

individual small entity will be negligible. During the two comment periods for this rulemaking, the Coast Guard received no comments regarding adverse impacts economic or otherwise on small entities. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). The collection of information requirements in the IR were previously approved by OMB. OMB Control Number 2115-0579 is assigned the collection.

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the

effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2-1, paragraph (34)(a), of Commandant Instruction M16475.ID, this rule is categorically excluded from further environmental documentation. The permit and numbering system, required

in the rule, are parts of a regulatory program to minimize the amount of municipal or commercial waste entering the coastal waters of the United States. The regulations are administrative in nature and do not prescribe any operational requirements that will have an impact on the environment. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 151

Administrative practice and procedure, Oil pollution, Penalties, Reporting and recordkeeping requirements, Water pollution control.

For the reasons discussed in the preamble, the interim rule amending 33 CFR part 151 which was published at 54 FR 22546 on May 24, 1989, and amended at 54 FR 24078, June 5, 1989; 61 FR 33665, June 28, 1996; 62 FR 33363, June 19, 1997; and 66 FR 33637, June 25, 2001, is adopted as a final rule.

Dated: December 14, 2001.

Paul J. Pluta,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 02-3250 Filed 2-8-02; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1, 2, 90 and 95

[ET Docket No. 00-221; ET Docket No. 99-255; PR Docket No. 92-235; WT Docket 97-153; FCC 01-382]

Reallocation of 27 MHz of Spectrum

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document reallocates spectrum transferred from Federal Government use for non-Government services pursuant to the Omnibus Budget Reconciliation Act of 1993 and the Balanced Budget Act of 1997. Our actions here fulfill our statutory obligation to reallocate this transfer spectrum to non-Government users. We believe that this will lead to the development of new technologies and services and provide spectrum alternatives for users currently operating on heavily encumbered spectrum where operations are constrained due to congestion.

DATES: Effective April 12, 2002.

After January 1, 2002, new assignments will no longer be permitted

for Government and non-Government operations in the 216–217 band.

FOR FURTHER INFORMATION CONTACT: Ira Keltz, Office of Engineering and Technology, (202) 418–0616, TTY (202) 418–2989, e-mail: ikeltz@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, ET Docket No. 00–221; ET Docket No. 99–255; PR Docket No. 92–235; WT Docket No. 97–153; FCC 01–382, adopted December 21, 2001 and released January 2, 2002. The full text of this document is available on the Commission's internet site at www.fcc.gov. It is also available for inspection and copying during regular business hours in the FCC Reference Center (Room CY–A257), 445 Twelfth Street, SW, Washington, DC 20554. The complete text of this document may be purchased from the Commission's duplication contractor Qualex International, (202) 863–2893 voice, (202) 863–2898 Fax, qualexint@aol.com e-mail, Portals II, 445 12th St., SW, Room CY–B402, Washington, DC 20554.

Summary of Report and Order

1. The *Notice of Proposed Rule Making* ("NPRM"), 66 FR 7443, January 23, 2001, proposed to allocate a total of 27 megahertz of spectrum from the 216–220 MHz, 1390–1395 MHz, 1427–1429 MHz, 1429–1432 MHz, 1432–1435 MHz, 1670–1675 MHz, and 2385–2390 MHz bands transferred from Government to non-Government use pursuant to the provisions of the Omnibus Budget Reconciliation Act of 1993 (OBRA–93) and the Balanced Budget Act of 1997 (BBA–97). These seven bands have a variety of continuing Government protection requirements and incumbent Government and non-Government uses. Despite these constraints and the relatively narrow bandwidth contained in each of the bands, we believe that our actions will foster a variety of potential applications in both new and existing services. The transfer of these bands to non-Government use should enable the development of new technologies and services, provide additional spectrum relief for congested private land mobile frequencies, and fulfill our obligation as mandated by Congress to assign this spectrum for non-Government use. The NPRM also requested comment on procedures for the reimbursement of relocation costs incurred by incumbent Federal Government users as mandated by the National Defense Authorization Act of 1999. Of the bands considered in this proceeding, the 216–220 MHz, 1432–1435 MHz, and 2385–2390 MHz bands are subject to competitive bidding

and reimbursement of Federal incumbents.

2. *216–220 MHz Band*—we are adopting our proposal to allocate the 216–220 MHz band to the fixed and mobile (except aeronautical mobile) services on a co-primary basis. In addition, we are adopting rules to upgrade the status of the Low Power Radio Service (LPRS) from secondary to primary on 216–217 MHz band. In making this allocation, we are retaining the secondary amateur service allocation at 219–220 MHz, the wildlife and ocean tracking allocation, as well as the secondary Government allocation. The rules adopted will continue to require licensees in this band to protect the Navy's SPASUR system.

3. We observe that maintaining the secondary allocation in the 216–220 MHz band for wildlife and ocean tracking and for Government operations is a departure from our proposal. However, we believe it is in the public interest to provide for the continuation of these services in this band. These services support scientific research as well as monitoring of critical infrastructure. In making this decision it is important to note that the majority of these operations tend to be in rural and unpopulated areas, far from where most licensees operate. Because it is unlikely for these existing secondary services to operate in proximity to new services, this action will allow the continuation of important operations with no impact on the ability of new licensees to use this band.

4. With respect to the 217–220 MHz band, we observe that the allocation changes we are adopting will not provide any significant change to current use of the spectrum. We are eliminating the Federal Government's unused primary maritime mobile allocation and are proceeding with the service plans currently underway. The 217–218 MHz and 219–220 MHz segments are currently used by AMTS stations and the Commission has proposed rules to assign the remaining AMTS licenses by competitive bidding. The 218–219 MHz band is currently allocated to the 218–219 MHz Service, formerly known as IVDS. The Commission established that service in 1992, and by 1995 had issued 612 licenses in 306 Metropolitan Statistical Areas (MSAs). We plan to award licenses for the remaining service areas in the 218–219 MHz Service in an upcoming auction.

5. With regard to the 216–217 MHz band, the LPRS auditory assistance and law enforcement applications are currently operating without encumbrance from a primary service

due to technical limitations from adjacent band restrictions. The LPRS is ideally suited for this band given the technical limitations and propagation characteristics of the spectrum. Because LPRS devices operate with low power, they are susceptible to harmful interference from high-powered systems and thus not able to share well with many types of radios. If forced to relocate, it is highly unlikely that these consumer devices could be cost effectively retuned and instead would have to be replaced. Because the LPRS is licensed by rule, all spectrum in the 216–217 MHz band is shared among all users. Thus, it is not possible to have mutually exclusive applications under the current service rules. Under the provisions of Section 309(j), only mutually exclusive applications are eligible to be granted through competitive bidding.

6. Providing a primary allocation for the LPRS in the 216–217 MHz band is also consistent with statutory requirements for providing access to facilities and services by persons with disabilities. Most notably, the Americans with Disabilities Act (ADA) requires businesses to make their public facilities and services accessible to persons with disabilities. In fact, many businesses, such as theaters, stadiums, and other public gathering places, have complied with the ADA by installing auditory assistance devices in their facilities. In addition, many states have used assistive listening devices to comply with the Individuals with Disabilities Education Act, which requires that State Government agencies provide children with disabilities with a free and appropriate public education. Further, the Technology-Related Assistance for Individuals with Disabilities Act Amendments of 1994 promote the development and use of affordable telecommunications devices by persons with disabilities in places such as educational settings, public gathering places, and health care facilities.

7. LPRS is also used extensively by law enforcement agencies for law enforcement tracking systems (LETS). These systems, which operate on two channels in the 216–217 MHz band, protect high-risk businesses, such as banks and jewelers, by assisting in the recovery of stolen money and property. Currently, such systems are used by local police departments and the Federal Bureau of Investigation in 135 cities in the United States and have been instrumental in reducing crime rates. Allowing this service to continue to operate and providing protection by raising its status to primary along with

the other LPRS Services will ensure that the valuable services provided by these systems remain accessible to the public. We are amending the Table of Frequency Allocations in Section 2.106 and the LPRS rules in Part 95 to provide LPRS stations with primary status. In doing so, we are not making any other amendments to the LPRS service rules already in place. LPRS stations must continue to operate within the parameters of the current rules and protect the reception of television channel 13 and the Navy's SPASUR system.

8. We believe that it will likely be difficult for secondary telemetry licenses to coordinate with LPRS, which is licensed by rule, and authorized to operate ubiquitously without prior notice. LPRS operations are primarily in and near urban areas. We are sympathetic with the Hearing Industry Association comments that LPRS devices could be protected from interference by prohibiting non-LPRS operations in major cities. While it would not be equitable to force incumbent operations to relocate, we believe that we should no longer accept new applications in order to protect LPRS devices. Accordingly, new assignments will no longer be permitted for Government and non-Government operations in the 216–217 MHz band after January 1, 2002.

9. We are proceeding with our current plans to license the remainder of the 217–220 MHz band by competitive bidding. Thus, we affirm our tentative conclusion in the *NPRM* that it would be inappropriate to allow new co-primary services in this band. In doing so, we note that because this band is already licensed in many areas, the transfer of the Federal Government spectrum will not free up significant additional capacity. By this action, we are rejecting the requests of numerous parties to this proceeding that asked for various rule amendments to the 216–220 MHz band. We observe that many of the specific requests for this band can be accommodated under the fixed and mobile (except aeronautical mobile) allocations we are adopting and the rules currently in place in the 217–220 MHz portion of the band or other spectrum regulated by the Commission.

10. The Amateur Radio Relay League (ARRL) requests that we expand the current secondary Amateur Service allocation at 219–220 MHz to include the entire 216–220 MHz band. ARRL submits that currently amateurs must coordinate their operations in the 219–220 MHz band with nearby AMTS stations before operating. Because it is necessary to protect these critical

operations, ARRL concedes that amateurs have only been able to make limited use of this band.

Notwithstanding ARRL's statements that the amateur service should remain secondary under any expansion of the 216–220 MHz band to which amateurs have access, we do not believe such expansion would be appropriate. We have adopted a geographic area licensing scheme in the 217–220 MHz band segments, which should result in increased and more efficient use of these bands. Any increase in use of this spectrum by the Amateur Service within a licensee's service area could be detrimental to successful operations by the geographic area license.

Additionally, because the existing complex coordination rules would have to be applied to the entire band, and such rules have foreclosed much use of the 219–220 MHz band by amateurs, we do not foresee much, if any, use of an expanded band by the amateur service.

We also note, that amateur service licensees can operate message forwarding systems similar to those allowed in the 219–220 MHz band in any band in which they have privileges. Accordingly, we are denying ARRL's request to extend the amateur service use of the band to the entire 216–220 MHz band. We will continue to make the 219–220 MHz band available to amateurs on a secondary basis. If amateur use of this band significantly increases in the future, we may revisit and reevaluate this decision.

11. Manufacturers and users of 216–220 MHz band telemetry equipment request that we elevate their operations from secondary to primary status. They state that such action is needed to ensure that these operations continue to be viable for the transmission of "accurate, uncontaminated data." We continue to believe that secondary status is adequate. We have no indication that their existing secondary status has substantially constrained or impeded operations in this band. We note that many of these types of telemetry operations are temporary in nature and occur in areas with low population densities. If primary status is necessary, operators can obtain primary status, under the fixed and mobile (except aeronautical mobile) allocations we adopt herein, either by acquiring a license at the auction for the 217–218 Service or AMTS, or by negotiating with a licensee in the desired area.

12. With respect to the 216–217 MHz band, we note that the Commission asked for comment in WT Docket No. 97–153 on the need to protect LPRS operations from telemetry operations in that band. Based on the action taken

here to elevate the LPRS allocation in the band to primary, no additional action is necessary to protect that service. Because LPRS is primary and telemetry remains secondary, telemetry operators must not cause interference to LPRS and telemetry is not entitled to any protection from LPRS. This regulatory structure should not be problematic for many of the telemetry systems in this band because, as stated above, many of these operations take place in rural areas, while the majority of LPRS operations occur in populated areas. With respect to the 216–217 MHz band, we decline to make changes as requested by Warren Havens and Securicor, except for the portion of these requests that encompasses the 216–217 MHz band, these requests are beyond the scope of this Report and Order and will be addressed in the Companion Service Rule Notice.

The 1.4 GHz Bands

13. The 1.4 GHz spectrum encompasses 13 megahertz of spectrum in four segments at 1390–1395 MHz, 1427–1429 MHz, 1429–1432 MHz, and 1432–1435 MHz. In the *NPRM*, we did not make specific allocation proposals for these bands, but instead presented several options for consideration.

Frequency Bands

14. *1390–1395 MHz Band:* The 1390–1395 MHz band is allocated internationally in ITU Region 2 on a primary basis to the radiolocation service, and on a secondary basis to the space research (passive) and Earth exploration-satellite (passive) services. Domestically, the 1390–1395 MHz band is a Federal Government exclusive band that is allocated to the radiolocation service on a primary basis and to the fixed and mobile services on a secondary basis. Federal agencies use this band for long-range air defense radars, military test range telemetry links, tactical radio relays, and radio astronomy. In designating this band for transfer to non-Federal Government use, NTIA noted that high powered Federal Aviation Administration (FAA) and Department of Defense (DoD) radars would continue to operate in the lower adjacent band which could affect the performance of non-Federal Government receivers in the 1390–1395 MHz band. In addition, NTIA stated that radio astronomy operations would continue within this band. Footnote US311 to the Table of Frequency allocations requires that every practicable effort be made to avoid the assignment of frequencies in the band in the geographic areas where radio astronomy is conducted. As a condition

of the reallocation, NTIA states that airborne and satellite downlink operations need to be prohibited to avoid interference to radio astronomy. NTIA also stated that 17 military radar sites in the band will require protection until the year 2009. These protection areas, circles with radii of 80 kilometers, are scattered around the continental United States and Alaska, and range from sparsely populated desert areas to major metropolitan areas such as the Washington, D.C.-Baltimore, MD area. Finally, we note that the 1390–1395 MHz band was transferred pursuant to OBRA–93 and is not subject to mandatory reimbursement of Federal Government incumbent relocation expenses.

15. *1427–1429 MHz Band:* The 1427–1429 MHz band is allocated to the fixed, mobile (except aeronautical mobile), and space operation (Earth-to-space) services on a co-primary basis throughout the world. Also, in some countries this band is used to search for intentional emissions of extraterrestrial origin. Domestically, the 1427–1429 MHz band is allocated on a co-primary basis to Federal Government fixed and mobile (except aeronautical mobile) services and to the Federal and non-Federal Government space operation service. The 1427–1429 MHz band is also allocated on a secondary basis to non-Federal Government fixed and mobile services, limited to telemetering and telecommand applications. The Federal Government uses this band for military tactical radio relay communications and military test range aeronautical telemetry and telecommand. NTIA stated that airborne operations or space-to-Earth communications should be avoided in this band to protect sensitive radio

astronomy observations in the adjacent 1400–1427 MHz band. In addition, NTIA stated that military airborne operations at 14 sites will require protection until the year 2004. These sites, which must be protected within circles with radii ranging from 70–160 kilometers, are scattered around the continental United States and Alaska, and range from sparsely populated desert areas to major metropolitan areas such as the Washington, D.C.-Baltimore, MD area. The non-Federal Government use of this spectrum is for telemetry. This band was transferred pursuant to OBRA–93 and is not subject to mandatory reimbursement of Federal Government incumbent relocation expenses.

16. *1429–1432 MHz Band:* In ITU Region 2, the 1429–1432 MHz band is allocated to the fixed and mobile services on a co-primary basis. Also, in some countries this band is used to search for intentional emissions of extraterrestrial origin. Domestically, the 1429–1432 MHz band is allocated to the Federal and non-Federal Government land mobile service on a primary basis for WMTS use. The 1429–1432 MHz band is allocated to the fixed and land mobile services on a secondary basis for non-Federal Government use, limited to telemetering and telecommand applications. Federal Government uses of this band are identical to those described above for the 1427–1429 MHz band. Thus, operations in this band must also protect military airborne operations at the same 14 sites as for the 1427–1429 MHz band. This band was transferred pursuant to OBRA–93 and is not subject to mandatory reimbursement of Federal Government incumbent relocation expenses.

17. *1432–1435 MHz Band:* In ITU Region 2, the 1432–1435 MHz band is

allocated to the fixed and mobile services on a co-primary basis. Also, in some countries this band is used to search for intentional emissions of extraterrestrial origin. Domestically, the 1432–1435 MHz band is allocated to the fixed and mobile services on a primary basis for Federal Government use. The 1432–1435 MHz band is allocated to the fixed and land mobile services on a secondary basis for non-Federal Government use, limited to telemetering and telecommand applications. This band is also used for the passive search for signals of extraterrestrial origin. This band is used by the military for tactical radio relay communications, military test range aeronautical telemetry and telecommand, and various types of guided weapon systems. NTIA stated that military airborne operations and their associated airspace will need to be protected at 23 sites indefinitely. These protection areas, circles with radii ranging from 3 kilometers to 160 kilometers, are scattered around the continental United States and Alaska, and range from sparsely populated desert areas to major metropolitan areas such as the Washington, D.C.-Baltimore, MD area. This band was transferred to non-Federal Government use pursuant to BBA–97, and therefore licenses must be assigned in accordance with Section 309(j) of the Communications Act. In addition, new licensees must compensate Federal Government entities in advance for marginal costs incurred in relocating their facilities from the band.

Band Plan

The band plan options that we proposed in the *Notice* are summarized in Table 1, below.

TABLE 1.—SUMMARY OF 1.4 GHZ BAND PLAN OPTIONS

| Band | 1390–1392 MHz | 1392–1395 MHz | 1427–1429 MHz | 1429–1432 MHz | 1432–1435 MHz assign pursuant to 309(j) subject to NDAA–99 |
|-------------------------|--|---------------|---|--|--|
| Current Allocations ... | Federal Government: RADIOLOCATION Fixed Mobile | | Federal Government: SPACE OPERATION (uplink) FIXED MOBILE (except aeronautical Mobile). non-Federal Gov't: SPACE OPERATION (uplink) Fixed (telemetry) Land mobile (telemetry & Telecommand). | Federal Government: LAND MOBILE (WMTS). non-Federal Gov't: LAND MOBILE (WMTS) Fixed (non-med. telemetry) Land mobile (non-medical telemetry & telecommand). | Federal Government: FIXED MOBILE. non-Federal Gov't: Fixed (telemetry) Land mobile (telemetry & telecommand). |

TABLE 1.—SUMMARY OF 1.4 GHZ BAND PLAN OPTIONS—Continued

| Band | 1390–1392 MHz | 1392–1395 MHz | 1427–1429 MHz | 1429–1432 MHz | 1432–1435 MHz as-sign pursuant to 309(j) subject to NDAA–99 |
|----------------|---|--|---|--|---|
| Option 1 | FIXED & MOBILE (except aeronautical mobile) for PMRS use and pair with 1427–1429 MHz (site license). | FIXED & MOBILE (except aeronautical mobile) for PMRS use and pair with 1432–1435 MHz (band manager). | FIXED & MOBILE for PMRS use and pair with 1390–1392 MHz (site license). | Upgrade non-medical telemetry to co-primary status with WMTS. | FIXED & MOBILE for PMRS use and pair with 1392–1395 MHz (band manager). |
| Option 2 | FIXED & MOBILE (except aeronautical mobile) for unpaired operations. | | Upgrade telemetry to primary status | | |
| Option 3 | Allocate to FIXED & MOBILE (except aeronautical mobile) for PMRS use and to MSS (feeder uplinks) on a Co-primary basis. | | 1427–1430 MHz: Shift WMTS down in frequency and upgrade non-medical telemetry to primary status so that both medical and non-telemetry telemetry operates on a co-primary basis in this band. | Allocate 1430–1432 MHz to FIXED & MOBILE for PMRS use and to MSS (feeder downlinks) on a co-primary basis. | |

18. Upon consideration of the various options and the comments, we believe that it is possible to craft a spectrum allocation plan that satisfies the needs of each of the user groups interested in the 1.4 GHz spectrum. While our spectrum plan does not meet the full

request of any one user, it does provide some spectrum for all parties in a way that we believe allows each party to mutually coexist and provide services with minimal potential for harmful interference. We also note that new licensees in these bands must protect

incumbent Federal Government licensees as specified above. The allocation plan being adopted for the 1.4 GHz spectrum is shown in the table below:

TABLE 2.—1.4 GHZ BAND PLAN

| 1390–1392 MHz | 1392–1395 MHz | 1427–1429.5 MHz | 1429.5–1432 MHz | 1432–1435 MHz |
|--|--|--|--|---|
| MOBILE (except aeronautical mobile); Unpaired operations. FIXED | MOBILE (except aeronautical mobile); paired with 1432–1435 MHz. FIXED | LAND MOBILE (WMTS) ... Fixed & land mobile (non-medical telemetry). | FIXED & LAND MOBILE (telemetry). 1430–1432 MHz NGSO MSS FEEDER DOWNLINKS (conditioned on international allocation). | MOBILE (except aeronautical mobile); paired with 1392–1395 MHz. FIXED. |
| NGSO MSS FEEDER UPLINKS (conditioned on international allocation). | | | | |

19. As shown in Table 2, we are providing six megahertz of spectrum for fixed and mobile (except aeronautical mobile) uses by pairing the 1392–1395 MHz band with the 1432–1435 MHz band. This spectrum pairing was consistent throughout each of our options and was not disputed by any party. As noted above, aeronautical mobile use will be prohibited in the 1392–1395 MHz band to protect radio astronomy operations in the 1390–1400 MHz band. Thus, we will also prohibit aeronautical mobile use in the paired 1432–1435 MHz band. Further, because the 1432–1435 MHz band was transferred to non-Federal Government

use pursuant to BBA–97, licenses must be assigned in accordance with Section 309(j) of the Communications Act. In addition, new licensees must compensate Federal Government entities for marginal costs incurred in relocating their facilities from the band. While the specific service and licensing rules for these bands will be the subject of the companion Service Rule NPRM, we observe that this spectrum may be well suited for licensing to band managers. Band managers could make spectrum available to PLMRS entities that are experiencing congestion in other bands. We are limiting this allocation to land mobile use rather than

a general mobile allocation to protect sensitive adjacent channel operations such as radio astronomy.

20. We are making an additional two megahertz of unpaired spectrum available for a flexible fixed, mobile (except aeronautical mobile), and MSS (uplink) allocation in the 1390–1392 MHz band. Because airborne operations would be incompatible with co-channel satellite uplinks and sensitive radio astronomy operations that occur in-band and in the adjacent bands, we are prohibiting aeronautical mobile use.

21. This allocation makes a total of eight megahertz of spectrum potentially available to the mobile (except

aeronautical mobile) service. Although this is less than the ten megahertz LMCC sought in its petition for rule making and its comments, we believe that this provides sufficient spectrum to relieve much of the crowding in existing land mobile bands. Further, by making some unpaired spectrum available, we hope to encourage innovative technologies, such as time division duplex (TDD), to locate in this band. Also, this unpaired spectrum is well suited to services that traditionally operate one-way communications services, such as paging and telemetry systems.

22. The flexible allocation in the 1390–1392 MHz band also allows this spectrum to be used for satellite feeder uplinks by Little LEOs. This allocation is consistent with the views expressed by (CORF) proposing to limit uplink transmissions to spectrum below 1392 MHz. However, the allocation will be contingent on completion of ongoing studies and an international allocation for such feeder links through the international process. To codify this allocation, we will add a new footnote, US368, to the Table of Frequency Allocations in Section 2.106 of the Commission's rules.

23. An issue of concern from the land mobile industry has been the ability of satellite systems to successfully share spectrum with land mobile stations. Because spectrum in the 1390–1392 MHz band would be used for feeder uplinks, we believe that such sharing can be accomplished while still minimizing the potential for harmful interference between satellite earth stations and land mobile stations. As pointed out by the Joint Satellite Commenters, licensees using this band for feeder uplinks only need a few earth stations that can be located in areas where land mobile use is least likely to occur. Thus, through geographic separation, land mobile and satellite earth stations will be able to co-exist in this band. Satellite and land mobile licensees will have to coordinate their operations to ensure sufficient separation distance and/or shielding between stations.

24. In the remaining five megahertz (1427–1432 MHz), we are allocating the 1427–1429 MHz band to the land mobile service on primary basis and maintaining the current land mobile primary allocation in the 1429–1432 MHz band. Under this allocation, the 1427–1429.5 MHz segment will be limited to WMTS and the 1429.5–1432 MHz segment will be limited to telemetry. In addition, the 1429.5–1432 MHz segment is being allocated for fixed service on a co-primary basis also

limited to telemetry operations. Further, we are conditionally permitting Little LEO feeder downlinks to share the 1430–1432 MHz band with telemetry on a co-primary basis. This allocation decision shifts WMTS down in frequency from its current allocation at 1429–1432 MHz and elevates telemetry operations to primary status in the 1429.5–1432 MHz segment. Non-medical telemetry will continue to operate with secondary status in the 1427–1429.5 MHz segment. Finally, we are removing the space operation (Earth-to-space) allocation from the 1427–1429 MHz band, as that allocation is incompatible with the allocation decisions we have made in the R&O. WMTS will continue to be licensed by rule in the modified allocation. Under this licensing scheme, WMTS licensees share spectrum with each other and applications are not mutually exclusive. Thus assignments are not subject to competitive bidding pursuant to Section 309(j) of the Communications Act.

25. Our allocation of the 1430–1432 MHz segment for Little LEO feeder downlinks, similar to the allocation for uplinks in the 1390–1392 MHz band, is contingent on completion of ongoing studies and adoption of an international allocation for this spectrum. All sharing studies must be completed and show that satellite downlink sharing is feasible with operations in the 1400–1427 MHz band before such an international allocation is adopted and our domestic allocation is finalized. We note that the sharing studies currently underway contemplate a satellite allocation in the 1429–1432 MHz band, but we have limited this allocation to the 1430–1432 MHz band which will provide an additional megahertz of guard band between the downlinks and the Earth Exploration Satellite Service (EESS) and Radio Astronomy Service (RAS). Once such an allocation is finalized, Little LEO operators may seek adoption of service rules, and issuance of necessary authorizations under Part 25 of our rules for feeder links subject to coordination with telemetry operations in the same spectrum.

26. We do not believe that the addition of Little LEO feeder downlinks in this band will preclude the use of the band by telemetry systems due to the low PFD levels of the satellite signals relative to the power levels of telemetry systems. We are confident that such limits will not preclude satellite earth stations in this band. However, these earth stations may have to locate in rural areas and use large, high gain antennas to ensure reception of the satellite signals. Because we anticipate that telemetry operations will be

concentrated largely in urban areas, sharing can be readily accomplished.

27. Our decision to shift the WMTS allocation down to 1427–1429.5 MHz is consistent with the position of AHA. AHA indicates that at 1427–1429.5 MHz, WMTS would be adjacent to radio astronomy instead of potentially high powered land mobile operators and thus would not require a guard band making spectrum use more efficient. AHA also requests that adjacent band telemetry services operating in 1429.5–1432 MHz be limited to fixed utility telemetry operations in order to minimize the impact on WMTS operations. We note that there are currently telemetry operations that are not fixed or limited to utility telemetry, which would have to be relocated to implement AHA's request. We did not seek comment on relocating incumbents in this band and such action would need to be addressed in the companion service rule proceeding. We do, however, note that medical telemetry system operators can also use the 608–614 MHz and 1395–1400 MHz bands to obtain additional capacity for their systems.

28. We are deferring consideration of the proposed AHA/Itron band swap. AHA and Itron's proposal contemplated carving out 7 geographic areas in the Medical Telemetry band for utility telemetry and then compensating Medical telemetry with corresponding spectrum in the telemetry band to our companion service rule proceeding. These 7 sites represent areas where Itron has built out existing facilities under the current secondary telemetry allocation. We believe that spectrum allocations in general should be kept as flexible as possible and that issues such as eligibility or unique requirements/restrictions should be addressed in service rules.

29. In making these allocation decisions in the 1.4 GHz spectrum, we deny the Petitions for Reconsideration filed by Little LEO entities in ET Docket No. 99–255. However, we note that substantively, this proceeding is providing a substantial portion of what the petitioners have indicated they needed to operate. The Petitions asked that we allocate the 1429–1432 MHz band for Little LEO feeder links and eliminate the WMTS allocation in this band. We believe that there is substantial public interest in maintaining an allocation for WMTS and are shifting the allocation to 1427–1429.5 MHz. We are elevating telemetry to primary in the 1429.5–1432 MHz portion of the band and believe that such systems can share this spectrum with Little LEO systems. Accordingly, we have provided a mechanism by

which Little LEOs can obtain an allocation in the 1430–1432 MHz band. While the Petitions for Reconsideration seeking an exclusive allocation of three megahertz of spectrum at 1427–1432 MHz for Little LEOs are denied, we are providing 2 MHz of spectrum in the requested frequency range for Little LEOs conditioned on adoption of an international allocation for this spectrum.

30. We believe that the allocation plan for use of the 1.4 GHz spectrum provides a reasonable compromise solution that will best accommodate the needs of all parties interested in this band. Through careful planning and coordination, these parties will be able to share spectrum and satisfy their communications needs, while maximizing the efficient use of scarce spectrum resources.

1670–1675 MHz Band

31. In the *NPRM*, we proposed to allocate the 1670–1675 MHz band to the fixed and mobile (except aeronautical mobile) services and to adopt rules that would make the band usable for a number of potential services. We specifically noted that five megahertz of unpaired spectrum could be useful for service providers interested in deploying TDD equipment.

32. We believe that a number of technologies, are well suited to this band. Therefore, in keeping with our policy of providing flexibility where possible and appropriate so that potential licensees can determine and offer the services that are valued most highly, we are adopting our proposal to provide a flexible allocation in this band for fixed and mobile (except aeronautical mobile) services. Aeronautical mobile use will be prohibited in order that operations in the 1670–1675 MHz band protect the sensitive radio astronomy receivers in the lower adjacent band. Further, the GOES receive earth stations located at Wallop's Island, Fairbanks and Greenbelt will have co-primary status with non-Federal Government operations in the band. In the *NPRM*, we asked for comment regarding appropriate technical rules for this band, especially as it relates to power limits and out-of-band emissions necessary to protect radio astronomy operations in the lower adjacent band. Specific service and licensing rules will be discussed in the companion Service Rule *NPRM*.

33. To protect the Federal Government earth stations located at Wallops Island and Fairbanks that will be co-primary in the band, we will require that licensees planning to

operate within 100 kilometers (62.1 miles) of the earth stations at these facilities coordinate such use with the affected earth station prior to construction. This requirement will be added to footnote US362. In addition, we will require licensees planning to operate in the vicinity of the earth station located at Greenbelt to coordinate such use prior to construction. This requirement is consistent with the *First Spectrum Reallocation Report* in which NTIA recommended that, in the absence of coordination guidelines for METSATS, coordination of all ground stations is necessary. Because the Greenbelt facility is used as a back-up for Wallops Island it operates only during tests (about once per month) and in any instance where Wallops Island goes out of service. Due to this sporadic use, different coordination procedures may be needed for this site than for the other two sites. Therefore, we are not adopting specific coordination requirements for the Greenbelt facility.

34. We are mindful of the need to protect radio astronomy and radiosonde operations in the 1660–1670 MHz band. We note, however, that because radio astronomy receivers are much more sensitive than those of radiosondes, any protection schemes designed for radio astronomy receivers should also protect radiosondes. Typically, to accomplish such protection, the Commission has set out-of-band emission limits to restrict the amount of power present in a frequency band due to a transmitter in an adjacent band. We believe that such a requirement is necessary here. However, we are not adopting specific limits in the *Report and Order*. Instead, issues of maximum power levels and emission masks will be explored in the companion Service Rules Notice. In its comments, ArrayComm states that power spectral flux density limits (PSFD) should be established as coordination criteria for locating stations in the 1670–1675 MHz band near radio astronomy sites. We decline to adopt PSFD limits. We generally have not adopted such limits in the past and believe that they could artificially restrict commercial operations in the band. However, we will encourage future licensees in this band to coordinate mutually agreeable limits with radio astronomers. Finally, we note that the provisions of footnote US74 of the Table of Frequency Allocations will apply to this band. This footnote specifies that radio astronomy operations will be protected from extraband radiation only to the extent that such radiation exceeds the limits

for a station operating in compliance with all applicable Commission rules.

2385–2390 MHz Band

35. In ITU Region 2, the 2385–2390 MHz band is allocated to the fixed, mobile, and radiolocation services on a primary basis and to the amateur service on a secondary basis. Domestically, the band is allocated to the mobile service on a primary basis for Federal and non-Federal Government use, limited to aeronautical telemetry and associated telecommand operations for flight testing of aircraft and missiles. All other mobile telemetering uses are secondary to these uses. Currently, DoD, the National Aeronautics and Space Administration (NASA), DOE, and the commercial aviation industry use the entire 2360–2390 MHz band to support aeronautical flight test operations. These operations will continue in the 2360–2385 MHz band. In addition, the 2385–2390 MHz band is allocated to the radiolocation service on a primary basis and to the fixed service on a secondary basis for Federal Government use.

36. The 2385–2390 band will become available for exclusive non-Federal Government use in January 2005. However, NTIA stated that to minimize the operational impact to flight test programs that are ongoing or planned to begin in the near future, Federal Government operations at seventeen sites will continue on a protected basis until 2007. These protection areas, circles with radii ranging from 100 kilometers to 160 kilometers, are scattered around the continental United States, Hawaii, and Puerto Rico, and range from sparsely populated desert areas to major metropolitan areas such as Seattle, Washington and St. Louis, Missouri. In addition, the National Astronomy and Ionosphere Center operates a 1-megawatt planetary research radar at Arecibo, Puerto Rico with a 20 megahertz bandwidth, centered at 2380 MHz. As indicated in the *Second Spectrum Reallocation Report*, airborne and space-to-Earth transmissions will be prohibited in Puerto Rico to protect this facility. Finally, we note that this band was transferred to non-Federal Government use pursuant to BBA–97, and therefore licenses will be assigned in accordance with Section 309(j) of the Communications Act. New licensees must compensate Federal Government entities in advance for marginal costs incurred in relocating their facilities from the band. In a recent Report to Congress, NTIA estimated the reimbursement costs for this band as \$124–\$219 million dollars with the majority of these costs going towards

retuning existing equipment to a band of replacement spectrum.

37. In the *NPRM*, we proposed to allocate the 2385–2390 MHz band to the fixed and mobile services on a co-primary basis and to allow flexible use. In addition, we asked for comment on whether we should allocate this band more narrowly. We received few comments regarding our proposals for this band. MicroTrax states that although the 2385–2390 MHz band presents characteristics that allow the band to be a good technical fit for its proposed PLMS, other aspects of the band make it less desirable than the 1670–1675 MHz band. Primarily, Microtrax argues that the requirement to reimburse Federal Government users of this spectrum for relocation costs, are unknown and may be prohibitively expensive as to prevent Microtrax from offering a low-cost consumer service. We believe other entities, such as those interested in the 1670–1675 MHz band, could also make use of the 2385–2390 MHz band. Under the provisions of the Communications Act, the Commission must reallocate and assign this spectrum for competitive bidding. If NTIA determines that it is in the public interest to retain this spectrum for Federal Government use, it may substitute this spectrum for other spectrum under its authorizing statute.

38. In addition to our proposal to allocate this band for fixed and mobile services, we sought comment on NTIA's determination that receiver and transmitter standards are needed for users of this band in order to reduce the potential for mutual interference with airborne systems that will continue to operate in the adjacent 2360–2385 MHz band. No comments were received regarding this issue. Thus, consistent with rules for most radio services regulated by the Commission, we will not adopt receiver standards for this band. However, in order to attract and retain customers, we believe that equipment manufacturers have sufficient incentive to design robust equipment capable of operating in this band absent specific Commission rules to that effect. We also asked for comment on whether sites in addition to the seventeen sites identified by NTIA for protection until 2007 are currently being used. The Aerospace and Flight Test Radio Coordinating Council (AFTRCC) requests that ten additional sites beyond those identified by NTIA receive protection until 2007. They state that this would minimize the impact of reallocation on current and planned flight test operations while they prepare to operate in reduced spectrum.

39. Inasmuch as there was no opposition to our proposal to provide a flexible allocation in this band to the fixed and mobile services, we are adopting this proposal for the 2385–2390 MHz band. As stated in the *NPRM*, we would like to minimize the impact on aeronautical telemetry operators from transitioning out of this band. We, therefore, will protect nine of the additional ten sites requested by AFTRCC, but will not extend this protection to the Fairfield County, Connecticut site. In this regard, we are concerned that protecting the Fairfield County site would delay deployment of service to the New York City metropolitan area for at least two years. Because this area is such a large population center, it is important that a licensee have access to this market as soon as possible. We believe that these actions strike a balance between the needs of the aeronautical telemetry community and those of new licensees in the 2385–2390 MHz band. Accordingly, we are modifying proposed footnote USzzz (codified herein as footnote US363) in the Table of Frequency Allocations to include protection for the requested nine sites.

Effect of Reallocated Spectrum on Native Americans

40. In the *NPRM*, we sought comment from Indian Tribal Governments regarding the effect our proposals for the 27 MHz being addressed in this proceeding might have on Native American Tribes. Last year, the Commission adopted a *Tribal Government Policy Statement*, 65 FR 41668, July 6, 2000 which stated that the Commission is committed to working with Native American tribes to ensure adequate access to communications services, and consulting with Tribal Governments prior to implementing any regulatory action or policy that would significantly affect tribal Governments, their land, and resources. We did not receive any comments from Tribal Governments or other parties on this issue. However, we will encourage future licensees, when deploying systems in spectrum reallocated in the *Report and Order*, to work with Tribal Governments to serve the communications needs of Tribal communities.

Protection of Federal Government Services

41. Federal Government operations will continue on a protected basis in several of the reallocated frequency bands, either indefinitely or for a period of time beyond the date of spectrum transfer from Federal to non-Federal

Government use. In the *NPRM*, we stated that within the established protection zones, non-Federal Government stations would need to be coordinated with NTIA. This mandatory coordination will be accomplished by the Commission after an application is submitted by a licensee through the Frequency Assignment Subcommittee (FAS) of the Interdepartment Radio Advisory Committee (IRAC). We proposed a procedure whereby licensees proposing to construct a facility within a protected zone, would submit an application through the Universal Licensing System which contains the technical information for the site. This information would then be forwarded to the FAS. Licensees would be prohibited from constructing the facility until receiving a response from the Commission that the coordination with NTIA was successful. We sought comment on this proposal and asked for suggestions on alternative procedures that might be less cumbersome. The only comment received on this issue was from The National Academy of Sciences, which suggests coordination procedures for the GOES earth stations that will continue to operate with co-primary status in the 1670–1675 MHz band. We are adopting rules to implement this suggestion. For all other frequency bands, we adopt the procedures as proposed. Under these procedures, Commission licensees may construct facilities under the terms of their license and in accordance with the relevant service rules so long as the facility is not within one of the protected zones as defined by NTIA, unless the facility has been coordinated with NTIA. This does not exempt licensees from any other required filings or coordination requirements, such as those that may be required under the National Environmental Policy Act of 1969 or for international coordination.

42. By the decisions in the R&O, we reallocate twenty-seven megahertz of spectrum from Federal to non-Federal Government use. These actions fulfill our obligations to implement various provisions of OBRA–93 and BBA–97 and they also continue implementation of the 1999 *Spectrum Policy Statement*. We believe that through these actions, manufacturers, service providers and consumers will reap the benefits of new technologies and services.

Final Regulatory Flexibility Analysis

43. As required by the Regulatory Flexibility Act (RFA) ¹ an Initial

¹ See 5 U.S.C. 603, The RFA, see 5 U.S.C. 601 *et seq.*, has been amended by the Contract With

Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rule Making (NPRM)*.² The Commission sought written public comments on the proposals in the Notice, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.³

Need for, and Objectives of, the Report and Order.

44. This *Report and Order (R&O)* allocates 27 megahertz of spectrum from the 216–220 MHz, 1390–1395 MHz, 1427–1429 MHz, 1429–1432 MHz, 1432–1435 MHz, 1670–1675 MHz, and 2385–2390 MHz bands for non-Government use, thereby effectuating the transfer of this spectrum from the Federal Government, pursuant to the provisions of the Omnibus Budget Reconciliation Act of 1993 (OBRA–93) and the Balanced Budget Act of 1997 (BBA–97). The bands 1390–1395 MHz, 1427–1429 MHz, and 2385–2390 MHz are being allocated for exclusive non-Federal Government use, while the bands 216–220 MHz, 1432–1435 MHz, and 1670–1675 MHz, are being allocated for mixed use. Mixed use is a type of shared use whereby Federal Government use is limited by geographic area, by time, or by other means so as to guarantee that the potential use to be made by Federal Government stations is substantially less than the potential use to be made by non-Federal Government stations. All primary Government allocations are being deleted from the transfer bands except in the mixed-use bands, where a limited number of stations will be grandfathered indefinitely. Federal agencies will not add new primary stations in any of the transfer bands. In the bands 1432–1435 MHz and 2385–2390 MHz, non-grandfathered Federal Government stations will retain their primary status until relocated in accordance with the Strom Thurmond National Defense Authorization Act of Fiscal Year 1999 (NDAA–99).

45. These seven bands have a variety of continuing Government protection requirements and incumbent Government and non-Government uses. Despite these constraints and the relatively narrow bandwidth contained in each of the bands, we believe that the

R&O will foster a variety of potential applications in both new and existing services. The transfer of these bands to non-Government use should enable the development of new technologies and services, provide additional spectrum relief for congested private land mobile frequencies, and fulfill our obligations as mandated by Congress to assign this spectrum for non-Government use.

Summary of Significant Issues Raised by Public Comments in Response to the IRFA

46. There were no comments received in response to the IRFA.

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

47. 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.⁴ The RFA defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”⁵ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁶ 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).⁷ A small organization is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”⁸ Nationwide, as of 1992, there were approximately 275,801 small organizations.⁹ “Small governmental jurisdiction”¹⁰ generally means “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.”¹¹ As of

1992, there were approximately 85,006 governmental entities in the United States.¹² This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96%, have populations of fewer than 50,000.¹³ The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (96%) are small entities.

48. Licenses in some of the spectrum being allocated in the R&O will be assigned by auction, and licenses in some of the spectrum may be assigned by auction. The Commission has not yet determined how many licenses will be awarded, nor will it know how many licensees will be small businesses, until auctions are planned and held. We therefore assume that, for purposes of our evaluations and conclusions in the FRFA, all of the prospective licensees in the bands addressed in the *NPRM* are small entities, as that term is defined by the SBA.

49. Incumbent services in the 216–220 MHz band, which the R&O allocates on a primary basis to the Fixed and Mobile Services, include the Automated Maritime Telecommunications Service (AMTS), telemetry users and Low Power Radio Service (LPRS) users. The Commission has defined small businesses in the AMTS as those businesses which, together with their affiliates and controlling interests, have not more than fifteen million dollars (\$15 million) in the preceding three years.¹⁴ There are only three AMTS licensees, none of whom are small businesses. However, potential licensees in AMTS include all public coast stations, which fall within the Small Business Administration classification as Radiotelephone Service Providers, Standard Industrial Classification Code 33422.¹⁵ The small business size standard for this category is an entity that employs no more than 1500 persons.¹⁶ According to the 1992 Census of Transportation, Communications, and Utilities, there are a total of 1178 radiotelephone service

⁴ 5 U.S.C. 603(b)(3).

⁵ 5 U.S.C. 601(6).

⁶ 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).

⁷ Small Business Act, 15 U.S.C. 632 (1996).

⁸ 5 U.S.C. 601(4).

⁹ 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).

¹⁰ 47 CFR 1.1162.

¹¹ 5 U.S.C. 601(5).

¹² U.S. Dept. of Commerce, Bureau of the Census, “1992 Census of Governments.”

¹³ *Id.*

¹⁴ Letter from Aida Alvarez, Administrator, Small Business Administration to Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission (June 4, 1999).

¹⁵ See 13 CFR 121.201, North American Industrial Classification System (NAICS) Code 33422.

¹⁶ See *Amendment of the Commission's Rules Concerning Maritime Communications*, PR Docket No. 92–257, *Third Report and Order and Memorandum Opinion and Order*, 13 FCC Rcd 19853 (1998).

America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

² See Reallocation of the 216–220 MHz, 1390–1395 MHz, 1427–1429 MHz, 1429–1432 MHz, 1432–1435 MHz, 1670–1675 MHz, and 2385–2390 MHz Government Transfer Bands, ET Docket No. 00–221, 15 FCC Rcd 22,657, 22,697 (2000), 66 FR 7443, January 23, 2001.

³ See 5 U.S.C. 604.

providers, of whom only 12 had more than 1000 employees. Therefore, we estimate that at least 1166 small entities may be affected by these rules.

50. Users of telemetry are generally large corporate entities, such as utility companies, and it is unlikely that any of the users would be small businesses. LPRS permits licensees to use the 216–217 MHz segment for auditory assistance, medical devices, and law enforcement tracking devices. Users are likely to be theaters, auditoriums, churches, schools, banks, hospitals, and medical care facilities. The primary manufacturer of auditory assistance estimates that it has sold 25,000 pieces of auditory assistance equipment. Many if not most LPRS licensees are likely to be small businesses or individuals. However, because the LPRS is licensed by rule, with no requirement for individual license applications or documents, the Commission is unable to estimate how many small businesses make use of LPRS equipment.

51. The incumbent service in the 1427–1429 MHz band is telemetry. The incumbent services in the 1429–1432 MHz band include general telemetry and medical telemetry. The Commission has issued only a small number of licenses in these bands. The primary user of this band is Itron, Inc., which with an investment of \$100 million in equipment development, is not likely to be a small business. Other licensees include utility companies, such as Pueblo Service Company of Colorado and E Prime, Inc., and large manufacturers such as Deere and Company, Caterpillar, and General Dynamics. None of these licensees are likely to be small businesses. One licensee, Zytex, a manufacturer of high-speed telemetry systems may be a small business. Users of medical telemetry are hospitals and medical care facilities, some of which are likely to be small businesses.

52. The Commission has not developed a definition of small entities specifically applicable to Radio Frequency Equipment Manufacturers (RF Manufacturers). Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to manufacturers of “Radio and Television Broadcasting and Communications Equipment.” According to the SBA’s regulation, an RF manufacturer must have 750 or fewer employees in order to qualify as a small business.¹⁷ Census Bureau data indicates that there are 858 companies in the United States that manufacture

radio and television broadcasting and communications equipment, and that 778 of these firms have fewer than 750 employees and would be classified as small entities.¹⁸ We believe that many of the companies that manufacture RF equipment may qualify as small entities.

53. According to the SBA’s regulations, nursing homes and hospitals must have annual gross receipts of \$5 million or less in order to qualify as a small business concern. There are approximately 11,471 nursing care firms in the nation, of which 7,953 have annual gross receipts of \$5 million or less.¹⁹ There are approximately 3,856 hospital firms in the nation, of which 294 have gross receipts of \$5 million or less. Thus, the approximate number of small confined setting entities to which the Commission’s new rules will apply is 8,247.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

54. Entities interested in acquiring spectrum in the bands where license assignment will be made through an auction will need to submit a high bid and then submit a license application for the spectrum of interest. In other bands, entities will be required only to submit license applications to obtain the use of spectrum. Additionally, licensees will be required to file applications for license renewals and make certain other filings as required by the Communications Act.

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

55. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its 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. As in all of the bands

where incumbent licensees exist, we have inquired whether we should elevate the status of the services in which the incumbents are licensed to primary. 5 U.S.C. 603.

56. Although the scope of this *R&O* is spectrum allocation, and not license assignment and compliance requirements, several steps have been taken to minimize any possible significant economic impact on small entities. For example, the allocation decision not to auction the 216–217 MHz band and also to elevate LPRS to primary status in that band will protect the investment made by small entities in LPRS devices. Similarly, the decision to relocate the Wireless Medical Telemetry Service (WMTS) to the 1427–1429.5 MHz band from the 1429–1432 MHz band will allow licensees to more efficiently use the spectrum because the spectrum sharing environment will be more favorable at the lower end of the band. Because, the original allocation decision for WMTS was only made recently, devices are not yet on the market. Thus, there is no economic impact on licensees to retune equipment. Likewise, the impact on manufacturers will be minimal.

Report to Small Business Administration

57. The Commission will send a copy of this Report and Order, including a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

Report to Congress

58. The Commission will send a copy of this Final Regulatory Flexibility Analysis, along with the Report and Order, in a report to Congress pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

Ordering Clauses

59. Authority for issuance of this *Report and Order and Memorandum Opinion and Order* is contained in Sections 4(i), 257, 303(b), 303(f), 303(g), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 257, 303(b), 303(f), 303(g), 303(r), and 309(j).

60. Parts 1, 2, 90, and 95 of the Commission’s Rules *Are amended*, effective April 12, 2002.

61. The proceeding in WT Docket No. 97–153 *Is terminated*.

62. The Petitions for Reconsideration filed in ET Docket No. 99–255 *Are denied*.

63. The Commission’s Consumer Information Bureau, Reference Information Center, *Shall send* a copy of this *Report and Order and*

¹⁷ See 13 CFR 121.201, North American Industrial Classification System (NAICS) Code 33422.

¹⁸ See U.S. Department of Commerce, 1992 Census of Transportation, Communications and Utilities (issued May 1995), NAICS Code 33422.

¹⁹ See Small Business Administration Tabulation File, SBA Size Standards Table 2C, January 23, 1996, SBA, Standard Industrial Code (SIC) categories 8050 (Nursing and Personal Care Facilities) and 8060 (Hospitals). (SBA Tabulation File).

Memorandum Opinion and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel.

List of Subjects

47 CFR Part 1

Administrative practice and procedure, Radio.

47 CFR Part 2

Communications equipment, Radio.

47 CFR Part 90

Communications equipment, Radio, Reporting and recordkeeping requirements.

47 CFR Part 95

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 1, 2, 90 and 95 as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r), 309 and 325(e).

2. Section 1.924 is amended by adding paragraph (g) to read as follows:

§ 1.924 Quiet zones.

* * * * *

(g) *GOES*. The requirements of this paragraph (g) are intended to minimize harmful interference to Geostationary Operational Environmental Satellite (GOES) earth stations receiving in the band 1670–1675 MHz, which are located at Wallops Island, Virginia and Fairbanks, Alaska and Greenbelt Maryland.

(1) Applicants and licensees planning to construct and operate a new or modified station within the area bounded by a circle with a radius of 100 kilometers (62.1 miles) that is centered on 37°56′ 47″ N, 75°27′ 37″ W (Wallops Island) or 64°58′ 36″ N, 147°31′ 03″ W (Fairbanks) must notify the National Oceanic and Atmospheric Administration (NOAA) of the proposed operation. For this purpose, NOAA maintains the GOES coordination web page at <http://www.osd.noaa.gov/radio/frequency.htm>, which provides the technical parameters of the earth stations and the point-of-contact for the notification. The notification shall include the following information: requested frequency, geographical coordinates of the antenna location, antenna height above mean sea level, antenna directivity, emission type, equivalent isotropically radiated power, antenna make and model, and transmitter make and model.

(2) When an application for authority to operate a station is filed with the FCC, the notification required in paragraph (g)(1) of this section should be sent at the same time. The

application must state the date that notification in accordance with paragraph (g)(1) of this section was made. After receipt of such an application, the FCC will allow a period of 20 days for comments or objections in response to the notification.

(3) If an objection is received during the 20-day period from NOAA, the FCC will, after consideration of the record, take whatever action is deemed appropriate.

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

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

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

4. Section 2.106 is amended as follows:

a. Revise pages 23, 31, 41, 42, 43, 47, 50, and 51.

b. Revise footnotes US210, US229, US276, US311, US350, and US352; remove footnotes US274 and US317; and add footnotes US361, US362, US363, and US368.

c. Add footnotes NG173 and NG174.

d. Revise footnotes G2, G27, G30, G114, and G120.

The additions and revisions read as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

BILLING CODE 6712-01-P

| 33-50 MHz (VHF) | | | | Page 23 | |
|---|----------|----------|---|--|--|
| International Table | | | United States Table | | FCC Rule Part(s) |
| Region 1 | Region 2 | Region 3 | Federal Government | Non-Federal Government | |
| See previous page for 30.01-37.5 MHz | | | 33-34 | 33-34 FIXED LAND MOBILE NG124 | Private Land Mobile (90) |
| 37.5-38.25 FIXED MOBILE Radio astronomy | | | 34-35 FIXED MOBILE | 34-35 | |
| | | | 35-36 | 35-36 FIXED LAND MOBILE | Public Mobile (22) Private Land Mobile (90) |
| | | | 36-37 FIXED MOBILE US220 | 36-37 | |
| | | | 37-37.5 | US220 | |
| | | | 37-37.5 | 37-37.5 LAND MOBILE NG124 | Private Land Mobile (90) |
| S5.149 | | | 37.5-38 Radio astronomy S5.149 | 37.5-38 LAND MOBILE Radio astronomy S5.149 NG59 NG124 | |
| | | | 38-38.25 FIXED MOBILE RADIO ASTRONOMY S5.149 US81 | 38-38.25 RADIO ASTRONOMY S5.149 US81 | |
| 38.25-39.986 FIXED MOBILE | | | 38.25-39 FIXED MOBILE | 38.25-39 | |
| | | | 39-40 | 39-40 LAND MOBILE NG124 | Private Land Mobile (90) |
| 39.986-40.02 FIXED MOBILE Space research | | | 40-42 FIXED MOBILE | 40-40.98 | ISM Equipment (18) Private Land Mobile (90) |

| 162.0125-322 MHz (VHF/UHF) | | | | | Page 31 |
|--|--|---|--|--|--|
| International Table | | | United States Table | | FCC Rule Part(s) |
| Region 1 | Region 2 | Region 3 | Federal Government | Non-Federal Government | |
| See previous page for 156.8375-174 MHz | | | 162.0125-173.2 FIXED MOBILE | 162.0125-173.2 | Auxiliary Broadcasting (74) Private Land Mobile (90) |
| | | | S5.226 US8 US11 US13 US216 US223 US300 US312 G5 | S5.226 US8 US11 US13 US216 US223 US300 US312 | |
| | | | 173.2-173.4 | 173.2-173.4 FIXED Land mobile | Private Land Mobile (90) |
| | | | 173.4-174 FIXED MOBILE G5 | 173.4-174 | |
| | | | 174-216 BROADCASTING Fixed Mobile S5.234 | 174-216 BROADCASTING | Broadcast Radio (TV) (73) Auxiliary Broadcasting (74) |
| 174-223 BROADCASTING | 174-223 FIXED MOBILE BROADCASTING | 216-220 FIXED MARITIME MOBILE Radiolocation S5.241 | 216-220 Fixed Mobile Radiolocation S5.241 G2 | 216-220 FIXED MOBILE except aeronautical mobile | Maritime (80) Private Land Mobile (90) Personal Radio (95) Amateur (97) |
| | | S5.242 | US210 US229 | US210 US229 NG152 NG173 | |
| | | 220-225 AMATEUR FIXED MOBILE Radiolocation S5.241 | 220-222 FIXED LAND MOBILE Radiolocation S5.241 G2 | 220-222 FIXED LAND MOBILE | Private Land Mobile (90) |
| | | S5.235 S5.237 S5.243 | S5.233 S5.238 S5.240 S5.245 | US335 222-225 Radiolocation S5.241 G2 | US335 222-225 AMATEUR |

| 941-1429 MHz (UHF) | | | | | Page 41 | |
|--|-----------------------------------|--|--|---|--|--|
| International Table | | | United States Table | | FCC Rule Part(s) | |
| Region 1 | Region 2 | Region 3 | Federal Government | Non-Federal Government | | |
| See previous page for 890-942 MHz | See previous page for 928-942 MHz | See previous page for 890-942 MHz | 941-944 FIXED | 941-944 FIXED | Public Mobile (22) Fixed Microwave (101) | |
| 942-960 FIXED MOBILE except aeronautical mobile BROADCASTING S5.322 | 942-960 FIXED MOBILE | 942-960 FIXED MOBILE BROADCASTING | US268 US301 US302 G2 | US268 US301 US302 NG120 | Public Mobile (22) Auxiliary Broadcast. (74) Fixed Microwave (101) | |
| S5.323 | | S5.320 | 944-960 | 944-960 FIXED | Aviation (87) | |
| 960-1215 AERONAUTICAL RADIONAVIGATION | | | 960-1215 AERONAUTICAL RADIONAVIGATION | NG120 | | |
| S5.328 | | | S5.328 US224 | | | |
| 1215-1240 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION RADIONAVIGATION-SATELLITE (space-to-Earth) S5.329 SPACE RESEARCH (active) S5.330 S5.331 S5.332 | | | 1215-1240 RADIOLOCATION S5.333 G56 RADIONAVIGATION-SATELLITE (space-to-Earth) | 1215-1240 | | |
| 1240-1260 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION RADIONAVIGATION-SATELLITE (space-to-Earth) S5.329 SPACE RESEARCH (active) Amateur | | | 1240-1300 RADIOLOCATION S5.333 G56 | 1240-1300 Amateur | Amateur (97) | |
| S5.330 S5.331 S5.332 S5.334 S5.335 | | | | | | |
| 1260-1300 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION SPACE RESEARCH (active) Amateur | | | | | | |
| S5.282 S5.330 S5.331 S5.332 S5.334 S5.335 | | | S5.334 | S5.282 S5.333 S5.334 | | |
| 1300-1350 AERONAUTICAL RADIONAVIGATION S5.337 Radiolocation | | | 1300-1350 AERONAUTICAL RADIO-NAVIGATION S5.337 Radiolocation G2 | 1300-1350 AERONAUTICAL RADIO-NAVIGATION S5.337 | Aviation (87) | |
| S5.149 | | | S5.149 | S5.149 | | |

| | | | | |
|--|----------------------------|--|---|---|
| 1350-1400 FIXED MOBILE RADIOLOCATION | 1350-1400 RADIOLOCATION | 1350-1390 FIXED MOBILE RADIOLOCATION G2 S5.149 S5.334 S5.339 US311 G27 G114 | 1350-1390 S5.149 S5.334 S5.339 US311 | |
| | | 1390-1395 | 1390-1392 FIXED MOBILE except aeronautical mobile FIXED-SATELLITE (Earth-to-space) US368 S5.149 S5.339 US311 US351 | |
| | | S5.149 S5.339 US311 US351 | 1392-1395 FIXED MOBILE except aeronautical mobile S5.149 S5.339 US311 US351 | |
| S5.149 S5.338 S5.339 | S5.149 S5.334 S5.339 | 1395-1400 LAND MOBILE US350 S5.149 US5.339 US311 US351 | Personal (95) | |
| 1400-1427 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) S5.340 S5.341 | | 1400-1427 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive) S5.341 US246 | | |
| 1427-1429 SPACE OPERATION (Earth-to-space) FIXED MOBILE except aeronautical mobile S5.341 | | 1427-1429.5 LAND MOBILE US350 S5.341 US352 | 1427-1429.5 LAND MOBILE US350 Fixed (telemetry) S5.341 US352 | Private Land Mobile (90) Personal (95) |
| See next page for 1429-1452 MHz | | See next page for 1429.5-1432 MHz | 1429.5-1430 FIXED (telemetry) LAND MOBILE (telemetry) S5.341 US352 | Private Land Mobile (90) |

| 1430-1610 MHz (UHF) | | | | United States Table | | FCC Rule Part(s) |
|--|---|--|----------------|--|--|---|
| International Table | | Region 3 | | Federal Government | Non-Federal Government | |
| Region 1 | Region 2 | Region 3 | | 1429.5-1432 | See previous page | See previous page |
| 1429-1452 FIXED MOBILE except aeronautical mobile | 1429-1452 FIXED MOBILE S5.343 | | | | 1430-1432 FIXED (telemetry) LAND MOBILE (telemetry) FIXED-SATELLITE (space-to-Earth) US368 S5.341 US352 | Private Land Mobile (90) |
| S5.341 S5.342 | S5.341 | | | 1432-1435 | 1432-1435 FIXED MOBILE except aeronautical mobile S5.341 US361 | |
| 1452-1492 FIXED MOBILE except aeronautical mobile BROADCASTING S5.345 S5.347 BROADCASTING- SATELLITE S5.345 S5.347 S5.341 S5.342 | 1452-1492 FIXED MOBILE S5.343 BROADCASTING S5.345 S5.347 BROADCASTING-SATELLITE S5.345 S5.347 S5.341 S5.344 | | | 1435-1525 MOBILE (aeronautical telemetry) | | Aviation (87) |
| 1492-1525 FIXED MOBILE except aeronautical mobile S5.341 S5.342 | 1492-1525 FIXED MOBILE S5.343 MOBILE-SATELLITE (space-to-Earth) S5.348A S5.341 S5.344 S5.348 | 1492-1525 FIXED MOBILE | S5.341 S5.348A | | | |
| 1525-1530 SPACE OPERATION (space-to-Earth) FIXED MOBILE-SATELLITE (space-to-Earth) Earth exploration-satellite Fixed Mobile S5.343 mobile S5.349 S5.341 S5.342 S5.350 S5.351 S5.352A S5.354 | 1525-1530 SPACE OPERATION (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) Earth exploration-satellite Fixed Mobile S5.343 S5.341 S5.351 S5.354 | 1525-1530 SPACE OPERATION (space-to-Earth) FIXED MOBILE-SATELLITE (space-to-Earth) Earth exploration-satellite Mobile S5.349 S5.341 S5.351 S5.352A S5.354 | | S5.341 US78 | | Satellite Communications (25) Aviation (87) |

| 1670-2110 MHz (UHF) | | | | | Page 47 | |
|---|--|---|--|--|---|--|
| International Table | | | United States Table | | FCC Rule Part(s) | |
| Region 1 | Region 2 | Region 3 | Federal Government | Non-Federal Government | | |
| 1670-1675 METEOROLOGICAL AIDS FIXED METEOROLOGICAL-SATELLITE (space-to-Earth) MOBILE S5.380 S5.341 | | | 1670-1675 S5.341 US211 US362 | 1670-1675 FIXED MOBILE except aeronautical mobile S5.341 US211 US362 | | |
| 1675-1690 METEOROLOGICAL AIDS FIXED METEOROLOGICAL-SAT- ELLITE (space-to-Earth) MOBILE except aeronautical mobile S5.341 | 1675-1690 METEOROLOGICAL AIDS FIXED METEOROLOGICAL-SAT- ELLITE (space-to-Earth) MOBILE except aeronautical mobile MOBILE-SATELLITE (Earth-to-space) S5.341 S5.377 | 1675-1690 METEOROLOGICAL AIDS FIXED METEOROLOGICAL-SAT- ELLITE (space-to-Earth) MOBILE except aeronautical mobile S5.341 | 1675-1700 METEOROLOGICAL AIDS (radiosonde) METEOROLOGICAL-SATELLITE (space-to-Earth) | | | |
| 1690-1700 METEOROLOGICAL AIDS METEOROLOGICAL-SAT- ELLITE (space-to-Earth) Fixed Mobile except aeronautical mobile S5.289 S5.341 S5.382 | 1690-1700 METEOROLOGICAL AIDS METEOROLOGICAL-SAT- ELLITE (space-to-Earth) MOBILE-SATELLITE (Earth-to-space) S5.289 S5.341 S5.377 S5.381 | 1690-1700 METEOROLOGICAL AIDS METEOROLOGICAL-SAT- ELLITE (space-to-Earth) S5.289 S5.341 S5.381 | S5.289 S5.341 US211 | | | |
| 1700-1710 FIXED METEOROLOGICAL-SAT- ELLITE (space-to-Earth) MOBILE except aeronautical mobile S5.289 S5.341 | 1700-1710 FIXED METEOROLOGICAL-SAT- ELLITE (space-to-Earth) MOBILE except aeronautical mobile MOBILE-SATELLITE (Earth- to-space) S5.289 S5.341 S5.377 | 1700-1710 FIXED METEOROLOGICAL-SAT- ELLITE (space-to-Earth) MOBILE except aeronautical mobile S5.289 S5.341 S5.384 | 1700-1710 FIXED G118 METEOROLOGICAL-SAT- ELLITE (space-to-Earth) | 1700-1710 METEOROLOGICAL-SAT- ELLITE (space-to-Earth) Fixed | | |
| 1710-1930 FIXED MOBILE S5.380 | | | S5.289 S5.341 1710-1755 FIXED MOBILE S5.341 US256 | S5.289 S5.341 1710-1755 S5.341 US256 | Note: Proceeds from the auction of the 1710-1755 MHz mixed-use band are to be deposited not later than September 30, 2002. | |

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|---|--|---|---------------------------------|---|
| S5.392 | MOBILE (line-of-sight only including aeronautical telemetry, but excluding flight testing of manned aircraft) SPACE RESEARCH (space-to-Earth) (space-to-space) | US303 | | |
| 2290-2300 FIXED MOBILE except aeronautical mobile SPACE RESEARCH (deep space) (space-to-Earth) | | 2290-2300 SPACE RESEARCH (deep space) (space-to-Earth) | | |
| 2300-2450 FIXED MOBILE Amateur Radiolocation | 2300-2450 FIXED MOBILE RADIOLOCATION Amateur | 2300-2305 Amateur | | Amateur (97) Note: 2300-2305 MHz became non-Federal Government exclusive spectrum in August 1995 |
| | | 2305-2310 FIXED MOBILE except aeronautical mobile RADIOLOCATION Amateur US338 | | Wireless Communications (27) Amateur (97) |
| | | 2310-2360 Fixed Mobile US339 Radiolocation G2 G120 US338 G123 | | Wireless Communications (27) |
| | | 2310-2320 FIXED MOBILE US339 RADIOLOCATION BROADCASTING- SATELLITE US327 S5.396 US338 | | |
| | | 2320-2345 BROADCASTING- SATELLITE US327 Mobile US276 US328 S5.396 | | Satellite Communications (25) |
| S5.150 S5.282 S5.395 | | S5.396 US327 US328 See next page | See next page for 2345-2450 MHz | See next page for 2345-2450 MHz |
| | S5.150 S5.282 S5.393 S5.394 S5.396 | | | |

| 2345-2655 MHz (UHF) | | | | Page 51 | |
|-------------------------------------|----------|----------|--|---|---|
| International Table | | | United States Table | | FCC Rule Part(s) |
| Region 1 | Region 2 | Region 3 | Federal Government | Non-Federal Government | |
| See previous page for 2300-2450 MHz | | | See previous page for 2310-2360 MHz | 2345-2360 FIXED MOBILE US339 RADIOLOCATION BROADCASTING- SATELLITE US327 S5.396 | Wireless Communications (27) |
| See previous page for 2300-2450 MHz | | | 2360-2385 MOBILE US276 RADIOLOCATION G2 Fixed G120 | 2360-2385 MOBILE US276 | |
| | | | 2385-2390 US363 | 2385-2390 FIXED MOBILE NG174 US363 | |
| | | | 2390-2400 G122 | 2390-2400 AMATEUR | RF Devices (15) Amateur (97) |
| | | | 2400-2402 S5.150 G123 | 2400-2402 Amateur S5.150 S5.282 | ISM Equipment (18) Amateur (97) |
| | | | 2402-2417 | 2402-2417 AMATEUR | RF Devices (15) ISM Equipment (18) Amateur (97) |
| | | | S5.150 G122 | S5.150 S5.282 | ISM Equipment (18) Amateur (97) |
| | | | 2417-2450 Radiolocation G2 S5.150 G124 | 2417-2450 Amateur S5.150 S5.282 | ISM Equipment (18) Amateur (97) |
| | | | 2450-2483.5 | 2450-2483.5 FIXED MOBILE Radiolocation S5.150 US41 | ISM Equipment (18) Private Land Mobile (90) Fixed Microwave (101) |
| | | | 2450-2483.5 FIXED MOBILE RADIOLOCATION S5.150 S5.397 | | |
| | | | S5.150 S5.394 | | |

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United States (US) Footnotes

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US210 In the sub-band 40.66–40.7 MHz and 216–220 MHz, frequencies may be authorized to Government and non-Government stations on a secondary basis for the tracking of, and telemetering of scientific data from, ocean buoys and wildlife. Operation in these bands is subject to the

technical standards specified in: (a) Section 8.2.42 of the NTIA Manual for Government use, or (b) 47 CFR 90.248 for non-Government use. After January 1, 2002, no new assignments shall be authorized in the band 216–217 MHz.

* * * * *

US229 In the band 216–220 MHz, the fixed, aeronautical mobile, land mobile, and radiolocation services are allocated on a

secondary basis for Government operations. The use of the fixed, aeronautical mobile, and land mobile services shall be limited to telemetering and associated telecommand operations. After January 1, 2002, no new assignments shall be authorized in the band 216–217 MHz. Further, Government and non-Government assignments in the sub-band 216.88–217.08 MHz shall protect the Navy's SPASUR system, which operates on a primary basis at the following sites:

| Transmit frequency of 216.98 MHz | | | Receive frequencies of 216.965–216.995 MHz | | |
|----------------------------------|-------------------------------|-------------------|--|-------------------------------|-------------------|
| Location | North latitude/west longitude | Protection radius | Location | North latitude/west longitude | Protection radius |
| Lake Kickapoo, TX | 33° 32'/098° 45' | 250 km | San Diego, CA | 32° 34'/116° 58' | 50 km |
| Jordan Lake, AL | 32° 39'/086° 15' | 150 km | Elephant Butte, NM | 33° 26'/106° 59' | 50 km |
| Gila River, AZ | 33° 06'/112° 01' | 150 km | Red River, AR | 33° 19'/093° 33' | 50 km |
| | | | Silver Lake, MO | 33° 08'/091° 01' | 50 km |
| | | | Hawkinsville, GA | 32° 17'/083° 32' | 50 km |
| | | | Fort Stewart, GA | 31° 58'/081° 30' | 50 km |

* * * * *

US276 Except as otherwise provided for in this note, use of the bands 2320–2345 MHz and 2360–2385 MHz by the mobile service is limited to aeronautical telemetering and associated telecommand operations for flight testing of manned or unmanned aircraft, missiles or major components thereof. The

following four frequencies are shared on a co-equal basis by Government and non-Government stations for telemetering and associated telecommand operations of expendable and reusable launch vehicles whether or not such operations involve flight testing: 2332.5 MHz, 2364.5 MHz, 2370.5 MHz, and 2382.5 MHz. All other mobile

telemetering uses shall be secondary to the uses listed elsewhere in this note.

* * * * *

US311 Radio astronomy observations may be made in the band 1350–1400 MHz on an unprotected basis at the following radio astronomy observatories:

| | | |
|---|---|------------------|
| Allen Telescope Array, Hat Creek, California | 80 kilometers (50 mile) radius centered on latitude 40° 49' W, longitude 121° 28' N | |
| Hat Creek Observatory, Hat Creek, California | Rectangle between latitudes 40° 00' N and 42° 00' N and between longitudes 120° 15' W and 122° 15' W | |
| NASA Facilities, Goldstone, California | 80 kilometers (50 mile) radius centered on latitude 35° 18' W, longitude 116° 54' N | |
| National Astronomy and Ionosphere Center, Arecibo, Puerto Rico | Rectangle between latitudes 17° 30' N and 19° 00' N and between longitudes 65° 10' W and 68° 00' W | |
| National Radio Astronomy Observatory, Socorro, New Mexico | Rectangle between latitudes 32° 30' N and 35° 30' N and between longitudes 106° 00' W and 109° 00' W | |
| National Radio Astronomy Observatory, Green Bank, West Virginia | Rectangle between latitudes 37° 30' N and 39° 15' N and between longitudes 78° 30' W and 80° 30' W | |
| National Radio Astronomy Observatory, Very Long Baseline Array Stations | 80 kilometers (50 mile) radius centered on: | |
| | Latitude (North) | Longitude (West) |
| Brewster, WA | 48° 08' | 119° 41' |
| Fort Davis, TX | 30° 38' | 103° 57' |
| Hancock, NH | 42° 56' | 71° 59' |
| Kitt Peak, AZ | 31° 57' | 111° 37' |
| Los Alamos, NM | 35° 47' | 106° 15' |
| Mauna Kea, HI | 19° 48' | 155° 27' |
| North Liberty, IA | 41° 46' | 91° 34' |
| Owens Valley, CA | 37° 14' | 118° 17' |
| Pie Town, NM | 34° 18' | 108° 07' |
| Saint Croix, VI | 17° 46' | 64° 35' |
| Owens Valley Radio Observatory, Big Pine, California | Two contiguous rectangles, one between latitudes 36° 00' N and 37° 00' N and between longitudes 117° 40' W and 118° 30' W and the second between latitudes 37° 00' N and 38° 00' N and between longitudes 118° 00' W and 118° 50' W | |

Every practicable effort will be made to avoid the assignment of frequencies in the band 1350–1400 MHz to stations in the fixed and mobile services that could interfere with radio astronomy observations within the geographic areas given in the table in this note. In addition, every practicable effort will be made to avoid assignment of frequencies in these bands to stations in the aeronautical

mobile service which operate outside of those geographic areas, but which may cause harmful interference to the listed observatories. Should such assignments result in harmful interference to these observatories, the situation will be remedied to the extent practicable.

* * * * *

US350 The use of the bands 608–614 MHz, 1395–1400 MHz, and 1427–1429.5 MHz by the Government and non-Government land mobile service is limited to medical telemetry and medical telecommand operations, except that non-Government land mobile use is permitted for non-medical telemetry and telecommand operations on a

secondary basis in the band 1427–1429.5 MHz.

* * * * *

US352 In the band 1427–1432 MHz, Government operations, except for medical

telemetry and medical telecommand operations, are on a non-interference basis to authorized non-Government operations and shall not hinder the implementation of any non-Government operations. However,

Government operations authorized as of March 22, 1995 at the 14 sites identified in the following table may continue on a fully protected basis until January 1, 2004:

| Location | North latitude/west longitude | Operating radius | Location | North latitude/west longitude | Operating radius |
|---------------------------------|-------------------------------|------------------|----------------------------------|-------------------------------|------------------|
| Patuxent River, MD | 38° 17' / 076° 25' | 70 km | Mountain Home AFB, ID | 43° 01' / 115° 50' | 160 km |
| NAS Oceana, VA | 36° 49' / 076° 02' | 100 km | NAS Fallon, NV | 39° 24' / 118° 43' | 100 km |
| MCAS Cherry Point, NC | 34° 54' / 076° 52' | 100 km | Nellis AFB, NV | 36° 14' / 115° 02' | 100 km |
| Beaufort MCAS, SC | 32° 26' / 080° 40' | 160 km | NAS Lemoore, CA | 36° 18' / 119° 47' | 120 km |
| NAS Cecil Field, FL | 30° 13' / 081° 52' | 160 km | Yuma MCAS, AZ | 32° 39' / 114° 35' | 160 km |
| NAS Whidbey IS., WA | 48° 19' / 122° 24' | 70 km | China Lake, CA | 35° 29' / 117° 16' | 80 km |
| Yakima Firing Ctr AAF, WA | 46° 40' / 120° 15' | 70 km | MCAS Twenty Nine Palms, CA | 34° 15' / 116° 03' | 80 km |

* * * * *

US361 In the band 1432–1435 MHz, Government stations in the fixed and mobile services may operate indefinitely on a

primary basis at the 23 sites listed in the following table. All other Government stations in the fixed and mobile services shall operate in the band 1432–1435 MHz on a

primary basis until re-accommodated in accordance with the National Defense Authorization Act of 1999. The table follows:

| Location | North Latitude/West Longitude | Operating Radius | Location | North Latitude/West Longitude | Operating Radius |
|--|-------------------------------|------------------|---------------------------------------|---------------------------------|------------------|
| China Lake/Edwards AFB, CA | 35° 29' / 117° 16' | 100 km | AUTEC | 24° 30' / 078° 00' | 80 km |
| White Sands Missile Range/ Holloman AFB, NM. | 32° 11' / 106° 20' | 160 km | Beaufort MCAS, SC | 32° 26' / 080° 40' | 160 km |
| Utah Test and Training Range/ Dugway Proving Ground, Hill AFB, UT. | 40° 57' / 113° 05' | 160 km | MCAS Cherry Point, NC | 34° 54' / 076° 53' | 100 km |
| Patuxent River, MD | 38° 17' / 076° 24' | 70 km | NAS Cecil Field, FL | 30° 13' / 081° 52' | 160 km |
| Nellis AFB, NV | 37° 29' / 114° 14' | 130 km | NAS Fallon, NV | 39° 30' / 118° 46' | 100 km |
| Fort Huachuca, AZ | 31° 33' / 110° 18' | 80 km | NAS Oceana, VA | 36° 49' / 076° 01' | 100 km |
| Eglin AFB/Gulftport ANG Range, MS/Fort Rucker, AL. | 30° 28' / 086° 31' | 140 km | NAS Whidbey Island, WA | 48° 21' / 122° 39' | 70 km |
| Yuma Proving Ground, AZ | 32° 29' / 114° 20' | 160 km | NCTAMS, GUM | ¹ 13° 35' / 144° 51' | 80 km |
| Fort Greely, AK | 63° 47' / 145° 52' | 80 km | Lemoore, CA | 36° 20' / 119° 57' | 120 km |
| Redstone Arsenal, AL | 34° 35' / 086° 35' | 80 km | Savannah River, SC | 33° 15' / 081° 39' | 3 km |
| Alpena Range, MI | 44° 23' / 083° 20' | 80 km | Naval Space Operations Center, ME. | 44° 24' / 068° 01' | 80 km |
| Camp Shelby, MS | 31° 20' / 089° 18' | 80 km | | | |

¹ East.

US362 The band 1670–1675 MHz is allocated to the meteorological-satellite service (space-to-Earth) on a primary basis for Government use. Earth station use of this allocation is limited to Wallops Island, VA (37°56'47" N, 75°27'37" W), Fairbanks, AK (64°58'36" N, 147°31'03" W), and Greenbelt, MD (39°00'02" N, 76°50'31" W). Applicants for non-Government stations within 100 kilometers of the Wallops Island or Fairbanks coordinates shall notify NOAA in accordance

with the procedures specified in 47 C.F.R. § 1.924.

US363 (a) Until January 1, 2005, the band 2385–2390 MHz is allocated to the Government mobile and radiolocation services on a primary basis and to the Government fixed service on a secondary basis. Use of the mobile service is limited to aeronautical telemetry and associated telecommand operations for flight testing of manned or unmanned aircraft, missiles or major components thereof. Use of the

radiolocation service is limited to the military services.

(b) After January 1, 2005, Government stations in the mobile and radiolocation services shall continue to operate on a primary basis until re-accommodated in accordance with the National Defense Authorization Act of 1999, except at the sites identified in the following table where Government stations may not be re-accommodated until January 1, 2007:

| Location | North Latitude/West Longitude | Location | North Latitude/West Longitude |
|--|-------------------------------|-------------------------------------|-------------------------------|
| Protection Radius for Each of the Following Sites is 160 km: | | | |
| Barking Sands, HI | 22° 07' / 159° 40' | Roswell, NM | 33° 18' / 104° 32' |
| Cape Canaveral, FL | 28° 33' / 080° 34' | Seattle, WA | 47° 32' / 122° 18' |
| China Lake, CA | 35° 40' / 117° 41' | St. Louis, MO | 38° 45' / 090° 22' |
| Eglin AFB, FL | 30° 30' / 086° 30' | Utah Test Range, UT | 40° 12' / 112° 54' |
| Glasgow, MT | 48° 25' / 106° 32' | White Sands Missile Range, NM | 32° 58' / 106° 23' |
| Nellis AFB, NV | 37° 48' / 116° 28' | Wichita, KS | 37° 40' / 097° 26' |
| Palm Beach County, FL | 26° 54' / 080° 19' | Yuma Proving Ground, AZ | 32° 54' / 114° 20' |
| Roosevelt Roads, PR | 18° 14' / 065° 38' | | |
| Protection Radius for Each of the Following Sites is 100 km: | | | |
| Edwards AFB, CA | 34° 54' / 117° 53' | Patuxent River, MD | 38° 17' / 076° 25' |

(c) In addition, non-Government flight test operations may continue at the sites identified in the following table on a primary basis until January 1, 2007:

| Location | North Latitude/West Longitude | Location | North Latitude/West Longitude |
|--|-------------------------------|----------------------|-------------------------------|
| Protection Radius for Each of the Following Sites is 160 km: | | | |
| Alamosa, CO | 37° 26' 04"/105° 52' 03" | Thermal, CA | 33° 37' 35"/116° 09' 36" |
| Albuquerque, NM | 35° 11' 03"/106° 34' 30" | Phoenix, AZ | 33° 18' 28"/111° 39' 19" |
| Amarillo, TX | 35° 12' 49"/101° 42' 31" | Marietta, GA | 33° 54' 24"/084° 31' 09" |
| Arlington, TX | 32° 40' 00"/097° 05' 53" | Greenville, TX | 33° 04' 01"/096° 03' 09" |
| Leadville, CO | 39° 13' 13"/106° 19' 03" | | |

US368 The band 1390–1392 MHz is also allocated to the fixed-satellite service (Earth-to-space) on a primary basis and the band 1430–1432 MHz is also allocated to the fixed-satellite service (space-to-Earth) on a primary basis, limited to feeder links for the Non-Voice Non-Geostationary Mobile-Satellite Service, and contingent on (1) the completion of sharing studies including the measurement of emissions from equipment that would be employed in operational systems and demonstrations to validate the studies as called for in Resolution 127 (WRC-2000), (2) the adoption of worldwide feeder link allocations at the 2003 World Radiocommunication Conference (WRC-03), and (3) compliance with any technical and operational requirements that may be imposed at WRC-03 to protect passive services in the 1400–1427 MHz band from unwanted emissions associated with such allocations. These allocations become effective upon adoption of worldwide allocations at WRC-03. If no such allocations are adopted by WRC-03, these allocations shall be considered null and void, with no grandfathering of rights. Individual assignments shall be coordinated with the Interdepartmental Radio Advisory Committee's (IRAC) Frequency Assignment Subcommittee (FAS) (see, for example, Recommendations ITU-R RA.769-1 and ITU R SA.1029-1) to ensure the protection of passive services in the 1400–1427 MHz band. Coordination shall not be completed until the feeder downlink system is tested and certified to be in conformance with the technical and operational requirements for the protection of passive services in the 1400–1427 MHz band. Certification and all supporting documentation shall be submitted to the Commission and FAS prior to launch.

Non-Federal Government (NG) Footnotes

* * * * *

NG173 In the band 216–220 MHz, secondary telemetry operations are permitted subject to the requirements of § 90.259 of this chapter. After January 1, 2002, no new assignments shall be authorized in the band 216–217 MHz.

NG174 In Puerto Rico, frequencies within the band 2385–2390 MHz are not available for assignment to stations in the aeronautical mobile service.

Federal Government (G) Footnotes

* * * * *

G2 In the bands 216–225 MHz, 420–450 MHz (except as provided by US217), 890–902 MHz, 928–942 MHz, 1300–1390 MHz, 2310–2385 MHz, 2417–2450 MHz, 2700–2900

MHz, 5650–5925 MHz, and 9000–9200 MHz, the Government radiolocation service is limited to the military services.

* * * * *

G27 In the bands 255–328.6 MHz, 335.4–399.9 MHz, and 1350–1390 MHz, the fixed and mobile services are limited to the military services.

* * * * *

G30 In the bands 138–144 MHz, 148–149.9 MHz, and 150.05–150.8 MHz, the fixed and mobile services are limited primarily to operations by the military services.

* * * * *

G114 The band 1369.05–1390 MHz is also allocated to the fixed-satellite service (space-to-Earth) and to the mobile-satellite service (space-to-Earth) on a primary basis for the relay of nuclear burst data.

* * * * *

G120 Development of airborne primary radars in the band 2310–2385 MHz with peak transmitter power in excess of 250 watts for use in the United States is not permitted.

* * * * *

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

5. The authority citation for part 90 continues to read as follows:

Authority: Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

6. Section 90.259 is revised to read as follows:

§ 90.259 Assignment and use of frequencies in the bands 216–220 MHz and 1427–1432 MHz.

(a) *216–220 MHz band.* (1) Frequencies in the 216–220 MHz band may be assigned to applicants that establish eligibility in the Industrial/Business Pool.

(2) All operation is secondary to the fixed and mobile services, including the Low Power Radio Service.

(3) In the 216–217 MHz band, no new assignments will be made after January 1, 2002.

(b) *1427–1432 MHz band.* (1) Frequencies in the 1427–1432 MHz band may be assigned to applicants that establish eligibility in the Public Safety Pool or the Industrial/Business Pool.

(2) All operations in the 1427–1429.5 MHz band are secondary to the Wireless Medical Telemetry Service.

(3) All operations in the 1429.5–1432 MHz band authorized prior to April 12, 2002, are on a secondary basis.

(c) *Authorized uses.* (1) Use of these bands is limited to telemetering purposes.

(2) Base stations authorized in these bands shall be used to perform telecommand functions with associated mobile telemetering stations. Base stations may also command actions by the vehicle itself, but will not be authorized solely to perform this function.

(3) Airborne use is prohibited.

PART 95—PERSONAL RADIO SERVICES

7. The authority citation for part 95 continues to read:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

8. Section 95.630 is revised to read as follows:

§ 95.630 WMTS transmitter frequencies.

WMTS transmitters may operate in the frequency bands specified as follows:

608–614 MHz
1395–1400 MHz
1427–1429.5 MHz

9. Section 95.639(g) is revised to read as follows:

§ 95.639 Maximum transmitter power.

* * * * *

(a) The maximum field strength authorized for WMTS stations in the 608–614 MHz band is 200 mV/m, measured at 3 meters. For stations in the 1395–1400 MHz and 1427–1429.5 MHz bands, the maximum field strength is 740 mV/m, measured at 3 meters.

* * * * *

10. Section 95.1017 is amended by revising paragraph (a) to read as follows:

§ 95.1017 Labeling requirements.

(a) Each LPRS transmitting device shall bear the following statement in a

conspicuous location on the device:
 "This device may not interfere with TV
 reception or Federal Government
 radar."

* * * * *

11. Section 95.1101 is revised to read as follows:

§ 95.1101 Scope.

This part sets out the regulations governing the operation of Wireless Medical Telemetry Devices in the 608–614 MHz, 1395–1400 MHz and 1427–1429.5 MHz frequency bands.

12. Section 95.1103(c) is revised to read as follows:

§ 95.1103 Definitions.

* * * * *

(c) *Wireless medical telemetry.* The measurement and recording of physiological parameters and other patient-related information via radiated bi-or unidirectional electromagnetic signals in the 608–614 MHz, 1395–1400 MHz, and 1427–1429.5 MHz frequency bands.

13. Section 95.1115(a)(2) and (d)(1) are revised to read as follows:

§ 95.1115 General technical requirements.

(a) * * *

(2) In the 1395–1400 MHz and 1427–1429.5 MHz bands, the maximum allowable field strength is 740 mV/m, as measured at a distance of 3 meters, using measuring equipment with an averaging detector and a 1 MHz measurement bandwidth.

* * * * *

(d) *Channel use.* (1) In the 1395–1400 MHz and 1427–1429.5 MHz bands, no specific channels are specified. Wireless medical telemetry devices may operate on any channel within the bands authorized for wireless medical telemetry use in this part.

* * * * *

14. Section 95.1121, is revised to read as follows:

§ 95.1121 Specific requirements for wireless medical telemetry devices operating in the 1395–1400 MHz and 1427–1429.5 MHz bands.

Due to the critical nature of communications transmitted under this part, the frequency coordinator in consultation with the National Telecommunications and Information Administration shall determine whether there are any Federal Government systems whose operations could affect, or could be affected by, proposed wireless medical telemetry operations in the 1395–1400 MHz and 1427–1429.5 MHz bands. The locations of government systems in these bands are

specified in footnotes US351 and US352 of § 2.106 of this chapter.

[FR Doc. 02–2170 Filed 2–8–02; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600, 635, 648, and 660

[Docket No. 010612153–2015–02; I.D. 041901A]

RIN 0648–AP21

Fisheries Off West Coast States and in the Western Pacific; Atlantic Highly Migratory Species; Fisheries of the Northeastern United States; Implementation of the Shark Finning Prohibition Act

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS publishes this final rule to implement the provisions of the Shark Finning Prohibition Act (Act). This final rule prohibits any person under U.S. jurisdiction from engaging in shark finning, possessing shark fins harvested on board a U.S. fishing vessel without corresponding shark carcasses, or landing shark fins harvested without corresponding carcasses. Finning is the practice of removing the fin or fins from a shark and discarding the remainder of the shark at sea. This final rule is issued in accordance with the requirement of the Act that the Secretary of Commerce (Secretary) issue regulations to implement the Act. This final rule does not alter or modify shark finning regulations already in place in the Atlantic for Federal permit holders.

DATES: Effective March 13, 2002.

ADDRESSES: Copies of the environmental assessment (EA) and the regulatory impact review/final regulatory flexibility analysis (RIR/FRFA) may be obtained from the Southwest Regional Administrator, Southwest Region, NMFS, 501 W. Ocean Blvd., Long Beach, CA 90802–4213; fax 562–980–4047.

FOR FURTHER INFORMATION CONTACT: Svein Fougner, Assistant Regional Administrator for Sustainable Fisheries, Southwest Region, NMFS, at 562–980–4040; or Charles Karnella, Administrator, Pacific Island Area Office, NMFS, at 808–973–2935; or

Karyl Brewster-Geisz, NMFS headquarters, at 301–713–2347.

SUPPLEMENTARY INFORMATION:

Electronic Access

This **Federal Register** document is also accessible via the Internet at the Office of the **Federal Register's** website at <http://www.access.gpo.gov/su-docs/aces/aces140.html>

Background

The proposed rule published for this action (66 FR 34401, June 28, 2001) provided substantial background information on the issue of shark finning. A summary of that information is provided here. The Act was passed by Congress and signed by the President in December 2000 out of concern for the status of shark populations and the effects of fishing mortality associated with finning on shark populations. The Act amends the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Act prohibits any person subject to U.S. jurisdiction from (1) engaging in shark finning, (2) possessing shark fins aboard a U.S. fishing vessel without the corresponding carcass, or (3) landing shark fins without a corresponding carcass.

The strong international market for shark fins has increased the potential for fishing shark stocks at unsustainable levels. Uncontrolled shark finning may lead to unsustainable shark harvests, as well as to the waste of usable (but often relatively lower value) shark meat. The intent of the Act is to end the practice of shark finning and support domestic and international conservation of shark stocks.

Provisions of the Final Rule

To implement the Act, this final rule prohibits: (1) Any person from engaging in shark finning aboard a U.S. fishing vessel; (2) any person from possessing shark fins on board a U.S. fishing vessel without the corresponding shark carcasses; (3) any person from landing from a U.S. fishing vessel shark fins without the corresponding carcasses; (4) any person on a foreign fishing vessel from engaging in shark finning in the U.S. exclusive economic zone (EEZ), from landing shark fins without the corresponding carcass into a U.S. port, and from transshipping shark fins in the U.S. EEZ; and (5) the sale or purchase of shark fins taken in violation of the above prohibitions. In addition, this final rule requires that all shark fins and carcasses be landed and weighed at the same time, once a landing of shark fins and/or shark carcasses has begun. This rule does not affect the reporting