

(3) *For permitted combinations containing a nasal decongestant and an analgesic-antipyretic identified in § 341.40(c), (g), (m), (n), (q), (r), and (cc).*

* * *

Dated: October 26, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04-24423 Filed 11-1-04; 8:45 am]

BILLING CODE 4160-01-S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[GA-112L-2004-1-FRL-7832-8]

Approval of Section 112(l) Authority for Hazardous Air Pollutants; Equivalency by Permit Provisions; National Emission Standards for Hazardous Air Pollutants From the Pulp and Paper Industry; State of Georgia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to section 112(l) of the Clean Air Act (CAA), the Georgia Environmental Protection Division (GEPD) requested approval to implement and enforce State permit terms and conditions that substitute for the National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry. In the Rules section of this **Federal Register**, EPA is granting GEPD the authority to implement and enforce alternative requirements in the form of title V permit terms and conditions after EPA has approved the State's alternative requirements. A detailed rationale for this approval is set forth in the direct final rule. If no significant, or adverse comments are received, no further activity is contemplated. If EPA receives significant, or adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before November 23, 2004.

ADDRESSES: Comments may be submitted by mail to: Lee Page, Air Toxics Assessment and Implementation Section, Air Toxics and Monitoring Branch, Air, Pesticides and Toxics

Management Division; U.S. Environmental Protection Agency Region 4; 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Duplicate copies of all comments must also be submitted to Ron C. Methier, Chief, Air Protection Branch, Georgia Environmental Protection Division, 4244 International Parkway, Suite 120, Atlanta, Georgia 30354. Comments may also be submitted electronically, or through hand delivery/courier. Please follow the detailed instructions described in the direct final rule, **SUPPLEMENTARY INFORMATION** section [part (I)(B)(1)(i) through (iii)] which is published in the Rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Lee Page, Air Toxics Assessment and Implementation Section, Air Toxics and Monitoring Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9141. Mr. Page can also be reached via electronic mail at page.lee@epa.gov.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Rules section of this **Federal Register**.

Dated: October 19, 2004.

J.I. Palmer, Jr.,

Regional Administrator, Region 4.

[FR Doc. 04-24410 Filed 11-1-04; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 27

[WT Docket No. 04-356; WT Docket No. 02-353; FCC 04-218]

Service Rules for Advanced Wireless Services in the 1915-1920 MHz, 1995-2000 MHz, 2175-2180 MHz and 1.7 GHz and 2.1 GHz Bands

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In connection with a decision to provide additional twenty megahertz of spectrum that can be used to offer a variety of broadband and advanced wireless services (AWS), potentially including "third generation" (3G) wireless services, the Commission ask for public comment on licensing, technical, and operational rules to govern the use of the 1915-1920 MHz, 1995-2000 MHz, and 2020-2025 MHz and 2175-2180 MHz bands designated

for AWS. The Commission announced its desire to provide licensees of this spectrum with flexibility to provide any fixed or mobile service consistent with the technical parameters of allocation.

DATES: Comments are due on or before November 23, 2004, and reply comments are due on or before January 7, 2005. Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before November 23, 2004.

ADDRESSES: In addition to filing comments with the Secretary, a copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to Judith B. Herman, Federal Communications Commission, Room 1-C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to Judith-B.Herman@fcc.gov, and to Kristy L. LaLonde, OMB Desk Officer, Room 10234 NEOB, 725 17th Street, NW., Washington, DC 20503 via the Internet to Kristy_L.LaLonde@omb.eop.gov, or via fax at 202-395-5167.

FOR FURTHER INFORMATION CONTACT: Peter Corea at 202-418-2487. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Judith B. Herman at 202-418-0214, or via Internet at Judith-B.Herman@fcc.gov.

SUPPLEMENTARY INFORMATION: This document contains proposed information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due on or before November 23, 2004. 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. In addition, pursuant to the Small

Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

This is a summary of the Commission’s NPRM, released on September 24, 2004, FCC 04-218. The full text of the NPRM is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY-A257, 445 12th Street, SW., Washington, DC 20554. The complete text may also be purchased from the Commission’s duplicating contractor, Best Copy and Printing, Inc., (BCPI), Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone number 202-488-5300 or 800-387-3160, e-mail at fcc@bcpiweb.com. The complete item is also available on the Commission’s Web site at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-04-135A1.doc.

I. Summary of Notice of Proposed Rule Making

1. In this Notice of Proposed Rule Making, we seek comment on service rules for licensed fixed and mobile services, including Advanced Wireless Services (AWS), in the 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz, and 2175–2180 MHz bands. These service rules include application, licensing, operating and technical rules. As with the service rules for advanced wireless services in the 1710–1755 MHz and 2110–2155 MHz bands, we propose to permit any use of this spectrum that is consistent with the bands’ fixed and mobile allocations. We also propose to license the bands using a geographic area licensing scheme, under our flexible, market-oriented part 27 rules. Because the adoption of geographic area licensing would make possible the filing of mutually exclusive applications, which in turn would require us to assign licenses by auction, we also propose competitive bidding rules. In addition, we seek comment on outstanding issues regarding the relocation of incumbents in each band, primarily whether to adopt rules governing the assignment of band clearance costs among multiple AWS licensees in the same band. We also seek comment on interference issues specific to each band, and seek comment on the power limits, out-of-band emission restrictions, and other technical or operational requirements that might be needed to protect incumbents in adjacent bands from harmful interference.

2. Concurrently with the adoption of this Notice, we are also adopting a *Sixth Report and Order*, in ET Docket No. 00-258, FCC 04-219, released September 22, 2004, designating these bands for licensed fixed and mobile services that include advanced wireless services, and pairing the 1915–1920 MHz band with the 1995–2000 MHz band and the 2020–2025 MHz band with the 2175–2180 MHz band. Our goal is to enable service providers to maximize the use of this spectrum. Ideally, the marketplace, not the government, should determine how this spectrum is used, within the wide limits of the fixed and mobile allocation. Thus, the licensing and operational rules we propose below provide flexibility for licensees to offer 3G and other advanced wireless services in the near term, while preserving their ability to quickly adapt to changes in technological capabilities and marketplace conditions in the future. This will, in turn, benefit consumers by fostering the development of new services and capabilities. Specifically, the NPRM addresses the following issues:

Band Plan

3. We tentatively conclude that we should license the 1915–1920 and 1995–2000 MHz bands and the 2020–2025 and 2175–2180 MHz bands using a geographic area licensing scheme, and we seek comment on this tentative conclusion. Assuming that we utilize a geographic area approach for licensing these bands, we must determine the appropriate size(s) of service areas on which licenses should be based. In discussing these issues, commenters should also take into consideration the possibility of aggregating licenses through the auction process as well as post-auction partitioning of licenses. We do not make any tentative conclusions regarding the most appropriate license area for these bands and invite comment broadly on this issue. We also specifically seek comment from Indian Tribal governments on the effect various geographic licensing options may have on the deployment of services to tribal lands.

Band Clearance and Reimbursement

4. We have, in the accompanying *AWS Sixth Report and Order*, already established certain procedures for new AWS licensees to follow in relocating the incumbents in the bands at issue. In this Notice, we seek comment regarding additional relocation and reimbursement issues relevant to each band.

5. *1915–1920 MHz Band.* With regard to the 1915–1920 MHz band, UTAM,

Inc. (UTAM) is entitled to recover from AWS licensees in this band 25% of UTAM’s preexisting costs of relocating fixed microwave services (FMS) from the 1910–1930 MHz band, payable at the commencement of operations, and all of the future costs attributable to relocating FMS services from the 1915–1920 MHz band. We now seek comment on whether, in the event we license multiple licensees in this band, we should adopt rules resolving how current and future reimbursement costs will be shared among them. Thus, we seek comment both on how to apportion the initial 25% of UTAM’s reimbursement costs among these licensees, and on how to allocate future costs. We also seek comment on how the Commission should apportion relocation costs in the event that there are multiple licenses and not all licenses are actually awarded. We also seek comment on whether it would be advantageous to require payment of reimbursement earlier than the commencement of operations. Further, we seek comment on whether UTAM should be required to provide, at a time prior to auction, the total amount of relocation costs it has incurred to date.

6. *2175–2180 and 2110–2150 MHz Band.* With regard to the 2175–2180 MHz band, we have concluded that the Emerging Technologies procedures established in part 101, as modified for Mobile-Satellite Service for the relocation of FMS links would apply to AWS licensees in this band. We now seek comment on whether to modify these rules to address issues of cost-sharing between new AWS entrants. We seek comment on whether to adopt the plan proposed by PCIA, the Wireless Infrastructure Association, which calls for applying to AWS licensees the cost sharing rules that have governed the relocation of FMS by Personal Communications Services (PCS) in the 1910–1930 MHz band, as codified at 47 CFR 24.239–24.253. PCIA also proposes that we establish a clearinghouse to administer the relocation and reimbursement process. We seek comment on whether we should adopt this proposal or a modification of it, and if so, what entity should be assigned to act as clearinghouse, and under what rules. We further seek comment on whether the same cost sharing rules should be adopted for the 2110–2150 MHz band, which is likewise governed by the part 101 relocation procedures, and whether a cost sharing regime should be adopted for that band even if one is not adopted in the 2175–2180 MHz band.

7. *1995–2000 MHz and 2020–2025 MHz bands.* We propose that AWS

licensees conform to the technical criteria specified in TIA Bulletin TSB 10-F, or procedures other than TSB 10-F that follow generally acceptable good engineering practices pursuant to § 101.105 (c) of the Commission's Rules, to determine where AWS operations would cause interference to BAS operations, such that their relocation would be necessary before AWS operations could commence. We further propose that AWS licensees conform to the methodology and criteria in TIA Bulletin TSB-86 to compute interference between satellite and fixed services.

8. We propose that AWS licensees be subject to mandatory negotiation periods only, ending on May 31, 2005 for stage-one relocations and March 31, 2006 for stage-two relocations. If an AWS licensee wishes to begin operation in a BAS market that has not been cleared, we propose that it should first coordinate its anticipated clearance schedule with affected incumbents and other new entrants. We seek comment on whether it is necessary to impose on the AWS licensees a timetable to complete BAS relocation. If so, what should the specific requirements be? We propose that AWS entrants who do not participate in band-tolerance coordination sessions be bound by the decisions of those who do. We also note that if Nextel has received credit for BAS relocation costs in the 800 MHz true-up, late entering AWS licensees will not have any reimbursement obligation to Nextel for such costs.

9. If we decide to license this spectrum in such a way that different licensees may hold licenses for the same frequency block but in different geographic areas, we seek comment on how the reimbursement rights and obligations of each AWS licensee could be most efficiently and equitably allocated, whether on the basis of geographic area or population covered by each license, or the value of each license as indicated by the winning auction bid, or by some other means.

10. If all spectrum has not been licensed by the end of the BAS transition, we propose to require those entrants who are licensed at that time to bear a pro rata share of the relocation costs based on the amount of spectrum they have been assigned relative to the amount of 1990–2025 MHz spectrum that has been licensed. Further, in such event, should later arriving new entrants have a reimbursement obligation? If so, what mechanism should apply, and how long should such an obligation run?

11. We also seek comment on how the accounting to settle relocation

expenditures between AWS licensees and MSS licensees should occur, to the extent not covered by the issues discussed above, and any other issues presented by the complex entry of numerous new licensees in the 1990–2025 MHz spectrum band.

12. The NPRM next considers licensing and operating rules. Paragraphs 63 through 65 of the NPRM propose to apply the regulatory status provisions of § 27.10 to licensees in the 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz and 2175–2180 MHz bands and to allow these licensees to provide all allowable services anywhere within their licensed area at any time, consistent with their regulatory status. It also recommends that these applicants be able to request common carrier status as well as non-common carrier status for authorization in a single license, rather than to require the applicant to choose between common carrier and non-common carrier services. The NPRM further proposes that applicants and licensees in these bands be required to indicate a regulatory status based on any services they choose to provide. Lastly in this regard, the NPRM proposes that, if a licensee operating in this spectrum changes the service or services it offers, such that its regulatory status would change, that licensee must notify the Commission of the change.

13. The NPRM, in paragraphs 66 through 69, discusses ownership restrictions in the 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz and 2175–2180 MHz bands. The NPRM proposes to establish parity in foreign ownership reporting requirements, but does not suggest a single, substantive standard for compliance. For example, the Commission would not deny a license to an applicant requesting authorization exclusively to provide services not enumerated in § 310(b) of the Communications Act, solely because its foreign ownership would disqualify it from receiving a license if the applicant had applied for a license to provide the services enumerated in § 310(b).

14. The NPRM tentatively concludes that the Commission does not need to impose a spectrum aggregation limit or eligibility restrictions applicable to the initial licensing of the 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz and 2175–2180 MHz bands, but seeks comment on whether any such limits are necessary or appropriate. In particular, the NPRM solicits comment on whether the Commission should limit the amount of spectrum in these bands that any one entity (or related entities) may acquire at auction in the same geographic area. In addition, in

paragraph 69 the Commission tentatively concludes that open eligibility in these bands will not pose a significant likelihood of substantial harm to competition in any specific markets and that therefore an eligibility restriction in these bands is not warranted.

15. Paragraphs 70 through 72 of the NPRM discusses license term renewal expectancy, and proposes that in the 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz and 2175–2180 MHz spectrum, the license term be 10 years. The NPRM further proposes that the renewal expectancy provisions of § 27.14 be applied to these bands such that a licensee in this spectrum applying for renewal receive a preference or renewal expectancy if the applicant has provided substantial service during its past license term and has complied with the Communications Act and applicable Commission rules and policies. The Commission also proposes that in the event that a license in these bands is partitioned or disaggregated, any partitionee or disaggregate would be authorized to hold its license of the remainder of the partitioner's or disaggregator's original license term and would be eligible for a renewal expectancy on the same basis as other licensees.

16. In addition, the NPRM, in paragraphs 73 through 76, seeks comment on whether licensees in the 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz and 2175–2180 MHz bands should be subject to any performance requirements, in addition to a substantial service requirement, at license renewal. The NPRM, in particular, questions whether the Commission should establish any specific coverage requirements in this spectrum, or whether coverage criteria should be adopted as one means, but not the exclusive means, of meeting a substantial service requirement. The NPRM invites comment on this and other issues related to possible performance requirements. If a licensee does not comply with the performance requirements that are adopted, the Commission proposes to apply the procedures set out in § 1.946(c). The Commission seeks comment on this proposal.

17. The NPRM, in paragraphs 77 and 78, asks whether the Commission should allow licensees in the 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz and 2175–2180 MHz bands to partition their service areas and to disaggregate their spectrum. If so, the NPRM proposes to apply § 27.15 of the Commission's rules to this spectrum. Section 27.15, among other things,

provides that licensees may apply to partition their licensed geographic service areas or disaggregate their licensed spectrum at any time following the grant of their license.

18. In paragraph 79 of the NPRM, the Commission proposes that the spectrum leasing policies that were adopted in the *Secondary Markets Report and Order*, be applied to this services established in this proceeding in the same manner that those policies apply to other part 27 services and seeks comment on this proposal.

19. As indicated in paragraphs 14 and 80 of the NPRM, even though licenses in the 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz and 2175–2180 MHz bands may be issued pursuant to one part of the Commission's rules, licensees in these bands may be required to comply with rules contained in other parts of the Commission's rules. The NPRM therefore solicits comment generally on any provisions in existing, service-specific rules that may require specific recognition or adjustment to comport with the supervening application of another rule part, as well as any provisions that may be necessary in this other rule part to fully describe the scope of covered services and technologies.

20. This Notice seeks comment on the technical parameters to be applied to the four spectrum blocks. In particular, the Notice seeks comment on the various technical measures (e.g., power limits) that will be needed to prevent co-channel and adjacent channel interference from occurring to new and existing operations.

Competitive Bidding Procedures

21. The NPRM proposes to conduct any auction of initial licenses in the 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz and 2175–2180 MHz bands in conformity with the general competitive bidding rules set forth in part 1, subpart Q, of the Commission's rules, and substantially consistent with the competitive bidding procedures that have been employed in previous auctions. Thus, the NPRM solicits comment on whether any of the Commission's part 1 rules would be inappropriate or should be modified for an auction of licenses in these bands.

22. In the event that the Commission adopts a licensing scheme based on non-nationwide geographic licensing areas, the NPRM proposes to adopt a small business size standard which defines a small business as an entity with average annual gross revenues for the preceding three years not exceeding \$40 million, and a very small business as an entity with average annual gross

revenues for the preceding three years not exceeding \$15 million. In addition, in the event the Commission establishes non-nationwide service areas, the NPRM proposes to provide small businesses with a bidding credit of 15 percent and very small businesses with a bidding credit of 25 percent, as set forth in the standardized schedule in part 1 of the Commission's rules. The Commission seeks comment on the use of these standards and associated bidding credits, with particular focus on the appropriate definitions of small and very small businesses as they may relate to the size of the geographic area to be served and the spectrum allocated to each license.

23. If, on the other hand, the Commission decides to license the 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz and 2175–2180 MHz bands on a nationwide basis, the NPRM tentatively concludes that small business bidding credits are not appropriate for these bands due to the very high costs associated with implementing a nationwide service. The Commission seeks comment on this tentative conclusion.

24. To the extent commenters support a different approach to bidding credits than those discussed in the NPRM, they should support their proposals with relevant information on the types of system architecture that are likely to be deployed in these bands, the availability of equipment, market conditions and other factors that may affect the capital requirements of the types of services that may be provided.

Procedural Matters

Ex Parte Rules

25. This is a permit-but-disclose notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed pursuant to the Commission's rules.

Comment Period and Procedures

26. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments on this Notice on or before November 23, 2004, and reply comments on or before January 7, 2005. Comments and reply comments should be filed in WT Docket No. 04–356, and 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.

27. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket number. Parties may also submit an electronic comment by e-mail via the Internet. 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.

28. Parties who choose to file by paper must file an original and four copies of each filing. 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). The Commission's contractor, Natek, 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, Office of the Secretary, Federal Communications Commission.

29. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be attached to the original paper filing submitted to the Office of the Secretary. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Microsoft™ Word 97 for Windows 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 commenter's name, proceeding, type of pleading (comment or reply comment), 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, preferably in a single electronic file. In addition, commenters

should send diskette copies to the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554, 202-863-2893.

30. The public may view the documents filed in this proceeding during regular business hours in the FCC Reference Information Center, Federal Communications Commission, 445 12th Street, SW., Room CY-A257, Washington, DC 20554, and on the Commission's Internet home page: <http://www.fcc.gov>. Copies of comments and reply comments are also available through the Commission's duplicating contractor: Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554, (202) 488-5300. Accessible formats (computer diskettes, large print, audio recording and Braille) are available to persons with disabilities by contacting Brian Millin, of the Consumer & Governmental Affairs Bureau, at (202) 418-7426, TTY (202) 418-7365, or at bmillin@fcc.gov.

Initial Paperwork Reduction Analysis

31. This document contains proposed new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due on or before November 23, 2004. Comments should address: (i) 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; (ii) the accuracy of the Commission's burden estimates; (iii) ways to enhance the quality, utility, and clarity of the information collected; and (iv) 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. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, we seek specific comment on how we might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

OMB Control Number: 3060-1030.

Title: Service Rules for Advanced Wireless Services in the 1915-1920 MHz, 1995-2000 MHz, 2175-2180 MHz and 1.7 GHz and 2.1 GHz Bands.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents: 1010.

Estimated Time Per Response: .50-3 hours.

Frequency of Response: On occasion and other one-time.

Estimated Total Annual Burden: 6505 hours.

Estimated Total Annual Costs: \$910,750.

Needs and Uses: The various information reporting and verification requirements, and the prospective coordination requirement, if ultimately adopted, will be used by the Commission to verify licensee compliance with Commission rules and regulations, and to ensure that licensees continue to fulfill their statutory responsibilities in accordance with the Communications Act of 1934. Such information has been used in the past and will continue to be used to minimize interference, verify that applicants are legally and technically qualified to hold licenses, and to determine compliance with Commission Rules.

Regulatory Flexibility Analysis

32. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Notice of Proposed Rulemaking (NPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadline for comments provided in this NPRM. 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**.

Need for, and Objectives of, the Proposed Rules

33. The NPRM seeks comment on service rules for licensed fixed and mobile services, including advanced wireless services (AWS), in the 1915-1920 MHz, 1995-2000 MHz, 2020-2025 MHz and 2175-2180 MHz bands. These service rules include application, licensing, operating and technical rules and competitive bidding provisions. As with the Commission's recently adopted AWS service rules for the 1710-1755

MHz and 2110-2155 MHz bands, the NPRM proposes to allow licensees in the 1915-1920 MHz, 1995-2000 MHz, 2020-2025 MHz and 2175-2180 MHz bands the flexibility to use this spectrum for any licensed fixed or mobile service, including advanced wireless services, that is consistent with the bands' allocations. In order to promote flexibility, the Notice tentatively concludes to license this spectrum under the Commission's market-oriented part 27 rules. In addition, the NPRM tentatively concludes to license this spectrum using geographic area licensing, as opposed to site-by-site licensing, and seeks comment on the appropriate size geographic licensing area or areas to utilize.

34. Concurrently with the adoption of the NPRM, the Commission has adopted a *Sixth Report and Order*, in ET Docket No. 00-258, designating the 1915-1920 MHz, 1995-2000 MHz, 2020-2025 MHz and 2175-2180 MHz bands for licensed fixed and mobile services, including advanced wireless services. The Commission's goal is to enable service providers to maximize the use of this spectrum with minimal transaction costs. Within the limits of the licensed fixed and mobile allocation, the marketplace and not the government will determine how this spectrum is used. Thus, the NPRM's tentative conclusions allow flexibility for licensees to provide third generation (3G) and other advanced wireless services in the near term, while fostering innovation and agility so they can quickly adapt to changes in technological capabilities and marketplace conditions into the future. It is the Commission's belief that the licensing and service rules proposed in the NPRM will benefit consumers by giving them the services and value that they demand, and thereby provide the new business opportunities necessary to support continued service enhancements by licensees.

35. As discussed in paragraphs 121-122 of the NPRM, while the Commission does not know precisely what types of services may be developed in the 1915-1920 MHz, 1995-2000 MHz, 2020-2025 MHz and 2175-2180 MHz bands, the Commission anticipates that the services that will be deployed in these bands may have capital requirements comparable to those in the broadband PCS service and AWS in the 1710-1755 MHz and 2110-2155 MHz bands. The Commission also anticipates that licensees in the 1915-1920 MHz, 1995-2000 MHz, 2020-2025 MHz and 2175-2180 MHz bands will be presented with issues and costs similar

to those presented to broadband PCS licensees and licensees in the 1710–1755 MHz and 2110–2155 MHz bands, including issues and costs involved in relocating incumbents, and developing markets, technologies, and services. In light of these similarities, the NPRM proposes the adoption of the same small business size standards for the 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz and 2175–2180 MHz bands as the Commission adopted for broadband PCS and AWS in the 1710–1755 MHz and 2110–2155 MHz bands. Accordingly, if the Commission adopts bidding credits, the NPRM proposes to define a small business as an entity with average annual gross revenues for the preceding three years not exceeding \$40 million, and a very small business as an entity with average annual gross revenues for the preceding three years not exceeding \$15 million.

36. The NPRM also proposes to provide small businesses with a bidding credit of 15 percent and very small businesses with a bidding credit of 25 percent, as set forth in the standardized schedule in part 1 of the Commission's rules. The NPRM seeks comment on the use of these standards and associated bidding credits for applicants to be licensed in the 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz and 2175–2180 MHz bands, with particular focus on the appropriate definitions of small and very small businesses as they may relate to the size of the geographic area to be covered and the spectrum allocated to each license. In discussing these issues, commenters are requested to address the expected capital requirements for services in these bands and other characteristics of the service. Commenters are also invited to use comparisons with other services for which the Commission has already established auction procedures as a basis for their comments regarding the appropriate small business size standards.

Legal Basis

37. The proposed action is authorized pursuant to sections 1, 2, 4(i), 7, 10, 201, 214, 301, 302, 303, 307, 308, 309, 310, 319, 324, 332 and 333 of the Communications Act of 1934, 47 U.S.C. 151, 152, 154(i), 157, 160, 201, 214, 301, 302, 303, 307, 308, 309, 310, 319, 324, 332, 333.

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

38. 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 and policies, 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.” In addition, the term “small business” has the same meaning as the term “small business concern” 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 SBA.

39. *Small Businesses.* Nationwide, there are a total of 22.4 million small businesses, according to SBA data.

40. *Small Organizations.* Nationwide, there are approximately 1.6 million small organizations.

41. *Small Governmental Jurisdictions.* The term “small governmental jurisdiction” is defined as “governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.” As of 1997, there were approximately 87,453 governmental jurisdictions in the United States. This number includes 39,044 county governments, municipalities, and townships, of which 37,546 (approximately 96.2%) have populations of fewer than 50,000, and of which 1,498 have populations of 50,000 or more. Thus, we estimate the number of small governmental jurisdictions overall to be 84,098 or fewer.

42. Also, as stated in the NPRM, Sections 310(a) and 310(b) of the Communications Act, as modified by the Telecommunications Act of 1996, impose foreign ownership and citizenship requirements that restrict the issuance of licenses to certain applicants. *See* Section D, *infra*.

43. The Commission has not yet determined how many licenses will be awarded in the 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz and 2175–2180 MHz bands. Moreover, the Commission does not yet know how many applicants or licensees in these bands will be small entities. Thus, the Commission assumes, for purposes of this IRFA, that all prospective licensees are small entities as that term is defined by the SBA or by our proposed small business definitions for these bands. The Commission invites comment on this analysis.

44. Although the Commission does not know for certain which entities are likely to apply for these frequencies, we note that the 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz and 2175–2180 MHz bands are comparable to

cellular service and personal communications service.

45. *Wireless Service Providers.* The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of “Paging” and “Cellular and Other Wireless Telecommunications.” Under both SBA categories, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 1997 show that there were 1,320 firms in this category, total, that operated for the entire year. Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or more. Thus, under this category and associated small business size standard, the great majority of firms can be considered small. For the census category Cellular and Other Wireless Telecommunications, Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more. Thus, under this second category and size standard, the great majority of firms can, again, be considered small.

46. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The SBA has developed a small business size standard for “Cellular and Other Wireless Telecommunications” services. Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees. According to the most recent *Trends in Telephone Service* data, 447 carriers reported that they were engaged in the provision of wireless telephony. We have estimated that 245 of these are small under the SBA small business size standard.

47. *Broadband Personal Communications Service.* The broadband personal communications services (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission has created a small business size standard for Blocks C and F as an entity that has average gross revenues of less than \$40 million in the three previous calendar years. For Block F, an additional small business size standard for “very small business” was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar

years. These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA. No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 "small" and "very small" business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. On March 23, 1999, the Commission reaucted 155 C, D, E, and F Block licenses; there were 113 small business winning bidders.

48. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as "small" or "very small" businesses. Subsequent events concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant.

49. *Cellular Licensees.* The SBA has developed a small business size standard for wireless firms within the broad economic census category "Cellular and Other Wireless Telecommunications." Under this SBA category, a wireless business is small if it has 1,500 or fewer employees. For the census category Cellular and Other Wireless Telecommunications firms, Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more. Thus, under this category and size standard, the great majority of firms can be considered small. According to the most recent *Trends in Telephone Service data*, 447 carriers reported that they were engaged in the provision of cellular service, personal communications service, or specialized mobile radio telephony services, which are placed together in the data. We have estimated that 245 of these are small, under the SBA small business size standard.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

50. The NPRM proposes to apply to the 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz and 2175–2180 MHz bands essentially the same licensing and operating provisions as the Commission adopted for advanced wireless services in the 1710–1755 MHz and 2110–2155 MHz bands. These licensing and operating provisions include reporting,

recordkeeping and other compliance requirements. The Commission will provide time for public comment on and seek Office of Management and Budget approval for any proposals that entail Paperwork Reduction Act burdens.

51. The Commission proposes to permit licensees in the 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz and 2175–2180 MHz bands the flexibility to use this spectrum for any services that are consistent with the bands' fixed and mobile allocations. The NPRM, at paragraph 14, also tentatively concludes to license the bands under the Commission's market-orientated part 27 licensing and operating provisions. In addition, the Commission tentatively concludes to use a geographic area licensing scheme for the 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz and 2175–2180 MHz bands.

52. Entities interested in acquiring an initial license to use the spectrum in the 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz and 2175–2180 MHz bands will be required to file using the Universal Licensing System. As in other services, licensees in these bands would be allowed to provide all allowable services anywhere within their licensed area. The Commission's current mobile service license application requires an applicant for mobile services to identify the regulatory status of the service(s) they intend to provide, since service offerings may bear on eligibility and other statutory and regulatory requirements. The NPRM also proposes to permit applicants to request common carrier status as well as non-common carrier status for authorization in a single license, rather than to require the applicant to choose between common carrier and non-common services. These proposed regulatory status obligations are discussed in the NPRM.

53. The Commission seeks comment on whether licensees in the 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz and 2175–2180 MHz bands should be subject to any performance requirements in addition to a substantial service requirement at license renewal. The NPRM notes that in some services the Commission has imposed minimum coverage requirements on licensees to ensure that spectrum is used effectively and service is implemented promptly. The NPRM seeks comment on whether the Commission should establish any specific coverage requirements in the 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz and 2175–2180 MHz bands, or whether coverage criteria should be adopted as one means, but not the exclusive means, of meeting a substantial service requirement. The NPRM also seeks comment on whether

licensees should be subject to interim performance requirements prior to the end of the license term.

54. The Commission seeks comment on allowing licensees in the 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz and 2175–2180 MHz bands to partition their service areas and to disaggregate their spectrum. If the Commission permits partitioning, then the partitioning licensee would have to include with its request a description of the partitioned service area and a calculation of the population of the partitioned service area and the licensed geographic service area.

55. The NPRM seeks comment on a number of technical issues and licensing obligations. The NPRM requests information on how best to control in-band and out-of-band interference, appropriate power limits, RF safety limits, and Canadian and Mexican coordination.

56. The Commission requests comment on how all of these requirements may be modified to reduce the burden on small entities and still meet the objectives of the proceeding.

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

57. 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): (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (iii) the use of performance rather than design standards; and (iv) an exemption from coverage of the rule, or any part thereof for small entities.

58. Specifically to assist small businesses, the NPRM proposes to establish the same small business size standards and associated small business bidding credits for the 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz and 2175–2180 MHz bands as the Commission adopted for broadband PCS and AWS in the 1710–1755 MHz and 2110–2155 MHz bands in the event that licensing is based on non-nationwide geographic areas. Thus, the NPRM proposes to define a small business as an entity with average annual gross revenues for the preceding three years not exceeding \$40 million, and a very small business as an entity with average annual gross revenues for the preceding three years not exceeding \$15 million, if

licenses are not nationwide. The NPRM proposes a bidding credit of 15 percent for small businesses and a bidding credit of 25 percent for very small businesses. The NPRM tentatively concludes that small business bidding credits are not appropriate if a nationwide licensing scheme is adopted for the 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz and 2175–2180 MHz bands. The NPRM bases this conclusion on the fact that the implementation costs associated with a nationwide license in these bands is presumed to be very high, and it is not clear whether small businesses could attract the capital necessary to implement and provide nationwide service.

59. The NPRM solicits comment on a number of proposals and alternatives regarding the service rules for the 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz and 2175–2180 MHz bands. The NPRM seeks to adopt rules that will reduce regulatory burdens, promote innovative services and encourage flexible use of this spectrum. It opens up economic opportunities to a variety of spectrum users, which could include small businesses. The NPRM considers various proposals and alternatives partly because the Commission seeks to minimize, to the extent possible, the economic impact on small businesses.

60. The NPRM invites comment on various alternative licensing and service rules and on a number of issues relating to how the Commission should craft service rules for this spectrum, that could have an impact on small entities. For example, the Commission seeks comment on the size of spectrum blocks for these frequencies and how the size of spectrum blocks would impact small entities. The NPRM proposes a geographic area approach to service areas, as opposed to a station-defined licensing approach, and seeks comment on the appropriate size of service areas. Specifically, the NPRM asks for comment on whether smaller geographic areas would better serve the needs of small entities. As explained the NPRM, the Commission's approach to determining optimum geographic area license size(s) attempts to accommodate the likely range of applicant desires by balancing efficiency with the policy goal of disseminating licenses among a wide variety of applicants. The NPRM notes that the Commission wishes to foster service to rural areas and tribal lands, and to promote investment in and rapid deployment of new technologies and services. The NPRM also notes that small license areas may favor smaller entities with regional business plans and no interest in providing large-area

service. In summary, the NPRM seeks comment on the advantages and disadvantages to small entities of a large geographic licensing scheme over a small one in terms of impact on rural and small entities.

61. As noted earlier, the NPRM seeks comment on permitting geographic partitioning and spectrum disaggregation. The NPRM notes that geographic partitioning and spectrum disaggregation is a tool utilized by the Commission to promote efficient spectrum use and economic opportunity for a wide variety of applicants, including small business, rural telephone, minority-owned, and women-owned applicants. The NPRM seeks comment on the benefits and costs of partitioning and disaggregation, and whether it promotes the public interest. Finally, the NPRM seeks comment on whether any band-specific limits on spectrum aggregation are necessary or appropriate in this case, and how this would impact the marketplace, including small entities.

62. The regulatory burdens proposed in the NPRM, such as filing applications on appropriate forms, appear necessary in order to ensure that the public receives the benefits of innovative new services, or enhanced existing services, in a prompt and efficient manner. The Commission will continue to examine alternatives in the future with the objectives of eliminating unnecessary regulations and minimizing any significant economic impact on small entities. The Commission invites comment on any additional significant alternatives parties believe should be considered and on how the approach outlined in the NPRM will impact small entities, including small businesses and small government entities.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

63. None.

Ordering Clauses

64. Pursuant to sections 1, 2, 4(i), 7, 10, 201, 214, 301, 302, 303, 307, 308, 309, 310, 319, 324, 332 and 333 of the Communications Act of 1934, 47 U.S.C. 151, 152, 154(i), 157, 160, 201, 214, 301, 302, 303, 307, 308, 309, 310, 319, 324, 332, 333, that this Notice of Proposed Rulemaking is adopted.

65. Additionally, notice is given of the proposed regulatory changes described in this Proposed rule, and that comment is sought on these proposals.

66. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Notice, including the Initial

Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 27

Communications common carriers, Radio.

Federal Communications Commission.

Marlene H. Dortch.

Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposed to amend 47 CFR part 27 as follows:

PART 27—MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES

1. The authority citation for part 27 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 307, 309, 332, 336, and 337 unless otherwise noted.

2. In § 27.1, add paragraphs (b)(9) and (b)(10) to read as follows:

§ 27.1 Basis and purpose.

* * * * *

(b) * * *

(9) 1915–1920 MHz and 1995–2000 MHz.

(10) 2020–2025 MHz and 2175–2180 MHz.

* * * * *

3. In § 27.5, revise paragraph (h) to read as follows:

§ 27.5 Frequencies.

* * * * *

(h) 1710–1755 MHz, 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz, 2110–2155 MHz and 2175–2180 MHz bands. The following frequencies are available for licensing pursuant to this part in the 1710–1755 MHz, 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz, 2110–2155 MHz and 2175–2180 MHz bands:

(1) Two paired channel block of 10 megahertz each are available for assignment as follows:

Block A: 1710–1720 MHz and 2110–2120 MHz; and

Block B: 1720–1730 MHz and 2120–2130 MHz.

(2) Four paired channel blocks of 5 megahertz each are available for assignment as follows:

Block C: 1730–1735 MHz and 2130–2135 MHz;

Block D: 1735–1740 MHz and 2135–2140 MHz;

Block F: 1915–1920 MHz and 1995–2000 MHz; and

Block G: 2020–2025 MHz and 2175–2180 MHz.

(3) One paired channel block of 15 megahertz each is available for assignment as follows:

Block E: 1740–1755 MHz and 2140–2155 MHz.

4. In § 27.11, revise paragraph (i) to read as follows:

§ 27.11 Initial authorization.

* * * * *

(i) *1710–1755 MHz, 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz, 2110–2155 MHz and 2175–2180 MHz bands.* Initial authorizations for the 1710–1755 MHz, 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz, 2110–2155 MHz and 2175–2180 MHz bands shall be for 5, 10 or 15 megahertz of spectrum in each band in accordance with § 27.5(h).

(1) Authorizations for Block A, consisting of two paired channels of 10 megahertz each, will be based on those geographic areas specified in § 27.6(h)(1).

(2) Authorizations for Block B, consisting of two paired channels of 10 megahertz each, will be based on those geographic areas specified in § 27.6(h)(2).

(3) Authorizations for Block C, consisting of two paired channels of 5 megahertz each, will be based on those geographic areas specified in § 27.6(h)(2).

(4) Authorizations for Block D, consisting of two paired channels of 5 megahertz each, will be based on those geographic areas specified in § 27.6(h)(3).

(5) Authorizations for Block E, consisting of two paired channels of 15 megahertz each, will be based on those geographic areas specified in § 27.6(h)(2).

(6) Authorizations for Block F, consisting of two paired channels of 5 megahertz each, will be based on those geographic areas specified in § 27.6(h).

(7) Authorizations for Block G, consisting of two paired channels of 5 megahertz each, will be based on those geographic areas specified in § 27.6(h).

5. In § 27.13, add paragraph (h) to read as follows:

§ 27.13 License period.

* * * * *

(h) *1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz and 2175–2180 MHz bands.* Authorizations for the 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz and 2175–2180 MHz bands will have a term not to exceed ten years from the date of initial issuance or renewal.

6. In § 27.50, redesignate paragraphs (e), (f), (g) and (h) as paragraphs (f), (g), (h) and (i), and add new paragraph (e) to read as follows:

§ 27.50 Power and antenna height limits.

* * * * *

(e) The following power limits apply to stations transmitting in the 1995–2000 MHz, 2020–2025 MHz, and 2175–2180 MHz bands:

(1) Fixed and base stations transmitting in the 1995–2000 MHz and 2175–2180 MHz bands are limited to a peak effective isotropic radiated power (EIRP) of 1640 watts and a peak output power of 100 watts.

(2) Fixed, mobile, and portable (hand-held) stations operating in the 2020–2025 MHz bands are limited to a peak EIRP of 1 watt.

* * * * *

7. In § 27.53, redesignate paragraphs (h), (i), (j), (k) and (l) as paragraphs (i), (j), (k), (l) and (m), and add new paragraph (h) to read as follows:

§ 27.53 Emission limits.

* * * * *

(h) For operations in the 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz, and 2175–2180 MHz bands, the power of any emission outside a licensee's frequency block shall be attenuated below the transmitter power (P) by at least $43 + 10 \log_{10}(P)$ dB.

(1) Compliance with these provisions is based on the use of measurement instrumentation employing a resolution bandwidth of 1 megahertz or greater. However, in the 1 megahertz bands immediately outside and adjacent to the licensee's frequency block, a resolution bandwidth of at least one percent of the emission bandwidth of the fundamental emission of the transmitter may be employed. The emission bandwidth is defined as the width of the signal between two points, one below the carrier center frequency and one above the carrier center frequency, outside of which all emissions are attenuated at least 26 dB below the transmitter power.

(2) When measuring the emission limits, the nominal carrier frequency shall be adjusted as close to the licensee's frequency block edges, both upper and lower, as the design permits.

(3) The measurements of emission power can be expressed in peak or average values, provided they are expressed in the same parameters as the transmitter power.

* * * * *

8. In § 27.57, revise paragraph (c) to read as follows:

§ 27.57 International coordination.

* * * * *

(c) Operation in the 1710–1755, 1915–1920, 1995–2000, 2020–2025, 2110–2155 and 2175–2180 MHz bands is subject to international agreements with Mexico and Canada.

9. In part 27, the subpart heading for subpart L is revised to read as follows:

Subpart L—1710–1755 MHz, 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz, 2110–2155 MHz and 2175–2180 MHz Bands

10. Revise § 27.1101 to read as follows:

§ 27.1101 1710–1755 MHz, 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz, 2110–2155 MHz and 2175–2180 MHz bands subject to competitive bidding.

Mutually exclusive applications for initial licenses in the 1710–1755 MHz, 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz, 2110–2155 MHz and 2175–2180 MHz bands are subject to competitive bidding. The general competitive bidding procedures set forth in 47 CFR part 1, Subpart Q will apply unless otherwise provided in this subpart.

15. Sections 27.1112 and 27.1113 are added to read as follows:

§ 27.1112 Relocation of fixed microwave service licensees in the 1915–1920 MHz band.

(a) Any new entrants granted a license for the 1915–1920 MHz band must reimburse UTAM, Inc. a 25-percent share of its total expenses incurred in clearing the 1910–1930 MHz band to date. These expenses cover the relocation of fixed point-to-point microwave links that the Commission ordered UTAM to do in anticipation of the Unlicensed Personal Communication Service.

(b) New licensees will be responsible for the actual costs associated with future relocation activities in their licensed spectrum.

§ 27.1113 Relocation of Broadcast Auxiliary Service, Cable Television Relay Service, and Local Television Transmission Service licensees in the 1995–2000 MHz and 2020–2025 MHz bands.

Sections 74.690 and 78.40 of this chapter contain provisions governing the relocation of incumbent Broadcast Auxiliary, Cable Television Relay and Local Television Transmission Service licensees in the 1995–2000 MHz and 2020–2025 MHz bands.

16. Section 27.1136 is added to read as follows:

§ 27.1136 Protection of Fixed Service stations operating in the 2160–2200 MHz band.

Prior to initiating operations, AWS licensees authorized in the 2175–2180 MHz band must coordinate with incumbent co-channel and adjacent channel Fixed Service licensees

operating on spectrum between 2160 MHz and 2200 MHz.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 062804C]

Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Petition for Rulemaking

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

ACTION: Notice of decision on petition for emergency rulemaking.

SUMMARY: NMFS responds to a NMFS announces its decision not to undertake the rulemaking requested in a Petition for Rulemaking (Petition) submitted by the Fisheries Survival Fund (FSF) and the Garden State Seafood Association (GSSA) (Petitioners), that requested that NMFS develop and implement an emergency rule pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) to require specific modifications to the fishing gear used by Atlantic sea scallop vessels fishing south of Long Island and north of Cape Hatteras from May 1 through October 15. The gear modifications requested are the installation of a chain mesh configuration ("turtle chains") in dredge gear and the installation of effective turtle excluder devices (TEDs) in trawl gear. The Petitioners proposed that these measures should be required for any Atlantic sea scallop vessel, whether fishing under a Limited Access or General Category permit, to prevent the incidental capture of sea turtles. NMFS announces that it will conduct rulemaking under the authority of the Endangered Species Act (ESA) to enact measures by May 2005 to address incidental sea turtle takes in the Atlantic sea scallop fishery. NMFS has decided not to undertake the rulemaking as an emergency rule under the Magnuson-Stevens Act because the circumstances outlined in the Petition do not justify an immediate need for a Magnuson-Stevens Act emergency rule and the Magnuson-Stevens Act is not the appropriate legal authority for adequately addressing incidental takes of sea turtles in the sea scallop fishery.

NMFS has denied the specific request made in the petition for the use of the emergency rulemaking authority provided in the Magnuson-Stevens Act. This decision is based on the determination that the circumstances outlined in the petition are not consistent with NMFS policy guidelines for the use of the emergency authority provided in the Magnuson-Stevens Act. While emergency action is not warranted under the Magnuson-Stevens Act, NMFS announces that it will conduct rulemaking under the authority of the Endangered Species Act (ESA) to enact measures by May 2005 to address incidental sea turtle takes in the Atlantic sea scallop fishery.

FOR FURTHER INFORMATION CONTACT:

Peter Christopher, 978-281-9288; fax 978-281-9135 or Pat Scida, 978-281-9208; fax 978-281-9394.

SUPPLEMENTARY INFORMATION: On June 17, 2004, the Petitioners submitted a Petition requesting that NMFS promulgate an emergency rule pursuant to section 305(c) of the Magnuson-Stevens Act. The Petitioners asserted that sea turtle captures in the scallop fishery "represent a recently-emerging and relatively modest phenomenon." The Petitioners stated that, after increased incidental sea turtle captures were documented in 2001, the FSF began working with Dr. William DuPaul of the Virginia Institute of Marine Sciences (VIMS) and Captain Ronald Smolowitz, a scallop gear researcher, to design and test a chain configuration for the front of the scallop dredge to reduce or eliminate the catch of sea turtles in scallop dredges. The Petition referenced an interim report authored by W. DuPaul, D. Rudders, and R. Smolowitz, "Interim Report: Industry Trials of a Modified Sea Scallop Dredge to Minimize the Catch of Sea Turtles," VIMS Marine Research Report No. 2004-08 (May 2004), that described the 2 years of field trials during which turtle chains were tested. Preliminary results described in that report stated that the researcher's experimental dredge recorded no takes of sea turtles, while the control dredge recorded nine takes. The Petitioners noted that the VIMS Sea Grant Program and FSF had developed instruction cards for vessel captains, which set forth specifications for voluntary use of the turtle chains. The Petitioners requested that NMFS immediately initiate emergency rulemaking to require use of turtle chains on scallop dredges and TEDs on scallop trawl vessels from Long Island to Cape Hatteras from May 1 through October 15. NMFS published a notice of receipt of a Petition for rulemaking on

July 7, 2004 (69 FR 40850) and invited public comment for 30 days, through August 6, 2004. Subsequent to the publication of the notice of receipt, the researchers submitted a draft final version of the report submitted with the Petition (DuPaul *et al.*, 2004) to NMFS.

Reinitiation of Consultation

In addition to the information provided by the Petitioners and the public comments, which are addressed in detail below, a technical report was issued by the Northeast Fisheries Science Center (NEFSC) in August 2004 entitled, "Bycatch of Sea Turtles in the Mid-Atlantic Sea Scallop (*Placopecten magellanicus*) Dredge Fishery during 2003" (NEFSC Reference Document 04-11). The report presents an extrapolation of loggerhead sea turtle takes for the Mid-Atlantic sea scallop dredge fishery from June to November, 2003, and is based on data collected during observed scallop dredge fishing trips that occurred from Long Island, NY, to Cape Hatteras, NC, during the period June 1, 2003–November 30, 2003. In all, 630 loggerhead sea turtles are estimated to have been caught with scallop dredge gear that operated in this Mid-Atlantic region during that portion of the 2003 scallop fishing year. This represents new information regarding the capture of sea turtles in scallop dredge gear. Therefore, formal consultation pursuant to section 7 of the ESA was reinitiated on September 3, 2004, to reconsider the effects of the Atlantic sea scallop fishery on ESA-listed species.

NMFS Decision

NMFS has carefully considered the information contained in the Petition and supporting research report, the public comments, and the NEFSC reference document. While NMFS denies the specific request made in the Petition for the use of the emergency rulemaking authority provided in the Magnuson-Stevens Act, NMFS will conduct rulemaking under the authority of the ESA to enact measures by May 2005 to address incidental sea turtle takes in the Atlantic sea scallop fishery. This rulemaking will have the benefit of providing for full public participation under the Administrative Procedure Act.

This decision is based on the determination that the Magnuson-Stevens Act does not provide sufficient authority or flexibility to adequately address the sea turtle incidental take issue. Any measures developed under the Magnuson-Stevens Act are effective only in the Exclusive Economic Zone or to federally permitted vessels. As such,