

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[NV 045-0070b; FRL-7548-1]

Revisions to the Nevada State Implementation Plan, Clark County Air Quality Management Board**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Clark County Air Quality Management Board (CCAQMB) portion of the Nevada State Implementation Plan (SIP). The revisions concern the emission of particulate matter (PM-10) from residential wood combustion. We are proposing to approve the local rules (building code provisions) that regulate this emission source under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by October 8, 2003.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR-4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105; steckel.andrew@epa.gov.

You can inspect a copy of the submitted rule (building code provisions) revisions and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see a copy of the submitted provisions and TSD at the following locations:

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, (Mail Code 6102T), Room B-102, 1301 Constitution Avenue, NW., Washington, DC. 20460.

Nevada Division of Environmental Protection, 333 West Nye Lane, Room 138, Carson City, NV 89706.

Clark County Air Quality Management Board, 500 South Grand Central Parkway, Las Vegas, NV 89155.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR-4), U.S. Environmental Protection Agency, Region IX; (415) 947-4118.

SUPPLEMENTARY INFORMATION: This proposal addresses the approval of local Clark County Building Code, section 3708; City of Las Vegas Building Code, section 3708; City of North Las Vegas Building Code, section 13.16.150; City of Henderson Building Code section 15.40.010. In the Rules section of this **Federal Register**, we are approving these local rules in a direct final action

without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: July 29, 2003.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. 03-22646 Filed 9-5-03; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Parts 1, 2 and 95**

[ET Docket No. 03-137; FCC 03-132]

Exposure to Radiofrequency Electromagnetic Fields**AGENCY:** Federal Communications Commission**ACTION:** Proposed rule.

SUMMARY: This document seeks comment on proposed amendments to the FCC's rules and regulations relating to compliance of transmitters and facilities with guidelines for human exposure to radiofrequency (RF) energy. These proposals are intended to ensure protection of the public from potentially adverse health effects from RF exposure, while avoiding any unnecessary burden in evaluating compliance with FCC requirements. Several proposals are made regarding the Commission's rules and regulations including proposals related to categorical exclusion from routine evaluation for RF exposure, requirements for evaluation of Specific Absorption Rate (SAR) for certain RF devices, RF evaluation requirements for modular transmitters, labeling requirements for consumer devices, clarifications of responsibilities for evaluating compliance, special considerations regarding occupational exposure to RF fields, procedures for measuring RF fields for evaluating compliance, and other miscellaneous items related to clarification of the FCC's rules for RF exposure.

DATES: Written comments are due December 8, 2003, and reply comments are due January 6, 2004.

FOR FURTHER INFORMATION CONTACT: Robert Cleveland, Office of Engineering

and Technology, (202) 418-2422, email: robert.cleveland@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking (NPRM)*, ET Docket No. 03-137, FCC 03-132, adopted June 12, 2003, and released June 26, 2003. The full text of this document 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 of this document also may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. The full text may also be downloaded at: <http://www.fcc.gov>. Alternate formats are available to persons with disabilities by contacting Brian Millin at (202) 418-7426 or TTY (202) 418-7365.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before December 8, 2003, and reply comments on or before January 6, 2004. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121, May 1, 1998. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, 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. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number.

All filings must be addressed to the Commission's Secretary, Office of the

Secretary, Federal Communications Commission. 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, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

Summary of the Notice of Proposed Rule Making

Proposed Changes in the Commission's Rules Regarding Human Exposure to Radiofrequency Electromagnetic Fields

1. The National Environmental Policy Act of 1969 (NEPA) requires agencies of the Federal Government to evaluate the effects of their actions on the quality of the human environment. To meet its responsibilities under NEPA, the Commission has adopted requirements for evaluating the potential environmental impact of its actions. One of several environmental factors that must be considered is human exposure to radiofrequency (RF) energy emitted by FCC-regulated transmitters and facilities.

2. In 1996 and 1997, the Commission established its most recent comprehensive guidelines for evaluating the environmental impact of RF energy. These guidelines include limits for Maximum Permissible Exposure (MPE), including limits for both whole-body and partial-body exposures. The Commission's guidelines were based on recommendations from expert scientific bodies as well as on guidance received from Federal agencies with responsibility for protecting the public health and for worker safety.

3. Since adoption and implementation of its guidelines, the Commission has determined that certain revisions and changes may be needed in the procedures and regulations used in ensuring compliance with the RF exposure guidelines. For example, additional transmitters and devices

under FCC jurisdiction may be eligible for categorical exclusion from routine evaluation while others may have been inappropriately excluded. Also, certain criteria used for categorical exclusion should be harmonized to govern similar facilities in different services. In addition, it appears that certain aspects of the Commission's RF exposure rules may require revision to clarify the responsibilities of licensees and grantees and to ensure compliance in a more practical, consistent and efficient manner.

4. This *NPRM* makes several proposals to accomplish these goals, and Commission is requesting comment on all of the proposals. These proposals are related only to the Commission's implementation of procedures for compliance with the adopted limits for human exposure from fixed, mobile and portable transmitters regulated by the FCC. This *NPRM* does not invite comment regarding the exposure limits themselves, which have been developed in conjunction with other organizations and agencies that have primary expertise in health and safety.

Initial Regulatory Flexibility Analysis

5. As required by the Regulatory Flexibility Act (RFA),¹ 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 *Notice of Proposed Rule Making (NPRM)*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments 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).²

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

6. The National Environmental Policy Act of 1969 (NEPA) requires agencies of the Federal Government to evaluate the effects of their actions on the quality of the human environment.³ To meet its responsibilities under NEPA, the Commission has adopted requirements for evaluating the environmental impact of its actions. One of several

environmental factors addressed by these requirements is human exposure to radiofrequency (RF) energy emitted by FCC-regulated transmitters, facilities and devices.⁴

7. The *NPRM* proposes to amend parts 1 and 2 of our rules relating to the compliance of FCC regulated transmitters, facilities, and devices with the guidelines for human exposure to radiofrequency (RF) energy adopted by the Commission in 1996 and 1997. Specifically we are proposing to make certain revisions in our rules that we believe will result in more efficient, practical and consistent application of compliance procedures.

B. Legal Basis

8. The proposed action is authorized under sections 4(i), 301, 303(f) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 301, 303(f) and 303(r).

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

9. 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.⁵ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁶ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act, 15 U.S.C. 632, unless the Commission has developed one or more definitions that are appropriate to its activities.⁷ A "small business concern" is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration ("SBA").⁸

Experimental Radio Service (Other Than Broadcast)

10. The Commission has not developed a definition of small entities

⁴ See 47 CFR 1.1307(b).

⁵ 5 U.S.C. 603(b)(3).

⁶ 5 U.S.C. 601(6).

⁷ 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**." 5 U.S.C. 601(3).

⁸ 15 U.S.C. 632.

¹ See 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Public Law 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

² See 5 U.S.C. 603(a).

³ National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321-4335.

applicable to experimental licensees. Therefore, the applicable definition of small entity is the definition under the Small Business Administration (SBA) rules applicable to radiotelephone companies. This definition provides that a small entity is a radiotelephone company employing fewer than 1,500 persons. The Commission is unable at this time to make a precise estimate of the number of Experimental Radio Services which are small businesses.

11. The majority of experimental licenses are issued to companies such as Motorola and Department of Defense contractors such as Northrop, Lockheed and Martin Marietta. Businesses such as these may have as many as 200 licenses at one time. The majority of these applications are from entities such as these. Given this fact, the remaining 30 percent of applications, we assume, for purposes of our evaluations and conclusions in this FRFA, will be awarded to small entities, as that term is defined by the SBA.

12. The Commission processes approximately 1,000 applications a year for experimental radio operations. About half or 500 of these are renewals and the other half are for new licenses. We do not have adequate information to predict precisely how many of these applications will be impacted by our proposed rule revisions. However, based on the above figures we estimate that as many as 300 of these applications could be from small entities and potentially could be impacted.

Mass Media Services

13. Experimental Broadcast Stations; Low Power TV, TV Translator and TV Booster Stations; Instructional Television Fixed Service; FM Broadcast Translator Stations and FM Booster Stations. These services involve a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (e.g., from a remote news gathering unit back to the station), although the latter service is not affected by this proceeding. The applicable definitions of small entities are those, noted previously, under the SBA rules and are applicable to radio broadcasting stations and television broadcasting stations.⁹

14. The Commission estimates that there are approximately 2,700 translators and boosters. The Commission does not collect financial information on any broadcast facility, and the Department of Commerce does

not collect financial information on these broadcast facilities. We recognize that most commercial translators and boosters are owned by a parent station which, in some cases, would be covered by the revenue definition of small business entity discussed above. These stations would likely have annual revenues that exceed the SBA maximum to be designated as a small business (either \$5 million for a radio station or \$10.5 million for a TV station). Furthermore, they do not meet the Small Business Act's definition of a "small business concern" because they are not independently owned and operated.¹⁰

15. There are presently 2032 ITFS licensees. All but 100 of these licensees are held by educational institutions. Educational institutions are included in the definition of a small business. We do not, however, collect annual revenue data for ITFS licensees and are not able to ascertain how many of the 100 non-educational licensees would be categorized as small under the SBA definition. Therefore, we conclude that at least 1932 ITFS licensees are small businesses. All of these licensees could be impacted by the rule revisions proposed with respect to categorical exclusion and labeling requirements for subscriber transceivers.

16. Multipoint Distribution Service (MDS). This service has historically provided primarily point-to-multipoint, one-way video services to subscribers.¹¹ The Commission recently amended its rules to allow MDS licensees to provide a wide range of high-speed, two-way services to a variety of users.¹² 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.¹³ The Commission established this small business definition in the context of this particular service and with the approval of the SBA.¹⁴ The

MDS auction resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs).¹⁵ Of the 67 auction winners, 61 met the definition of a small business. At this time, we estimate that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent MDS licensees that are considered small entities.¹⁶ After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 MDS licensees that are defined as small businesses under either the SBA or the Commission's rules. These small business licensees may be affected by the proposals in this NPRM pertaining to categorical exclusion and labeling.

Maritime Services

17. The proposed rules would not change the current rules that affect licensees using ship earth stations in the Maritime Services. The Commission has not developed a definition of small entities applicable to licensees of ship earth stations. Therefore, the Commission is unable at this time to make a precise estimate of the number of licensees of ship earth stations which are small businesses.

International Services

18. The Commission has not developed a definition of small entities applicable to licensees in the international services. Therefore, the applicable definition of small entity is generally the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified (NEC).¹⁷ This definition provides that a small entity is expressed as one with \$11.0 million or less in annual receipts.¹⁸ According to the Census Bureau, there were a total of 848 communications services providers,

FCC Rcd 9589, 9670 (1995), 60 FR 36524 (July 17, 1995).

¹⁵ Basic Trading Areas (BTAs) were designed by Rand McNally and are the geographic areas by which MDS was auctioned and authorized. *See id.* At 9608.

¹⁶ 47 U.S.C. 309(j). (Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of section 309(j) of the Communications Act of 1934, 47 U.S.C. 309(j). For these pre-auction licenses, the applicable standard is SBA's small business size standard for "other telecommunications" (annual receipts of \$11 million or less). *See* 13 CFR 121.201.

¹⁷ An exception is the Direct Broadcast Satellite (DBS) Service, *infra*.

¹⁸ 13 CFR 121.201, NAICS codes 48531, 513322, 51334, and 51339.

⁹ 13 CFR 121.201, NAICS codes 513111 and 513112.

¹⁰ 15 U.S.C. 632.

¹¹ For purposes of this item, MDS includes both the single channel Multipoint Distribution Service (MDS) includes Local Multipoint Distribution Service (LMDS), and the Multichannel Multipoint Distribution Service (MMDS).

¹² *Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in Fixed Two-Way Transmissions*, 13 FCC Rcd 19112 (1998), *recon.*, 14 FCC Rcd 12764 (1999), *further recon.*, 15 FCC Rcd 14566 (2000).

¹³ 47 CFR 21.961 and 1.2110.

¹⁴ *Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, 10

NEC, in operation in 1992, and a total of 775 had annual receipts of less than \$10.0 million.¹⁹ The Census report does not provide more precise data.

International Broadcast Stations. Commission records show that there are 17 international high frequency broadcast station authorizations. We do not request nor collect annual revenue information, and are unable to estimate the number of international high frequency broadcast stations that would constitute a small business under the SBA definition. Since all international broadcast stations operate using relatively high power levels, it is likely that they could all be impacted by our rule revisions.

Fixed Satellite Transmit/Receive Earth Stations. There are approximately 2,784 earth station authorizations, a portion of which are Fixed Satellite Transmit/Receive Earth Stations. We do not request nor collect annual revenue information, and are unable to estimate the number of the earth stations that would constitute a small business under the SBA definition. However, the majority of these stations could be impacted by our revised rules.

Fixed Satellite Small Transmit/Receive Earth Stations. There are approximately 2,784 earth station authorizations, a portion of which are Fixed Satellite Small Transmit/Receive Earth Stations. We do not request nor collect annual revenue information, and are unable to estimate the number of fixed small satellite transmit/receive earth stations that would constitute a small business under the SBA definition. However, the majority of these stations could be impacted by our revised rules.

Fixed Satellite Very Small Aperture Terminal (VSAT) Systems. These stations operate on a primary basis, and frequency coordination with terrestrial microwave systems is not required. Thus, a single "blanket" application may be filed for a specified number of small antennas and one or more hub stations. There are 492 current VSAT System authorizations. We do not request nor collect annual revenue information, and are unable to estimate the number of VSAT systems that would constitute a small business under the SBA definition. However, it is expected that many of these stations could be impacted by our revised rules.

Mobile Satellite Earth Stations. There are 15 licensees. We do not request nor

collect annual revenue information, and are unable to estimate the number of mobile satellite earth stations that would constitute a small business under the SBA definition. However, it is expected that many of these stations could be impacted by our revised rules.

Wireless and Commercial Mobile Services

19. Cellular Licensees. Neither the Commission nor the SBA has developed a definition of small entities specific to cellular licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone (wireless) company employing no more than 1,500 persons.²⁰ According to the Census Bureau, only twelve radiotelephone (wireless) firms from a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.²¹ Even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. In addition, we note that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. According to the most recent *Telecommunications Reporting Worksheets* data, 806 wireless telephony providers reported that they were engaged in the provision of either cellular service, Personal Communications Service (PCS) services, and SMR telephony carriers, which are placed together in the data.²² We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. We estimate that there are fewer than 806 small wireless service providers that may be affected by these revised rules. All may be impacted by these proposed rule revisions.

Private and Common Carrier Paging. In the *Paging Third Report and Order*, we adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.²³ We have defined a small business as an entity that, together with its affiliates

and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. Additionally, a very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years.²⁴ The SBA has approved these definitions.²⁵ An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000.²⁶ Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won. At present, there are approximately 24,000 Private-Paging site-specific licenses and 74,000 Common Carrier Paging licenses. According to the most recent *Telecommunications Industry Revenue* data, 172 carriers reported that they were engaged in the provision of either paging or "other mobile" services, which are placed together in the data.²⁷ We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and therefore are unable at this time to estimate with greater precision the number of paging carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 172 small paging carriers that may be affected by these revised rules. We estimate that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition. All may be impacted by these proposed rule revisions.

Specialized Mobile Radio (SMR). Pursuant to 47 CFR 90.814(b)(1), the Commission has defined "small business" for purposes of auctioning 900 MHz SMR licenses, 800 MHz SMR licenses for the upper 200 channels, and 800 MHz SMR licenses for the lower 230 channels on the 800 MHz band, as a firm that has had average annual gross revenues of \$15 million or less in the

²⁴ 700 MHz Guard Band Auction Closes," Public Notice, 15 FCC Rcd 18026 (2000).

²⁵ "Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems," Memorandum Opinion and Order on Reconsideration and Third Report and Order, 14 FCC Rcd 10030, at paragraph 98-107 (1999).

²⁶ "Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems," Memorandum Opinion and Order on Reconsideration and Third Report and Order, 14 FCC Rcd 10030, at paragraph 98 (1999).

²⁷ See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division from A. Alvarez, Administrator, SBA (December 2, 1998).

¹⁹ 1992 *Economic Census Industry and Enterprise Receipts Size Report*, Table 2D, NAICS codes 48531, 513322, 51334, and 513391 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration).

²⁰ 13 CFR 121.201, NAICS code 513322.

²¹ 1992 *Census, Series UC92-S-1*, at Table 5, NAICS code 513322.

²² *Trends in Telephone Service*, Table 16.3 (December 2000).

²³ 220 MHz *Third Report and Order*, 62 FR 16004 (April 3, 1997), at paragraphs 291-295.

three preceding calendar years.²⁸ The SBA has approved this small business size standard for the 800 MHz and 900 MHz auctions.²⁹ Sixty winning bidders for geographic area licenses in the 900 MHz SMR band qualified as small business under the \$15 million size standard. The auction of the 525 800 MHz SMR geographic area licenses for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997.³⁰ Ten winning bidders for geographic area licenses for the upper 200 channels in the 800 MHz SMR band qualified as small businesses under the \$15 million size standard.³¹ An auction of 800 MHz SMR geographic area licenses for the General Category channels began on August 16, 2000 and was completed on September 1, 2000. Of the 1,050 licenses offered in that auction, 1,030 licenses were sold. Eleven winning bidders for licenses for the General Category channels in the 800 MHz SMR band qualified as small business under the \$15 million size standard. In an auction completed on December 5, 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were sold. Of the 22 winning bidders, 19 claimed small business status. Thus, 40 winning bidders for geographic licenses in the 800 MHz SMR band qualified as small businesses. In addition, there are numerous incumbent site-by-site SMR licenses on the 800 and 900 MHz band. All may be impacted by these proposed rule revisions.

Private Land Mobile Radio (PLMR). PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories. The Commission has not developed a definition of small entity specifically applicable to PLMR licensees due to the vast array of PLMR users. For the purpose of determining whether a licensee is a small business as defined by the SBA, each licensee would need to be evaluated within its own business area. Therefore, the Commission is unable at this time to estimate the number of small businesses which could be impacted by the rules.

Fixed Microwave Services. Microwave services include common

carrier,³² private-operational fixed,³³ and broadcast auxiliary radio services.³⁴ At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of this FRFA, we will use the SBA's definition applicable to radiotelephone (wireless) companies—*i.e.*, an entity with no more than 1,500 persons.³⁵ We estimate that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition for radiotelephone (wireless) companies. Some of these services could be impacted by the proposed revisions of our rules, particularly those which utilize consumer subscriber transceivers that may be subject to labeling requirements.

Personal Radio Services. Personal radio services provide short-range, low power radio for personal communications, radio signaling, and business communications not provided for in other services. The services include the citizen's band (CB) radio service, general mobile radio service (GMRS), radio control radio service, and family radio service (FRS).³⁶ Since the CB, GMRS, and FRS licensees are individuals, no small business definition applies for these services. We are unable at this time to estimate the number of other licensees that would qualify as small under the SBA's definition. However, in general, there should be little impact of these proposed rule revisions on these services.

Wireless Communications Services. This service can be used for fixed,

mobile, radiolocation and digital audio broadcasting satellite uses. The Commission defined "small business" for the wireless communications services (WCS) auction as an entity with average gross revenues of \$40 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of \$15 million for each of the three preceding years. The SBA has approved these definitions.³⁷ The FCC auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as very small business entities, and one that qualified as a small business entity. We conclude that the number of geographic area WCS licensees which could be impacted includes these eight entities.

Local Multipoint Distribution Service. The Commission defined "small entity" for LMDS licenses as an entity that has average gross revenues of less than \$40 million in the three previous calendar years.³⁸ An additional classification 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.³⁹ These regulations defining "small entity" in the context of LMDS auctions have been approved by the SBA.⁴⁰ There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 40 winning bidders. Based on this information, we conclude that the number of small LMDS licenses will include the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission's auction rules. The LMDS service could be impacted by the proposed revisions of our rules, particularly with respect to consumer subscriber transceivers that may be subject to labeling requirements.

³² 47 CFR 101 *et seq.* (formerly, part 21 of the Commission's rules).

³³ Persons eligible under parts 80 and 90 of the Commission's rules can use Private Operational-Fixed Microwave services. *See* 47 CFR parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

³⁴ Auxiliary Microwave Service is governed by part 74 of Title 47 of the Commission's rules. *See* 47 CFR 74 *et seq.* As discussed earlier, there should be no impact on this class of transmitters.

³⁵ 13 CFR 121.201, NAICS codes 513321, 513322, 51333.

³⁶ Licensees in the Citizens Band (CB) Radio Service, General Mobile Radio Service (GMRS), Radio Control (R/C) Radio Service and Family Radio Service (FRS) are governed by subpart D, subpart A, subpart C, and subpart B, respectively, of part 95 of the Commission's rules. 47 CFR 95.401 through 95.428; 95.1 through 95.181; 95.201 through 95.225; 47 CFR 95.191 through 95.194.

³⁷ *See* Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division from A. Alvarez, Administrator, SBA (December 2, 1998).

³⁸ *See* Local Multipoint Distribution Service, *Second Report and Order*, 12 FCC Rcd 12545 (1997).

³⁹ *Id.*

⁴⁰ *See* Letter to Daniel Phythyon, Chief, Wireless Telecommunications Bureau (FCC) from A. Alvarez, Administrator, SBA (January 6, 1998).

²⁸ 47 CFR 90.814(b)(1).

²⁹ *See* Letter to Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau (FCC) from A. Alvarez, Administrator, SBA (August 10, 1999).

³⁰ *See* Letter to Daniel B. Phythyon, Chief, Wireless Telecommunications Bureau (FCC) from A. Alvarez, Administrator, SBA (October 27, 1997).

³¹ *Id.*

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

20. The proposals being made in this item may require additional reporting regarding compliance with our RF exposure limits for certain facilities, operations and transmitters, such as some wireless base stations and some antennas at multiple transmitter sites. In other cases, current reporting requirements are being relaxed. Also, we are proposing to require that in order for the occupational/controlled SAR or MPE limits to be used in evaluating compliance for a portable or mobile device, certain conditions must be met, that may include placing a label on a device that provides a user with specific information on RF exposure. We are also proposing that a sample of the label and instructional material be filed with the Commission along with the application for equipment authorization.

21. We are also proposing to adopt a general labeling requirement for certain high-gain subscriber across all services that will be consistent and ensure compliance of consumer products with our RF safety guidelines. When equipment authorization is required, we are proposing that a sample of the label and illustrations showing its location should be filed with the Commission along with the application for a grant of equipment authorization.

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

22. 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; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.⁴¹ In this proceeding, our proposals are consistent with (2), in that our goal is making our RF rules more consistent and clarifying certain areas that have created confusion in the past. In addition, due to our revisions in our policy on categorical exclusions, we are providing exemptions from routine RF evaluation for many small entities

that should reduce the overall impact on small entities (see number 4 of this paragraph).

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

23. None.

List of Subjects

47 CFR Part 1

Administrative practice and procedure, Environmental impact statements.

47 CFR Parts 2 and 95

Communications equipment, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 1, 2 and 95 as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. 151, 154, 303, and 309(j) unless otherwise noted.

2. Section 1.1307 is amended by revising paragraph (b)(1) and the table that immediately follows it, and by revising paragraph (b)(2) to read as follows:

§ 1.1307 Actions that may have a significant environmental effect, for which Environmental Assessments (EAs) must be prepared.

* * * * *

(b) * * *

(1) The appropriate exposure limits in §§ 1.1310 and 2.1093 of this chapter are generally applicable to all facilities, operations and transmitters regulated by the Commission. However, a determination of compliance with the exposure limits in § 1.1310 or § 2.1093 of this chapter (routine environmental evaluation), and preparation of an EA if the limits are exceeded, is necessary only for the facilities, operations and transmitters indicated in table 1, or those specified in paragraph (b)(2) of this section. All other facilities, operations and transmitters are categorically excluded from making such studies or preparing an EA, except as indicated in paragraphs (b)(1)(ii), (c) and (d) of this section. The term *power* in column 2 of table 1 refers to total operating power of

the transmitting operation in question in terms of effective radiated power (ERP), effective isotropically radiated power (EIRP), or peak envelope power (PEP), as defined in § 2.1 of this chapter.

The phrase *total transmit power of all channels* when used in column 2 of table 1 means the sum of the ERP or EIRP of all co-located simultaneously operating transmitters owned and operated by a single licensee. When applying criteria of table 1, radiation in all directions should be considered. For the case of transmitting facilities using sectorized transmitting antennas, the criteria are to be applied to all transmitting channels in a given sector, noting that for a highly directional antenna there is relatively little contribution to ERP or EIRP summation for other directions. See § 1.1310 for general information on compliance with the FCC's limits for RF exposure.

(i) Table 1 applies to "fixed" transmitters. For purposes of applying these rules, a fixed transmitter is defined as one that is physically secured at one location and is not able to be easily moved to another location. This definition includes transmitters that are physically secured at one location on a temporary basis. An example of this latter case would be a wireless base station installed temporarily to accommodate increased call volume at a special event.

(ii) Fixed transmitters in any service are not required to undergo routine environmental evaluation for RF exposure, and the provisions of table 1 do not apply, if the transmitter is mounted such that persons cannot be closer than 20 cm from any part of the radiating structure and if the operating power of the transmitter is less than 1.5 W effective radiated power (ERP), for transmitters operating at frequencies at or below 1.5 GHz, or less than 3 W ERP for operating frequencies above 1.5 GHz. Compliance with exposure guidelines for fixed transmitters can be accomplished by the use of labels specifying minimum separation distance and/or proper antenna installation.

(iii) *Labeling requirements:* With the exception of paragraph (b)(1)(iv) of this section, licensees in service categories with labeling requirements are required to attach a label to a fixed subscriber transceiver antenna if:

(A) The transceiver is mounted such that persons cannot be closer than 20 cm from any part of the radiating structure and the operating power of the transmitter is greater than 1.5 W ERP, for transmitters operating at frequencies at or below 1.5 GHz, or greater than 3

⁴¹ 5 U.S.C. 603(c).

W ERP for operating frequencies above 1.5 GHz; or,

(B) The transceiver is designed with the potential to be mounted closer than 20 cm from the body or from nearby persons and the operating power is greater than 100 mW conducted or radiated peak power. The label must provide adequate notice regarding potential radiofrequency safety hazards, e.g., information regarding the safe

minimum distance required between users and antennas; and reference the applicable FCC-adopted limits for radiofrequency exposure specified in § 1.1310. Such labels must be clearly visible and legible to nearby persons.

(iv) Labels are not required on any fixed subscriber transceiver antennas if it can be demonstrated that the appropriate partial body SAR limits specified in § 2.1093 of this chapter

cannot be exceeded by persons immediately adjacent to the antenna. Also, labels are not required on any fixed subscriber transceiver antenna if the transmitter is mounted such that persons can never be closer than 20 cm from any part of the radiating structure and the device can be shown to comply with the MPE limits for field strength and/or power density at a distance of 20 cm or more.

TABLE 1.—FIXED TRANSMITTERS, FACILITIES AND OPERATIONS SUBJECT TO ROUTINE ENVIRONMENTAL EVALUATION

Service (title 47 CFR rule part)	Evaluation required if:
Experimental Radio Services (part 5)	(1) Transmit power is 100 W ERP (164 W EIRP) or more or (2) Separation distance is less than 3 m.
Multipoint Distribution Service (subpart K of part 21).	(1) Separation distance is less than 10 m and transmit power is greater than 200 W ERP (328 W EIRP) or (2) Separation distance is less than 3 m. <i>Labeling:</i> In addition, MDS licensees are required to comply with the labeling requirements set forth in §§ 1.1307(b)(1)(iii) and (iv).
Paging and Radiotelephone Service (subpart E of part 22).	(1) Separation distance is less than 10 m and transmit power is greater than 100 W ERP (164 W EIRP) for VHF, UHF, and 900 MHz channels, or greater than 200 W ERP (328 W EIRP) for 2.1 GHz channels or (2) Separation distance is less than 3 m.
Cellular Radiotelephone Service (subpart H of part 22).	(1) Separation distance is less than 10 m and transmit power is greater than 100 W ERP (164 W EIRP) or (2) Separation distance is less than 3 m.
Personal Communications Services (part 24)	<i>Narrowband PCS (subpart D):</i> (1) Separation distance is less than 10 m and transmit power is greater than 100 W ERP (164 W EIRP) or (2) Separation distance is less than 3 m. <i>Broadband PCS (subpart E):</i> (1) Separation distance is less than 10 m and transmit power is greater than 200 W ERP (328 W EIRP). (2) Separation distance is less than 3 m.
Satellite Communications (part 25)	All Included. <i>For DARS terrestrial repeater stations only:</i> (1) Separation distance is less than 10 m and transmit power is greater than 200 W ERP (328 W EIRP) or (2) Separation distance is less than 3 m. <i>Labeling:</i> In addition, for NGSO subscriber equipment, licensees are required to comply with the labeling requirements set forth in §§ 1.1307(b)(1)(iii) and (iv).
Wireless Communications Service (part 27)	<i>700 MHz service:</i> (1) Separation distance is less than 10 m and transmit power is greater than 100 W ERP (164 W EIRP) or (2) Separation distance is less than 3 m. <i>2.3 GHz service:</i> (1) Separation distance is less than 10 m and transmit power is greater than 200 W ERP (328 W EIRP) or (2) Separation distance is less than 3 m.
Radio Broadcast Services (part 73)	All included, except subpart G. <i>For subpart G only:</i> Separation distance less than 3 m (assuming ERP 100 W or less).
Experimental, auxiliary, and Broadcast and other program Distributional services (part 74).	<i>Subparts A, G, L:</i> (1) Transmit power is greater than 100 W ERP (164 W special EIRP) or (2) Separation distance is less than 3 m. <i>Subpart I:</i> (1) Separation distance is less than 10 m and transmit power is greater than 200 W ERP (328 W EIRP) or (2) Separation distance is less than 3 m.

TABLE 1.—FIXED TRANSMITTERS, FACILITIES AND OPERATIONS SUBJECT TO ROUTINE ENVIRONMENTAL EVALUATION—Continued

Service (title 47 CFR rule part)	Evaluation required if:
Stations in the Maritime Services (part 80)	<i>Labeling:</i> In addition, ITFS licensees are required to comply with the labeling requirements set forth in §§ 1.1307(b)(1)(iii) and (iv). Ship earth stations only.
Private Land Mobile Radio Services Paging Operations & Specialized Mobile Radio (part 90).	(1) Separation distance is less than 10 m and transmit power is greater than 100 W ERP (164 W EIRP) or (2) Separation distance is less than 3 m.
Amateur Radio Service (part 97)	Transmitter output power levels specified in § 97.13(c)(1) of this chapter.
Fixed Microwave Service (part 101)	<i>For frequencies at or below 1500 MHz:</i> (1) Separation distance is less than 10 m and transmit power is greater than 100 W ERP (164 W EIRP) or (2) Separation distance is less than 3 m. <i>For frequencies above 1500 MHz:</i> (1) Separation distance is less than 10 m and transmit power is greater than 200 W ERP (328 W EIRP) or (2) Separation distance is less than 3 m.
	<i>Labeling:</i> In addition, licensees in the LMDS, 24 GHz and DEMS, and 39 GHz Service are required to comply with the labeling requirements set forth in §§ 1.1307(b)(1)(iii) and (iv).

Note to Table 1: The term “separation distance” in Table 1 is defined to mean the minimum distance from any part of the radiating structure of a transmitting antenna in any direction to any area that may be entered by a member of the general public. Workers meeting the criteria for occupational/controlled exposures may access such areas consistent with appropriate engineering and/or administrative controls that result in compliance with FCC occupational/controlled limits without triggering the need for routine evaluation.

(2) Except as provided under §§ 2.1091 and 2.1093, mobile and portable devices that operate in the Cellular Radiotelephone Service, the Personal Communications Services (PCS), the Satellite Communications Services, the Wireless Communications Service, the Maritime Services (ship earth stations only), and the Specialized Mobile Radio Service authorized under subpart H of parts 22, 24, 25, 27, 80, and 90, respectively, of this chapter, are subject to routine environmental evaluation for RF exposure prior to equipment authorization or use, as specified in §§ 2.1091 and 2.1093 of this chapter. Cordless telephones and portable transmitters, millimeter devices, unlicensed PCS and unlicensed NII devices authorized under §§ 15.247, 15.253, 15.255, 15.319 and 15.407 of this chapter are also subject to routine environmental evaluation for RF exposure prior to equipment authorization or use. However, routine evaluation for portable devices authorized under § 15.247 of this chapter is required only if the maximum peak output power of the device exceeds 100 milliwatts (100 mW). Portable transmitting equipment for use in the Wireless Medical Telemetry Service (WMTS) authorized under part 95 of this chapter is subject to routine environmental evaluation as specified in §§ 2.1093 and 95.1125 of this chapter. Equipment authorized for use in the Medical Implant Communications Service (MICS) as a medical implant transmitter (as defined in Appendix 1 to

subpart E of part 95 of this chapter) is subject to routine environmental evaluation for RF exposure prior to equipment authorization or use, as specified in § 2.1093 of this chapter. All other mobile, portable and unlicensed transmitting devices are categorically excluded from routine environmental evaluation for RF exposure under §§ 2.1091 and 2.1093 of this chapter prior to equipment authorization or use, except as specified in §§ 1.1307(c) and 1.1307(d).

* * * * *

3. Section 1.1310 is amended by revising the introductory text, by removing notes 1 and 2 to table 1, and by adding paragraphs (a), (b), (c), and (d) to read as follows:

§ 1.1310 Radiofrequency radiation exposure limits.

The limits for Maximum Permissible Exposure (MPE) specified below and in table 1 shall be used to evaluate the environmental impact of human exposure to radiofrequency (RF) radiation as specified in § 1.1307(b). In the case of portable devices, as defined in § 2.1093 of this chapter, and fixed transmitters that are mounted so that persons may normally be within 20 cm of any part of the radiating structure, the MPE values listed in table 1 are not appropriate for evaluation of exposure and such evaluations must be performed according to the provisions of § 2.1093 of this chapter. The MPE values in table 1 are derived from a Specific Absorption Rate (SAR) limit for occupational/

controlled exposure of 0.4 W/kg, as averaged over the whole body, and an SAR limit for general population/uncontrolled exposure of 0.08 W/kg, as averaged over the whole body. In addition, the Commission has adopted exposure limits for spatial peak SAR. In general, and in lieu of compliance with the MPE values in table 1, compliance can also generally be demonstrated with respect to the allowed limits for SAR. The SAR limits for occupational/controlled exposure are 0.4 W/kg, as averaged over the whole body, and a spatial peak SAR of 8 W/kg, averaged over any 1 gram of tissue (defined as a tissue volume in the shape of a cube); exceptions are the hands, wrists, feet and ankles where the spatial peak SAR limit is 20 W/kg, as averaged over any 10 grams of tissue (defined as a tissue volume in the shape of a cube). The SAR limits for general population/uncontrolled exposure are 0.08 W/kg, as averaged over the whole body, and a spatial peak SAR of 1.6 W/kg, averaged over any 1 gram of tissue (defined as a tissue volume in the shape of a cube); exceptions are the hands, wrists, feet and ankles where the spatial peak SAR limit is 4 W/kg, as averaged over any 10 grams of tissue (defined as a tissue volume in the shape of a cube). Detailed information on evaluating compliance with these exposure limits can be found in the FCC's OET Bulletin Number 65, “Evaluating Compliance with FCC-Specified Guidelines for Human Exposure to Radiofrequency Electromagnetic Fields,” and in the

supplements to Bulletin 65, all available at the FCC's Internet Web site: www.fcc.gov/oet/rfsafety.

Note to Introductory Paragraph: These limits are generally based on recommended exposure guidelines published by the National Council on Radiation Protection and Measurements (NCRP) in "Biological Effects and Exposure Criteria for Radiofrequency Electromagnetic Fields," NCRP Report No. 86, Sections 17.4.1, 17.4.1.1, 17.4.2 and 17.4.3. Copyright NCRP, 1986, Bethesda, Maryland 20814. In the frequency range from 100 MHz to 1500 MHz, exposure limits for field strength and power density are also generally based on guidelines recommended by the American National Standards Institute (ANSI) in Section 4.1 of "IEEE Standard for Safety Levels with Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 3 kHz to 300 GHz," ANSI/IEEE C95.1-1992. Copyright 1992 by the Institute of Electrical and Electronics Engineers, Inc., New York, New York 10017. Limits for whole body SAR and spatial peak SAR are based on recommendations made in both of these documents.

* * * * *

(a) Occupational/controlled exposure limits apply in situations in which persons are exposed as a consequence of their employment provided those persons are fully aware of the potential for exposure and can exercise control over their exposure. Limits for occupational/controlled exposure also apply in situations when an individual is transient through a location where occupational/controlled limits apply provided he or she is made aware of the potential for exposure. The phrase *fully aware* in the context of applying these exposure limits means that an exposed individual has received written and verbal information fully explaining the potential for RF exposure resulting from his or her employment. With the exception of *transient* individuals, this phrase also means that an exposed individual has received comprehensive training regarding appropriate work practices relating to controlling or mitigating his or her exposure. Such training is not required for *transient* individuals, but they must receive written or verbal information and notification (for example, warning signs) concerning their exposure potential and appropriate means available to mitigate their exposure. The phrase *exercise control* means that an exposed individual is allowed to reduce or avoid exposure by administrative or engineering work practices, such as use

of personal protective equipment or time-averaging of exposure.

(b) General population/uncontrolled exposure limits apply in situations in which the general public may be exposed, or in which persons that are exposed as a consequence of their employment may not be fully aware of the potential for exposure or cannot exercise control over their exposure.

(c) Licensees and applicants are generally responsible for compliance with both the occupational/controlled exposure limits and the general population/uncontrolled exposure limits as they apply to transmitters under their jurisdiction. Licensees and applicants should be aware that the occupational/controlled exposure limits apply especially in situations where workers may have access to areas in very close proximity to antennas where access to the general public may be restricted.

(d) Amateur radio station licensees must also take steps to ensure that their stations comply with the exposure limits, as noted in § 1.1307(b), table 1, of this section and in § 97.13(c) of that chapter. For example, for a typical amateur station located at a residence the station licensee and members of his or her immediate household may be evaluated with respect to the occupational/controlled exposure limits, provided the appropriate conditions specified in paragraph (a) of this section. Other nearby persons, such as neighbors, who are not members of the amateur licensee's household must be evaluated with respect to the general population/uncontrolled exposure limits. Similar considerations apply to amateur stations located at places other than a residence.

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

4. The authority citation for Part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

5. Section 2.1091 is amended by revising paragraphs (c), (d) introductory text and (d)(3) to read as follows:

§ 2.1091 Radiofrequency radiation exposure evaluation: mobile devices.

* * * * *

(c) Mobile devices that operate in the Cellular Radiotelephone Service, the Personal Communications Service (PCS), the Satellite Communications Service, the Wireless Communications Service, the Maritime Services, the Specialized Mobile Radio Service, authorized under subpart H of part 22,

parts 24, 25, 27, 80 (ship earth station devices only), and 90 of this chapter are subject to routine environmental evaluation for RF exposure prior to equipment authorization or use if they operate at frequencies of 1.5 GHz or below and their effective radiated power (ERP) is 1.5 watts or more, or if they operate at frequencies above 1.5 GHz and their ERP is 3 watts or more. Unlicensed personal communications service devices, unlicensed millimeter wave devices and unlicensed NII devices authorized under § 15.253, § 15.255, and subparts D and E of part 15 of this chapter are also subject to routine environmental evaluation for RF exposure prior to equipment authorization or use if their ERP is 3 watts or more or if they meet the definition of a portable device as specified in § 2.1093(b) requiring evaluation under the provisions of that section. All other mobile and unlicensed transmitting devices are categorically excluded from routine environmental evaluation for RF exposure prior to equipment authorization or use, except as specified in §§ 1.1307(c) and 1.1307(d) of this chapter. Applications for equipment authorization of portable transmitting devices subject to routine environmental evaluation must contain a statement confirming compliance with the limits specified in paragraph (d) of this section as part of their application. Technical information showing the basis for this statement must be submitted to the Commission upon request.

(1) When antennas for part 15 modular transmitters ("transmitter modules") that operate at power levels of 200 mW or less (peak EIRP or peak conducted output power) are designed to be incorporated into a laptop ("notebook") computer such that they will be located at a distance of at least 20 cm from the body of a user (the configuration necessary to be classified as a mobile device) evaluation of the modular transmitter for compliance with the Commission's RF exposure limits is not required. Evaluation for compliance with the Commission's RF exposure limits is required for modular transmitters operating in excess of 200 mW (peak EIRP or peak conducted output power).

(2) In general, the maximum RF exposure of a combination device (host device plus modules) can be determined by adding the frequency-dependent RF exposure levels of all antennas incorporated within a single combination device that could functionally transmit at the same time. Such antennas can be considered to be

“mobile” transmitting devices for purposes of evaluating compliance as long as the 20 cm separation criterion defined in paragraph (b) of this section is met.

(d) The limits to be used for evaluation of mobile devices are the limits for Maximum Permissible Exposure (MPE) specified in § 1.1310 of this chapter. Appropriate methodologies for evaluating exposure from mobile devices are described in the most current edition of *OET Bulletin 65*. All unlicensed personal communications service (PCS) devices and unlicensed NII devices shall be subject to the limits for general population/uncontrolled exposure.

* * * * *

(3) If appropriate, compliance with exposure guidelines for devices in this section can be accomplished by the use of labels and by providing users with information concerning minimum separation distances from transmitting structures and proper installation of antennas. Labels should be legible and clearly visible to the user of the device. Labels used on devices that are subject to occupational/controlled exposure limits must indicate that the device is for occupational use only, must refer the user to specific information on RF exposure, such as that provided in a user manual, and must note that the label and its information is required for FCC RF exposure compliance. Such instructional material must provide the user with information on how to use the device in order to ensure compliance with the occupational/controlled exposure limits. A sample of the label, illustrating its location on the device, and any instructional material intended to accompany the device when marketed, shall be filed with the Commission along with the application for equipment authorization. For occupational devices, details of any special training requirements pertinent to limiting RF exposure should also be submitted. Holders of grants for mobile devices to be used in occupational settings are encouraged, but not required, to coordinate with end-user organizations to ensure appropriate RF safety training.

* * * * *

6. Section 2.1093 is amended by revising paragraphs (c) and (d)(3) and by adding paragraph (d)(6) to read as follows:

§ 2.1093 Radiofrequency radiation exposure evaluation: portable devices.

* * * * *

(c) Portable devices that operate in the Cellular Radiotelephone Service, the Personal Communications Service

(PCS), the Satellite Communications Services, the Wireless Communications Service, the Maritime Services, the Specialized Mobile Radio Service, the Wireless Medical Telemetry Service (WMTS) and the Medical Implant Communications Service (MICS), authorized under subpart H of part 22, parts 24, 25, 27, 80 (ship earth station devices only), and 90, subparts H and I of part 95, and unlicensed personal communication service devices, unlicensed NII devices and millimeter wave devices authorized under subparts D and E, §§ 15.253 and 15.255 of part 15 of this chapter are subject to routine environmental evaluation for RF exposure prior to equipment authorization or use. Portable devices authorized under § 15.247 of part 15 of this chapter are subject to routine evaluation for RF exposure prior to equipment authorization or use if the maximum peak output power of the device exceeds 100 milliwatts (100 mW). Evaluation of MICS transmitters may be demonstrated by use of computational modeling or laboratory measurement techniques. Unless otherwise specified in this chapter, other portable transmitting devices are categorically excluded from routine environmental evaluation for RF exposure prior to equipment authorization or use, except as specified in §§ 1.1307 (c) and (d) of this chapter. Applications for equipment authorization of portable transmitting devices subject to routine environmental evaluation must contain a statement confirming compliance with the limits specified in paragraph (d) of this section as part of their application. Technical information showing the basis for this statement must be submitted to the Commission upon request.

(1) Unlicensed transmitters authorized under § 15.247 may be authorized as “transmitter modules” for use in various host devices provided that the configurations and exposure conditions of host products are identified and provided the maximum peak conducted output power is 100 milliwatts (100 mW) or less. Such transmitters may be authorized as modules when they have been shown to comply with our RF exposure guidelines and when it can be demonstrated that the use of the module in additional host devices would not result in non-compliance.

(2) When a modular transmitter (“transmitter module”) is designed to be used in a hand-held wireless portable telephone or in a portable digital assistant (“PDA”) that can be used in contact with the head or body, and the

operating power level of the module is 2 mW or less (peak EIRP or peak conducted output power), if the phone or PDA (“host” device) has been previously shown to be compliant with the Commission’s limits for SAR, no additional SAR evaluation of the combined device (host plus module) is required. When a modular transmitter is designed to be used in a hand-held wireless portable telephone or in a PDA that can be used in contact with the head or body, and the operating power level of the module is greater than 2 mW (peak EIRP or peak conducted output power), the combined device (host plus module) must be evaluated for SAR in the normal operating configuration. If the combined device is demonstrated to be in compliance with the Commission’s SAR limits, this demonstration of compliance can be applied to such modules designed to be used in similar host devices that have been tested and certified for similar configurations.

(3) When modular transmitters (“transmitter modules”) operating at power levels of 10 mW or less (peak EIRP or peak conducted output power) are designed to be used in the keyboard portion of a laptop (“notebook”) computer evaluation for compliance with the Commission’s limits for SAR is not required.

(4) When modular transmitters (“transmitter modules”) operating at power levels of 25 mW or less (peak EIRP or peak conducted output power) are designed to be used in a PDA, designed only to be held in the hand, evaluation for compliance with the Commission’s limits for SAR is not required.

(5) When a modular transmitter is designed to be used in a PDA (the “host device”) that is only used when held in the hand, and the operating power level of the module is greater than 25 mW (peak EIRP or peak conducted output power), the combined device (host plus module) must be evaluated for SAR in the normal operating configuration. If the combined device is demonstrated to be in compliance with the Commission’s SAR limits, this demonstration of compliance can be applied to such modules designed to be used in similar host devices that have been tested and certified for similar configurations.

(6) For a combination device that incorporates at least one modular transmitter in addition to the host transmitter, when the relevant exclusion thresholds described in this section are not applicable, evaluation of SAR of the combination device can be determined by adding the maximum RF exposure

levels of all antennas incorporated within a single combination device that could functionally transmit at the same time.

(d) * * *

(3) Compliance with SAR limits can be demonstrated by either laboratory measurement techniques or by computational modeling. The latter must be supported by adequate documentation. The methodologies that shall be used for evaluating SAR for wireless handsets and similar devices are described in the most current edition of *Supplement C to OET Bulletin 65*, issued by the Commission's Office of Engineering and Technology.

* * * * *

(6) Labels placed directly on portable devices designed only for occupational use can be used as part of an applicant's evidence of compliance with occupational/controlled exposure limits. Such labels should be legible and clearly visible to the user of the device. They must indicate that the device is for occupational use only, refer the user to specific information on RF exposure, such as that provided in a user manual

and note that the label and its information is required for FCC RF exposure compliance. Such instructional material must provide the user with information on how to use the device in order to ensure compliance with the occupational/controlled exposure limits. A sample of the label, illustrating its location on the device, and any instructional material intended to accompany the device when marketed, shall be filed with the Commission along with the application for equipment authorization. Details of any special training requirements pertinent to limiting RF exposure should also be submitted. Holders of grants for portable devices to be used in occupational settings are encouraged, but not required, to coordinate with end-user organizations to ensure appropriate RF safety training.

7. Section 95.603 is amended by revising paragraph (f) to read as follows:

§ 95.603 Certification required.

* * * * *

(f) Each Medical Implant Communications Service transmitter (a transmitter that operates or is intended

to operate in the MICS) must be certificated except for medical implant transmitters that are not marketed for use in the United States, but which otherwise comply with the MICS technical requirements and are operated in the United States by individuals who have traveled to the United States from abroad. Medical implant transmitters (as defined in appendix 1 to subpart E of part 95 of this chapter) are subject to the radiofrequency radiation exposure requirements specified in §§ 1.1307 and 2.1093 of this chapter, as appropriate. Applications for equipment authorization of devices operating under this section must demonstrate compliance with these requirements using either finite difference time domain computational modeling or by laboratory measurement techniques. Where a showing is based on computational modeling, the Commission retains the discretion to request that specific absorption rate (SAR) data also be submitted.

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