

After considering the economic impacts of this rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

#### *D. Unfunded Mandates Reform Act*

EPA has determined that this proposed rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. This proposed rule is estimated to result in one-time compliance costs of \$13,877.00 to the private sector. In addition, this rule does not create any additional federally enforceable duty for State, local and tribal governments. Thus, this proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

#### *E. Executive Order 13132, Federalism*

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. "Policies that have federalism implications" is defined in the Executive Order to include regulations that 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." This proposed rule does not have federalism implications. It will 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.

#### *F. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations

that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes." This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, 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 in Executive Order 13175.

#### *G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks*

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

#### *H. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

#### *I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104-113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed rule does not establish technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

#### *J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment.

This proposed rule does not relax the control measures on sources regulated by the rule and therefore will not cause emissions increases from these sources.

#### **List of Subjects in 40 CFR Part 372**

Environmental protection, Community right-to-know, Reporting and recordkeeping requirements, Toxic chemicals, Articles Exemption.

Dated: August 17, 2009.

**Lisa P. Jackson,**  
Administrator.

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## **FEDERAL COMMUNICATIONS COMMISSION**

### **47 CFR Part 15**

[ET Docket Nos. 04-37 and 03-104; FCC 09-60]

### **Broadband Over Power Line Systems**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document addresses certain issues from the Commission's Report and Order on rules for broadband over power line systems and devices (*BPL Order*) that was remanded by the United States Court of Appeals for the District of Columbia. In the *BPL Order*, the Commission established technical standards, operating restrictions and measurement guidelines for Access Broadband over Power Line (Access BPL) systems to promote the

development of such systems while ensuring that licensed radio services are protected from harmful interference. In *ARRL v. FCC*, the court remanded the *BPL Order* to the Commission for further consideration and explanation of certain aspects of its decision. Specifically, the court directed the Commission to provide a reasonable opportunity for public comment on unredacted staff technical studies on which it relied to promulgate the rules, to make the studies part of the rulemaking record, and to provide a reasoned explanation of the choice of an extrapolation factor for use in measurement of emissions from Access BPL systems.

**DATES:** Comments must be filed on or before September 23, 2009, and reply comments must be filed on or before October 8, 2009.

**ADDRESSES:** You may submit comments, identified by ET Docket No. 04–37 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.
- **E-mail:** [Optional: Include the E-mail address only if you plan to accept comments from the general public]. Include the docket number(s) in the subject line of the message.
- **Mail:** [Optional: Include the mailing address for paper, disk or CD-ROM submissions needed/requested by your Bureau or Office. Do not include the Office of the Secretary's mailing address here.]
- **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.

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:** Anh Wride, Office of Engineering and Technology, (202) 418–0577, e-mail: [Anh.Wride@fcc.gov](mailto:Anh.Wride@fcc.gov), TTY (202) 418–2989.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Further Request for Comment and Further Notice of Proposed Rule Making*, ET Docket No. 04–37 and 03–104, FCC 09–60, adopted July 16, 2009, and released July 17, 2009. The full text of this document is available for inspection and copying during normal business

hours in the Commission's Reference Information Center, Portals II, 445 12th Street, SW., (Room CY–A257), Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room, CY–B402, Washington, DC 20554, telephone (202) 488–5300, facsimile (202) 488–5563 or via e-mail [FCC@BCPIWEB.com](mailto:FCC@BCPIWEB.com). The full text may also be downloaded at: <http://www.fcc.gov>.

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 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.

**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).

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., room CY–A257, Washington, DC 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone: (202) 488–5300, fax: (202) 488–5563, or via e-mail <http://www.bcpweb.com>.

### Summary of Request for Further Comment and Further Notice of Proposed Rulemaking

1. This Request for Further Comment and Further Notice of Proposed Rulemaking (FNPRM), addresses certain issues from the Commission's Report and Order on rules for broadband over power line systems and devices (*BPL Order*), 70 FR 1360, January 7, 2005, that was remanded by the United States Court of Appeals for the District of Columbia. In the *BPL Order*, the Commission established technical standards, operating restrictions and measurement guidelines for Access Broadband over Power Line (Access BPL) systems to promote the development of such systems while ensuring that licensed radio services are protected from harmful interference. In *ARRL v. FCC*, the court remanded the *BPL Order* to the Commission for further consideration and explanation of certain aspects of its decision. Specifically, the

court directed the Commission to provide a reasonable opportunity for public comment on unredacted staff technical studies on which it relied to promulgate the rules, to make the studies part of the rulemaking record, and to provide a reasoned explanation of the choice of an extrapolation factor for use in measurement of emissions from Access BPL systems.

2. The unredacted staff technical studies have been placed into the record of the proceeding and the Commission is requesting comment on the information in those studies as it pertains to our BPL decisions. The Commission is also placing into the record certain additional materials that contain preliminary staff research and educational information and were not previously available therein. In response to its remand of a portion of the BPL measurement procedure, the Commission is also providing an explanation of our reasons for selecting 40 dB per decade as the extrapolation factor for frequencies below 30 MHz. The Commission further explains why it believes that the studies and technical proposal submitted earlier by the ARRL do not provide convincing information that we should use an extrapolation factor that is different from that which was adopted. The Commission also notes the existence of more recent studies that verify the correctness of our determination, although we do not rely on those studies as *post facto* rationale or justification for our decision.

3. Consistent with the opportunity provided by the court's remand and the Commission's stated intention in the *BPL Order* to review the decision on the extrapolation factor if new information becomes available, we are also re-examining the current extrapolation factor in light of the recently issued technical studies addressing the attenuation of BPL emissions with distance and efforts by the IEEE to develop BPL measurement standards. As the several studies now available show and as the Commission has observed previously, there can be considerable variability in the attenuation of emissions from BPL systems across individual measurement sites that is not captured in the fixed 40 dB per decade standard. To address this variability, the Commission is requesting comment on whether it should amend the BPL rules to (1) adjust the extrapolation factor downward to 30 dB or some other fixed value and, (2) as an alternative, also allow use of a special procedure for determining site-specific BPL extrapolation values using *in situ* measurements. The special *in situ*

procedure the Commission is proposing is based on a concept under consideration by the Institute of Electrical and Electronics Engineers (IEEE) working group on power line communications technology electromagnetic compatibility (EMC). In addition, the Commission clarifies that parties testing BPL equipment and systems for compliance with emissions limits in our the rules may measure at the standard 30 meter distance rather than only the shorter distances recommended in the BPL measurement guidelines. The Commission request comments on the unredacted staff studies, our decision for selecting an extrapolation factor for BPL systems based on slant range method and the explanation provided herein, and our proposal to allow use of site-specific extrapolation factors as an alternative to the standard extrapolation factor. In the interim, as justified herein, the Commission will continue to apply the standard as adopted in the *BPL Order*.

#### Issues for Comment

##### A. Staff Technical Studies

4. In the *BPL Order*, the Commission adopted operational and technical requirements and restrictions on Access BPL devices over and above those applied to other Part 15 devices. These included requirements for consultation with specific entities, mandatory listing of BPL installations in a public database, exclusion of certain frequencies from operation, exclusion zones, frequency notching, and a remote shut-down mechanism, and were based on the aggregate information from comments and technical studies submitted into the rulemaking record, including ARRL's and FCC staff's studies.

5. Subsequent to the release of the *BPL Order*, the Commission on December 22, 2004 submitted five staff technical studies, in redacted form, into the record of the above-mentioned docket in response to a Freedom of Information Act (FOIA) request from ARRL. The staff studies measured emissions from various Access BPL systems at various locations in Pennsylvania, Maryland, New York, and North Carolina. The studies were used in the decision-making process along with studies submitted by commenters such as ARRL and the National Telecommunications and Information Administration (NTIA). The Commission redacted certain portions of those studies on the basis that they represented preliminary or partial results or staff opinions that were part of the internal deliberative process. On

reconsideration of the *BPL Order*, ARRL alleged that the Commission violated the APA reasoned decision making requirements because it responded to ARRL's FOIA request belatedly and because it redacted certain information from the released information. The Commission disagreed with ARRL's arguments, and ARRL sought judicial review of the Commission's decisions in the *BPL Order* and the *Reconsideration Order*.

6. In *ARRL v. FCC*, the court determined that the APA requires the Commission to disclose the studies upon which it relies in promulgating rules, and it directed the Commission to make available for notice and comment the unredacted "technical studies and data that it has employed in reaching [its] decision." In accordance with the court's mandate, and in response to a FOIA request from ARRL filed March 31, 2009, the Commission has placed in the record complete copies of the five staff studies identified by the court, including the previously redacted pages. The first two studies, included in a single file entitled *BPL Measurements in Allentown, PA*, contain data collected on the Amperion BPL system and on the Main.Net BPL system, both in Allentown, PA. The third study, *Emissions Measurements on Current Technologies Medium Voltage BPL System*, contains data collected on the Current Technologies BPL system in Potomac, MD. The fourth study, *BPL Summary After Briarcliff Manor, NY Test*, contains data collected on the Ambient BPL system in Briarcliff, NY, and some staff reactions. The fifth study, *BPL Emission Test Near Raleigh, NC*, contains data collected on the Amperion/Progress Energy BPL system in Raleigh, NC. The Commission observes that the redacted pages mostly contain information regarding specific test notes and test set-up recommendations with respect to the BPL systems at the various test sites, certain requests from third parties, and preliminary and partial data with respect to the noise floor and with respect to the attenuation rate of the signal strength at the test sites as well as the opinion of one staff member as to whether BPL systems are point-source systems and that staff member's proposed options on how to treat these systems. The Commission seeks comment on the information contained in these staff studies as it pertains to the issues in this proceeding.

7. The Commission has several staff working papers and video files that contain data and information on research from BPL field tests that were used in preparing the staff studies and

for staff education. These are materials that the Commission would not routinely, and in this case did not, place in the record. However, in order to fully and most efficaciously continue to examine this issue, the Commission believes it is important that it make available all potentially relevant research and information materials. The Commission is therefore placing these additional materials in the record of this proceeding and invites comment. A list of these additional materials is provided in Appendix E of this "Request for Further Comment and FNPRM."

#### B. Distance Extrapolation Factor

8. ARRL filed a petition for reconsideration of the Commission's decision to use 40 dB per decade as the extrapolation factor for frequencies below 30 MHz. In support of its argument that an extrapolation factor of 20 dB per decade should be used, ARRL also submitted, through *ex parte* comments, the results of three studies conducted by the United Kingdom's Office of Communications (OFCOM) and one by the Special International Committee on Radio Interference (CISPR) regarding emission measurements for BPL systems. On reconsideration, the Commission affirmed its decision to use the existing Part 15 distance extrapolation factor of 40 dB per decade decay rate for measuring BPL emissions on frequencies below 30 MHz, stating: "No new information has been submitted that would provide a convincing argument for modifying this requirement at this time."

9. In *ARRL v. FCC*, the court found that the Commission did not offer a reasoned explanation for its dismissal of empirical data that was submitted *ex parte* by ARRL, *i.e.*, the three studies conducted by OFCOM and additional ARRL analysis intended to suggest that an extrapolation factor of 20 dB per decade may be more appropriate for Access BPL. The court faulted the Commission for summarily dismissing the data submitted by ARRL because such a conclusory statement "provides neither assurance that the Commission considered the relevant factors nor a discernable path to which the court may defer." The court ordered the Commission either to "provide a reasoned justification for retaining an extrapolation factor of 40 dB per decade for Access BPL systems sufficient to indicate that it has grappled with the 2005 studies, or adopt another factor and provide a reasoned explanation for it."

10. ARRL's proposal for a sliding scale extrapolation factor referenced a

1996 CISPR Standard. This standard, which was published in 1996 well before Access BPL was developed, evaluates radio noise generated by high-voltage converter power stations and similar high-voltage installations and discusses methods on how to reduce radio noise from inherent power line components, such as mercury arc and thyristor valves. ARRL pointed to a graph in the standard, Figure 17, which shows calculated values of the field strength attenuation of emissions from a vertical electrical dipole antenna as a function of the distance on a horizontal plane for different frequencies. Based on this graph, ARRL then proposed a formula which effectively constitutes a sliding-scale calculation for an extrapolation factor that varies with frequencies.

11. In the period of time since the Commission's adoption of the *Reconsideration Order*, reports have become available on two new technical studies addressing attenuation of BPL emissions with distance, one by NTIA in October 2007 that describes a second phase of its simulation study on the potential for interference from Access BPL systems (NTIA Phase 2 Study) and the other by the Federal Republic of Brazil (Brazil Study) in June 2008 that presents the results of a measurement study of BPL emissions. In addition, the Commission is aware that the IEEE working group on power line communications technology electromagnetic compatibility is working on a standard for EMC testing and measurements methodology for BPL equipment and installations (IEEE P1775/D2) that includes a provision for determining extrapolation (distance correction) factors on a site-by-site basis using *in situ* measurements as part of its work on that standard.

12. Consistent with the Commission's stated intention in the *BPL Order*, to review the decision on the extrapolation factor if new information becomes available and the opportunity provided by the Court's remand of the extrapolation factor for explanation, the Commission is reviewing its decision on that factor in light of the NTIA Phase 2 and Brazil studies and the site-specific option suggested by the IEEE P1775/D2 work. The Commission's goal is to provide BPL measurement procedures that will adequately ensure compliance with the § 15.209 emissions standard for emissions at or below 30 MHz without placing unfair or undue compliance burdens on equipment manufacturers and users. In conducting this review, the Commission advised interested parties that at this point it continues to believe that the decision to apply the

existing 40 dB per decade distance attenuation extrapolation factor in the rules for Access BPL operations, in conjunction with slant distance, on frequencies in this range was reasonable and appropriate.

13. The Commission is also mindful that the Court has ordered that it provide a reasoned justification for retaining the 40 dB per decade extrapolation for Access BPL systems or adopt another factor and provide reasoning, and specifically remarked that the Commission did not offer an explanation for dismissing the technical studies and technical proposal for an alternative extrapolation submitted *ex parte* in 2005 by ARRL. The Commission is therefore providing an explanation of its reasons for selecting 40 dB per decade as the extrapolation factor for frequencies below 30 MHz and why it do not believe that the studies and technical proposal submitted earlier by the ARRL provide convincing information that the Commission should use an extrapolation factor that is different from (and, specifically, less than) 40 dB. The Commission believes that the NTIA Phase 2 and Brazil Studies further validate the use of 40 dB as the extrapolation factor. In addition, the sufficiency of the rules for ensuring compliance is further validated by the fact that the Commission has not had any new complaints of interference for more than two years.

14. The Commission also recognizes, however, that there can be considerable variability in the attenuation of emissions from BPL systems at individual measurement sites, although NTIA's modeling results do not generally indicate that differences are expected to be typically as high as the 15 to 20 dB for an underground system such as was observed in the Winchester Study. To address this variability, the Commission is requesting comment on whether it should adjust the extrapolation factor downward to 30 dB or some other fixed value and also specify and allow use of a special procedure for determining site-specific BPL extrapolation values using *in situ* measurements. The procedure for determining these site-specific extrapolation values would follow the general model under consideration in the IEEE P1775/D2 work.

15. The Commission is requesting that interested parties submit additional comment and information on the BPL extrapolation factor and on our proposal to modify the value specified for that factor and to alternatively allow use of special procedure for determining site-specific BPL extrapolation values. Such comment and information should

address (1) the three studies and proposal for a sliding scale extrapolation factor submitted previously by the ARRL as part of its *ex parte* filing on July 8, 2005 in conjunction with its petition for reconsideration of the *BPL Order* identified by the court, (2) the NTIA Phase 2 and Brazil studies with respect to findings on the extrapolation factor for BPL systems, and (3) our existing slant range method as it pertains to the effective field attenuation rate in a horizontal distance context. The Commission further request submission of any other new empirical studies or information that may inform us regarding the BPL distance attenuation extrapolation factor. Our goal is to ensure that the extrapolation factor used when tests cannot be made at the standard measurement distance provides effective protection to authorized services from harmful interference without unnecessarily burdening Access BPL technology.

a. The 40 dB per Decade BPL Extrapolation Factor

16. In explaining our reasoning for adopting 40 dB per decade as the extrapolation factor value for BPL emissions, it is important to understand that this is a measurement protocol (or “tool”), not an adjustment to the emissions standard. The Commission first observed that a concern in the BPL proceeding was that BPL systems are not traditional point-source emitters. Rather, they could act to some extent in a manner similar to line source emitters that would radiate along the power lines, and, therefore the emissions from these systems would not attenuate in the same manner as a typical point-source emitter. In addressing this concern in the *BPL Order*, the Commission agreed with the ARRL that Access BPL systems on overhead lines are not traditional point-source emitters.

17. The Commission also observed that NTIA’s earlier BPL computer simulation modeling as reported in the Technical Appendix to its June 2004 comments showed results indicating that the attenuation in field strength of emissions from BPL systems with distance from the power line is consistent with the existing distance extrapolation factors for unlicensed devices in § 15.31(f)(1) and (2) of the Commission’s rules when used with the slant range to the power line. No party offered analysis or argument to dispute NTIA’s results. These simulation results were conducted using the widely recognized and employed National Electromagnetic Code (NEC) software for analyzing radio propagation.

Although, the Commission does not rely on NTIA’s more recent Phase 2 simulation results to justify its earlier decision, the Commission noted here that those results indicate that the attenuation at individual locations can be expected to vary around the standard 40 dB value with frequency, configurations of line arrangements on poles, and other site-specific characteristics. The Commission is aware that measurements of the emissions from BPL systems at different distances will vary, but cluster around the 40 dB per decade factor. As the NTIA simulation results show, this variation is to be expected when measuring emissions below 30 MHz from points near the ground at distances close to a source of emissions.

18. While the Commission recognizes the potential value and importance of empirical data with respect to this issue, there were no significant studies that examined the very large number of measurements that would be needed to address the different site characteristics that affect the attenuation of emissions below 30 MHz. In this regard the studies submitted by the ARRL in its 2005 *ex parte* provided only anecdotal information on two different types of installations (overhead and underground) from two single sites, and also had certain methodological shortcomings. These studies did not provide sufficient information to support a statistically valid and comprehensive description of how BPL emissions attenuate over the short distances at which measurements are made.

19. The Commission specifically observed that only two of the studies (the Winchester Study and the Crieff Amperion Study) collected data relevant to the extrapolation factor. In addition, those two studies each report only a few measurements on a small number of operating frequencies along a single perpendicular path each at two small and very dissimilar BPL installations (one underground and one overhead) on power line configurations which may not be representative of power line configurations in the United States. In order for a study to provide statistically significant information on the attenuation of BPL emissions in the close vicinity of power lines and to adequately include signal conditions under different configurations of power lines on a pole or underground installations, a much larger body of empirical data at sites with varying configurations of power line attachments to poles and differing site characteristics would be needed. Moreover, such samples would need to

demonstrate that they are conducted on power distribution systems representative of those found in the U.S.

20. Second, the RF propagation environments in which BPL emissions are measured can affect the results such that results from a given site may not be characteristic of the general rate at which BPL emissions attenuate. The measurements in these two studies were taken near the ground (as are measurements BPL emissions under our measurement procedure), where the field strength of radio signals, and particularly those below 30 MHz, is typically affected to a significant degree by reflections and absorption by the ground, nearby vegetation, vehicles, structures, measuring equipment, equipment stands, and even the positions of the persons making the measurements. Of particular importance in this context are the presence and configuration of other power lines in addition to the power line to which the BPL device is attached and of metallic structures and vehicles. Because of the effects of these factors, the field strengths of radio signals emitted at the same power level will often vary significantly when measured near the ground at different locations that are the same distance from a source. Thus, in order to obtain empirical data from which general conclusions about the attenuation characteristics of Access BPL emissions may be drawn, it is necessary to have a very large number of observations from different BPL installations and from different locations at those installations. The small number of observations provided by the measurements in the Winchester and Crieff Amperion studies is not sufficient to form a basis for establishing a value for the extrapolation factor.

21. The Commission notes that even at the two installations examined in the OFCOM studies, the data describe that the electromagnetic field attenuates at different rates. In addition, the data does not even appear sufficient to determine whether the type of BPL technology and architecture made a difference in the field attenuation rate. Moreover, OFCOM itself recommends that “[d]uring the course of future PLT leakage emission measurements, further work is undertaken to confirm this finding elsewhere. The Commission saw nothing in the studies submitted by the ARRL that would warrant selection of a different (lower value) extrapolation factor.

22. With respect to its proposal for a sliding scale extrapolation factor, the Commission observed that the ARRL did not provide an explanation as to how its formula was derived or how to

use it to determine the extrapolation factor, nor did it provide a rationale for selecting such a formula. Further, even the CISPR graph has no explanation for the data showed thereon. In addition, the Commission has no information as to the relationship between the performance of emissions from BPL technology and the specifications for reduction of power line noise adopted in the standard. Therefore, the Commission was unable to determine whether or how the sliding scale factor proposed by the ARRL could be used to represent the attenuation of emissions from a BPL system.

23. Accordingly, the extrapolation factor adopted in the *BPL Order*, and affirmed in the *BPL Reconsideration Order*, was based on the best information available at the time each of those decisions were made, while acknowledging that it might be desirable to revisit this issue if more information would become available, as we are now undertaking.

#### b. Review of the Extrapolation Factor

24. In reviewing the BPL extrapolation factor, the Commission intends to seek new information and studies, including those with empirical research, and to consider new approaches for the extrapolation that could use a lower value for the attenuation rate of emissions. Looking at new information, shortly after the release of the Commission's *BPL Reconsideration Order*, NTIA published its "Phase 2 Study." This study illustrates the application of the Commission's BPL rules and measurement guidelines in a case study. Using the well-known and validated simulation software it employed in its Phase 1 Study, NTIA created an elaborate power line model that approximates existing overhead Access BPL power line structures in the U.S. After applying the emissions limits and methodology from the BPL measurement guidelines, NTIA analyzed the noise floor increase expected in nearby receivers as a result of BPL operations. NTIA states that its simulations confirm that "at or above 10 MHz, the simulation results show good agreement between the rate that field strength decays and the part 15 distance extrapolation rate using the slant range distance to the Access BPL device and power lines." NTIA does, however, further state that "the simulations in the 4 to 8 MHz frequency range exhibited somewhat slower rates of field strength decay with distance than would be expected by the distance extrapolation rate in the part 15 rules for Access BPL

systems. This difference was up to 6 dB less than the distance extrapolation rate.

25. The Commission also observes that, like OFCOM in the United Kingdom, the regulatory agencies of other countries are testing BPL systems as part of the international forum's discussions on BPL technology. The recently released study from the Federal Republic of Brazil reports results that show attenuation of emissions from BPL that is greater than the 40 dB per decade extrapolation factor, which indicates variation on the other side of the results found in the OFCOM studies. Here again, the amount of data collected is relatively small. The Commission believes that the information in the NTIA Phase 2 and Brazil studies, when viewed in light of the NTIA's Technical Appendix and the OFCOM studies taken together not only provide validation for our previous conclusions selecting 40 dB per decade as the extrapolation factor, recognizing that there will be variation around that value at individual locations, but also inform our further consideration of this matter.

26. There may be other new studies of the attenuation of BPL emissions with distance. The Commission requests that interested parties provide additional empirical information and studies regarding the distance extrapolation factor for use in measurements of emissions from Access BPL operating below 30 MHz. Such information and studies will be most useful if they are compiled using the FCC measurement guidelines and cover various BPL technologies that operate below 30 MHz. The data should also cover the different operating frequencies of BPL emitters in their typical deployment configurations and the field strength attenuation at these frequencies. Access BPL systems from which data is collected also should be representative of power line configurations (underground and overhead) and current BPL network architectures in the United States.

27. The Commission also observes that the slant range distance in the measurement procedure works with the 40 dB per decade factor to yield extrapolated measurement values that have the effect of imposing a more conservative emissions standard than would be derived if using the horizontal distance from a power pole. In this regard, at relatively short distances, *i.e.*, distances 30 meters or less, the slant range measurement method effectively reduces the emission limit for BPL systems with respect to the horizontal distance from the pole because at any given horizontal distance from the pole, the slant range distance is longer than

the horizontal distance. This is simple geometry resulting from the height of the power line on which the BPL emitter is installed. (The hypotenuse of a right triangle is longer than either of the sides.) When extrapolated values at 40 dB per decade of slant range distance are plotted against the horizontal distance, the effective slant range emission limit curve more closely follows the emission limit curve based on a 20 dB per decade extrapolation factor than the emission limit curve based on a 40 dB per decade extrapolation factor. NTIA's modeling results effectively support this observation. The Commission also notes that given that its BPL measurement procedure requires that compliance measurements be taken at 30 meters or less, the effect of the slant range distance provision is significant at all distances where the extrapolation factor can be used. The Commission seeks comment on our slant range method as it pertains to the effective field attenuation rate in a horizontal distance context and on NTIA's findings with respect to the extrapolation factor in its Phase 2 Study.

28. The Commission observes that while 40 dB per decade continues to best describe the attenuation rate of emissions from BPL systems, there is also considerable variability around that value at different sites. The result of this variability is that the actual attenuation at some sites could be less than 40 dB per decade and using the current extrapolation factor at such sites could produce an adjusted measurement that would be less than the signal that would be measured at the standard 30 meter measurement distance specified in § 15.209. The Commission requests comment on whether it would be desirable to modify the value of the BPL extrapolation factor to be 30 dB per decade or some other value. This lower value would apply a more conservative approach that would compensate for those cases where the actual attenuation is less than 40 dB. While the Commission does not have statistics that indicate the distribution of cases where the attenuation rate is less than 40 dB per decade, it believes that the additional margin provided by a 30 dB standard would encompass a large number of such cases. A 30 dB standard would also substantially reduce the remaining differences in under-adjustment of measurements at locations where the attenuation rate might be less than 30 dB per decade. The Commission further notes that extrapolated emission limits based on our proposed 30 dB extrapolation factor

when applied to slant distance are comparable to the extrapolated emission limits based on a 20 dB extrapolation factor applied to horizontal distance.

29. The Commission recognizes that reliance on a 30 dB per decade extrapolation factor could increase the compliance burden for BPL equipment and systems that are tested at locations where the attenuation rate is in fact greater than 40 dB per decade. The Commission, therefore clarifies that in all cases measurements of BPL equipment and systems may be made at the 30 meters distance specified in § 15.209 and that where possible, the Commission's staff will make measurements at this distance when testing for compliance. Further, to provide manufacturers and system operators the opportunity to use a higher extrapolation rate at locations where they believe the attenuation rate is higher than 30 dB per decade, the Commission is also considering allowing parties testing BPL systems for compliance with the radiated emissions limits to determine distance correction factors on a site-by-site basis using an *in situ* measurements procedure. The site-specific extrapolation factor would be an alternative to the proposed 30 dB per decade standard and would replace the existing alternative method currently in the rules but that is not included in the BPL measurement procedures. This alternative method would only be applicable to Access BPL devices operating on overhead power lines on frequencies below 30 MHz.

30. The Commission requests comment on the suitability of an extrapolation factor lower than 40 dB per decade and the *in situ* procedure for determining the field strength of BPL emissions in locations where measurements cannot be made at the lateral distance of 10 meters from the overhead line. Interested parties are invited to suggest alternative values for the extrapolation factor that would account for the variability of attenuation rates without unfairly burdening manufacturers of users of BPL equipment and systems. Parties submitting such suggestions should also provide information to support their proposal. Interested parties are specifically requested to address (1) whether use of the proposed procedure would provide an appropriate and reliable means of accounting for any variation in the attenuation rate at individual sites; (2) the effect that an extrapolation factor lower than 40 dB per decade would have on the effective emission limits for Access BPL devices operating on overhead power lines when used in conjunction with our

slant range method; and (3) any special provisions that may be necessary to ensure that site-specific attenuation rates derived through this procedure reliably and fairly represent the attenuation rate at individual sites.

#### Initial Regulatory Flexibility Analysis

31. As required by the Regulatory Flexibility Act of 1980 as amended,<sup>1</sup> the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Further Notice of Proposed Rulemaking ("FNPRM"). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the FNPRM. The Commission will send a copy of this FNPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).<sup>2</sup>

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

32. Consistent with the opportunity provided by the court's remand and the Commission's stated intention in the *BPL Order* to review the decision on the extrapolation factor if new information becomes available, the Commission is re-examining the current extrapolation factor in light of the recently issued technical studies addressing the attenuation of BPL emissions with distance and efforts by the IEEE to develop BPL measurement standards. As the several studies now available show and as the Commission has observed previously, there can be considerable variability in the attenuation of emissions from BPL systems across individual measurement sites that is not captured in the existing fixed 40 dB per decade standard.

33. The Commission proposes to amend part 15 of our rules to adjust the extrapolation factor downward to 30 dB for Access Broadband over Power Line (BPL) systems and, as an alternative, also allow use of a special procedure for determining site-specific BPL extrapolation values using *in situ* measurements. Specifically, as a means to address the concerns that the rate of attenuation of BPL emissions at a specific site can differ from the existing 40 dB per decade standard, the

Commission proposes to modify its rules and measurement procedures for Access BPL to specify the use of a 30 dB extrapolation factor and to allow parties testing BPL systems for compliance with the radiated emissions limits to determine distance correction factors on a site-by-site basis using an *in situ* measurements procedure when measurements cannot be made at the measurement distance of 30 meters as specified in the rules. In addition, the Commission is clarifying that parties testing BPL equipment and systems for compliance with emissions limits in the Commission rules may measure at the standard 30 meter distance rather than only the shorter distances recommended in the BPL measurement guidelines. The Commission's actions will ensure that the BPL measurement rules would not unnecessarily burden this technology while providing appropriate protection from harmful interference for authorized services.

#### B. Legal Basis

34. This action is taken pursuant to Sections 1, 4, 301, 302, 303(e), 303(f) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 1, 4, 301, 302, 303(e), 303(f) and 303(r).

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

35. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.<sup>3</sup> The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small business concern" under Section 3 of the Small Business Act.<sup>4</sup> Under the Small Business Act, a "small business concern" is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operations; and (3) meets many additional criteria established by the Small Business Administration (SBA).<sup>5</sup>

36. Nationwide, there are a total of approximately 27.2 million small businesses, according to the SBA.<sup>6</sup> A "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."<sup>7</sup> Nationwide, as of 2002, there were approximately 1.6 million small

<sup>1</sup> See 5 U.S.C. 603. The RFA, see 5 U.S.C. 601–612, has been amended by the Contract With America Advancement Act of 1996, Public Law 104–112, 110 Stat. 847 (1996) ("CWAAA"). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA").

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

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

<sup>4</sup> *Id.* 601(3).

<sup>5</sup> *Id.* 632.

<sup>6</sup> See SBA, Office of Advocacy, "Frequently Asked Questions," <http://web.sba.gov/faqs> (accessed Jan. 2009).

<sup>7</sup> 5 U.S.C. 601(4).



organizations.<sup>8</sup> The term “small governmental jurisdiction” is defined generally as “governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”<sup>9</sup> Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States.<sup>10</sup> We estimate that, of this total, 84,377 entities were “small governmental jurisdictions.”<sup>11</sup> Thus, we estimate that most governmental jurisdictions are small.

37. The proposed rules pertain to manufacturers of unlicensed communications devices. The appropriate small business size standard is that which the SBA has established for radio and television broadcasting and wireless communications equipment manufacturing. The Census Bureau defines this category as follows: “This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: Transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.”<sup>12</sup> The SBA has developed a small business size standard for firms in this category, which is: all such firms having 750 or fewer employees.<sup>13</sup> According to Census Bureau data for 2002, there were a total of 1,041 establishments in this category that operated for the entire year.<sup>14</sup> Of

this total, 1,010 had employment of less than 500, and an additional 13 had employment of 500 to 999.<sup>15</sup> Thus, under this size standard, the majority of firms can be considered small. The Commission does not believe this action would have a negative impact on small entities that manufacture unlicensed BPL devices. Indeed, it believes the actions should benefit small entities because it should make available increased business opportunities to small entities. The Commission request comment on these assessments.

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

38. The FNPRM does not contain proposed new or modified information collection requirements.

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

39. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.<sup>16</sup>

40. In this FNPRM, the Commission proposed to modify its rules and measurement procedures for Access BPL to specify the use of a 30 dB extrapolation factor and, as an alternative, to allow parties testing BPL systems for compliance with the radiated emissions limits to determine distance correction factors on a site-by-site basis using an *in situ* measurements procedure when measurements cannot be made at the measurement distance of 30 meters as specified in the rules. In addition, the Commission clarifies that parties testing BPL equipment and systems for compliance with emissions limits in the rules may measure at the standard 30 meter distance rather than

only the shorter distances recommended in the BPL measurement guidelines. The Commission seeks comment on the alternatives and the clarification.

#### *F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules*

41. None.

#### **Ordering Clauses**

42. Pursuant to Sections 1, 4, 301, 302, 303(e), 303(f) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 1, 4, 301, 302, 303(e), 303(f) and 303(r), the Request for Comment and Further Notice of Proposed Rule Making is hereby adopted.

43. The Commission’s Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Request for Comment and Further Notice of Proposed Rule Making, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

#### **List of Subjects in 47 CFR Part 15**

Communications equipment, Radio.

Federal Communications Commission.

**William F. Caton,**  
*Deputy Secretary.*

#### **Proposed Rules Changes**

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 15 to read as follows:

#### **PART 15—RADIO FREQUENCY DEVICES**

1. The authority citation for part 15 continues to read as follows:

**Authority:** 47 U.S.C. 154, 302, 303, 304, 307 and 544A.

2. In § 15.31 redesignate paragraphs (f)(3) through (f)(5) as (f)(4) through (f)(6), and add a new paragraph (f)(3) to read as follows:

#### **§ 15.31 Measurement standards.**

\* \* \* \* \*

(f) \* \* \*

(3) For Access BPL devices operating at frequencies below 30 MHz, the results shall be extrapolated to the specified distance by using an extrapolation factor of 30 dB/decade. Measurements may be performed at a distance closer than that specified with the radiated emissions limit in § 15.209 of this part; however, an attempt should be made to avoid making measurements in the near field. The distance correction to the emission limit for measurements on overhead power line installations shall be based

<sup>8</sup> Independent Sector, *The New Nonprofit Almanac & Desk Reference* (2002).

<sup>9</sup> 5 U.S.C. 601(5).

<sup>10</sup> U.S. Census Bureau, *Statistical Abstract of the United States: 2006*, Section 8, page 272, Table 415.

<sup>11</sup> We assume that the villages, school districts, and special districts are small, and total 48,558. See U.S. Census Bureau, *Statistical Abstract of the United States: 2006*, section 8, page 273, Table 417. For 2002, Census Bureau data indicate that the total number of county, municipal, and township governments nationwide was 38,967, of which 35,819 were small. *Id.*

<sup>12</sup> U.S. Census Bureau, 2007 NAICS Definitions, “334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing”; <http://www.census.gov/naics/2007/def/ND334220.HTM#N334220>.

<sup>13</sup> 13 CFR 121.201, NAICS code 334220.

<sup>14</sup> U.S. Census Bureau, *American Fact Finder, 2002 Economic Census, Industry Series, Industry Statistics by Employment Size, NAICS code 334220* (released May 26, 2005); <http://factfinder.census.gov>. The number of “establishments” is a less helpful indicator of small business prevalence in this context than would be the number of “firms” or “companies,” because the latter take into account the concept of common ownership or control. Any single physical location for an entity is an establishment, even though that location may be owned by a different establishment.

Thus, the numbers given may reflect inflated numbers of businesses in this category, including the numbers of small businesses. In this category, the Census breaks-out data for firms or companies only to give the total number of such entities for 2002, which was 929.

<sup>15</sup> *Id.* An additional 18 establishments had employment of 1,000 or more.

<sup>16</sup> 5 U.S.C. 603(c).



on the slant range distance, which is the line-of-sight distance from the measurement antenna to the overhead line. Alternatively, a site-specific extrapolation factor may be used in lieu of the 30 dB/decade standard. This extrapolation factor shall be derived from a best fit straight line fit determined by a first-order regression calculation from measurements for at least four lateral distances from the overhead line. Compliance measurements for Access BPL and use of site-specific extrapolation factors shall be made in accordance with the Guidelines for Access BPL systems specified by the Commission.

\* \* \* \* \*

[FR Doc. E9-20336 Filed 8-21-09; 8:45 am]

BILLING CODE 6712-01-P

## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

#### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Parts 2, 17, 22, 36, and 52

[FAR Case 2009-005; Docket 2009-0024; Sequence 2]

RIN 9000-AL31

#### Federal Acquisition Regulation; FAR Case 2009-005, Use of Project Labor Agreements for Federal Construction Projects

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Proposed rule; reopening of comment period.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to implement Executive Order (E.O.) 13502, Use of Project Labor Agreements for Federal Construction Projects. The comment period is being reopened for an additional 30 days to provide additional time for interested parties to review the proposed FAR changes.

**DATES:** Interested parties should submit written comments to the Regulatory Secretariat on or before September 23, 2009 to be considered in the formulation of a final rule.

**ADDRESSES:** Submit comments identified by FAR case 2009-005 by any of the following methods:

• Regulations.gov: <http://www.regulations.gov>.

Submit comments via the Federal eRulemaking portal by inputting "FAR Case 2009-005" into the field "Keyword". Select the link that corresponds with FAR Case 2009-005. Follow the instructions provided to submit your comments. Please include your name, company name (if any), and "FAR Case 2009-005" on your attached document.

• Fax: 202-501-4067.

• Mail: General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW, Room 4041, ATTN: Hada Flowers, Washington, DC 20405.

**Instructions:** Please submit comments only and cite FAR case 2009-005 in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact Mr. Ernest Woodson, Procurement Analyst, at (202) 501-3775. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501-4755. Please cite FAR case 2009-005.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

The Councils published a proposed rule in the *Federal Register* at 74 FR 33953, July 14, 2009. The comment period is being reopened for an additional 30 days to provide additional time for interested parties to review the proposed FAR changes.

Dated: August 18, 2009

Edward Loeb,

Deputy Director, Acquisition Policy Division.

[FR Doc. E9-20305 Filed 8-21-09; 8:45 am]

BILLING CODE 6820-EP-S

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### 49 CFR Part 571

[Docket No. NHTSA-2009-0150]

#### Federal Motor Vehicle Safety Standard No. 108; Lamps, Reflective Devices and Associated Equipment

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Denial of petition for rulemaking.

**SUMMARY:** This document responds to a petition for rulemaking regarding the Federal motor vehicle safety standard for lighting. The Groupe de Travail "Bruxelles 1952" (GTB) and the Society of Automotive Engineers (SAE) Lighting Committee requested that new specifications be added for optional lower beam and upper beam headlamp patterns on the basis they would increase harmonization with European requirements. After completing a technical review of the petition, NHTSA is denying this petition. The agency notes the petitioners did not provide data to demonstrate that the requested new optional specifications would provide safety benefits comparable to those of the existing standard or that cost savings would be realized without compromising safety. Additionally, NHTSA is pursuing a more comprehensive review of the lighting standard and is currently studying the feasibility of many issues and potential regulatory changes, some of which would address issues raised in this petition.

**FOR FURTHER INFORMATION CONTACT:** For non-legal issues, you may call Mr. David Hines, Office of Crash Avoidance Standards (Phone: 202-493-0245; FAX: 202-366-7002).

For legal issues, you may call Mr. Ari Scott, Office of the Chief Counsel (Phone: 202-366-2992; FAX: 202-366-3820).

You may send mail to these officials at: National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

#### SUPPLEMENTARY INFORMATION:

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- I. The Petition
- II. Agency Technical Evaluation
- III. Agency Conclusions

##### I. The Petition

On July 21, 2004, the SAE Lighting Committee and GTB petitioned the agency to add new specifications to Federal Motor Vehicle Safety Standard (FMVSS) No. 108; *Lamps, reflective devices, and associated equipment*, for optional upper and lower beam patterns based on specifications pending approval by the United Nations' Economic Commission for Europe (ECE) under ECE R112. If these requested amendments were adopted, manufacturers of vehicles sold in the U.S. would be able to choose to certify products to either the existing requirements of FMVSS No. 108 or the requested alternative new requirements. Modifications to the agency's test procedures were also requested. The petitioners stated that Japan had