

Flammability Limits in Compliance with Proposed Addendum p to Standard 34. HI-02-7-2 (RP-1073).

Wong, K.L. 1992. Carbon Dioxide. Internal Report, Johnson Space Center Toxicology Group. National Aeronautics and Space Administration: Houston, TX. 1987.

**List of Subjects in 40 CFR Part 82**

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: September 14, 2006.

**Stephen L. Johnson,**  
*Administrator.*

For the reasons set out in the preamble, 40 CFR part 82 is proposed to be amended as follows:

**PART 82—PROTECTION OF STRATOSPHERIC OZONE**

1. The authority citation for part 82 continues to read as follows:

**Authority:** 42 U.S.C. 7414, 7601, 7671–7671q.

**Subpart G—Significant New Alternatives Policy Program**

2. The first table in Subpart G to Appendix B of part 82 is amended by adding 2 new entries to the end of the table to read as follows:

**Appendix B to Subpart G of Part 82—Substitutes Subject to Use Restrictions and Unacceptable Substitutes**

**REFRIGERANTS—ACCEPTABLE SUBJECT TO USE CONDITIONS**

Application	Substitute	Decision	Conditions	Comments
* CFC-12 Automobile Motor Vehicle Air Conditioning (New equipment only).	* Carbon Dioxide (CO <sub>2</sub> ) as a substitute for CFC-12.	* Acceptable subject to use conditions.	* Engineering strategies and/or devices shall be incorporated into the system such that foreseeable leaks into the free space <sup>1</sup> of the passenger compartment do not result in concentrations greater than the CO <sub>2</sub> short-term exposure limit (STEL) of 3% v/v for 15 minutes. Manufacturers must adhere to all the safety requirements listed in the Society of Automotive Engineers (SAE) Standard J639, including unique fittings and a high pressure system warning label.	* Additional training for service technicians recommended. Manufacturers should conduct and keep on file Failure Mode and Effect Analysis (FEMA) on the MVAC as stated in SAE J1739. In designing safety mitigation strategies and/or devices, manufacturers should factor in background CO <sub>2</sub> concentrations potentially contributed from normal respiration by the maximum number of vehicle occupants.
CFC-12 Automobile Motor Vehicle Air Conditioning (New equipment only).	HFC-152a as a substitute for CFC-12.	Acceptable subject to use conditions.	Engineering strategies and/or devices shall be incorporated into the system such that foreseeable leaks into the passenger compartment do not result in HFC-152a concentrations of 3.7% v/v or above in any part of the free space <sup>2</sup> inside the passenger compartment for more than 15 seconds. Manufacturers must adhere to all the safety requirements listed in the Society of Automotive Engineers (SAE) Standard J639, including unique fittings and a flammable refrigerant warning label.	Additional training for service technicians recommended. Manufacturers should conduct and keep on file Failure Mode and Effect Analysis (FMEA) on the MVAC as stated in SAE J1739.

<sup>1</sup> Free space is defined as the space inside the passenger compartment excluding the space enclosed by the ducting in the HVAC module.  
<sup>2</sup> Free space is defined as the space inside the passenger compartment excluding the space enclosed by the ducting in the HVAC module.

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**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Parts 1, 27, and 90**

[WT Docket Nos. 06-169, 96-86; FCC 06-133]

**Revisions to Upper 700 MHz Guard Band Licenses; Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010**

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** In this document, the Federal Communications Commission (Commission) seeks comment on possible changes to its rules governing existing and prospective Upper 700 MHz Guard Bands licensees as well as possible revision to its Upper 700 MHz band plan in order to promote the most efficient and effective use of the spectrum. Specifically, the Commission requests comment on whether to extend the Commission's Secondary Markets spectrum leasing policies to the Guard Bands, whether to increase band manager flexibility for incumbents and prospective licensees; whether to eliminate the prohibition on deploying cellular architectures in the Guard

Bands; and whether to change the current Adjacent Channel Power (ACP) limits in the Guard Bands. Further, the Commission seeks comment on whether reclaimed spectrum (42 Guard Bands licenses that were returned from Nextel) should be re-licensed as commercial spectrum, or reallocated for critical infrastructure industries or public safety entities. Finally, the Commission seeks comment on proposals to modify the existing Upper 700 MHz band plan with respect to the Guard Bands, or to preserve the existing band plan.

**DATES:** Comments are due on or before October 23, 2006 and reply comments are due on or before November 6, 2006.

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

**FOR FURTHER INFORMATION CONTACT:** Paul Moon of the Mobility Division, Wireless Telecommunications Bureau, at (202) 418-1793, e-mail at [Paul.Moon@fcc.gov](mailto:Paul.Moon@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Notice of Proposed Rulemaking*, FCC 06-133, in WT Docket Nos. 06-169 and 96-86, adopted on September 6, 2006, and released on September 8, 2006. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the FCC's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone (202) 488-5300, facsimile (202) 488-5563, or via e-mail at [FCC@BCPIWEB.COM](mailto:FCC@BCPIWEB.COM). The full text may also be downloaded at <http://www.fcc.gov>. Alternative formats are available to persons with disabilities (braille, large print, electronic files and audio format) by e-mailing [fcc504@fcc.gov](mailto:fcc504@fcc.gov), or calling the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

### Synopsis of the Notice of Proposed Rulemaking

1. Several factors suggest that the Commission should re-examine its spectrum management policies regarding the 700 MHz Guard Bands. In the *800 MHz Report and Order* in WT Docket No. 02-55, the Commission reclaimed 700 MHz Guard Bands B Block licenses surrendered by Nextel Communications, Inc., as part of the Commission's 800 MHz re-banding process aimed at improving public safety communications. See *Improving*

*Public Safety Communications in the 800 MHz Band*, WT Docket No. 02-55, *Report and Order*, 19 FCC Rcd 14969 (2004). Although the Commission reclaimed the Nextel licenses in that Order, it deferred the resolution of how best to use the surrendered 700 MHz spectrum. Further, the Commission's required annual Guard Band Manager reports, as well as comments from existing licensees, indicate that the 700 MHz Guard Bands spectrum is underutilized. Finally, Congress recently created greater certainty regarding the availability of unencumbered 700 MHz spectrum for wireless commercial and public safety licensees—including the Guard Bands—by establishing a “hard date” of February 17, 2009, by which time incumbent analog broadcasters must vacate the spectrum. See Deficit Reduction Act of 2005, Public Law 109-171, 120 Stat. 4 (2006) (“DTV Act”). As set forth in detail below, the Commission seeks comment on proposed uses of the reclaimed spectrum, as well as possible revisions to service rules and band plan that would enable the highest and best use of this service.

2. The Commission seeks comment on proposed revisions to service and technical rules that could promote greater operational, technical and regulatory flexibility for the 700 MHz Guard Bands service generally. The *NPRM* seeks comment on whether the Commission should continue to apply the band manager rules for purposes of any re-auction of the former Nextel spectrum, or whether it would be more appropriate to eliminate “band manager only” eligibility restrictions and extend the Commission's current Secondary Markets spectrum leasing policies to this spectrum. The Commission requests comment on whether it should consider making both regulatory options available to bidders in the event the reclaimed Nextel spectrum is re-auctioned. For that matter, the Commission asks commenters to address whether it remains necessary in the public interest to permit only band managers to be licensed in the 700 MHz Guard Bands, which requires leasing to third parties to guarantee spectrum access through negotiated spectrum use agreements, while prohibiting the band manager from offering service or using the spectrum for its internal purposes. The Commission also seeks comment on an alternative approach involving relaxation of certain band manager restrictions (e.g., leasing to affiliates) while retaining the overall concept. Further, the *NPRM* seeks comment on whether the Commission should modify

its rules pertaining to incumbent 700 MHz Guard Bands licensees in the event the Commission determines that the band manager concept should not be applied to any re-licensing of the Nextel returned spectrum.

3. In addition to seeking public comment regarding eligibility and use restrictions, the Commission also requests comment on whether it is appropriate to remove or modify certain technical rules that were originally put in place to minimize interference to public safety operations. For example, the *NPRM* seeks comment on whether the restriction on cellular architecture in the Guard Bands should be maintained, eliminated or more clearly defined. The *NPRM* requests comment on a proposal that advocates the removal of the Commission's cellular architecture prohibition in favor of a power flux density (PFD) limit used in conjunction with improved receiver technology. Alternatively, the Commission also seeks comment on whether it should reduce the 1 kilowatt maximum Effective Radiated Power (ERP) limit for those 700 MHz Guard Band base stations implemented in a cellular architecture, either applied independently or in conjunction with a PFD limit as a means of mitigating interference to public safety operations. Further, in order to determine the possible impact of removing or modifying the cellular architecture ban on all affected parties (Guard Bands licensees as well as public safety entities), the Commission seeks comment on the feasibility of completing the required coordination with public safety operations of the numerous sites involved in a cellular architecture.

4. The *NPRM* also requests comment on whether the Commission should reconsider the existing out-of-band emission (OOBE) limits used for the 700 MHz Guard Bands. Specifically, the Commission seeks comment on whether it should replace its current use of Adjacent Channel Power (ACP) limits with the OOBE limits that apply to the Upper 700 MHz C and D Blocks. See 47 CFR 27.53(c)(1) and (2). ACP limits differ from OOBE limits in that they require several different power attenuation levels at specific points displaced from the center frequency of a channel. OOBE limits, on the other hand, require that out-of-band signal power be attenuated to ensure that the maximum out-of-band signal power maintains an established, constant relation to the transmitter power. The Commission also seeks comment on the emission limits necessary to protect public safety operations in the event

broadband operations are permitted in the public safety block, pursuant to a separate open proceeding. See Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, *Eighth Notice of Proposed Rulemaking*, WT Docket Nos. 96–86 and 05–157, 21 FCC Rcd 3668 (2006). Further, in the event that the Commission maintains the current ACP limits and does not apply OOB limits to the Guard Bands, the *NPRM* asks whether the Commission's rules should be modified to account for operations wider than 150 kilohertz, and requests that commenters propose attenuation values for band widths greater than 150 kilohertz that will maintain adequate protection for public safety operations.

5. Apart from the proposed revisions to service and technical rules, the *NPRM* also requests comment on whether the Commission should re-examine the current 700 MHz Guard Bands spectrum plan. The Commission requests comment on a proposal submitted by Motorola, Inc. and the United Telecommunications Council (Motorola/UTC). The Motorola/UTC plan proposes that the Commission reallocate one megahertz of the Guard Bands B Block for critical infrastructure interoperability and retain the remainder of the B Block as a guard band. The Commission also seeks comment on alternative proposals filed by existing Guard Band Managers, including Access Spectrum, L.L.C., Pegasus Guard Band, L.L.C., Columbia Capital Equity Partners III, L.P. and PTPMS II Communications, L.L.C. These proposals ask the Commission to reallocate the 700 MHz Guard Bands, as well as the adjacent 700 MHz public safety spectrum, in order to accommodate broadband operations by both Guard Bands licensees and public safety entities. Because each of the proposals would require the Commission to reclaim the B Block spectrum, the *NPRM* requests comment on how best to clear the block of existing licensees in the event that the Commission concludes that it is in the public interest to reconfigure the band plan. The *NPRM* tentatively concludes, however, that it would not be appropriate to adopt any proposal that entails a shift in the narrowband channels within the public safety band unless two issues—the costs of reprogramming existing public safety radios, and international border coordination—are resolved expeditiously. The *NPRM* also tentatively concludes that any decision

to shift the existing Upper 700 MHz band plan in a way that affects “recovered analog spectrum” within the DTV transition would need to be made in time to allow the Commission to conduct the auction of recovered spectrum in accordance with the relevant statutory requirements.

#### Procedural Matters

##### *Initial Regulatory Flexibility Analysis*

6. As required by section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the proposals considered in this document. The text of the IRFA is set forth below. Written public comments are requested on this IRFA. Comments must be filed in accordance with the same filing deadlines for comments on this *NPRM*, and they should have a separate and distinct heading designating them as responses to the IRFA. The Commission will send a copy of the *NPRM*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act.

##### *Ex Parte Rules—Permit-but-Disclose Proceeding*

7. This is a “permit-but-disclose” notice and comment rulemaking proceeding in accordance with the Commission's *ex parte* rules. See 47 CFR 1.1200, and 1.1206. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented is generally required. See 47 CFR 1.1206(b)(2). Other rules pertaining to oral and written presentations are set forth in § 1.1206(b) of the Commission's rules as well.

##### *Comment Dates*

8. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, and 1.419, interested parties may file comments in response to this *NPRM* no later than on or before 30 days after **Federal Register** publication. Reply comments to these comments may be filed no later than on or before 45 days after **Federal Register** publication. All pleadings are to reference WT Docket Nos. 06–169 and 96–86. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. Parties

are strongly encouraged to file electronically. 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>. Parties should transmit one copy of their comments to the dockets in the caption of this rulemaking. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable dockets or rulemaking number. Parties may also submit an electronic comment via 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.

10. Parties choosing to file by paper must file an original and four copies of each filing in WT Docket Nos. 06–169 and 96–86. 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). 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. The Commission's mail contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

11. Comments submitted on diskette should be on a 3.5-inch diskette formatted in an IBM-compatible format using Word for Windows or compatible software. The diskette should be clearly labeled with the commenter's name, proceedings (including the docket numbers, in this case WT Docket Nos. 06–169 and 96–86), type of pleading

(comments or reply comments), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase: "Disk Copy—Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file.

12. All parties must file one copy of each pleading electronically or by paper to each of the following: (1) The Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone (202) 488-5300, facsimile (202) 488-5563, or via e-mail at [FCC@BCPIWEB.COM](mailto:FCC@BCPIWEB.COM).

13. Comments and reply comments and any other filed documents in this matter may be obtained from Best Copy and Printing, Inc., in person at 445 12th Street, SW., Room CY-B402, Washington, DC 20554, via telephone at (202) 488-5300, via facsimile at (202) 488-5563, or via e-mail at [FCC@BCPIWEB.COM](mailto:FCC@BCPIWEB.COM). The pleadings will be also available for public inspection and copying during regular business hours in the FCC Reference Information Center, Room CY-A257, 445 12th Street, SW., Washington, DC 20554, and through the Commission's Electronic Filing System (ECFS) accessible on the Commission's Web site, <http://www.fcc.gov>.

14. Commenters who file information that they believe is proprietary may request confidential treatment pursuant to § 0.459 of the Commission's rules. Commenters should file both their original comments for which they request confidentiality and redacted comments, along with their request for confidential treatment. Commenters should not file proprietary information electronically. See Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission, *Report and Order*, 13 FCC Rcd 24816 (1998), *Order on Reconsideration*, 14 FCC Rcd 20128 (1999). Even if the Commission grants confidential treatment, information that does not fall within a specific exemption pursuant to the Freedom of Information Act (FOIA) must be publicly disclosed pursuant to an appropriate request. See 47 CFR 0.461; 5 U.S.C. 552. We note that the Commission may grant requests for confidential treatment either conditionally or unconditionally. As such, we note that the Commission has the discretion to release information on public interest grounds that does fall within the scope of a FOIA exemption.

15. To request materials in accessible formats for people with disabilities (braille, large print, electronic files,

audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

#### Further Information

16. The World Wide Web addresses/URLs that the Commission gives here were correct at the time this document was prepared but may change over time. They are included herein in addition to the conventional citations as a convenience to readers. The Commission is unable to update these URLs after adoption of this *NPRM*, and readers may find some URLs to be out of date as time progresses. The Commission also advises readers that the only definitive text of any FCC document is the one that is published in the FCC Record. In any case of discrepancy between the electronic documents cited here and the FCC Record, the version in the FCC Record is definitive.

#### Initial Paperwork Reduction Act of 1995 Analysis

17. This *NPRM* contains proposed new and/or modified information collections. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the proposed and/or modified information collections contained in this *NPRM*, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Comments should address: (a) Whether the proposed and/or modified collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), we seek specific comment on how we might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

18. Written comments by the public on the proposed and/or modified information collections are due October 23, 2006. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/

or modified information collections on or before November 6, 2006. In addition to filing comments with the Secretary, a copy of any comments on the proposed and/or modified information collections contained herein should be submitted to Judith B. Herman, Federal Communications Commission, Room 1-B441, 445 12th Street, SW., Washington, DC 20554, or via the Internet to [Judith-B.Herman@fcc.gov](mailto:Judith-B.Herman@fcc.gov), and to Allison E. Zaleski, OMB Desk Officer, 10236 NEOB, 725 17th Street, NW., Washington, DC 20503, or via the Internet to [Allison\\_E.\\_Zaleski@omb.eop.gov](mailto:Allison_E._Zaleski@omb.eop.gov).

#### Initial Regulatory Flexibility Analysis

19. As required by the Regulatory Flexibility Act (RFA), 5 U.S.C. 603, the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) regarding the possible significant economic impact of the policies and rules proposed in this *NPRM* on a substantial number of small entities. Written public comments are requested regarding this IRFA. Comments must be identified as responses to this IRFA and must be filed by the deadlines for comments identified in the *NPRM*. The Commission will send a copy of this *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. See 5 U.S.C. 603(a). In addition, this *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

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

20. In the *800 MHz Report and Order* in WT Docket No. 02-55, the Commission reclaimed 700 MHz Guard Bands B Block licenses surrendered by Nextel Communications, Inc., as part of the Commission's 800 MHz re-banding process aimed at improving public safety communications. See *Improving Public Safety Communications in the 800 MHz Band*, WT Docket No. 02-55, *Report and Order*, 19 FCC Rcd 14969 (2004). Although the Commission reclaimed the Nextel licenses in that Order, it deferred the resolution of how best to use the surrendered 700 MHz spectrum. Further, the Commission's required annual Guard Band Manager reports as well as comments from existing licensees indicate that the 700 MHz Guard Bands spectrum is under-utilized. Also, Congress recently created greater certainty regarding the availability of unencumbered 700 MHz spectrum for wireless commercial and public safety licensees—including the Guard Bands—by establishing a "hard date" of February 17, 2009, by which time incumbent analog broadcasters

must vacate the spectrum. *See* Deficit Reduction Act of 2005, Public Law 109–171, 120 Stat. 4 (2006) (“DTV Act”). These factors suggest that the Commission should re-examine its spectrum management policies regarding the 700 MHz Guard Bands. As set forth in detail below, the Commission seeks comment on proposed uses of the reclaimed spectrum, as well as possible revisions to service rules and band plan that would enable the highest and best use of this service.

21. *Band Manager Status.* The Commission seeks comment on proposed revisions to service and technical rules that could promote greater operational, technical and regulatory flexibility for the 700 MHz Guard Bands service generally. For example, the *NPRM* seeks comment on the relative merits of the Secondary Markets leasing and band manager leasing mechanisms. The *NPRM* seeks comment on whether the Commission should continue to apply the band manager rules for purposes of any re-auction of the former Nextel spectrum, or whether it would be more appropriate to eliminate “band manager only” eligibility restrictions and extend the Commission’s current Secondary Markets spectrum leasing policies to this spectrum. The Commission requests comment on whether it should consider making both regulatory options available to bidders in the event the reclaimed Nextel spectrum is re-auctioned.

22. The Commission also asks commenters to address whether it remains necessary in the public interest to permit only band managers to be licensed in the 700 MHz Guard Bands, which requires leasing to third parties to guarantee spectrum access through negotiated spectrum use agreements, while prohibiting the band manager from offering service or using the spectrum for its internal purposes. The Commission also seeks comment on an alternative approach involving relaxation of certain band manager restrictions while retaining the overall concept. For example, the *NPRM* asks whether the Commission should remove or lessen the restriction on leasing to affiliates. Further, the *NPRM* seeks comment on whether the Commission should modify its rules pertaining to incumbent 700 MHz Guard Bands licensees in the event the Commission determines that the band manager concept should not be applied to any relicensing of the Nextel returned spectrum.

23. *Cellular System Architecture.* In addition to seeking public comment

regarding eligibility and use restrictions, the Commission also requests comment on whether it is appropriate to remove or modify certain technical rules that were originally put in place to minimize interference to public safety operations. For example, the *NPRM* seeks comment on whether the restriction on cellular architecture in the Guard Bands should be maintained, eliminated or more clearly defined. The Commission seeks comment on whether its ban on the use of cellular architecture in the 700 MHz Guard Bands should be removed or revised in ways that will provide all Guard Bands licensees, including small businesses, with greater operational flexibility yet ensure adequate interference protection to public safety operations. The *NPRM* requests comment on a proposal that advocates the removal of the Commission’s cellular architecture prohibition in favor of a power flux density (PFD) limit used in conjunction with improved receiver technology. The *NPRM* asks whether, in the event that the Commission eliminates the cellular architecture restriction, the Commission should implement a PFD limit as a means to mitigate interference to public safety operations. Alternatively, the Commission also seeks comment on whether it should reduce the 1 kilowatt maximum Effective Radiated Power (ERP) limit for those 700 MHz Guard Band base stations implemented in a cellular architecture, either applied independently or in conjunction with a PFD limit as a means of mitigating interference to public safety operations. Further, in order to determine the possible impact of removing or modifying the cellular architecture ban on all affected parties (Guard Bands licensees as well as public safety entities), the Commission seeks comment on the feasibility of completing the required coordination with public safety operations of the numerous sites involved in a cellular architecture.

24. *Emission Limits.* The *NPRM* also requests comment on whether the Commission should reconsider the existing out-of-band emission (OOBE) limits used for the 700 MHz Guard Bands. Specifically, the Commission seeks comment on whether it should replace its current use of Adjacent Channel Power (ACP) limits with the OOBE limits that apply to the Upper 700 MHz C and D Blocks. The Commission also asks commenters to provide comment on the emission limits necessary to protect public safety operations in the event broadband operations are permitted in the public

safety block. *See* Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, *Eighth Notice of Proposed Rulemaking*, WT Docket Nos. 96–86 and 05–157, 21 FCC Rcd 3668 (2006). Further, in the event that the Commission maintains the current ACP limits and does not apply OOBE limits to the Guard Bands, the *NPRM* asks whether the Commission’s rules should be modified to account for operations wider than 150 kilohertz, and requests that commenters propose attenuation values for band widths greater than 150 kilohertz that will maintain adequate protection for public safety operations.

25. *Band Plan Proposals.* The *NPRM* requests comment on whether the Commission should re-examine the current 700 MHz Guard Bands spectrum plan. The Commission requests comment on a proposal submitted by Motorola, Inc. and the United Telecommunications Council (Motorola/UTC). The Motorola/UTC proposal states that the nation’s critical infrastructure industries (CII) require wireless communications that are reliable, ubiquitous in coverage, and interoperable with public safety entities during emergencies, particularly where CII entities are among first responders to a disaster or emergency. The Motorola/UTC plan proposes that the Commission reallocate one megahertz of the Guard Bands B Block for critical infrastructure interoperability and retain the remainder of the B Block as a guard band. The Commission also seeks comment on alternative proposals alternative proposals filed by existing Guard Band Managers, including Access Spectrum, L.L.C., Pegasus Guard Band, L.L.C., Columbia Capital Equity Partners III, L.P. and PTPMS II Communications, L.L.C. The proposals ask the Commission to reallocate the 700 MHz Guard Bands and public safety spectrum in order to accommodate broadband operations by Guard Bands licensees as well as public safety entities. Because each of the proposals would require the Commission to reclaim the B Block spectrum, the *NPRM* requests comment on how best to clear the block of existing licensees in the event that the Commission concludes that it is in the public interest to reconfigure the band plan. The *NPRM* tentatively concludes, however, that it would not be appropriate to adopt any proposal that entails a shift in the narrowband channels within the public safety band unless two issues—the costs of reprogramming existing public safety

radios, and international border coordination—are resolved expeditiously. The *NPRM* also tentatively concludes that any decision to shift the existing Upper 700 MHz band plan in a way that affects “recovered analog spectrum” within the DTV transition would need to be made in time to allow the Commission to conduct the auction of recovered spectrum in accordance with the relevant statutory requirements.

#### Legal Basis

26. The proposed actions are authorized under sections 1, 2, 4(i), 5(c), 7, 10, 201, 202, 208, 214, 301, 302, 303, 307, 308, 309, 310, 311, 314, 316, 319, 324, 332, 333, 336 and 337 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 155(c), 157, 160, 201, 202, 208, 214, 301, 302, 303, 307, 308, 309, 310, 311, 314, 316, 319, 324, 332, 333, 336 and 337.

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

27. 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 U.S.C. 603(b)(3). The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” 5 U.S.C. 601(6). In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. 5 U.S.C. 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. 632). 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”).

28. *700 MHz Guard Band Licensees.* The term “small business” in the context of Cellular and Other Wireless Telecommunications Companies is defined as companies employing no more than 1,500 persons. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of the bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001, and closed on February 21, 2001. All eight of the licenses auctioned were sold to three

bidders. One of these bidders was a small business that won a total of two licenses.

29. *Governmental Entities.* The term “small governmental jurisdiction” is defined as “governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.” 5 U.S.C. 601(5). As of 1997, there were approximately 87,453 governmental jurisdictions in the United States. This number includes 39,044 county governments, municipalities, and townships, of which 37,546 (approximately 96.2%) have populations of fewer than 50,000, and of which 1,498 have populations of 50,000 or more. Thus, we estimate the number of small governmental jurisdictions overall to be 84,098 or fewer.

30. *Public Safety Radio Licensees.* As a general matter, Public Safety Radio licensees include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services. See subparts A and B of part 90 of the Commission’s rules, 47 CFR 90.1–90.22. The SBA rules contain a definition for cellular and other wireless telecommunications companies which encompass business entities engaged in wireless communications employing no more than 1,500 persons. See 13 CFR 121.201. According to Census Bureau data for 2002, in this category there was a total of 8,863 firms that operated for the entire year. Of this total, 401 firms had 100 or more employees, and the remainder had fewer than 100 employees. With respect to local governments, in particular, since many governmental entities as well as private businesses comprise the licensees for these services, we include under public safety services the number of government entities affected.

31. *Wireless Communications Equipment Manufacturers.* The SBA has established a small business size standard for radio and television broadcasting and wireless communications equipment manufacturing. Under the standard, firms are considered small if they have 750 or fewer employees. See 13 CFR 121.201. Census Bureau data for 1997 indicates that, for that year, there were a total of 1,215 establishments in this category. Of those, there were 1,150 that had employment under 500, and an additional 37 that had employment of 500 to 999. The Commission estimates that the majority of wireless communications equipment manufacturers are small businesses. We note, however, that the major providers of 700 MHz equipment, Motorola and

M/A-COM Private Radio Systems, Inc., are not considered small businesses.

#### Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

32. This *NPRM* seeks comment on possible revisions to the 700 MHz Guard Bands service rules that may modify reporting, recordkeeping and other compliance requirements. The Commission requests comment on proposals to apply its Secondary Markets leasing regime to reclaimed 700 MHz Guard Bands spectrum as well as to existing licensees. Application of Secondary Markets leasing to the 700 MHz Guard Bands would require a modification of current reporting and recordkeeping requirements. Further, as noted, the *NPRM* seeks comment on whether to eliminate its prohibition on cellular architecture in the 700 MHz Guard Bands. In light of the numerous sites that are involved in a cellular architecture, this proposal could lead to more intensive coordination with public safety operations if the ban is lifted.

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

33. 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. See 5 U.S.C. 603(c).

34. Generally, the Commission’s primary objective in issuing the *NPRM* is to determine the most efficient and effective use of the reclaimed Nextel spectrum and the 700 MHz Guard Bands. The Commission invites comment on ways in which the Commission can achieve its goal of encouraging operational, technical and regulatory flexibility for all licensees, including small entities, while at the same time imposing minimal burdens on small entities. The Commission seeks comment on the effect the various proposals described in the *NPRM* will have on small entities, whether existing or prospective Guard Bands licensees, or public safety entities. To assist the Commission in its analysis, commenters are asked to provide information

regarding which entities would be affected by possible revisions to 700 MHz Guard Band service and technical rules as well as to the 700 MHz Guard Bands spectrum band plan as described in this *NPRM*. In particular, the Commission seeks estimates of how many small entities might be affected and whether the proposals under consideration would be overly burdensome to small entities. The following summarizes significant alternatives considered in the *NPRM*.

35. *Band Manager Status*. Under the current rules, the Guard Band Manager must lease to third parties to guarantee spectrum access through negotiated spectrum use agreements, while the Guard Band Manager cannot itself offer service or use the spectrum for its internal purposes. Additionally, the Guard Band Manager cannot lease its spectrum to more than 49.9 percent of its affiliates in the licensed geographic area. These restrictions were created to promote the leasing of spectrum to third parties, many of whom would be small entities that lack the capacity or need to acquire an entire service area. The *NPRM* seeks comment on the relative merits of the Secondary Markets leasing and band manager leasing policies. Noting that certain Guard Bands licensees argue that the current band manager rules have resulted in the inefficient use of the spectrum, the *NPRM* asks whether the Commission should retain the existing Guard Band Manager rules or whether the Commission should apply a different regulatory structure, such as the Secondary Market rules, to the Guard Bands spectrum generally. Alternatively, the *NPRM* asks whether the Commission should continue to apply the band manager rules for purposes of any re-auction of the former Nextel spectrum, or even if existing rules are retained for existing licensees. The *NPRM* also asks whether it should permit existing or new licensees to choose among several regulatory options for managing the Guard Bands.

36. The *NPRM* also seeks comment on an alternative approach involving the relaxation of certain band manager eligibility restrictions, while retaining the overall existing band manager concept. For example, the *NPRM* asks whether the Commission should remove or lessen the restriction that band managers may not lease more than 49.9 percent of their spectrum in a geographic area to affiliates. Alternatively, the Commission asks whether it should change its rules to permit a band manager to use its licensed spectrum in some capacity exclusively for internal purposes.

37. *Cellular System Architecture*. The *NPRM* seeks comment on whether the restriction on cellular architecture in the Guard Bands should be removed or modified in order to facilitate the use of broadband technology by all Guard Bands licensees, including those qualifying as small businesses. The Commission seeks comment on a proposal to lift the cellular architecture prohibition and replace it with a power flux density (PFD) limit as an alternative means to ensure adequate interference protection to public safety operations. The *NPRM* also seeks comment on another option, applied either independently or in conjunction with a PFD limit, to reduce the 1 kilowatt maximum ERP limit for Guard Bands base stations implemented in a cellular architecture. Noting that reducing ERP limits could minimize the area of interference surrounding each base station, thereby reducing the overall potential for interference to adjacent channel public safety mobiles/portables, the Commission seeks comment as to what base station ERP limit applied to a Guard Bands system based on a cellular architecture would adequately protect public safety systems.

38. *Emission Limits*. The *NPRM* also requests comment on whether the Commission should reconsider the existing OOB limits used for the 700 MHz Guard Bands. The Commission originally applied the current ACP limits to the Guard Bands because it found that the immediate proximity of the Guard Bands to the public safety block justifies an application of the same emission limit for the Guard Bands as applies for emissions from within the public safety block. In the *NPRM*, the Commission seeks comment on the proposal to replace its current use of ACP limits with OOB limits. The Commission also seeks comment on the emission limits necessary to protect public safety operations in the event broadband operations are permitted in the public safety block. Alternatively, to the extent that the Commission determines that the use of ACP limits does not sufficiently guard public safety entities against unwanted OOB, the *NPRM* asks whether the Commission's rules should be modified to account for operations wider than 150 kilohertz, and requests that commenters provide attenuation values for bandwidths greater than 150 kilohertz that will maintain adequate protection for public safety operations. Finally, the *NPRM* also considers the relative merits of maintaining the status quo.

39. *Band Plan Proposals*. The *NPRM* requests comment on whether the Commission should re-examine the

current 700 MHz Guard Bands spectrum plan, and asks commenters to consider several alternative band plan proposals. First, Motorola/UTC requests that the Commission reallocate the licenses surrendered by Nextel from the Guard Bands B Block as narrowband channels for critical infrastructure industries in support of interoperability with public safety entities. Motorola/UTC argue that one megahertz of the B Block contiguous with the public safety block could carry narrowband channels dedicated to providing critical infrastructure entities with the ability to communicate with state and local agencies. The *NPRM* seeks comment on the potential benefit of creating a separate class of interoperability channels, and whether the proposal should be applied only to the former Nextel spectrum or to all Guard Bands licenses.

40. The *NPRM* also seeks comment on a proposal requesting that the Commission rededicate the relinquished Nextel spectrum for exclusive public safety use. The *NPRM* seeks comment on whether there have been any technical or marketplace developments that may alleviate concerns that redesignating the spectrum for public safety applications may result in increased interference to public safety.

41. Alternatively, the Commission also seeks comment on various proposals from existing Guard Band Managers to revise the Upper 700 MHz band plan. A consortium consisting of almost all existing Guard Band Managers filed a White Paper proposing three alternative Upper 700 MHz band plans with the goal of facilitating broadband communications inside the Guard Bands. Subsequently, a new consortium, which includes most of the White Paper proponents, filed the Optimization Plan, advocating another, more comprehensive band plan proposal that implicates the Guard Bands as well as the Upper 700 MHz public safety block.

42. The Optimization Plan proposes, in part, that three megahertz from the existing B Block should be allocated to the public safety block as additional spectrum for broadband communications, and that the remaining Guard Bands spectrum should be consolidated into a new A Block. The *NPRM* seeks comment on whether the public interest (including the interests of small entities) would be served by adoption of the band plan proposed in the Optimization Plan, and asks for comment on a number of "transition" issues, including timing and cost considerations associated with a band plan shift, how existing B Block licenses

could be reclaimed by the Commission, as well as how a reconfigured and enlarged A Block should be licensed, in the event the Commission adopts the Optimization Plan.

43. Further, because the Optimization Plan does not specifically disclaim or supercede the preceding White Paper band plan proposals, the Commission seeks comment on the White Paper proposals as well. As in the case of the Optimization Plan, the White Paper's three proposals entail some shift in the position of the commercial spectrum blocks in the Upper 700 MHz Band. The White Paper's three band plan proposals would increase the existing allocation of one megahertz for the A Block up to one-and-a-half or two megahertz. In order to facilitate broadband within an enlarged A Block, the White Paper proposals involve either eliminating the B Block while adding bandwidth to the A Block and the public safety block, or reducing the B Block while adding bandwidth to the A Block. The *NPRM* seeks comment on whether the Commission should adopt any of the various White Paper proposals and also requests comment on the same transition issues raised by consideration of the Optimization Plan. The *NPRM* seeks comment on similar transition issues, including cost, timing and equitable compensation considerations, for each of the other alternative proposals as well.

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

44. None.

#### Ordering Clauses

45. Pursuant to sections 1, 2, 4(i), 5(c), 7, 10, 201, 202, 208, 214, 301, 302, 303, 307, 308, 309, 310, 311, 314, 316, 319, 324, 332, 333, 336 and 337 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 155(c), 157, 160, 201, 202, 208, 214, 301, 302, 303, 307, 308, 309, 310, 311, 314, 316, 319, 324, 332, 333, 336 and 337, this *Notice of Proposed Rulemaking* is hereby adopted.

46. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, and 1.419, interested parties may file comments on this Notice of Proposed Rulemaking on or before 30 days after publication in the **Federal Register**, and reply comments on or before 45 days after publication in the **Federal Register**.

47. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Notice of Proposed Rulemaking*,

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

#### List of Subjects

##### 47 CFR Part 1

Administrative practice and procedure, Communications common carriers.

##### 47 CFR Part 27

Communications equipment, Radio.

##### 47 CFR Part 90

Radio, Reporting and recordkeeping requirements.

Federal Communication Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 06-7912 Filed 9-20-06; 8:45 am]

**BILLING CODE 6712-01-P**

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## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

#### 49 CFR Part 172

[Docket No. PHMSA-06-25885 (HM-232F)]

RIN 2137-AE22

#### Hazardous Material: Revision of Requirements for Security Plans

**AGENCY:** Pipeline and Hazardous Materials Safety Administration, DOT.

**ACTION:** Advance notice of proposed rulemaking (ANPRM) and announcement of public meeting.

**SUMMARY:** PHMSA is considering revisions to the list of hazardous materials that require development and implementation of a security plan to address security risks during transportation in commerce. This effort is being coordinated with other Department of Transportation modal administrations (Federal Aviation Administration, Federal Motor Carrier Safety Administration, and Federal Railroad Administration) and the Transportation Security Administration of the Department of Homeland Security. The revisions would address outstanding petitions requesting that certain materials be excepted from the security plan requirements. PHMSA will hold a public meeting on November 30, 2006 to obtain stakeholder comments on security plan requirements. This ANPRM and the public meeting provide an opportunity for the public to comment on this issue and make recommendations on the

applicability of the security plan requirements.

**DATES:** *Public meeting:* The meeting will be held on November 30, 2006. The meeting will begin at 9 a.m.

*Written comments:* Comments must be received by December 20, 2006.

**ADDRESSES:** *Public meeting:* The meeting will be held at the U.S. Department of Transportation, Nassif Building, Room 2230, 400 Seventh Street, SW., Washington, DC 20590-0001. Requests for special accommodations should be addressed to the Pipeline and Hazardous Material Safety Administration, PHH-10, 400 Seventh Street, SW., Washington, DC 20590-0001; telephone (202) 366-8553. *Written comments:* You may submit comments identified by the docket number (PHMSA-06-25885) by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- Web site: <http://dms.dot.gov>.

Follow the instructions for submitting comments on the DOT electronic docket site.

- FAX: 1-202-493-2251.
- Mail: Docket Management System, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, PL-402, Washington, DC 20590-0001.
- Hand Delivery: PL-402 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Instructions:* All submissions must include the agency name and docket number or Regulation Identification Number (RIN) for this notice. Internet users may access comments received by DOT at <http://dms.dot.gov>. Note that comments received may be posted without change to <http://dms.dot.gov> including any personal information provided.

While all comments should be sent to DOT's Docket Management System (DMS), comments or those portions of comments PHMSA determines to include trade secrets, confidential commercial information, or sensitive security information (SSI) will not be placed in the public docket and will be handled separately. If you believe your comments contain trade secrets, confidential commercial information, or SSI, those comments or the relevant portions of those comments should be appropriately marked so that DOT may make a determination. PHMSA procedures in 49 CFR part 105 establish a mechanism by which commenters may request confidentiality.

In accordance with 49 CFR 105.30, you may ask PHMSA to keep