

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Amendment of Parts 0, 1, 2, 15 and 18 of the) ET Docket No. 15-170
Commission's Rules regarding Authorization of)
Radiofrequency Equipment)

ORDER

Adopted: October 16, 2015

Released: October 19, 2015

By the Commission:

1. We take action today to temporarily waive the requirements in sections 2.1203 and 2.1205 of the Commission's rules that govern the submission of information in connection with imported Radio Frequency (RF) devices, effective July 1, 2016, through December 31, 2016, for the reasons discussed below.

2. Section 2.1203 of our rules states that no RF device may be imported unless the importer or ultimate consignee (or their designated customs broker) declares that the device meets the conditions of entry set forth in our importation rules. Section 2.1205 provides two ways to make this declaration. At ports of entry where electronic filing with the U.S. Customs and Border Protection (CBP) is not available, the importer completes FCC Form 740 and attaches a copy to its customs import papers. Where electronic customs filing is available, the importer may submit the information electronically as part of its entry documentation submission to CBP. Currently, nearly all submissions are made electronically through the CBP's Automated Commercial System (ACS), and very few paper filings are submitted.

3. CBP is deploying a new electronic filing system, the Automated Commercial Environment (ACE), which is scheduled to become available for electronic entry and electronic summary filings on November 1, 2015. ACE, however, will not have the capability for importers to submit the FCC-required Form 740 information electronically. FCC-related importation filings can continue to be submitted electronically via ACS or paper until July 1, 2016. According to the current CBP schedule, as of July 1, 2016, CBP will no longer accept filings made via ACS.

1 47 C.F.R. § 2.1203.

2 The International Trade and Data System (ITDS) program was established to streamline the import and export process for America's businesses by December 2016. http://www.itds.gov. ACE will become the sole system through which the trade community will report imports and exports and the government will determine admissibility. See http://www.cbp.gov/trade/automated.

3 Introducing such a capability into ACE requires a certain amount of reprogramming of the ACE system.

4 http://www.cbp.gov/trade/automated/ace-mandatory-use-dates.

5 We note that this requirement has yet to be effectuated by rule making by CBP.

4. Recently, the Commission adopted a Notice of Proposed Rulemaking (*NPRM*) in the above-captioned proceedings to update the rules that govern the evaluation and approval of RF devices.⁶ In the *NPRM*, the Commission proposed to eliminate the importation filing requirement, observing that most of the information included on Form 740 (and its electronic equivalent) was readily available from other sources (*e.g.*, from data CBP otherwise collected, or from the Internet).⁷ The *NPRM* proposed to amend section 2.1203 and remove section 2.1205, thereby eliminating the declaration and associated filing requirements.⁸ While our ongoing rulemaking may ultimately result in the elimination, modification, or retention of the section 2.1203 and 2.1205 requirements, the revised pleading cycle has not yet closed,⁹ and, as the overall rulemaking proceeding initiated by the *NPRM* is quite complex, it is possible that the Commission will be unable to reach and publish a final determination before July 1, 2016, the date upon which CBP will no longer accept the electronic filing of FCC Form 740s via ACS. Assuming the Commission retains or modifies the Form 740 filing requirement, parties will be precluded from filing the Form 740 electronically after July 1, 2016 unless the filing is done via ACE. The modifications to the ACE that would be necessary to render that system capable of accepting FCC Form 740s, however, will take an appreciable amount of time and expense to implement on the part of both CBP and the Commission. Thus, unless the CBP and the FCC initiate the work to effectuate such modifications well in advance of July 1, it is likely that for some period of time after July 1 all the Form 740 filings would need to be made as paper filings. The option of relying on paper filings after July 1 also would be impractical. With the elimination of hybrid filings, parties, requiring submissions to multiple agencies would have to file separate paper forms to each agency. We estimate that we would receive approximately 20,000 such forms each week, with the same number of forms submitted to CBP. In addition, numerous importers would also have to file with FDA or other agencies that may regulate a given device. Given the above circumstances, we find that absent a waiver, there would be significant burdens associated with the ACE implementation for Form 740, for the CBP and FCC. If the Commission determines not to continue with the Form 740 requirements, those burdens will have proved to have been unnecessary. On the other hand, if the Commission determines to continue use of Form 740, the necessary changes to the ACE can be made at that time.

5. Absent a waiver, we also find that there would be significant burdens for those filing Form 740 prior to the time the ACE filing system could be modified to accommodate the Form. The timing of our proceeding and its open issues also introduce considerable regulatory uncertainty for the importation community that support the need for a waiver. Both manufacturers with considerable importation volumes and import brokers and brokers' associations have already begun consulting informally with the FCC on possible steps to take to ensure continued compliance with our importation requirements. Based on these discussions, we understand that it could take a number of months for the members of the importation community to tailor their existing documentation and related processes to a new importation regime (even one that lifts burdens). Accordingly, this community needs to have some degree of guidance now, to know whether its members should begin making the necessary preparations for compliance with a paper-based regime in July, or whether they can continue using their existing

⁶Amendment of Parts 0, 1, 2, 15 and 18 of the Commission's Rules Regarding Authorization of Radiofrequency Equipment, ET Docket No. 15-170, *Notice of Proposed Rulemaking*, 30 FCC Rcd 7725 (2015) (*NPRM*). Comments in this proceeding were originally due on September 8, 2015 and reply comments were originally due on September 21, 2015. 80 Fed. Reg. 46900 (August 6, 2015). These dates were recently extended to October 9, 2015, and November 9, 2015, respectively. Amendment of Parts 0, 1, 2, 15 and 18 of the Commission's Rules Regarding Authorization of Radiofrequency Equipment, ET Docket No. 15-170, *Order*, DA 15-956, rel. August 25, 2015.

⁷ *NPRM*, 30 FCC Rcd at 7766-67, paras. 117-121.

⁸ *NPRM*, 30 FCC Rcd 7767, para. 120; proposed 47 C.F.R. § 2.1203 (Appendix A).

⁹ The reply comment period will close on November 9, a little over a week after CBP began allowing electronic filing in ACE. Leadership of the ITDS task force implementing the ACE have been continuously advised of the FCC's subject rulemaking proceeding.

processes with some assurance that, in the event the rule making remains unresolved, they will not be expected to make a flash cut to a paper filing process come July.

6. Section 1.3 of the Commission's rules provides that "[a]ny provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown."¹⁰ For the above stated reasons, we find good cause to temporarily waive the above-described filing requirements in sections 2.1203 and 2.1205 of the rules effective July 1, 2016, and extending for six months. Assuming that the waiver remains necessary as of July 1, we anticipate that any difficulties associated with not gathering data through Form 740 will be relatively limited in time and scope. We will work with CBP to draw on other data to satisfy any informational needs that are currently provided through the operation of sections 2.1203 and 2.1205.¹¹ In the event that we decide to retain the requirement that importers submit some or all of the information required by sections 2.1203 and 2.1205, we will set forth appropriate revised filing procedures at that time. To the extent that a waiver remains necessary as of July 1, our action only affects the manner in which the Commission collects the information about imported RF equipment that is associated with the requirements of sections 2.1203 and 2.1205. The general proscription against importation of non-authorized equipment is unaffected and will remain fully in effect.¹²

7. For the foregoing reasons, we will temporarily waive the requirements of sections 2.1203 and 2.1205, effective July 1, 2016. The waiver will remain in effect through December 31, 2016. If, despite our best efforts, additional time is needed, we hereby delegate authority to the Office of Engineering and Technology to extend this date, but no later than the effective date of any decision regarding sections 2.1203 and 2.1205 in the *NPRM* proceeding.

8. Accordingly, IT IS ORDERED, pursuant to Sections 1, 4(i), 301, 302, 303(e), 303(f), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 151, 154(i), 301, 302, 303(e), 303(f), and 303(r), and Section 1.3 of the Commission's rules, 47 C.F.R. Section 1.3, that Sections 2.1203 and 2.1205 of the Commission's Rules and Regulations, 47 C.F.R. Sections 2.1203 and 2.1205, ARE TEMPORARILY WAIVED, effective July 1, 2016, to the extent set forth in the foregoing paragraph.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹⁰ See 47 C.F.R. § 1.3.

¹¹ See *NPRM*, at 7766-7767. For example, most equipment is advertised or for sale on the internet and there is a wealth of information available as to the supplier of the equipment.

¹² 47 C.F.R. § 2.1204.