

## Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 36361, July 11, 2001) requesting comments on how to best carry out the Order. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

## Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

## Environment

We prepared an "Environmental Assessment" in accordance with Commandant Instruction M16475.1D, and determined that this rule will not significantly affect the quality of the human environment. The "Environmental Assessment" and "Finding of No Significant Impact" is available in the docket where indicated under **ADDRESSES**.

## List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

## PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 is revised to read as follows:

**Authority:** 33 U.S.C. 1233 through 1236; Department of Homeland Security Delegation No. 0170, 33 CFR 100.35.

2. Section 100.530 is added to read as follows:

### § 100.530 Prospect Bay, Kent Island Narrows, Maryland

(a) *Definitions.*—(1) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Activities Baltimore.

(2) *Official Patrol.* The Official Patrol is any vessel assigned or approved by Commander, Coast Guard Activities Baltimore with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(3) *Regulated area.* Includes all waters of Prospect Bay enclosed by the following points:

| Latitude      | Longitude          |
|---------------|--------------------|
| 38°57'52.0"   | 076°14'48.0" W, to |
| 38°58'02.0" N | 076°15'05.0" W, to |
| 38°57'38.0" N | 076°15'29.0" W, to |
| 38°57'28.0" N | 076°15'23.0" W, to |
| 38°57'52.0" N | 076°14'48.0" W.    |

All coordinates reference Datum NAD 1983.

(b) *Special local regulations.* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area shall:

(i) Stop the vessel immediately when directed to do so by any official patrol, including any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any official patrol, including any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(c) *Enforcement period.* This section will be enforced annually from 9:30 a.m. to 6:30 p.m. on the first Saturday and Sunday in August. Notice of the enforcement period will be given via Marine Safety Radio Broadcast on VHF-FM marine band radio, Channel 22 (157.1 MHz).

Dated: March 10, 2003.

**James D. Hull,**

*Vice Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.*

[FR Doc. 03-7545 Filed 3-28-03; 8:45 am]

**BILLING CODE 4910-15-P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 76 and 78

[MB Docket No. 03-50; FCC 03-37]

### Extend Interference Protection for the Marine and Aeronautical Distress and Safety Frequency at 406.025 MHz

**AGENCY:** Federal Communications Commission

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Commission proposes to provide interference protection for the international emergency digital distress and safety frequency operating at 406.025 MHz. New Emergency Position Indicated Radio Beacons (EPRIBs) and Emergency Locator Transmitters (ELTs) are using digital signals operating on 406.025 MHz instead of the traditional analog signals which operate on 121.5 and 243.0 MHz. The rules proposed herein will protect the frequency 406.025 MHz from possible interference from cable television systems and multi-channel video program distributor (MVPD) systems operating near this frequency. In addition, the Commission seeks comment on adding a provision to part 78 regarding the cancellation or forfeiture of unused or discontinued Cable Television Relay Service (CARS) licenses. Canceling unused or discontinued CARS licenses will help the Commission conserve and reclaim unused spectrum. Also, in order to keep the rules consistent and up to date, the Commission proposes to streamline and revise certain sections of parts 76 and 78.

**DATES:** Comments are due on or before April 30, 2003 and reply comments are due on or before May 15, 2003. Written comments by the public on the proposed information collections are due April 30, 2003. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collection(s) on or before May 30, 2003.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judith Boley Herman, Federal Communications Commission, Room 1-C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to [jberman@fcc.gov](mailto:jberman@fcc.gov), and to Jeanette Thornton, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or

via the Internet to  
[jthornto@omb.eop.gov](mailto:jthornto@omb.eop.gov).

**FOR FURTHER INFORMATION CONTACT:**

Sarah Mahmood, Media Bureau at (202) 418-7009 or via Internet at [smahmood@fcc.gov](mailto:smahmood@fcc.gov). For additional information concerning the information collection(s) contained in this NPRM, contact Judith Boley Herman at 202-418-0214, or via the Internet at [jbherman@fcc.gov](mailto:jbherman@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 03-050, adopted February 24, 2003 and released March 5, 2003. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554, and may be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone (202) 863-2893, facsimile (202) 863-2898, or via e-mail [qualexint@aol.com](mailto:qualexint@aol.com) or may be viewed via internet at <http://www.fcc.gov/mb/>.

1. This Notice of Proposed Rule Making (NPRM) proposes to modify § 76.616 of our rules to include the international digital search and rescue frequency 406.025 MHz within the prohibition on cable system operation near the emergency and distress frequencies. As part of our continual review of our technical rules, this NPRM also proposes streamlining and revising part 76, Multichannel Video and Cable Television Service rules, and part 78, Cable Television Relay Service rules, by eliminating outdated rules, correcting others, and maintaining consistency throughout different Commission Rule parts.

2. The United States, Canada, France, and Russia use COSPAS/SARSAT satellites to detect and locate distress signals from Emergency Position Indicating Radio Beacons (EPIRBs) and Emergency Locator Transmitters (ELTs). Older EPIRBs and ELTs use analog signals and operate on 121.5 MHz and 243.0 MHz. Section 76.616 of our rules is designed to protect the emergency frequencies at 121.5 MHz and 243.0 MHz from interference by cable television systems operating near these frequencies. The Commission adopted rules prohibiting the transmission of carriers or other signal components capable of delivering peak power levels equal to or greater than 10 microwatts ( $10^{-5}$  watts) at any point in a cable television system within 100 kHz of the frequency 121.5 MHz and within 50 kHz of the frequency 243.0 MHz.

3. Newer EPIRBs and ELTs use digital signals and operate on 406.025 MHz. Conforming to satellite use, the Commission adopted rules authorizing the use of the frequency 406.025 MHz for EPIRBs in the maritime radio services, aviation radio services, and for Personal Locator Beacons (PLBs). According to the U.S. Coast Guard, EPIRBs operating on the frequency 406.025 MHz account for four times the number of lives saved as 121.5/243.0 MHz EPIRBs and are responsible for only two percent of the total number of false alerts attributed to 121.5/243.0 MHz EPIRBs. This is due in part to the ability of rescue personnel to locate and detect the emergency signal more efficiently using the additional registration information contained in the 406.025 MHz signal that specifically identifies the beacon in distress. As a result, COSPAS/SARSAT announced that it would stop equipping new satellites with 121.5/243.0 MHz processors and plans to establish a date after which any remaining active processors will be turned off. Carriage of the 406.025 MHz EPIRB is already required aboard SOLAS-class merchant vessels and U.S. commercial fishing vessels. The 406.025 MHz EPIRB is also being used aboard recreational vessels at an increasing rate. In light of these special circumstances surrounding the exclusive use of 406.025 MHz as an emergency communication frequency, it is appropriate to consider revising our rules to protect 406.025 MHz against harmful interference by cable television systems and MVPDs.

4. Analog EPIRBs and ELTs designed to transmit on 121.5 MHz and 243.0 MHz transmit amplitude modulated continuous signals with an audio swept tone. The audio swept tone assists Search and Rescue (SAR) personnel by emitting a distinctive aural signal. These signals also provide distress alerting and homing assistance in emergency situations. Digital EPIRBs and ELTs designed to transmit on 406.025 MHz send short digital signals to provide distress alerting in emergencies and use 121.5 MHz to provide homing. The 406.025 MHz digital signal includes information on the type of emergency, the country and identification code of the beacon in distress, and other information to significantly aid SAR operations. In addition, 406.025 MHz distress signals can be stored on-board COSPAS/SARSAT satellites and then later retransmitted to a ground station, thereby eliminating the "blind spots" that exist with the older analog 121.5 MHz and 243.0 MHz EPIRBs and ELTs.

5. Lifesaving efforts have been significantly aided by EPIRBs and ELTs

operating on 406.025 MHz. The use of 406.025 MHz EPIRBs has been increasing rapidly, particularly as mandatory requirements come into effect. This has led the United States and the international community to consider transitioning to the exclusive use of 406.025 MHz EPIRBs in the near future.

6. We propose to amend § 76.616 of our rules to extend protection to the additional emergency frequency at 406.025 MHz. In light of the special circumstances surrounding the use of this emergency frequency, we propose forbidding the transmission of carriers or other signal components capable of delivering peak power levels equal to or greater than 10 microwatts ( $10^{-5}$  watts) at any point in the cable television system within 100 kHz of 406.025 MHz. Prohibiting cable television operation within this limited guard band will not substantially impact current cable television operation, as the closest cable television frequency in use is the color carrier of cable channel 54, which is approximately 800 kHz from 406.025 MHz. We request comment on this proposal.

7. As part of our effort to keep our rules consistent and up to date, we propose the following deletions and updates.

8. We are proposing to eliminate §§ 76.618 and 76.619 because the period allotted for grandfathered cable television operation ended on July 1, 1990. Consequently, we also are proposing to amend § 76.610 to remove the reference to §§ 76.618 and 76.619 found in the last sentence of the rule. In addition, we are deleting Note 2 of § 76.610 because the exclusion of the frequency band 136-137 MHz expired on January 1, 1990. We also propose incorporating § 76.620 into § 76.610 as the requirements under § 76.610 apply to all MVPDs (cable and non-cable).

9. We recognize the need to add a provision to part 78 addressing the cancellation or forfeiture of unused or discontinued CARS licenses. We feel that this provision is necessary to help conserve spectrum and to reclaim unused spectrum. We seek comment on how the cancellation or forfeiture of unused or discontinued CARS licenses should be implemented. We note that § 101.65 addresses the same issue for fixed microwave licenses.

10. We also propose some miscellaneous corrections for various sections of the Commission's Rules as indicated below.

11. Our proposal to expand the safeguard provision to include the international digital emergency distress frequency at 406.025 MHz is intended to

promote "safety of life and property through the use of wire and radio communication." In addition, the elimination of outdated regulations should increase regulatory efficiency.

## I. Procedural Matters

### A. Initial Regulatory Flexibility Analysis

12. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. The IRFA is set forth below. Written public comments are requested on the IRFA. In order to fulfill the mandate of the Contract with America Advancement Act of 1996 regarding the Final Regulatory Flexibility Analysis, we ask a number of questions regarding the prevalence of small businesses in the affected industries.

13. Comments must be filed in accordance with the same filing deadlines as comments filed in this NPRM, but they must have a separate and distinct heading designating them as responses to the IRFA. The Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act.

### B. Paperwork Reduction Act

14. This NPRM contains either a proposed information collection. As part of its continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due at the same time as other comments on this NPRM; OMB comments are due 60 days from date of publication of this NPRM in the **Federal Register**. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated

collection techniques or other forms of information technology.

### C. Ex Parte—Permit-But-Disclose Proceedings

15. This is a permit-but-disclose notice and comment rule making proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules. See generally 47 CFR 1.1202, 1.1203, 1.1206(a).

### D. Filing of Comments and Reply Comments

16. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before April 30, 2003, and reply comments on or before May 15, 2003. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

17. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters 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 for e-mail comments, commenters should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

18. 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 appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before April 30, 2003, and reply comments on or before May 15, 2003. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See Electronic Filing of Documents in

Rulemaking Proceedings, 63 FR 24121 (1998).

19. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters 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 for e-mail comments, commenters should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the body of the message, "get form". A sample form and directions will be sent in reply. 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 appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number.

20. 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).

21. The Commission's contractor, Vistrionix, Inc., 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 mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW-A325, Washington, DC 20554. The Media Bureau contact for this proceeding is Sarah Mahmood at (202) 418-7009, TTY (202) 418-7172, or at [smahmood@fcc.gov](mailto:smahmood@fcc.gov).

22. Parties who choose to file by paper should also submit their comments on diskette. Parties should submit diskettes to Sarah Mahmood, Media Bureau, 445 12th Street SW., Room 4-C824, Washington, DC 20554. Such a submission should be on a 3.5-inch diskette formatted in an IBM compatible form using MS DOS 5.0 and Microsoft Word, or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the party's name, proceeding (including the lead docket number in this case MB Docket No. 03-50), type of pleading (comments or reply comments), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy—Not an Original." Each diskette should contain only one party's pleadings, referable in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554.

23. Written comments by the public on the proposed and/or modified information collections are due April 30, 2003. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before May 30, 2003. In addition to filing comments with the Secretary, a copy of any comments on the information collection(s) contained herein should be submitted to Judith Boley Herman, Federal Communications Commission, Room 1-C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to [jbherman@fcc.gov](mailto:jbherman@fcc.gov) and to Jeanette Thornton, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to [jthornto@omb.eop.gov](mailto:jthornto@omb.eop.gov).

## II. Initial Regulatory Flexibility Analysis

24. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this *NPRM*. 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 on the *NPRM* provided in paragraph 17 of the item. The Commission will send a copy of this

*NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

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

25. The basis of this *NPRM* is our concern to assess the need to protect the emergency and distress frequency at 406.025 MHz from cable system operations in order to promote the safety of life and property. We also aim to streamline the rules by eliminating outdated regulations and making some minor changes as detailed below.

26. We seek comment on the following objectives which are proposed for consideration in this *NPRM*:

- Whether to provide for the protection of emergency and distress frequency 406.025 MHz by updating § 76.616 to include that frequency in the group of protected frequencies;
- Whether the industry believes that unused or discontinued CARS licenses should be forfeited or cancelled;
- Whether to include signal leakage restrictions among the other requirements within Part 76 listed in § 76.1510 that apply to open video systems;
- Whether to eliminate of §§ 76.618 and 76.619 because the date after which operators on these were grandfathered to continue operations ended on July 1, 1990; and
- Whether to effect the miscellaneous amendments which exclusively involve typographical errors or operations that have become obsolete.

### B. Legal Basis

27. The proposed action is authorized under Sections 4, 4(i), 157, 303, 303(g), 303(r), and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 154(i), 157, 303, 303(g), 303(r), 307.

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

28. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the rules adopted herein. The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction" under Section 3 of the Small Business Act. Under the Small Business Act, a small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any

additional criteria established by the Small Business Administration ("SBA").

29. A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."

Nationwide, as of 1992, there were approximately 275,801 small organizations. "Small government jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000." As of 1992, there were approximately 87,525 governmental entities in the United States. This number includes 38,978 counties, cities, and towns: of these, 37,566, or 96%, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (96%) are small entities. Below, we further describe and estimate the number of small entity licensees and regulates, including cities, counties, farms, villages, and other small organizations that may be affected by these rules.

30. The rules we adopt as a result of this *NPRM* protect the emergency and distress frequency 406.025 MHz from interference from cable system operations. The nearest cable frequency is a color carrier approximately 800 kHz above the emergency and distress frequency at 406.83 MHz.

31. *Small MVPDs*. SBA has developed a definition of small entities for cable and other program distribution services, which includes such companies generating \$12.5 million or less in annual receipts. This definition includes cable system operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems, and subscription television services. According to the Census Bureau, there were 1,423 such cable and other program distribution services generating less than \$12.5 million in revenue. We address below services individually to provide a more precise estimate of small entities.

32. The Commission has developed, with SBA's approval, its own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide. Based on our most recent information, we estimate that there were 1439 cable operators that qualified as small cable companies at the end of 1995. Since

then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. The Commission's rules define a "small system," for the purposes of rate regulation, as a cable system with 15,000 or fewer subscribers. The Commission does not request nor does the Commission collect information concerning cable systems serving 15,000 or fewer subscribers and thus is unable to estimate, at this time, the number of small cable systems nationwide.

33. The Communications Act, as amended, also contains a size standard for a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000." The Commission has determined that there are 68,500,000 subscribers in the United States. Therefore, an operator serving fewer than 685,000 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed \$250 million in the aggregate. Based on available data, we find that the number of cable operators serving 685,000 subscribers or less totals approximately 1,450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

34. *Satellite Master Antenna Television Systems ("SMATV")*. The SBA definition of small entities for cable and other program distribution services includes SMATV services and, thus, small entities are defined as all such companies generating \$12.5 million or less in annual receipts. Industry sources estimate that approximately 5,200 SMATV operators were providing service as of December 1995. Other estimates indicate that SMATV operators serve approximately 1.5 million residential subscribers as of July 2001. The best available estimates indicate that the largest SMATV operators serve between 15,000 and 55,000 subscribers each. Most SMATV operators serve approximately 3,000–4,000 customers. Because these operators are not rate regulated, they are not required to file financial data with

the Commission. Furthermore, we are not aware of any privately published financial information regarding these operators. Based on the estimated number of operators and the estimated number of units served by the largest ten SMATVs, we believe that a substantial number of SMATV operators qualify as small entities.

35. *Open Video System ("OVS")*. Because OVS operators provide subscription services, OVS falls within the SBA-recognized definition of cable and other program distribution services. This definition provides that a small entity is one with \$12.5 million or less in annual receipts. The Commission has certified 25 OVS operators with some now providing service. Affiliates of Residential Communications Network, Inc. ("RCN") received approval to operate OVS systems in New York City, Boston, Washington, DC and other areas. RCN has sufficient revenues to assure us that they do not qualify as small business entities. Little financial information is available for the other entities authorized to provide OVS that are not yet operational. Given that other entities have been authorized to provide OVS service but have not yet begun to generate revenues, we conclude that at least some of the OVS operators qualify as small entities.

36. *Multichannel, Multipoint Distribution Service ("MMDS")*. MMDS systems, often referred to as "wireless cable," transmit video programming to subscribers using the microwave frequencies of the MDS and ITFS. In connection with the 1996 MDS auction, the Commission defined small businesses as entities that had annual average gross revenues of less than \$40 million in the previous three calendar years. This definition of a small entity in the context of MDS auctions has been approved by the SBA. The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas ("BTAs"). Of the 67 auction winners, 61 met the definition of a small business. MDS also includes licensees of stations authorized prior to the auction. As noted, the SBA has developed a definition of small entities for program distribution services, which includes all such companies generating \$12.5 million or less in annual receipts. This definition includes multipoint distribution services, and thus applies to MDS licensees and wireless cable operators that did not participate in the MDS auction. Information available to us indicates that there are approximately 850 of these licensees and operators that do not generate revenue in excess of \$12.5 million

annually. Therefore, for purposes of the IRFA, we find there are approximately 850 small MDS providers as defined by the SBA and the Commission's auction rules.

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

37. This NPRM proposes no changes in reporting, recordkeeping or compliance.

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

38. 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 such 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."

39. We believe that the rules proposed in this NPRM will have a negligible economic effect on all entities regardless of size. The majority of the rule changes proposed in this NPRM include the deletion of outdated rules as well as some corrections for typographical errors and consistency.

40. The revision to § 76.616 concerning operation near certain aeronautical and marine emergency radio frequencies (*i.e.* 406.025 MHz) should have a minimal or negligible effect on small or large entities since all such operations are already well outside of the boundaries defined by the proposed rule. It is in the interest of public safety to protect the digital search and rescue frequency 406.025 MHz; the alternative of not protecting the frequency 406.025 MHz is unacceptable.

41. The revision of § 76.1510 to include signal leakage restrictions for open video systems is also in the interest of public safety, thus the alternative of non-restriction is unacceptable.

42. In this NPRM we ask for comment on whether discontinued or unused CARS licenses should be forfeited or cancelled. The alternative would be to leave the CARS licenses as they are, which would result in unused or wasted spectrum as it would not be available for other licensees.

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

None.

### III. Ordering Clauses

43. Pursuant to the authority contained in Sections 4, 4(i), 157, 303, 303(g), 303(r), and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 154(i), 157, 303, 303(g), 303(r), 307, this Notice of Proposed Rule Making is adopted.

44. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Notice of Proposed Rule Making*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 603(a).

45. For further information concerning this NPRM, contact Sarah Mahmood, (202) 418-7009, or Wayne McKee, (202) 418-2355, of the Engineering Division, Media Bureau.

#### List of Subjects in 47 CFR Parts 76 and 78

Administrative practice and procedure, Cable television, Reporting and recordkeeping requirements.

Federal Communications Commission.

**Marlene H. Dortch,**  
*Secretary.*

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Parts 76 and 78 of Title 47 of the Code of Federal Regulations as follows:

#### PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

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

**Authority:** 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

2. Section 76.5 is amended by revising paragraph (v) and removing the Note to read as follows:

##### § 76.5 Definitions.

\* \* \* \* \*

(v) *Subscriber terminal.* The cable television system terminal to which a subscriber's equipment is connected. Separate terminals may be provided for delivery of signals of various classes. Terminal devices interconnected to subscriber terminals of a cable system must comply with the provisions of part

15 of this Chapter for TV interface devices.

\* \* \* \* \*

3. Amend § 76.605 as follows:

a. Paragraph (a) introductory text is revised.

b. Paragraph (a)(1)(ii) is revised.

c. Paragraph (a)(6) is revised.

d. Paragraph (a)(7) is revised.

e. Note 3 in paragraph (b) is revised.

The revisions read as follows:

##### § 76.605 Technical standards.

(a) The following requirements apply to the performance of a cable television system as measured at any subscriber terminal with a matched impedance at the termination point or at the output of the modulating or processing equipment (generally the headend) of the cable television system or otherwise as noted. The requirements are applicable to each NTSC or similar video downstream cable television channel in the system:

(1) \* \* \*

(ii) Cable television systems shall transmit signals to subscriber premises equipment on frequencies in accordance with the channel allocation plan set forth in the Electronics Industries Association's "Cable Television Channel Identification Plan, EIA/CEA-542 Revision A, April 2002" (EIA-542). This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 522(a) and 1 CFR Part 51. Cable systems are required to use this channel allocation plan for signals transmitted in the frequency range 54 MHz to 1002 MHz. Copies of EIA-542 Revision A may be obtained from: Global Engineering Documents, 15 Inverness Way East, Englewood, CO., 80112, 1-800-854-7179, <http://www.global.ihs.com>. Copies of EIA-542 Revision A may be inspected during normal business hours at the following locations: Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554, or the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC 20001.

\* \* \* \* \*

(6) The amplitude characteristic shall be within a range of  $\pm 2$  decibels from 0.75 MHz to 5.0 MHz above the lower boundary frequency of the cable television channel, referenced to the average of the highest and lowest amplitudes within these frequency boundaries. The amplitude characteristic shall be measured at the subscriber terminal.

(7) The ratio of RF visual signal level to system noise shall not be less than 43 decibels. For class I cable television

channels, the requirements of this section are applicable only to:

\* \* \* \* \*

(b) \* \* \*

**Note 3:** The requirements of this section shall not apply to devices subject to the TV interface device rules under part 15 of this chapter.

\* \* \* \* \*

4. Section 76.610 is revised to read as follows:

##### § 76.610 Operation in the frequency bands 108–137 and 225–400 MHz—scope of application.

The provisions of §§ 76.605(a)(12), 76.611, 76.612, 76.613, 76.614, 76.616, 76.617, 76.1803 and 76.1804 are applicable to all MVPDs (cable and non-cable) transmitting carriers or other signal components carried at an average power level equal to or greater than  $10^{-4}$  watts across a 25 kHz bandwidth in any 160 microsecond period, at any point in the cable distribution system in the frequency bands 108–137 and 225–400 MHz for any purpose. Exception: Non-cable MVPDs serving less than 1000 subscribers and less than 1000 units do not have to comply with § 76.1804(g).

5. Section 76.616 is revised to read as follows:

##### § 76.616 Operation near certain aeronautical and marine emergency radio frequencies.

The transmission of carriers or other signal components capable of delivering peak power levels equal to or greater than  $10^{-5}$  watts at any point in a cable television system is prohibited within 100 kHz of the two frequencies 121.500 MHz and 406.025 MHz, and is prohibited within 50 kHz of the two frequencies 156.800 MHz and 243.000 MHz.

##### § 76.618 [Removed]

6. Section 76.618 is removed.

##### § 76.619 [Removed]

7. Section 76.619 is removed.

##### § 76.620 [Removed]

8. Section 76.620 is removed.

9. Section 76.1510 is revised to read as follows:

##### § 76.1510 Application of certain Title VI provisions.

The following sections within part 76 shall also apply to open video systems; §§ 76.71, 76.73, 76.75, 76.77, 76.79, 76.1702, and 76.1802 (Equal Employment Opportunity Requirements); §§ 76.503 and 76.504 (ownership restrictions); § 76.981 (negative option billing); and §§ 76.1300, 76.1301 and 76.1302

(regulation of carriage agreements); § 76.611 (signal leakage restrictions); provided, however, that these sections shall apply to open video systems only to the extent that they do not conflict with this subpart S. Section 631 of the Communications Act (subscriber privacy) shall also apply to open video systems.

#### **PART 78—CABLE TELEVISION RELAY SERVICE**

10. The authority citation for part 78 continues to read as follows:

**Authority:** Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085; 47 U.S.C. 152, 153, 154, 301, 303, 307, 308, 309.

11. Section 78.19(f)(2)(ii) is revised to read as follows:

#### **§ 78.19 Interference.**

\* \* \* \* \*

(f) \* \* \*

(2) \* \* \*

(ii) Within the rectangular areas defined as follows (vicinity of Denver, CO):

Rectangle 1:

41°30'00" N. Lat. on the north  
103°10'00" W. Long. on the east  
38°30'00" N. Lat. on the south  
106°30'00" W. Long. on the west

Rectangle 2:

38°30'00" N. Lat. on the north  
105°00'00" W. Long. on the east  
37°30'00" N. Lat. on the south  
105°50'00" W. Long. on the west

Rectangle 3:

40°08'00" N. Lat. on the north  
107°00'00" W. Long. on the east  
39°56'00" N. Lat. on the south  
107°15'00" W. Long. on the west

\* \* \* \* \*

12. Section 78.27(b)(1) is revised to read as follows:

#### **§ 78.27 License conditions.**

\* \* \* \* \*

(b) \* \* \*

(1) The licensee of a CARS station shall notify the Commission in writing when the station commences operation.

Such notification shall be submitted on or before the last day of the authorized one year construction period; otherwise, the station license shall be automatically forfeited.

\* \* \* \* \*

[FR Doc. 03-7556 Filed 3-28-03; 8:45 am]

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#### **DEPARTMENT OF COMMERCE**

#### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 648**

[I.D. 032103A]

#### **New England Fishery Management Council; Public Meeting**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Public meeting.

**SUMMARY:** The New England Fishery Management Council (Council) will hold a 1-day Council meeting on April 15, 2003, to consider actions affecting New England fisheries in the U.S. exclusive economic zone (EEZ).

**DATES:** The meeting will be held on Tuesday, April 15, 2003. The meeting will begin at 8 a.m. on Tuesday.

**ADDRESSES:** The meeting will be held at the Sheraton Ferncroft, 50 Ferncroft Road, Danvers, MA 01923; telephone 978/777-2500. Requests for special accommodations should be addressed to the New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone (978) 465-0492.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Howard, Executive Director, New England Fishery Management Council, (978) 465-0492.

#### **SUPPLEMENTARY INFORMATION:**

#### **Tuesday, April 15, 2003**

Following introductions, the Council will reconsider and finalize Groundfish

Amendment 13 to the Northeast Multispecies Fishery Management Plan reference point and rebuilding alternatives and control rules. In considering options, the Council will review rebuilding projections prepared by the Plan Development Team (PDT), and NMFS and peer review reports and add to or reduce the number of alternatives. The Council will also finalize Total Allowance Catch (TAC) management alternatives including defining and controlling directed and incidental catch; review and approval of Groundfish Committee suggestions for clarifying Amendment 13 management measures and finalize alternatives to implement the U.S. Canada Resource Sharing Agreement including the handling of TAC coverages and overages. The Council meeting will adjourn following the conclusion of any other outstanding business.

Although other non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subjects of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

#### **Special Accommodations**

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: March 25, 2003.

**Richard W. Surdi,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 03-7646 Filed 3-28-03; 8:45 am]

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