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Federal Communications Commission Enforcement Advisory Reminds Electronic Device Marketers of Compliance Requirements

On Feb. 15, 2019, the Enforcement Bureau of the Federal Communications Commission (FCC) issued an [Enforcement Advisory](#) warning entities marketing radio frequency (RF) devices subject to the FCC's Supplier's Declaration of Conformity (Supplier's DoC) equipment authorization procedures that they must comply with all applicable rules. Specifically, prior to being marketed in the United States, RF devices subject to the Supplier's DoC procedures must have the appropriate equipment authorization, be labelled properly, and include required disclosures. This GT Alert focuses on compliance requirements applicable to marketing RF devices with a Supplier's DoC authorization. A detailed description of the types of RF devices and marketing activities subject to FCC regulation and the equipment authorizations applicable to RF devices is found in a GT Alert issued in July 2018 ([See FCC Enforcement Advisory Cautions Against Marketing Electronics Without Required Equipment Authorizations](#)).

RF Devices and Entities Subject to Supplier's DoC Procedures

Digital devices that produce RF signals but that do not purposely transmit such signals for communications purposes must have a Supplier's DoC equipment authorization prior to marketing. These devices, known as unintentional radiators, include various consumer and commercial devices, such as

televisions, electronic games and toys, computer peripherals, light-emitting diode (LED) signs,¹ and microwave ovens.² An unintentional radiator device is considered to have a Supplier's DoC if a responsible party (often the manufacturer or importer) has the device tested by a laboratory to ensure that it meets the FCC's technical parameters. The test data and related reports must be maintained and provided to the FCC upon request.

Entities that market unintentional radiator devices in the United States must ensure that they comply with the Supplier's DoC procedures. FCC rules define marketing to include "sale or lease, or offering for sale or lease, including advertising for sale or lease, or importation, shipment, or distribution for the purpose of selling or leasing or offering for sale or lease." (47 CFR § 2.803(a)). Therefore, entities that market RF devices include manufacturers, importers, and retailers. Under FCC rules there must be a party responsible for compliance, and that party must be located in the United States. (47 C.F.R. § 2.909(b)).

The FCC rules define the "responsible party" as the manufacturer or the assembler if the equipment is assembled from individual component parts and the resulting system is subject to authorization under a Supplier's DoC. However, if the device subject to a Supplier's DoC is imported, then the importer is the responsible party. In addition, a retailer may enter into an agreement with a manufacturer or importer to assume the responsibilities of compliance and become the new responsible party. (*Id.*)

Supplier's DoC Compliance Requirements

Even though a particular entity may not be the "responsible party" under FCC rules, if an entity markets RF devices, it is required to ensure that devices have been properly authorized under the Supplier's DoC procedures and meet other applicable requirements. In the Enforcement Advisory, the FCC specifically advises marketers to "ensure that each device in their inventory or catalog has been authorized by obtaining proof of compliance."

The FCC's compliance requirements for RF devices subject to a Supplier's DoC include the following:

- Testing the device to determine that it meets applicable technical requirements.
- Ensuring that the device meets labelling requirements.
- Supplying a compliance information statement with the device at the time of marketing or importing. The statement must include the name and model number of the product; the name, address and telephone number or Internet contact information of the responsible party and any other compliance statements required by FCC rules for certain specialized devices.
- Including the compliance information statement in the user's manual or on a separate sheet. Under certain circumstances, the compliance information statement can be provided in an Internet version of a user's manual or electronically if the device has an integrated display screen.
- Retaining records to demonstrate compliance with applicable FCC rules.

¹ The FCC also issued an [Enforcement Advisory specifically aimed at LED sign manufacturers](#) because the FCC has observed a growing number of companies marketing these signs in violation of FCC rules. In the Enforcement Advisory, the FCC stressed that each panel that is part of an LED sign must comply with the Supplier's DoC procedures and applicable FCC rules.

² The FCC has exempted certain categories of unintentional radiators from the equipment authorization requirement, but those devices must still meet any applicable technical standards and may not cause harmful interference. Exempt unintentional radiators include digital devices used in vehicles, industrial and medical testing equipment, and large household appliances, such as stoves, dishwashers, and washing machines.

Enforcement

Entities that market RF devices without the required equipment authorization may be subject to FCC enforcement actions initiated by the FCC's Enforcement Bureau or in response to a complaint. Enforcement actions may include the issuance of a Notice of Apparent Liability recommending a monetary forfeiture, with the alleged violator having an opportunity to respond. The FCC may then issue a forfeiture order directing the responsible party to pay a fine. The base forfeiture amount for equipment authorization violations is \$7,000 (which the FCC can adjust upward or downward depending on several factors). (47 C.F.R. § 1.80(b)). However, the amount of any forfeiture penalty shall not exceed \$20,134 for each violation or each day of a continuing violation up to a maximum of \$151,005 for any single continuing violation. (47 U.S.C. § 503(b)(2)(D) and 47 C.F.R. §§ 1.80(b)(7), (b)(9), as adjusted for inflation). The FCC also commonly enters into consent decrees with violators that include the payment of civil penalties and admissions of liability.

If you have questions about the latest FCC Enforcement Advisory regarding the marketing of RF devices subject to Supplier's DoC procedures or any other questions regarding the FCC's rules and enforcement policies governing RF devices, please contact us at your convenience.

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