SUPPORTING STATEMENT

A. Justification:

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitates the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.

The Commission is requesting Office of Management and Budget (OMB) approval for a revision of this information collection.

On June 17, 2021, the Commission released a Report and Order, ET Docket No. 20-382, FCC 21-72, "*Allowing Earlier Equipment Marketing and Importation Opportunities."* Among other adopted rules intended to target enhancements to our marketing and importation rules, the Commission amended the 47 CFR Part 2 rules that will allow equipment manufacturers to better gauge consumer interest and prepare for new product launches. The Commission is also requesting a Title change by adding "Conditions and Section 2.1204" to the title. OMB's Inventory is to read as follow: "Marketing and Importing Conditions of RF Devices Prior to Equipment Authorization - Sections 2.803 and 2.1204."

Revised Information Collection Requirements which require OMB Approval

In amendment to rule sections 2.803(c)(2), remove and reserve paragraph (ii) and revise paragraph (i), and 2.1204(a)(11) includes revisions to this information collection and rule sections were revised to read as follow:

§ 2.803 Marketing of radio frequency devices prior to equipment authorization.

(c) * * *

(2) * * *

(i) Conditional sales contracts (including agreements to produce new devices manufactured in accordance with designated specifications), and advertisements for such sales, are permitted under the following conditions:

(A) The initiating party must provide to the prospective buyer at the time of marketing, through a prominent disclosure:

1. notification that the equipment is subject to the FCC rules and delivery to the end user is conditional upon successful completion of the applicable equipment authorization process;

2. notification that FCC rules do not address the applicability of consumer protection, contractual, or other provisions under federal or state law; and

3. notification of any responsibility of the initiating party to the buyer in the event that the applicable equipment authorization process is not successfully completed, including information regarding any applicable refund policy.

(B) For devices subject to Supplier Declaration of Conformity procedures under subpart J, physical transfer of equipment from the initiating party to other entities, including delivery to the end user, prior to successful completion of the equipment authorization process is prohibited.

(C) For devices subject to Certification procedures under subpart J, delivery to the end user prior to successful completion of the equipment authorization process is prohibited; transfer of physical possession of devices to other entities for the sole purpose of pre-sale activity is permitted only after compliance testing by an FCC-recognized accredited testing laboratory is completed and an application for Certification is submitted to an FCC-recognized Telecommunication Certification Body pursuant to § 2.911. Pre-sale activity includes packaging and transferring physical possession of devices to distribution centers and retailers. Pre-sale activity does not include display or demonstration of devices.

1. Each device, or its packaging, physically transferred for the purpose of pre-sale activity must prominently display a visible temporary removable label stating:

"This device cannot be delivered to end users, displayed, or operated until the device receives certification from the FCC. Under penalty of law, this label must not be removed prior to receiving an FCC certification grant."

2. The first party to initiate a conditional sales contract under paragraph (c)(2)(i) of this section or to physically transfer devices must have processes in place to retrieve the equipment in the event that the equipment is not successfully certified and must complete such retrieval immediately after a determination is made that the equipment certification cannot be successfully completed.

(D) Notwithstanding § 2.926, radiofrequency devices marketed pursuant to paragraph (c)(2)(i) of this section may include the expected FCC ID if obscured by the temporary label described in paragraph (c)(2)(i)(B)(*1*) of this section or, in the case of electronic labeling, if the expected FCC ID cannot be viewed prior to authorization.

(E) All radiofrequency devices marketed under paragraph (c)(2)(i) of this section must remain under legal ownership of the first party to initiate a conditional sales contract.

(F) The first party to initiate a conditional sales contract or any party that physically transfers devices under paragraph (c)(2)(i) of this section must maintain, for a period of sixty (60) months, records of each conditional sale contract. Such records must identify the device name and product identifier, the quantity conditionally sold, the date on which the device authorization was sought, the expected FCC ID number, and the identity of the conditional buyer, including contact information. The first party to initiate a conditional sales contract or any party that physically transfers devices under paragraph (c)(2)(i) of this section must provide these records upon the request of Commission personnel.

§ 2.1204 Import Conditions.

(a) * * *

* * * * *

(11) The radio frequency device is subject to Certification under § 2.907 and is being imported in quantities of 12,000 or fewer units for pre-sale activity. For purposes of this paragraph, quantities are determined by the number of devices with the same FCC ID.

(i) The Chief, Office of Engineering and Technology, may approve importation of a greater number of units in a manner otherwise consistent with paragraph (a)(11) of this section in response to a specific request.

(ii) Pre-sale activity includes packaging and transferring physical possession of devices to distribution centers and retailers. Pre-sale activity does not include display or demonstration of devices. Except as provided in § 2.803(c)(2)(i), the devices must not be delivered to end users, displayed, operated, or sold until equipment Certification under § 2.907 has been obtained.

(iii) Radiofrequency devices can only be imported under the exception of paragraph (11) of this section after compliance testing by an FCC-recognized accredited testing laboratory is completed and an application for certification is submitted to an FCC-recognized Telecommunication Certification Body pursuant to § 2.911 of this part;

(iv) Each device, or its packaging, imported under this exception must prominently display a visible temporary removable label stating:

"This device cannot be delivered to end users, displayed, or operated until the device receives certification from the FCC. Under penalty of law, this label must not be removed prior to receiving an FCC certification grant."

(v) Notwithstanding § 2.926, radiofrequency devices imported pursuant to paragraph (a)(11) of this section may include the expected FCC ID if obscured by the temporary label described in paragraph (a)(11)(iv) this section or, in the case of electronic labeling, if it cannot be viewed prior to authorization.

(vi) The radiofrequency devices must remain under legal ownership of the device manufacturer, developer, importer or ultimate consignee, or their designated customs broker, and only transferring physical possession of the devices for pre-sale activity as defined in paragraph (a)(11) of this section is permitted prior to Grant of Certification under § 2.907. The device manufacturer, developer, importer or ultimate consignee, or their designated customs broker must have processes in place to retrieve the equipment in the event that the equipment is not successfully certified and must complete such retrieval immediately after a determination is made that certification cannot be successfully completed.

(vii) The device manufacturer, developer, importer or ultimate consignee, or their designated customs broker must maintain, for a period of sixty (60) months, records identifying the recipient of devices imported for pre-sale activities. Such records must identify the device name and product identifier, the quantity shipped, the date on which the device authorization was sought, the expected FCC ID number, and the identity of the recipient, including contact information. The device manufacturer, developer, importer

or ultimate consignee, or their designated customs broker must provide records maintained under this provision upon the request of Commission personnel.

Previously Approved Information Collection Requirements by OMB

On January 31, 2013, the Commission adopted a Report and Order, ET Docket No. 10-236 and 06-155, FCC 13-15, which revised the rules in Section 2.803(c)(2) to include limited marketing activities prior to equipment authorization. The following marketing activities are permitted prior to equipment authorization:

Limited marketing is permitted, as described in the following text, for devices that could be authorized under the current rules; could be authorized under waivers of such rules that are in effect at the time of marketing; or could be authorized under rules that have been adopted by the Commission but that have not yet become effective. These devices may not be operated unless permitted by §2.805.

(i) [Amended by Report and Order, ET Docket No. 20-382, FCC 21-72, *"Allowing Earlier Equipment Marketing and Importation Opportunities."*]

(ii) Id. [REMOVED AND RESERVED]

(iii) (A) A radio frequency device may be advertised or displayed, (*e.g.*, at a trade show or exhibition) if accompanied by a conspicuous notice containing this language:

This device has not been authorized as required by the rules of the Federal Communications Commission. This device is not, and may not be, offered for sale or lease, or sold or leased, until authorization is obtained.

(B) If the device being displayed is a prototype of a device that has been properly authorized and the prototype, itself, is not authorized due to differences between the prototype and the authorized device, this language may be used instead: Prototype. Not for Sale.

(iv) An evaluation kit as defined in §2.1 may be sold provided that:

(A) Sales are limited to product developers, software developers, and system integrators;

(B) The following notice is included with the kit:

FCC NOTICE: This kit is designed to allow:

(1) Product developers to evaluate electronic components, circuitry, or software associated with the kit to determine whether to incorporate such items in a finished product and

(2) Software developers to write software applications for use with the end product. This kit is not a finished product and when assembled may not be resold or otherwise marketed unless all required FCC equipment authorizations are first obtained. Operation is subject to the condition that this product not cause harmful interference to licensed radio stations and that this product accept harmful interference. Unless the assembled kit is designed to operate under part 15, part 18 or part 95 of this chapter, the

operator of the kit must operate under the authority of an FCC license holder or must secure an experimental authorization under part 5 of this chapter.

(C) The kit is labeled with the following legend: For evaluation only; not FCC approved for resale; and

(D) Any radiofrequency transmitter employed as part of an evaluation kit shall be designed to comply with all applicable FCC technical rules, including frequency use, spurious and out-of-band emission limits, and maximum power or field strength ratings applicable to final products that would employ the components or circuitry to be evaluated.

This information collection does not affect individuals nor do respondents have to provide any personally identifiable information (PII). Thus, a Privacy Impact Assessment is not required.

This collection of information is authorized under Sections 4(i), 301, 302a, 303(c), 303(f), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 301, 302a, 303(c), 303(f), and 303(r).

2. Indicate how, by whom and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

(A) The FCC Rules in 47 CFR Part 2, Section 2.803(i) that require information be disclosed about marketing of the RF device, are intended:

(1) Require that the seller of a conditionally-purchased RF device advise the conditional purchaser that the device is subject to FCC rules, and

(2) that delivery of the device to the purchaser is contingent upon device compliance with applicable FCC equipment authorization and technical requirements.

(B) The FCC rules in 47 CFR Part 2, Section 2.1204(a)(11) that require importation of RF devices into the United States prior to equipment authorization for pre-sale activities—including imaging, packaging, and delivery to retail locations, are intended:

(1) each imported RF device display a temporary removable label stating that it cannot be displayed, operated, offered for sale, marketed to consumers, or sold prior to proper FCC equipment authorization has been granted, and

(2) moreover, importing manufacturers will be required to maintain, for a period of 60 months, records identifying the recipients of RF devices imported for pre-sale activities.

(a) Such records must identify several factors such as:

a. the device name and product identifier,

b. the quantity shipped,

c. the date on which the device authorization was sought,

d. the expected FCC ID number, and

e. the identity of the recipient, including address and telephone number.

(b) Also, particular recordkeeping requirements that will be imposed on RF manufacturers so that RF equipment that is conditionally sold can be accounted for if equipment authorization is ultimately not granted or enforcement action needs to be taken,

(c) and the period of time that manufacturers should be required to retain those records and provide them to the FCC upon request.

(d) Additionally, the Commission requests that a manufacturer that imports an RF device should be required to document (and provide such documentation to the FCC upon request) the basis for its belief that the FCC will authorize that device.

(C) The FCC Rules in 47 CFR Part 2, Section 2.803 that require information be disclosed about marketing of the RF device, are intended:

(1) To ensure the compliance of the proposed equipment with Commission's Rules, and

(2) To assist industry efforts to introduce new products to the marketplace more promptly.

(b) The information disclosure applies to a variety of RF equipment that:

a. is pending equipment authorization or verification of compliance,

b. may be manufactured in the future,

c. may be sold as kits, and

d. operates under varying technical standards.

(c) The information disclosed is essential to ensuring that interference to radio communications is controlled.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.

This information collection does not involve the use of any automated, electronic, mechanical, or other technological collection techniques.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in item 2 above.

The Commission believes that no other agency or entity requires this type of disclosure.

5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.

The Commission rules set forth are minimal, and we believe would significantly assist RF equipment manufacturers, some of which may be small entities, to market and import RF equipment. Also, that the regulatory burdens that we are implementing are necessary in order to ensure that the public receives the benefits of innovative products and technologies in a prompt and efficient manner, and those burdens apply equally to large and small entities, thus without differential impact.

Small businesses that manufacture radio communications devices generally request authorization for marketing of devices regulated under 47 CFR Part 15 of the Commission's Rules. The Commission believes that disclosure of information required under these rules represents a minimal burden to both large and small entities.

6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

This is a one-time reporting requirement. The information that respondents disclose is necessary to ensure an understanding by the public that the subject RF equipment must comply with Commission regulations prior to sale and/or operation.

7. Explain any special circumstances that cause an information collection to be conducted in a manner: requiring respondents to report information to the agency more often than quarterly; requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it; requiring respondents to submit more than an original and two copies of any document; requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.

No special circumstances exist for the collection of the information.

8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information prior to submission to OMB.

-Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

The Commission published a notice in the *Federal Register* on October 25, 2021 (86 FR 58911). No comments were received in response to the notification.

9. Explain any decision to provide any payment or gift to respondents, other than renumeration of contractors or grantees.

No payments or gifts are given to respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation or agency policy.

The Commission is not making any request that respondents provide information that would require an assurance of confidentiality, nor are there any instances where confidentiality is requested due to patents, trade secrets, etc.

11. Provide additional justification for any questions of a sensitive nature.

There are no issues of a sensitive nature.

12. Provide estimates of the hour burden of the collection of information. The statement should: indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance.

The estimated burden is calculated for 10,000 respondents, at an average 1 hour per response, that's .5 hours more than previously accounted for. This burden is imposed only once in the life of the equipment. Should the device be modified a new application submittal is required, and the requirement would exist for the display or advertisement of the device prior to authorization. See, subpart (B) and (C) of section 2.803(c)(2)(i) for devices subject to Supplier Declaration of Conformity(SDoC) or Certification procedures under subpart J.

Total Number of Respondents: 10,000 RF manufacturers.

Total Number of Responses Annually: 10,000 devices from RF manufacturers.

10,000 respondents X 1 ("one-time") reporting requirement per device from RF manufacturer = 10,000 responses.

Total Annual Hourly Burden: 10,000 x 1 hour/response = **10,000 hours.** This burden is for disclosure to a third party that equipment displayed or advertised is not available for sale or operation or that it is a kit used for limited purposes or see further requirements described in item 2 above.

Furthermore, the Commission believes that because this is a "one-time" reporting requirement, RF equipment manufacturers (respondents) consider this disclosure requirement a regular part of their business costs.

13. Provide estimate for the total annual cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden shown in items 12 and 14).

Annual reporting and recordkeeping costs:

(a) Total annual capital/startup costs: **None.**

(b) Total annual costs (O&M): **None.**

(c) Total annualized cost requested: **None.**

14. Provide estimates of annualized costs to the Federal government. Also provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), any other expenses that would not have been incurred without this collection of information.

There are no costs to the Federal Government because this collection involves labeling or notification requirements performed by RF manufacturers.

15. Explain the reasons for any program changes or adjustments reported.

The Commission adopted new information collection requirements contained in FCC 21-72 under sections 2.803 and 2.120 which resulted in a program change/an increase in the total annual hours of +5,000 (from 5,000 hours to 10,000 hours). There is no change in the total number of respondents or total annual responses.

There are no adjustments to this information collection.

16. For collections of information whose results will be published, outline plans for tabulation and publication.

The information disclosed is intended to ensure compliance of equipment with applicable Commission technical standards and rules. The data is not compiled, published, or otherwise reported to the public.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

Since this information collection does not include any FCC forms, we are not seeking approval to not display the OMB expiration date for this information collection. The Commission publishes a list of OMB-approved information collections in 47 CFR 0.408 of the Commission's rules. Thereby, satisfying OMB's requirement to "display" the OMB control number and expiration date.

18. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

The Commission omitted the word "Conditions" in the title of this information collection when the 60/30-Day Notices were published in the Federal Register on October 25, 2021 (86 FR 58911) and January 10, 2022 (87 FR 1146), respectively. The correct title is "**Sections 2.803, 2.803(c)(2), and 2.1204(a)(11) Marketing and Importing Conditions of RF Devices Prior to Equipment Authorization"** and is reflected in this submission to OMB.

There are no other exceptions to the Certification Statement.

B. <u>Collection of Information Employing Statistical Methods:</u>

This information collection does not employ statistical methods.