

and, should submit materials for review by the State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO) and the Commission. In addition, the draft Nationwide Agreement includes provisions for emergency situations;<sup>12</sup> inadvertent or post-review discovery of adverse effects on historic properties; construction prior to completion of the section 106 process; public comments; and amendment or termination of the Agreement. Finally, the Nationwide Agreement proposes to prescribe two standardized forms for making submissions to the SHPO or THPO.

10. The Commission further proposes to amend § 1.1307(a)(4) in order to make clear that the procedures in the Nationwide Agreement will be binding on applicants, and that non-compliance with these procedures would subject a party to potential enforcement action by the Commission. Specifically, § 1.1307(a)(4) would be amended to specify that in order to ascertain whether a proposed action may affect properties that are listed or eligible for listing in the National Register,<sup>13</sup> an Applicant shall follow the procedures set forth in the rules of the Council, as modified and supplemented by the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas, 66 FR 17554, April 2, 2001, and this Nationwide Agreement.

#### D. Legal Basis

11. We tentatively conclude that we have authority under sections 1, 4(i), 301, 303(q), 303(r), 309(a), 309(j), and 319 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 301, 303(q), 303(r), 309(a), 309(j), and 319, section 106 of the National Historic Preservation Act of 1966, 16 U.S.C. 470f, and § 800.14(b) of the rules of the Advisory Council on Historic Preservation, 36 CFR 800.14(b), to adopt the proposals set forth in the *NPRM*.

<sup>12</sup> The draft Nationwide Agreement outlines the manner in which applicants should complete section 106 reviews in those circumstances when emergency service is needed in a specific location.

<sup>13</sup> "Listed" properties are those properties for which an application for inclusion in the National Register of Historic Places ("National Register") has been approved. Under § 800.16(l)(2) of the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.16(l)(2), the term "eligible for inclusion in the National Register" includes both properties formally determined as such by the Keeper of the National Register in accordance with applicable regulations of the Secretary of the Interior and all other properties that meet the National Register criteria. Information on the characteristics of properties that meet these criteria is available at the National Register web site: <http://www.cr.nps.gov/nr>.

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

12. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by proposed rules.<sup>14</sup> The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."<sup>15</sup> In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.<sup>16</sup> 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).<sup>17</sup>

13. The draft Nationwide Agreement and *NPRM* could result in rule changes that, if adopted, would impose requirements on entities that may construct facilities that may significantly affect the environment under § 1.1307 of the Commission's rules. This includes various classes of Commission licensees as well as non-licensee tower owners. To assist the Commission in analyzing the total number of potentially 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 *NPRM*.

#### Wireless Telecommunications

14. *Cellular Licensees.* The SBA has developed a small business size standard for small businesses in the category "Cellular and Other Wireless Telecommunications."<sup>18</sup> Under that SBA category, a business is small if it has 1,500 or fewer employees.<sup>19</sup> According to the Bureau of the Census, only twelve firms from a total of 1238 cellular and other wireless telecommunications firms operating during 1997 had 1,000 or more

employees.<sup>20</sup> Therefore, even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition.

15. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the definition under the SBA rules applicable to "Cellular and Other Wireless Telecommunication" companies. This category provides that a small business is a wireless company employing no more than 1,500 persons.<sup>21</sup> According to the Bureau of the Census, only twelve firms from a total of 1238 cellular and other wireless telecommunications firms operating during 1997 had 1,000 or more employees.<sup>22</sup> If this general ratio continues in 2003 in the context of Phase I 220 MHz licensees, we estimate that nearly all such licensees are small businesses under the SBA's small business standard.

16. *220 MHz Radio Service—Phase II Licensees.* The Phase II 220 MHz service is subject to spectrum auctions. In the *220 MHz Third Report and Order*, we adopted a small business size standard for defining "small" and "very small" businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.<sup>23</sup> This small business standard indicates that a "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding

<sup>20</sup> U.S. Department of Commerce, U.S. Census Bureau, 1997 Economic Census, Information—Subject Series, Establishment and Firm Size, Table 5—Employment Size of Firms Subject to Federal Income Tax at 64, NAICS code 517212 (October 2000).

<sup>21</sup> 13 CFR 121.201.

<sup>22</sup> U.S. Department of Commerce, U.S. Census Bureau, 1997 Economic Census, Information—Subject Series, Establishment and Firm Size, Table 5—Employment Size of Firms Subject to Federal Income Tax at 64, NAICS code 517212 (October 2000).

<sup>23</sup> Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220–222 MHz Band by the Private Land Mobile Radio Service, PR Docket No. 89–552, *Third Report and Order*, 12 FCC Rcd 10943, 11068–70, paras. 291–295 (1997) (*220 MHz Third Report and Order*).

<sup>14</sup> 5 U.S.C. 604(a)(3).

<sup>15</sup> 5 U.S.C. 601(6).

<sup>16</sup> 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**."

<sup>17</sup> 15 U.S.C. 632.

<sup>18</sup> 13 CFR 121.201, North American Industry Classification System (NAICS) code 517212.

<sup>19</sup> *Id.*