nonattainment area 30 days after the effective date for the rule, or July 1, 1997, whichever is later. As of the implementation date for the various parties, this area will be treated as a covered area for all purposes of the federal RFG program for the relevant parties. EPA asks for comment on whether retailers and wholesale purchaser-consumers believe they could comply with federal RFG in less than 30 days from the effective date set for persons other than retailers and wholesale purchaser-consumers.

On February 18, 1997, EPA also published a Direct Final Rule (62 FR 7164) setting an effective date for the Phoenix ozone nonattainment area to be a covered area in the federal RFG program. Subsequent to publication, EPA received several requests for a hearing from interested parties. Thus, EPA will soon publish in the Federal Register a notice to indicate the withdrawal of the Direct Final Rule.

II. Procedures for Public Participation

A. Comments and the Public Docket

The scope of EPA's proposal is limited to setting an effective date for Phoenix's opt-in to the RFG program and not to decide whether Phoenix should in fact opt in. For this reason, EPA is only soliciting comments addressing the appropriate implementation date and whether there is sufficient capacity to produce RFG, and is not soliciting comments that support or oppose Phoenix participating in the program. EPA also asks for comment on whether retailers and wholesale purchaser-consumers believe they could comply with federal RFG in less than 30 days from the effective date set for persons other than retailers and wholesale purchaser-consumers. EPA also notes that comments regarding Arizona's request for an RVP waiver under section 211(c)(4), EPA opt-out procedures, or federal enforcement issues would not be relevant to the limited scope of this rulemaking.

Persons with comments containing proprietary information must distinguish such information from other comments to the greatest extent and label it as ''Confidential Business Information.'' If a person making comments wants EPA to base the final rule in part on a submission labeled as confidential business information, then a non-confidential version of the document which summarizes the key data or information should be placed in the public docket. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when it is received by EPA, it may be made available to the public without further notice to the person making comments.

B. Public Participation

Any person desiring to present testimony regarding this proposed rule at the public hearing (see **DATES**) should notify the contact person listed above of such intent as soon as possible. A sign-up sheet will be available at the registration table the morning of the hearing for scheduling testimony for those who have not notified the contact person. This testimony will be scheduled on a first come, first serve basis to follow the previously scheduled testimony.

EPA suggests that approximately 50 copies of the statement or material to be presented be brought to the hearing for distribution to the audience. In addition, EPA would find it helpful to receive an advance copy of any statement or material to be presented at the hearing in order to give EPA staff adequate time to review such material before the hearing. Such advance copies should be submitted to the contact person listed previously.

The official records of the hearing will be kept open for 30 days following the hearing to allow submission of rebuttal and supplementary testimony. All such submittals should be directed to the Air Docket, Docket No. A–97–02 (see **ADDRESSES**).

Ms. Lori Stewart, Fuels Implementation Group Leader, Fuels and Energy Division, Office of Mobile Sources, is hereby designated Presiding Officer of the hearing. The hearing will be conducted informally and technical rules of evidence will not apply. Because a public hearing is designed to give interested parties an opportunity to participate in the proceeding, there are no adversary parties as such. Statements by participants will not be subject to cross examination by other participants. A written transcript of the hearing will be placed in the above docket for review. Anyone desiring to purchase a copy of the transcript should make individual arrangements with the court reporter recording the proceeding. The Presiding Officer is authorized to strike from the record statements which she deems irrelevant or repetitious and to impose reasonable limits on the duration of the statement of any witness. EPA asks that persons who testify attempt to limit their testimony to ten minutes, if possible. The Administrator will base her decision with regard to Arizona's request on the record of the public hearing and on any other relevant written submissions and other pertinent information. This information will be available for public inspection at the EPA Air Docket, Docket No. A–97–02 (see **ADDRESSES**).

Dated: March 5, 1997.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

[FR Doc. 97–6216 Filed 3–11–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 22 and 101

[WT Docket No. 97–81, FCC 97–58]

Multiple Address Systems

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This *Notice of Proposed Rule Making* (*NPRM*) proposes to amend the Commission's rules in order to streamline licensing procedures and provide additional flexibility for Multiple Address Systems (MAS) licensees. These proposals were adopted as part of the Commission's continuing effort to establish a flexible regulatory framework for spectrum allocations. The effects of these proposals would be to maximize the use of radio frequency spectrum allocated to MAS.

DATES: Comments are due on or before April 21, 1997. Reply comments are due on or before May 6, 1997.

ADDRESSES: You must send comments and reply comments to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. You may also file informal comments by electronic mail. You should address informal comments to bjames@fcc.gov. You must put the docket number of this proceeding on the subject line (''WT Docket No. 97–81''). You must also include your full name and Postal Service mailing address in the text of the message. Comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, NW., Washington, DC 20554, or via the internet to dconway@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725–17th Street, NW., Washington, DC 20503 or via the internet to fain __ t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: Bob James of the Commission's Wireless Telecommunications Bureau at (202)

418–0680 or via email at bjames@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *NPRM*, FCC 97–58, adopted February 19, 1997, and released February 27, 1997. The full text of this NPRM is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, ITS, Inc., 2100 M Street NW., Suite 140, Washington, DC 20037, telephone (202) 857–3800.

Paperwork Reduction Act

This *NPRM* contains either a proposed or modified information collection. As part of the Commission's continuing effort to reduce paperwork burdens, we invite the general public, the Office of Management and Budget (OMB), and other agencies 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 60 days after the publication of this *NPRM* in the Federal Register. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

Summary of Notice

1. This *NPRM* seeks to further the development and implementation of MAS. Accordingly, this *NPRM* tentatively concludes that the 932/941 MHz and 928/959 MHz MAS bands should be designated for subscriber-based services and licensed on a geographic basis, with service areas based on the U.S. Department of Commerce's Economic Areas. In this vein, licensees providing such subscriber-based services would be presumed telecommunications carriers and would be required to meet liberal construction/coverage requirements with their service areas. Further, the Commission proposes to resolve mutually exclusive applications for the 932/941 MHz and 928/959 MHz MAS licenses through competitive bidding.

2. In contrast to the subscriber-based services discussed above, this *NPRM* tentatively concludes that the 928/952/956 MHz MAS bands should be designated exclusively for private use and seeks comment on whether these bands should continue to be licensed on a site-by-site basis or should be licensed on a geographic basis. The Commission also proposes to set aside five channel pairs in the 932/941 MHz MAS bands, to be licensed on a first-come, first-served basis, for Federal Government/Public Safety communications.

3. This *NPRM* also seeks to further the development of MAS by reducing regulatory burdens and increasing flexibility for all MAS licensees. For example, the Commission proposes to simplify and streamline the MAS licensing process. The Commission also proposes to increase operational flexibility by allowing MAS licensees to provide mobile and fixed operations on a co-primary basis with point-to-point and point-to-multipoint operations. Further, the Commission seeks comment on whether 12.5 kHz or larger blocks of spectrum should be available to MAS licensees in order to broaden the range of communications services possible using MAS spectrum.

4. Finally, effective February 19, 1997, this *NPRM* suspends the acceptance and processing of MAS applications in the 932/941 MHz and 928/959 MHz bands, and subscriber-based MAS applications in the 928/952/956 MHz bands, except certain pending applications, applications for minor modifications, and applications for license assignment or transfer of control, during the pendency of this rule making. This suspension, however, does not affect MAS applications for private, internal communications in the 928/952/956 MHz bands.

5. This is a non-restricted notice and comment rule making proceeding. *Ex Parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. *See generally* 47 CFR 1.1202, 1.1203, and 1.1206(a).

6. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before April 21, 1997, and reply comments on or before May 6, 1997. To file formally in this proceeding, you must file an original and four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You must send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, DC 20554. You may also file informal comments by electronics mail. You should address informal comments to bjames@fcc.gov. You must put the docket number of the proceeding on the subject line (''WT Docket No. 97–81''). You must also include your full name and Postal Service mailing address in the text of the message. Formal and informal comments and reply comments will be available for public inspection during regular business hours in the F.C.C. Reference Center of the Federal Communications Commission, Room 239, 1919 M Street, NW., Washington, DC 20554.

7. Authority for issuance of this *NPRM* is contained in Sections 4(i), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 309(j).

List of Subjects

47 CFR Part 22

Communications common carriers, Radio, Reporting and recordkeeping requirements.

47 CFR Part 101

Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Note:This attachment will not be published in the Code of Federal Regulations.

Attachment

Initial Regulatory Flexibility Analysis

1. Pursuant to the Regulatory Flexibility Act (RFA), *see* 5 U.S.C. 603, the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the policies and rules proposed in this *NPRM*. Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM*. The Secretary shall cause a copy of this *NPRM* to be sent to the Chief counsel for Advocacy of the Small Business Administration, in accordance with 5 U.S.C. 603(a).

A. Reason for Action

2. This *NPRM* requests public comment on our proposals to maximize the use of spectrum allocated to Multiple Address Systems in the Microwave Service. These proposals include: (1) Converting licensing of MAS spectrum for which the principal use will involve, or is reasonably likely to involve, ''subscriber-based'' services, from site-by-site licensing to geographic area licensing, (2) simplifying and streamlining the MAS licensing procedures and rules, (3) increasing licensee flexibility to provide

communication services that are responsive to dynamic demands, and (4) employing competitive bidding procedures (auctions) to resolve mutually exclusive applications for MAS spectrum for which the principal use will involve, or is reasonably likely to involve, ''subscriber-based'' services, In addition, by this *NPRM* we temporarily suspend the acceptance and processing of MAS applications, with the exception of applications in a few noted categories.

B. Objectives

3. In attempting to maximize the use of MAS spectrum, we continue our efforts to establish a flexible regulatory framework for spectrum allocations that will, among other things, provide opportunities for continued development of competitive new service offerings by allowing flexible use of spectrum, expedite market entry through modified licensing procedures, and promote technological innovation by eliminating unnecessary regulatory burdens.

C. Legal Basis

4. The authority for this action is contained in Sections 4(i), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 309(j). *See* also Administrative Procedure Act, 5 U.S.C. § 553.

D. Description and Estimate of Small Entities Affected

5. Pursuant to the Contract with America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996), the Commission is required to estimate in its Final Regulatory Flexibility Analysis the number of small entities to which a rule will apply, provide a description of such entities, and assess the impact of the rule on such entities. The Regulatory Flexibility Act defines a ''small business'' to be the same as a ''small business concern'' under the Small Business Act unless the Commission has developed one or more definitions that are appropriate to its activities. Under the Small Business Act, a ''small business concern'' is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA). To assist the Commission in this analysis, commenters are requested to provide information regarding how many MAS entities, total, would be affected by the various proposals on which the Commission seeks comment in this *NPRM*. In particular, we seek estimates of how many affected entities will be considered ''small businesses.'' In this regard, we ask commenters to note that we have requested comment regarding the establishment of a small business definition for MAS for the purpose of competitive bidding.

6. The proposals in the *NPRM* would effect MAS licensees and applicants for licenses. Such entities fall into two categories: (1) Those using MAS spectrum for which the principal use involves, will involve, or is reasonably likely to involve, ''subscriber-based'' (commercial) services, and (2) those using, or intending to use, MAS spectrum to provide for their own internal communications needs. Theoretically, it is also possible that an entity could fall into both categories. The spectrum uses in the two categories differ markedly.

7. With respect to the first category, neither the Commission nor the Small Business Administration (SBA) has developed a specific definition of small entities applicable to MAS licensees that provide commercial subscription services. The applicable definition of small entity in this instance appears to be the definition under the SBA rules applicable to establishments engaged in radiotelephone communications. This definition provides that a small entity is any entity employing fewer than 1,500 persons. *See* 13 CFR 121.201, Standard Industrial Classification (SIC) Code 4812. The 1992 Census of Transportation, Communications and Utilities, conducted by the Bureau of the Census, which is the most recent information available, shows that only 12 radiotelephone firms out of a total of 1,178 such firms operated during 1992 had 1,000 or more employees. Therefore, whether or not any or all of these 12 firms are MAS commercial service providers, nearly all MAS commercial service providers are small businesses by the Small Business Administration's definition. The Commission's licensing database indicates that, as of November 8, 1996, there were a total of 8,171 MAS station authorizations. Of these, 1087 authorizations were for common carrier service.

8. Alternatively, under the SBA rules, the applicable definition of small entity for MAS licensees that provide commercial subscription services may also be applicable to establishments primarily engaged in furnishing telegraph and other message communications. This definition provides that a small entity is an entity with annual receipts of $5 million or less. *See* 13 CFR 121.201, Standard Industrial Classification (SIC) Code 4822. 1992 Census data, which is the most recent information available, indicates that, of the 286 firms under this category, 247 had annual receipts of $4.999 million or less. We seek comment on whether the appropriate definition for such MAS licensees is SIC Code 4812, SIC Code 4822, or both.

9. The Commission seeks comment on the number of small entities that currently provide commercial MAS subscription service, and the number of small entities that would anticipate filing applications to provide such service under the various proposals described in the *NPRM*. We seek comment on whether we should conclude, for purposes of the Final Regulatory Flexibility Analysis in this matter, that all MAS commercial communications service providers are small entities.

10. With respect to the second category, which consist of entities that use or seek to use MAS spectrum to provide for their own internal communications needs, we note that MAS serves 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 virtually all U.S. business categories. Because of the array of users, the Commission has not developed (nor would it be possible to develop) a definition of small entities specifically applicable to such MAS users. Nor is there a precise SBA definition. In this context we again seek comment on whether the appropriate definition of small entity under the SBA rules is that applicable to radiotelephone companies: any entity employing fewer than 1,500 persons. *See* 13 CFR 121.201, Standard Industrial Classification (SIC) Code 4812. Again, alternatively, we seek comment on the appropriateness of defining such MAS licensees under SIC Code 4822, concerning establishments primarily engaged in furnishing telegraph or other message communications, or perhaps under both Codes 4812 and 4822. For the purpose of determining whether a licensee is a small business as defined by the Small Business Administration, each licensee would need to be evaluated within its own business area. The Commission's licensing database indicates that, as of November 8, 1996, of the 8,171 total MAS station authorizations, 7,084 authorizations were for private radio service, and of these, 426 were for private mobile service.

11. We seek comment on the number of small entities that use MAS spectrum for their internal communications needs. Further, we seek comment on the number of small entities that are likely to apply for licenses, under the various proposals described in the *NPRM*, to obtain spectrum for their own internal communications needs. Because any entity engaged in a business or commercial activity is eligible to hold an MAS license, the proposals in the *NPRM* could prospectively affect any small business in the United States interested in using MAS for its own communications needs. In other words, the universe of prospective or possible MAS users includes all U.S. small businesses.

12. The RFA also includes small governmental entities as a part of the regulatory flexibility analysis. The definition of a small governmental entity is one with populations of fewer than 50,000. There are 85,006 governmental entities in the nation. This number includes such entities as states, counties, cities, utility districts and school districts. There are no figures available on what portion of this number has populations of fewer than 50,000. However, this number includes 38,978 counties, cities and towns, and of those, 37,566, or 96 percent, 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, we estimate that 96 percent, or 81,600, are small entities that may be affected by our rules.

13. Again, we have requested comment regarding the establishment of a refined small business definition for MAS for the purpose of competitive bidding. This *NPRM* does not propose any definition, but merely seeks comment on this issue.

E. Reporting, Recordkeeping, and Other Compliance Requirements

14. If we have competitive bidding to award certain MAS licenses, as proposed, and also establish a small business definition for the purpose of competitive bidding, then all small businesses that choose to participate

in these services will be required to demonstrate that they meet the criteria set forth in quality as small businesses. *See generally* 47 CFR Part 1, Subpart Q (competitive bidding proceedings). Any small business applicant wishing to avail itself of small business provisions will need to make the general financial disclosures necessary to establish that the small business is in fact small.

15. If this occurs, prior to auction each small business applicant will be required to submit an FCC Form 175, OMB Clearance Number 3060–0600. The estimated time for filling out an FCC Form 175 is 45 minutes. In addition to filing an FCC Form 175, each applicant must submit information regarding the ownership of the applicant, any joint venture arrangements or bidding consortia that the applicant has entered into, and financial information which demonstrates that a small business wishing to qualify for installment payments and bidding credits is a small business. Applicants that do not have audited financial statements available will be permitted to certify to the validity of their financial showings. While many small businesses have chosen to employ attorneys prior to filing an application to participate in an auction, the rules are proposed so that a small business working with the information in a bidder information package can file an application on its own. When an applicant wins a license, it will be required to submit an FCC Form 494 (common carrier) or FCC Form 402 (private radio), which will require technical information regarding the applicant's proposals for providing service. This application will require information provided by an engineer who will have knowledge of the systems design. (Also, the Commission is currently developing a single, consolidated MAS form, FCC Form 415, which will eventually supersede both Form 494 and Form 402.)

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

16. None.

G. Significant Alternatives Minimizing the Impact on Small Entities Consistent With the Stated Objectives

17. The *NPRM* solicits comment on a variety of proposals, some of which are described below. Any significant alternatives presented in the comments will be considered. As noted, we have requested comment regarding the establishment of a small business definition for MAS. We also seek comment generally on the existence of small entities in MAS and how many total entities, existing and potential, would be affected by the proposed rules in the *NPRM*. Finally, we request that each commenter identify whether it is a ''small business'' under either of the two SBA definitions described *supra*—either employing fewer than 1,500 employees (for radiotelephone communications companies) or having annual receipts of $5 million or less (for telegraph or other message communications companies).

18. The Commission expects that licensing subscriber-based MAS bands by geographic area, as proposed, will assist small businesses. As described *supra*, such licensing makes expansion of operations easier, and this flexibility assists all licenses, including small business licensees. We also believe that the proposed EA geographic area service area is large enough to support the services contemplated while being small enough to be attractive to small business entities. The *NPRM* also proposes a purely private allocation for licenses using MAS solely for internal uses. In addition, the proposed flexible approach to the build-out of MAS systems will assist licensees, including small business licensees, in designing and implementing their particular business plans, while the partitioning and disaggregation proposals will assist those small businesses that might otherwise be unable to acquire a ''full'' license as currently configured. Finally, we believe that the proposed spectrum auction will assist small entities desiring to obtain MAS licenses. This approach gets licenses to those most likely to use them most effectively. By contrast, when awarding licenses by lotteries it is only coincidental when the license is awarded to the entity best suited to using the license. Using lotteries, therefore, creates uncertainty for all would-be licensees, including those that are small business. We seek comment on all proposals and alternatives described in the *NPRM*, and the impact that such proposals and alternatives might have on small entities.

[FR Doc. 97–6166 Filed 3–11–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[I.D. 021197C]

International Code of Conduct for Responsible Fisheries; Second Draft Implementation Plan

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

ACTION: Notice of availability; request for comments.

SUMMARY: NMFS announces the availability of a second Draft Implementation Plan (Plan) for the Code of Conduct for Responsible Fisheries (Code) and invites review and comment. The purpose and intended effect of this action is to improve the document and inform the public of its content.

DATES: Comments should be submitted on or before April 28, 1997

ADDRESSES: Send comments to Matteo Milazzo, International Fisheries Division, Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Matteo Milazzo, 301–713–2276.

SUPPLEMENTARY INFORMATION: On July 25, 1996, NMFS announced the availability of an initial Plan for the Code in the Federal Register (61 FR 38703) and requested comments by September 23, 1996. At the close of this period, it became clear that several of the public comments raised substantive issues. During the same period, two other relevant developments took place. First, the Congress passed numerous and significant amendments to the Magnuson-Stevens Fishery Conservation and Management Act in the form of the Sustainable Fisheries Act (SFA) and, second, NOAA/NMFS moved into the final and substantive phase of its long-term program planning exercise, the NMFS Fisheries Strategic Plan.

The requirements of the SFA and the Strategic Plan point in the same directions as the Code. In effect, NMFS will implement the Code domestically as it carries out its Congressionally mandated responsibilities and the objectives of the Strategic Plan. Accordingly, NMFS has redrafted the Plan, taking into account (1) the comments received on the first draft; (2) the guidance provided by Congress in the Sustainable Fisheries Act; and (3) the long-term program planning that is being developed through the NMFS Fisheries Strategic Plan.

With this notice, NMFS notifies the public of the second draft's availability for comment. It includes the Agency's definition of a sustainable fishery, i.e., one in which the rate or level of fishing mortality does not jeopardize the capacity of the fishery to produce the maximum sustainable yield on a continuing basis.

For further background and rationale for the Plan, please refer to the notice of availability published on July 25, 1996.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 6, 1997.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 97–6193 Filed 3–11–97; 8:45 am]

BILLING CODE 3510–22–F

50 CFR Part 630

[I.D.030597B]

Atlantic Tuna Fisheries; Public Hearings

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