

APPENDIX L TO SUBPART A OF PART 82.—APPROVED CRITICAL USES AND LIMITING CRITICAL CONDITIONS FOR THOSE USES FOR THE 2007 CONTROL PERIOD—Continued

Column A	Column B	Column C
Approved critical uses	Approved critical user and location of use	Limiting critical conditions that either exist, or that the approved critical user reasonably expects could arise without methyl bromide fumigation
Commodity Storage .....	(e) Members of the National Pest Management Association associated with dry commodity structure fumigation (cocoa) and dry commodity fumigation (processed food, herbs and spices, dried milk and cheese processing facilities).	Moderate to severe beetle or moth infestation. Older structures that can not be properly sealed to use an alternative to methyl bromide. Presence of sensitive electronic equipment subject to corrosivity. Time to transition to an alternative.
Dry Cured Pork Products.	(a) California entities storing walnuts, beans, dried plums, figs, raisins, dates (in Riverside county only), and pistachios in California.	Rapid fumigation is required to meet a critical market window, such as during the holiday season, rapid fumigation is required when a buyer provides short (2 working days or less) notification for a purchase or there is a short period after harvest in which to fumigate and there is limited silo availability for using alternatives.
	(a) Members of the National Country Ham Association  (b) Members of the American Association of Meat Processors.  (c) Nahunta Pork Center (North Carolina) .....	A need for methyl bromide for research purposes. Moderate to severe red legged ham beetle infestation. Moderate to severe cheese/ham skipper infestation. Moderate to severe dermested beetle infestation. Ham mite infestation. Moderate to severe red legged ham beetle infestation. Moderate to severe cheese/ham skipper infestation. Moderate to severe dermested beetle infestation. Ham mite infestation. Moderate to severe red legged ham beetle infestation. Moderate to severe cheese/ham skipper infestation. Moderate to severe dermested beetle infestation. Ham mite infestation.

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**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 73**

[ET Docket No. 06-94; FCC 06-51]

**Digital Television Signals Pursuant To the Satellite Home Viewer Extension and Reauthorization Act of 2004**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes measurement procedures for determining the strength of a digital broadcast television (DTV) signal at any specific location. These procedures would be used as a means of determining whether households are eligible to receive distant DTV network signals retransmitted by satellite carriers. The Commission seeks public comment on the proposed procedures.

**DATES:** Comments are due on or before August 7, 2006, and reply comments are due on or before August 21, 2006. Written comments on the Paperwork Reduction Act proposed information collection requirements must be

submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before September 5, 2006.

**ADDRESSES:** You may submit comments, identified by ET Docket No. 06-94 and FCC 06-51 by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Federal Communications Commission's Web Site: <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone: 202-418-0530 or TTY: 202-418-0432.

In addition to filing comments with the Secretary, a copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to Cathy Williams, Federal Communications Commission, Room 1-C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to [PRA@fcc.gov](mailto:PRA@fcc.gov), and to Kristy L. LaLonde, OMB Desk Officer, Room 10234 NEOB, 725 17th Street, NW., Washington, DC

20503, via the Internet to *Kristy L. LaLonde@omb.eop.gov*, or via fax at 202-395-5167.

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

**FOR FURTHER INFORMATION CONTACT:** David Sturdivant, Technical Analysis Branch, Electromagnetic Compatibility Division, Office of Engineering and Technology, (202) 418-2470, e-mail: [David.Sturdivant@fcc.gov](mailto:David.Sturdivant@fcc.gov), TTY (202) 418-1227. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Judith B. Herman at 202-418-0214, or via the Internet at [PRA@fcc.gov](mailto:PRA@fcc.gov).

**SUPPLEMENTARY INFORMATION:** Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

• **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the Web site for submitting comments.

• For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

• **Paper Filers:** Parties who choose to file by paper must file an original and four copies 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 (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

• The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes 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 should be addressed to 445 12th Street, SW., Washington DC 20554.

**People with Disabilities:** To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call

the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

### **Initial Paperwork Reduction Act of 1995 Analysis**

This document contains proposed/modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due September 5, 2006. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

*OMB Control Number:* 3060-0863.

*Title:* Satellite Delivery of Network Signals to Unserved Households for Purposes of the Satellite Home Viewer Act.

*Form No.:* N.A.

*Type of Review:* Revision of currently approved collection.

*Respondents:* Business or other for-profit.

*Estimated Number of Respondents:* 2,215.

*Estimated Time Per Response:* 1.0 hour per written report.

*Frequency of Response:* Recordkeeping requirement; On occasion reporting requirement; Third party disclosure requirement.

*Estimated Total Annual Burden:* 280 hours.

*Estimated Total Annual Costs:* \$42,000 per year.

*Privacy Act Impact Assessment:* No Impact.

*Needs and Uses:* 47 CFR 73.686 describes a method for measuring signal strength at a household so that the satellite and broadcast industries and

consumers would have a uniform method for making an actual determination of the signal strength that a household received. The information gathered as part of the Grade B signal strength tests will be used to indicate whether consumers are "unserved" by over-the-air network signals. The written records of test results will be made after testing and predicting the strength of a television station's signal.

### **Summary of Notice of Proposed Rulemaking**

1. Consistent with the provisions of section 204 of Satellite Home Viewer Extension and Reauthorization Act of 2004 (SHVERA) (Pub. L. 108-447, 204, 118 Stat 2809, 3393 3423-24, (2004), codified at 47 U.S.C. 339(c)(1)) and Commission's *Report to Congress (SHVERA Report) ("Study of Digital Television Field Strength Standards and Testing Procedures"* (SHVERA Report), ET Docket No. 05-182, 20 FCC Rcd 19504 (2005)), the Commission proposes to amend the rules to include procedures for measuring the field strength of digital television signals. These new measurement procedures are needed to account for the differences that are inherent between the NTSC (analog) and digital television signals. While the proposed procedures would be generally applicable for measuring digital TV signal strengths, they would specifically be used in determining if a household is served by a digital television signal as part of an evaluation of the household's eligibility to receive a distant digital network signal from a satellite television provider. The proposals set forth were developed based on our recommendations in the *SHVERA Report*.

2. Wherever possible, the proposed procedures rely on existing, proven methods the Commission has established for measuring analog television signal strength at any individual location. The Commission request comment on these proposals. We also note that SHVERA gives subscribers the ability to request and pay for signal strength test if their satellite carrier does not request the test or refuses to do so. The Commission request comment on whether there are ways, such as by choice of equipment or by designation of procedures, to minimize the cost of digital signal strength tests while at the same time ensuring the accuracy and reliability of the results. We also note that SHVERA provides that testing of digital signal strength for this purpose could begin as early as April 30, 2006. We will allow subscribers and satellite carriers to rely on the proposed DTV measurement

procedures for evaluating DTV signal strengths pending our adoption of final rules.

3. *Antenna.* The current analog TV measurement rules allow the use of either a standard half-wave dipole or a directional (gain) antenna for which the antenna factor is known. The Commission request comment on whether we should require that measurements be taken using a calibrated gain antenna with a front-to-back ratio consistent with the DTV planning factors, or follow the approach used with analog TV signals and require that measurements be taken using either a standard half-wave dipole antenna or a gain antenna with a known antenna factor for the channel(s) that are to be tested. Parties addressing this issue should provide information to support their position, including technical merits, effect on the accuracy of measurements, and the practical implications for testing parties, including ease of use and cost. Parties performing measurements in accordance with the proposals set forth in the interim period pending the Commission's adoption of final DTV signal strength measurement procedures are advised that they may use a calibrated gain antenna with a front-to-back ratio consistent with the Commission's DTV planning assumptions, a standard half-wave dipole, or a directional (gain) antenna for which the antenna factor is known.

4. *Measurement procedures.* The current measurement procedures for analog television signals require that at least five measurements be made in a cluster of positions as close as possible to the location of the antenna site being tested. These measurements are taken for the signal strength of the visual carrier of the analog signal, and the median signal strength is reported as representative of the actual field strength of the signal. In addition, the current rules require that the intermediate frequency ("i.f.") of the measurement equipment be at least 200 kilohertz and no greater than 1 megahertz. The Commission propose to include in the digital signal measurement procedures the requirements that at least five measurements be made in a cluster as close as possible to the location being tested and that the median be reported and used to determine eligibility for distant network signals. To account for the facts that the digital TV signal does not have a visual carrier and that the digital signal tends to be flat across the entire bandwidth, we propose to require digital signal measurements to be conducted by measuring the integrated

average power over the signal's entire 6-megahertz bandwidth. To provide testing parties with flexibility in making measurements, we propose to require that the i.f. bandwidth of the measuring instrumentation be not greater than 6 MHz. This will allow testers to choose the measurement instrumentation and settings they believe appropriate, provided only that the equipment must be capable of integrating the measured power in the selected i.f. bandwidth across the 6 MHz TV channel. On this point, we note that in general the average power is measured by taking multiple measurements across the TV channel and integrating the results of those individual measurements. The Commission request comment on these proposals.

5. In addition, the Commission, propose to apply to the testing of digital TV signals the requirements in the analog TV testing rules that the instrumentation be set up with a shielded transmission line between the testing antenna and the field strength meter, that the antenna impedance be matched to the transmission line at all frequencies measured, and that the tester account for transmission line loss for each frequency being measured. Further, whenever an unbalanced line is used, we propose to require that a suitable balun be employed. We seek comment on these proposals.

6. The Commission further proposes, consistent with the analog testing rules, to require that digital television measurements be made with a horizontally polarized antenna. We also would require that the testing antenna be oriented so that its maximum gain (over an isotropic antenna) faces the strongest signal coming from the transmitter under test. If more than one station's signal is being measured, the testing antenna would be required to be oriented separately for each station. This procedure is consistent with the Commission's current analog signal measurement rules as well as with good engineering practice.

7. Finally, the Commission proposes to apply the antenna height requirement, set forth in the existing analog rules, as a required procedure for measuring digital signals. The rules currently require that, for field strength measurements at one-story buildings, the testing antenna be elevated to 6.1 meters (20 feet) above the ground. For field strength measurements at buildings taller than one story, the rules require that the testing antenna be elevated to 9.1 meters (30 feet) above the ground.

8. *Weather.* We propose that the current analog measurement rules with

respect to weather conditions be applied to the measurement of digital television signal field strength. Digital signal strength measurements are to be made only when inclement weather or major weather front movements are not present in the measurement area. We seek comment on this proposal.

9. *Data recording.* Our rules require the recording of the measured values of the analog field strength value in units of dBu. In addition, a number of additional factors must be recorded as part of the analog field strength measurement procedure. These factors include a listing of the calibrated equipment used in a field strength survey, the locations of each measurement performed at the site, factors that may affect a measurement reading (such as weather, topography or other obstacles), the time and date of measurements, and the signature of the person making the measurement. The Commission propose to apply these same recording requirements for the reporting of measurements of DTV signal strength. More specifically, we propose to require that a written record of the digital signal measurement process and results be made and that this record include at least the following: (1) A list of calibrated equipment used; (2) detailed description of the calibration of the measuring equipment, including field strength meters, measuring antenna, and connecting cable; (3) all factors which may affect the recorded field, such as topography, height and types of vegetation, buildings, obstacles, weather, and other local features for each spot at the measuring site; (4) a description of where each of the cluster measurements was made; (5) the time and date of the measurements and the signature of the person making the measurements; and (6) a list of the measured value of field strength (in units of dBu after adjustment for line loss and antenna factor) of the five readings made during the cluster measurement process, with the median value highlighted for each channel being measured. The Commission seek comment on this proposal.

10. *Tester Availability.* The Commission request comment on whether we can fashion rules that will address the lack of qualified, independent testers to perform signal strength tests. Are there steps that the Commission can take in this proceeding that will facilitate or enhance tester competence and availability? We seek comment on this question.

## Initial Regulatory Flexibility Act Analysis

11. As required by the Regulatory Flexibility Act of 1980, as amended ("RFA"),<sup>1</sup> the Commission has prepared this Initial Regulatory Flexibility Act Analysis ("IRFA") of the possible significant economic impact on small entities by the policies and rules proposed in this *Notice of Proposed Rulemaking* ("NPRM"). Written public comments are requested on this IRFA. Comments must be identified as response to the IRFA and must be filed by the deadlines for comments on the NPRM, provided in paragraph 20 of the item. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.<sup>2</sup> In addition, the NPRM (or summaries thereof), including the IRFA, will be published in the **Federal Register**.<sup>3</sup>

*A. Need for and Objectives of the Proposed Rules.* The Commission seek comment on whether the Commission should amend its rules as proposed to include measurement procedures for determining the strength of a digital broadcast television (DTV) signal at any specific location. These procedures would be used as a means of determining whether households are eligible to receive distant DTV network signals retransmitted by satellite communications providers. This Notice of Proposed Rulemaking begins the process of implementing our recommendations for DTV measurement procedures presented in the Commission's *Report to Congress* (SHVERA Report) pursuant to section 204(b) of the Satellite Home Viewer Extension and Reauthorization Act of 2004 (SHVERA).<sup>4</sup>

(1) The current rule includes measurement procedures for determining the strength of an analog broadcast television signal at any specific location and is used to determine household eligibility to receive distant analog TV network signals retransmitted by satellite communications providers. In December 2004, however, Congress enacted the Satellite Home Viewer Extension and Reauthorization Act of 2004,<sup>5</sup> pursuant to which, the Commission conducted an

*Inquiry*<sup>6</sup> (SHVERA Inquiry) and on December 9, 2005, released the SHVERA *Report to Congress*. In relevant part, the SHVERA *Report to Congress* stated that the Commission intended to conduct a rulemaking proceeding to specify procedures for measuring the field strength of digital television signals at individual locations.<sup>7</sup> The report also stated that the digital television measurement procedures should be similar to the current procedures for measuring the field strength of analog television stations in 73.686(d) of the rules, but with certain modifications to address the differences between analog and digital TV signals.<sup>8</sup>

(2) Wherever possible, the proposed digital signal strength measurement procedures rely on the existing, proven methods the Commission has established for measuring analog television signal strength at any individual location.<sup>9</sup> In the NPRM, the Commission requests comment on these proposals. We also note that the SHVERA statute provides that testing of digital signal strength for this purpose could begin as early as April 30, 2006.<sup>10</sup>

<sup>6</sup> See *In the Matter Of Technical Standards For Determining Eligibility For Satellite-Delivered Network Signals Pursuant To The Satellite Home Viewer Extension and Reauthorization Act, ET Docket No. 05-182, Notice of Inquiry* (Inquiry), 20 FCC Rcd. 9349 (2005).

<sup>7</sup> See SHVERA Report, *supra* note 4.

<sup>8</sup> *Id.*

<sup>9</sup> See generally, 47 CFR 73.686(d).

<sup>10</sup> 47 U.S.C. 339(a)(2)(D)(vii) provides trigger dates for testing. Generally, subscribers in the top 100 television markets will be able to request a digital signal strength test after April 30, 2006 and subscribers in other markets will be able to request a test after July 15, 2007. Only network stations that have received a tentative digital channel designation that is the same as such stations' current digital channel, or that have lost interference protection, are subject to the April 30, 2006 commencement date for signal strength testing. Network stations in the top 100 markets without tentative channel designations on their DTV channels, as well as all network stations not in the top 100 markets, will be subject to signal strength testing beginning July 15, 2007, unless the Commission grants the station a waiver. 47 U.S.C. 339(a)(2)(D)(vii)(AA).

Waiver requests by stations subject to the testing commencement date of April 30, 2006 were required to be submitted by November 30 2005. To be grantable, waiver requests must provide "clear and convincing evidence that the station's digital signal coverage is limited due to the unremediable presence of one or more of the following: 1) the need for international coordination or approvals; 2) clear zoning or environmental legal impediments; 3) force majeure; 4) the station experiences a substantial decrease in its digital signal coverage area due to the necessity of using a side-mounted antenna; 5) substantial technical problems that result in a station experiencing a substantial decrease in its coverage area solely due to actions to avoid interference with emergency response providers; or 6) no satellite carrier is providing the retransmission of the analog signals of local network stations under section 338 in the local market." The Act further provides that "under no

Therefore, the NPRM states that the Commission will rely on the proposed DTV measurement procedures for evaluating DTV signal strengths pending the adoption of rules in this regard.

*B. Legal Basis.* The legal basis for the rule changes proposed in the NPRM is contained in sections 1, 4(i) and (j), and 339 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and (j), and 339 (including amendments enacted in the Satellite Home Viewer Extension and Reauthorization Act of 2004).

*C. Description and Estimates of the Number of Small Entities to Which the Rules Adopted in This Notice May Apply.* The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules.<sup>11</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>12</sup> In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.<sup>13</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 Small Business Administration (SBA).<sup>14</sup>

(1) The proposed rules contained in the NPRM set forth procedures to measure the strength of digital television signals at any particular location, as a means of determining whether any particular household is "unserved" by a local DTV network station and is therefore eligible to receive a distant DTV network signal retransmitted by a Direct Broadcast Satellite (DBS) service provider. Therefore, DBS providers will be directly and primarily affected by the proposed rules, if adopted. In addition,

circumstances may such a waiver be based upon financial exigency." Waiver requests by stations subject to the testing commencement date of July 15, 2007 must be submitted to the Commission no later than February 15, 2007. See Public Notice DA No. 05-2979 (released Nov. 17, 2005). See generally, 47 U.S.C. 339(a)(2)(D)(vii)-(viii).

<sup>11</sup> 5 U.S.C. 603(b) (3), 604(a) (3).

<sup>12</sup> *Id.*, 601(6).

<sup>13</sup> 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such terms which are appropriate to the activities of the agency and publishes such definitions(s) in the **Federal Register**."

<sup>14</sup> 15 U.S.C. 632.

<sup>1</sup> See 5 U.S.C. 603. The RFA, see 5 U.S.C. 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104-121, 110 Stat. 847 (1996).

<sup>2</sup> 5 U.S.C. 603(a).

<sup>3</sup> *Id.*

<sup>4</sup> See SHVERA, *supra* n.1.

<sup>5</sup> See *id.*

the proposed rules, if adopted, will also directly affect those local digital television stations that broadcast network programming. Therefore, in this IRFA, we consider, and invite comment on, the impact of the proposed rules on small digital television broadcast stations, small DBS providers, and other small entities. A description of such small entities, as well as an estimate of the number of such small entities, is provided below.

(2) *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. Because DBS provides subscription services, DBS falls within the SBA-recognized definition of Cable and Other Program Distribution.<sup>15</sup> This definition provides that a small entity is one with \$13.5 million or less in annual receipts.<sup>16</sup> Currently, only three operators hold licenses to provide DBS service, which requires a great investment of capital for operation. All three currently offer subscription services. Two of these three DBS operators, DirecTV<sup>17</sup> and EchoStar Communications Corporation ("EchoStar"),<sup>18</sup> report annual revenues that are in excess of the threshold for a small business. The third DBS operator, Dominion Video Satellite, Inc. ("Dominion"), offers religious (Christian) programming and does not report its annual receipts.<sup>19</sup> The Commission does not know of any source which provides this information and, thus, we have no way of confirming whether Dominion qualifies as 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 licensee. Nevertheless, given the absence of specific data on this point, we acknowledge the possibility that there are entrants in this field that may not yet have generated \$13.5 million in annual receipts, and therefore may be

categorized as a small business, if independently owned and operated.

(3) *Television Broadcast Stations.* The proposed rules and policies apply to digital television broadcast licensees, and potential licensees of digital television service. The SBA defines a television broadcast station as a small business if such station has no more than \$13 million in annual receipts.<sup>20</sup> Business concerns included in this industry are those "primarily engaged in broadcasting images together with sound."<sup>21</sup> According to Commission staff review of the BIA Publications, Inc. Master Access Television Analyzer Database (BIA) on October 18, 2005, about 873 of the 1,307 commercial television stations<sup>22</sup> (or approximately 67 percent) have revenues of \$13 million or less and thus qualify as small entities under the SBA definition. We note, however, that, in assessing whether a business concern qualifies as small under the above definition, the controlling affiliation(s)<sup>23</sup> must be considered. 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.

(4) 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 the number of small businesses to

which the proposed rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. Also as noted, an additional element of the definition of "small business" is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may also be over-inclusive to this extent. Finally, because only those digital television stations that are affiliated with a network would be subject to the proposed rules, our estimate of potentially affected small businesses is over-inclusive for this reason as well.

(5) *Class A TV, LPTV, and TV translator stations.* The proposed rules and policies could also apply to licensees of Class A TV stations, low power television (LPTV) stations, and TV translator stations, as well as to potential licensees in these television services. The same SBA definition that applies to television broadcast licensees would apply to these stations. The SBA defines a television broadcast station as a small business if such station has no more than \$13 million in annual receipts.<sup>24</sup>

(6) Currently, there are approximately 592 licensed Class A stations, 2,145 licensed LPTV stations, 4,491 licensed TV translators and 11 TV booster stations.<sup>25</sup> Given the nature of these services, we will presume that all of these licensees qualify as small entities under the SBA definition. We note, however, that under the SBA's definition, revenue of affiliates that are not LPTV stations should be aggregated with the LPTV station revenues in determining whether a concern is small. Our estimate may thus overstate the number of small entities since the revenue figure on which it is based does not include or aggregate revenues from non-LPTV affiliated companies. We do not have data on revenues of TV translator or TV booster stations, but virtually all of these entities are also likely to have revenues of less than \$13 million and thus may be categorized as small, except to the extent that revenues of affiliated non-translator or booster entities should be considered. Finally, our estimate overstates the number of affected entities because these stations could be affected only if they both

<sup>20</sup> See 13 CFR 121.201, NAICS Code 515120.

<sup>21</sup> *Id.* This category description continues, "These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studios, from an affiliated network, or from external sources." Separate census categories pertain to businesses primarily engaged in producing programming. See Motion Picture and Video Production, NAICS code 512110; Motion Picture and Video Distribution, NAICS Code 512120; Teleproduction and Other Post-Production Services, NAICS Code 512191; and Other Motion Picture and Video Industries, NAICS Code 512199.

<sup>22</sup> Although we are using BIA's estimate for purposes of this revenue comparison, the Commission has estimated the number of licensed commercial television stations to be 1,368. See News Release, "Broadcast Station Totals as of June 30, 2005" (dated Aug. 29, 2005); see <http://www.fcc.gov/mb/audio/totals/bt050630.html>.

<sup>23</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 the power to control both." 13 CFR 121.103(a)(1).

<sup>24</sup> See 13 CFR 121.201, NAICS Code 515120.

<sup>25</sup> News Release, "Broadcast Station Totals as of December 31, 2005" (dated Feb. 23, 2006); see <http://www.fcc.gov/mb/audio/totals/bt051231.html>

<sup>15</sup> 13 CFR 121.201, NAICS code 517510.

<sup>16</sup> *Id.*

<sup>17</sup> DirecTV is the largest DBS operator and the second largest MVPD, serving an estimated 13.04 million subscribers nationwide; See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Twelfth Annual Report, FCC 05-255, ¶ 73 (rel. March 3, 2006) ("2006 Cable Competition Report").

<sup>18</sup> EchoStar, which provides service under the brand name Dish Network, is the third largest MVPD, serving an estimated 11.45 million subscribers nationwide. *Id.*

<sup>19</sup> Dominion, which provides service under the brand name Sky Angel, serves fewer than one million subscribers. *Id.*

broadcast a digital signal and are affiliated with a network.

D. *Description of Projected Reporting, Recordkeeping and Other Compliance Requirements.* The rules proposed in this NPRM would establish procedures for measuring digital television signal strength at any specific location. These measurement procedures would be used as a means of determining whether households are eligible to receive distant DTV network signals retransmitted by DBS providers. These procedures are similar to the ones used for measuring analog television signal strength for like purposes, with only those revisions necessary to account for the difference between digital and analog signals. Section 339(a)(2)(D)(vi) of the Communications Act (47 U.S.C. 339(a)(2)(D)(vi)) delineates when measurements are necessary and when the satellite communications provider, the digital television broadcast station, or the consumer is responsible for bearing their cost. No reporting requirement is proposed. In this IFRA, we seek comment on the types of burdens direct broadcast satellite service providers and digital television broadcast stations will face in complying with the proposed requirements. Entities, especially small businesses and, more generally, small entities are encouraged to quantify the costs and benefits of the proposed reporting requirements.

E. *Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered.* Since the adoption of analog television signal strength procedures in 1999, the number of analog TV signal strength measurements taken in order to determine household eligibility to receive distant analog TV network signals have been infrequent. For example, DIRECTV, in comments filed in ET Docket No. 05-182, *Notice of Inquiry on Technical Standards for Determining Eligibility for Satellite-Delivered Network Signals Pursuant to the Satellite Home Viewer Extension and Reauthorization Act*, 20 FCC Rcd 9349 (2005), stated that in the last five years only 1400 DIRECTV subscribers received onsite tests to determine eligibility to receive distant network television signals. In that proceeding, both DIRECTV and EchoStar indicated that they generally declined to perform or arrange for a test and instead refused to offer distant signals when subscribers were predicted to be "served" and the relevant network stations refused to grant a waiver. DIRECTV cited high costs both monetary and in time involved as reasons that tests have not been performed.

(1) As TV stations transition from analog transmissions to DTV, we anticipate that the combined number of analog and digital measurements will not increase substantially. This is so because, as part of the DTV transition, television stations will be ceasing the transmission of analog signals and households seeking to receive retransmitted DTV network signals will not be seeking to receive analog signals. In other words, digital measurements will replace analog measurements. Also, as direct broadcast stations increasingly offer local-to-local service to households pursuant to *SHVERA*, those households will not be eligible to receive retransmitted distant signals and therefore DTV signal strength measurements for this purpose will not be necessary.

(2) In addition, the NPRM requests comment on what measures the Commission can take, consistent with the *SHVERA* statute, that would reduce the cost to subscribers of digital signal testing without reducing the accuracy and reliability of the tests. We also note that *SHVERA* provides that testing of digital signal strength for this purpose could begin as early as April 30, 2006. We will rely on the proposed DTV measurement procedures as interim rules for evaluating DTV signal strengths pending our adoption of final rules.

(3) Finally, the NPRM proposes, as is now the case with analog signal strength measurements, to allow measurements to be taken using either a standard half-wave dipole antenna or a gain antenna with a known antenna factor for the channel(s) that are to be tested. For digital measurements, this approach would allow the tester flexibility in performing the test while still providing for accurate results. The NPRM requests comment on this proposal and, alternatively, on whether we should require the use of a gain antenna only. Commenters are also asked to provide information regarding differences in ease of use of gain antennas as compared to the use of half-wave dipole antennas. Finally, to assure that we explore this issue in depth and develop a complete record on this issue, the NPRM seeks comment on what rules we should propose, if any, that would address the apparent lack of qualified, independent testers to perform signal strength tests. Commenters are asked to submit information related to the cost of testing and the number of qualified testers available. The NPRM states that we seek to determine if there are alternative methods that would reduce the cost of performing a test while

retaining or improving on the accuracy of the proposed method.

F. *Federal Rules that Might Duplicate, Overlap, or Conflict with the Proposed Rules.* None.

#### List of Subjects in 47 CFR Part 73

Communications equipment, Television.

Federal Communications Commission.

Marlene H. Dortch,  
Secretary.

#### Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73, 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 and 336.

2. Section 73.686 is amended by revising the heading to paragraph (d) and revising paragraph (d)(1)(i) and by adding a new paragraph (e) to read as follows:

#### § 73.686 Field strength measurements.

\* \* \* \* \*

(d) *NTSC—Collection of field strength data to determine NTSC television signal intensity at an individual location—cluster measurements—(1)\* \* \*(i) Testing antenna.* The test antenna shall be either a standard half-wave dipole tuned to the visual carrier frequency of the channel being measured or a gain antenna, provided its antenna factor for the channel(s) under test has been determined. Use the antenna factor supplied by the antenna manufacturer as determined on an antenna range.

\* \* \* \* \*

(e) *DTV—Collection of field strength data to determine DTV television signal intensity at an individual location—cluster measurements—(1) Preparation for measurements—(i) Testing antenna.* The test antenna shall be either a standard half-wave dipole tuned to the center frequency of the channel being tested or a gain antenna provided its antenna factor for the channel(s) under test has been determined. Use the antenna factor supplied by the antenna manufacturer as determined on an antenna range.

(ii) *Testing locations—*At the test site, choose a minimum of five locations as close as possible to the specific site where the site's receiving antenna is located. If there is no receiving antenna at the site, choose a minimum of five

locations as close as possible to a reasonable and likely spot for the antenna. The locations shall be at least three meters apart, enough so that the testing is practical. If possible, the first testing point should be chosen as the center point of a square whose corners are the four other locations. Calculate the median of the five measurements (in units of dBu) and report it as the measurement.

(iii) *Multiple signals*—If more than one signal is being measured (*i.e.*, signals from different transmitters), use the same locations to measure each signal.

(2) *Measurement procedure.* Measurements shall be made in accordance with good engineering practice and in accordance with this section of the rules. At each measuring location, the following procedure shall be employed:

(i) *Testing equipment.* Perform an on-site calibration of the test instrument in accordance with the manufacturer's specifications. Tune a calibrated instrument to the center of the channel being tested. Measure the integrated average power over the full 6 megahertz bandwidth of the television signal. The intermediate frequency ("i.f.") of the instrument must be less than or equal to 6 megahertz and the instrument must be capable of integrating over the selected i.f. Take all measurements with a horizontally polarized antenna. Use a shielded transmission line between the testing antenna and the field strength meter. Match the antenna impedance to the transmission line at all frequencies measured, and, if using an un-balanced line, employ a suitable balun. Take account of the transmission line loss for each frequency being measured.

(ii) *Weather.* Do not take measurements in inclement weather or when major weather fronts are moving through the measurement area.

(iii) *Antenna elevation.* When field strength is being measured for a one-story building, elevate the testing antenna to 6.1 meters (20 feet) above the ground. In situations where the field strength is being measured for a building taller than one-story, elevate the testing antenna 9.1 meters (30 feet) above the ground.

(iv) *Antenna orientation.* Orient the testing antenna in the direction which maximizes the value of field strength for the signal being measured. If more than one station's signal is being measured, orient the testing antenna separately for each station.

(3) Written record shall be made and shall include at least the following:

(i) A list of calibrated equipment used in the field strength survey, which for

each instrument, specifies the manufacturer, type, serial number and rated accuracy, and the date of the most recent calibration by the manufacturer or by a laboratory. Include complete details of any instrument not of standard manufacture.

(ii) A detailed description of the calibration of the measuring equipment, including field strength meters, measuring antenna, and connecting cable.

(iii) For each spot at the measuring site, all factors which may affect the recorded field, such as topography, height and types of vegetation, buildings, obstacles, weather, and other local features.

(iv) A description of where the cluster measurements were made.

(v) Time and date of the measurements and signature of the person making the measurements.

(vi) For each channel being measured, a list of the measured value of field strength (in units of dBu after adjustment for line loss and antenna factor) of the five readings made during the cluster measurement process, with the median value highlighted.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 060621176-6176-01; I.D. 052306A]

RIN 0648-AU50

#### Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Great South Channel Scallop Dredge Exemption Area

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule, request for comments.

**SUMMARY:** NMFS proposes to modify the regulations implementing the Northeast (NE) Multispecies Fishery Management Plan (FMP) to allow vessels issued either a General Category Atlantic sea scallop permit or a limited access sea scallop permit, when not fishing under a scallop days-at-sea (DAS) limitation, to fish for scallops with small dredges (combined width not to exceed 10.5 ft (3.2 m)) within the Great South Channel Scallop Dredge Exemption Area. This

proposed rule responds to a request from the fishing industry to add this area to the list of exempted fisheries. The intent of this action is to allow small scallop dredge vessels to harvest scallops in a manner that is consistent with the bycatch reduction objectives of the FMP.

**DATES:** Comments must be received no later than 5 p.m., eastern daylight time, on July 21, 2006.

**ADDRESSES:** Comments may be submitted by any of the following methods:

- E-mail: [GSC521@NOAA.gov](mailto:GSC521@NOAA.gov). Include in the subject line the following: "Comments on General Category Scallop Dredge Exemption."

- Federal e-Rulemaking Portal: <http://www.regulations.gov>.

- Mail: Paper, disk, or CD-ROM comments should be sent to Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on General Category Scallop Dredge Exemption."

- Fax: (978) 281-9135.

Copies of supporting documents, including the Regulatory Impact Review (RIR), the Initial Regulatory Flexibility Analysis (IRFA), and the Environmental Assessment (EA) prepared for this action are available from Patricia A. Kurkul, Regional Administrator, NMFS, at the above address. A summary of the IRFA is provided in the Classification section of this proposed rule.

#### FOR FURTHER INFORMATION CONTACT:

Tobey H. Curtis, Fishery Management Specialist, 978-281-9273, fax 978-281-9135.

#### SUPPLEMENTARY INFORMATION:

##### Background

Current regulations, implemented under Framework Adjustment 9 and expanded under Amendment 7 to the FMP, contain a multispecies fishing mortality and bycatch reduction measure that is applied to the Gulf of Maine (GOM), Georges Bank (GB), and Southern New England (SNE) Exemption Areas. A vessel may not fish in these areas unless it is fishing under a NE multispecies or a scallop day-at-sea (DAS) allocation, is fishing with exempted gear, is fishing under the Small Vessel Handgear (A or B) or Party/Charter permit restrictions, or is fishing in an exempted fishery. The procedure for adding, modifying, or deleting fisheries from the list of exempted fisheries is found in 50 CFR part 648.80. A fishery may be exempted by the Regional Administrator (RA), after consultation with the New England