

Should these devices be exempt from the TPC requirement?

22. The NPRM seeks comment on appropriate test procedures needed to ensure compliance with the DFS and TPC requirements proposed in this proceeding. It notes that the operational requirements for DFS are well defined in the applicable industry standards.⁵ It particularly seeks comment on means by which devices can be tested for compliance with TPC requirements to implement reduced power without placing unnecessary restrictions on device design. It also seeks comment on the extent to which devices under development with unique and novel transmission waveforms may require special measurement instrumentation settings (e.g., integration times) that differ from those used for measuring compliance for existing U-NII band devices.

23. U-NII devices currently operate in the 5.250–5.350 GHz band without DFS capability. As a result, some period of time will be needed to implement the new DFS requirement for U-NII equipment operating in the 5.250–5.350 GHz band. The NPRM proposes that the DFS requirement for the 5.250–5.350 GHz band effective for U-NII equipment that is certified after one year from the date of publication of the Report and Order in this proceeding in the **Federal Register**. It also proposes to require that all U-NII devices operating in the 5.250–5.350 GHz band that are imported or shipped in interstate commerce on or after three years from the date the adopted rules are published in the **Federal Register** comply with these standards. The Commission believes that most affected products will be redesigned within this three-year time frame and that compliance with this proposal would not cause an unreasonable burden on industry. Comments are requested on these proposed transition provisions. The NPRM proposes that U-NII equipment operating in the new spectrum at 5.470–5.725 GHz meet all the technical requirements, including DFS and TPC, on the effective date of these rules.

B. Legal Basis

24. This action is taken pursuant to sections 1, 4, 301, 302(a), 303, 307, 309, 316, 332, 334, and 336 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 301, 302(a), 303, 307, 309, 316, 332, 334, and 336.

⁵ See *supra* note 36.

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

25. 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 the proposed rules, if adopted.⁶ The RFA defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small business concern” under Section 3 of the Small Business Act.⁷ Under the Small Business Act, a “small business concern” is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operations; and (3) meets any additional criteria established by the Small Business Administration (SBA).⁸

26. A small organization is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”⁹ Nationwide, as of 1992, there were approximately 275,801 small organizations.¹⁰ The term “small governmental jurisdiction” is defined as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”¹¹ As of 1997, there were approximately 87,453 governmental jurisdictions in the United States.¹² This number includes 39,044 counties, municipal governments, and townships, of which 27,546 have populations of fewer than 50,000 and 11,498 counties, municipal governments, and townships have populations of 50,000 or more. Thus, we estimate that the number of small governmental jurisdictions is approximately 75,955 or fewer.

27. The Commission has not developed a definition of small entities applicable to unlicensed communications devices manufacturers. Therefore, we will utilize the SBA definition application to manufacturers of Radio and Television Broadcasting and Communications Equipment. According to the SBA regulations, unlicensed transmitter manufacturers must have 750 or fewer employees in order to qualify as a small business

concern.¹³ Census Bureau indicates that there are 858 U.S. companies that manufacture radio and television broadcasting and communications equipment, and the 778 of these firms have fewer than 750 employees and would be classified as small entities.¹⁴ We do not believe this action would have a negative impact on small entities that manufacture unlicensed U-NII devices. Indeed, we believe the actions should benefit small entities because it should make available increased business opportunities to small entities. We request comment on these assessments.

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

28. Part 15 transmitters are already required to be authorized under the Commission's certification procedures as a prerequisite to marketing and importation. Under the proposals in the NPRM, manufacturers will be required to demonstrate that U-NII devices operating in the bands 5.250–5.350 GHz and 5.470–5.725 GHz have Dynamic Frequency Selection Capabilities. Additionally, U-NII devices operating in the 5.470–5.725 GHz band must exhibit Transmit Power Control capabilities. The reporting and recordkeeping requirements associated with these equipment authorizations would not be changed by the rule revisions proposed in this NPRM.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

29. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.¹⁵

¹³ See 13 CFR 121.20 NAICS Code 33420 (SIC Code 3663). Although SBA now uses the NAICS classifications, instead of SIC, the size standard remains the same.

¹⁴ See U.S. Dept. of Commerce, 1992 census of Transportation, Communications and Utilities (issued May 1995), SIC category 3663 (NAICS Code 34220).

¹⁵ 5 U.S.C. 603(c).

⁶ See U.S.C. 603(b)(3).

⁷ *Id.* 601(3).

⁸ *Id.* 632.

⁹ 5 U.S.C. 601(4).

¹⁰ 1992 Economic Census, U.S. Bureau of the Census. Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

¹¹ 5 U.S.C. 601(5).

¹² 1995 Census of Governments, U.S. Census Bureau, United States Department of Commerce, Statistical Abstract of the United States (2000).