

Responsiveness Summary, which was included as part of the ROD.

On September 30, 1992, EPA issued a ROD for the Site, on which the State gave its concurrence. The ROD embodies EPA's decision on the remedial action for the entire Site. The ROD presents the selected remedial action for the Site, chosen in accordance with CERCLA, as amended by Superfund Amendments and Reauthorization Act (SARA), and, to the extent practicable, the NCP, 40 CFR part 300. The ROD is supported by an administrative record that contains the documents and information upon which EPA based the selection of the response action.

Current Status

Based on the Responsible Parties' successful completion of: (1) excavation and disposal of the lead-contaminated soils and the asbestos-contaminated materials and soils; (2) the disposal of the separator and its contents; and (3) the expedited landfarming of the hydrocarbon-contaminated soils and sludges, EPA has determined that no further CERCLA actions are necessary to address the surface of the Site for the protection of human health and the environment. On August 22, 1996, EPA issued a Superfund Preliminary Site Closeout Report documenting that construction of the remedy for the Prewitt Refinery Site was completed in accordance with OSWER Directive 9320.2-09. Confirmation sampling indicates that the remedial action goals and objectives set forth in the ROD have been met for the surface portion of the Site.

While EPA does not believe that any future response actions for the surface portion of the Site will be needed, if future conditions warrant such action, the surface areas which EPA proposes to delete from the NPL remain eligible for future Fund-financed response actions. Furthermore, this partial deletion does not alter the status of the subsurface portion of the Site which is not proposed for deletion and remains on the NPL.

EPA, with concurrence from the State of New Mexico and the Navajo Nation, has determined that all appropriate CERCLA response actions have been completed for the surface portion of the Site, and that protection of human health and the environment has been achieved in the surface areas of the Site. Therefore, EPA makes this proposal to delete only the surface portion of the Prewitt Abandoned Refinery Superfund Site from the NPL.

Dated: July 7, 1997.

Lynda F. Carroll,

Acting Regional Administrator, U.S. Environmental Protection Agency, Region 6.

Appendix A—Docket Information

Deletion Docket—Notice of Intent for Partial Deletion of the Prewitt Abandoned Refinery Superfund Site, Prewitt, New Mexico, surface portion, from the Superfund National Priorities List

- Prewitt Abandoned Refinery Superfund Site Administrative Record Index: September 30, 1992.
- Unilateral Administrative Order Docket Number 6-17-93 for the performance of the Remedial Design and Remedial Action at the Prewitt Abandoned Refinery Superfund Site: May 14, 1994.
- Remedial Design and Specifications for the surface remediation component: January 1995.
- Remedial Design for the landfarm: October 1995.
- Remedial Action Work Plan: January 1996.
- Construction Completion Report: July 1996.
- Remedial Action Completion Report for the surface remediation component: March 1996
- Superfund Preliminary Closeout Report: August 22, 1996.
- Remedial Action Completion Report for the landfarm: February 1997
- Concurrence letter dated November 12, 1996, from the State of New Mexico through the New Mexico Environment Department agreeing with EPA's proposal to delete the surface portion of the Site from the National Priorities List.
- Concurrence letter dated March 4, 1997, from the Navajo Nation through the Navajo Nation Superfund Office agreeing with EPA's proposal to delete the surface portion of the Site from the National Priorities List.
- Notice of Intent for Partial Deletion of the surface portion of the Prewitt Abandoned Refinery Superfund Site, surface portion only, from the National Priorities List.

Appendix B—Site Coordinates

1. 35°26' 55.30" North Latitude—108°01' 56.99" West Longitude
 2. 35°26' 45.62" North Latitude—108°02' 02.50" West Longitude
 3. 35°25' 33.05" North Latitude—107°57' 58.08" West Longitude
 4. 35°25' 07.99" North Latitude—107°58' 15.40" West Longitude
 5. 35°26' 49.34" North Latitude—108°02' 49.01" West Longitude
 6. 35°26' 29.31" North Latitude—108°03' 05.30" West Longitude
 7. 35°25' 24.04" North Latitude—108°02' 56.81" West Longitude
 8. 35°24' 47.46" North Latitude—108°02' 09.29" West Longitude
 9. 35°23' 49.20" North Latitude—107°59' 33.66" West Longitude
 10. 35°25' 10.10" North Latitude—107°58' 49.16" West Longitude
- [FR Doc. 97-26185 Filed 10-3-97; 8:45 am]
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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PR Docket No. 93-61, FCC 97-305]

Automatic Vehicle Monitoring Systems

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In the *Further Notice of Proposed Rule Making* ("FNPRM"), the Commission proposes rules and procedures governing competitive bidding for multilateration Location and Monitoring Service ("LMS") frequencies.

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 November 5, 1997, and reply comments on or before November 20, 1997.

ADDRESSES: To file formally in this proceeding, interested parties must file an original and four copies of all comments, reply comments, and supporting comments. If parties want each Commissioner to receive a personal copy of comments, an original plus nine copies must be filed. Comments and reply comments must be sent to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: David Furth or Linda Chang at (202) 418-0620.

SUPPLEMENTARY INFORMATION: This summarizes the Commission's *Further Notice of Proposed Rule Making* in FCC 97-305, PR Docket No. 93-61, adopted August 28, 1997, and released September 16, 1997. The complete text of this FNPRM is available for public inspection and copying during normal business hours in the FCC Dockets Branch, Room 239, 1919 M Street N.W., Washington, D.C. 20036. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20036 (telephone number: (202) 857-3800). 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.

Synopsis of Further Notice of Proposed Rule Making

I. Competitive Bidding for Multilateration LMS Licenses

1. In the *LMS Report and Order*, PR Docket No. 93-61, 60 FR 15248 (March 23, 1995), the Commission decided to use competitive bidding to select from mutually exclusive applications for multilateration LMS licenses. The Commission reached this decision based on its conclusion that the statutory criteria for auctioning licenses, which are set forth in section 309(j) of the Communications Act, 47 U.S.C. 309(j), are satisfied. More specifically, the Commission found (1) that its decision to offer multilateration LMS licenses on an exclusive basis makes it likely that mutually exclusive applications for such licenses will be filed; (2) that multilateration LMS licenses will be used principally to offer for-profit, subscriber-based services; and, (3) that the use of competitive bidding for these licenses will promote the public interest objectives set forth in section 309(j)(3).

2. Under the spectrum plan the Commission adopted in the *LMS Report and Order*, and reaffirms in the *Memorandum Opinion & Order*, PR Docket No. 93-61, FCC 97-305 three blocks of spectrum are allocated to multilateration LMS systems: (1) 904.000-909.750 MHz and 927.750-928.000 MHz; (2) 919.750-921.750 MHz and 927.500-927.750 MHz; and, (3) 921.750-927.250 MHz and 927.250-927.500 MHz. One license will be awarded for each of these spectrum blocks in each of 176 EAs and EA-like areas. Thus, there are a total of 528 multilateration LMS licenses to be auctioned.

3. The Commission anticipates conducting the auction for multilateration LMS frequencies in conformity with the general competitive bidding rules proposed to be included in part 1, subpart Q of the Commission's Rules, and substantially consistent with the auctions that have been employed in other wireless services. Amendment of part 1 of the Commission's Rules—Competitive Bidding, Order, *Memorandum Opinion and Order and Notice of Proposed Rule Making*, WT Docket No. 97-82, 62 FR 13540 (March 21, 1997). The Commission proposes to adopt for the LMS auction the simultaneous multiple round competitive bidding design used in the PCS auctions. Multiple round bidding should provide more information to bidders than single round bidding during the auction about the values of the licenses. The Commission seeks comment on this proposal. The

Commission also tentatively concludes that the LMS auction will follow the general competitive bidding procedures of part 1, subpart Q. The Commission seeks comment on this tentative conclusion.

4. *Small Businesses*. The Commission's auction rules for other services generally include special provisions—such as bidding credits and installment payments—designed to fulfill its statutory mandate to ensure that small businesses have the opportunity to participate in the provision of spectrum-based services. In the *Second Memorandum Opinion and Order* in the competitive bidding docket, the Commission indicated that it would establish definitions for "small business" on a service-by-service basis. *Second Memorandum Opinion and Order*, PP Docket No. 93-253, 59 FR 44272 (August 26, 1994). The Commission therefore seeks comment regarding the establishment of a small business definition for multilateration LMS. Commenters should discuss the level of capital commitment that is likely to be required to purchase a multilateration LMS license at auction and create a viable business. The Commission also seeks comment on what small business provisions should be offered to multilateration LMS small business entities. Its goal, should the Commission adopt a special provision(s) for one or more categories of small businesses, will be to remove entry barriers so as to ensure the participation of small businesses in the auction and in the provision of service. If the Commission adopts special provisions for small businesses, the Commission proposes that its unjust enrichment rules apply as set forth in part 1, subpart Q. 47 CFR 1.2111.

5. In other services the Commission also adopted attribution rules for purposes of determining small business status. The Commission tentatively concluded that for LMS the Commission should attribute the gross revenues of all controlling principals in the small business applicant as well as its affiliates. The Commission seeks comment on this tentative conclusion. The Commission also seeks comment on whether small business provisions are sufficient to promote participation by businesses owned by minorities, women, or rural telephone companies. To the extent that commenters propose additional provisions to ensure participation by minority-owned or women-owned businesses, the Commission asks them to address how such provisions should be crafted to meet the relevant standards of judicial review.

6. *Partitioning and Disaggregation*. The Commission proposes to allow multilateration LMS licensees to partition their geographic license area and disaggregate portions of their spectrum. The Commission anticipates that this will, among other things, help to remove entry barriers for small businesses. The Commission seeks comment on this proposal.

7. If the Commission determines that special provisions for small business are appropriate for LMS auctions, the Commission tentatively concludes that a qualified small business that applies to partition or disaggregate its license to a non-small business entity should be required to repay any benefits it received from special small business provisions. The Commission seeks comment on the type of unjust enrichment requirements that should be placed as a condition for approval of an application to partition or disaggregate a license owned by a qualified small business licensee to a non-small business entity. This could include, for example, repayment of any bidding credit that the Commission may adopt for small businesses, and would be applied on a proportional basis. Similarly, if a small business licensee partitions or disaggregates to another qualified small business that would not qualify for the same level of bidding credit, the transferring licensee should be required to repay a portion of the benefit it received. The Commission seeks comment on these tentative conclusions. Alternatively, the Commission seek comment on whether the Commission should restrict the partitioning or disaggregation of such licenses when the partitionee or disaggregatee is not within the definition of an entity eligible for such special provisions, or whether, at some point (e.g., a term of years), such restriction on partitioning and disaggregation be removed and the unjust enrichment provisions would apply. The Commission also seeks comment on how such unjust enrichment amounts should be calculated, especially in light of the difficulty of devising a methodology or formula that will differentiate the relative market value of the opportunities to provide service to various partitioned areas or to use the amount of spectrum disaggregated.

II. Procedural Matters and Ordering Clauses

8. *Ex Parte* Rules—Non-Restricted Proceeding. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine

Agenda period, provided they are disclosed as provided in Commission Rules. See generally 47 CFR 1.1202, 1.1203, 1.1206.

9. *Initial Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act, 3 U.S.C. § 603, the Commission has prepared an Initial Regulatory Flexibility Analysis of the expected impact on small entities of the policies and rules proposed and adopted in the Further Notice section of the *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*. Written public comments are requested on the IRFA and must be filed by the deadlines for comments on the *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*.

10. *Reason for Action:* This *FNPRM* was initiated to secure comment on proposals for revising rules for the auction of multilateration Location and Monitoring Service frequencies. Such changes to the rules for multilateration LMS would promote efficient licensing and enhance the service's competitive potential in the Commercial Mobile Radio Service marketplace. The adopted and proposed rules are based on the competitive bidding authority of section 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. § 309(j), which authorized the Commission to use auctions to select among mutually exclusive initial applications in certain services, including multilateration LMS.

11. *Objectives of this Action:* The Omnibus Budget Reconciliation Act of 1993 (Budget Act), Public Law 103-66, Title VI, § 6002, and the subsequent Commission actions to implement it are intended to establish a system of competitive bidding for choosing among certain applications for initial licenses, and to carry out statutory mandates that certain designated entities, including small businesses, are afforded an opportunity to participate in the competitive bidding process and in the provision of multilateration LMS services.

12. *Legal Basis:* The proposed action is authorized under the Budget Act and in sections 4(i), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r) and 309(j).

13. *Reporting, Recordkeeping, and Other Compliance Requirements:* The Commission does not anticipate any additional reporting or recordkeeping requirements resulting from this *FNPRM*.

14. *Federal Rules Which Overlap, Duplicate or Conflict With These Rules:* None.

15. *Description, Potential Impact, and Number of Small Entities Involved:* The *FNPRM* would establish certain multilateration LMS spectrum blocks for bidding by smaller entities as well as larger entities, and would grant special provisions to certain eligible entities bidding within those blocks. The Commission is required to estimate in its Final Regulatory Flexibility Analysis the number of small entities to which a rule will apply, provide a description of such 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 entities, existing and potential, would be affected by the proposed rules in the *FNPRM*. In particular, the Commission seeks estimates of how many such entities will be considered small businesses.

16. *Geographic Partitioning and Spectrum Disaggregation.* The partitioning and disaggregation rule changes proposed in this proceeding will affect all small businesses which avail themselves of these rule changes, including small businesses currently holding multilateration LMS licenses who choose to partition and/or disaggregate and small businesses who may acquire licenses through partitioning and/or disaggregation.

17. The Commission is required to estimate in its Final Regulatory Flexibility Analysis the number of small entities to which a rule will apply, provide a description of such 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 entities, existing and potential, would be affected by the proposed rules in the *FNPRM*. In particular, the Commission seeks estimates of how many such entities will be considered small businesses. As explained in the Final Regulatory Flexibility Analysis for the *Memorandum Opinion and Order*, the Commission is utilizing the SBA definition applicable to radiotelephone companies, *i.e.*, an entity employing less than 1,500 persons.¹ The Commission seeks comment on whether this definition is appropriate for multilateration LMS licensees in this context. Additionally, the Commission requests each commenter to identify whether it is a small business under this definition. If a commenter is a subsidiary of another entity, this information should be provided for both

the subsidiary and the parent corporation or entity.

18. The number of small entities that will be affected is unknown. New entrants could obtain multilateration LMS licenses through the competitive bidding procedure, and take the opportunity to partition and/or disaggregate a license or obtain an additional license through partitioning or disaggregation. Additionally, entities that are neither incumbent licensees nor geographic area licensees could enter the market by obtaining a multilateration LMS license through partitioning or disaggregation. The Commission cannot estimate how many licensees or potential licensees could take the opportunity to partition and/or disaggregate a license or obtain a license through partitioning and/or disaggregation, because it has not yet determined the size or number of multilateration LMS licenses that will be granted in the future. Given the fact that nearly all wireless communications companies have fewer than 1,000 employees, and that no reliable estimate of the number of future multilateration LMS licensees can be made, the Commission assumes for purposes of the IRFA that all of the licenses will be awarded to small businesses. It is possible that a significant number of the potential licensees who could take the opportunity to partition and/or disaggregate a license or who could obtain a license through partitioning and/or disaggregation will be small businesses.

19. *Any Significant Alternatives Minimizing the Impact on Small Entities Consistent with the Stated Objectives:* With respect to partitioning and disaggregation, the Commission tentatively concludes that unjust enrichment provisions should apply when a licensee has benefitted from the small business provisions in the auction rules and applies to partition or disaggregate a portion of the geographic license area to another entity that would not qualify for such benefits. The alternative to applying the unjust enrichment provisions would be to allow an entity who had benefitted from the special bidding provisions for small businesses to become unjustly enriched by partitioning or disaggregating a portion of their license area to parties that do not qualify for such benefits.

20. The *FNPRM* proposes certain provisions for smaller entities designed to ensure that such entities have the opportunity to participate in the competitive bidding process and in the provision of multilateration LMS services. Any significant alternatives

¹ 13 CFR 121.201, Standard Industrial Classification Code 4812.

presented in the comments will be considered.

21. *IRFA Comments.* The Commission requests written public comment on the foregoing Initial Regulatory Flexibility Analysis. Comments must have a separate and distinct heading designating them as responses to the IRFA and must be filed by the deadlines provided in the *Memorandum and Order/Further Notice of Proposed Rulemaking*.

22. *Paperwork Reduction.* The *FNPRM* has been analyzed with respect to the Paperwork Reduction Act of 1995 and was found to impose no new or modified information collection requirement on the public.

Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget, as prescribed by the Act.

23. *Authority.* This action is taken pursuant to sections 4(i), 5(b), 5(c)(1), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 155(b), 156(c)(1), 303(r), and 309(j).

Federal Communications Commission.

William F. Caton,

Acting Secretary.

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DEPARTMENT OF AGRICULTURE

48 CFR Parts 426 and 452

[AGAR Case 96-01]

RIN 0599-AA00

Office of Procurement and Property Management; Agriculture Acquisition Regulation; Preference for Selected Biobased Products

AGENCY: Office of Procurement and Property Management, USDA.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document invites written comments on a proposed amendment to the Department of Agriculture's Acquisition Regulation (AGAR). We are proposing to amend the AGAR to establish policy and procedures for set-asides and preferences for products developed with assistance provided by the Alternative Agricultural Research and Commercialization Corporation (AARC).

DATES: Submit comments on or before December 5, 1997.

ADDRESSES: Submit written comments to U.S. Department of Agriculture, Office of Procurement and Property Management, Procurement Policy

Division, STOP 9303, 1400 Independence Avenue SW, Washington, DC 20250-9303. See **SUPPLEMENTARY INFORMATION** section for electronic access addresses for comments.

FOR FURTHER INFORMATION CONTACT: J. R. Holcombe, Jr., (202) 720-8484.

SUPPLEMENTARY INFORMATION:

I. Background

II. Procedural Requirements

A. Executive Order Nos. 12866 and 12988.

B. Regulatory Flexibility Act.

C. Paperwork Reduction Act.

III. Public Comments

IV. Electronic Access Addresses

I. Background

The AGAR implements the Federal Acquisition Regulation (FAR) (48 CFR Ch. 1) where further implementation is needed, and supplements the FAR when coverage is needed for subject matter not covered by the FAR. This proposed rule would amend the AGAR to establish acquisition preferences for selected biobased products; i.e., nonfood, nonfeed products made from agricultural and forestry materials and animal by-products (AGAR Case 96-01).

The Alternative Agricultural Research and Commercialization Corporation (AARC), a wholly-owned government corporation of the Department of Agriculture (USDA), provides financial assistance to private companies and other parties to commercialize biobased products. Section 1665 of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 5909), added by section 729 of the Federal Agricultural Improvement and Reform Act of 1996, authorizes Federal executive agencies to establish set asides and preferences for biobased products that have been commercialized with assistance provided by AARC. Pursuant to the authority provided by Section 1665, USDA proposes to add subpart 426.70 to the AGAR to establish policies and procedures for AARC preferences and set-asides.

The following changes to the AGAR are proposed:

(a) AGAR part 426 is proposed to be added, with a subpart 426.70, Preference for Selected Biobased Products. This proposed subpart establishes policy and procedures for preferences and set-asides for products developed with AARC assistance.

(b) Provisions 452.226-70, Preferred Products, 452.226-71, Set-aside for Mandatory Products, and 452.226-72, Price Preference for Award, are proposed to be added to AGAR part 452.

II. Procedural Requirements

A. Executive Order Nos. 12866 and 12988

A work plan was prepared for this proposed regulation and submitted to the Office of Management and Budget pursuant to Executive Order No. 12866. The proposed rule has been determined to be not significant for the purposes of Executive Order No. 12866. Therefore, the proposed rule has not been reviewed by the Office of Management and Budget. This rule has been reviewed in accordance with Executive Order No. 12988, Civil Justice Reform. The proposed rule meets the applicable standards in section 3 of Executive Order No. 12988.

B. Review Under the Regulatory Flexibility Act

This rule was reviewed under the Regulatory Flexibility Act, 5 U.S.C. 601-611, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. USDA certifies that this proposed rule will not have a significant economic effect on a substantial number of small entities, and, therefore, no regulatory flexibility analysis has been prepared. However, comments from small entities concerning parts affected by the proposed rule will be considered. Such comments must be submitted separately and cite 5 U.S.C. 609 (AGAR Case 96-01) in correspondence.

C. Paperwork Reduction Act

No information collection or recordkeeping requirements are imposed on the public by this proposed rule. Accordingly no OMB clearance is required by section 350(h) of the Paperwork Reduction Act, 44 U.S.C. 3501, et. seq., or OMB's implementing regulation at 5 CFR Part 1320.

III. Public Comments

Interested persons are invited to participate in this rule making by submitting views and comments with respect to the proposed AGAR revision set out in this notice. All written comments will be carefully assessed and fully considered prior to publication of the final rule.

IV. Electronic Access Addresses

You may submit comments by sending electronic mail (E-mail) to RHOLCOMBE@USDA.GOV, or via fax at (202) 720-8972.