9, 2012 (*CALM Act Report and Order*).

<sup>4</sup> See *infra* para. 7.

calculating the average loudness of that commercial.<sup>12</sup> Use of the new algorithm may result in some reduction in commercial loudness in certain circumstances. The successor RP also contains other minor changes that do not affect our rules.<sup>13</sup>

### III. Discussion

4. As an initial matter, we address a procedural issue. In the *CALM Act Report and Order*, the Commission concluded that “although the ‘good cause’ exception [to the Administrative Procedure Act] excuses compliance with notice and comment requirements under these circumstances, the public interest [would] be better served by an opportunity for comment in most cases.”<sup>14</sup> The *CALM Act Report and Order* further stated that “if, however, a successor is not sufficiently substantive to require interpretation or public comment, [the Commission would] simply adopt the successor by public notice.”<sup>15</sup> Although we find that the “good cause” exception arguably would allow us to forgo notice and comment requirements in the instant circumstances because the successor RP’s changes do not require substantive interpretation on our part, we conclude that it is appropriate for us to seek comment on an appropriate timeline for implementation, as described below.

5. We tentatively conclude that the only substantive change raised by the Successor RP as it relates to our rules is the change to the measurement algorithm to conform to BS.1770–3, and seek comment on this tentative conclusion. As a practical matter, this change seems to be designed to prevent advertisers from using silent passages to offset excessively loud passages when calculating the average loudness of program material. Thus, once this Successor RP is implemented,

consumers may notice a modest decrease in the perceived loudness of certain commercials. This change is consistent with the type of updates that we believe Congress intended the Commission to incorporate in its rules by specifying in the CALM Act that the Commission shall make mandatory successor versions of the RP. Accordingly, we propose to adopt the Successor RP and incorporate it by reference into our rules.<sup>16</sup>

6. We recognize that, as a result of the proposed changes, parties<sup>17</sup> may need a software or device upgrade for their equipment. Accordingly, we believe that it is appropriate to afford a reasonable amount of time for affected parties to implement the Successor RP. We are mindful of the fact that many such parties have recently purchased new equipment to comply with the Commission’s rules implementing the statute, which took effect on December 13, 2012. Therefore, we seek comment about the costs and timing associated with upgrading existing equipment to comply with the Successor RP. Based on the limited scope of the rule changes raised by the Successor RP, we believe an effective date of one year from the release date of the Report and Order in the instant proceeding would provide enough time to implement any necessary equipment upgrades. We seek comment on this proposal, including the costs and benefits of this proposed implementation deadline. In particular, we seek specific comment from affected parties who have already purchased equipment that is not easily upgradable or for which implementation of the Successor RP would be significantly burdensome for some other reason. We also seek comment on whether small TV stations and MVPDs, as a class, may need more time to implement the Successor RP.<sup>18</sup> In setting an effective

date, we seek to ensure that consumers can benefit in a timely fashion from the improved method of controlling loudness,<sup>19</sup> while avoiding imposing unreasonable burdens on affected parties. If a commenter suggests that any party should have more time to implement the Successor RP, then we ask that commenter to explain in detail the reasons for needing the additional time and why that need outweighs the effect that the longer implementation timeline would have on consumers.

7. Although stations and MVPDs must continue to comply with the 2011 A/85 RP that is currently incorporated by reference in the rules, we waive our rules to permit stations and MVPDs to implement the Successor RP early. We expect that some stations and MVPDs may be able and willing to implement the Successor RP in less than the year we propose to allow for compliance with the new standard. Therefore, to the extent it may be necessary to expressly permit such early adoption of the Successor RP, and in light of the fact that the CALM Act makes mandatory the revision of our rules proposed herein, we hereby waive our rules to allow stations and MVPDs to comply with our existing rules by following either the BS.1770–1 measurement method in the Current RP or the BS.1770–3 updated measurement method in the Successor RP. Although the change in the measurement method is minor, we believe that consumers may benefit from early implementation of the improved loudness measurement technique incorporated into the Successor RP, and allowing stations and MVPDs to demonstrate compliance at this time based on the new standard is accordingly in the public interest. Finally, we invite comment on whether the Successor RP raises any other issues that should be addressed in this proceeding.<sup>20</sup>

<sup>12</sup> *Id.* (“Version 3 of BS.1770, adds ‘gating’ (excluding low level passages from the measured value) to the measurement algorithm.”).

<sup>13</sup> See *ATSC April 5 Letter* at 1. ATSC explains that version 3 of BS.1770 also “includes some minor editorial updates to the loudness measurement text and a minor correction to the true-peak measurement algorithm.” *Id.* ATSC also explains that “[b]eyond the reference change, A/85 now includes improved guidance for measuring the loudness of surround programming in both its multichannel format and in its 2-channel downmix.” \* \* \* In addition, A/85 is now specific about the differences between loudness and dynamic range.” *Id.*

<sup>14</sup> *Id.* (citing 5 U.S.C. 553(b)(B) (providing that Administrative Procedure Act’s notice and comment requirements do not apply “when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest”).

<sup>15</sup> *Id.*

<sup>16</sup> See Proposed rules.

<sup>17</sup> In addition to broadcasters and MVPDs, parties affected by these rules may include programmers and other third parties that may be performing the loudness measurements on which stations and MVPDs rely.

<sup>18</sup> The *CALM Act Report and Order* defines a “small broadcast station” and a “small MVPD system” for purposes of a streamlined financial hardship waiver to obtain a one-year waiver of the effective date of the rules. See *CALM Act Report and Order*, paras. 53–54. A “small broadcast station” is defined as a TV station with \$14.0 million or less in annual receipts or that is located in television markets 150 to 210. A “small MVPD system” is defined as an MVPD with fewer than 15,000 subscribers (as of December 31, 2011) and that is not affiliated with a larger operator serving more than 10 percent of all MVPD subscribers. *Id.* We note that some small stations and MVPDs have obtained financial hardship waivers for a one-year waiver of the effective date of the rules (until December 13, 2013) and are eligible for a second one-year waiver (until December 13, 2014).

<sup>19</sup> We note that the potential benefit that may occur for consumers is limited to situations where a commercial has a significant amount of silent or very quiet passages. The new algorithm’s use of “gating” is intended to more accurately reflect consumer perceptions in situations in which the commercial contains both very loud and very quiet passages. In this circumstance, the new algorithm would result in a greater perceived loudness measurement than the old algorithm, therefore requiring the commercial to be adjusted using one of the methods in the RP. Thus, the new algorithm may result in somewhat reduced loudness problems perceived by consumers in this circumstance, but is otherwise substantially the same as the existing algorithm.

<sup>20</sup> We note, however, that the scope of this proceeding is limited to the incorporation into our rules of the Successor RP and we will not revisit issues already decided by the Commission. Any comments or reply comments that raise such issues will not be substantively considered.

#### IV. Procedural Matters

8. *Initial Regulatory Flexibility Act Analysis.* As required by the Regulatory Flexibility Act of 1980, as amended (RFA)<sup>21</sup> the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) concerning the possible significant economic impact on small entities of the rule changes proposed in this *Order and Further Notice of Proposed Rulemaking (FNPRM)*. Written public comments are requested on this IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the *FNPRM* and they must have a separate and distinct heading designating them as responses to the IRFA. The Commission will send a copy of the *FNPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).<sup>22</sup> In addition, the *FNPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.<sup>23</sup>

##### 1. Need for, and Objectives of, the Proposed Rule Changes

9. This *FNPRM* proposes minor rule changes to incorporate by reference into the Commission's rules and make mandatory the Advanced Television Systems Committee's (ATSC) March 12, 2013 A/85:2013 Recommended Practice (RP) (Successor RP).<sup>24</sup> The Commercial Advertisement Loudness Mitigation (CALM) Act directs the Commission to incorporate by reference and make mandatory "any successor" to the ATSC's A/85 Recommended Practice (RP), affording the Commission no discretion in this regard.<sup>25</sup> Accordingly, this *FNPRM* proposes to replace the July 25, 2011 A/85:2011 RP (Current RP), incorporated into our rules in 2011, with the Successor RP published in 2013.<sup>26</sup> This *FNPRM* also seeks comment on the appropriate timing for the 2013 Successor RP to replace the 2011 Current RP. As mandated by the statute, the proposed rule changes will

apply to television station broadcasters and multichannel video programming distributors (MVPDs).<sup>27</sup>

##### 2. Legal Basis

10. The proposed action is authorized pursuant to the Commercial Advertisement Loudness Mitigation Act of 2010, Public Law 111–311, 124 Stat. 3294, and Sections 1, 2(a), 4(i) and (j), and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152(a), 154(i), and 303 and 621.

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

11. 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.<sup>28</sup> The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."<sup>29</sup> In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.<sup>30</sup> 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 SBA.<sup>31</sup> The rule changes proposed herein will directly affect small television broadcast stations and small MVPD systems, which include cable operators and satellite video providers. Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

12. *Television Broadcasting.* This economic census category "comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the

public."<sup>32</sup> The SBA has created the following small business size standard for Television Broadcasting businesses: those having \$35.5 million or less in annual receipts.<sup>33</sup> The Commission has estimated the number of licensed commercial television stations to be 1,386.<sup>34</sup> In addition, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on June 10, 2013, about 1,245 (or about 90 percent) the estimated 1,386 commercial television stations had revenues of \$35.5 million or less. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 396.<sup>35</sup> NCE stations are non-profit, and therefore considered to be small entities.<sup>36</sup> Therefore, we estimate that the majority of television broadcast stations are small entities.

13. We note, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations<sup>37</sup> must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, an element of the definition of "small business" is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive to that extent.

14. *Cable Television Distribution Services.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers, which was developed for small wireline businesses. This category is defined as

<sup>21</sup> See 5 U.S.C. 603. The RFA, see 5 U.S.C. 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. 104–121, 110 Stat. 847 (1996) (CWA AAA). Title II of the CWA AAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

<sup>22</sup> See 5 U.S.C. 603(a).

<sup>23</sup> See *id.*

<sup>24</sup> ATSC A/85:2013 "ATSC Recommended Practice: Techniques for Establishing and Maintaining Audio Loudness for Digital Television," (March 12, 2013) (Successor RP).

<sup>25</sup> See 47 U.S.C. 621(a); see also *CALM Act Report and Order*.

<sup>26</sup> The Successor RP, which replaces A/85:2011 "ATSC Recommended Practice: Techniques for Establishing and Maintaining Audio Loudness for Digital Television," (July 25, 2011) (Current RP), is available on the ATSC Web site at: [http://www.atsc.org/cms/standards/A\\_85-2013.pdf](http://www.atsc.org/cms/standards/A_85-2013.pdf).

<sup>27</sup> We refer herein to covered entities collectively as "stations/MVPDs" or "regulated parties."

<sup>28</sup> 5 U.S.C. 603(b)(3).

<sup>29</sup> 5 U.S.C. 601(6).

<sup>30</sup> 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." 5 U.S.C. 601(3).

<sup>31</sup> 15 U.S.C. 632. Application of the statutory criteria of dominance in its field of operation and independence are sometimes difficult to apply in the context of broadcast television. Accordingly, the Commission's statistical account of television stations may be over-inclusive.

<sup>32</sup> U.S. Census Bureau, 2012 NAICS Definitions, "515120 Television Broadcasting," at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

<sup>33</sup> 13 CFR 121.201; 2012 NAICS code 515120.

<sup>34</sup> See *Broadcast Station Totals as of June 30, 2013*, Press Release (MB rel. July 10, 2013) (*Broadcast Station Totals Press Release*) at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-322079A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-322079A1.pdf).

<sup>35</sup> See *Broadcast Station Totals*, *supra*.

<sup>36</sup> See generally 5 U.S.C. 601(4), (6).

<sup>37</sup> "[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has to power to control both." 13 CFR 21.103(a)(1).

follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services."<sup>38</sup> The SBA has developed a small business size standard for this category, which is: all such businesses having 1,500 or fewer employees.<sup>39</sup> Census data for 2007 shows that there were 31,996 establishments that operated that year.<sup>40</sup> Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees.<sup>41</sup> Therefore, under this size standard, we estimate that the majority of businesses can be considered small entities.

15. *Cable Companies and Systems.* The Commission has also developed its own small business size standards for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide.<sup>42</sup> Industry data shows that there were 1,141 cable companies at the end of

June 2012.<sup>43</sup> Of this total, all but 10 incumbent cable companies are small under this size standard.<sup>44</sup> In addition, under the Commission's rate regulation rules, a "small system" is a cable system serving 15,000 or fewer subscribers.<sup>45</sup> Current Commission records show 4,945 cable systems nationwide.<sup>46</sup> Of this total, 4,380 cable systems have less than 20,000 subscribers, and 565 systems have 20,000 subscribers or more, based on the same records. Thus, under this standard, we estimate that most cable systems are small.

16. *Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000."<sup>47</sup> There are approximately 56.4 million incumbent cable video subscribers in the United States today.<sup>48</sup> Accordingly, an operator serving fewer than 564,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate.<sup>49</sup> Based on available data,

we find that all but 10 incumbent cable operators are small under this size standard.<sup>50</sup> We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million.<sup>51</sup> Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

17. *Direct Broadcast Satellite (DBS) Service.* DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic "dish" antenna at the subscriber's location. DBS, by exception, is now included in the SBA's broad economic census category, Wired Telecommunications Carriers,<sup>52</sup> which was developed for small wireline businesses. Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees.<sup>53</sup> Census data for 2007 shows that there were 31,996 establishments that operated that year.<sup>54</sup>

Definition of Small Cable Operator, DA 01–158 (Cable Services Bureau, Jan. 24, 2001).

<sup>50</sup> See NCTA, Industry Data, Top 25 Multichannel Video Service Customers (2012), <http://www.ncta.com/industry-data> (visited Aug. 30, 2013).

<sup>51</sup> The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to Section 76.901(f) of the Commission's rules. See 47 CFR 76.901(f).

<sup>52</sup> See 13 CFR 121.201, 2012 NAICS code 517110. This category of Wired Telecommunications Carriers is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services. *By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.*" (Emphasis added to text relevant to satellite services.) U.S. Census Bureau, 2012 NAICS Definitions, "517110 Wired Telecommunications Carriers" at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

<sup>53</sup> 13 CFR 121.201; 2012 NAICS code 517110.

<sup>54</sup> U.S. Census Bureau, 2007 Economic Census. See U.S. Census Bureau, American FactFinder, "Information: Subject Series—Etab and Firm Size: Employment Size of Establishments for the United

<sup>38</sup> NCTA, Industry Data, Number of Cable Operating Companies (June 2012), <http://www.ncta.com/Statistics.aspx> (visited Sept. 28, 2012). Depending upon the number of homes and the size of the geographic area served, cable operators use one or more cable systems to provide video service. See *Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, MB Docket No. 12–203, Fifteenth Report, FCC 13–99 at para. 24 (rel. July 22, 2013) (15th Annual Competition Report).

<sup>39</sup> See SNL Kagan, "Top Cable MSOs—12/12 Q"; available at <http://www.snl.com/InteractiveX/TopCableMSOs.aspx?period=2012Q4&sortcol=subscribersbasic&sortorder=desc>. We note that, when applied to an MVPD operator, under this size standard (i.e., 400,000 or fewer subscribers) all but 14 MVPD operators would be considered small. See NCTA, Industry Data, Top 25 Multichannel Video Service Customers (2012), <http://www.ncta.com/industry-data> (visited Aug. 30, 2013). The Commission applied this size standard to MVPD operators in its implementation of the CALM Act. See *CALM Act Report and Order*, para. 37 (defining a smaller MVPD operator as one serving 400,000 or fewer subscribers nationwide, as of December 31, 2011).

<sup>40</sup> 47 CFR 76.901(c).

<sup>41</sup> The number of active, registered cable systems comes from the Commission's Cable Operations and Licensing System (COALS) database on Aug. 28, 2013. A cable system is a physical system integrated to a principal headend.

<sup>42</sup> 47 U.S.C. 543(m)(2); see 47 CFR 76.901(f) & nn. 1–3.

<sup>43</sup> See NCTA, Industry Data, Cable Video Customers (2012), <http://www.ncta.com/industry-data> (visited Aug. 30, 2013).

<sup>44</sup> 47 CFR 76.901(f); see Public Notice, FCC Announces New Subscriber Count for the

<sup>38</sup> U.S. Census Bureau, 2012 NAICS Definitions, "517110 Wired Telecommunications Carriers" (partial definition) at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>. Examples of this category are: broadband Internet service providers (e.g., cable, DSL); local telephone carriers (wired); cable television distribution services; long-distance telephone carriers (wired); closed circuit television (CCTV) services; VoIP service providers, using own operated wired telecommunications infrastructure; direct-to-home satellite system (DTH) services; telecommunications carriers (wired); satellite television distribution systems; and multichannel multipoint distribution services (MMDS).

<sup>39</sup> 13 CFR 121.201; 2012 NAICS code 517110.

<sup>40</sup> U.S. Census Bureau, 2007 Economic Census. See U.S. Census Bureau, American FactFinder, "Information: Subject Series—Etab and Firm Size: Employment Size of Establishments for the United States: 2007—2007 Economic Census," NAICS code 517110, Table EC0751SSZ2; available at <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>.

<sup>41</sup> *Id.*

<sup>42</sup> 47 CFR 76.901(e). The Commission determined that this size standard equates approximately to a size standard of \$100 million or less in annual revenues. *Implementation of Sections of the Cable Television Consumer Protection And Competition Act of 1992: Rate Regulation*, MM Docket No. 92–266, MM Docket No. 93–215, Sixth Report and Order and Eleventh Order on Reconsideration, FCC 95–196, 60 FR 35854, July 12, 1995.

Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees.<sup>55</sup> Therefore, under this size standard, the majority of such businesses can be considered small. However, the data we have available as a basis for estimating the number of such small entities were gathered under a superseded SBA small business size standard formerly titled "Cable and Other Program Distribution." The definition of Cable and Other Program Distribution provided that a small entity is one with \$12.5 million or less in annual receipts.<sup>56</sup> Currently, only two entities provide DBS service, which requires a great investment of capital for operation: DIRECTV and DISH Network.<sup>57</sup> Each currently offer subscription services. DIRECTV and DISH Network each report annual revenues that are in excess of the threshold for a small business. Because DBS service requires significant capital, we believe it is unlikely that a small entity as defined by the SBA would have the financial wherewithal to become a DBS service provider.

18. *Satellite Master Antenna Television (SMATV) Systems, also known as Private Cable Operators (PCOs).* SMATV systems or PCOs are video distribution facilities that use closed transmission paths without using any public right-of-way. They acquire video programming and distribute it via terrestrial wiring in urban and suburban multiple dwelling units such as apartments and condominiums, and commercial multiple tenant units such as hotels and office buildings. SMATV systems or PCOs are now included in the SBA's broad economic census category, Wired Telecommunications Carriers,<sup>58</sup> which was developed for

small wireline businesses. Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees.<sup>59</sup> Census data for 2007 shows that there were 31,996 establishments that operated that year.<sup>60</sup> Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees.<sup>61</sup> Therefore, under this size standard, the majority of such businesses can be considered small.

19. *Open Video Services.* The open video system (OVS) framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers.<sup>62</sup> The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services,<sup>63</sup> OVS falls within the SBA small business size standard covering cable services, which is "Wired Telecommunications Carriers."<sup>64</sup> The SBA has developed a small business size standard for this

that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services. *By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.*" (Emphasis added to text relevant to satellite services.) U.S. Census Bureau, 2012 NAICS Definitions, "517110 Wired Telecommunications Carriers" at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

<sup>59</sup> 13 CFR 121.201; 2012 NAICS code 517110.

<sup>60</sup> U.S. Census Bureau, 2007 Economic Census. See U.S. Census Bureau, American FactFinder, "Information: Subject Series—Estab and Firm Size: Employment Size of Establishments for the United States: 2007—2007 Economic Census," NAICS code 517110, Table EC0751SSSZ2; available at <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>.

<sup>61</sup> *Id.*

<sup>62</sup> 47 U.S.C. 571(a)(3) through (4). See *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 06–189, Thirteenth Annual Report, FCC 07–206, 74 FR 11102, March 16, 2009 (*Thirteenth Annual Cable Competition Report*).

<sup>63</sup> See 47 U.S.C. 573.

<sup>64</sup> See 13 CFR 121.201, 2012 NAICS code 517110. This category of Wired Telecommunications Carriers is defined in part as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services." U.S. Census Bureau, 2012 NAICS Definitions, "517110 Wired Telecommunications Carriers" at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

category, which is: all such businesses having 1,500 or fewer employees.<sup>65</sup> Census data for 2007 shows that there were 31,996 establishments that operated that year.<sup>66</sup> Of this total, 30,178 establishments had fewer than 100 employees, and 1,818 establishments had 100 or more employees.<sup>67</sup> Therefore, under this size standard, we estimate that the majority of businesses can be considered small entities. In addition, we note that the Commission has certified some OVS operators, with some now providing service.<sup>68</sup> Broadband service providers (BSPs) are currently the only significant holders of OVS certifications or local OVS franchises.<sup>69</sup> The Commission does not have financial or employment information regarding the entities authorized to provide OVS, some of which may not yet be operational. Thus, again, at least some of the OVS operators may qualify as small entities.

#### 4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

20. As stated above, the *FNPRM* proposes to incorporate by reference into our rules and make mandatory the Successor RP published in 2013, thereby replacing the Current RP incorporated into our rules in 2011. As discussed in the *FNPRM*, the only substantive change raised by the Successor RP appears to be the change in the measurement algorithm to be used when calculating the average loudness of a commercial.<sup>70</sup> Under the Current RP, television stations and MVPDs use the BS.1770–1 measurement method, whereas, under the Successor RP, stations and MVPDs will use the BS.1770–3 method. The primary difference is that BS.1770–3 employs "gating" that will exclude very quiet or silent passages of a commercial when calculating the average loudness of that commercial. As a result, stations and MVPDs may need a software or device upgrade for their equipment in order to perform the new loudness measurement

<sup>65</sup> 13 CFR 121.201; 2012 NAICS code 517110.

<sup>66</sup> U.S. Census Bureau, 2007 Economic Census. See U.S. Census Bureau, American FactFinder, "Information: Subject Series—Estab and Firm Size: Employment Size of Establishments for the United States: 2007—2007 Economic Census," NAICS code 517110, Table EC0751SSSZ2; available at <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>.

<sup>67</sup> *Id.*

<sup>68</sup> A list of OVS certifications may be found at <http://www.fcc.gov/mb/ovs/csovsr.html>.

<sup>69</sup> See *Thirteenth Annual Cable Competition Report*. BSPs are newer businesses that are building state-of-the-art, facilities-based networks to provide video, voice, and data services over a single network.

<sup>70</sup> See *FNPRM* paras. 4–5.

States: 2007—2007 Economic Census," NAICS code 517110, Table EC0751SSSZ2; available at <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>.

<sup>55</sup> *Id.*

<sup>56</sup> 13 CFR 121.201, NAICS code 517510 (2002).

<sup>57</sup> See *15th Annual Competition Report*, at para. 27. As of June 2012, DIRECTV is the largest DBS operator and the second largest MVPD in the United States, serving approximately 19.9 million subscribers. DISH Network is the second largest DBS operator and the third largest MVPD, serving approximately 14.1 million subscribers. *Id.* at paras. 27, 110–11.

<sup>58</sup> See 13 CFR 121.201, 2012 NAICS code 517110. This category of Wired Telecommunications Carriers is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities

technique. The *FNPRM* seeks comment about the costs and timing associated with upgrading existing equipment to comply with the Successor RP. The *FNPRM* does not otherwise propose any new reporting, recordkeeping or other compliance requirements.<sup>71</sup>

#### 5. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

21. 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.<sup>72</sup>

22. The CALM Act requires that the new technical loudness standard (*i.e.*, the 2011 ATSC A/85 RP) be made mandatory for all stations and MVPDs, regardless of size.<sup>73</sup> The statute also requires that the Commission make mandatory “any successor” to the ATSC A/85 RP, affording the Commission no discretion in this regard.<sup>74</sup> However, in this *FNPRM*, the Commission finds that it has some discretion to afford a reasonable amount of time for regulated parties to implement the Successor RP, and proposes to afford regulated parties with one year from the release date of the Report and Order in the instant proceeding to implement any necessary equipment upgrades. The *FNPRM* specifically considers (and seeks comment on) whether small TV stations and MVPDs, as a class, may need more time to implement the Successor RP.<sup>75</sup>

<sup>71</sup> For an overview of the existing compliance requirements pursuant to our implementation of the CALM Act, see Implementation of the Commercial Advertisement Loudness Mitigation (CALM) Act, MB Docket No. 11–93, Small Entity Compliance Guide, DA 13–1002 (MB rel. May 7, 2013); available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DA-13-1002A1.docx](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-13-1002A1.docx).

<sup>72</sup> 5 U.S.C. 603(c)(1) through (c)(4).

<sup>73</sup> See 47 U.S.C. 621(a).

<sup>74</sup> *Id.*

<sup>75</sup> See *FNPRM* paras. 6–7 (also seeking “specific comment from affected parties who have already purchased equipment that is not easily upgradable or for which implementation of the Successor RP would be significantly burdensome for some other reason”).

#### 6. Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rule

23. None.

24. *Initial Paperwork Reduction Act of 1995 Analysis*. This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA).<sup>76</sup> In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002.<sup>77</sup>

25. *Ex Parte Rules*. This matter will be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.<sup>78</sup> *Ex parte* presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed.<sup>79</sup> More than a one- or two-sentence description of the views and arguments presented is generally required.<sup>80</sup> Additional rules pertaining to oral and written presentations in “permit-but-disclose” proceedings are set forth in section 1.1206(b) of the rules.<sup>81</sup>

26. *Filing Requirements*. Pursuant to Sections 1.415 and 1.419 of the Commission’s rules,<sup>82</sup> interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. All comments are to reference MB Docket No. 11–93 and may be filed using: (1) the Commission’s Electronic Comment

<sup>76</sup> The Paperwork Reduction Act of 1995 (PRA), Pub. L. 104–13, 109 Stat 163 (1995) (codified in Chapter 35 of title 44 U.S.C.).

<sup>77</sup> The Small Business Paperwork Relief Act of 2002 (SBPRA), Pub. L. 107–198, 116 Stat 729 (2002) (codified in Chapter 35 of title 44 U.S.C.); see 44 U.S.C. 3506(c)(4).

<sup>78</sup> See 47 CFR 1.1206 (“Permit-but-disclose” proceedings); see also *id.* 1.1200 through 1.1216.

<sup>79</sup> See *id.* 1.1206(b)(2).

<sup>80</sup> See *id.*

<sup>81</sup> See *id.* 1.1206(b). See also *Commission Emphasizes the Public’s Responsibilities in Permit-But-Disclose Proceedings*, Public Notice, 15 FCC Rcd 19945 (2000). We note that the Commission has amended the rules governing the content of *ex parte* notices. See *Amendment of the Commission’s Ex Parte Rules and Other Procedural Rules*, GC Docket No. 10–43, Report and Order and Further Notice of Proposed Rulemaking, FCC 11–11, 76 FR 24376, May 2, 2011.

<sup>82</sup> See 47 CFR 1.415, 1419.

Filing System (ECFS) or (2) by filing paper copies.<sup>83</sup>

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

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

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

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

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

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

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

#### 28. Availability of Documents.

Comments and reply comments will be publically available online via ECFS.<sup>84</sup> These documents will also be available for public inspection during regular business hours in the FCC Reference Information Center, which is located in Room CY–A257 at FCC Headquarters, 445 12th Street SW., Washington, DC 20554. The Reference Information Center is open to the public Monday through Thursday from 8:00 a.m. to 4:30

<sup>83</sup> See *Electronic Filing of Documents in Rulemaking Proceedings*, GC Docket No. 97–113, Report and Order, FCC 98–56, 63 FR 24121, May 1, 1998.

<sup>84</sup> Documents will generally be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

p.m. and Friday from 8:00 a.m. to 11:30 a.m.

29. For additional information, contact Evan Baranoff, *Evan.Baranoff@fcc.gov*, of the Media Bureau, Policy Division, (202) 418-7142 or Shabnam Javid, *Shabnam.Javid@fcc.gov*, of the Engineering Division, Media Bureau at (202) 418-2672. Direct press inquiries to Janice Wise at (202) 418-8165.

#### V. Ordering Clauses

30. Accordingly, *it is ordered* that pursuant to the Commercial Advertisement Loudness Mitigation Act of 2010, Public Law 111-311, 124 Stat. 3294, and Sections 1, 2(a), 4(i), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152(a), 154(i), and 303(r), and 621, this Order and Further Notice of Proposed Rulemaking *is adopted* and *notice is hereby given* of the proposals and tentative conclusions described in this Further Notice of Proposed Rulemaking.

31. *It is further ordered* that, pursuant to the Commercial Advertisement Loudness Mitigation Act of 2010, Public Law 111-311, 124 Stat. 3294, and section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 621, and section 1.3 of the Commission's rules, 47 CFR 1.3, that

sections 73.682(e) and 76.607 of the rules, 47 CFR 73.682(e) and 76.607, are waived to the extent described in paragraph 7 herein.

32. *It is further ordered* that the Reference Information Center, Consumer and Governmental Affairs Bureau, shall send a copy of this Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

#### List of Subjects in 47 CFR Parts 73 and 76

Cable television, Digital television, Incorporation by reference, and Satellite television.

Federal Communications Commission.  
**Marlene H. Dortch**,  
*Secretary*.

#### Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 73 and 76 as follows:

#### PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, 336, and 339.

#### § 73.800 [Amended]

■ 2. Section 73.8000 is amended in paragraph (b)(5) by removing “ATSC A/85:2011” and adding in its place “ATSC A/85:2013”, and removing the date “July 25, 2011” and adding in its place “March 12, 2013”.

#### PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

■ 3. The authority citation for part 76 continues to read as follows:

**Authority:** 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

#### § 76.602 [Amended]

■ 4. Section 76.602 is amended in paragraph (b)(2) by removing “ATSC A/85:2011” and adding in its place “ATSC A/85: 2013”, and removing the date “July 25, 2011” and adding in its place “March 12, 2013”.

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