III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Authority: 42 U.S.C. 7401 *et seq.*

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 29, 2005.

Richard E. Greene,

Regional Administrator, Region 6.

[FR Doc. 05–9216 Filed 5–6–05; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MB Docket No. 05–181; FCC 05–92]

Implementation of Section 210 of the Satellite Home Viewer Extension and Reauthorization Act of 2004 To Amend Section 338 of the Communications Act

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the Commission proposes rules to implement section 210 of the Satellite Home Viewer Extension and Reauthorization Act of 2004 (''SHVERA''). The Satellite Home Viewer Extension and Reauthorization Act of 2004 (SHVERA) was enacted on December 8, 2004 as title IX of the ''Consolidated Appropriations Act, 2005.'' This proceeding to implement section 210 of SHVERA is one of a number of Commission proceedings that will be required to implement SHVERA.

DATES: Comments for this proceeding are due on or before June 8, 2005; reply comments are due on or before June 23, 2005. Written comments on the proposed information collection requirements contained in this document must be submitted by the public, the Office of Management and Budget (OMB), and other interested parties on or before July 8, 2005.

ADDRESSES: You may submit comments, identified by MB Docket No. 05–181, 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* or phone: 202–418–0530 or TTY: 202–418–0432.

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

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Eloise Gore, *Eloise.Gore@fcc.gov* of the Media Bureau, Policy Division, (202) 418–2120. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this *NPRM*, contact Cathy Williams, Federal Communications Commission, 445 12th St, SW., Room 1–C823, Washington, DC 20554, or via the Internet to *Cathy.Williams@fcc.gov*. If you would like to obtain or view a copy of this revised information collection, OMB Control Number 3060–0980, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking (NPRM)*, FCC 05–92, adopted on April 29, 2005, and released on May 2, 2005. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY–A257, Washington, DC 20554. These documents will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. To request this document in accessible formats

(computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Initial Paperwork Reduction Act of 1995 Analysis

This document contains proposed 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 July 8, 2005. 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: 3060–0980.

Title: SHVERA Rules; Implementation of Section 210 of the Satellite Home Viewer Extension and Reauthorization Act of 2004 (Broadcast Signal Carriage Issues, Retransmission Consent Issues).

Form No.: Not applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Estimated Number of Respondents: 7,179.

Estimated Time Per Response: 1–5 hours.

Frequency of Response: On occasion reporting requirement; every three years reporting requirement.

Estimated Total Annual Burden: 10,196 hours.

Estimated Total Annual Costs: $30,000.

Privacy Act Impact Assessment: No impact(s).

Needs and Uses: On April 29, 2005, the Commission adopted a *Notice of Proposed Rule Making (NPRM)*, In the Matter of the Implementation of Section 210 of the Satellite Home Viewer Extension and Reauthorization Act of 2004 to Amend Section 338 of the Communications Act, MB Docket No. 05–181, FCC 05–92. The *NPRM* proposed amendments to 47 CFR 76.66 to implement section 210 of the Satellite Home Viewer Extension and Reauthorization Act of 2004 (''SHVERA''). Section 210 of the SHVERA amends section 338(a) of the Communications Act of 1934, as amended, (''Communications Act'' or ''Act''). Section 338 governs the carriage of local television broadcast stations by satellite carriers. In general, the SHVERA amends this section to require satellite carriers to carry both the analog and digital signals of television broadcast stations in local markets in noncontiguous States (including Alaska and Hawaii), and to provide these signals to substantially all of their subscribers in each station's local market by December 8, 2005 for analog signals and by June 8, 2007 for digital signals.

On March 28, 2005, the Commission adopted an Order, FCC 05–81, Implementation of the Satellite Home Viewer Extension and Reauthorization Act of 2004 (''SHVERA''), Procedural Rules, to implement procedural rules as required by the SHVERA. The SHVERA is the third statute that addresses satellite carriage of television broadcast stations. The 2004 SHVERA gives satellite carriers the additional option to carry Commission-determined ''significantly viewed'' out-of-market signals to subscribers. The SHVERA requires the Commission to undertake several proceedings to implement new rules, revise existing rules, and conduct studies. The Procedural Rules Order to implement sections 202, 205, and 209 of the SHVERA is one of a number of Commission proceedings that will be required to implement the SHVERA.

Summary of the Notice of Proposed Rulemaking

I. Introduction

1. In this Notice of Proposed Rulemaking, *NPRM*, we propose rules to implement section 210 of the Satellite Home Viewer Extension and Reauthorization Act of 2004 (''SHVERA''). The Satellite Home Viewer Extension and Reauthorization Act of 2004 (SHVERA), Pub. L. 108–447, section 210, 118 Stat 2809 (2004). SHVERA was enacted on December 8, 2004, as title IX of the ''Consolidated Appropriations Act, 2005.'' This proceeding to implement section 210 of SHVERA is one of a number of Commission proceedings that will be required to implement SHVERA. The other proceedings will be undertaken and largely completely in 2005; *see* section 202 of the SHVERA (entitled ''Significantly Viewed Signals Permitted To Be Carried''), SHVERA NPRM, MB Docket No. 05–49, FCC 05–24, 2005 WL 289026 (rel. Feb. 7, 2005); sections 202, 204, 205, 207, 208, 209 and 210 of the SHVERA; *see also* Public Notice, ''Media Bureau Seeks Comment for Inquiry Required by the SHVERA on Rules Affecting Competition in the Television Marketplace,'' MB Docket No. 05–28, DA 05–169 (rel. Jan. 25, 2005) (Public Notice regarding Inquiry required by section 208 of the SHVERA concerning the impact of certain rules and statutory provisions on competition in the television marketplace); Implementation of Section 207 of the Satellite Home Viewer Extension and Reauthorization Act of 2004, Reciprocal Bargaining Obligations, MB Docket No. 05–89, FCC 05–49 (rel. Mar. 7. 2005); and Procedural Rules, FCC 05–81 (rel. March 30, 2005) (Order implementing rule revisions required by sections 202, 205, and 209). Section 210 of the SHVERA amends section 338(a) of the Communications Act of 1934, as amended, (''Communications Act'' or ''Act''). Section 338 governs the carriage of local television broadcast stations by satellite carriers; *see* 47 U.S.C. 338. In general, the SHVERA amends this section to require satellite carriers to carry both the analog and digital signals of television broadcast stations in local markets in noncontiguous states, including Alaska and Hawaii, and to provide these signals to substantially all of their subscribers in each station's local market by December 8, 2005 for analog signals and by June 8, 2007 for digital signals; *see* 47 U.S.C. 338(a)(4) (*as amended by* section 210 of the SHVERA).

II. Background

A. Satellite Home Viewer Act (SHVA) and Satellite Home Viewer Improvement Act of 1999 (SHVIA)

2. In 1988, Congress passed the Satellite Home Viewer Act (''SHVA''), which established a statutory copyright license for satellite carriers to offer subscribers access to broadcast programming via satellite when they are unable to receive the signal of a broadcast station over the air (that is, an ''unserved'' household). The Satellite Home Viewer Act of 1988, Pub. L. 100–667, 102 Stat. 3935, Title II (1988)

(codified at 17 U.S.C. 111, 119). SHVA was enacted on November 16, 1988, as an amendment to the copyright laws. SHVA gave satellite carriers a statutory license to offer signals to ''unserved'' households. 17 U.S.C. 119(a). In 1999, Congress enacted the Satellite Home Viewer Improvement Act (''SHVIA''), which expanded on the 1988 SHVA by amending both the 1988 copyright laws, and the Communications Act to permit satellite carriers to retransmit local broadcast television signals directly to subscribers in the station's local market (''local-into-local'' service) without requiring that they be in ''unserved'' households; *see* 17 U.S.C. 119 and 122, 47 U.S.C. 325, 338 and 339. The Satellite Home Viewer Improvement Act of 1999, Pub. L. 106–113, 113 Stat. 1501 (1999) (codified in scattered sections of 17 and 47 U.S.C.). SHVIA was enacted on November 29, 1999, as Title I of the Intellectual Property and Communications Omnibus Reform Act of 1999 (''IPACORA'') (relating to copyright licensing and carriage of broadcast signals by satellite carriers). The SHVIA created the copyright license to provide local signals to subscribers regardless of whether they were ''unserved;'' *see* 17 U.S.C. 122.

3. A satellite carrier provides ''local-into-local'' service when it retransmits a local television station's signal back into the local market of the television station for reception by subscribers. If a carrier carries one or more stations in the market pursuant to the statutory copyright license, it is required to carry all of the other local stations in the local market, upon the station's request (that is, the ''carry-one, carry-all'' requirement); *see* 47 U.S.C. 338(a)(1). Generally, a television station's ''local market'' is the designated market area (''DMA'') in which it is located. Section 340(i)(1) (*as amended by* section 202 of the SHVERA), defines the term ''local market'' by using the definition in 17 U.S.C. 122(j)(2): ''The term 'local market,' in the case of both commercial and noncommercial television broadcast stations, means the designated market area in which a station is located, and—(i) in the case of a commercial television broadcast station, all commercial television broadcast stations licensed to a community within the same designated market area are within the same local market; and (ii) in the case of a noncommercial educational television broadcast station, the market includes any station that is licensed to a community within the same designated market area as the noncommercial educational television broadcast station.'' DMAs describe each television market in terms of a unique geographic area, and are established by Nielsen Media Research based on measured viewing patterns; *see* 17 U.S.C. 122(j)(2)(A)–(C). There are 210 DMAs that encompass all counties in the 50 United States, except for certain areas in Alaska. Alaska has three DMAs situated around major population centers, but most of the State, which is sparsely populated, is not included in DMAs. A satellite carrier choosing to provide such local-into-local service is generally obligated to carry any qualified local station in a particular DMA that has made a timely election for mandatory carriage, unless the station's programming is duplicative of the programming of another station carried by the carrier in the DMA, or the station does not provide a good quality signal to the carrier's local receive facility; *see* 47 U.S.C. 338(a)(1), (b)(1) and (c)(1).

B. Satellite Home Viewer Extension and Reauthorization Act of 2004 (SHVERA)

4. In December 2004, Congress passed and the President signed the Satellite Home Viewer Extension and Reauthorization Act of 2004. SHVERA again amends the 1988 copyright laws and the Communications Act to further aid the competitiveness of satellite carriers and expand program offerings for satellite subscribers; *see* 47 U.S.C. 325, 338, 339 and 340. Section 102 of SHVERA creates a new 17 U.S.C. 119(a)(3) to provide satellite carriers with a statutory copyright license to offer ''significantly viewed'' signals as part of their local service to subscribers. This rulemaking is required to implement provisions in section 210 of the SHVERA concerning satellite carriage of local stations in the noncontiguous states, including Alaska and Hawaii; *see* 47 U.S.C. 338(a)(4).

III. Discussion

5. Section 210 of the SHVERA amends section 338(a) of the Communications Act to require satellite carriers with more than five million subscribers in the United States to carry the analog and digital signals of each television broadcast station licensed in local markets ''within a State that is not part of the contiguous United States.'' Analog signals are required to be carried by December 8, 2005, and digital signals by June 8, 2007. A carrier is required to provide these signals to substantially all of its subscribers in each station's local market. In addition, a satellite carrier is required to make available the stations that it carries in at least one local market to substantially all of its subscribers located outside of local markets and in the same State. The SHVERA also mandates that satellite carriers may not charge subscribers for these local signals more than they charge subscribers in other States to receive local market television stations. Although most of the requirements imposed by the new section 338(a)(4) are self-effectuating, the SHVERA requires the Commission to promulgate regulations concerning the timing of carriage elections by stations in local markets in the noncontiguous states; *see* 47 U.S.C. 338(a)(4) (as amended by the SHVERA), which provides: (4) CARRIAGE OF SIGNALS OF LOCAL STATIONS IN CERTAIN MARKETS–A satellite carrier that offers multichannel video programming distribution service in the United States to more than 5,000,000 subscribers shall (A) within 1 year after the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, retransmit the signals originating as analog signals of each television broadcast station located in any local market within a State that is not part of the contiguous United States, and (B) within 30 months after such date of enactment retransmit the signals originating as digital signals of each such station. The retransmissions of such stations shall be made available to substantially all of the satellite carrier's subscribers in each station's local market, and the retransmissions of the stations in at least one market in the State shall be made available to substantially all of the satellite carrier's subscribers in areas of the State that are not within a designated market area. The cost to subscribers of such retransmissions shall not exceed the cost of retransmissions of local television stations in other States. Within 1 year after the date of enactment of that Act, the Commission shall promulgate regulations concerning elections by television stations in such State between mandatory carriage pursuant to this section and retransmission consent pursuant to section 325(b), which shall take into account the schedule on which local television stations are made available to viewers in such State. As required by the SHVERA, we open this rulemaking proceeding and seek comments on implementation of the SHVERA's amendments to section 338(a) of the Act, on rule proposals in this *NPRM*, and tentative conclusions regarding these rules. The proposed rules are in the Appendix to this *NPRM.* These amendments apply only to satellite service in the noncontiguous states. The existing signal carriage provisions in section 76.66 also continue to apply to satellite service in

the noncontiguous states, where relevant and not inconsistent with the rules proposed in this proceeding; *see* 47 CFR 76.66.

A. Satellite Carriers With More Than 5,000,000 Subscribers

6. The SHVERA adds subsection 338(a)(4) to the Act, which applies to a ''satellite carrier that offers multichannel video programming distribution service in the United States to more than 5,000,000 subscribers;'' *see* 47 U.S.C. 338(a)(4). We include this limitation in the proposed new section 76.66(b)(2). This provision applies to satellite carriers that have more than five million subscribers in 2005 and, in the future, to any carriers with more than five million subscribers. Currently, DirecTV and EchoStar qualify under this definition. We seek comments regarding the proposed rule.

B. Noncontiguous States

7. Section 210 of SHVERA applies to ''a State that is not part of the contiguous United States;'' *see* 47 U.S.C. 338(a)(4). In the Communications Act, the definition of ''State'' includes ''the Territories and possessions;'' *see* 47 U.S.C. 153(40). We seek comment on whether ''State'' as used in the SHVERA includes the noncontiguous territories and possessions of the United States, including but not limited to Puerto Rico and Guam and whether considerations such as a satellite provider's regulatory authorizations and/or actual service area are relevant to interpreting the obligation under section 338(a)(4) to serve ''noncontiguous states.'' We note that territories in the Pacific, such as Guam, are in a different International Telecommunication Union (''ITU'') region. The contiguous United States, Alaska, Hawaii, Puerto Rico and the U.S. Virgin Islands are located in ITU Region 2 and have orbital assignments in the Region 2 BSS Plan. Guam, the Northern Marianas, Wake Island and Palmyra Island are located in ITU Region 3 and have orbital assignments in the Region 3 BSS plan at 122.0° E.L., 121.80° E.L., 140.0° E.L. and 170.0° E.L. respectively. We seek comment on the impact of regulatory differences (*e.g.*, use of different frequency bands) between ITU regions in providing service to these locations. Spot beam technology may allow coverage of widely spaced areas if visible from the satellite location. Many areas are not visible to all satellites. For example, Guam is below the horizon for United States allocations east of 148° W.L. Previously the Commission recognized that contiguous United States (''CONUS'') antenna beams modified to include Puerto Rico and the U.S. Virgin Islands could divert power from other regions and potentially adversely affect the services of other countries. We seek comment on satellite carriers' current capability to serve these areas using current or planned technology.

C. Analog and Digital Signals

8. The SHVERA requirements for satellite carriage to the noncontiguous states differ significantly from the existing satellite broadcast carriage requirements, both in scope and timing. Currently, under the Communications Act and Commission rules implementing the Act, satellite carriers choose whether to rely on the statutory copyright license in section 122 of title 17 to offer ''local-into-local service,'' which in turn triggers the carry-one, carry-all obligation; *see* 47 U.S.C. 338(a)(1) and 47 CFR 76.66(b), *Implementation of the Satellite Home Viewer Improvement Act of 1999*, 16 FCC Rcd 1918 (2000) 16 FCC Rcd 16544 (2001) (''DBS Must Carry Reconsideration Order''). The U.S. Court of Appeals for the Fourth Circuit upheld the constitutional validity of SHVIA and the reasonableness of the Commission's rules promulgated thereunder; *see Satellite Broadcasting and Communications Ass'n* v. *FCC, 275 F.3d 337 (2001), cert. denied, 536 U.S. 922 (2002)*. The Communications Act, moreover, prohibits a multichannel video programming distributor from retransmitting the signal of a broadcast station unless it has ''the express authority'' of the station. 47 U.S.C. 325(b)(1)(A), 17 U.S.C. 122(a) (as amended by section 1002 of the SHVIA) and 47 U.S.C. 338(a)(1) (as amended by section 1008 of the SHVIA). Satellite carriers are not currently required to offer local-into-local service in all markets. The question of satellite carriage obligations concerning a station's digital signal is currently pending before the Commission.

9. The new SHVERA provision for noncontiguous states supersedes carry-one, carry-all and the pending digital carriage rulemaking proceeding by mandating dual analog and digital carriage in the noncontiguous states. A satellite carrier with more than five million subscribers is required by the SHVERA to retransmit the analog signals of each television station in local markets in the noncontiguous states to subscribers in those local markets by December 8, 2005 (one year after enactment of the SHVERA). The SHVERA expands this requirement to include the digital signals of each station no later than June 8, 2007 (30 months after enactment of SHVERA). If any or all of the local stations in the noncontiguous states are still broadcasting analog signals as well as digital signals, as of June 8, 2007, the SHVERA requirement mandates dual must carry. The Communciations Act provides for termination of analog signal licenses as of December 31, 2006, unless local stations request an extension and demonstrate that one or more criteria exist in their markets; *see* 47 U.S.C. 309(j)(14) (criteria include the so-called ''85% test''). Section 210 of the SHVERA, which adds the carriage obligations for stations in noncontiguous states (section 338(a)(4)), requires carriage of ''signals originating as analog signals'' and ''signals originating as digital signals'' with no mention of a term such as ''primary video,'' the term used in the cable mandatory carriage provisions. 47 U.S.C. 534(b)(3) and 535(g). The Commission recently concluded that the statutory term relating to cable mandatory carriage, ''primary video,'' was ambiguous with respect to whether it requires cable operators to carry broadcasters' multicast signals. Faced with an ambiguous statute, the Commission did not require mandatory carriage of multicast signals by cable systems. The SHVERA provision before us contains no such ambiguity. Moreover, we note that section 210 uses the plural term ''signals,'' requiring satellite carriers to retransmit the signals originating as digital signals of each such station; *see* 47 U.S.C. 338(a)(4). In sum, this SHVERA amendment to section 338 does not contain any limitation on the nature of the broadcast signal that satellite operators must carry in the non-contiguous states. We believe, therefore, that the amendment requires that satellite carriers carry all multicast signals of each station in noncontiguous states and carry the high definition digital signals of stations in noncontiguous states in high definition format. We note that satellite carriage of high definition local signals is also under review in the ongoing broadcast carriage rulemaking docket in the context of applying the statutory prohibition on material degradation. We seek comment on these interpretations, and any alternative construction of the SHVERA as the statute relates to the carriage of multicast and/or high definition signals; *see* MB Docket Nos. 98–120 and 00–96, *WHDT* v. *Echostar*, 18 FCC Rcd 396 (MB 2003) (''WHDT Order'').

D. Carriage Election by Stations

10. Section 210 of the SHVERA expressly requires only that the Commission promulgate regulations

concerning the timing of the carriage elections related to the new carriage provisions in the noncontiguous states. Section 210 of the SHVERA also refers to the ''cost to subscribers of such transmissions'' but does not require rules for implementation. The Commission does not regulate rates, costs or prices for satellite service to subscribers. In this proceeding we propose regulations to implement the timing required by the carriage requirements in the noncontiguous states, and we will otherwise apply the rules pertaining to satellite carriage as they were adopted to implement section 338 pursuant to the SHVIA; *see* 47 U.S.C. 338(a)(1), (b)(1), and (c), 47 CFR 76.66(g) and (h). Therefore, carriage is mandated in the noncontiguous states for the above dates in 2005 and 2007 when requested by a television station; *see* proposed rule section 76.66(b)(2). The carriage procedures for stations in the noncontiguous states shall follow the existing requirements, except with respect to the carriage election process, as proposed here; *see* proposed rule section 76.66(c)(6). Non-commercial television stations do not elect carriage because they cannot elect retransmission consent; *see* 47 U.S.C. 325(b)(2)(A). They are entitled to mandatory carriage; *see* 47 U.S.C. 338, proposed rule section 76.66(c)(6). They are entitled to mandatory carriage; *see* 47 U.S.C. 338. We invite comment on these interpretations and proposals.

11. The analog signal carriage requirement mandated by the SHVERA for satellite carriers serving noncontiguous states commences several weeks before the carriage cycle that applies to satellite carriers and broadcast stations in the contiguous states, which commences January 1, 2006, and continues until December 31, 2008; *see* 47 CFR 76.66(c). The carriage election process enables stations to choose between carriage pursuant to retransmission consent or mandatory carriage. Retransmission consent is based on an agreement between a broadcast station and satellite carrier, and includes a station's authorization and terms for allowing its broadcast signal to be carried; *see* 47 U.S.C. 325(b). Broadcast stations and satellite carriers are required to negotiate retransmission consent agreements in good faith; *see* 47 U.S.C. 338(b)(3)(c). If a station elects must-carry status, it is, in general, entitled to insist without other terms that the satellite carrier carry its signal in its local market; *see* 47 U.S.C. 338(a), 47 CFR 76.66(c).

12. To implement the carriage election timing requirements in section 210 of the SHVERA, we propose to track the existing regulations as closely as possible so that carriage elections in the noncontiguous states will be synchronized with carriage elections in the contiguous states quickly and smoothly. This synchronization is intended to make the process simple and certain for both the local stations and the satellite carriers. The first satellite carriage cycle (pursuant to the SHVIA) will end on December 31, 2005. The carriage election deadline for the second cycle is October 1, 2005, for carriage beginning January 1, 2006; *see* 47 CFR 76.66(c)(4). Because the analog carriage requirement in the noncontiguous states is effective only 24 days earlier, December 8, 2005, we propose to keep the same election deadline of October 1, 2005. Thus, television broadcast stations in a local market in the noncontiguous states would be required to make a retransmission consent-mandatory carriage (must carry) election by October 1, 2005, which is the same deadline as for local stations in local-into-local markets in the contiguous states; *see* proposed section 76.66(c)(6). Carriage pursuant to a mandatory carriage election in the contiguous states will begin on January 1, 2006, and carriage under our proposed rules for noncontiguous states would begin by December 8, 2005; *see* 47 CFR 76.66(c)(2).

13. With respect to carriage of the digital signals of stations in a noncontiguous state, we propose that the retransmission consent-must carry election by a television station in a local market in the noncontiguous states should be a two-step process with one election that applies to the analog signal carriage, which commences December 8, 2005, and a second carriage election that would govern carriage of the digital signal; *see* proposed rule section 76.66(c)(6). Carriage of signals originating as digital must commence by June, 8, 2007, but may begin pursuant to retransmission consent at any time. The deadline for the second carriage election, for digital carriage, would be April 1, 2007, two months before carriage must commence. Alternatively, the station's election by October 1, 2005, for its analog signal, could also apply to its digital signal, for which mandatory carriage will commence by June 8, 2007. We seek comment on our proposed two-step approach and on the alternative of a single election. Two separate elections would be consistent with the Commission's Cable Must Carry decision in 2001 which permits stations broadcasting both analog and digital signals to elect must carry for their analog signal and retransmission consent for their digital signal. We believe that, regardless of whether the carriage election is two-step or one-step, stations in the noncontiguous states should be permitted to elect must carry for their analog signals and negotiate for carriage of the digital signals via retransmission consent before the mandatory digital signal carriage takes effect. That is, until the digital carriage rights for local stations in the noncontiguous states take effect as of June 8, 2007, stations should be permitted to separately negotiate for voluntary carriage of their digital signals even if they elect mandatory carriage for their analog signals; *see* proposed section 76.66(c)(6). We seek comment on these proposals.

14. After the initial carriage cycle in the noncontiguous states, the election cycle provided in section 76.66(c) will apply in the future; *see* proposed section 76.66(c)(6). For example, the next election after the upcoming 2005 election is required by October 1, 2008, for carriage beginning January 1, 2009; *see* 47 CFR 76.66(c)(2) and (4). The election made by a station in 2008 would apply uniformly to both its analog and digital signals, if both signals are continuing to be broadcast.

15. A new television station in a noncontiguous state will have a right to mandatory carriage for its analog signal if it begins service after December 8, 2005, and for its digital signal if it begins service after June 8, 2007. New stations should follow section 76.66(d)(3) of the Commission's rules to notify the satellite carrier and elect carriage; *see* 47 CFR 76.66(d)(3). We seek comments on our proposed rules governing the carriage election process.

E. Availability of Signals

16. The SHVERA provides that in the noncontiguous states, satellite retransmissions of local stations ''shall be made available to substantially all of the satellite carrier's subscribers in each station's local market;'' *see* 47 U.S.C. 338(a)(4). The SHVERA does not define what is meant by ''substantially all'' subscribers. This wording is consistent with the physical limitations of some satellite technology that may not be able to reach all parts of a state or a DMA, particularly where a spot beam is used to provide local stations. We believe that this provision recognizes the existing physical limitations on satellite service particularly in these noncontiguous states. With respect to DBS service to Alaska, for example, the Commission has stated that although reliable service usually requires a minimum elevation angle of ten degrees

or more, service to Alaska is often offered at elevation angles as low as five degrees. The Commission defined elevation angle ''as the upward tilt of an earth station antenna measured in degrees relative to the horizontal plane (ground), that is required to aim the earth station antenna at the satellite. When aimed at the horizon, the elevation angle is zero. If the satellite were below the horizon, the elevation angle would be less than zero. If the earth station antenna were tilted to a point directly overhead, it would have an elevation angle of 90°;'' *see* 47 U.S.C. 338(a)(4). In addition, the Commission determined that in some areas of Alaska, from some orbit locations, the elevation angle was less than five degrees, or even below the horizon, thereby making service to those areas impossible. For example, the elevation angle for Attu Island, Alaska is less than zero or below the horizon for the 61.5°, 101°, and 110° orbit locations and only 4 for the 119° location. We note, however, that satellite carriers must abide by the geographic service rules that require service where technically feasible. We welcome comment on the meaning of ''substantially all of the carrier's subscribers in each station's market.''

17. We do not believe it is necessary to adopt new rules to implement this provision. This provision is similar to the Commission interpretation adopted in the implementation of the SHVIA, that satellite carriers that offer local-into-local service are not required to provide service to every subscriber in a DMA. We seek comment on whether it is necessary to adopt a rule on this point, and, if so, what it should provide.

F. Areas Outside Local Markets

18. The SHVERA also addresses the anomalous situation in Alaska, the only one of the fifty states that has areas that are not included within any DMA. The eight major islands of Hawaii are currently included within the Honolulu DMA. If the reference to ''noncontiguous States'' is read to include territories and possessions, none of them are in DMAs and would be subject to the special treatment described in section 210. The statute requires a satellite carrier in Alaska to make available the signals of all the local television stations that it carries in at least one local market to substantially all of its subscribers in areas outside of local markets who are in the same State; *see* 47 U.S.C. 338(a)(4). In Alaska, there are three DMAs covering the main population centers, but most of the State, which is sparsely populated, is not included in a DMA. Thus, a satellite carrier in Alaska would be required to provide the television stations that it carries in at least one of the three DMAs, in which carriage of local stations is required by section 210 of the SHVERA, to areas of the State not included in DMAs. We believe that the statute speaks for itself and that no special rule is required to implement this statutory requirement. We seek comment on this conclusion.

G. Notification by Satellite Carrier

19. Section 210 of the SHVERA does not expressly require revisions to the existing notification procedures in connection with the new carriage requirements in the noncontiguous states. However, to ensure that the purpose of section 210 is achieved, we seek comment on whether to require satellite carriers with more than 5 million subscribers to notify all television broadcast stations located in local markets in the noncontiguous states that they are entitled to carriage of their analog signals as of December 8, 2005, and of their digital signals as of June 8, 2007, and that they must elect mandatory carriage or retransmission consent by October 1, 2005 and April 1, 2007, respectively, to be assured of carriage, as provided in sections 76.66(b)(2) and (c)(6). If required, this notification to the stations should include a statement advising them of the opportunity to have their analog and digital signals made available by the carrier to the carrier's subscribers in the local market of each station. If adopted, this notification would be required by September 1, 2005, with respect to analog signal carriage election, and by March 1, 2007, with respect to the carriage election for digital signals; *see* proposed section 76.66(d)(2)(iii). A new satellite carrier that meets this definition after 2005 would be required to comply with section 76.66(d)(2) of the Commission's rules regarding ''new local-into-local service'' (imposes requirements when a new satellite carrier intends to retransmit a local television station back into its local market); *see* 47 CFR 76.66(d)(2). We seek comment on the need for this notification. We also request comment on whether such notice should be required only for stations in Alaska and Hawaii or also for television broadcast stations in all noncontiguous territories and possessions. We also seek comment on the need for a second notification 30 days prior to the second carriage election deadline, which is proposed for April 1, 2007 for carriage of digital signals. If, alternatively, the October 1, 2005 carriage election applies to both the analog and digital signals of local stations in the noncontiguous states, we propose that a second notification would not be required prior to the commencement of carriage of digital signals in June of 2007. We seek comment on these proposals.

IV. Procedural Matters

A. Initial Regulatory Flexibility Certification

20. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an initial regulatory flexibility analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities;'' *see* 5 U.S.C. 605(b), 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), Pub. L. 104–121, Title II, 110 Stat. 857 (1996). The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction;'' *see* 5 U.S.C. 601(6). In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act; *see* 5 U.S.C. 601(3). 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); *see* 15 U.S.C. 632.

21. As described in this *NPRM*, we propose to amend section 76.66 of the Commission's rules as required by section 210 of the SHVERA. We expect these rule amendments, if adopted, will not have a significant economic impact on a substantial number of small entities. The proposed rules contained in this *NPRM*, as required by statute, are intended to allow for local television stations to elect carriage pursuant to retransmission consent or mandatory carriage with respect to satellite carriers with more than 5 million subscribers in a non-contiguous state. ''Satellite carriers,'' including Direct Broadcast Satellite (DBS) carriers, will be directly and primarily affected by the proposed rules, if adopted.

22. The satellite carriers covered by these proposed rules fall within the SBA-recognized small business size standard of Cable and Other Program Distribution; *see* 13 CFR 121.201. This size standard provides that a small entity is one with $12.5 million or less in annual receipts; *see* 13 CFR 121.201. The two satellite carriers that are subject

to these proposed rule amendments because they currently have more than five million subscribers, DirecTV (DirecTV is the largest DBS operator and the second largest MVPD, serving an estimated 13.04 million subscribers nationwide) and EchoStar (EchoStar, which provides service under the brand name Dish Network, is the second largest DBS operator and the fourth largest MVPD, serving an estimated 10.12 million subscribers nationwide), report annual revenues that are in excess of the threshold for a small business. We anticipate that any satellite carrier that, in the future, has more than five million subscribers would necessarily have more than $12.5 million in annual receipts. Thus, the entities directly affected by the proposed rules are not small entities.

23. We also note that, in addition to satellite carriers, television broadcast stations are indirectly affected by the proposed rule in that they potentially benefit from the satellite carriage required by the rule and must elect between mandatory carriage and retransmission consent. This carriage election, however, follows the existing Commission rules. These existing rules currently permit stations in the noncontiguous states to elect carriage if and when a satellite carrier offers local-into-local service in their market. The proposed rules would affect these election rights by merely providing a date certain for carriage in these specified markets, which would not have a significant economic impact.

24. Therefore, we certify that the proposed rules, if adopted, will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of this Notice of Proposed Rulemaking, including a copy of this Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the SBA; *see* 5 U.S.C. 605(b). This initial certification will also be published in the **Federal Register**; *see* 5 U.S.C. 605(b).

B. Initial Paperwork Reduction Act of 1995 Analysis

25. This *NPRM* has been analyzed with respect to the Paperwork Reduction Act of 1995 (''PRA''), and contains proposed 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 proposed information collection requirements contained in this *NPRM*, as required by the PRA.

26. Written comments on the PRA proposed information collection requirements must be submitted by the public, the Office of Management and Budget (OMB), and other interested parties on or before July 8, 2005. 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, we seek specific comment on how we might ''further reduce the information collection burden for small business concerns with fewer than 25 employees;'' Pub. L. 107–198, *see* 44 U.S.C. 3506(c)(4).

27. In addition to filing comments with the Office of the Secretary, a copy of any comments on the proposed information collection requirements contained herein should be submitted to Cathy Williams, Federal Communications Commission, 445 12th St, SW., Room 1–C823, Washington, DC 20554, or via the Internet to *Cathy.Williams@fcc.gov*; and also to Kristy L. LaLonde, OMB Desk Officer, Room 10234 NEOB, 725 17th Street, NW., Washington, DC 20503, or via Internet to *Kristy_L._LaLonde@omb.eop.gov*, or via fax at (202) 395–5167.

28. *Further Information.* For additional information concerning the PRA proposed information collection requirements contained in this *NPRM*, contact Cathy Williams at (202) 418–2918, or via the Internet to *Cathy.Williams@fcc.gov.* If you would like to obtain or view a copy of this revised information collection, OMB Control Number 3060–0980, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra.*

C. Ex Parte Rules

29. *Permit-but-Disclose.* This proceeding will be treated as a ''permit-but-disclose'' proceeding subject to the ''permit-but-disclose'' requirements under section 1.1206(b) of the Commission's rules; *see* 47 CFR 1.1206(b); 47 CFR 1.1202, 1.1203. *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. More than a one-or two-sentence description of the views and arguments presented is generally required; *see* 47 CFR 1.1206(b)(2). Additional rules pertaining to oral and written presentations are set forth in section 1.1206(b).

D. Filing Requirements

30. *Comments and Replies.* The SHVERA requires the Commission to complete action within one year of enactment (December 8, 2004) to take account of carriage elections in light of the schedule for carriage as required in the noncontiguous states; *see* 47 U.S.C. 338(a)(4). The carriage election deadline is October 1, 2005 for the next carriage cycle. If the Commission waited until December 8, 2005, to implement this provision, it would be too late for stations to elect between must carry and retransmission consent for the carriage to commence on December 8, 2005. In addition, the Commission is proposing to require satellite carriers to provide notice to local stations in the noncontiguous states concerning the new carriage requirements one month prior to the carriage election deadline. Thus, the proposed notification requirement, if adopted, must be in effect by September 1, 2005, 30 days prior to the carriage election deadline of October 1, 2005, with respect to carriage of the analog signals required to commence by December 8, 2005. Consequently, the pleading cycle for comments and replies must be compressed and expedited. Pursuant to sections 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before June 6, 2005, and reply comments on or before June 20, 2005; *see* 47 CFR 1.415, 1419. 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* 13 FCC Rcd 11322 (1998).

31. *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*, and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response.

32. *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 a.m. to 7 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.

33. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY–A257, Washington, DC 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.

34. *Accessibility Information.* To request information in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document can also be downloaded in Word and Portable Document Format (PDF) at: *http://www.fcc.gov.*

35. *Additional Information.* For additional information on this proceeding, contact Eloise Gore, *Eloise.Gore@fcc.gov*, or Jim Keats, *Jim.Keats@fcc.gov*, of the Media Bureau, Policy Division, (202) 418–2120.

V. Ordering Clauses

36. Accordingly, *it is ordered* that pursuant to section 210 of the Satellite Home Viewer Extension and Reauthorization Act of 2004, and sections 1, 4(i) and (j), and 338(a)(4) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and (j), and 338(a)(4), *notice is hereby given* of the proposals and tentative conclusions described in this Notice of Proposed Rulemaking.

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

List of Subjects in 47 CFR Part 76

Cable television, Television.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 76 as follows:

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

1. The authority citation for 47 CFR part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302a, 307, 308, 309, 312, 317, 325, 338, 339, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, and 573.

2. Section 76.66 is amended by revising paragraphs (b)(2) and (c)(4), by adding paragraph (c)(6), redesignate paragraphs (d)(2)(iii) and (d)(2)(iv) as paragraphs (d)(2)(iv) and (d)(2)(v) and by adding a new paragraph (d)(2)(iii) to read as follows:

§ 76.66 Satellite broadcast signal carriage.

* * * * *

(b) * * *

(2) A satellite carrier that offers multichannel video programming distribution service in the United States to more than 5,000,000 subscribers shall, no later than December 8, 2005, carry upon request the signal originating as an analog signal of each television broadcast station that is located in a local market in a noncontiguous state; and shall, no later than June 8, 2007, carry upon request the signals originating as digital signals of each television broadcast station that is located in a local market in a noncontiguous State.

* * * * *

(c) * * *

(4) Except as provided in paragraphs (c)(6), (d)(2) and (d)(3) of this section, local commercial television broadcast stations shall make their retransmission consent-mandatory carriage election by October 1st of the year preceding the new cycle for all election cycles after the first election cycle.

* * * * *

(6) A commercial television broadcast station located in a local market in a noncontiguous State shall make its retransmission consent-mandatory carriage election by October 1, 2005, for carriage of its signal that originates as an analog signal for carriage commencing on December 8, 2005 and ending on December 31, 2008, and by April 1, 2007, for its signal that originates as a digital signal for carriage commencing on June 8, 2007 and ending on December 31, 2008. For analog and digital signal carriage cycles commencing after December 31, 2008, such stations shall follow the election cycle in paragraphs (c)(2) and (c)(4) of this section. A noncommercial television broadcast station located in a local market in Alaska or Hawaii must request carriage by October 1, 2005, for carriage of its signal that originates as an analog signal for carriage commencing on December 8, 2005 and ending on December 31, 2008, and for its signal that originates as a digital signal for carriage commencing on June 8, 2007 and ending on December 31, 2008.

* * * * *

(d) * * *

(2) * * *

(iii) A satellite carrier with more than five million subscribers shall provide the notice as required by paragraphs (d)(2)(i) and (d)(2)(ii) of this section to each television broadcast station located in a local market in the noncontiguous States, not later than September 1, 2005 with respect to carriage of analog signals and not later than March 1, 2007 with respect to carriage of digital signals; provided, however, that the notice shall

also describe the carriage requirements pursuant to section 338(a)(4) of title 47, United States Code, and paragraph (b)(2) of this section.

* * * * *

[FR Doc. 05–9290 Filed 5–6–05; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 383

[Docket No. FMCSA–2005–20043]

RIN 2126–AA01

Minimum Uniform Standards for a Biometric Identification System To Ensure Identification of Operators of Commercial Motor Vehicles; Withdrawal

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Advance notice of proposed rulemaking (ANPRM); withdrawal.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) (formerly the Federal Highway Administration's (FHWA) Office of Motor Carriers) withdraws two advance notices of proposed rulemaking (ANPRM) on using biometric identifiers to provide positive identification of drivers in the Commercial Driver's License Information System (CDLIS) and to prevent drivers from obtaining more than one commercial driver's license (CDL). The ANPRM requesting comments was published on May 15, 1989 at 54 FR 20875; an ANPRM providing additional information was published on March 8, 1991 at 56 FR 9925. The Transportation Security Administration (TSA) currently is developing a Transportation Worker Identification Credential (TWIC) that will incorporate biometric identifiers. FMCSA does not want to cause a conflict in standards adopted by each agency or place an undue burden on States by imposing two different standards and/or technologies for CDLs and the TWIC. In the future, FMCSA may assess the impact of the TWIC upon the Federal Motor Carrier Safety Regulations.

DATES: The ANPRM with request for comments published on May 15, 1989, and the ANPRM with additional information published on March 8, 1991, are withdrawn as of May 9, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Carol Gore, Leader, Commercial Driver's License Team, (202) 366–4013, Federal Motor Carrier Safety Administration, (MC–ESS), 400 Seventh Street SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Section 9105(a) of the Truck and Bus Safety and Regulatory Reform Act of 1988 [Pub. L. 100–690, November 18, 1988, 102 Stat. 4530] required the agency to issue minimum biometric identification standards for operators of commercial motor vehicles (CMVs) by December 31, 1990. The purpose of this system would be to provide positive identification of drivers in the Commercial Driver's License Information System (CDLIS) and to prevent drivers from obtaining more than one driver's license.

In 1988, FHWA [1] and a committee including four State licensing agencies and the American Association of Motor Vehicle Administrators (AAMVA) assessed the feasibility of using certain biometric identifier technologies to fulfill the statutory requirements of sec. 9105(a) of the Truck and Bus Safety and Regulatory Reform Act of 1988. The committee found both retinal scanning and automated fingerprint identification systems (AFIS) feasible [2] for use in the planned pilot study and identified an initial set of functional requirements [3] for a biometric identification system for CMV operators.

On May 15, 1989,[4] the agency requested comments on the establishment of biometric identifiers for operators of CMVs and announced the pilot study on the use of fingerprints and retinal scan technology to positively and uniquely identify operators of CMVs. The pilot study was conducted in 1990.

On March 8, 1991,[5] the agency published an ANPRM with the results of the pilot study and with a summary and response to comments to the 1989 ANPRM. (The 1991 ANPRM provided supplemental information on the biometric identifier issue but did not request additional comments.) FHWA concluded that neither retinal scanning nor AFIS was sufficiently accurate or cost effective to be practical at that time. Therefore, the agency did not issue a notice of proposed rulemaking. Instead, further rulemaking action on the matter was deferred until the technology developed to meet FHWA functional requirements. The agency continued to require States to make available in CDLIS a driver's personal identification information.

In 1998, section 4011(c) of the Transportation Equity Act for the 21st Century [49 U.S.C. 31308(2)] (TEA–21) required the agency to issue a rule mandating that all commercial driver's licenses (CDLs) issued by States after January 1, 2001, include a unique identifier that may be biometric. Although the 1998 legislation did not explicitly repeal the 1988 mandatory biometric identifier language, the agency concluded the contradictory language of the 1998 statute, when viewed against the lack of a statement of congressional intent in the legislative conference reports for TEA–21, supersedes and repeals by implication the 1988 mandate. Therefore, FMCSA found that TEA–21 changed the standard from mandating use of a biometric identifier to mandating use of a unique identifier, which may or may not be biometric.

In 1999, FMCSA again conducted a study to determine if a national biometric program was feasible and whether fingerprinting or facial imaging should be used. The results showed that a national biometric implementation program is feasible and that thumbprints are better than facial images as a biometric standard.

Withdrawal of Proposal

FMCSA believes the agency has satisfied the unique identifier standard in TEA–21 through its adoption of a specialized search procedure as part of the CDLIS. This procedure contains the following seven personal identifiers: Name, date of birth, sex, height, weight, eye color, and Social Security number, in an algorithm designed to produce a highly probable personal identification.

The Transportation Security Administration (TSA) currently is developing a Transportation Worker Identification Credential (TWIC) that

[1] The Federal Highway Administration (FHWA), Office of Motor Carriers became the Federal Motor Carrier Safety Administration (FMCSA) on January 1, 2000 (64 FR 72959, December 29, 1999).

[2] ''Personal Identifier Project Feasibility Study Report,'' State of California Department of Motor Vehicles, Project No. 2300–75, Log No. 215–88; Revised December 7, 1988.

[3] ''Functional Description for a Unique Identification System for the Commercial Driver's License Information System (CDLIS),'' Office of Motor Carriers; Report No. FHWA–MC–88–048; February 1988.

[4] ''Minimum Uniform Standards for a Biometric Identification System to Ensure Identification of Operators of Commercial Motor Vehicles;'' published at 54 FR 20875, May 15, 1989); ANPRM.

[5] ''Minimum Uniform Standards for Biometric Identification System to Ensure Identification of Operators of Commercial Motor Vehicles;'' published at 56 FR 9925 on March 8, 1991; ANPRM; additional information.