provide how the above demonstration will be made nor the criteria for the demonstration. Section 114.5(a)(1) allows registered farm vehicles used primarily on a farm or ranch to remove or make inoperable the farm vehicles air pollution control system or device used to control emissions from the farm vehicle. This exemption is contrary to section 203(a)(3)(A) of the Act and EPA tampering prohibition as outlined in Memorandum No. 1A. Section 114.5(c) allows exclusion from tampering laws by petition to state for danger to person or property. The EPA has never recognized any circumstances that merit removal of a catalytic converter or other emissions controls because of a fire hazard or other problem. Again, this is contrary to the Act and EPA tampering prohibition. In addition, section 114.1(b)(3) references a deleted section and section 114.1(e) allows dispensing of leaded gasoline if properly labeled. The Act banned the dispensing of leaded gasoline on January 1, 1996.

III. Proposed Action

The EPA is proposing disapproval of the State submitted revisions received on February 21, 1989, September 20, 1990, and July 13, 1993, for Regulation IV, 30 TAC Chapter 114, sections 114.1 and 114.5. The EPA has evaluated the submitted rules and has determined that they are not consistent with the Clean Air Act, and EPA tampering prohibition.

The Regional office, with EPA's Office of Mobile Sources has initiated efforts to help ensure that this action is consistent with the Act and Memo 1A, and will not interfere with any applicable requirement concerning attainment or any other applicable requirement of the Act. These revisions are not required by the Act. Therefore, this proposed disapproval action does not impose sanctions for failure to meet Act requirements.

The EPA is soliciting public comments on the proposed action discussed in this document or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rule making procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this document.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. *See* 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

The EPA's disapproval of the State request under section 110 and subchapter I, part D of the Act does not affect any existing requirements applicable to small entities. Any preexisting Federal requirements remain in place after this disapproval. Federal disapproval of the State submittal does not affect its State-enforceability. Moreover, EPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements and impose any new Federal requirements.

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the disapproval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal disapproval action imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: August 11, 1997.

Jerry Clifford,

Acting Regional Administrator.

[FR Doc. 97–24242 Filed 9–11–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WT Docket No. 97–192; FCC 97–303]

Procedures for Reviewing Requests for Relief From State and Local Regulations Pursuant to Section 332(c)(7)(B)(v) of the Communications Act of 1934

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This *Notice of Proposed Rulemaking (NPRM)* in WT Docket No. 97–192, opens a new proceeding to establish procedures for filing and reviewing requests for relief from state or local regulations based directly or indirectly on the environmental effects of RF emissions.

DATES: Comments are due October 9, 1997. Reply comments are due October 24, 1997.

ADDRESSES: Office of the Secretary, Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Shaun A. Maher, Policy and Rules Branch, Commercial Wireless Division, Wireless Telecommunications Bureau, Federal Communications Commission, (202) 418–7240.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *NPRM*, WT Docket 97–192, FCC 97–303, adopted August 25, 1997, and released August 25, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and also may be

purchased from the Commission's duplication contractor, International Transcription Service, (202) 857–3800, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

Summary of the Notice of Proposed Rulemaking

I. Definitional Issues

1. In this proceeding, we seek comment on proposed procedures for filing and reviewing requests filed pursuant to section 332(c)(7)(B) (iv)–(v) of the Communications Act for relief from state or local regulations on the placement, construction or modification of personal wireless service facilities based either directly or indirectly on the environmental effects of RF emissions. As the siting of personal wireless facilities expands and numerous new personal wireless service providers seek to construct their facilities, we anticipate being called upon more frequently to review petitions alleging that a state or local government has acted or failed to act in a manner that is inconsistent with section 332(c)(7)(B) (iv)–(v). Therefore, we believe it is appropriate to initiate a rulemaking proceeding to seek comment on the procedures we should adopt for reviewing section 332(c)(7)(B) (iv)–(v) petitions.

2. On August 1, 1996, we issued our *Report and Order* in ET Docket No. 93–62, 61 FR 41006, August 7, 1996, wherein we revised our RF emissions guidelines in response to Congress' mandate in section 704(b) of the Telecommunications Act. In the *Report and Order*, we first considered the implementation of section 332(c)(7)(B)(iv) when we sought to determine the definition of the term ''personal wireless service facilities.'' Congress specifically defined this term in section 332(c)(7)(C)(i) of the Communications Act to mean: ''commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services.'' This section does not provide specific authority for the Commission to preempt state or local regulations relating to RF emissions of communications services other than those specifically defined in the statute. Therefore, we declined to consider the preemption of state and local regulations relating to RF emissions involving broadcast or other communications facilities.

3. The Electromagnetic Energy Association filed a petition for reconsideration of our Report and Order requesting that a broader RF preemption policy be adopted for all services. The *Second Memorandum Opinion and Order* in ET Docket No. 93–62, declined to take that approach or to consider granting relief from state and local regulations relating to RF emissions for facilities other than those of ''personal wireless services'' as set forth in section 332(c)(7)(B)(iv) of the Communications Act. Congress provided a clear definition of this term in section 332(c)(7)(C)(i) of the Communications Act, and we find that definition is appropriate when determining whether to consider a request for relief filed under section 332(c)(7)(B)(v) of the Communications Act.

4. As a preliminary matter, before considering procedures to review requests for relief under section 332(c)(7)(B)(v) of the Communications Act, we seek comment concerning the definition of certain terms contained in this section. For example, Congress did not define the terms ''final action'' or ''failure to act'' as they appear in section 332(c)(7)(B)(v) of the Communications Act. In the *Conference Report*, however, ''final action'' is defined as final administrative action at the state or local government level so that a party can commence action under section 332(c)(7)(B)(v) rather than waiting for the exhaustion of any independent remedy otherwise required. We understand this to mean that, for example, a wireless provider could seek relief from the Commission from an adverse action of a local zoning board or commission while its independent appeal of that denial is pending before a local zoning board of appeals. We propose to adopt this definition of ''final action'' for the purpose of determining whether a state or local regulation is ripe for review under section 332(c)(7)(B)(v) and we seek comment on this definition.

5. In addition, while Congress provided no specific definition of the term ''failure to act,'' under section 332(c)(7)(B)(ii) of the Communications Act, decisions regarding personal wireless service facilities siting are to be rendered in a reasonable period of time, taking into account the nature and scope of each request. If a request for placement of a personal wireless service facility involves a zoning variance or a public hearing or comment process, the *Conference Report* states that the time period for rendering a decision will be the usual period under such circumstances. Congress also stated that it did not intend to confer preferential treatment upon the personal wireless service industry in the processing of requests, or to subject that industry's requests to anything but the generally applicable time frames for zoning decisions. Therefore, we propose to determine whether a state or local government has ''failed to act'' on a case-by-case basis taking into account various factors including how state and local governments typically process other facility siting requests and other RF-related actions by these governments. We seek comment on the average length of time it takes to issue various types of siting permits, such as building permits, special or conditional use permits, and zoning variances and whether additional time is needed when such permits are subject to a formal hearing.

6. Furthermore, we seek comment on whether the Commission should grant relief from a final action or failure to act based only partially on the environmental effects of RF emissions. We believe that state and local regulations do not have to be based entirely on the environmental effects of RF emissions in order for decisions to be reviewed by the Commission. The *Conference Report* stated that, in order to be reviewed pursuant to section 337(c)(7)(B)(v) of the Communications Act, such regulations may be based either directly or indirectly on the environmental effects of RF emissions. However, the *Conference Report* did not define the term ''indirectly.'' We seek comment as to how we should define this term. We propose to examine such determinations on a case-by-case basis and to preempt, where applicable, only that portion of an action or failure to act that is based on RF emissions and to permit the adversely-affected party to seek relief from the remainder of the state or local regulation for which the Commission does not have authority to grant relief from the appropriate federal or state court. We may act in an advisory capacity in those areas where the Commission does not have specific preemption authority and provide the court with our expert opinion, as requested by the court or parties.

7. We tentatively conclude that we have the authority to review state and local regulations that appear to be based upon RF concerns but for which no formal justification is provided. For example, in response to the CTIA Letter, the WTB considered a hypothetical case where a county denied a wireless provider's application for a conditional use permit. A significant portion of the record in the hypothetical local proceeding centered on the environmental effects of RF emissions. Although the local government entity did not refer to these concerns in its decision denying the permit, it did reference community opposition which was largely based upon these concerns.

The WTB advised that, under the circumstances, the decision's citation to community opposition as a ground for denial suggested that the decision may, in fact, have been based on environmental concerns. To the extent that the evidence in such a hypothetical case established that the decision was based either directly or indirectly on such impermissible considerations and the evidence did not establish non-compliance with the Commission's regulations, the WTB believed that the decision would apparently be inconsistent with section 332(c)(7)(B)(iv). In addition, we note that, pursuant to section 332(c)(7)(B)(iii) of the Communications Act, state and local decisions concerning the siting of personal wireless facilities are to be in writing and supported by substantial evidence contained in a written record. Therefore, we seek comment on our tentative conclusion to grant relief to licensees or personal wireless service facilities from state and local regulations of personal wireless facilities based upon concerns of the environmental effects of RF emissions even if there is no formal justification provided for the decision if there is evidence to support the conclusion that concerns over RF emissions constituted the basis for the regulation.

8. Finally, we seek comment on whether our authority under section 332(c)(7)(B)(v) to preempt state and local actions that are based on concerns over RF emissions extends to private entities' efforts to limit the placement, construction, and modification of personal wireless service facilities. We recognize that wireless providers, especially new services such as the ''wireless local loop,'' may encounter restrictions by non-governmental entities, such as homeowner associations and private land covenants, that could prove to be an impediment to their ability to deploy their services. We seek to determine whether such entities would fall under the definition of ''state or local government or any instrumentality thereof'' as that term is used in section 332(c)(7)(B)(v) of the Communications Act and whether decisions by private entities should be subject to Commission review.

II. Demonstration of RF Compliance

9. Section 332(c)(7)(B)(iv) of the Communications Act states that ''[n]o state or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions.'' Neither the text of the Act nor the legislative history indicates to what extent localities are permitted to request that personal wireless service providers demonstrate compliance with our RF guidelines. LSGAC argues that Act preserves the authority of state and local governments to ensure that personal wireless service facilities comply with the Commission's RF emission regulations. We recognize that it is reasonable for state and local governments to inquire as to whether a specific personal wireless service facility will comply with our RF emissions guidelines. LSGAC contends that local officials must be able to assure their constituents that compliance with the Commission's RF regulations will be monitored. LSGAC recommends that the Commission adopt a mutually acceptable RF testing and documentation mechanism that providers and local authorities may use to demonstrate compliance with RF radiation limits. We tentatively agree with LSGAC's recommendation, however, we believe that there should be some limit as to the type of information that a state or local authority may seek from a personal wireless service provider. The type of information may vary depending upon how the personal wireless service facility is classified under our environmental rules. Under the procedural guidelines adopted in the *Report and Order* and modified in the *Second Memorandum Opinion and Order* in this proceeding, proposed wireless facilities may be considered either: (1) Environmental actions requiring the submission of an Environmental Assessment (EA); (2) actions that do not require such an assessment but nevertheless require routine RF emissions evaluation by the Commission; or (3) actions that are categorically excluded from routine RF emissions evaluation based upon their height above ground level or their low operating power. Facilities that are categorically excluded must comply with the substantive RF emissions guidelines; however, because they are extremely unlikely to cause routine exposure that exceeds the guidelines, applicants for such facilities are not required to perform any emissions evaluation as a condition of license, unless specifically ordered to do so by the Commission. Given these environmental classifications, we seek comment on two alternative showings that would be permissible for local and state governments to request personal wireless providers submit as part of the local approval process.

10. Under the first alternative, we propose a more limited showing. For personal wireless service facilities that were categorically excluded from routine Commission evaluation, state and local authorities would only be allowed to request that the personal wireless provider certify in writing that its proposed facility will comply with the Commission's RF emissions guidelines. In the case of facilities that were not categorically excluded, state or local authorities would be limited to requesting copies of any and all documents related to RF emissions submitted to the Commission as part of the licensing process. We seek comment on this limited showing and how a state or local authority would be able to seek relief from a licensee that falsely certifies its facility complies or will comply with our RF emissions guidelines.

11. Alternatively, we ask for comment on whether to adopt a more detailed showing. We believe, however, that this alternative can be workable only if we adopt uniform standards for such a demonstration that would be regarded as sufficient by all state and local governments for demonstrating compliance with the RF guidelines. We propose, once again, for facilities that were not categorically excluded, that state or local authorities would be limited to requesting copies of any and all documents related to RF emissions submitted to the Commission as part of the licensing process. For facilities that were categorically excluded, we propose that the state and local governments be permitted to request that the personal wireless service provider submit a demonstration of compliance. We ask for comments on the criteria for such a demonstration of compliance. We seek to develop a showing that would impose a minimal burden on service providers, while satisfying legitimate state and local government interests. In addition, we seek to determine which party should be required to pay for the preparation of the demonstration of compliance. LSGAC contends that local taxpayers should not bear the costs of investigations taken by state and local governments to determine compliance with the Commission's RF regulations.

12. While this proceeding is pending, we believe that it would be beneficial to personal wireless service providers and state and local governments for us to provide some policy guidance as to what information we believe a carrier should be obligated to provide to demonstrate to localities that its ''facilities comply with the

Commission's regulations concerning such (RF) emissions'' as stated in section 332(c)(7)(B)(iv) of the Communications Act. We therefore are providing a non-binding policy statement as to the circumstances in which we would be less likely to find such information requests to be inconsistent with section 332(c)(7)(B)(iv). We believe that such a statement will provide much needed guidance to state and local governments on the issue of RF compliance and would greatly expedite the siting of personal wireless service facilities pending our adoption of final rules herein. We are concerned that state and local governments may delay the siting of facilities based upon concerns about the effects of RF emissions and a carrier's compliance with our RF guidelines. As the record in the RF emissions proceeding indicated, several states have been adopting their own RF regulations in an effort to resolve these concerns. As a result of such actions, wireless facilities that otherwise comply with federal RF emissions guidelines are experiencing delays as state and local officials search for methods to assess such compliance. Conversely, personal wireless service providers cite to our RF rules and conclude that they should not be required to submit any information about RF compliance as part of the local approval process. Therefore, we believe that providing guidance as to the types of RF information a state or local government may request will provide both sides a much-needed measure of certainty because state and local governments would know certain types of RF information they could request in this interim period without concern that their actions would be subsequently preempted by the Commission. Similarly, personal wireless service providers would understand what we believe is reasonable for state and local governments to request.

13. We believe that, pending adoption of final rules, we would not preempt state and local government requests that personal wireless service providers submit, as part of their application to place, construct, or modify a personal wireless service facility, the more detailed demonstration of RF compliance set forth in our second alternative above. However, at the present time, we believe that this level of information should be the most that a state or local government should be permitted to request and we would be likely to find that information requests that exceed this level are inconsistent with section 332(c)(7)(B)(iv) of the Communications Act. The type of demonstration that could be requested by the state or local government would depend on how the facility was classified under the Commission's environmental categories. For those facilities that are not categorically excluded from routine environmental processing, as set forth in § 1.1306 of the rules, we would be less likely to preempt state or local authorities that simply request copies of all environmental documents, such as the Environmental Assessment or evaluation, that were submitted to the Commission as part of the licensing process. For those facilities that were categorically excluded, we would be less likely to preempt state and local authorities that simply request that the personal wireless service provider submit a uniform demonstration of compliance with the Commission's RF guidelines. We believe that a uniform demonstration of compliance should consist of a written statement signed by the personal wireless service provider or its representative and should conform to our rules on truthfulness of written statements, subscription and verification. We believe that the following information should also be contained in the uniform demonstration of RF compliance to be filed for facilities that were categorically excluded:

(1) A statement that the proposed or existing transmitting facility does or will comply with FCC radio frequency emission guidelines for both general population/uncontrolled exposures and occupational/controlled exposures as defined in the rules.

(2) A statement or explanation as to how the personal wireless service provider determined that the transmitting facility will comply, e.g., by calculational methods, by computer simulations, by actual field measurements, etc. Actual values for predicted exposure should be provided to further support the statement. An exhaustive record of all possible exposure locations is not necessary, but, for example, the ''worst case'' exposure value in an accessible area could be mentioned as showing that no exposures would ever be greater than that level. Reference should be given to the actual FCC exposure limit or limits relevant for the particular transmitting site.

(3) An explanation as to what, if any, restrictions on access to certain areas will be maintained to ensure compliance with the public or occupational exposure limits. This includes control procedures that are established for workers who may be exposed as a result of maintenance or other tasks related to their jobs.

(4) A statement as to whether other significant transmitting sources are located at or near the transmitting site, and, if required by the rules, whether their RF emissions were considered in determining compliance at the transmitting site.

14. We stress that the above-outlined policies concerning the demonstration of RF compliance are non-binding and are merely provided as guidance pending the final outcome of this proceeding. Should a state or local government request that a personal wireless service provider submit RF information that is consistent with our above-outlined policies, we would be less likely to find its action to be inconsistent with section 332(c)(7)(B)(iv) of the Communications Act. However, we stress that we will continue to evaluate each request for relief that is filed concerning state and local RF regulations and we will determine, on a case by-case basis, whether such regulations are consistent with section 332(c)(7)(B)(iv).

15. In addition, we seek comment as to whether the more detailed showing that we proposed as one of the two alternatives above should include the above outlined criteria. We believe that the criteria set forth above should provide sufficient information to constitute the more detailed showing of RF compliance while imposing a minimum burden on personal wireless service providers. We seek to determine whether additional information, not currently included above, is necessary to demonstrate compliance or whether any of the above-outlined elements are too broad or unnecessary.

III. General Procedures for Reviewing Requests for Relief

16. We seek comment on the following proposed procedures for reviewing requests for relief filed under section 332(c)(7)(B)(v) of the Communications Act. We propose that parties seeking relief file a request for declaratory ruling pursuant to § 1.2 of the Commission's Rules, asking that the Commission review the state or local regulation and grant appropriate relief. Sections 1.45 through 1.49 of the Commission's Rules, concerning the filing of pleadings and responsive pleadings, shall be applicable with respect to such requests. We propose that a copy of the request be served on the state or local authority that took the action or failed to take the action against which relief is sought.

17. We also seek comment on the following method for providing comment on such requests. We seek comment on whether we should limit participation in the proceeding to only those interested parties able to demonstrate standing to participate in the proceeding. Section 332(c)(7)(B)(v) of the Communications Act states that requests for relief may be filed by any ''person adversely affected.'' We seek comment on the definition of ''person

adversely affected.'' and how we should determine whether an entity has standing to participate in the preemption proceeding. We find that limiting the number of parties participating in the proceeding to only those that are ''adversely affected'' will reduce the possibility of frivolous filings, and expedite the processing of preemption requests. We seek comment on this proposed procedure.

IV. Rebuttable Presumption of Compliance

18. We tentatively conclude that we should adopt a rebuttable presumption that would operate when reviewing requests for relief from state and local actions under section 332(c)(7)(B)(v). Under such a procedure, we would presume that personal wireless facilities will comply with our RF emissions guidelines. The state or local government would have the burden of overcoming this presumption by demonstrating that the facility in question does not or will not, in fact, comply with our RF guidelines. We believe that such a presumption would be consistent with Commission practice. Generally, we presume that licensees are in compliance with our rules unless presented with evidence to the contrary. In addition, applicants for personal wireless services must certify in their applications that they will comply with all of the Commission's rules, including the RF guidelines. With respect to providers of ''unlicensed wireless services,'' we tentatively conclude that it would be consistent with Commission practice to presume that they are in compliance with our RF guidelines because such providers must employ type-accepted equipment that complies with our RF guidelines. Therefore, we seek comment on whether we should presume that personal wireless facilities are in compliance with our RF guidelines, and whether we should grant relief from state or local actions that prevent the construction of such facilities when such actions are based on RF concerns. We remain sensitive, of course, to the concerns of state and local governments and we encourage state and local governments to submit comments explaining how such a presumption might effect them. We encourage state and local governments, including LSGAC, to file comments on the NPRM. We specifically request comment in the interest of minimizing any potential adverse affect the establishment of a rebuttable presumption may have on state and local authorities' ability to ensure the health and safety of their citizens.

19. We have utilized a rebuttable presumption in other contexts similar to this one. In our proceeding concerning preemption of local zoning regulation of satellite earth stations, we adopted a rebuttal presumption that state and local regulation of small antennas is presumed unreasonable. If the state or local government objects to a request to preempt its action, then it is permitted to rebut the presumption by demonstrating the necessity of the regulation for health and safety reasons. In the rulemaking we conducted concerning access to telecommunications equipment and services by persons with disabilities, we adopted a rebuttable presumption that, by a date certain, all workplace non-common area telephones would be hearing aid compatible. We found that the rebuttable presumption approach would relieve employers of the need to field-test and identify whether their telephones are hearing aid compatible. This presumption can be rebutted, on a telephone-by-telephone basis, by any person legitimately on the premises who identifies a particular telephone as non-hearing aid compatible. Finally, in our proceeding concerning the improvement of the quality of the AM broadcast service, we adopted a rebuttable presumption of compliance with our newly-adopted emission limits and we did not require that AM station licensees conduct periodic emission measurements. However, this presumption could be rebutted by technical evidence (e.g., spectrum analyzer measurement results) of non-compliance. In each of these cases, we adopted a presumption and then permitted the presumption to be rebutted when presented with contrary evidence. We seek comment as to whether we should adopt a similar rebuttable presumption for consideration of preemption requests filed pursuant to section 332(c)(7)(B)(v) of the Communications Act.

V. Operation of Presumption

20. We recognize that some wireless services are licensed on a geographic area basis only and that our wireless rules do not provide for the licensing of individual tower or antenna facilities. There may be a concern that individual facilities do not, in fact, comply with our RF guidelines. Moreover, certain personal wireless services may be provided via low-power, unlicensed devices. Therefore, we believe that it is appropriate to permit interested parties to rebut the presumption of compliance. We seek comment on the procedures we should adopt to permit the presentation of such a rebuttal showing. We propose limiting the consideration of such presentations to only those parties that are able to demonstrate that they are ''interested parties'' or that otherwise demonstrate that they have standing to participate in the proceeding. We propose that, in order to rebut the presumption, interested parties would bear the initial burden of proof and would be required to demonstrate that a particular facility does not in fact comply with our RF limits. Such a demonstration of noncompliance could include, but would not be limited to: (1) The interested party demonstrating that the personal wireless service provider is or would be operating without a valid Commission authorization; (2) the interested party submitting an Environmental Assessment with detailed RF measurements or calculations that demonstrates that the Commission's RF exposure guidelines for controlled or uncontrolled environments is or would be exceeded in the disputed area, or (3) the interested party demonstrating that the licensee's operation otherwise may not comply with the Commission's RF exposure guidelines. The Commission shall examine this showing and determine whether the interested party has made a *prima facie* case for noncompliance. If the interested party fails to make a *prima facie* case for noncompliance, then we would preempt the state or local regulation. If a *prima facie* case for noncompliance is made, then the burden of proof would shift to the personal wireless provider to demonstrate that its facility would comply with the RF limits. Should we find that the facility in question does not comply with our RF limits or should the personal wireless service provider fail to respond, we would not grant relief from the state or local regulation and we would initiate an enforcement proceeding to ensure compliance with our RF guidelines. If, after examination of the personal wireless service provider's response, we find that the facility does comply with our RF limits, then we would preempt the state or local regulation. Should the personal wireless provider modify its facility to comply with the RF emissions guidelines, we propose allowing the provider to file subsequent requests for relief. In addition, we tentatively propose that both the wireless provider and the interested parties be permitted to seek review of final Commission and delegated authority actions taken pursuant to section 332(c)(7)(B)(v) of the Communications Act via the review procedures set forth in our rules and the

Communications Act. We seek comment on these procedures.

21. We believe that allowing interested parties to rebut the presumption of compliance will provide a balanced method for resolving section 332(c)(7)(B)(v) proceedings. We seek comment as to whether such a procedure is appropriate and whether there are other methods an interested party might employ to demonstrate its contention that a personal wireless facility does not or will not comply with the RF emissions guidelines.

22. We believe that the procedures we propose herein provide a fair and balanced approach to reviewing requests for relief from state and local regulations based on the effects of RF emissions filed pursuant to section 332(c)(7)(B)(v) of the Communications Act. These procedures, if adopted, would provide interested parties with the opportunity to present their views to the Commission and for the Commission to carefully review requests for relief in an expedited fashion. We view this proceeding as another important step in our ongoing efforts to assist in the resolution of state and local disputes concerning the siting of personal wireless service facilities and to provide expert guidance and input on these important matters.

VI. Procedural Matters

i. Regulatory Flexibility Act

23. An Initial Regulatory Flexibility Analysis for the *NPRM* in WT Docket No. 97–192 appears below. As required by section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Commission has prepared the Initial Regulatory Flexibility Analysis of the expected impact on small entities of the proposals suggested in this document. Written public comments are requested on the Initial Regulatory Flexibility Analysis. In order to fulfill the mandate of the Contract with America Advancement Act of 1996 regarding the Final Regulatory Flexibility Analysis we ask a number of questions in our Initial Regulatory Flexibility Analysis regarding the prevalence of small businesses that may be impacted by the proposed procedures. Comments on the Initial Regulatory Flexibility Analysis must be filed in accordance with the same filing deadlines as comments on the *NPRM*, but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Secretary shall send a copy of this *NPRM*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 603(a).

24. As required by section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Commission has prepared an 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* as provided in the *NPRM*.

25. Reason for Action: This rulemaking proceeding was initiated to secure comment on procedures for reviewing requests for relief of State and local regulations concerning the siting of personal wireless service facilities that are based on the environmental effects of RF emissions pursuant to section 332(c)(7)(B)(v) of the Communications Act. This section of the Communications Act was created with the passage of section 704 the Telecommunications Act of 1996.

26. Objectives: The procedures set forth in the *NPRM* are designed to provide a balanced method for reviewing requests for relief and to ensure that personal wireless service providers are permitted to seek the full relief afforded them under the Communications Act. At the same time, the Commission seeks to provide an opportunity for interested parties to argue that a specific wireless facility will not comply with the Commission's RF guidelines. In addition, the Commission believes that the procedures adopted as a result of this proceeding will allow for expedited review of requests for relief, as well as, much-needed guidance on this important issue.

27. Legal Basis: The proposed action is authorized under sections 4(i), 303(g), 303(r) and 332(c)(7) of the Communications Act of 1934, as amended.

28. Reporting, Recordkeeping, and Other Compliance Requirements: The proposals under consideration in the *NPRM* include the possibility of imposing a new filing requirement for parties seeking relief pursuant to section 332(c)(7)(B)(v) of the Communications Act. The filing requirement would be used to determine whether to grant relief from the State or local regulation in question. This filing will be in the form of a request for declaratory ruling filed pursuant to § 1.2 of the Commission's Rules. Only interested parties or those parties demonstrating the requisite standing will be permitted to participate in the proceeding. The *NPRM* also seeks comment on whether to adopt either a simple certification of compliance or more detailed demonstration of compliance that personal wireless service providers will be required to submit to State and local governments as evidence of RF emissions compliance.

29. We estimate that the average burden on the party seeking relief will be approximately two hours to prepare the request for relief and file it with the Commission. We estimate an equal amount of time for the State or local authority or other interested party (referred to jointly herein as the ''respondents'') to prepare and file their comments on and/or oppositions to the preemption request. We estimate that 75 percent of both the requesting parties and the respondents (which may include small businesses) will contract out the burden of preparing their filings. We estimate that it will take approximately 1 hour to coordinate information with those contractors. The remaining 25 percent of parties filing requests and respondents (which may include small businesses) are estimated to employ in-house staff to provide the information. We estimate that parties requesting relief and respondents that contract out the task of preparing their filings will use an attorney or engineer (average $200 per hour) to prepare the information.

30. We estimate that the average burden on the party required to prepare a simple certification of RF compliance to be less than one hour. We estimate that the average burden on the party required to prepare a more detailed demonstration of RF compliance to be approximately 5 hours. We estimate that 75 percent of these parties (which may include small businesses) will contract out the burden of preparing their filings. We estimate that it will take approximately 1 hour to coordinate information with those contractors. The remaining 25 percent of parties (which may include small businesses) are estimated to employ in-house staff to provide the information. We estimate that parties that contract out the task of preparing their filings will use an engineer (average $200 per hour) to prepare the information.

31. Federal Rules Which Overlap, Duplicate or Conflict With These Rules: section 332(c)(7)(B)(iv)-(v) provides the authority for the Commission to consider requests for relief of state and local actions.

32. Description, Potential Impact, and Number of Small Entities Involved: The proposed rules in this NPRM will apply to all small businesses which avail themselves of these new procedures,

including small businesses defined as providers of ''personal wireless services'' that seek relief from State and local regulations based upon the environmental effects of RF emissions. The Commission is required to estimate in its Final Regulatory Flexibility Analysis the number of small entities to which these new procedures will apply, provide a description of these entities, and assess the impact of the rule on such entities. To assist the Commission in this analysis, commenters are requested to provide information regarding how many total providers of ''personal wireless services,'' existing and potential, will be considered small businesses. ''Small business'' is defined as having the same meaning as the term ''small business concern'' under the Small Business Act. Based on that statutory provision, we will consider a small business concern one which (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). We seek comment as to whether this definition is appropriate in this context. Additionally, we request each commenter to identify whether it is a small business under this definition. If the commenter is a subsidiary of another entity, this information should be provided for both the subsidiary and the parent corporation or entity.

33. The Commission has not yet developed a definition of small entities which respect to reviewing requests for relief pursuant to section 332(c)(7)(B)(v) of the Communications Act. Therefore, the applicable definition of small entity is the definition under the SBA applicable to the ''Communications Services, Not Elsewhere'' category. The Census Bureau estimates indicate that of the 848 firms in the ''Communications Services, Not Elsewhere'' category, 775 are small businesses. While the Commission anticipates receiving requests for relief filed pursuant to section 332(c)(7)(B)(v) of the Communications Act, it is not possible to predict how many will be filed or what percentage of these will be filed by small entities.

Cellular Radio Telephone Service

34. 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 Small Business Administration (SBA) rules applicable to radiotelephone companies. This definition provides that a small entity is a radiotelephone company employing fewer than 1,500 persons. The 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 500 or more employees. We therefore used the 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, which is the most recent information available. That census shows that only 12 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 12 of these large firms were cellular telephone companies, all of the remainder were small businesses under the SBA's definition. We assume that, for purposes of our evaluations and conclusions in this IRFA, all of the current cellular licensees are small entities, as that term is defined by the SBA. Although there are 1,758 cellular licenses, we do not know the number of cellular licensees, since a cellular licensee may own several licenses.

35. The rules we are proposing would permit a cellular licensee to seek relief from the Commission for an adverse State or local regulation that is based upon environmental effects of RF emissions. Since most cellular licensees have constructed their facilities, we anticipate receiving only a small number of such requests from cellular licensees and that all of these would be small entities.

Personal Communications Service

36. The broadband PCS spectrum is divided into six frequency blocks designated A through F. Pursuant to 47 CFR 24.720(b), the Commission has defined ''small entity'' for Blocks C and F licensees as firms that had average gross revenues of less than $40 million in the three previous calendar years. This regulation defining ''small entity'' in the context of broadband PCS auctions has been approved by the SBA.

37. The Commission has auctioned broadband PCS licenses in all of its spectrum blocks A through F. We do not have sufficient data to determine how many small businesses under the Commission's definition bid successfully for licenses in Blocks A and B. As of now, there are 90 non-defaulting winning bidders that qualify as small entities in the Block C auction and 93 non-defaulting winning bidders that qualify as small entities in the D, E, and F Block auctions. Based on this information, we conclude that the number of broadband PCS licensees that would be affected by the proposals in this *NPRM* includes the 183 non-defaulting winning bidders that qualify as small entities in the C, D, E and F Block broadband PCS auctions.

38. The Commission expects to receive a significant number of requests for relief filed pursuant to section 332(c)(7)(B)(v) involving broadband PCS licensee, many of whom may be small entities. However, it is not possible to estimate the exact number that will be filed.

Paging and Radiotelephone Service, and Paging Operations

39. Since the Commission has not yet approved a definition for paging services, we will utilize the SBA's definition applicable to radiotelephone companies, i.e., an entity employing less than 1,500 persons.

40. The Commission anticipates that a total of 15,531 non-nationwide geographic area licenses will be granted or auctioned. The geographic area licenses will consist of 3,050 MTA licenses and 12,481 EA licenses. In addition to the 47 Rand McNally MTAs, the Commission is licensing Alaska as a separate MTA and adding three MTAs for the U.S. territories, for a total of 51 MTAs. No auctions of paging licenses has been held yet, and there is no basis to determine the number of licenses that will be awarded to small entities. Given the fact that nearly all radiotelephone companies have fewer than 1,000 employees, and that no reliable estimate of the number of prospective paging licensees can be made, we assume, for purposes of this IRFA, that all the 15,531 geographic area paging licenses will be awarded to small entities, as that term is defined by the SBA.

41. We estimate that a significant number of paging licensees may file requests for relief pursuant to section 332(c)(7)(B)(v) and that all of these will be small entities.

Specialized Mobile Radio

42. Pursuant to 47 CFR 90.814(b)(1), the Commission has defined ''small entity'' for geographic area 800 MHz and 900 MHz SMR licenses as firms that had average gross revenues of less than $15 million in 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.

43. The proposals set forth in the *NPRM* apply to SMR providers in the 800 MHz and 900 MHz bands. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service, nor how many of these providers have annual revenues of less than $15 million. Furthermore, we are not able to estimate how many SMR

providers will seek preemption pursuant to section 332(c)(7)(B)(v) of the Communications Act.

44. The Commission recently held auctions for geographic area licenses in the 900 MHz SMR band. There were 60 winning bidders who qualified as small entities under the Commission's definition in the 900 MHz auction. Based on this information, we conclude that the number of geographic area SMR licensees affected by the proposals set forth in this *NPRM* includes these 60 small entities.

45. No auctions have been held for 800 MHz geographic area SMR licenses. Therefore, no small entities currently hold these licenses. A total of 525 licenses will be awarded for the upper 200 channels in the 800 MHz geographic area SMR auction. However, the Commission has not yet determined how many licenses will be awarded for the lower 230 channels in the 800 MHz geographic area SMR auction. There is no basis to estimate, moreover, how many small entities within the SBA's definition will win these licenses. Given the facts that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective 800 MHz licensees can be made, we assume, for purposes of our evaluations and conclusions in this IRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

Unlicensed Personal Communications Services and Wireless Exchange Access Carriers

46. Section 332(c)(7)(C)(i) of the Communications Act includes ''unlicensed wireless services'' and ''common carrier wireless exchange access services'' in the definition of ''personal wireless services'' for which relief may be sought under section 332(c)(7)(B)(v). We presently have no data on the number of providers of unlicensed wireless services or common carrier wireless exchange access services.

47. Significant Alternatives Minimizing the Impact on Small Entities Consistent with the Stated Objectives: The proposals advanced in the *NPRM* are designed to permit personal wireless service providers with the opportunity to seek relief pursuant to section 332(c)(7)(B)(v) of the Communications Act. The impact on small entities in the proposals in the *NPRM* is the opportunity to seek such relief. These procedures were designed to have a minimal impact on all personal wireless providers, including small entities, and to provide for a balanced and expedited method for reviewing such requests. The Commission believes that such procedures shall help to attain the Congressional objective of ensuring that small businesses have an opportunity to participate in the provision of wireless services by enabling small businesses to overcome entry barriers in the provision of such services.

48. This *NPRM* solicits comments on a variety of proposals discussed herein. Any significant alternatives presented in the comments will be considered.

ii. Ex Parte Rules—Non-Restricted Proceedings

49. 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 the Commission's rules. See generally 47 CFR §§ 1.1201, 1203, and 1.1206(a).

iii. Comment Dates

Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415 and 1.419, interested parties may file comments to the *NPRM* on or before October 9, 1997, and reply comments on or before October 24, 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 should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center of the Federal Communications Commission, Room 239, 1919 M Street, N.W., Washington, D.C. 20554.

51. Parties are encouraged to submit comments and reply comments on diskette for possible inclusion on the Commission's Internet site so that copies of these documents may be obtained electronically. Such diskette submissions would be in addition to and not a substitute for the formal filing requirements presented above. Parties submitting diskettes should submit them to Shaun A. Maher, Esq., Policy & Rules Branch, Commercial Wireless Division, Wireless Telecommunications Bureau, 2100 M Street, N.W., 7th Floor—Room 93, Washington, D.C. 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible form using Word Perfect 5.1 for Windows software. The diskette should be submitted in ''read only'' mode, and should be clearly labelled with the party's name, proceeding, type of pleading (comment or reply comment) and date of submission.

iv. Initial Paperwork Reduction Act of 1995 Analysis

52. The *NPRM* contains either a proposed or modified information collection. As part of its continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget 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 on or before 60 days after the publication 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.

53. Written comments by the public on the proposed and/or modified information collections are due October 14, 1997. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before 60 days after the publication in the **Federal Register**. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to both of the following: Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to jboley@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, DC 20503 or via the Internet at fain__t@al.eop.gov. For additional information regarding the information collections contained herein, contact Judy Boley above.

v. Ordering Clauses

54. *It is ordered* That, pursuant to the authority of sections 4(i), 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C.

sections 154(i), 303(g), 303(r), and 332(c)(7), a notice of proposed rulemaking is hereby adopted.

55. *It is further ordered* That the petition for rulemaking of the Cellular Telecommunications Industry Association, filed December 22, 1994 (RM–8577), is hereby Dismissed.

vi. Further Information

56. For further information concerning the *NPRM,* contact Shaun A. Maher, Esq. at (202) 418–7240, internet: smaher@fcc.gov, Policy & Rules Branch, Commercial Wireless Division, Wireless Telecommunications Bureau, Federal Communications Commission, Washington, D.C. 20554.

List of Subjects in 47 CFR Part 1

Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–24166 Filed 9–11–97; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 54 and 69

[CC Docket No. 97–181; FCC 97–316]

Defining Primary Lines

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: As a result of reforms adopted to implement the Telecommunications Act of 1996, our access charge rules require incumbent LECs subject to the Commission's price cap rules to charge subscriber line charges (SLCs) and presubscribed interexchange carrier charges (PICCs) at different levels for secondary residential and multi-line business lines. This NPRM considers how Commission should define and identify primary lines for the purposes of implementing the Commission's access charge rules.

DATES: Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before September 25, 1997, and reply comments on or before October 9, 1997. Written comments by the public on the proposed and/or modified information collections are due September 25, 1997. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before November 12, 1997.

ADDRESSES: Parties should send their comments or reply comments to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554. Parties filing on paper should also send three (3) copies of their comments to Sheryl Todd, Federal Communications Commission, Accounting and Audits Division, Universal Service Branch, 2100 M Street, N.W., Room 8611, Washington, DC 20554. Parties filing in paper form should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 1231 20th Street, NW, Washington, D.C. 20036. See **SUPPLEMENTARY INFORMATION** section for further information about filing comments and reply comments electronically.

In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to jboley@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, DC 20503 or via the Internet to fain__t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: Valerie Yates, Legal Counsel, Common Carrier Bureau, (202) 418–1500, or Sheryl Todd, Common Carrier Bureau, (202) 418–7400. For additional information concerning the information collections contained in this NPRM contact Judy Boley at 202–418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

1. This NPRM contains either a proposed or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the 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 notification of action is due 60 days from date of 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.

OMB Approval Number: None, new information collection.

Title: In the Matter of Federal-State Joint Board on Universal Service, Defining Primary Lines, Notice of Proposed Rulemaking, CC Docket No. 97–181.

Form No.: None.

Type of Review: New collection.

Respondents: Business or other for-profit.

Frequency of Response: On occasion; one-time requirement.

Proposed collection	No. of respondents	Est. time per response	Total annual burden	Est. costs per respondent
(a.) Request by ILEC to consumer	164	100	16,400	1,6400.00
(b.) Response by consumer to identify primary line	149,141,075	[1].083	12,378,709	0.00
(c.) Disclosure statement	164	100	16,400	0.00
(d.) Recordkeeping	164	50	8,200	286,040.00

[1] 5 min.

Total Annual Burden: 12,419,709 hours.

Needs and Uses: The information collections proposed in this NPRM are necessary to fully implement the rules the Commission adopted in its *Universal Service Order* and *Access Charge Reform Order* because, without a definition and a means of identifying and verifying primary residential lines, incumbent LECs subject to Commission price cap regulation will not be able to