

Executive Order 13211 defines “significant energy actions” as “any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) that is a significant regulatory action under Executive Order

12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.”

B. Is This Rule Subject to Executive Order 13211?

This proposed rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866 (See discussion of Executive Order 12866 above.)

TABLE 1.—NATIONAL PRIORITIES LIST PROPOSED RULE NO. 37, GENERAL SUPERFUND SECTION

State	Site name	City/County
IA	Railroad Avenue Groundwater Contamination	Des Moines.
ID	Stibnite/Yellow Pine Mining Area	Yellow Mine.
IL	Sauget Area 1	Sauget and Cahokia.
IL	Sauget Area 2	Sauget.
MA	Hatheway and Patterson Company	Mansfield.
ME	Callahan Mine	Brooksville.
MO	Oak Grove Village Well	Oak Grove Village.
NC	Reasor Chemical Company	Castle Hayne.
NJ	Atlantic Resources Corporation	Sayreville.
NJ	Woodbrook Road Dump	South Plainfield.
NM	McGaffey and Main Groundwater Plume	Roswell.
NY	Cayuga County Ground Water Contamination	Cayuga County.
NY	Crown Cleaners of Watertown, Inc	Carthage.
NY	Ellenville Scrap Iron and Metal	Ellenville.
PA	Franklin Slag Pile (MDC)	Philadelphia.
TX	Brine Service Company	Corpus Christi.

Number of Sites Proposed to General Superfund Section: 16.

TABLE 2.—NATIONAL PRIORITIES LIST PROPOSED RULE NO. 37, FEDERAL FACILITIES SECTION

State	Site name	City/County
MD	Curtis Bay Coast Guard Yard	Anne Arundel County.

Number of Sites Proposed to Federal Facilities Section: 1.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: September 5, 2001.

Michael H. Shapiro,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.
[FR Doc. 01–22742 Filed 9–12–01; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[ET Docket Nos. 00–258 and 95–18 and IB Docket No. 99–81; FCC 01–224]

Introduction of New Advanced Mobile and Fixed Terrestrial Wireless Services; Use of Frequencies Below 3 GHz

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission seeks comment on additional options and issues in its continuing study of the possible use of frequency bands below 3 GHz to support the introduction of new advanced mobile and fixed terrestrial wireless services, including third generation and future generations of wireless systems.

DATES: Comments are due on or before October 11, 2001, and reply comments are due on or before October 25, 2001.

ADDRESSES: Send comments and reply comments to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: John Spencer, 202–418–1310.

SUPPLEMENTARY INFORMATION: This is a summary of the Further Notice of Proposed Rulemaking (FNPRM) portion of the Commission’s Memorandum Opinion and Order (MO&O) and FNPRM in ET Docket Nos. 00–258 and 95–18, and IB Docket No. 99–81, FCC 01–224, adopted August 9, 2001, and released August 20, 2001. The complete text of this FNPRM is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, SW, Washington, DC, and also may be purchased from the Commission’s copy contractor, Quallex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC 20554.

Synopsis of the FNPRM

1. This FNPRM continues our exploration of the possible use of frequency bands below 3 GHz to support the introduction of new advanced mobile and fixed terrestrial wireless services (advanced wireless services), including third generation (3G) and future generations of wireless systems. The Commission initiated this proceeding by Notice of Proposed Rulemaking in ET No. 00–258, which can be found at 66 FR 18740, April 11, 2001. The FNPRM also resolves a petition for rulemaking filed by the Cellular Telecommunications & Internet Association (CTIA). The MO&O portion of this decision is published elsewhere in this edition of the **Federal Register**.

2. The Commission, in the FNPRM, explores the possibility of introducing new advanced wireless services in frequency bands not identified in the NPRM, including bands currently designated for the Mobile Satellite Service (MSS), the Unlicensed Personal Communications Service (UPCS), the Amateur Radio Service (ARS), and the Multipoint Distribution Service (MDS). Specifically, the Commission seeks comment on reallocating spectrum in the 1910–1930 MHz, 1990–2025 MHz, 2150–2160 MHz, 2165–2200 MHz, and 2390–2400 MHz bands for new advanced wireless services.

3. The purpose of this FNPRM is to supplement the record by providing new allocation options that were not addressed in the NPRM, and by seeking comment on the benefits and costs of each new allocation option. These spectrum options complement rather than substitute for options identified previously in the NPRM. The FNPRM solicits comment on the potential for commercial use of these additional spectrum bands directly for new advanced wireless services, both paired and unpaired. The FNPRM also invites comment on the use of these or other bands for the relocation of incumbent licensees or operators who could be displaced by the final allocation established in this proceeding. The FNPRM seeks comment on the advantages and disadvantages of these options, including the potential for new advanced wireless services in these bands. Further, the FNPRM seeks comment on the potential effect of the allocation proposals described in the full text of the FNPRM on existing and prospective users of these bands and the services they provide (e.g., MSS, UPCS, ARS, and MDS). Finally, the FNPRM seeks comment on the costs and benefits to the United States of regional or global

spectrum harmonization for advanced wireless services.

4. In its petition for rulemaking, CTIA asked that the 2 GHz MSS bands be reallocated for other uses and that the Commission withhold grant of 2 MHz licenses while it considers CTIA's petition. The FNPRM grants CTIA's petition in part, but denies the petition insofar as it requests reallocation of the entire 2 GHz MSS band and a delay in authorizing 2 GHz MSS systems.

Initial Regulatory Flexibility Analysis

5. As required by the Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 603, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules proposed in this FNPRM. The Commission requests written public comment on the IRFA. In order to fulfill the mandate of the Contract with America Advancement Act of 1996 regarding the Final Regulatory Flexibility Analysis, the Commission asks a number of questions in the IRFA regarding the prevalence of small businesses in the affected industries. Comments on the IRFA must be filed in accordance with the same filing deadlines as comments filed on the FNPRM, 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, will send a copy of this FNPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

Paperwork Reduction Analysis

6. The Further Notice of Proposed Rulemaking does not contain a proposed information collection.

Ex Parte Presentations

7. For purposes of this permit-but-disclose notice and comment rulemaking proceeding, members of the public are advised that ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed under the Commission's Rules. (*See generally* 47 CFR 1.1202, 1.1203, 1.1206(a).)

Comment Dates

8. Pursuant to applicable procedures set forth in 47 CFR 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before October 11, 2001, and reply comments on or before October 25, 2001. The Commission asks that comments to the IRFA be submitted to all three dockets listed in the caption of the FNPRM, ET

Docket No. 00–258, ET Docket No. 95–18, and IB Docket No. 99–81.

9. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, interested parties must file an original and four copies of all comments, reply comments, and supporting comments. If interested parties want each Commissioner to receive a personal copy of their comments, they must file an original plus nine copies. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters who file by paper must submit two additional copies for each additional docket or rulemaking number. Interested parties should send comments and reply comments to the Office of the Secretary, Federal Communications Commission, Room TW–A325, 445 Twelfth Street, SW, Washington, DC 20554, with a copy to John Spencer, Wireless Telecommunications Bureau, 445 Twelfth Street, SW, Washington, DC 20554. Parties are also encouraged to file a copy of all pleadings on a 3.5-inch diskette in Word 97 format.

10. 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. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To obtain filing instructions for e-mail comments, commenters should send an e-mail to 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.

11. Comments and reply comments will be available for public inspection during regular business hours at the FCC Reference Center, Room CY–A257, at the Federal Communications Commission, 445 Twelfth Street, SW, Washington, DC 20554. Copies of comments and reply comments are available through the Commission's duplicating contractor: Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC 20554, 202–863–2893.

Ordering Clauses

12. Pursuant to the authority contained in sections 1, 4(j), 7(a), 301,

303(c), 303(f), 303(g), 303(r), 308, and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. sections 151, 154(j), 157(a), 301, 303(c), 303(f), 303(g), 303(r), 308, and 309(j), this Further Notice of Proposed Rulemaking is adopted.

13. The Petition for Rulemaking filed by the Cellular Telecommunications & Internet Association is granted to the extent indicated in the Further Notice of Proposed Rule Making, and is otherwise denied.

14. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Initial Regulatory Flexibility Analysis

15. This is a summary of the Initial Regulatory Flexibility Analysis for the FNPRM. The full text of the Initial Regulatory Flexibility Analysis may be found in Appendix A of the full FNPRM.

16. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this FNPRM, ET Docket No. 00-258, ET Docket No. 95-18, and IB Docket No. 99-81. 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 FNPRM. The Commission further asks that comments to the IRFA be submitted to all three dockets listed in the caption of the FNPRM, ET Docket No. 00-258, ET Docket No. 95-18, and IB Docket No. 99-81.

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

17. The objective of the proposed actions is to consider reallocating spectrum that could be used to provide a wide range of voice, data, and broadband services over a variety of mobile and fixed networks, thus offering all entities, including small entities, greater opportunity to participate in the telecommunications industry and greater flexibility.

B. Legal Basis for Proposed Rules

18. The proposed action is authorized under sections 1, 4(j), 7(a), 301, 303(c), 303(f), 303(g), 303(r), 308, and 309(j) of the Communications Act of 1934, 47 U.S.C. 151, 154(j), 157(a), 301, 303(c), 303(f), 303(g), 303(r), 308, and 309(j).

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

19. 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. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."

20. The term "small business" has the same meaning as the term "small business concern" under Section 3 of the Small Business Act, unless the Commission has developed one or more definitions that are appropriate for its activities. 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 operation; and (3) satisfies any additional criteria established by the SBA. Nationwide, as of 1992 there were approximately 4.44 million small business firms, according to SBA reporting data.

21. 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.

22. The definition of "small governmental jurisdiction" is one with populations of fewer than 50,000. As of 1992, there were approximately 85,006 governmental entities in the nation. This number includes such entities as states, counties, cities, utility districts and school districts. There are no figures available on what portion of this number have populations of fewer than 50,000. However, this number includes 38,978 counties, cities and towns, and of those, 37,556, or ninety-six percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all government entities. Thus, of the 85,006 governmental entities, we estimate that ninety-six percent, or about 81,600, are small entities that may be affected by our proposed rules.

23. *Geostationary, Non-Geostationary Orbit, Fixed Satellite, or Mobile Satellite Service Operators.* The Commission has not developed a definition of small entities applicable to geostationary or non-geostationary orbit, fixed-satellite or mobile-satellite service operators. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to Communications Services, Not

Elsewhere Classified, which provides that a small entity is one with \$11.0 million or less in annual receipts. According to Census Bureau data, there are 848 firms that fall under this category. Of those, approximately 775 reported annual receipts of \$11 million or less and qualify as small entities. Small businesses may not have the financial ability to become geostationary or non-geostationary, fixed-satellite or mobile-satellite service system operators because of the high implementation costs associated with satellite systems and services. At this time, at least one of the 2 GHz MSS applicants may be considered a small business. The Commission expects, however, that by the time of implementation it will no longer be considered a small business due to the capital requirements for launching and operating its proposed system. Because there are limited spectrum and orbital resources available for assignment, the Commission estimates that no more than nine entities will be approved by the Commission as operators providing these services.

24. *Multipoint Distribution Service (MDS).* In connection with the 1996 MDS auction, the Commission defined small businesses as entities that had annual average gross revenues for the three preceding years not in excess of \$40 million. The SBA has approved this definition of a small entity in the context of MDS auctions. The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities. Of the 67 auction winners, 61 meet the definition of a small business.

25. MDS is also heavily encumbered with licensees of stations authorized prior to the MDS auction. SBA has developed a definition of small entities for pay television services, which includes all such companies generating \$11 million or less in annual receipts. This definition includes MDS systems, and thus applies to incumbent MDS licensees and wireless cable operators which may not have participated or been successful in the MDS auction. For purposes of this analysis, we find there are approximately 892 small MDS providers as defined by the SBA and the Commission's auction rules, all of which could be affected by the Commission's proposed action.

26. *Amateur Radio Service (ARS).* Incumbent licensees in the ARS could be affected by actions taken in this proceeding. However, because the ARS is comprised of individuals, no small entities will be affected.

27. *Unlicensed Personal Communications Service (UPCS).* As its

name indicates, UPCS is not a licensed service. There is no accurate source for the number of operators in the UPCS. Manufacturers could be affected if UPCS frequencies are transferred for other uses, however, because need for their product could be minimized or eliminated, depending on the final action taken. This hardship could be offset if UPCS operators are moved to other frequencies or if manufacturers can sell equipment to new services occupying the UPCS frequencies. The Commission has not developed a definition of small entities applicable to UPCS equipment manufacturers. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified, which provides that a small entity is one with \$11.0 million or less in annual receipts. According to Census Bureau data, there are 848 firms that fall under this category. Of those, approximately 775 reported annual receipts of \$11 million or less and qualify as small entities. There are currently 15 manufacturers that have 45 equipment authorizations for devices that operate in the 1910–1930 MHz band. No equipment authorizations have been issued for devices operating in the 2390–2400 MHz band.

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

28. This FNPRM deals only with the possible reallocation of frequency bands below 3 GHz to support the introduction of new wireless services, and does not propose assignment or service rules. Thus, the item proposes no new reporting, recordkeeping, or other compliance requirements. Once it has been decided whether to reallocate this spectrum, the Commission will consider adoption of implementing rules, some of which might entail compliance requirements.

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

29. 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; (4) an exemption from coverage of the rule, or any part thereof, for small entities.

30. Providing spectrum to support the introduction of new advanced mobile and fixed terrestrial wireless services is critical to the continuation of technological advancement. First and foremost, the Commission believes that our proposal to explore the possible use of several frequency bands that could offer a wide range of voice, data, and broadband services over a variety of mobile and fixed networks may provide substantial new opportunities for small entities.

31. However, depending on the final action taken in this proceeding, small incumbent entities could be affected in a negative way as well, because some entities must be displaced to clear spectrum for new uses. The Commission endeavored to avoid this effect by identifying unencumbered spectrum, but spectrum in the suitable frequency range is heavily used already and sufficient unencumbered spectrum simply does not exist. The Commission has therefore sought to minimize an adverse impact by proposing to reallocate frequency bands for those incumbents, including small entities, which might be accommodated in other spectrum and could be relocated more easily. The Commission is also considering compensation of displaced incumbents, including any small entity, which is displaced. At this nascent stage of the proceeding, the Commission is soliciting comment on a variety of issues relevant to these possibilities.

32. Paragraph 40 of the full text of the FNPRM further suggests the alternative of grandfathering incumbent licensees who qualify as small entities, until they are ready to move to new frequencies, thus easing their transition to new spectrum. Another alternative that the Commission believes has worked in the past, would be to encourage small entities to participate by offering them bidding credits if the reallocation is adopted and the spectrum is auctioned.

33. The FNPRM more specifically considers a variety of alternatives that could make frequencies available to incumbents, including small entities, who could be subject to relocation. For example, one alternative discussed in paragraphs 11–13 of the FNPRM would be to use spectrum in the 1910–1930 MHz or 2390–2400 MHz bands for relocation. A second alternative, discussed in paragraphs 27–28 of the FNPRM, would be to use some of the 2 GHz MSS spectrum for relocation. Paragraph 38 of the full FNPRM seeks

comment on using the 2150–2160 MHz MDS band for relocation purposes. Any of these alternatives would facilitate the relocation of displaced incumbents, including small entities.

34. Finally, the Commission has already received extensive comments on issues related to the possible reallocation of the 2150–2160 MHz (2.1 GHz) spectrum for advanced wireless purposes. Comments filed by the multipoint distribution/instructional television fixed services industry and several equipment manufacturers argue that the 2.1 GHz band is necessary for the continued roll-out of fixed wireless services across the country. Other commenters support the use of 2.1 GHz for advanced wireless services.

We are considering both alternatives, and are attempting to minimize any negative impact on licensees, including small entities, in the 2150–2160 band. These alternatives are discussed in paragraphs 37–41 of the FNPRM, and include the possibility of providing displaced incumbents with relocation spectrum or compensating such licensees.

F. Federal Rules That May Duplicate, Overlap, or Conflict with the Proposed Rules

35. None.

Federal Communications Commission.

Magalie Roman Salas,
Secretary.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[IB Docket No. 01–185, ET Docket No. 95–18; FCC 01–225]

Flexibility for Delivery of Communications By Mobile Satellite Service Providers in the 2 GHz Band, the L-Band and the 1.6/2.4 GHz Band; Amendment of Section 2.106 of the Commission's Rules To Allocate Spectrum at 2 GHz for Use by the Mobile Satellite Service

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document addresses proposals made by two Mobile Satellite Service (MSS) operators to allow Mobile Satellite operators to reuse their assigned spectrum over land-based transmitters to improve service quality, particularly where the satellite signals are blocked by buildings or other