APPENDIX C

FINAL REGULATORY FLEXIBILITY ANALYSIS

(*Second Report and Order* in WT Docket No. 00-48)

As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[388] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Further Notice of Proposed Rule Making* (*FNPRM*) in this proceeding.[389] The Commission sought written public comment on the proposals in the *FNPRM*, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[390]

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

The rules adopted in the *Second Report and Order* are intended to further streamline, consolidate and clarify the Commission's Part 80 rules; remove unnecessary or duplicative requirements; address new international maritime requirements; and promote flexibility and efficiency in the use of marine radio equipment in a manner that will further maritime safety. Specifically, in the *Second Report and Order* the Commission (a) declines to create a voluntary restricted Global Maritime Distress and Safety System

communicate with search and rescue personnel on two specified aeronautical frequencies;[400] (k) determines to continue listing the carrier frequency, rather than the assigned frequency, in Part 80 Tables of Frequencies;[401] and (l) specifies the number of questions to be included in the GMDSS radio operator license examinations.[402]

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

No comments were submitted specifically in response to the IRFA. We note, however, that the

(ELT). The Commission has not developed a definition of small entities specifically applicable to these small businesses. For purposes of this FRFA, therefore, the applicable definition of small entity is the definition under the SBA rules applicable to wireless telecommunications. Pursuant to this definition, a "small entity" for purposes of the ship station licensees, public coast station licensees, or other marine

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

In the *Second Report and Order*, we adopt several rule amendments that may affect

requirements, and specifically requested comment on the economic impact of these changes.[427]

E. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant alternatives that it has considered in developing 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 and reporting requirements under the rule for such 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 such small entities."[428]

With respect to all of the rules adopted in the *Second Report and Order* that may affect reporting, recordkeeping and other compliance requirements for small entities, as identified in Section D of this FRFA, *supra*, we have considered how we might minimize the economic impact on small entities, and we have considered alternative measures that might minimize that impact. As a general matter, the alternatives

could compromise the ability of the Coast Guard to process and respond to distress signals.[433]

In the *Second Report and Order*, we amend section 80.215(g)(3)[434] to require that ship station

Vessel Traffic Systems.[444] We decline to exempt any class of vessels otherwise subject to section 80.905(a) from the new DSC requirement, even with respect to vessels owned and operated by small businesses and/or restricted to voyages in particular inland or coastal waterways. We agree with the Coast Guard and the GMDSS Task Force that the public safety benefits of imposing this requirement on small passenger vessels are paramount. DSC represents an important enhancement of maritime safety, and requiring DSC capability in small passenger vessels, even those limited to voyages on protected waterways, will provide safety

operating more than one hundred nautical miles from shore are operating in Sea Area A3.

In the *Second Report and Order*, we adopt a requirement that the INMARSAT ship earth stations that may be carried by ships operating more than one hundred nautical miles from shore in lieu of an SSB radio, pursuant to section 80.905,[451] be limited to specified classes of earth stations.[452] We do not believe this requirement should have a significant impact on any small entities. No commenter opposed this

Finally, in the *Second Report and Order*, we amend section 80.1085 of the rules[461] to require that every passenger ship be provided with means for two-way on-scene radiocommunications for search and rescue purposes using the aeronautical frequencies 121.5 and 123.1 MHz from the position from which the ship is normally navigated.[462] PVA argues that a requirement for on-scene radios with aeronautical frequencies is expensive and is not useful outside of open ocean environments.[463] It urges that this requirement not be imposed upon passenger vessels operating in or near coastal, inland, and other protected waters.[464] More broadly, PVA complains that the USCG's proposals in this proceeding indicate that the USCG is seeking to extend equipment requirements that are justified for vessels in open-ocean service to vessels on domestic voyages.[465] We agree with PVA that equipment requirements that make sense for vessels on the open ocean should not be extended without further analysis to vessels that stay closer to shore. However, we disagree with PVA that an on-scene capability for two-way radiocommunications with aircraft using the aeronautical frequencies 121.5 and 123.1 MHz offers no potential safety benefits to vessels on domestic voyages. We believe that the ability to communicate with helicopters or other aircraft involved in search and rescue operations could save lives where, for example, a passenger vessel catches fire and is exuding thick smoke on an inland waterway. We further believe

Report to Congress: The Commission will send a copy of the *Second Report and Order* in WT Docket No. 00-48, including the Final Regulatory Flexibility Analysis, in a report to be sent to Congress pursuant to the Congressional Review Act.[467] In addition, the Commission will send a copy of the *Second Report and Order* in WTB Docket No. 00-48, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the SBA. A copy of the *Second Report and Order* in WT Docket No. 00-48 and the Final Regulatory Flexibility Analysis (or summaries thereof) will also be published in the Federal Register.[468]

[467] *See* 5 U.S.C. § 801(a)(1)(A).

[468] *See id.* § 604(b).

APPENDIX D

FINAL REGULATORY FLEXIBILITY ANALYSIS

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

No comments were submitted specifically in response to the IRFA. Nonetheless, we have considered the potential economic impact on small entities of the rules discussed in the IRFA, and we have considered alternatives that would reduce the potential economic impact on small entities of the rules enacted herein.

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

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 rules adopted herein.[481] The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[482] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[483] 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).[484]

Small businesses in the aviation and marine radio services use a marine very high frequency (VHF), medium frequency (MF), or high frequency (HF) radio, any type of emergency position indicating radio beacon (EPIRB) and/or radar, an aircraft radio, and/or any type of emergency locator transmitter (ELT). The Commission has not developed a definition of small entities specifically applicable to these small businesses. For purposes of this FRFA, therefore, the applicable definition of small entity is the definition under the SBA rules applicable to wireless telecommunications. Pursuant to this definition, a "small entity" for purposes of the ship station licensees, public coast station licensees, or other marine radio users that may be affected by these rules, is any entity employing 1,500 of fewer persons. 13 C.F.R. § 121.201 (NAICS Code 517212). Since the size data provided by the Small Business Administration do not enable us to make a meaningful estimate of the number of marine radio service providers and users that are small businesses, we have used the 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, which is the most recent information available. This document shows that twelve radiotelephone firms out of a total of 1,178 such firms which operated in 1992 had at least 1,000 employees. Thus, we estimate that as many as 1,166 small entities may be affected.

Some of the rules adopted herein affect VHF public coast station licensees. The Commission has defined the term "small entity" specifically applicable to public coast station licensees as any entity employing less than 1,500 persons, based on the definition under the Small Business Administration rules applicable to radiotelephone service providers. *See* Amendment of the Commission's Rules Concerning Maritime Communications, *Third Report and Order and Memorandum Opinion and Order*, 13 FCC Rcd

radiotelephone firms out of a total of 1,178 such firms which operated in 1992 had 1,000 or more employees. Thus, we estimate that no fewer than 1,166 small entities will be affected.

Some of the rules adopted herein may also affect small businesses that manufacture marine radio equipment. The Commission has not developed a definition of small entities applicable to marine radio equipment manufacturers. Therefore, the applicable definition is that for Wireless Communications Equipment Manufacturers. The SBA has established a small business size standard for radio and television broadcasting and wireless communications equipment manufacturing. Under this standard, firms are considered small if they have 750 or fewer employees.[485] Census Bureau data for 1997 indicate that, for that year, there were a total of 1,215 establishments[486] in this category.[487] Of those, there were 1,150 that had employment under 500, and an additional 37 that had employment of 500 to 999. The percentage of wireless equipment manufacturers in this category is approximately 61.35%,[488] so the Commission estimates that the number of wireless equipment manufacturers with employment under 500 was actually closer to 706, with and additional 23 establishments having employment of between 500 and 999. Given the above, the Commission estimates that the great majority of wireless communications equipment manufacturers are small businesses.

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

The *Sixth Report and Order* does not impose any additional reporting, recordkeeping, or other compliance requirements on small entities. The rule amendments adopted in the *Sixth Report and Order*

would result in a "discontinuance, reduction or suspension" of the watch.[493] We believe this language already encompassed a requirement to notify the Coast Guard of a relocation of the watch, and we have amended the rule only to clarify the point, as requested by the commenters.

APPENDIX E

INITIAL REGULATORY FLEXIBILITY ANALYSIS

(*Second Further Notice of Proposed Rule Making* in WT Docket No. 00-48)

As required by the Regulatory Flexibility Act (RFA),[497] the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in the *Second Further Notice of Proposed Rule Making* in WT Docket No. 00-48 (*2nd FNPRM*). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *2nd FNPRM* as provided in paragraph 91 of the item. The Commission will send a copy of the *2nd FNPRM*, including the IRFA, to the Chief Counsel for Advocacy of the U.S. Small Business Administration.[498] In addition, the *2nd FNPRM* and IRFA (or summaries thereof) will be published in the Federal Register.[499]

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

In the *2nd FNPRM*, we seek comment on rule amendments that are intended to enhance maritime

are internationally.[506] Finally, we request comment on suggestions by both Globe Wireless and the Commission that certain regulatory provisions have become outdated, and therefore should be revised or eliminated.[507]

B. Legal Basis for Proposed Rules

The proposed action is authorized under sections 1, 4(i), 302, 303(f) and (r), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 1, 154(i), 302, 303(f) and (r), and 332.

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

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.[508] The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and

Small businesses in the aviation and marine radio services use a marine very high frequency (VHF), medium frequency (MF), or high frequency (HF) radio, any type of emergency position indicating

on board that can operate even when the vessel loses power.[521] Currently, section 80.917 of the Commission's rules imposes a requirement on vessels of more than 100 gross tons to have a reserve power supply.[522] Adoption of the NTSB recommendation would in effect remove the tonnage limitation from section 80.917,and impose the reserve power supply requirement on all passenger vessels, regardless of size. The NTSB states that imposing the reserve power supply requirement on all small passenger vessels will prevent accidents and save lives.[523] Imposition of such a requirement would likely require small passenger vessel operators, including small passenger vessel operators that are small entities, to purchase and install additional equipment on their vessels. The record in this proceeding does not indicate the estimated cost of such equipment or the estimated overall costs of compliance with such a requirement. In the *2nd FNPRM*, we specifically ask commenters to provide information on the costs to small vessel operators of complying with such a requirement,[524] and we reiterate that request here.

We do not believe any of the other matters discussed in the *2nd FNPRM* would have a direct, significant economic impact on a substantial number of small entities. However, any commenters that disagree with that tentative conclusion are asked to explain the basis of that disagreement.

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

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (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.[525]

In the *2nd FNPRM*, we request comment on whether to incorporate into the Commission's rules newly adopted international standards for digital selective calling equipment. We describe here, and seek comment on, possible alternatives to imposing these new requirements that might minimize the economic impact on small entities. First, we ask commenters to consider whether it would be appropriate to exempt small businesses from any additional requirements for digital selective calling equipment that may be adopted. Commenters advocating such an exemption should propose criteria for identifying entities that should be exempt, and should explain why they believe such an exemption represents a reasonable compromise between the goals of promoting maritime safety and minimizing compliance costs for small entities. In addition, if we do determine to impose new requirements on digital selective calling equipment, we would consider whether we should grandfather some vessels from the requirement, either

adequate to address safety concerns. Commenters are also invited to suggest alternatives other than those discussed here.

In the *2nd FNPRM*, we also invite comment on an NTSB recommendation to require that small passenger vessels, regardless of size, have VHF radiotelephone communications systems on board that can operate even when the vessel loses power. We tentatively conclude that the most direct way of imposing such a requirement is removing the tonnage limitation in section 80.917, which now exempts vessels of 100 gross tons or less from an otherwise applicable reserve power supply requirement. However, we also specifically ask interested parties to recommend other means of addressing the safety needs of small vessel operators, crewmembers, and passengers, either as alternatives to the NTSB recommendation or as supplementary measures.[526]

We describe here, and seek comment on, possible alternatives to the NTSB recommendation that might minimize the economic impact on small entities. First, we ask commenters to consider whether the reserve power supply requirement should be expanded only to a subset of additional small passenger vessels rather than to all small passenger vessels. For example, instead of eliminating the tonnage limitation in current section 80.917, we might simply lower the threshold. Commenters advocating a lowered tonnage threshold should recommend a specific threshold and explain why they believe it represents a reasonable compromise between the goals of promoting maritime safety and minimizing compliance costs for small entities. Alternatively, we could restrict the applicability of the reserve power supply requirement based on the size of the small passenger vessel operator, perhaps exempting only those small passenger vessel operators that meet the statutory definition of a small business. Commenters advocating such an approach should explain, *inter alia*, if it might result in exempting certain vessels exceeding 100 gross tons that are now fully subject to the reserve power supply requirement, and the ramifications of such an exemption for maritime safety. In addition, we might consider providing a continuing exemption for vessels below a certain size, or owned by a small business, that operate only in protected inland waterways.[527] If we do determine to impose a reserve power supply requirement on all small passenger vessels, we would consider whether we should grandfather some vessels from the requirement, either indefinitely or for a specified term of years, or whether there should be a phased-in schedule for compliance, with possibly different compliance timetables for vessels based, possibly, on vessel size or on whether the vessel operator is a small business. Interested parties should address these alternatives. Finally, we seek comment on whether an alternative equipment requirement, less costly to small passenger vessel operators, could provide the same or similar safety benefits as a reserve power supply requirement. Proponents of such an alternative requirement should compare the estimated

F. Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

(...continued from previous page)
See 47 C.F.R. § 80.917(b)-(g). Commenters may propose, as alternatives minimizing the costs to small entities, either a requirement for less costly equipment in lieu of a reserve power supply, or a relaxation of the criteria applicable to the reserve power supply.

APPENDIX F

Glossary of Acronyms

AIS	Automatic Identification Systems
ATMS	Automated Maritime Telecommunications System
CMRS	Commercial mobile radio services
COLEM	Commercial Operator License Examination Manager
DSC	Digital selective calling
EPIRB	Emergency position indicating radiobeacon
GMDSS	Global Maritime Distress and Safety System
IEC	International Electrotechnical Commission
IMO	International Maritime Organization
ISO	International Standards Organization
ITU	International Telecommunication Union
NTSB	National Transportation Safety Board
PAWSS	Ports and Waterways Safety System
PSTN	Public switched telephone network
RTCM	Radio Technical Commission for Maritime Services
SOLAS	International Convention for the Safety of Life at Sea
SSB	Single sideband
STCW	Standards of Training, Certification and Watchkeeping Convention
ULS	Universal Licensing System
USCG	United States Coast Guard
USPS	United States Power Squadrons
VPC	VHF public coast station
VTS	Vessel Traffic Systems