

Federal Communications Commission.

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**FEDERAL COMMUNICATIONS  
COMMISSION**

**47 CFR Parts 1, 2 and 25**

[ET Docket No. 10-142; FCC 10-126]

**Fixed and Mobile Services in the  
Mobile Satellite Service**

**AGENCY:** Federal Communications  
Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to take a number of actions to further the provision of terrestrial broadband services in the MSS bands. In the 2 GHz MSS band, the Commission proposes to add co-primary Fixed and Mobile allocations to the existing Mobile-Satellite allocation. This will lay the groundwork for providing additional flexibility in use of the 2 GHz spectrum in the future. The Commission also proposes to apply the terrestrial secondary market spectrum leasing rules and procedures to transactions involving terrestrial use of the MSS spectrum in the 2 GHz, Big LEO, and L-bands in order to create greater certainty and regulatory parity with bands licensed for terrestrial broadband service. The Commission also asks, in a Notice of Inquiry, about approaches for creating opportunities for full use of the 2 GHz band for stand-alone terrestrial uses. The Commission requests comment on ways to promote innovation and investment throughout the MSS bands while also ensuring market-wide mobile satellite capability to serve important needs like disaster recovery and rural access.

**DATES:** Comments must be filed on or before September 15, 2010, and reply comments must be filed on or before September 30, 2010.

**ADDRESSES:** You may submit comments, identified by ET Docket No. 10-142, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Federal Communications Commission's Web site:* <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.
- *E-mail:* [Optional: Include the E-mail address only if you plan to accept comments from the general public].

Include the docket number(s) in the subject line of the message.

- *Mail:* [Optional: Include the mailing address for paper, disk or CD-ROM submissions needed/requested by your Bureau or Office. Do not include the Office of the Secretary's mailing address here.]

- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone: 202-418-0530 or TTY: 202-418-0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** of this document.

**FOR FURTHER INFORMATION CONTACT:** Nicholas Oros, Office of Engineering and Technology, (202) 418-0636, e-mail: [Nicholas.Oros@fcc.gov](mailto:Nicholas.Oros@fcc.gov), TTY (202) 418-2989.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Notice of Proposed Rule Making and Notice of Inquiry*, ET Docket No. 10-142, FCC 10-126, adopted July 15, 2010 and released July 15, 2010. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY-A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room, CY-B402, Washington, DC 20554. The full text may also be downloaded at: <http://www.fcc.gov>.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121, May 1, 1998.

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/> or the Federal eRulemaking Portal: <http://www.regulations.gov>.

- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two

additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW., Room TW-A325, Washington, DC 20554. The filing hours are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington, DC 20554.

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**Summary of Notice of Proposed Rulemaking**

1. The Commission takes steps to make additional spectrum available for mobile broadband services, while ensuring that America has robust mobile satellite service capability to meet public safety, rural connectivity, federal government, and other important needs. In this Notice of Proposed Rulemaking the Commission proposes to take a number of actions to further our goal of enabling the provision of terrestrial broadband services in the MSS bands. In the 2 GHz MSS band, it proposes to add co-primary Fixed and Mobile allocations to the existing Mobile-Satellite allocation. While this action in itself does not change the status of the existing MSS licensees and the Commission's service rules for MSS and ATC networks, it lays the groundwork for providing additional flexibility in use of the 2 GHz spectrum in the future. In keeping with this proposed flexible allocation for the 2 GHz MSS band, if an MSS license is cancelled for any reason the Commission proposes not to assign any additional spectrum for MSS in this band to either the existing MSS licensees or to a new MSS entrant. To

further the goal of increasing the provision of terrestrial broadband services in the MSS bands, the Commission also proposes to apply the Commission's terrestrial secondary market spectrum leasing rules and procedures to transactions involving terrestrial use of MSS spectrum in the 2 GHz (2000–2020 MHz and 2180–2200 MHz), Big LEO (1610–1626.5 MHz and 2483.5–2500 MHz), and L-bands (1525–1559 MHz and 1626.5–1660.5 MHz).

## 2 GHz MSS Band Allocation

2. The Commission tentatively concludes to add primary Fixed and Mobile allocations to the 2000–2020 MHz and 2180–2200 MHz bands. This allocation will be co-primary with the existing Mobile-Satellite allocation for these bands. Currently, the 1980–2010 MHz band is allocated to Fixed, Mobile, and Mobile-Satellite (Earth-to-space) on a primary basis while the 2170–2200 MHz band is allocated to the Fixed, Mobile, and Mobile-Satellite (space-to-Earth) on a primary basis in the international table for all regions. The 2010–2025 MHz band is allocated to Fixed, Mobile, and Mobile-Satellite (Earth-to-space) on a primary basis in Region 2 (North and South America) and to Fixed and Mobile on a primary basis in other regions.

3. A footnote to the Table of Frequency Allocations (Allocation Table) permits MSS operators to operate ATC in conjunction with their MSS networks despite the fact that these bands are not presently allocated for Fixed and Mobile uses. Because the Commission is proposing that a Fixed and Mobile allocation be added to these bands, this footnote would no longer be necessary for the 2 GHz band. The Commission proposes to modify this footnote to remove the 2000–2020 MHz and 2180–2200 MHz bands. The current footnote is still necessary for the Big LEO and L-band MSS because these bands have no Fixed and Mobile allocations in the International Table of Frequency Allocations.

4. Two footnotes in the Allocation Table, NG156 and NG168, permit certain BAS and FS licensees to continue to operate on a primary basis in the 2 GHz MSS band until December 9, 2013 (the sunset date for the band). After the sunset date, any remaining licensees will operate on a secondary basis. In proposing to add primary Fixed and Mobile allocations to these bands, the Commission is not proposing to change this relationship. The incumbent BAS and FS licensees will continue to operate with primary status until they are relocated or until the sunset date. However, the Commission tentatively

has concluded to amend these two footnotes to clarify that ATC operations by MSS will continue to be permitted on a primary basis after the sunset date but that existing Fixed and Mobile operations (i.e., the incumbent BAS and FS licensees) will become secondary on the sunset date.

5. The proposal to add Fixed and Mobile allocations is the first step to providing additional flexibility to the 2 GHz MSS bands. The existing service rules continue to permit MSS and ATC operation and are not altered by the re-introduction of a Fixed and Mobile allocation to the band. The existing MSS licensees, both of which have launched satellites, will continue to be able to operate under the terms of their licenses and must continue to comply with all of the Commission's existing ATC rules.

6. The Commission also believes that in the event that one or both of the 2 GHz MSS licenses were to be returned or cancelled for any reason, the returned spectrum could be used for terrestrial mobile broadband deployment. It last addressed the issue of "returned spectrum" in 2005, and concluded at that time that assigning each systems' 10 megahertz of spectrum in each direction of transmission (20 megahertz per system) would serve the public interest. In reaching that conclusion, the Commission considered alternative proposals that some, or all, of the returned spectrum be reallocated to other services, or made available for use by other MSS systems.

7. The Commission proposes that, in the event a 2 GHz MSS license is returned or cancelled, the spectrum covered by the license should not be assigned to the remaining licensee, or made available for a new MSS licensee. Assigning the returned spectrum under the existing satellite licensing rules would potentially limit options for flexible use and promotion of fixed/mobile deployment. Moreover, deployment of fixed and mobile services under the ATC framework may be substantially delayed by requirements for prior satellite deployment. Accordingly, the returned spectrum would not be declared available for further licensing under the satellite licensing rules. As explained in the accompanying Notice of Inquiry, the Commission is exploring ways to promote the development of terrestrial mobile services. It is in the public interest to retain flexibility on how best to assign the spectrum, should it become available, until we make final decisions in this proceeding. The Commission seeks comment on all of these proposals.

## Secondary Market Rules and Procedures for Terrestrial Services in MSS Bands

8. The Commission seeks to modify its policies and procedures with regard to spectrum leasing arrangements between MSS licensees and third parties for the provision of terrestrial services using MSS spectrum. Specifically, the Commission proposes to subject spectrum leasing arrangements between an MSS operator in the 2 GHz, Big LEO, and L-bands and a third party entity involving the use of MSS spectrum for the provision of terrestrial services to the Commission's general secondary market spectrum leasing policies and rules that currently apply to wireless terrestrial services. This proposal would apply to all terrestrial use of the MSS spectrum in the 2 GHz, Big LEO, and L-bands, which currently consists of ATC operations, but in the future may include other terrestrial operations in the 2 GHz MSS band. The proposal aims to provide greater regulatory predictability and parity, so that a common set of policies and rules applies for spectrum leasing arrangements involving the provision of terrestrial services, independent of the underlying allocation.

9. The Commission has previously approved an MSS/ATC spectrum leasing arrangement between MSS licensee Globalstar and terrestrial provider Open Range. SkyTerra/Harbinger also has proposed various arrangements that involve the use of MSS spectrum in the provision of terrestrial services. As Globalstar, SkyTerra/Harbinger, and other MSS providers realize their plans to offer high-speed broadband services to consumers using terrestrial networks under their ATC authority, the services they offer have the potential to expand the services offered in the overall market of mobile terrestrial wireless services and enhance competition in this larger mobile marketplace.

10. Given these developments in the use of MSS spectrum for the provision of terrestrial services through various secondary market arrangements, the Commission now proposes to subject MSS/ATC spectrum leasing arrangements to the same general policies and rules—including notification and/or approval procedures—that the Commission currently applies to spectrum leasing arrangements involving Wireless Radio Services. The Commission expects that technological advancements will enable MSS licensees and their spectrum lessees to use their ATC authority to provide mobile broadband services

similar to those provided by terrestrial mobile providers and enhance competition in the mobile broadband sector. As the kinds of terrestrial services that will be offered using MSS spectrum converges with those services offered by terrestrial mobile providers, the Commission tentatively concludes that spectrum leasing arrangements associated with both should be treated consistently. Such action would create greater predictability, consistency, and transparency between all spectrum leasing arrangements involving terrestrially-based mobile service offerings. Further, this would ensure that the Commission would have the opportunity to evaluate, in a streamlined process, the various public interest considerations that might arise with respect to MSS/ATC spectrum leasing arrangements. We seek comment on these proposals.

11. The Commission starts with the premise that its general spectrum leasing framework currently applicable to all terrestrial Wireless Radio Services spectrum leasing arrangements should apply to MSS/ATC spectrum leasing arrangements. Accordingly, it would require that leasing parties submit specified information and certifications (including information about the parties, the amount and geographic location of the spectrum involved, and other overlapping terrestrial-use spectrum holdings of the parties) to the Commission in advance of any operations that would be permitted pursuant to the proposed transaction. As with proposed spectrum leasing arrangements involving Wireless Radio Services, to the extent a proposed arrangement does not raise potential public interest concerns, the transaction would be subject to immediate processing or approval, whereas to the extent potential public interest concerns were raised (e.g., potential competitive harms) the transaction would be subject to streamlined procedures as the Commission evaluated whether the public interest would be served by the proposed transaction.

12. The Commission also seeks comment on whether only a subset of the spectrum leasing policies and rules applicable to Wireless Radio Services should be applied to terrestrial use of MSS spectrum relating to ATC services, and if so, which ones. For instance, considering that the ATC rules require use of an integrated MSS/ATC network, should MSS licensees and potential lessees of MSS/ATC spectrum only be permitted to enter into spectrum manager leasing arrangements, or should they also have the option of entering into *de facto* transfer leasing

arrangements, as permitted in the Wireless Radio Services? As the Commission evaluates whether a particular MSS/ATC spectrum arrangement raises potential competitive concerns, what considerations should it take into account, and should those differ in any respect from its current considerations of potential competitive harms under the existing spectrum leasing policies applicable to terrestrial mobile services? The Commission proposes to require that parties seeking to enter into MSS/ATC spectrum leasing arrangements file the requisite information using the form used for spectrum leasing arrangements involving the Wireless Radio Services. The Commission also seeks comment on how the adoption of industry-wide MSS/ATC spectrum leasing rules should affect existing MSS leasing arrangements. What other concerns or issues do commenters think should be addressed? The Commission invites commenting parties to address any aspect of the approach it is proposing.

13. Finally, the Commission seeks comment on whether its secondary market policies and rules for terrestrial wireless services need to be modified to accommodate spectrum leasing arrangements or other secondary market transactions involving non-ATC terrestrial use of spectrum allocated or co-allocated to MSS, such as the proposals discussed in the NOI.

#### *Summary of Notice of Inquiry*

14. The Notice of Inquiry launches a broader inquiry into how the Commission can best increase the value, utilization, innovation and investment in the spectrum for terrestrial services throughout the 2 GHz, Big LEO and L-bands, while ensuring that the United States market, as a whole, continues to have robust mobile satellite service capabilities. As an initial matter, the Commission focuses on flexibility for deploying new mobile broadband services under the proposed co-primary Fixed and Mobile allocations in the 2 GHz band. It is also interested in additional options for increasing terrestrial use of the Big LEO and L-bands.

#### **Utilizing the 2 GHz Band for Terrestrial Services**

15. The current licensees, New DBSD Satellite Services G.P. (formerly New ICO Satellite Services G.P.) (DBSD) and TerreStar Networks Inc. (TerreStar), are authorized to use the entire allocated 40 megahertz for MSS and related ATC operations. The Commission seeks comment on how best to encourage the growth of new mobile broadband

services in the 2 GHz Band under the proposed co-primary Fixed and Mobile allocations in a way that will attract investment.

16. The National Broadband Plan recommends that Congress consider expressly expanding the FCC's authority to enable it to conduct incentive auctions in which incumbent licensees may relinquish rights in spectrum assignments to other parties or to the FCC in exchange for a portion of the proceeds realized by the auction of new spectrum licenses. That is, existing licensees could, on a voluntary basis, relinquish bandwidth in exchange for a portion of the proceeds from an auction for the new licenses authorizing terrestrial only services. Would voluntary incentive auctions, if Congress were to grant such authority to the FCC, be an appropriate mechanism for providing an option for incumbent 2 GHz MSS licensees to vacate the band in favor of mobile broadband providers operating on new licenses?

17. Alternatively, are there other approaches that could create licenses that would attract the substantial investment necessary to launch new mobile broadband services in the 2 GHz band and that are within the Commission's existing legal authority? Should existing 2 GHz MSS licensees be given the option to return some of their spectrum (which we could then auction to new terrestrial licensees) while concurrently modifying the MSS licensees' authorizations to allow them to operate terrestrial networks under the proposed Fixed and Mobile allocations instead of under the current ATC service rules? What is an appropriate metric for assessing how much bandwidth should be returned in exchange for modifying the existing MSS licenses? What, if any, additional conditions—such as build-out requirements for terrestrial networks—are appropriate or necessary to serve the public interest?

18. As noted in the National Broadband Plan, the 2 GHz MSS band is adjacent to the Advanced Wireless Services-2 paired "J" block at 2020–2025 MHz and 2175–2180 MHz. In any of the scenarios discussed, would the opportunity to integrate the J Block and 2 GHz MSS spectrum help attract new investment and utilization of new mobile broadband networks in the 2 GHz band? If so, the Commission seeks comment on how the Commission could and whether it should take into account such potential as it decides how to increase utilization of the 2 GHz MSS spectrum for terrestrial use.

### Increasing Value, Utilization, Innovation and Investment in all MSS Bands

19. As noted, the Commission already has taken additional steps to promote the development of ATC in the Big LEO and L-bands. Are there any other actions that the Commission could take that would increase terrestrial use of the MSS bands? Are there any such actions that would specifically apply to the Big LEO or L-bands? Are there any value or investment promoting actions that might apply to MSS spectrum generally? Are there various incentives that the Commission could apply to help ensure that the public receives the maximum benefits from the use of the spectrum?

20. As part of this inquiry, the Commission has also considered deployment of satellite and terrestrial services in the MSS bands, both within the U.S. and internationally. Do parties anticipate or plan to offer satellite and terrestrial services independent of each other or as part of combined, integrated network offerings? What is happening in other countries with respect to investment in the 2 GHz, Big LEO and L-bands?

21. The Commission notes the importance of maintaining MSS to provide services, for example, to public safety and Federal government agencies, to rural areas, and during natural disasters. How should the Commission assess the current and future spectrum needs for MSS so that it can assure those needs continue to be met? How many users depend on such services today? Where are they located? Are there, for example, certain remote or rural areas that appear to be more suitable than other areas for the use of such services? What are the characteristics of those areas (e.g., population size, income of residents, topography) that make them more suitable? Which particular services do they rely upon most? Are these services specific to a particular provider or band or can they be substituted by other MSS or FSS providers? To what extent can such services coexist with terrestrial uses in areas that do not rely as heavily upon MSS?

22. How can the Commission ensure that the United States continues to have market-wide MSS capabilities, even as we take targeted actions to create opportunities for terrestrial use in specific MSS bands? Is it necessary to continue to support the capability of providing MSS in all three bands, or can the Commission meet future needs with less allocated spectrum in some or all of the bands? If so, which band(s) are best suited for MSS?

### Paperwork Reduction Act

23. This document contains proposed modified information collection requirements. 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 collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

### Ordering Clauses

24. Pursuant to sections 4(i), 301, 303(c), 303(f), 303(r), 303(y), and 310 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 301, 303(c), 303(f), 303(r), 303(y), and 310, this Notice of Proposed Rulemaking and Notice of Inquiry *is adopted*.

25. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Notice of Proposed Rulemaking, and Notice of Inquiry, including the Initial Regulatory Flexibility Analysis to the Chief Counsel for Advocacy of the Small Business Administration.

### Initial Regulatory Flexibility Analysis

26. As required by the Regulatory Flexibility Act (RFA),<sup>1</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 Notice of Proposed Rulemaking (NPRM). 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 provided on the first page of this NPRM. The Commission will send a copy of this NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).<sup>2</sup>

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

27. Mobile broadband is emerging as one of America's most dynamic innovation and economic platforms. Yet tremendous demand growth will soon test the limits of spectrum availability.

<sup>1</sup> See 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, 110 Stat. 857 (1996).

<sup>2</sup> See 5 U.S.C. 603(a).

As observed in the National Broadband Plan, 90 megahertz of spectrum allocated to the Mobile Satellite Service (MSS)—in the 2 GHz band, Big LEO band, and L-band—are potentially available for terrestrial mobile broadband use.<sup>3</sup> In the Notice of Proposed Rulemaking (NPRM) the Commission seeks to remove regulatory barriers to terrestrial use, and to promote additional investments in the MSS bands while retaining sufficient market-wide MSS capability.

28. The NPRM makes two proposals. First, the Commission proposes to add co-primary Fixed and Mobile allocations to the Table of Frequency Allocations for the 2 GHz band,<sup>4</sup> consistent with the International Table of Allocations. Under this proposed allocation, Fixed and Mobile services would have equal status to Mobile Satellite Services. This allocation modification is a precondition for more flexible licensing of terrestrial services within the band and lays the groundwork for providing additional flexibility in use of the 2 GHz spectrum in the future. The NPRM would not change the status of the existing MSS licensees nor grant authority for terrestrial operations in the band beyond what are currently permitted under the Ancillary Terrestrial Component (ATC) rules.<sup>5</sup>

29. In keeping with this proposed flexible allocation for the 2 GHz MSS band, if an MSS license is cancelled for any reason, we also propose not to assign any additional spectrum for MSS use in this band to either of the existing MSS licensees or to a new MSS entrant. Previously, the Commission has not expressed any preference on how it would treat returned 2 GHz MSS spectrum. Assigning the returned spectrum under the existing MSS licensing rules would potentially limit options for flexible use and promotion of future fixed and mobile deployment. The Notice of Inquiry (NOI) that accompanies this NPRM explores ways to promote the development of terrestrial mobile services in the 2 GHz MSS band. It is in the public interest to retain flexibility on how best to assign the spectrum, should it become available, until we make final decisions in this proceeding.

30. Second, we propose to apply the Commission's secondary markets

<sup>3</sup> Connecting America: The National Broadband Plan, Recommendation 5.8.4, p.87 (2010) (*National Broadband Plan*).

<sup>4</sup> 47 CFR 2.106.

<sup>5</sup> Any terrestrial use of the 2 GHz MSS bands must comply with the Commission's service and licensing rules for the band. The NPRM does not propose to alter these rules.

policies and rules applicable to terrestrial services to all transactions involving the use of MSS bands for terrestrial services in order to create greater predictability and regulatory parity with bands licensed for terrestrial mobile broadband service. The secondary markets policies and rules provide a means by which terrestrially-based Wireless Radio Service licensees holding "exclusive use" spectrum rights can lease some or all of the spectrum usage rights associated with their licenses to third parties.<sup>6</sup> The rules include immediate approval procedures for categories of terrestrial spectrum leasing arrangements that do not raise public interest concerns (such as concerns relating to foreign ownership or competition). Currently, the secondary markets policies and rules do not apply to satellite spectrum such as the MSS bands. Extending these rules to terrestrial use of the MSS band will foster regulatory parity by allowing leases involving use of the MSS bands for terrestrial services to use the same leasing rules as are used in other bands, including the immediate approval procedures for certain categories of leasing arrangements. It will create greater predictability by allowing licensees to take advantage of the established secondary markets leasing procedures. No protest or grievances have been received from small entities alleging that their interest have been compromised under the secondary markets rules as they have been applied in the past to Wireless Radio Services licensees.

#### B. Legal Basis

31. The proposed action is authorized under sections 4(i), 301, 303(c), 303(f), 303(r), 303(y), and 310 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 301, 303(c), 303(f), 303(r), 303(y), and 310.

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

32. 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.<sup>7</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>8</sup> In addition, the term "small business" has the same meaning

as the term "small business concern" under the Small Business Act.<sup>9</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 SBA.<sup>10</sup>

33. *Mobile Satellite Service Carriers.* Neither the Commission nor the U.S. Small Business Administration has developed a small business size standard specifically for mobile satellite service licensees. The appropriate size standard is therefore the SBA standard for Satellite Telecommunications, which provides that such entities are small if they have \$15 million or less in annual revenues.<sup>11</sup> Currently, the Commission's records show that there are 31 entities authorized to provide voice and data MSS in the United States. The Commission does not have sufficient information to determine which, if any, of these parties are small entities. The Commission notes that small businesses are not likely to have the financial ability to become MSS system operators because of high implementation costs, including construction of satellite space stations and rocket launch, associated with satellite systems and services. Nonetheless, it might be possible that some are small entities affected by this NPRM and therefore we include them in this section of the IFRA.

34. *Satellite Telecommunications and All Other Telecommunications.* The category of Satellite Telecommunications "comprises establishments primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications."<sup>12</sup> For this category, Census Bureau data for 2002 show that there were a total of 371 firms that operated for the entire year.<sup>13</sup> Of

this total, 307 firms had annual receipts of under \$10 million, and 26 firms had receipts of \$10 million to \$24,999,999.<sup>14</sup> Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

35. The second category of All Other Telecommunications has a size standard of \$25 million or less in annual receipts.<sup>15</sup> The most current Census Bureau data in this context, however, are from the (last) economic census of 2002, and we will use those figures to gauge the prevalence of small businesses in these categories.<sup>16</sup> This category comprises, *inter alia*, "establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems."<sup>17</sup> For this category, Census Bureau data for 2002 show that there were a total of 332 firms that operated for the entire year.<sup>18</sup> Of this total, 303 firms had annual receipts of under \$10 million and 15 firms had annual receipts of \$10 million to \$24,999,999.<sup>19</sup> Consequently, we estimate that the majority of All Other Telecommunications firms are small entities that might be affected by our action.

36. *Wireless Telecommunications Carriers (except satellite).* The NPRM proposes that the Commission's secondary market policies and rules be applied to terrestrial service in the MSS bands. We can not predict who may in the future lease spectrum for terrestrial use in these bands. In general, any wireless telecommunications provider would be eligible to lease spectrum from the MSS licensees. Since 2007, the

Firm Size (Including Legal Form of Organization)," tbl. 4, NAICS code 517410 (rel. Nov. 2005).

<sup>14</sup> *Id.* An additional 38 firms had annual receipts of \$25 million or more.

<sup>15</sup> 13 CFR 121.201, NAICS code 517919.

<sup>16</sup> 13 CFR 121.201, NAICS codes 517410 and 517910 (2002).

<sup>17</sup> U.S. Census Bureau, 2007 NAICS Definitions, "517919 All Other Telecommunications," <http://www.census.gov/naics/2007/def/ND517919.HTM#N517919> (last visited Oct. 21, 2009).

<sup>18</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," tbl. 4, NAICS code 517910 (issued Nov. 2005).

<sup>19</sup> *Id.* An additional 14 firms had annual receipts of \$25 million or more.

<sup>6</sup> Rules and procedures for spectrum leasing arrangements are set forth in Part 1, Subpart X. 47 CFR 1.9001 *et seq.*

<sup>7</sup> 5 U.S.C. 603(b)(3).

<sup>8</sup> 5 U.S.C. 601(6).

<sup>9</sup> 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. 632). Pursuant to the RFA, 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**." 5 U.S.C. 601(3).

<sup>10</sup> Small Business Act, 15 U.S.C. 632 (1996).

<sup>11</sup> 13 CFR 121.201, North American Industry Classification System ("NAICS") code 517410.

<sup>12</sup> U.S. Census Bureau, 2007 NAICS Definitions, "517410 Satellite Telecommunications," <http://www.census.gov/naics/2007/def/ND517410.HTM> (last visited Oct. 21, 2009).

<sup>13</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and

Census Bureau has placed wireless firms within the new, broad, economic census category of Wireless Telecommunications Carriers (except satellite). Prior to that time, such firms were within the now-superseded categories of "Paging" and "Cellular and Other Wireless Telecommunications." Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. Because Census Bureau data are not yet available for the new category, we will estimate small business prevalence using the prior categories and associated data. For the category of Paging, data for 2002 show that there were 807 firms that operated for the entire year. Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more. For the category of Cellular and Other Wireless Telecommunications, data for 2002 show that there were 1,397 firms that operated for the entire year. Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more. Thus, we estimate that the majority of wireless firms are small.

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

37. The NPRM proposes to apply the Commission's secondary market policies and rules applicable to terrestrial services to all transactions involving the use of MSS bands for terrestrial services. Leasing parties will be required to submit specified information and certifications (including information about the parties, the amount and geographic location of the spectrum involved, and other overlapping terrestrial-use spectrum holdings of the parties) to the Commission in advance of any operations that would be permitted pursuant to the proposed transaction.

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

38. 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.<sup>20</sup>

39. The proposal to add Fixed and Mobile allocations to the 2 GHz MSS band is the first step toward providing additional flexibility to the band.<sup>21</sup> The addition of Fixed and Mobile allocations in itself does not change the status of the existing MSS licensees or the Commission's service rules for MSS and ATC networks. Furthermore, this addition does not grant authority for terrestrial operations in the band beyond what is currently permitted under the ATC rules. The existing 2 GHz MSS operators, both of which have launched satellites, will continue to be able to operate under the terms of their licenses and must continue to comply with all of the Commission's existing ATC rules as was the case before the Fixed and Mobile allocations were added to the band. Consequently, this proposal will not have a significant economic impact on the 2 GHz MSS operators or any other entity, small or otherwise.

40. The NPRM also proposes that if one or both of the 2 GHz MSS licenses were to be returned or cancelled for any reason, the returned spectrum could be used for terrestrial mobile broadband deployment. This proposal would not encourage or require the MSS operators to return their licenses and therefore will not result in a negative economic impact on any entity, small or otherwise. Furthermore, if an MSS license is returned or cancelled and the returned spectrum were to be used for terrestrial mobile broadband services, this could provide future opportunities for small entities to provide mobile broadband services—e.g. by obtaining licenses by standard FCC auction procedures or by obtaining leases for the returned spectrum not subject to any restraints or preconditions.

41. The proposal to apply the Commission's secondary market policies and rules to all transactions involving the use of MSS bands for terrestrial services will provide greater predictability and regulatory parity with bands licensed for terrestrial mobile broadband service. This proposal should make it easier for MSS providers in any of the MSS bands to enter into leasing agreements involving terrestrial use of their spectrum. The proposal should provide an economic benefit for

<sup>20</sup> See 5 U.S.C. 603(c).

<sup>21</sup> This item does not propose to alter the primary MSS allocation or propose to relocate the incumbent MSS licensees under the Emerging Technologies relocation policies.

the MSS providers and those entities entering into leasing agreements with them. The secondary market leasing rules apply equally to all entities, whether small or large. As a result, we believe that this proposal will provide an economic benefit to small entities by making it easier for small entities to enter into spectrum leasing agreements for terrestrial use of the MSS spectrum.

42. As noted, the proposed secondary market policies will require the collection of certain information about the proposed leases. This information is necessary for the Commission to make informed decisions regarding the proposed leases and should not be overly burdensome. Consequently, we do not expect this requirement to have a negative economic impact on any small entities.

#### *F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule*

43. None.

#### **List of Subjects 47 CFR Parts 1, 2 and 25**

Administrative practice and procedure, Communications equipment, Radio Reporting and recordkeeping requirements.

Federal Communications Commission

**Marlene H. Dortch,**

*Secretary.*

#### **Proposed Rules Changes**

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 1, 2 and 25 to read as follows:

#### **PART 1—PRACTICE AND PROCEDURE**

1. The authority citation for part 1 continues to read as follows:

**Authority:** 15 U.S.C. 79 *et seq.*; 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 303(r), and 309.

2. Section 1.9001 is amended by revising paragraph (a) to read as follows:

#### **§ 1.9001 Purpose and scope.**

(a) The purpose of part 1, subpart X is to implement policies and rules pertaining to spectrum leasing arrangements between licensees in the services identified in this subpart and spectrum lessees. This subpart also implements policies for private commons arrangements. These policies and rules also implicate other Commission rule parts, including parts 1, 2, 20, 22, 24, 25, 26, 27, 80, 90, 95, and 101 of title 47, chapter I of the Code of Federal Regulations.

\* \* \* \* \*

3. Section 1.9005 is amended by revising the introductory text and by adding paragraph (jj) to read as follows:

**§ 1.9005 Included services.**

The spectrum leasing policies and rules of this subpart apply to the following services:

\* \* \* \* \*

(jj) The Ancillary Terrestrial Component of a Mobile Satellite Service (part 25 of this chapter).

4. Section 1.9020 is amended by revising paragraph (e)(2)(i)(A) to read as follows:

**§ 1.9020 Spectrum manager leasing arrangements.**

\* \* \* \* \*

- (e) \* \* \*
- (2) \* \* \*
- (i) \* \* \*

(A) The license does not involve spectrum that may be used to provide interconnected mobile voice and/or data services under the applicable service rules and that would, if the spectrum leasing arrangement were consummated, create a geographic overlap with spectrum in any licensed Wireless Radio Service (including the same service) or the Ancillary Terrestrial Component of a Mobile Satellite Service in which the proposed spectrum lessee already holds a direct or indirect interest of 10% or more (see § 1.2112), either as a licensee or a spectrum lessee, and that could be used by the spectrum lessee to provide interconnected mobile voice and/or data services;

\* \* \* \* \*

5. Section 1.9030 is amended by revising paragraph (e)(2)(i)(A) to read as follows:

**§ 1.9030 Long term de facto transfer leasing arrangements.**

\* \* \* \* \*

- (e) \* \* \*
- (2) \* \* \*
- (i) \* \* \*

(A) The license does not involve spectrum that may be used to provide interconnected mobile voice and/or data services under the applicable service rules and that would, if the spectrum leasing arrangement were consummated, create a geographic overlap with spectrum in any licensed Wireless Radio Service (including the same service) or the Ancillary Terrestrial Component of a Mobile Satellite Service in which the proposed spectrum lessee already holds a direct or indirect interest of 10% or more (see § 1.2112), either as a licensee or a spectrum lessee, and that could be used by the spectrum lessee to provide interconnected mobile voice and/or data services;

\* \* \* \* \*

6. Section § 1.9049 is added to read as follows:

**§ 1.9049 Special provisions relating to spectrum leasing arrangements involving Mobile Satellite Services.**

(a) A license issued under part 25 of the Commission's rules that provides authority for an Ancillary Terrestrial Component will be considered to provide "exclusive use rights" for purpose of this Subpart of the rules.

(b) For purposes of §§ 1.9020(d)(8), 1.9030(d)(8), and 1.9035(d)(4), the licensee's obligation, if any, concerning the E911 requirements in § 20.18 of this chapter, will, with respect to an Ancillary Terrestrial Component, be specified in the licensing document for the Ancillary Terrestrial Component.

(c) The following provision shall apply, in lieu of §§ 1.9020(m) and 1.9030(m), with respect to spectrum leasing of an Ancillary Terrestrial Component: Although the term of a spectrum leasing arrangement may not

be longer than the term of the Ancillary Terrestrial Component license, a licensee and spectrum lessee that have entered into an arrangement, the term of which continues to the end of the current term of the license may, contingent on the Commission's grant of a modification or renewal of the license to extend the license term, extend the spectrum leasing arrangement into the new license term. The Commission must be notified of the extension of the spectrum leasing arrangement at the same time that the licensee submits the application seeking an extended licensed term. In the event the parties to the arrangement agree to extend it into the new license term, the spectrum lessee may continue to operate consistent with the terms and conditions of the expired license, without further action by the Commission, until such time as the Commission makes a final determination with respect to the extension or renewal of the license.

**PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS**

7. The authority citation for part 2 continues to read as follows:

**Authority:** 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

8. Section 2.106 is amended as follows:

- a. Revise page 36.
- b. Revise footnote US380 to the list of United States (US) Footnotes.
- c. Revise footnotes NG156 and NG168 to the list of non-Federal Government (NG) Footnotes.

**§ 2.106 Table of Frequency Allocations.**

\* \* \* \* \*

<p>1980-2010 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space) 5.351A</p>	<p>2010-2025 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space)</p>	<p>2010-2025 FIXED MOBILE 5.388A 5.388B 5.388</p>	<p>1980-2025</p>	<p>NG177 2000-2020 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space) NG156 2020-2025 FIXED MOBILE NG177</p>	<p>Satellite Communications (25)</p>
<p>5.388 5.389A 5.389B 5.389F</p>	<p>2010-2025 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space)</p>	<p>5.388 5.389C 5.389E</p>	<p>2025-2110 SPACE OPERATION (Earth-to-space) (space-to-space) EARTH EXPLORATION-SATELLITE (Earth-to-space) (space-to-space) SPACE RESEARCH (Earth-to-space) (space-to-space)</p>	<p>2025-2110 FIXED NG118 MOBILE 5.391</p>	<p>TV Auxiliary Broadcasting (74F) Cable TV Relay (78) Local TV Transmission (10J)</p>
<p>5.392 2110-2120 FIXED MOBILE 5.388A 5.388B SPACE RESEARCH (deep space) (Earth-to-space)</p>	<p>2110-2120</p>	<p>5.391 5.392 US90 US222 US346 US347 US393 2110-2120</p>	<p>2110-2120</p>	<p>5.392 US90 US222 US346 US347 US393 2110-2120 FIXED MOBILE</p>	<p>Public Mobile (22) Wireless Communications (27) Fixed Microwave (101)</p>
<p>5.388 2120-2170 FIXED MOBILE 5.388A 5.388B Mobile-satellite (space-to-Earth)</p>	<p>2120-2160 FIXED MOBILE 5.388A 5.388B Mobile-satellite (space-to-Earth)</p>	<p>5.388 2160-2170 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth)</p>	<p>US252 2120-2200</p>	<p>US252 2120-2180 FIXED MOBILE</p>	<p>Satellite Communications (25)</p>
<p>5.388 2170-2200 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) 5.351A</p>	<p>2170-2200 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth)</p>	<p>5.388 5.389C 5.389E</p>	<p>NG153 NG178 2180-2200 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth)</p>	<p>NG153 NG178 2180-2200 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) NG168</p>	<p>Satellite Communications (25)</p>
<p>5.388 5.389A 5.389F</p>	<p>2170-2200 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth)</p>	<p>5.388 5.389C 5.389E</p>	<p>NG153 NG178 2180-2200 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth)</p>	<p>NG153 NG178 2180-2200 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) NG168</p>	<p>Satellite Communications (25)</p>

\* \* \* \* \*

**United States (US) Footnotes**

\* \* \* \* \*

US380 In the bands 1525–1544 MHz, 1545–1559 MHz, 1610–1645.5 MHz, 1646.5–1660.5 MHz, and 2483.5–2500 MHz, a non-Federal licensee in the mobile-satellite service (MSS) may also operate an ancillary terrestrial component in conjunction with its MSS network, subject to the Commission's rules for ancillary terrestrial components and subject to all applicable conditions and provisions of its MSS authorization.

\* \* \* \* \*

**Non-Federal Government (NG) Footnotes**

\* \* \* \* \*

NG156 Except as permitted below, the use of the 2000–2020 MHz band is limited to the MSS and ancillary terrestrial component offered in conjunction with an MSS network, subject to the Commission's rules for ancillary terrestrial components and subject to all applicable conditions and provisions of an MSS authorization. In the 2000–2020 MHz band, where the receipt date of the initial application for facilities in the fixed and mobile services was prior to June 27, 2000, said facilities shall operate on a primary basis and all later-applied-for facilities shall operate on a secondary basis to the mobile-satellite service (MSS); and not later than December 9, 2013, all such facilities shall operate on a secondary basis.

\* \* \* \* \*

NG168 Except as permitted below, the use of the 2180–2200 MHz band is limited to the MSS and ancillary terrestrial component offered in conjunction with an MSS network, subject to the Commission's rules for ancillary terrestrial components and subject to all applicable conditions and provisions of an MSS authorization. In the 2180–2200 MHz band, where the receipt date of the initial application for facilities in the fixed and mobile services was prior to January 16, 1992, said facilities shall operate on a primary basis and all later-applied-for facilities shall operate on a secondary basis to the mobile-satellite service (MSS); and not later than December 9, 2013, all such facilities shall operate on a secondary basis.

\* \* \* \* \*

**PART 25—SATELLITE COMMUNICATIONS**

9. The authority citation for part 25 continues to read as follows:

**Authority:** 47 U.S.C. 701–744. Interprets or applies Sections 4, 301, 302, 303, 307, 309 and 332 of the Communications Act, as amended, 47 U.S.C. Sections 154, 301, 302, 303, 307, 309 and 332, unless otherwise noted.

10. Section 25.149 is amended by adding paragraph (g) to read as follows:

**§ 25.149 Application requirements for ancillary terrestrial components in the mobile-satellite service networks operating in the 1.5/1.6 GHz, 1.6/2.4 GHz and 2 GHz mobile-satellite service.**

\* \* \* \* \*

(g) *Spectrum leasing.* Lease of spectrum rights by MSS licensees or system operators for ATC use is subject to the rules spectrum leasing arrangements as set forth in Part 1, subpart X of the rules (*see* §§ 1.9001 through 1.9080 of this chapter.).

[FR Doc. 2010–19824 Filed 8–13–10; 8:45 am]

BILLING CODE 6712–01–P

**DEPARTMENT OF TRANSPORTATION****National Highway Traffic Safety Administration****49 CFR Part 578**

[Docket No. NHTSA–2010–0114; Notice 1]

RIN 2127–AK78

**Civil Penalties**

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.  
**ACTION:** Notice of Proposed Rulemaking.

**SUMMARY:** This document proposes to increase the maximum civil penalty amounts for violations covering a related series of violations of the Vehicle Safety Act and violations of the odometer standard with intent to defraud. This action would be taken pursuant to the Federal Civil Monetary Penalty Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, which requires us to review and, as warranted, adjust penalties based on inflation at least every four years.

**DATES:** Comments on the proposal are due September 15, 2010.

**ADDRESSES:** You may submit comments electronically [identified by DOT Docket ID Number NHTSA–2010–0114] by visiting the following Web site:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Alternatively, you can file comments using the following methods:

- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200

New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

- *Fax:* (202) 493–2251.

*Instructions:* For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to <http://www.dms.dot.gov> or <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading below.

*Privacy Act:* Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. Follow the online instructions for accessing the dockets.

**FOR FURTHER INFORMATION CONTACT:** Jessica Lang, Office of Chief Counsel, NHTSA, telephone (202) 366–5902, facsimile (202) 366–3820, 1200 New Jersey Avenue SE., Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:****Background**

In order to preserve the remedial impact of civil penalties and to foster compliance with the law, the Federal Civil Monetary Penalty Inflation Adjustment Act of 1990 (28 U.S.C. 2461, Notes, Pub. L. 101–410), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134) (referred to collectively as the “Adjustment Act” or, in context, the “Act”), requires us and other Federal agencies to adjust civil penalties for inflation. Under the Adjustment Act, following an initial adjustment that was capped by the Act, these agencies must make further adjustments, as warranted, to the amounts of penalties in statutes they administer at least once every four years.

NHTSA's initial adjustment of civil penalties under the Adjustment Act was published on February 4, 1997. 62 FR