

of accreditation. For assessment of telecommunications equipment, the areas of expertise to be used during the assessment shall include, but not be limited to electromagnetic compatibility and telecommunications equipment (wired and wireless).

8. A new Section 68.232 is added to read as follows:

*Section 68.232 Requirements for Telecommunication Certification Bodies*

Telecommunication certification bodies designated by the FCC, or designated by another authority pursuant to an MRA, must comply with the following criteria.

(a) Certification Methodology

(1) The certification system shall be based on type testing as identified in sub-clause 1.2(a) of ISO/IEC Guide 65.

(2) Certification shall normally be based on testing no more than one unmodified representative sample of each product type for which certification is sought. Additional samples may be requested if clearly warranted, such as in cases where certain tests are likely to render a sample inoperative.

(b) Criteria for Designation

(1) To be designated as a telecommunication certification body under this section, the body must, by means of accreditation, meet all the appropriate specifications in ISO/IEC Guide 65 for the scope of equipment it is to certify. The scope of accreditation shall specify the group of equipment to be certified and the applicable regulations.

(2) The telecommunication certification body must demonstrate expert knowledge of the regulations for each product with respect to which the body seeks designation. Such expertise must include familiarity with all applicable technical regulations, administrative provisions or requirements, as well as the policies and procedures used in the application thereof.

(3) The telecommunication certification body shall have the technical expertise and capability to test the equipment it will certify and must also be accredited in accordance with ISO/IEC Guide 25 to demonstrate it is competent to perform such tests.

(4) The prospective telecommunication certification body must demonstrate an ability to recognize situations where interpretations of the regulations or test procedures may be necessary. The appropriate key certification and laboratory personnel must demonstrate a knowledge of how to obtain current and correct technical regulation interpretations. The competence of the telecommunication certification body shall be demonstrated by assessment. The general competence, efficiency, experience, familiarity with technical regulations and products included

in those technical regulations as well as compliance with applicable parts of the ISO/IEC Guides 25 and 65 shall be taken into consideration.

(5) A telecommunication certification body shall participate in any consultative activities, announced by the Commission or NIST, to establish to facilitate a common understanding and interpretation of applicable regulations.

(c) Sub-contracting

(1) In accordance with the provisions of sub-clause 4.4 of ISO/IEC Guide 65, the testing of a product, or a portion thereof, may be performed by a sub-contractor of a designated telecommunication certification body, including a supplier's laboratory, provided the laboratory has been assessed by the telecommunication certification body in accordance with ISO/IEC Guide 25, or has been accredited to ISO/IEC Guide 25.

(2) When a subcontractor is used, the telecommunication certification body remains responsible for the tests and must maintain appropriate oversight of the subcontractor to ensure reliability of the test results. Such oversight must include periodic audits of products that have been tested.

(d) Procedures for Designation

(1) NIST will give 30 days for notice and comment before accrediting a prospective TCB. In the case of a foreign TCB, the foreign Designating Authority will provide 30 days for the prospective TCB to be designated in accordance with the MRA.

(2) In case of concern raised during the 30 day comment period, the Commission and NIST will allow sufficient opportunity for the Designating Authority and prospective TCB to provide comments before a decision will be made on the designation of the TCB.

(3) A list of designated TCBs will be published by the Commission.

(f) Post-certification requirements

(1) A TCB shall supply an electronic copy of each approved certification application to the Commission.

(2) In accordance with ISO/IEC Guide 65, the TCB is required to conduct appropriate surveillance activities. These activities shall be based on type testing a few samples of the total number of product types which the certification body has certified. Other types of surveillance activities of a product that has been certified are permitted, provided they are no more onerous than testing type. The importing party may at any time request a list of products certified by the certification body and may request and receive copies of product evaluation reports.

(3) If during post market surveillance of a certified product, a certification body determines that a product fails to comply with the applicable technical regulations, the certification body shall immediately notify the supplier and the appropriate importing party. A follow-up report shall also be provided within thirty days of the action taken by the supplier to correct the situation.

(4) Where concerns arise, the TCB shall provide a copy of the product evaluation report within 30 calendar days upon request by the Commission to the TCB and the manufacturer. If the certification report is not provided within 30 calendar days, a statement shall be provided to the Commission as to why such a report cannot be provided. This could be grounds for revocation of the product certification.

(g) In case of dispute with respect to designation or recognition of a TCB and the testing or certification of products by a TCB, the Commission will be the final arbiter. Manufacturers and designated TCBs will be afforded the opportunity to comment before a decision is reached. In the case of a TCB designated or recognized, or a product certified pursuant to a bilateral or multilateral mutual recognition agreement or arrangement (MRA), the FCC may limit or withdraw its recognition of a TCB designated by an MRA party and revoke the certification of products using testing or certification provided by such a TCB. The FCC shall consult with the Office of the United States Trade Representative (USTR), as necessary, concerning any problems arising under an MRA for the USTR's investigation or review under the Telecommunications Trade Act of 1998 (Section 1371-1382 of the Omnibus Trade and Competitiveness Act of 1988).

## APPENDIX B

## INITIAL REGULATORY FLEXIBILITY ANALYSIS

As required by the Regulatory Flexibility Act (RFA),<sup>34</sup> the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this *NPRM*.<sup>35</sup> Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on this *NPRM* provided above. The Commission will send a copy of this *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. See 5 U.S.C. § 603(a). In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the Federal Register. See *id.*

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

The Commission is proposing to amend Parts 2, 25 and 68 of the rules to provide the option of private sector approval of equipment that currently requires an approval by the Commission. We are also proposing rule changes to implement a Mutual Recognition Agreement (MRA) for product approvals with the European Community (EC) and to allow for similar agreements with other foreign trade parties. These actions would eliminate the need for manufacturers to wait for approval from the Commission before marketing equipment in the United States, thereby reducing the time needed to bring a product to market. We are also proposing an interim procedure to issue equipment approvals for Global Mobile Personal Communication for Satellite (GMPCS) terminals prior to domestic implementation of the GMPCS-MOU Arrangements.<sup>36 37</sup> That action would benefit manufacturers of GMPCS terminals by allowing greater worldwide acceptance of their products.

---

<sup>34</sup> See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

<sup>35</sup> 1998 Biennial Review -- Amendment of Parts 2, 25 and 68 of the Commission's Rules to Further Streamline the Equipment Authorization Process for Radio Frequency and Telephone Terminal Equipment and to Implement Mutual Recognition Agreements.

<sup>36</sup> "Global Mobile Personal Communications by Satellite" (GMPCS) service is defined in the 1996 Final Report of the World Telecommunications Policy Forum as: "any satellite system, (i.e., fixed or mobile, broadband or narrow-band, global or regional, geostationary or non-geostationary, existing or planned) providing telecommunication services directly to end users from a constellation of satellites."

<sup>37</sup> The GMPCS MOU and Arrangements are intended to allow the worldwide transport and use of GMPCS equipment. They are described in more detail in the Notice.

**B. Legal Basis**

The proposed action is authorized under Sections 4(i), 301, 302, 303(e), 303(f), 303(r), 304 and 307 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 301, 302, 303(e), 303(f), 303(r), 304 and 307.

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

Under the RFA, small entities may include small organizations, small businesses, and small governmental jurisdictions. 5 U.S.C. § 601(6). The RFA, 5 U.S.C. § 601(3), generally defines the term "small business" as having the same meaning as the term "small business concern" under the Small Business Act, 15 U.S.C. § 632. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA"). This standard also applies in determining whether an entity is a small business for purposes of the RFA.

The Commission has not developed a definition of small entities applicable to RF Equipment Manufacturers. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to manufacturers or "Radio and Television Broadcasting and Communications Equipment." According to the SBA's regulation, an RF manufacturer must have 750 or fewer employees in order to qualify as a small business.<sup>38</sup> Census Bureau data indicates that there are 858 companies in the United States that manufacture radio and television broadcasting and communications equipment, and that 778 of these firms have fewer than 750 employees and would be classified as small entities.<sup>39</sup> We believe that many of the companies that manufacture RF equipment may qualify as small entities.

The Commission has not developed a definition of small manufacturers of telephone terminal equipment. The closest applicable definition under SBA rules is for manufacturers of telephone and telegraph apparatus (SIC 3661), which defines a small manufacturer as one having 1,000 or fewer employees.<sup>40</sup> According to 1992 Census Bureau data, there were 479 such manufacturers, and of those, 436 had 999 or fewer employees, and 7 had been between 1,000 and

---

<sup>38</sup> See 13 C.F.R. § 121.201, Standard Industrial Classification (SIC) Code 3663.

<sup>39</sup> See U.S. Department of Commerce, 1992 Census of Transportation, Communications and Utilities (issued May 1995), SIC category 3663.

<sup>40</sup> 13 C.F.R. § 121.201, SIC 3661.

1,499 employees.<sup>41</sup> We estimate that there fewer than 443 small manufacturers of terminal equipment that may be affected by the proposed rules.

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

We are proposing to allow designated Telecommunication Certification Bodies (TCBs) in the United States to issue equipment approvals. Applicants for equipment authorization may apply either to the FCC or to a TCB, and they will be required to submit the same application form and exhibits that the rules currently require.

We are also proposing to carry out a mutual recognition agreement with the European Community that will permit certain equipment currently required to be authorized by the FCC to be authorized instead by TCBs in Europe. As with TCBs in the United States, applicants would be required to submit the same application form and exhibits they do now.

We are proposing that TCBs submit a copy of each approved application to the FCC. Applications for equipment authorization under Part 2 of the rules will be sent and stored electronically using the new OET electronic filing system. Paper copies of Part 68 applications will be required, since there is not yet an electronic filing system for those applications. However, we are requesting comments on alternatives to these proposals.

We are also proposing to require equipment authorization for mobile transmitters used in the Global Mobile Personal Communications by Satellite (GMPCS) service. This will require manufacturers to file an application and technical exhibits to the FCC or a designated TCB and wait for an approval before the equipment can be marketed. While this action would impose a new authorization requirement, it should ultimately reduce the burden on manufacturers. Under the terms of the GMPCS MOU and Arrangements, the single approval obtained in the United States could eliminate the need to obtain approvals from multiple other countries.

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

Certain equipment that uses radio frequencies must be approved by the Commission before it can be marketed. Allowing parties other than the Commission to certify equipment would provide manufacturers with alternatives where they could possibly obtain certification faster than available from the Commission. Further, by providing for other product certifiers, manufacturers would have the option of obtaining certification from a facility in a more convenient location. An additional benefit of allowing other parties to certify equipment would be a reduction in the number of applications filed with the Commission. This would enable us

---

<sup>41</sup> 1992 Economic Census, Industry and Employment Size of Firm, Table 1D (data prepared by U.S. Census Bureau under contract to the U.S. Small Business Administration)

to redirect resources to enforcement of the rules. Finally, allowing equipment to be certified by parties located in other countries is an essential and necessary step for concluding mutual recognition agreements. Therefore, we are proposing to allow private organizations to certify equipment as an alternative to certification by the Commission.

**Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rule:**

None.

**Separate Statement of Commissioner Harold W. Furchtgott-Roth****In re: Notice of Proposed Rule Making****1998 Biennial Regulatory Review -- Amendment of Parts 2, 25 and 68 of the Commission's Rules to Further Streamline the Equipment Authorization Process for Radio Frequency and Telephone Terminal Equipment and to Implement Mutual Recognition Agreements**

I support adoption of this NPRM. In my view, any reduction of unnecessary regulatory burdens is beneficial. To that extent, this item is good and I am all for it. This item should not, however, be mistaken for compliance with Section 11 of the Communications Act.

As I have explained previously, I question whether the FCC is prepared to meet its statutory obligation to review all of the regulations covered by Section 11 in 1998. *See generally 1998 Biennial Regulatory Review -- Review of Computer III and ONA Safeguards and Requirements*, 12 FCC Rcd \_\_ (Jan. 29, 1998). To my knowledge, the FCC has no plans to review affirmatively *all* regulations applicable to the operations or activities of telecommunications providers and to make specific findings as to their continued necessity. Nor has the Commission issued general principles to guide our "public interest" analysis and decision-making process across the wide range of FCC regulations.

\* \* \* \* \*