or offer to render, any freight forwarding service free of charge or at a reduced fee in consideration of receiving compensation from a common carrier or for any other reason. *Exception*: A licensed freight forwarder may perform freight forwarding services for recognized relief agencies or charitable organizations, which are designated as such in the tariff of the common carrier, free of charge or at reduced fees.

(e) *In-plant arrangements.* A licensed freight forwarder may place an employee or employees on the premises of its principal as part of the services rendered to such principal, provided:

(1) The in-plant forwarder arrangement is reduced to writing in the manner of a special contract under § 515.32(d), which shall identify all services provided by either party (whether or not constituting a freight forwarding service); state the amount of compensation to be received by either party for such services; set forth all details concerning the procurement, maintenance or sharing of office facilities, personnel, furnishings, equipment and supplies; describe all powers of supervision or oversight of the licensee's employee(s) to be exercised by the principal; and detail all procedures for the administration or management of in-plant arrangements between the parties; and

(2) The arrangement is not an artifice for a payment or other unlawful benefit to the principal.

§ 515.42 Forwarder and carrier; compensation.

(a) *Disclosure of principal.* The identity of the shipper must always be disclosed in the shipper identification box on the bill of lading. The licensed freight forwarder's name may appear with the name of the shipper, but the forwarder must be identified as the shipper's agent.

(b) *Certification required for compensation.* A common carrier may pay compensation to a licensed freight forwarder only pursuant to such common carrier's tariff provisions. Where a common carrier's tariff provides for the payment of compensation, such compensation shall be paid on any shipment forwarded on behalf of others where the forwarder has provided a written certification as prescribed in paragraph (c) of this section and the shipper has been disclosed on the bill of lading as provided for in paragraph (a) of this section. The common carrier shall be entitled to rely on such certification unless it knows that the certification is incorrect. The common carrier shall retain such certification for a period of five (5) years.

(c) *Form of certification.* Where a licensed freight forwarder is entitled to compensation, the forwarder shall provide the common carrier with a signed certification which indicates that the forwarder has performed the required services that entitle it to compensation. The required certification may be placed on one copy of the relevant bill of lading, a summary statement from the forwarder, the forwarder's compensation invoice, or as an endorsement on the carrier's compensation check. Each forwarder shall retain evidence in its shipment files that the forwarder, in fact, has performed the required services enumerated on the certification. The certification shall read as follows:

The undersigned hereby certifies that neither it nor any holding company, subsidiary, affiliate, officer, director, agent or executive of the undersigned has a beneficial interest in this shipment; that it is the holder of valid FMC License No. ____, issued by the Federal Maritime Commission and has performed the following services:

(1) Engaged, booked, secured, reserved, or contracted directly with the carrier or its agent for space aboard a vessel or confirmed the availability of that space; and

(2) Prepared and processed the ocean bill of lading, dock receipt, or other similar document with respect to the shipment.

(d) *Compensation pursuant to tariff provisions.* No licensed freight forwarder, or employee thereof, shall accept compensation from a common carrier which is different from that specifically provided for in the carrier's effective tariff(s). No conference or group of common carriers shall deny in the export commerce of the United States compensation to an ocean freight forwarder or limit that compensation to less than a reasonable amount.

(e) *Electronic data interchange.* A licensed freight forwarder may own, operate, or otherwise maintain or supervise an electronic data interchange based computer system in its forwarding business; however, the forwarder must directly perform value-added services as described in paragraph (c) of this section in order to be entitled to carrier compensation.

(f) *Compensation; services performed by underlying carrier; exemptions.* No licensed freight forwarder shall charge or collect compensation in the event the underlying common carrier, or its agent, has, at the request of such forwarder, performed any of the forwarding services set forth in § 515.2(i) unless such carrier or agent is also a licensed freight forwarder, or unless no other licensed freight forwarder is willing and able to perform such services.

(g) *Duplicative compensation.* A common carrier shall not pay compensation for the services described in paragraph (c) of this section more than once on the same shipment.

(h) *Non-vessel-operating common carriers; compensation.* (1) A licensee operating as an NVOCC and a freight forwarder, or a person related thereto, may collect compensation when, and only when, the following certification is made together with the certification required under paragraph (c) of this section:

The undersigned certifies that neither it nor any related person has issued a bill of lading or otherwise undertaken common carrier responsibility as a non-vessel-operating common carrier for the ocean transportation of the shipment covered by this bill of lading.

(2) Whenever a person acts in the capacity of an NVOCC as to any shipment, such person shall not collect compensation, nor shall any underlying ocean common carrier pay compensation to such person, for such shipment.

(i) *Compensation; beneficial interest.* A licensed freight forwarder may not receive compensation from a common carrier with respect to any shipment in which the forwarder has a beneficial interest or with respect to any shipment in which any holding company, subsidiary, affiliate, officer, director, agent, or executive of such forwarder has a beneficial interest.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 98–33554 Filed 12–21–98; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 20 and 22

[WT Docket Nos. 98–205, 96–59, GN Docket No. 93–252; FCC 98–308]

1998 Biennial Regulatory Review—Spectrum Aggregation Limits for Wireless Telecommunications Carriers

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this *Notice of Proposed Rulemaking* the Commission undertakes a comprehensive review of the 45 MHz Commercial Mobile Radio Services (CMRS) spectrum cap as part of our biennial review of the Commission's regulations. The Commission seeks comment on whether it should repeal,

modify or retain the 45 MHz spectrum cap. In addition, the Commission seeks comment on a petition, submitted by the Cellular Telecommunications Industry Association (CTIA), to forbear from enforcement of the CMRS spectrum cap pursuant to section 10 of the Communications Act of 1934, as amended. We also seek comment on whether we should retain, modify, or repeal the cellular cross-ownership rule.

DATES: Comments are due on or before January 25, 1999. Reply comments are due on or before February 10, 1999.

ADDRESSES: All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W.; TW–A325; Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: David Krech or Pieter van Leeuwen, Commercial Wireless Division, Wireless Telecommunications Bureau, (202) 418–0620.

SUPPLEMENTARY INFORMATION: This *Notice of Proposed Rulemaking* in WT Docket Nos. 98–205, 96–59, GN Docket No. 93–252, adopted November 19, 1998, and released December 10, 1998, is available for inspection and copying during normal business hours in the FCC Reference Center, Room 230, 1919 M Street N.W., Washington D.C. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington D.C. 20036 (202) 857–3800.

Synopsis of the Notice of Proposed Rulemaking:

I. Background

A. History of the CMRS Spectrum Cap

1. The CMRS spectrum cap, 47 CFR 20.6, governs the amount of CMRS spectrum that can be licensed to a single entity within a particular geographic area. Pursuant to § 20.6, a single entity may acquire attributable interests in the licenses of broadband Personal Communications Service (PCS), cellular, and Specialized Mobile Radio (SMR) services that cumulatively do not exceed 45 MHz of spectrum within the same geographic area.

2. The CMRS spectrum cap was established in Implementation of Sections 3(n) and 332 of the Communications Act, GN Docket No. 93–252, *Third Report and Order,* 59 FR 59945 (November 21, 1994) (*CMRS Third Report and Order*). The Commission found that if licensees were to aggregate sufficient amounts of spectrum, it would be possible for them, unilaterally or in combination, to exclude efficient competitors, to reduce the quantity or quality of services provided, or to increase prices to the detriment of consumers. The Commission found that creating a cap on broadband PCS, SMR, and cellular licenses would prevent licensees from artificially withholding capacity from the market. The Commission found that a 45 MHz cap provided a minimally intrusive means for ensuring that the mobile communications marketplace remained competitive and preserved incentives for efficiency and innovation.

3. To perform a spectrum cap analysis, a threshold determination must first be made regarding whether the CMRS offerings under consideration are serving markets that substantially overlap. The Commission adopted a simple formula for this assessment: a determination of whether the overlap between geographic service areas or licensed contours contains 10 percent or more of the market's population. Assuming a 10 percent population overlap, the rule next requires a determination of whether there is common attributable ownership. For purposes of the spectrum cap, equity ownership of 20 percent or more was deemed attributable. The Commission also stated that in determining when cellular, broadband PCS and SMR licenses are held indirectly through intervening corporate entities, a multiplier would be used to determine attributable ownership levels, consistent with application of the broadcast attribution rules.

4. In Implementation of Sections 3(n) and 332 of the Communications Act, GN Docket No. 93–252, Fourth Report and Order, 59 FR 61828 (December 2, 1994) (*CMRS Fourth Report and Order*) the Commission further clarified that certain business relationships could give rise to attributable ownership interests for purposes of the CMRS spectrum cap. First, the Commission held that resale agreements will not be considered attributable interests because resellers can neither exercise control over the spectrum on which they provide service nor reduce the amount of service provided over that spectrum. Second, the Commission found that management agreements that authorize managers of cellular, broadband PCS or SMR systems to engage in practices or activities that determine or significantly influence the nature and types of services offered, the terms on which services are offered, or the prices charged for such services, give the managers an attributable interest in that licensee. Finally, the Commission also concluded that joint marketing agreements that affect pricing or service offerings will be attributable.

5. In Amendment of parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap; Amendment of the Commission's Cellular/PCS Cross-Ownership Rule, WT Docket No. 96–59, GN Docket No. 90–314, *Report and Order,* 61 FR 33859 (July 1, 1996) (*CMRS Spectrum Cap Report and Order*) *appeal pending sub nom. Cincinnati Bell Tel Co.* v. *FCC,* No. 96–3756 (6th Cir), *recon. (BellSouth MO&O) appeal pending sub nom. BellSouth Corporation* v. *FCC,* No. 97–1630 (D.C. Cir), the Commission reaffirmed the basic tenets of the CMRS spectrum cap and provided additional economic rationale for its use. Specifically, the Commission provided an analysis of the potential market concentrations using the Herfindahl-Hirschman Index (HHI), and found that a 45 MHz spectrum cap was necessary to prevent CMRS markets from becoming highly concentrated. The Commission found that such a spectrum cap was needed to ensure competition, and that it would adequately address concerns about anticompetitive behavior in the CMRS market.

6. In addition to reviewing the general structure of the CMRS spectrum cap, the Commission also reconsidered the ownership and geographic attribution provisions of § 20.6. In the *CMRS Spectrum Cap Report and Order,* the Commission revisited the use of a 20 percent attribution standard and found it appropriate for use in the CMRS spectrum cap. Although the Commission did not alter the 20 percent ownership attribution standard in the *CMRS Spectrum Cap Report and Order,* it did adopt a rule under which it would review requests for waiver of the attribution standard. *See* 47 CFR 20.6 Note 3. The Commission also eliminated the 40 percent attribution threshold for ownership interests held by minorities and women, but maintained it for small businesses and rural telephone companies. In considering changes to the geographic attribution standard, the Commission declined to alter the 10 percent overlap definition because it found that an overlap of 10 percent of the population is sufficiently small that the potential for exercise of undue market power by the cellular operator is slight. In addition, the Commission expanded the divestiture provisions by allowing parties with non-controlling, attributable interests in CMRS licenses to have an attributable or controlling interest in another CMRS application that would exceed the 45 MHz spectrum cap so long as they followed our post-

licensing divestiture procedures. In the *BellSouth MO&O,* Commission held that the CMRS spectrum cap is not limited to real time, two-way switched phone service, but covers a variety of services within the definition of CMRS.

B. Pending Proceedings Regarding the CMRS Spectrum Cap

7. There are several proceedings pending before the Commission which deal with different aspects of the CMRS spectrum cap. Because the Commission intends for this proceeding to be a comprehensive re-evaluation of the CMRS spectrum cap, it plans to consolidate these outstanding issues in this proceeding. The Commission therefore incorporates into this proceeding the record of the following pending proceedings on the CMRS spectrum cap: (1) Petitions for Reconsideration of *CMRS Third Report and Order;* (2) Petitions for Reconsideration of *CMRS Fourth Report and Order;* (3) Petitions for Reconsideration of *CMRS Spectrum Cap Report and Order;* and, (4) Implementation of Sections 3(n) and 332 of the Communications Act—Regulatory Treatment of Mobile Services, GN Docket No. 93–252, *Third Further Notice of Proposed Rulemaking,* 60 FR 26861 (May 19, 1995). In that proceeding the Commission examined whether the CMRS spectrum cap should be extended to all cellular, SMR, and broadband PCS providers regardless of whether they are classified as Private Mobile Radio Services (PMRS) or CMRS providers.

II. Notice of Proposed Rulemaking

A. Overview

8. The Commission last reviewed the CMRS spectrum aggregation limits in 1996 in the *CMRS Spectrum Cap Report and Order.* Section 11 of the Communications Act requires that the Commission review regulations ''that apply to the operation or activities of any provider of telecommunications service'' and ''determine whether any such regulation is no longer necessary in the public interest as the result of meaningful economic competition between providers of such service.'' 47 U.S.C. 161. In light of the mandate in section 11 and the developments in the marketplace since 1996, the Commission seeks comment in this Notice on whether to retain, modify, or repeal the CMRS spectrum cap.

B. Reassessment of the CMRS Spectrum Cap

9. Generally, the Commission believes that the spectrum cap has been useful in promoting competition in mobile voice services, given that these services were largely available from only two cellular companies in each locality prior to our broadband PCS auctions. The 45 MHz limit was originally devised as the Commission prepared for its auction of broadband PCS spectrum, in response to concerns that incumbent cellular providers had incentives to impede the development of competing networks to preserve their competitive position. Under constraints imposed by the CMRS spectrum cap, the Commission awarded broadband PCS licenses that are now, or will soon be, competing directly with these cellular providers. In many localities, significant new entry into mobile voice services has already occurred. Moreover, the Commission expects that competition will develop further as remaining broadband PCS licensees complete the initial phases of their network buildouts. The Commission believes that the aggregation limit helped to promote the likely emergence of at least three new competitors in each market. In at least several markets, mobile voice services are now being offered by seven or more competitors. The competitive evolution of these markets may be traced directly to decisions to auction additional spectrum well-suited to the provision of mobile communications, and to impose limits on the extent to which firms were permitted to aggregate spectrum in these auctions. The Commission seeks comment on this assessment that the existing spectrum aggregation limit to date may have promoted competition in mobile voice markets. The Commission seeks comment on how evidence of emerging competition should be factored into the assessment of whether the current cap should be eliminated, relaxed or redefined. In particular, what weight should these factors be given relative to HHI calculations or similar measures of concentration of ownership or control? Parties should provide discussion or analysis supporting their views. The Commission seeks comment on the following issues and how they relate to the question of whether to retain, modify, or repeal the spectrum cap: (1) what are the relevant product markets?; (2) what are the relevant geographic markets?; and, (3) what are the relevant measures of market capacity (assigned spectrum, operational spectrum, subscribers, revenues, traffic/minutes of use, etc.)?

10. The extent to which services are presently available in individual markets varies considerably. In no market have all of the licensed broadband PCS providers begun offering service, and in a number of localities, service is not yet available from any new entrant. For purposes of assessing the competitive nature of individual markets and calculating market shares, the Department of Justice's *Merger Guidelines* limit market participants to firms that currently produce or sell the relevant product and those described as ''uncommitted entrants.'' Hence, for purposes of conducting an analysis of competition in wireless markets, the Commission seeks comment on whether to limit the assessment of market participants to only current suppliers and any other firms that have announced intentions to commence operations, declared their intentions to offer the relevant product, and will imminently begin soliciting business. Particularly in smaller towns and rural markets, cellular incumbents continue to hold competitive advantages vis-à-vis market entrants that are not very different from those existing when the cap was originally conceived and implemented. Spectrum aggregation limits may well continue to be useful to promote competition in at least certain areas. The Commission invites comment on these assessments. The Commission also solicits comment on whether to apply the CMRS spectrum cap on a market-by-market basis.

11. The Commission also believes that with respect to mobile wireless services, the spectrum cap has served the purpose of constraining undesirable erosion of existing competition through mergers or acquisitions in major markets, where competition among multiple carriers is most advanced. For cellular and SMR incumbents especially, and perhaps for the early A- and B-Block broadband PCS entrants as well, incentives exist for operational carriers to explore in-market merger options. Hence, it appears likely that the spectrum aggregation limit has been of some value in inhibiting competition-eroding spectrum consolidation. The Commission invites comment on these assessments and on the potential for consolidation of CMRS markets if the spectrum cap were relaxed or eliminated, and whether such consolidation would harm or benefit consumers. Commenters should provide empirical evidence on the harms or benefits of consolidation in CMRS markets.

12. The Commission also invites comment on whether there are existing disciplinary factors in the marketplace that may independently minimize the likelihood that any single entity would achieve an anticompetitive level of ownership of CMRS spectrum in a particular geographic area. For example,

are there dis-economies of scale that will limit the size to which firms will grow, and thus tend to ensure that the CMRS sector will assume a competitive structure even in the absence of a spectrum cap? Is it possible that capital markets will not finance attempts by individual firms to acquire spectrum in amounts or construct systems of sizes that would threaten competition? Commenters arguing that such factors lessen or eliminate the need for our current spectrum cap should, where possible, provide specific quantifiable examples of dis-economies, or of points at which various types of costs or risks associated with owning or controlling additional wireless spectrum outweigh potential benefits.

13. The Commission seeks comment on whether the convergence and substitutability of other telecommunications networks, including wireline, cable, private wireless, and satellite networks among others, should affect the application or public interest considerations underlying the spectrum cap. It is important that commenters addressing this issue supply detailed analysis, identify all underlying assumptions, and provide factual support for any projections.

14. The Commission has scheduled an auction for March 1999, that will include licenses for operation on C and F block frequencies. There are certain restrictions on the sale of entrepreneur block licenses (C and F blocks). The Commission invites comment on whether these rules are sufficient to prevent undesirable spectrum consolidation. Commenters should also provide their views on any relationship between this proceeding, including the timing of our final decision, and the successful completion of the upcoming C block auction.

15. The Commission also seeks comment on whether issues regarding economies of scope may provide a rationale for relaxing the spectrum aggregation limit. The Commission invites comment generally on the concepts of economies of scope and scale and their relationship to spectrum aggregation limits.

16. In re-assessing the CMRS spectrum cap, the Commission also seeks comment on whether there are other efficiency benefits or progress toward other public interest goals that would flow from changes in the cap that might counterbalance concerns about possible anticompetitive effects resulting from increased geographic concentration of ownership. For example, might a relaxed cap allow efficient deployment of third-generation wireless services that would be prevented under the present cap? Or, might a relaxed cap facilitate provision of fixed wireless services by CMRS firms, perhaps as universal service providers? What, if any, impact would altering the cap have on the provision of wireless services to under-served areas? Would an enforceable commitment to provide such service in high-cost or low-income areas override anticompetitive concerns?

17. *Service in rural areas.* The Commission seeks comment on whether the relative lack of competition in certain rural and other markets suggests that there is a continuing need for the CMRS spectrum cap in those areas. Commenters should address whether the cap should be retained, at least in those areas until increased competition begins to emerge. On the other hand, the cap may affect the ability of a CMRS provider to attain certain economies of scale and scope. Spectrum may be made newly available for commercial use through partitioning agreements, but the economics of offering service to these lower-density populations may nevertheless limit the extent of competitive, facilities-based entry. The Commission seeks comment on whether the existing spectrum cap may impede delivery of potentially lower-cost service to rural customers as economies of scope go unrealized. In particular, should more concentration of spectrum in rural markets be permitted, perhaps allowing for leveraging of existing facilities? The Commission seeks comment on the extent to which the current 45 MHz aggregation limit may be thwarting the realization of potential economies, and solicit evidence on the magnitude of any such savings or efficiencies in particular market settings.

18. *Advancement of competition in local markets.* The Commission seeks comment on how the spectrum cap affects wireless providers' ability to enter into and compete in markets other than mobile voice service. The Commission seeks comment on the extent to which existing networks are capable of economically supporting the delivery of wireless services other than fixed or mobile voice and paging/messaging. In particular, we invite comment on the technical and economic feasibility of offering dispatch, high-speed Internet, and other two-way data services over existing cellular, broadband PCS, and SMR network platforms. We also invite views on the extent to which any limitations on currently installed networks may be eased in the foreseeable future as newly available technologies are adopted. The Commission is especially interested in views on whether the current spectrum cap is enhancing or impeding the provision of wireless services as a competitive alternative to wireline services.

19. *Development and deployment of new technologies and services.* The Commission seeks comment on whether the spectrum cap serves as a barrier to firms that wish to offer additional services or to adopt advanced network technologies. Specifically, the Commission seeks comment on whether the current aggregation limit poses an obstacle to the introduction of more advanced network technologies. The Commission also seeks comment on whether the existing spectrum limit constitutes a significant constraint on firms' abilities to offer wireless local loop or high-speed mobile data services, either on a stand-alone basis or bundled with mobile voice services. In particular, we invite comment on the extent to which companies are able to acquire and use spectrum outside of CMRS bands to achieve these goals. The Commission also invites comment on the possible use of our waiver process to consider petitions for supplemental spectrum that may be needed to launch new wireless services.

C. Modifications and Alternatives to Existing CMRS Spectrum Cap

i. Modification of Significant Overlap Threshold

20.The CMRS spectrum cap prohibits a licensee from having more than 45 MHz of spectrum in broadband PCS, cellular or SMR services with significant overlap in a geographic area. A ''significant overlap'' occurs when at least ten percent of the population of the PCS licensed service area is within the cellular geographic service area and/or SMR service area(s). 47 CFR 20.6(c). Therefore, a carrier's spectrum counts toward the spectrum cap if the carrier is licensed to serve 10 percent or more of the population of the designated service area.

21. The Commission seeks comment on the effect of recent changes in CMRS markets, particularly concerning the emergence of broadband PCS carriers as competitors to cellular operators, on the rationale for a 10 percent overlap threshold. The Commission also seek comment on the public interest benefits of increasing the threshold and whether those benefits outweigh any potential for anticompetitive concentration of ownership or control of CMRS licenses.

22. The Commission seeks comment on whether a geographic overlap standard of greater than a 10 percent

overlap should be adopted. If so, what would be a more appropriate standard of geographic overlap and why. The Commission seeks comment on whether a greater overlap may facilitate anticompetitive behavior. The Commission also seeks comment on what degree of a permissible geographic overlap could promote anticompetitive conduct. In addition, the Commission seeks comment on whether we should permit carriers in high-cost and under-served markets to have a greater than 10 percent population overlap, and how we should define high-cost and under-served markets for purpose of the significant overlap threshold. The Commission also seeks comment on whether there is a need to allow a greater overlap in high-cost and under-served areas if we adopt our proposal to allow for a higher cap in rural areas. In addition, the Commission seeks comment on whether a separate geographic overlap standard for rural areas may be in the public interest by possibly encouraging a greater number of service options and better service quality. In the alternative, comment is requested on whether there is a mechanism for triggering the application of a spectrum cap in given geographic areas that might be superior to our current significant overlap standard.

ii. Modification of 45 MHz Limitation

23. The CMRS spectrum cap allows a single entity to control up to 45 MHz of broadband PCS, cellular, and SMR spectrum in a geographic area. The Commission seeks comment on whether a 45 MHz CMRS spectrum limitation is appropriate given increased competition in the CMRS marketplace. For instance, the vast majority of the broadband PCS licenses have been assigned and there are broadband PCS licensees providing service in competition with cellular carriers and each other in many markets. In particular, we seek comment on what would be an appropriate spectrum aggregation limitation in light of current and future prospects for competition in CMRS markets. Commenters should provide analytical support for any limitation that they propose.

24. Another option would be to raise the 45 MHz limitation when competition in relevant markets reaches a particular level. For example, one possible option would permit licensees to exceed the 45 MHz limit as long as a certain number of competitors would remain in a market after the assignment. The Commission seeks comment on such an option. How many competitors in a market would be sufficient to allow a licensee to exceed the 45 MHz limitation? Would the same number of competitors be required for wireless services other than mobile voice? How would the Commission identify qualifying competitors? Should facilities-based competitors be considered? Should other factors be considered in addition to the number of facilities-based carriers in a given market in determining when to lift the restriction? The Commission seeks comment on whether there should be any restraints on how much spectrum a licensee could obtain under such an option.

25. A similar option would be to allow the cap to be raised/exceeded in rural or under-served areas. The Commission seeks comment on the benefits that may be obtained by allowing licensees serving rural, high-cost areas to hold more than 45 MHz of broadband CMRS spectrum in those areas. The Commission also seeks comment on how to define those areas. One possibility would be to use rural service areas, or rural service areas (RSAs). Another option would be to use high-cost areas as defined in our universal service proceeding. The Commission seeks comment on these possible determinations of rural/under-served areas. Commenters that suggest other definitions for rural or under-served areas are requested to precisely set out their proposed definition, and explain the type and number of areas that would come within that definition.

26. The Commission also seeks comment whether the partnerships anticipated under this option would result in meaningful convergence in service quality and rates between urban and rural subscribers. Furthermore, the Commission solicits views on whether any claimed efficiencies of scope are likely to be commercially significant in magnitude for operators in rural markets. The Commission also invites comments on whether this option would discourage broadband PCS carriers from extending their digital network buildouts beyond urban and suburban centers.

iii. Modification of Ownership Attribution Thresholds

27. Under the CMRS spectrum cap, ownership interests of 20 percent or more (40 percent if held by a small business or rural telephone company), including general and limited partnership interests, voting and non-voting stock interests or any other equity interest are considered attributable. 47 CFR 20.6(d)(2). Officers and directors are attributed with their company's holdings, as are persons who manage certain operations of licensees, and licensees that enter into certain joint marketing arrangements with other licensees. 47 CFR 20.6(d)(7). Stock interests held in trust are attributable only to those who have or share the power to vote or sell the stock. 47 CFR 20.6(d)(3). Debt does not constitute an attributable interest, nor are securities affording potential future equity interests (such as warrants, options, or convertible debentures) considered attributable until they are converted or exercised. 47 CFR 20.6(d)(5). The Commission seeks comment generally on whether we should modify any or all of these attribution criteria. Commenters should provide reasoning and factual support for their positions.

28. The Commission seeks comment on whether we should modify the 20 percent ownership benchmark. Specifically, the Commission seeks comment on the effect that a 20 percent attribution standard has on the ability of CMRS providers to obtain capital, and on the public interest benefits of increasing the 20 percent attribution standard. The Commission also seeks comment on what level to set an attribution standard. Commenters proposing a different standard should provide analytical support for their proposals. The Commission seeks comment on whether we should increase the benchmark as it applies to the amount of non-voting equity interest, or interest held by a limited partner. The Commission also seeks comment on whether to continue to have a separate 40 percent attribution standard for licenses that are held by small businesses or rural telephone companies or whether this standard should also be modified.

29. The Commission also seeks comment on whether any of the other provisions in our ownership attribution criteria should be modified. Are there any situations where an entity can acquire effective control over another entity that is not adequately contemplated under our attribution standards? Alternatively, are there situations proscribed by our attribution rules that are inhibiting competition? Commenters should be as specific as possible in identifying which, if any, attribution standards should be changed and in explaining the rationale and public interest benefits that might accompany such a change in our rules. The Commission also seeks comment on the waiver test for attribution, 47 CFR 20.6 note 3, and whether the waiver test should be retained if the 20 percent attribution standard is modified.

iv. Forbearance From Enforcing the CMRS Spectrum Cap

30. On September 30, 1998, CTIA petitioned the Commission to forbear from enforcing the spectrum cap pursuant to our authority under section 10 of the Act, 47 U.S.C. 160. The Commission must forbear from applying any regulation or provision of the Act to a telecommunications carrier or service, or class of telecommunications carriers or services, in any or some of its geographic markets, if a three-pronged test is met. Specifically, section 10 requires forbearance, notwithstanding 47 U.S.C. 332(c)(1)(A), if the Commission determines that: (1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory; (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and (3) forbearance from applying such provision or regulation is consistent with the public interest.

31. To satisfy the first prong of section 10, CTIA relies on statements that the CMRS market is competitive. CTIA also argues that principles of antitrust law and economics provide adequate protection against the possibility of excessive concentration that the spectrum cap was designed to safeguard against. Addressing the second prong, CTIA contends that the Commission's section 310(d) authority is an appropriate vehicle for the Commission to effectuate the ''ideal approach [which] is to judge spectrum combinations on a case-by-case basis taking into account all of the relevant variables bearing upon competition and efficiency, including the service area overlap, the populations in the respective service areas, and the quantity of spectrum currently allocated to and * * * sought to be acquired by the licensee.'' CTIA argues that the third prong is met because the public interest is better served by a case-by-case determination of permissible ownership structures. According to CTIA, rigid ownership limitations endangers innovation and efficiency and outweighs the administrative burden associated with reliance upon a case-by-case approach to market concentration issues.

32. The Commission seeks comment on the CTIA Forbearance Petition, particularly whether CTIA's arguments meet the standards of section 10 for forbearance from the spectrum cap. In regard to the third prong of the test and in connection with the above questions regarding the re-assessment of the rule under section 11, it would be useful for commenting parties to consider and comment upon: (i) the original purpose of the particular rule in question; (ii) the means by which the rule was meant to further that purpose; (iii) the state of competition in relevant markets at the time the rule was promulgated; (iv) the current state of competition as compared to that which existed at the time of the rule's adoption; (v) how any changes in competitive market conditions between the time the rule was promulgated and the present might obviate, remedy, or otherwise eliminate the concerns that originally motivated the adoption of the rule; and (vi) the ultimate effect forbearance may have on consumers.

33. If the Commission, upon review of the record, finds that the requirements set out in section 10 have been satisfied, and thus the Commission has authority to forbear from the CMRS spectrum cap, we seek comment on the advantages or disadvantages of forbearing from the cap rather than modifying, sunsetting, or eliminating it.

34. If the Commission forbears from enforcing the CMRS spectrum cap, what step the Commission should take next regarding the cap? Should the Commission, subsequently, in this or another proceeding, develop a factual record on what happened to CMRS markets without the spectrum cap to confirm that our conclusions about the need for the cap were correct?

v. Sunset CMRS Spectrum Cap

35. The Commission seeks comment on the public interest benefits of establishing a sunset date for the CMRS spectrum aggregation limit in all or some markets. In particular, what market conditions that should be present before sunsetting the cap. The Commission also seeks comment on when these market conditions are likely to be generally present. The Commission also seeks comment on whether a date certain should be set for elimination of the spectrum aggregation limit, or if instead, the Commission should review the continuing need for such a restriction at a pre-set date, e.g., as part of the next biennial review process.

36. One alternative to a uniform date for sunsetting the CMRS spectrum aggregation limit in all or some markets, would be to sunset the cap in selected markets based on the competitive concerns in the particular markets in question. The Commission seeks comment on whether it would be in the public interest to sunset the CMRS spectrum cap on a market-by-market basis, and if so, what criteria should be considered in determining whether to sunset the cap in a particular market. One approach may be to sunset the cap when a certain number of competitors are present in a market. The Commission seeks comment on this approach and what level of competition should exist before we sunset the cap in a particular market.

37. Another option would be to review certain types of proposed transactions involving the aggregation of CMRS spectrum under our section 310(d). Under this approach, any transfers in connection with a merger or acquisition where both parties have directly competing operational wireless services in the same geographic market, would no longer be prohibited under the spectrum cap. Instead, parties to these transactions involving a combination of more than 45 MHz would be obligated to affirmatively demonstrate that the transaction is in the public interest. This would generally include a competitive analysis to evaluate whether the interests of consumers in relevant markets are threatened. All other transactions, including those involving overlapping licenses but where build-out is not complete and service is not operational, would continue to be subject to compliance with the CMRS spectrum cap. The Commission seeks comment on this approach.

vi. Eliminate CMRS Spectrum Cap

38. The Commission seeks comment on whether elimination of the CMRS spectrum cap, and reliance on case-by-case determinations of ownership issues pursuant to section 310(d) of the Communications Act, 47 U.S.C. 310(d), would serve the public interest. Commenters should provide facts and detailed analysis supporting their position. The Commission also seeks comment on the likelihood that anticompetitive behavior would result from elimination of the cap, and request that commenters identify what type of anticompetitive behavior is likely and establish causality between elimination of the cap and that behavior.

39. The Commission seeks comment, including empirical evidence, whether CMRS markets are sufficiently competitive to allow for removal of the CMRS spectrum cap. Commenters should address any significant changes in CMRS markets and telecommunications markets in general that would directly support elimination of the CMRS spectrum cap. The

Commission also seeks comment regarding the administrative burden that would presumably be placed on the Commission's limited resources by reviewing ownership issues on a case-by-case basis.

40. The Commission invites comment on the extent to which other Federal and state authorities, given their resources and broad responsibilities, would be able to effectively monitor the competitive effects of smaller mergers and corporate acquisitions. The Commission also seeks comment on the ability that Federal and state authorities have under antitrust laws to protect competition in cases where competition may not yet be adequately developed.

D. Cellular Cross-Interest Rule

41. Section 22.942 of the Commission's rules prohibits any person from having a direct or indirect ownership interest in licenses for both cellular channel block in overlapping cellular geographic service areas (CGSAs). 47 CFR 22.942. Given the changes in mobile voice markets, and the fact that many markets no longer comprise primarily cellular duopolies, as in 1991 when the rule was adopted, the Commission seeks comment on whether to retain, modify, or repeal § 22.942.

42. The Commission seeks comment on whether the CMRS spectrum cap provides sufficient protection from anticompetitive behavior by cellular licenses in the same market. Commenters should also address whether we should eliminate the cellular cross-ownership rule if we decide to eliminate the CMRS spectrum cap.

43. Where the structure of these markets has not changed significantly, the Commission seeks comment on whether the original purpose of the rule may still be served by its application. Namely, where cellular licensees are still the predominant providers of mobile voice services, is the cellular cross-interest rule may still be necessary to guarantee the competitive nature of the cellular industry and to foster the development of competing systems? The Commission seeks comment on whether to modify the cellular cross-ownership rule so that it does not apply in certain circumstances. One possibility would be to have the rule apply only in markets where there are a limited number of competitors to the cellular providers. The Commission seeks comment on what would be an appropriate threshold for determining in which markets the rule would not apply. The Commission seeks comment on the potential effects of such an application of the cellular cross-ownership rule.

44. The Commission also seeks comment on whether we should relax the current attribution rules related to this rule. For example, should an entity that controls the cellular A block be allowed to have some interest in the cellular B block in the same market? Further, should the current limit on what a non-controlling interest holder may have in each cellular license in a given market be relaxed? Commenters are asked to address the competitive and public interest implications of their proposals.

III. Conclusion

45. In this *Notice of Proposed Rulemaking,* the Commission seeks comment on whether the present CMRS spectrum cap furthers the public interest and encourages competition, consistent with spirit of the Communications Act. The Commission also seeks comment on whether to retain, forbear from, eliminate, or modify the present cap. In particular, the Commission seeks comment on the petition filed by CTIA requesting forbearance from applying the CMRS spectrum cap. The Commission also seeks comment on whether we should retain, modify, or repeal the cellular cross-interest rule.

IV. Procedural Matters and Ordering Clauses

A. Regulatory Flexibility Analysis

46. As required by the Regulatory Flexibility Act (RFA), *see* 5 U.S.C. 603, the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible impact on small entities of the rules proposed in the Notice of Proposed Rulemaking (Notice) in WT Docket No. 98–205. Written public comments are requested on the IRFA. Comments on the IRFA must have a separate and distinct heading designating them as responses to the IRFA and must be filed by the deadlines for comments on the Notice. The Commission will send a copy of the Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the Notice and IRFA (or summaries thereof) will be published in the **Federal Register**.

i. *Need for, and objectives of, the proposed rules:*

47. As part of its biennial regulatory review, pursuant to section 11 of the Communications Act, 47 U.S.C. 161, the Commission solicits comment on whether we should retain, modify, or eliminate the commercial mobile radio service (CMRS) spectrum cap, 47 CFR 20.6. In this *Notice of Proposed Rulemaking (Notice),* the Commission also seeks comment on the petition to forbear from enforcement of the CMRS spectrum cap filed by the Cellular Telecommunications Industry Association on September 30, 1998. The discussion in the *Notice* is focused on whether to retain, modify, eliminate or forbear from enforcing the spectrum cap by looking at the competitive changes in the CMRS market, reexamining the goals that the spectrum cap was initially designed to achieve, and seeking comment on whether there are less restrictive measures, or additional public interest goals we should consider in determining whether to eliminate or modify the spectrum aggregation limits. Additionally, the Commission seeks comment on how our analysis may differ in the context of markets with many wireless competitors, as opposed to markets, for example, in rural or high-cost areas, where few or no broadband Personal Communications Service (PCS) providers may have initiated service, and whether we should consider the rule on a market-by-market basis. The *Notice* sets forth several different possible modifications or alterations to the cap and seeks comments on them, as well as other options that commenters may suggest. Specific issues raised for comment include: (1) expanding the allowable amount of geographic overlap between a licensee's various broadband CMRS holdings; (2) increasing the amount of spectrum that a single entity may hold beyond 45 MHz; (3) altering the ownership attribution rules associated with the spectrum cap; (4) forbearing from enforcement of the CMRS spectrum cap pursuant to our authority under section 10 of the Communications Act, 47 U.S.C. 160; (5) establishment of a sunset for the CMRS spectrum cap; and, (6) elimination the CMRS spectrum cap and reliance on a case-by-case analysis of the potential competitive effects of a proposed spectrum holding pursuant to section 310(d) of the Communications Act, 47 U.S.C. 310(d). The Commission also solicits comment on whether we should retain, modify, or repeal the cellular cross-ownership rule, 47 CFR 22.942.

ii. *Legal basis:*

48. The proposed action is authorized under sections 1, 4(i), 10, 11, 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 160, 161, 303(g) and 303(r).

iii. *Description and estimate of the number of small entities to which rules will apply:*

49. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by our rules. 5 U.S.C. 603(b)(3), 604(a)(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). A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' 5 U.S.C. 601(4). Nationwide, there are 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.'' 5 U.S.C. 601(5). As of 1992, there were 85,006 such jurisdictions in the United States.

50. In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under Section 3 of the Small Business Act. 5 U.S.C. 601(3). 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) meets any additional criteria established by the Small Business Administration (SBA). 15 U.S.C. 632.

51. The Notice could result in rule changes that, if adopted, would affect all small businesses that currently are or may become licensees of the broadband PCS, cellular and/or specialized mobile radio (SMR) services. To assist the Commission in analyzing the total number of affected small entities, commenters are requested to provide estimates of the number of small entities that may be affected by any rule changes resulting from the Notice. The Commission estimates the following number of small entities may be affected by the proposed rule changes:

52. *Cellular Radiotelephone Service.* The Commission has not developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone companies. This definition provides that a small entity is a radiotelephone company employing no more than 1,500 persons. 13 CFR 121.20. The size data provided by the SBA does not enable us to make a meaningful estimate of the number of cellular providers which are small entities because it combines all radiotelephone companies with 1000 or more employees. The 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, is the most recent information available. This document shows that only twelve radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. Therefore, even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. The Commission assumes, for purposes this IRFA, that all of the current cellular licensees are small entities, as that term is defined by the SBA. In addition, the Commission notes that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. The most reliable source of information regarding the number of cellular service providers nationwide appears to be data the Commission publishes annually in its *Telecommunications Industry Revenue* report, regarding the Telecommunications Relay Service (TRS). The report places cellular licensees and Personal Communications Service (PCS) licensees in one group. According to the data released in November 1997, there are 804 companies reporting that they engage in cellular or PCS service. It seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees; however, the Commission is unable at this time to estimate with greater precision the number of cellular service carriers qualifying as small business concerns under the SBA's definition. For purposes of this IRFA, the Commission estimates that there are fewer than 804 small cellular service carriers.

53. *Broadband PCS.* The broadband PCS spectrum is divided into six frequency blocks designated A through F. The Commission has defined ''small entity'' in the auctions for Blocks C and F as a firm that had average gross revenues of less than $40 million in the three previous calendar years. This definition of ''small entity'' in the context of broadband PCS auctions has been approved by the SBA. The Commission has auctioned broadband PCS licenses in blocks A through F. Of the qualified bidders in the C and F block auctions, all were entrepreneurs. Entrepreneurs was defined for these auctions as entities, together with affiliates, having gross revenues of less than $125 million and total assets of less than $500 million at the time the FCC Form 175 application was filed. Ninety bidders, including C block auction winners, won 493 C block licenses and 88 bidders won 491 F block licenses. For purposes of this IRFA, the Commission assumes that all of the 90 C block broadband PCS licensees and 88 F block broadband PCS licensees, a total of 178 licensees, are small entities.

54. *Specialized Mobile Radio (SMR).* The Commission awards bidding credits in auctions for geographic area 800 MHz and 900 MHz SMR licenses to firms that had revenues of no more than $15 million in each of the three previous calendar years. This regulation defining ''small entity'' in the context of 800 MHz and 900 MHz SMR has been approved by the SBA. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. The Commission assumes for purposes of this IRFA that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission has held auctions for geographic area licenses in the 900 MHz SMR band, and recently completed an auction for geographic area 800 MHz SMR licenses. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. There were 10 winning bidders who qualified as small entities in the 800 MHz auction.

iv. *Description of reporting, record keeping and other compliance requirements:*

55. The Notice proposes no additional reporting, record keeping or other compliance measures.

v. *Steps taken to minimize the significant economic impact on small entities, and significant alternatives considered:*

56. The CMRS spectrum cap was established in 1994 in the *CMRS Third Report and Order,* and was reaffirmed in the *CMRS Spectrum Cap Report and Order.* Since that time, there have been several developments that have significantly affected CMRS markets. Through this notice the Commission, as part of the Commission's biennial regulatory review pursuant to section 11 of the Act, seeks to develop a record regarding whether the CMRS spectrum cap continues to make regulatory and economic sense in the current and foreseeable wireless telecommunications markets. Likewise, the Commission seeks comment on whether there continue to be a need for the cellular cross-interest rule. We request comment on whether retention, modification, elimination or forbearance from enforcement of the CMRS

spectrum cap is appropriate with respect to small business that are licensees of the broadband PCS, cellular and/or SMR services. We also request comment on whether retention, modification or elimination of the cellular cross-interest rule is appropriate with respect to small businesses that are cellular licensees.

vi. *Federal rules which overlap, duplicate, or conflict with these proposed rules:*

None.

B. Ex Parte Rules—Permit-But-Disclose Proceedings

58. This is a permit-but-disclose notice and comment rulemaking proceeding. Ex parte presentations are permitted except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules. *See generally* 47 CFR 1.1201, 1203, and 1.1206(a).

C. Comment Dates

59. Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before *January 25, 1999,* and reply comments on or before *February 10, 1999.* Comments and reply comments should be filed in WT Docket No. 98–205. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24,121 (1998).

60. 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. Comments and reply comments should be filed in WT Docket No. 98–205. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, ''get form <your e-mail address.'' A sample form and directions will be sent in reply.

61. Parties who choose to file by paper must file an original and four copies of each filing. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W.; TW-A325; Washington, D.C. 20554.

62. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to the Policy and Rules Branch, Commercial Wireless Division, Wireless Telecommunications Bureau, Room 700, 2100 M Street, N.W., Washington, D.C. 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using WordPerfect 5.1 for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskette should be clearly labelled with the commenter's name, proceeding (Docket No.98–205), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase ''Disk Copy—Not an Original.'' Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20037.

D. Initial Paperwork Reduction Act of 1995 Analysis

63. This Notice of Proposed Rulemaking does not contain a proposed information collection.

E. Ordering Clauses

64. It ordered that, pursuant to the authority of sections 1, 4(i), 10, 11, 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 160, 161, 303(g), and 303(r), this *Notice of Proposed Rulemaking* is hereby *adopted*.

65. *It is further ordered* that the Commission's Office of Public Affairs, Reference Operations Division, *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 Subject in 47 CFR Parts 20 and 22

Communications common carriers.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–33775 Filed 12–21–98; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 193

[Docket No. RSPA–97–3002; Notice 2]

RIN 2137–AD11

Pipeline Safety: Incorporation of Standard NFPA 59A in the Liquefied Natural Gas Regulations

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to replace substantive portions of siting, design, construction, equipment and fire protection provisions of Liquefied Natural Gas (LNG) regulations and incorporate by reference the American National Standards Institute (ANSI), National Fire Protection Association (NFPA) Standard 59A (1996 edition), titled ''Standards for the Production, Storage and Handling of Liquefied Natural Gas (LNG)''. This document proposes to amend remaining LNG regulations including some operation and maintenance requirements. These proposed changes are intended to enable operators to utilize current technology, materials, and practices, thereby reducing costs and enhancing economic growth. These changes will eliminate unnecessary or burdensome requirements while maintaining current levels of safety. The proposed rule is consistent with the President's goals of regulatory reinvention and improvement of customer service.

DATES: Interested persons are invited to submit comments on this notice of proposed rulemaking (NPRM) by March 22, 1999. Late filed comments will be considered to the extent practicable.

ADDRESSES: Written comments on the subject of this document must be submitted in duplicate to the Dockets Facility, U.S. Department of Transportation, 400 Seventh Street, SW, Plaza 401, Washington, DC 20590–0001. Comments should identify the docket and document number stated in the heading of this document. Alternatively, comments may be submitted via e-mail to ''ops.comments@rspa.dot.gov.'' The docket facility is open from 9:00 a.m. to 5:00 p.m., Monday through Friday, except holidays. All comments received will be electronically scanned into the docket and will be accessible at http://dms.dot.gov. General information about the RSPA/Office of Pipeline Safety programs can be reviewed by accessing OPS's homepage at http://ops.dot.gov.