

**SUPPLEMENTARY INFORMATION:** For further information, please see the information provided in the direct final action pertaining to the establishment of a VOC limit for an overprint varnish used in the cosmetic industry throughout the state of Maryland with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: December 4, 2002.

**Thomas C. Voltaggio,**

*Acting Regional Administrator, Region III.*

[FR Doc. 03-730 Filed 1-14-03; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 2 and 90

[WT Docket No. 01-90; ET Docket No. 98-95; RM-9096; FCC 02-302]

### Regarding Dedicated Short-Range Communication Services in the 5.850-5.925 GHz Band (5.9 GHz Band)

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, a notice of proposed rulemaking, the Federal Communications Commission (FCC) proposes service rules for the Dedicated Short-Range Communications Systems in the 5.850-5.925 GHz band (5.9 GHz band) to govern the licensing and use of this band. The NPRM seeks public comment on numerous issues concerning the service rules.

**DATES:** Comments are due on or before March 17, 2003, and reply comments are due on or before April 15, 2003.

**ADDRESSES:** Federal Communications Commission 445 12th Street, SW., TW-A325, Washington, DC 20554. See **SUPPLEMENTARY INFORMATION** for filing instructions.

**FOR FURTHER INFORMATION CONTACT:**

Nancy M. Zaczek at (202) 418-7590, Gerardo Mejia at (202) 418-2895 or via e-mail at [nzaczek@fcc.gov](mailto:nzaczek@fcc.gov) or [gmejia@fcc.gov](mailto:gmejia@fcc.gov), or via TTY (202) 418-7233.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Federal Communications Commission's *Notice of Proposed Rulemaking*, FCC 02-302,

adopted on November 7, 2002, and released on November 15, 2002. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the FCC's copy contractor, Qualex International, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. The full text may also be downloaded at: [www.fcc.gov](http://www.fcc.gov). Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418-7426 or TTY (202) 418-7365 or at [bmillin@fcc.gov](mailto:bmillin@fcc.gov).

1. In this *Notice of Proposed Rulemaking and Order (NPRM and Order)*, the FCC propose service rules to govern the licensing and use of the 5.850-5.925 GHz band (5.9 GHz band) for Dedicated Short-Range Communications (DSRC) services in the Intelligent Transportation System (ITS) radio service. Specifically in this *NPRM and Order*:

- The FCC proposes to permit entities providing public safety DSRC operations to use the 5.9 GHz band;
- For public safety entities, the FCC proposes to apply the application, licensing and processing rules under part 90 of the FCC's rules;

2. The FCC generally seeks comment on the following issues:

- Whether to license Roadside Units (RSUs) by site or geographic area;
- Whether to permit non-public safety radio DSRC operations in the 5.9 GHz band:
  - In the event that the FCC allows non-public safety radio applications in the 5.9 GHz band and in the event that the licensing scheme the FCC selects for those ITS applications results in mutually exclusive licenses, the FCC proposes to apply competitive bidding procedures under the FCC's part 1 competitive bidding rules;
  - The definition of public safety in the context of ITS;
  - The definition of Dedicated Short-Range Communication Service (DSRCS);
  - The interoperability necessary for DSRC operations and how this interoperability should be achieved;
  - Whether to license On Board Units (OBUs) associated with fixed systems under the associated RSU license;
  - Whether the OBUs not associated with a fixed system should be licensed by rule or unlicensed under part 15;
  - The appropriate licensing scheme or schemes for this band;
  - Various channelization plans;
  - Various technical matters; and
  - Use of this band in Mexican and Canadian border areas.

3. Dismissal of Petitions for Reconsideration. Further, the FCC also seeks comment on issues raised by two Petitions for Reconsideration or Clarification of the Allocation Report and Order. PanAmSat sought reconsideration of the FCC's decision that prior coordination between DSRC operations applications and Fixed Satellite Service (FSS) uplinks is unnecessary. Mark IV Industries sought reconsideration or clarification of the power levels and emission mask requirements established in the Allocation Report and Order. The FCC dismisses these two petitions for reconsideration as moot because the FCC is seeking comment on the issues raised through this NPRM, and, with the benefit of a fuller record, will address those issues in this proceeding, *i.e.*, WT Docket 01-90.

## I. Procedural Matters

### A. Initial Regulatory Flexibility Analysis

4. The FCC has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules proposed in the Notice of Proposed Rulemaking; it is contained further. The FCC requests written public comment on the analysis. Comments must be filed in accordance with the same filing deadlines as comments filed in response to the notice of proposed rulemaking, and must have a separate and distinct heading designating them as responses to the IRFA. The FCC's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this notice of proposed rulemaking, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

### B. Paperwork Reduction Analysis

5. This NPRM contains a proposed information collection. As part of its continuing effort to reduce paperwork burdens, the FCC invites the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due at the same time as other comments on this NPRM; OMB comments are due March 17, 2003. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the FCC, including whether the information shall have practical utility; (b) the accuracy of the FCC'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.

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

#### C. Ex Parte Presentations

7. For purposes of this permit-but-disclose notice and comment rulemaking proceeding, members of the public are advised that ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed under the FCC's rules.

#### D. Comment Dates

8. Pursuant to §§ 1.415 and 1.419 of the FCC's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before March 17, 2003, and reply to comments on or before April 15, 2003. Comments may be filed using the FCC's Electronic Comment Filing System (ECFS) or by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121(1998).

9. 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, *i.e.* WT Docket 01-90, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an

e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply. 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. 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 the FCC continues to experience delays in receiving U.S. Postal Service mail). The FCC's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the FCC'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 FCC's Secretary, Office of the Secretary, Federal Communications Commission.

## II. Initial Regulatory Flexibility Analysis

10. As required by the Regulatory Flexibility Act ("RFA"), the FCC has prepared this present Initial Regulatory Flexibility Analysis ("IRFA") of the possible significant economic impact on small entities by the policies and rules proposed in the notice of proposed rulemaking (NPRM), WT Docket No. 01-90. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM as provided above. The FCC will send a copy of the NPRM, including the IRFA, to the Chief Counsel for Advocacy of the U.S. Small Business Administration. In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

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

11. In this NPRM, the FCC proposes licensing, service, and operating rules for the 5.850-5.925 GHz band for use by

Dedicated Short Range Communications (DSRC) Services in the provision of Intelligent Transportation Systems (ITS) services. DSRC communications are used for the non-voice wireless transfer of data over short distances between roadside and mobile units, between mobile units, and between portable and mobile units to perform operations related to the improvement of traffic flow, traffic safety, and other intelligent transportation service applications in a variety of environments. This action is taken as a follow-up to the Allocation Report and Order, in which the FCC stated that it would defer licensing and service rules to a later proceeding.

#### B. Legal Basis for Proposed Rules

12. The proposed action is authorized under sections 1, 4(i), 302, 303(f) and (r), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 1, 154(i), 302, 303(f) and (r), and 332.

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

13. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA 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 Small Business Administration (SBA). A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 1992, there were approximately 275,801 small organizations. "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000." As of 1992, there were approximately 85,006 governmental entities in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96%, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, the FCC

estimates that 81,600 (96%) are small entities.

14. With respect to the 5.9 GHz band, the FCC has not yet determined how many licenses will be awarded. Moreover, the FCC does not yet know how many applicants or licensees will be small entities. The FCC therefore assume that, for purposes of the FCC's evaluations and conclusions in the IRFA, all prospective licensees are small entities, as that term is defined by the SBA or by the FCC's proposed small business definitions for these bands. The FCC invites comment on this analysis.

15. In addition, the FCC notes that the SBA has developed size standards for wireless small businesses within the two separate Economic Census categories of Paging and of Cellular and Other Wireless Telecommunications. For both of those categories, the SBA considers a business to be small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS codes 517211, 517212. According to the FCC's most recent Telephone Trends Report data, 1,761 companies reported that they were engaged in the provision of wireless service. Telephone Trends Report, Table 5.3. Of these 1,761 companies, an estimated 1,175 have 1,500 or fewer employees and 586 have more than 1,500 employees. *Id.* Consequently, the FCC estimates that most wireless service providers are small entities.

16. The FCC has not developed a definition of small entities specifically applicable to Dedicated Short-Range Communications Manufacturers (DSRC Manufacturers). However, the SBA has established a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing. Under this standard, firms are considered small if they have 750 or fewer employees. Census data for 1997 indicate that, for that year, there were a total of 1,215 establishments in this category. Of those, there were 1150 that had employment under 500, and an additional 37 that had employment of 500 to 999. The percentage of wireless equipment manufacturers to total manufacturers in this category is approximately 61.35%, so the FCC estimates that the number of wireless equipment manufacturers with employment under 500 was actually closer to 706, with an additional 23 establishments having employment of between 500 and 999. Given the above, the FCC estimates that the great majority of wireless communications equipment manufacturers are small.

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

17. In the NPRM, the FCC seeks comment on whether to designate a portion of the band for public safety and non-public safety radio. Should the FCC decide to license a portion of the 5.9 GHz band for public safety purposes, those licensees will be required to submit an application through the Universal Licensing System using form 601. Other possible requirements include complying with part 90 of the FCC's rules and part 15 of the agency's rules if unlicensed operations are permitted.

18. Should the FCC adopt a licensing scheme that results in mutually exclusive applications, applicants for licenses will be required to submit short-form auction applications using FCC form 175. In addition, winning bidders must submit long-form license applications through the Universal Licensing System using FCC form 601, and other appropriate forms. Licensees will also be required to apply for an individual station license by filing FCC form 601 for those individual stations that (1) require submission of an Environmental Assessment under section 1.1307 of the FCC's rules; (2) require international coordination; (3) would operate in the quiet zones listed in section 1.924 of the FCC's rules; or (4) require coordination with the Frequency Assignment Subcommittee (FAS) of the Interdepartment Radio Advisory Committee (IRAC). Licensees will be required to identify on form 601 the type of service or services they intend to provide. The FCC seeks comment of how these filing requirements can be modified to reduce the burden on small entities.

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

19. 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: (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.

20. The FCC has reduced the burdens wherever possible. To minimize any negative impact, however, the FCC propose certain incentives for small entities that will redound to their benefit. The FCC proposes the use of bidding credits for small entities that participate in auctions of licenses that are conducted pursuant to the rules proposed in this NPRM. The FCC proposes to define a "small business" as an entity with average annual gross revenues for the preceding three years not to exceed \$15 million and a "very small business" as an entity with average gross revenues for the preceding three years not to exceed \$3 million. The FCC believes that these bidding credits will help small entities compete in FCC auctions and acquire licenses. The FCC seeks comment on its proposed small business definitions and bidding credits, including information on factors that may affect the capital requirements of the type of services a licensee may seek to provide.

21. The regulatory burdens the FCC has retained, such as filing applications on appropriate forms, are necessary in order to ensure that the public receives the benefits of innovative new services in a prompt and efficient manner. The FCC 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 FCC seeks comment on significant alternatives commenters believe the FCC should adopt.

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

22. None.

### **III. Ordering Clauses**

23. Pursuant to sections 1, 4(i), 302, 303(f) and (r), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 1, 154(i), 302, 303(f) and (r), and 332, notice is hereby given of the proposed regulatory changes described in this notice of proposed rulemaking and order, and that comment is sought on these proposals.

24. The petitions for reconsideration or clarification of the allocation report and order, ET Docket No. 98-95, filed by PanAmSat Corporation and Mark IV Industries Limited, I.V.H.S. Division are dismissed as moot.

25. The FCC's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this notice of proposed rulemaking and order, including the Initial Regulatory Flexibility Analysis, to the Chief

Counsel for Advocacy of the U.S. Small Business Administration.

#### List of Subjects in 47 CFR Parts 2 and 90

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03-812 Filed 1-14-03; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

#### 49 CFR Part 10

[Docket No. OST-1996-1437]

RIN 2105-AD23

#### Privacy Act of 1974; Proposed Implementation

**AGENCY:** Office of the Secretary, Department of Transportation (DOT).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** DOT proposes to add a system of records to the list of DOT Privacy Act Systems of Records that are exempt from one or more provisions of the Privacy Act. Public comment is invited.

**DATES:** Comments are due March 17, 2003.

**ADDRESSES:** Comments should be addressed to Documentary Services Division, Attention: Docket Section, Room PL401, Docket No. OST-1996-1437, Department of Transportation, SVC-124, Washington, DC 20590. Any person wishing acknowledgment that his/her comments have been received should include a self-addressed stamped postcard. Comments received will be available for public inspection and copying in the Documentary Services Division, Room PL401, Department of Transportation Building, 400 Seventh Street, SW., Washington, DC, from 9 a.m. to 5 p.m. ET Monday through Friday except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Yvonne Coates, Office of the Chief Information Officer, Department of Transportation, Washington, DC (202) 366-6964.

**SUPPLEMENTARY INFORMATION:** *Additional exempt system.* It is DOT practice to identify a Privacy Act system of records that is exempt from one or more provisions of the Privacy Act (pursuant to 5 U.S.C. 552a(k)) both in the system

notice published in the **Federal Register** for public comment and in an Appendix to DOT's regulations implementing the Privacy Act (49 CFR Part 10, Appendix). This amendment proposes exemption from portions of the Privacy Act of a proposed Transportation Security Administration (TSA) system, whose establishment is currently the subject of public comment:

Aviation Security-Screening Records (ASSR) (DOT/TSA 010) would enable the TSA to maintain a security-screening system for air transportation. This system contains information regarding TSA's conduct of risk assessments required by 49 U.S.C. 114 and 44903. The system may be used, generally, to review, analyze, and assess threats to transportation security and respond accordingly.

Due to the national security and law enforcement aspects of the proposed system, DOT proposes to treat this system as it treats other law enforcement systems, by exempting it from the following provisions of the Privacy Act: (c)(3) (Accounting of Certain Disclosures); (d) (Access to Records); (e)(1) (Relevancy and Necessity of Information); (e)(4)(G), (H), and (I) (Agency Requirements), and (f) (Agency Rules), (1) to the extent that ASSR contains information properly classified in the interest of national security, in accordance with 5 U.S.C. 552a(k) (1) and (2) to the extent that ASSR contains investigatory material compiled for law enforcement purposes, in accordance with 5 U.S.C. 552a(k)(2).

#### Analysis of Regulatory Impacts

This proposal is not a "significant regulatory action" within the meaning of Executive Order 12886. It is also not significant within the definition in DOT's Regulatory Policies and Procedures, 49 FR 11034 (1979), in part because it does not involve any change in important Departmental policies. Because the economic impact should be minimal, further regulatory evaluation is not necessary. Moreover, I certify that this proposal would not have a significant economic impact on a substantial number of small entities, because the reporting requirements, themselves, are not changed and because it applies only to information on individuals.

This proposal would not significantly affect the environment, and therefore an environmental impact statement is not required under the National Environmental Policy Act of 1969. It has also been reviewed under Executive Order 12612, Federalism, and it has been determined that it does not have

sufficient implications for federalism to warrant preparation of a Federalism Assessment.

#### Collection of Information

This proposal contains a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Application for collection authority is pending.

#### Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), (Pub. L. 104-4, 109 Stat. 48), requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. UMRA requires a written statement of economic and regulatory alternatives for proposed and final rules that contain Federal mandates. A "Federal mandate" is a new or additional enforceable duty, imposed on any State, local, or tribal government, or the private sector. If any Federal mandate causes those entities to spend, in aggregated, \$100 million or more in any one year the UMRA analysis is required. This proposal would not impose Federal mandates on any State, local, or tribal governments or the private sector.

#### List of Subjects in 49 CFR Part 10

Privacy.

In consideration of the foregoing, DOT proposes to amend part 10 of Title 49, Code of Federal Regulations, as follows:

1. The authority citation for part 10 would continue to read as follows:

**Authority:** Pub.L. 93-579; 49 U.S.C. 322.

2. Part II. A of the Appendix would be amended by adding new paragraph 21.

3. Part II. G of the Appendix would be amended by adding new paragraph 3.

The additions would read as follows:

*Part II. Specific exemptions.*

A. \* \* \*

21. Aviation Security-Screening Records (ASSR), DOT/TSA 010.

\* \* \* \* \*

G. \* \* \*

3. Aviation Security-Screening Records (ASSR), DOT/TSA 010, maintained by the Transportation Security Administration.

\* \* \* \* \*

Issued in Washington, DC, on January 9, 2003.

Eugene K. Taylor, Jr.,

Acting Chief Information Officer.

[FR Doc. 03-828 Filed 1-14-03; 8:45 am]

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