

alerts automatically routed, through the COSPAS/SARSAT satellite system, to the SAR authorities for a specific geographic region.<sup>165</sup> The system provides a specified level of accuracy and continual updates through an internationally proven system to SAR authorities that are properly trained, staffed and equipped to respond to these alerts. The 406 MHz PLBs are also designed to support widely fielded direction finding gear that is used for terminal SAR team guidance.<sup>166</sup>

68. We understand that some devices that do not operate in the 406 MHz frequency band, and that are not supported by the COSPAS/SARSAT satellite system, have been improperly marketed to the public as “PLBs.”<sup>167</sup> This practice has caused confusion among consumers and some may assume that these devices have the same utility as a 406 MHz PLB. We are concerned that erroneous reliance on these devices could have dangerous consequences for a user who is lost or injured in a remote area. We therefore propose to amend Part 95 to clarify that the term PLB refers only to a beacon that meets the requirements set forth in 47 C.F.R. Part 95, Subpart K for 406 MHz PLBs. If adopted, such a rule would make unlawful the marketing of noncompliant devices as PLBs.

69. Finally, in the Report and Order in WT Docket No. 99-366 we amended our rules to require that 406 MHz PLBs be required to comply with the technical standards in the Radio Technical Commission for Maritime (RTCM) Service document entitled RTCM Recommended Standards for 406 MHz Satellite Personal Locator Beacons (PLBs), and to incorporate the RTCM technical standards by reference in Part 95 of our Rules. The RTCM document provides minimum requirements for the functional and technical performance of 406 MHz PLBs. Since then the RTCM has revised these standards to clarify, improve and update the 406 MHz PLB requirements. Consequently, we propose to update our rules to reference the new revised RTCM 406 MHz PLB standards.

#### H. Other Part 95 Services

70. In addition to the specific Part 95 services discussed in this *NPRM*, we invite comment on the rules governing the other Part 95 services, which are: (1) Low Power Radio Service (LPRS); (2) Wireless Medical Telemetry Service (WMTS);<sup>168</sup> (3) Medical Device Radiocommunications Service (MedRadio)<sup>169</sup>; (4) Multi-Use Radio Service (MURS); and (5) Dedicated Short Range Communications

<sup>165</sup> “COSPAS” is an acronym for a Russian phrase meaning “space system for search and distress vessels.” “SARSAT” is an acronym for “search and rescue satellite-aided tracking.” In the United States, the United States Air Force is responsible for distributing 406 MHz PLB distress alerts to the state and local authorities that might be called upon to conduct the SAR response.

<sup>166</sup> 406 MHz PLBs transmit in the frequency band 406.0-406.1 MHz, and must comply with the technical standards in the RTCM Recommended Standards for 406 MHz Satellite Personal Locator Beacons, Version 1.1, RTCM Paper 76-2002/SC110-STD, and be certified by a COSPAS/SARSAT laboratory and an independent laboratory to certify that they comply with electrical and environmental standards associated with the RTCM standard. See 47 C.F.R. §§ 95.1401, 95.1402. Additionally, 406 MHz PLBs must include a 121.5 MHz homing beacon, and transmit a unique identifier (Morse Code “P”) on the 121.5 MHz signal. See 47 C.F.R. § 95.1402(b). The rules also specify labeling requirements and mandatory registration with the National Oceanic and Atmospheric Administration. See 47 C.F.R. §§ 95.1402(e), (f).

<sup>167</sup> For example, TracMe markets a locator device that transmits on FRS frequency 462.5625 MHz, with an advertised range of up to 1 kilometer on the ground and up to 4 kilometers from the air, which is not supported by the COSPAS/SARSAT system. See <http://domsoutdoor.com/product.asp?pn=1-040720>, (last visited May 28, 2010) (“The TracMe Non-Satellite Personal Locator Beacon (PLB) is a small device the size of a small candy bar, providing “peace of mind” through an increased level of safety for the millions of people around the world who participate in outdoor and adventure sport activities”).

<sup>168</sup> We note that certain issues pertaining to WMTS already are pending in another proceeding. See Amendment of Part 90 of the Commission’s Rules, WP Docket No. 07-100, *Notice of Proposed Rulemaking and Order*, 22 FCC Rcd 9595, 10007-08 ¶¶ 27-29 (2007). We do not seek additional comment on those issues.

<sup>169</sup> We note that certain issues pertaining to the Medical Device Radiocommunications Service (MedRadio) are included in another *Notice of Proposed Rulemaking* and that we do not seek comment on those issues in this *NPRM*.  
(continued...)

Service On-Board Units (DSRCS-OBUs). In addressing these services, interested parties are urged to provide specific recommendations, including any technical requirements that the Commission should consider in adopting any additional rules and policies.

#### IV. MEMORANDUM OPINION AND ORDER ON RECONSIDERATION

71. In the *Report and Order* in WT Docket No. 98-182, the Commission reallocated five very high frequency (VHF) Part 90 frequencies known in the PLMR community as the VHF “color dot” frequencies to the newly-created Part 95 Multi-Use Radio Service (MURS), a two-way, short-distance, voice, data or image communication service for the personal or business activities of the general public.<sup>170</sup> In response to petitions for reconsideration, the Commission affirmed its decision to license MURS by rule, but adopted additional technical restrictions designed to address concerns expressed by grandfathered (*i.e.*, pre-MURS) users of the frequencies in a *Memorandum Opinion and Order (MO&O)*.<sup>171</sup>

72. PRSG filed a petition for reconsideration of certain aspects of the *MO&O*.<sup>172</sup> Specifically, PRSG requests that we (1) revisit the rule prohibiting MURS radios from connecting to the public switched telephone network (PSTN); (2) require all MURS radios to have a feature that prevents the radio from transmitting if the corresponding receivers are using muting protocols; and (3) revisit the grandfathering privileges extended to pre-MURS business and industrial licensees that had licensed facilities operating on the MURS frequencies.<sup>173</sup> For the reasons stated below, we deny PRSG’s petition.

73. *Interconnection*. The Commission prohibited MURS transmitters from interconnecting with the PSTN.<sup>174</sup> It concluded that interconnection would be inappropriate for MURS because of the limited

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(...continued from previous page)

See *In the Matter of Amendment of Parts 2 and 95 of the Commission’s Rules to Provide Additional Spectrum for the Medical Device Radiocommunication Service in the 413-457 MHz band*, ET Docket No. 09-36, RM-11404, *Notice of Proposed Rulemaking*, 24 FCC Rcd 3445 (2009).

<sup>170</sup> See 1998 Biennial Regulatory Review – 47 C.F.R. Part 90 – Private Land Mobile Services, WT Docket No. 98-182, *Report and Order and Further Notice of Proposed Rule Making*, 15 FCC Rcd 16673, 16688 ¶ 31 (2000).

<sup>171</sup> *MURS MO&O*, 17 FCC Rcd at 9837-38 ¶¶ 15-17 (2002).

<sup>172</sup> We note that the PRSG Petition was not timely filed. Because the *MURS MO&O* was published in the Federal Register on October 11, 2002, 67 Fed. Reg. 63279 (2002), the filing deadline for petitions for reconsideration was November 12, 2002. See 47 C.F.R. § 1.429(d). PRSG states that it attempted to file its reconsideration petition on November 12, 2002, but the Commission’s Electronic Comment Filing System (ECFS) was malfunctioning and would not allow the petition to be filed. See PRSG Motion to Accept the Filing as Timely Filed (filed Nov. 12, 2002). Because ECFS was taken off-line for emergency repairs that day and was unavailable until November 14, 2002, we grant PRSG’s motion. See Wireless Telecommunications Bureau Announces Limited Extension of Time to File Comments and Reply Comments on Proposal to Revise Multichannel Multipoint Distribution Service and the Instructional Television Fixed Service, RM-10586, *Public Notice*, 17 FCC Rcd 22960 (WTB 2002).

<sup>173</sup> PRSG Petition at 2-5. We note that comments were filed by Dakota Alert, Inc. (Dakota), F.E. Brody (Brody), James Johnston (Johnston), Michael E. Dickerson (Dickerson), PRSG, and Stewart R. Teaze (Teaze). PRSG filed reply comments and a late-filed supplement to its reply comments. It sought leave to file the supplement out of time on the grounds that the Dakota comments were not timely posted to the Commission’s Electronic Comment Filing System (ECFS). See PRSG Petition for Acceptance of a Late Filed Reply Comment at 1 (filed Aug. 7, 2003). Dakota opposed the request on the grounds that PRSG received timely actual notice of Dakota’s comments. Opposition to Petition for Acceptance of a Late Filed Reply Comment at 1 (filed Aug. 20, 2003). PRSG received ample notice of the Dakota comments, both from the Commission and from Dakota. Nonetheless, in the interest of compiling as complete record as possible in this proceeding, we will grant PRSG’s request and accept the late-filed supplement.

<sup>174</sup> See *MURS MO&O*, 17 FCC Rcd at 9845-46 ¶ 29; see also 47 C.F.R. § 95.1313.

number of available channels and the importance of spectrum sharing and re-use of MURS frequencies.<sup>175</sup> PRSG supports the prohibition on interconnection, but asserts that the regulatory language adopted by the Commission<sup>176</sup> is imprecise and antiquated.<sup>177</sup> PRSG argues that the rule should address issues such as MURS radios connecting to networks other than the PSTN.<sup>178</sup> No party supports PRSG's request. We agree with commenters that the interconnection prohibition contained in section 95.1313 of the Commission's Rules is sufficiently clear,<sup>179</sup> and that no changes are needed to address the issues raised by PRSG.<sup>180</sup> We also note Teaze's concern that excessively complicated regulation of MURS could impede usage and stifle innovation.<sup>181</sup> We agree with Teaze that changes should not be made when there is no evidence of an existing rule creating a problem.<sup>182</sup>

74. *Monitoring.* Because MURS channels are shared, the Commission requires operators to monitor the transmitting frequency for communications in progress before transmitting.<sup>183</sup> PRSG argues that the Commission should go further, and require automatic monitoring, so that MURS radios could transmit only after monitoring the channel for a specified minimum period (at least several seconds).<sup>184</sup> PRSG does not explain why automatic monitoring is necessary for MURS.<sup>185</sup> Of the other Part 95 services, only the Medical Device Radiocommunications Service (MedRadio) has an automatic monitoring requirement.<sup>186</sup> There are obvious differences between the two services. MedRadio is used to

<sup>175</sup> See *MURS MO&O*, 17 FCC Rcd at 9845-46 ¶ 29.

<sup>176</sup> Section 95.1313 provides MURS stations are prohibited from interconnection with the public switched network. The rule defines interconnection as follows:

“Connection through automatic or manual means of multi-use radio stations with the facilities of the public switched telephone network to permit the transmission of messages or signals between points in the wireline or radio network of a public telephone company and persons served by multi-use radios. Wireline or radio circuits or links furnished by common carriers, which are used by licensees or other authorized persons for transmitter control (including dial-up transmitter control circuits) or as an integral part of an authorized, private, internal system of communication or as an integral part of dispatch point circuits in a multi-use radio station are not considered to be interconnection for purposes of this rule part.”

<sup>177</sup> See PRSG Petition at 2.

<sup>178</sup> *Id.* PRSG questions whether the rules apply to private networks that are directly interconnected to, or share resources with, the PSTN.

<sup>179</sup> We note that the current regulatory language goes into greater detail than the language that PRSG proposed in its petition for reconsideration of the *Report and Order*. See PRSG Petition for Reconsideration at 8 (filed Nov. 13, 2000) (proposing a rule stating “No MURS station may be interconnected to the public switched telephone network”). PRSG does not set forth any changed circumstances.

<sup>180</sup> See Dakota WT Docket No. 98-182 Comments at 1; Johnston WT Docket No. 98-182 Comments at 1; Teaze WT Docket No. 98-182 Comments at 2. Brody's comments, although supportive of the prohibition on interconnection, do not clearly address PRSG's claim that the current regulatory language is inadequate. See Brody WT Docket No. 98-182 Comments at 1.

<sup>181</sup> See Teaze WT Docket No. 98-182 Comments at 2; *accord* Johnston WT Docket No. 98-182 Comments at 1.

<sup>182</sup> See Teaze WT Docket No. 98-182 Comments at 2.

<sup>183</sup> See *MURS MO&O*, 17 FCC Rcd at 9846 ¶ 30; *see also* 47 C.F.R. § 95.1307(d).

<sup>184</sup> See PRSG Petition at 3.

<sup>185</sup> Moreover, we note that the Commission has recently proposed to permit the operation of certain medical implant devices without automatic monitoring. See Investigation of the Spectrum Requirements for Advanced Medical Technologies, ET Docket No. 06-135, *Notice of Proposed Rulemaking, Notice of Inquiry, and Order*, 21 FCC Rcd 8164, 8173-74 ¶¶ 23-25 (2006) (*MISC NPRM*).

<sup>186</sup> See 47 C.F.R. § 95.628(a).

transmit medical data in support of the diagnostic and/or therapeutic functions associated with implanted or body-worn medical devices such as cardiac pacemakers and defibrillators.<sup>187</sup> The automatic monitoring requirement helps avoid interference to these health-related transmissions.<sup>188</sup> No such need for automatic monitoring has been demonstrated with respect to MURS.<sup>189</sup> We therefore agree with commenters that PRSG's proposal should not be adopted,<sup>190</sup> because imposing an automatic monitoring requirement could stifle innovation and raise equipment costs without any corresponding public interest benefit.<sup>191</sup>

75. *Grandfathering.* The Commission grandfathered and licensed by rule all previously licensed operations on the MURS frequencies, including operations that employed parameters inconsistent with the technical restrictions of the MURS rules.<sup>192</sup> PRSG requests that we continue to require such stations to have a license, and require renewal of grandfathered licenses that operate at variance with current and future MURS requirements.<sup>193</sup> It also requests that parties operating under grandfathered privileges identify their stations by FCC call sign and that the operating parameters of these grandfathered licenses be contained in the FCC's publicly accessible license database.<sup>194</sup> PRSG argues that if its request is not granted, MURS operators will have no way of knowing if others are operating permissibly under grandfathered privileges or improperly in violation of the MURS rules.<sup>195</sup>

76. Contrary to PRSG's understanding, information on former Part 90 licenses for the MURS frequencies continues to be publicly available on the Commission's Universal Licensing System, including licenses that have expired. The public can search the database by frequency to locate grandfathered Part 90 Industrial/Business Pool users. Consequently, we conclude that PRSG's licensing proposal is unnecessary to enable MURS users to identify grandfathered operations. We also agree with Dakota that requiring grandfathered Part 90 stations to transmit a call sign could confuse MURS users.<sup>196</sup> Accordingly, we deny PRSG's petition.

## V. PROCEDURAL MATTERS

### A. *Ex Parte* Rules – Permit-But-Disclose Proceeding

77. This is a permit-but-disclose notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed pursuant to the Commission's Rules.<sup>197</sup>

<sup>187</sup> See Amendment of Parts 2 and 95 of the Commission's Rules to Establish a Medical Implant Communications Service in the 402-405 MHz Band, *Report and Order*, WT Docket No. 99-66, 14 FCC Rcd 21040, 21040 ¶ 1 (1999); See *MedRadio R&O*, 24 FCC Rcd at 3475 ¶ 2.

<sup>188</sup> See *MISC NPRM*, 21 FCC Rcd at 8168-69 ¶ 11.

<sup>189</sup> We are aware that increasing use is being made of MURS for data and telemetry applications, some of which have integrated scanning, automatic monitoring, and packet collision avoidance on a voluntary basis.

<sup>190</sup> See Brody WT Docket No. 98-182 Comments at 1; Dakota WT Docket No. 98-182 Comments at 1; Dickerson WT Docket No. 98-182 Comments at 1-2.

<sup>191</sup> See Brody WT Docket No. 98-182 Comments at 1-2; Teaze WT Docket No. 98-182 Comments at 3.

<sup>192</sup> See *MURS MO&O*, 17 FCC Rcd at 9850 ¶ 40; see also 47 C.F.R. § 95.1317.

<sup>193</sup> See PRSG Petition at 4.

<sup>194</sup> See *id.*

<sup>195</sup> See *id.*; accord Brody WT Docket No. 98-182 Comments at 2.

<sup>196</sup> See Dakota WT Docket No. 98-182 Comments at 2.

<sup>197</sup> See generally 47 C.F.R. §§ 1.1202, 1.1203, 1.1206.

## B. Comment Period and Procedures

78. Pursuant to sections 1.415 and 1.419 of the Commission's Rules,<sup>198</sup> interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments and reply comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS); (2) the Federal Government's eRulemaking Portal; or, (3) by filing paper copies.<sup>199</sup>

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/> or the Federal eRulemaking Portal: <http://www.regulations.gov>.
- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

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

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12<sup>th</sup> St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12<sup>th</sup> Street, SW, Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

79. The public may view the documents filed in this proceeding during regular business hours in the FCC Reference Information Center, Federal Communications Commission, 445 12th Street, S.W., Room CY-A257, Washington, DC 20554, and on the Commission's Internet Home Page: <http://www.fcc.gov>. Copies of comments and reply comments are also available through the Commission's duplicating contractor: Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC 20554, telephone 1-800-378-3160, or via e-mail at: [WWW.BCPIWEB.COM](http://WWW.BCPIWEB.COM).

80. For further information, contact B. C. "Jay" Jackson, Jr., Mobility Division, Wireless Telecommunications Bureau, (202) 418-1309, or via e-mail at [Jay.Jackson@fcc.gov](mailto:Jay.Jackson@fcc.gov).

## C. Regulatory Flexibility Act

81. *Initial Regulatory Flexibility Certification.* We have prepared an Initial Regulatory

<sup>198</sup> 47 C.F.R. §§ 1.415, 1.419.

<sup>199</sup> See Electronic Filing of Documents in Rulemaking Proceedings, GN Docket No. 97-113, *Report and Order*, 13 FCC Rcd 11322 (1998).

Flexibility Certification concerning the possibility of a significant economic impact of the policies and rules proposed by this *NPRM* on a substantial number of small entities. The Initial Regulatory Flexibility Certification is set forth in Appendix A.

#### **D. Initial Paperwork Reduction Act of 1995 Analysis**

82. This document proposes to eliminate an information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

#### **VI. ORDERING CLAUSES**

83. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i), 4(j), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303(r), NOTICE IS HEREBY GIVEN of the proposed amendments to Parts 1, 27, and 95 of the Commission's Rules, 47 C.F.R. Parts 1, 27, and 95, as discussed herein, and that COMMENT IS SOUGHT on these proposals.

84. IT IS FURTHER ORDERED that, pursuant to Sections 4(i), 303(f), 303(r), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(f), 303(r), 332, this *Notice of Proposed Rule Making and Memorandum Opinion and Order on Reconsideration* IS ADOPTED.

85. IT IS FURTHER ORDERED that, pursuant to Sections 4(i), 4(j), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303(r), and Section 1.407 of the Commission's Rules, 47 C.F.R. § 1.407, the petition for rulemaking filed by Garmin International, Inc., RM-10762, on July 22, 2003 IS GRANTED to the extent stated herein.

86. IT IS FURTHER ORDERED that, pursuant to Sections 4(i), 4(j), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303(r), and Section 1.407 of the Commission's Rules, 47 C.F.R. § 1.407, the petition for rulemaking filed by Omnitronics, L.L.C., RM-10844, on December 17, 2003 IS GRANTED to the extent stated herein.

87. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), and Section 1.106(j) of the Commission's Rules, 47 C.F.R. § 1.106(j), the petition for reconsideration filed by the Personal Radio Steering Group in WT Docket No. 98-182 on November 14, 2002, IS DENIED.

88. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Notice of Proposed Rule Making and Memorandum Opinion and Order on Reconsideration*, including the Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch  
Secretary

## APPENDIX A

## INITIAL REGULATORY FLEXIBILITY CERTIFICATION

1. The Regulatory Flexibility Act (RFA)<sup>1</sup> requires that an agency prepare a regulatory flexibility analysis for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."<sup>2</sup> The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."<sup>3</sup> In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.<sup>4</sup> A "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).<sup>5</sup>

2. This *Notice of Proposed Rule Making (NPRM)* proposes to streamline, update and reorganize Part 95 of the Federal Communications Commission (FCC) rules, which governs the Personal Radio Services. The Personal Radio Services are a family of radio services that provide for a variety of wireless devices operated by individual persons, primarily for their own personal use, or to provide benefits to other individual persons. For example, in some of the Personal Radio Services, such as the Family Radio Service and the General Mobile Radio Service, the general public may purchase FCC-certified two-way radios (sometimes called "walkie-talkies") that they can use to communicate with each other directly when they are within range (usually a short distance) of each other. Some other Personal Radio Service applications include radio-controlled aircraft and other hobby vehicles, wireless devices to aid persons with hearing difficulties, medical telemetry and implant devices that provide medical benefits to patients, and personal beacons to help search and rescue teams locate persons in distress in wilderness areas. Unlike commercial mobile radio services such as cellular telephones, the Personal Radio Services are not designed to be used by companies to provide a telecommunications service for hire. Because of the very large number of wireless devices used in most of the Personal Radio services, the FCC has authorized their use by rule, rather than by issuing a separate station license for each device.

3. Part 95 has been amended in a piecemeal fashion numerous times during the past three decades, usually to add a subpart to provide for a new Personal Radio Service. As a result, the structure of Part 95 has become somewhat disorganized. The FCC has not undertaken a comprehensive review of Part 95 in many years and, as a result, it contains many rules that are in effect redundant or inconsistent, or which use outdated technical terminology. The *NPRM* proposes amendments to correct these problems and seeks comment from the public on the proposals. Furthermore, some of the older Personal Radio Services have evolved substantially in technology and usage over the years and the rules for these services also need to be updated. One Part 95 service, the 218-219 MHz service, has evolved so much from its original concept that it no longer shares the personal characteristics of the other Personal Radio

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<sup>1</sup> See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

<sup>2</sup> See 5 U.S.C. § 605(b).

<sup>3</sup> 5 U.S.C. § 601(6).

<sup>4</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), 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."

<sup>5</sup> 15 U.S.C. § 632.

Services; it has become more like a commercial service. Accordingly, the *NPRM* proposes to transfer all of the rules for this service from Part 95 to Part 27 of the FCC rules, because it now has a regulatory framework that is similar to that of the Miscellaneous Wireless Communications Services.

4. The *NPRM* also proposes to reduce burdens on persons who use Personal Radio Services by authorizing the operation of some or all General Mobile Radio Service (GMRS) stations by rule, extending GMRS license terms from five to ten years, and by relaxing GMRS eligibility requirements and certain Citizens Band (CB) Radio Service operating rules. Additionally, the *NPRM* proposes to improve spectrum use efficiency by providing for the use of narrower emission bandwidths in the GMRS. The *NPRM* further proposes to enhance Personal Radio equipment operating features by allowing for the transmission of Global Positioning System (GPS) location information and user-generated text messages on certain GMRS channels, and permitting the use of “hands-free” microphones in the CB Radio Service. Finally, the *NPRM* proposes to promote the safety and consumer interests of Personal Radio Service operators by (1) requiring routine evaluation of GMRS portable devices for radio frequency exposure, (2) no longer granting certification of radios that have voice scrambling capability and “combination radios” capable of transmitting in the safety services in addition to the Personal Radio Services, and (3) preventing the marketing of ersatz devices using the term “Personal Locator Beacon” by limiting the use of that term to genuine personal locator beacons that meet the international technical requirements for such devices.

5. The two statutorily-mandated criteria that the FCC must apply when determining whether an Initial Regulatory Flexibility Certification is appropriate are: (1) whether the proposed rules, if adopted, would have a *significant economic effect*, and (2) if so, whether the economic effect would *directly affect a substantial number of small entities*. Upon application of these criteria, summarized in the following paragraphs, the FCC finds it appropriate to certify that the proposals in this *NPRM*, if adopted, would not have a significant economic effect on a substantial number of small entities.

6. With respect to the first criterion, the FCC finds that adoption of the proposals in the *NPRM* would not have a significant economic effect. In reaching this determination, the FCC first notes that most of the proposed changes to Part 95 in the *NPRM* are editorial and organizational in nature rather than substantive, and as such would not have any economic effect at all on any entities, large or small. Of the remaining proposed changes in the *NPRM*, many of them would directly affect only Personal Radio users, who are individual persons not considered to be small entities for the purpose of the RFA by the FCC, the SBA or Congress.

7. In addition to the editorial rule changes and those that affect only individual persons, however, the *NPRM* also proposes rules that would affect Personal Radio Service equipment manufacturers. Some of these rules would allow equipment manufacturers the flexibility to include certain new features in their future Personal Radio Services products, if they so desire. Because such rules are permissive and not mandatory requirements, any economic effects on these manufacturers, such as an increase in sales or manufacturing cost per unit, would be the result of the equipment manufacturer’s decision as to whether to take advantage of the increased options. As stated *supra*, the *NPRM* proposes (1) to require routine evaluation of certain GMRS radios for radio frequency exposure, (2) that the FCC no longer grant certification of certain types of personal radios (those combined with safety service radios and those with voice scrambling capability), and (3) to restrict future marketing use of the term “personal locator beacon”. If adopted, these proposed rules could require some equipment manufacturers to make adjustments to their future product plans (in regard to combination and voice-scrambling radios) or to alter product labeling (in regard to personal locator beacons). The FCC believes however, that the cost to manufacturers of implementing any of these proposals would be small in comparison to the costs of design, manufacturing, distribution and marketing of these products. Therefore, the FCC concludes that adoption of the *NPRM* proposals would not have more than a *de minimis*, if any, economic effect on manufacturers.

8. As for the second criterion, the FCC, while not in any way conceding the preceding point, considers *arguendo* the case that one or more proposals in the *NPRM*, if adopted, turns out to have a

significant economic effect. In such hypothetical case, the FCC considers whether the economic effect would directly affect a substantial number of small entities. Initially, the FCC notes that the substantive proposals in the *NPRM* would directly affect only operators of Personal Radio Services stations and entities who seek FCC certification of equipment for use in the Personal Radio Services. The former are individual persons, and the latter are typically large manufacturing organizations, neither of which is considered to be small entities for purposes of the RFA by the FCC, the SBA or Congress. The Personal Radio Services equipment market is a large, nationwide market and most Personal Radio Services devices are mass-marketed directly to the general public as consumer goods. This necessitates a large-volume manufacturing capability that a small entity typically does not have. Although there are small-entities that make accessory devices for the Personal Radio Services, and there are small-entity retailers, such as truck stops, that sell Personal Radio Services equipment (*e.g.* CB radios), the proposals outlined *supra* would not directly affect any of them. In view of these factors, the FCC concludes that the proposals in the *NPRM* would not directly affect any small entities, and thus obviously by reason would not directly affect a substantial number of small entities.

9. The FCC therefore certifies, pursuant to the RFA, that the proposals in this *NPRM*, if adopted, would not have a significant economic impact on a substantial number of small entities. The FCC will send a copy of the *NPRM*, including a copy of this Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the SBA. In addition, a summary of the *NPRM* and this initial certification will be published in the Federal Register.<sup>6</sup>

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<sup>6</sup> See 5 U.S.C. § 605(b).

## APPENDIX B

### Proposed Rules

Part 1 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

#### Part 1 – Practice and Procedure

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

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

2. Section 1.1307 is amended by revising paragraph (b)(2) as follows:

**§ 1.1307 Actions that may have a significant environmental effect, for which Environmental Assessments (EAs) must be prepared.**

\* \* \* \* \*

(b) \* \* \*

(2) Mobile and portable transmitting devices that operate in the Cellular Radiotelephone Service, the Personal Communications Services (PCS), the Satellite Communications Services, the Wireless Communications Service, the Maritime Services (ship earth stations only), the Specialized Mobile Radio Service, and the 3650 MHz Wireless Broadband Service authorized under Subpart H of Parts 22, 24, 25, 27, 80, and 90 of this chapter are subject to routine environmental evaluation for RF exposure prior to equipment authorization or use, as specified in §§2.1091 and 2.1093 of this chapter. Unlicensed PCS, unlicensed NII and millimeter wave devices are also subject to routine environmental evaluation for RF exposure prior to equipment authorization or use, as specified in §§15.253(f), 15.255(g), 15.319(i), and 15.407(f) of this chapter. Portable devices as defined in §2.1093(b) of this chapter operating in the General Mobile Radio Service (GMRS), the Wireless Medical Telemetry Service (WMTS) and the Medical Device Radiocommunication Service (MedRadio) Subparts C, H and I of Part 95 of this chapter are subject to radio frequency radiation exposure requirements as specified in §§2.1093 and 95.49 of this chapter. Equipment authorized for use in the Medical Device Radiocommunication Service (MedRadio) as a medical implant or body-worn transmitter (as defined in Appendix 1 to Subpart E of Part 95 of this chapter) is subject to routine environmental evaluation for RF exposure prior to equipment authorization, as specified in §2.1093 of this chapter by finite difference time domain computational modeling or laboratory measurement techniques. Where a showing is based on computational modeling, the Commission retains the discretion to request that specific absorption rate measurement data be submitted. All other mobile, portable, and unlicensed transmitting devices are categorically excluded from routine environmental evaluation for RF exposure under §§2.1091, 2.1093 of this chapter except as specified in paragraphs (c) and (d) of this section.

\* \* \* \* \*

Part 27 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

#### Part 27 – Miscellaneous Wireless Communications Services

**AUTHORITY:** 47 U.S.C. 154, 301, 302, 303, 307, 309, 332, 336, and 337 unless otherwise noted.

1. Section 27.1 is amended by adding paragraph (b)(10) to read as follows:

**§ 27.1 Basis and purpose.**

\* \* \* \* \*

(b) \* \* \*

(10) 218-219 MHz.

\* \* \* \* \*

2. Section 27.2 is amended by adding paragraph (d) to read as follows:

**§ 27.2 Permissible communications.**

\* \* \* \* \*

(d) *218-219 MHz.* A 218–219 MHz Service system may provide any fixed or mobile communications service to subscribers within its service area on its assigned spectrum, consistent with the Commission's rules and the regulatory status of the system to provide services on a common carrier or private basis.

3. Section 27.5 is amended by adding paragraph (j) to read as follows:

**§ 27.5 Frequencies.**

\* \* \* \* \*

(j) *218-219 MHz band.* There are two frequency segments available for assignment to the 218–219 MHz Service in each service area. Frequency segment A is 218.000–218.500 MHz. Frequency segment B is 218.501–219.000 MHz.

4. Section 27.10 is amended by revising paragraph (a) and by adding paragraph (e) to read as follows:

**§ 27.10 Regulatory status.**

\* \* \* \* \*

(a) *Single authorization.* Authorization will be granted to provide any or a combination of the following services in a single license: common carrier, non-common carrier, private internal communications, and broadcast services. A licensee may render any kind of communications service consistent with the regulatory status in its license and with the Commission's rules applicable to that service. A system in the 218-219 MHz Service may not provide broadcast services. An applicant or licensee may submit a petition at any time requesting clarification of the regulatory status for which authorization is required to provide a specific communications service.

\* \* \* \* \*

(e) *Pre-existing 218-219 MHz licenses.* Licenses in the 218-219 MHz Service granted before April 9, 2001, are authorized to provide services on a private (non-common carrier) basis. Licensees may modify this initial status pursuant to paragraph (d) of this section.

5. Section 27.11 is amended by adding paragraph (j) to read as follows:

**§ 27.11 Initial authorization.**

\* \* \* \* \*

(j) *218-219 MHz band.* There are two frequency segments available for assignment to the 218–219 MHz Service in each service area. Frequency segment A is 218.000–218.500 MHz. Frequency segment B is 218.501–219.000 MHz.

6. Section 27.13 is amended by adding paragraph (i) to read as follows:

**§ 27.13 License period.**

\* \* \* \* \*

(i) *218-219 MHz.* (1) Authorizations for the 218–219 MHz band will have a term not to exceed ten years from the date of initial issuance or renewal.

(2) Licenses for individually licensed cellular transmitter stations will be issued for a period running concurrently with the license of the associated 218–219 MHz Service system with which it is licensed.

7. Section 27.14 is amended by redesignating paragraphs (g) through (o) as (h) through (p), and adding paragraphs (g) and (q), to read as follows:

**§ 27.14 Construction requirements; criteria for renewal.**

\* \* \* \* \*

(g) Comparative renewal proceedings do not apply to licensees holding authorizations for the 218-219 MHz band. These licensees must file a renewal application in accordance with the provisions set forth in §1.949 of this chapter.

\* \* \* \* \*

(q) Each licensee holding authorizations in the 218–219 MHz band must make a showing of “substantial service” within ten years of the license grant. A “substantial service” assessment will be made at renewal pursuant to the provisions and procedures contained in §1.949 of this chapter.

(1) Each licensee holding authorizations in the 218–219 MHz band must file a report informing the Commission of the service status of its system. The report must be labeled as an exhibit to the renewal application. At minimum, the report must include:

- (i) A description of its current service in terms of geographic coverage and population served;
- (ii) An explanation of its record of expansion, including a timetable of new construction to meet changes in demand for service;
- (iii) A description of its investments in its 218–219 MHz Service systems;
- (iv) A list, including addresses, of all component cellular transmission stations constructed; and
- (v) Copies of all FCC orders finding the licensee to have violated the Communications Act or any FCC rule or policy; and a list of any pending proceedings that relate to any matter described in this paragraph.

8. Section 27.50 is amended by adding paragraph (j) to read as follows:

**§ 27.50 Power and antenna height limits.**

\* \* \* \* \*

(j) The following power and antenna height requirements apply to stations transmitting in the 218-219 MHz band:

(1) The effective radiated power (ERP) of each cellular transmitter station (CTS) and response transmitter unit (RTU) shall be limited to the minimum necessary for successful communications. No CTS or fixed RTU may transmit with an ERP exceeding 20 watts. No mobile RTU may transmit with an ERP exceeding 4 watts.

(2) The overall height from ground to topmost tip of a CTS antenna shall not exceed the height necessary to assure adequate service. Certain CTS antennas must be individually licensed to the 218–219 MHz System licensee (*see* §27.1403(b) of this part) and the antenna structures of which they are a part must be registered with the Commission (*see* part 17 of this chapter).

(3) The RTU may be connected to an external antenna not more than 6.1 m (20 feet) above ground or above an existing man-made structure (other than an antenna structure). Connectors that are used to connect RTUs to an external antenna shall not be of the types generally known as “F-type” or “BNC type.”

9. Section 27.53 is amended by adding paragraph (o) to read as follows:

**§ 27.53 Emission limits.**

\* \* \* \* \*

(o) For operations in the 218-219 MHz band, all transmissions by each cellular transmitter station and by each response transmitter unit shall use an emission type that complies with the following standard for unnecessary radiation.

- (1) All spurious and out-of-band emissions shall be attenuated:
  - (i) Zero dB on any frequency within the authorized frequency segment;
  - (ii) At least 28 dB on any frequency removed from the midpoint of the assigned frequency segment by more than 250 kHz up to and including 750 kHz;
  - (iii) At least 35 dB on any frequency removed from the midpoint of the assigned frequency segment by more than 750 kHz up to and including 1250 kHz;
  - (iv) At least  $43 + 10 \log (P)$  dB on any frequency removed from the midpoint of the assigned frequency segment by more than 1250 kHz.
- (2) When testing for certification, all measurements of unnecessary radiation are performed using a carrier frequency as close to the edge of the authorized frequency segment as the transmitter is designed to be capable of operating.
- (3) The resolution bandwidth of the instrumentation used to measure the emission power shall be 100 Hz for measuring emissions up to and including 250 kHz from the edge of the authorized frequency segment, and 10 kHz for measuring emissions more than 250 kHz from the edge of the authorized frequency segment. If a video filter is used, its bandwidth shall not be less than the resolution bandwidth. The power level of the highest emission within the frequency segment, to which the attenuation is referenced, shall be remeasured for each change in resolution bandwidth.

10. Part 27 is amended by adding subpart O to read as follows:

**Subpart O – 218-219 MHz Band**

Sec.

- 27.1401 Scope.
- 27.1402 218–219MHz Service description.
- 27.1403 License requirements.
- 27.1404 License application.
- 27.1405 Competitive bidding proceedings.
- 27.1406 License transferability.
- 27.1407 Station identification.
- 27.1408 Station inspection.
- 27.1409 Certification.
- 27.1410 Interference.

**AUTHORITY:** 47 U.S.C. 154, 301, 302, 303, 307, 309, 332, 336, and 337 unless otherwise noted.

**§ 27.1401 Scope.**

This subpart sets out the regulations governing the licensing and operation of a 218–219 MHz system. This subpart supplements part 1, subpart F of this chapter, which establishes the requirements and conditions under which commercial and private radio stations may be licensed and used in the Wireless Telecommunications Services.

**§ 27.1402 218–219 MHz service description.**

- (a) The 218–219 MHz Service is authorized for system licensees to provide communication service to subscribers in a specific service area.
- (b) The components of each 218–219 MHz Service system are its administrative apparatus, its response transmitter units (RTUs), and one or more cell transmitter stations (CTSs). RTUs may be used in any location within the service area. CTSs provide service from a fixed point, and certain CTSs must be individually licensed as part of a 218–219 MHz Service system. *See* §27.1403.
- (c) Each 218–219 MHz Service system service area is one of the cellular markets as defined in § 22.909

of this chapter, unless modified pursuant to §27.15.

#### **§ 27.1403 License requirements.**

(a) Each 218–219 MHz Service system must be licensed in accordance with part 1, subpart F of this chapter.

(b) Each cellular transmitter station (CTS) where the antenna does not exceed 6.1 meters (20 feet) above ground or an existing structure (other than an antenna structure) and is outside the vicinity of certain receiving locations (see §1.924 of this chapter) is authorized under the 218–219 MHz System license. All other CTS must be individually licensed.

(c) All CTSs not meeting the licensing criteria under paragraph (b) of this section are authorized under the 218–219 MHz Service system license.

(d) Each component response transmitter unit (RTU) in a 218–219 MHz Service system is authorized under the system license or if associated with an individually licensed CTS, under that CTS license.

(e) Each CTS (regardless of whether it is individually licensed) and each RTU must be in compliance with the Commission's environmental rules (see part 1, subpart I of this chapter) and the Commission's rules pertaining to the construction, marking and lighting of antenna structures (see part 17 of this chapter).

#### **§ 27.1404 License application.**

(a) In addition to the requirements of part 1, subpart F of this chapter, each application for a 218–219 MHz Service system license must include a plan analyzing the co- and adjacent channel interference potential of the proposed system, identifying methods being used to minimize this interference, and showing how the proposed system will meet the service requirements set forth in § 27.14 of this part. This plan must be updated to reflect changes to the 218–219 MHz Service system design or construction.

(b) In addition to the requirements of part 1, subpart F of this chapter, each request by a 218–219 MHz Service system licensee to add, delete, or modify technical information of an individually licensed cellular transmitter station (CTS) (*see* § 27.1403(b) of this part) must include a description of the system after the proposed addition, deletion, or modifications, including the population in the service area, the number of component CTSs, and an explanation of how the system will satisfy the service requirements specified in §27.14 of this part.

#### **§ 27.1405 Competitive bidding proceedings.**

(a) Mutually exclusive initial applications for 218–219 MHz Service licenses are subject to competitive bidding. The general competitive bidding procedures set forth in part 1, subpart Q of this chapter will apply unless otherwise provided in this part.

(b) Installment payments. Eligible Licensees that elect resumption pursuant to Amendment of part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218-219 MHz Service, Report and Order and Memorandum Opinion and Order, FCC 99-239 (released September 10, 1999) may continue to participate in the installment payment program. Eligible Licensees are those that were current in installment payments (i.e. less than ninety days delinquent) as of March 16, 1998, or those that had properly filed grace period requests under the former installment payment rules. All unpaid interest from grant date through election date will be capitalized into the principal as of Election Day creating a new principal amount. Installment payments must be made on a quarterly basis. Installment payments will be calculated based on new principal amount as of Election Day and will fully amortize over the remaining term of the license. The interest rate will equal the rate for five-year U.S. Treasury obligations at the grant date.

(c) Installment payment provisions for partitioning and disaggregation--(1) Parties not qualified for installment payment plans.

(i) When a winning bidder (partitionor or disaggregator) that elected to pay for its license through an

installment payment plan partitions its license or disaggregates spectrum to another party (partitionee or disaggregatee) that would not qualify for an installment payment plan, or elects not to pay for its share of the license through installment payments, the outstanding principal balance owed by the partitionor or disaggregator shall be apportioned according to § 1.2111(e)(3) of this chapter. The partitionor or disaggregator is responsible for accrued and unpaid interest through and including the consummation date.

(ii) The partitionee or disaggregatee shall, as a condition of the approval of the partial assignment application, pay its entire pro rata amount of the outstanding principal balance on or before the consummation date. Failure to meet this condition will result in cancellation of the grant of the partial assignment application.

(iii) The partitionor or disaggregator shall be permitted to continue to pay its pro rata share of the outstanding balance and, if applicable, shall receive loan documents evidencing the partitioning and disaggregation. The original interest rate, established pursuant to § 1.2110(g)(3)(i) of this chapter at the time of the grant of the initial license in the market, shall continue to be applied to the partitionor's or disaggregator's portion of the remaining government obligation.

(iv) A default on the partitionor's or disaggregator's payment obligation will affect only the partitionor's or disaggregator's portion of the market.

(2) Parties qualified for installment payment plans.

(i) Where both parties to a partitioning or disaggregation agreement qualify for installment payments, the partitionee or disaggregatee will be permitted to make installment payments on its portion of the remaining government obligation.

(ii) Each party may be required, as a condition to approval of the partial assignment application, to execute loan documents agreeing to pay its pro rata portion of the outstanding principal balance due, as apportioned according to § 1.2111(e)(3) of this chapter, based upon the installment payment terms for which it qualifies under the rules. Failure by either party to meet this condition will result in the automatic cancellation of the grant of the partial assignment application. The interest rate, established pursuant to § 1.2110(g)(3)(i) of this chapter at the time of the grant of the initial license in the market, shall continue to be applied to both parties' portion of the balance due. Each party will receive a license for its portion of the partitioned market.

(iii) A default on an obligation will affect only that portion of the market area held by the defaulting party.

(d) Eligibility for small business provisions.

(1) A small business is an entity that, together with its affiliates and controlling interests, has average gross revenues not to exceed \$15 million for the preceding three years.

(2) A very small business is an entity that, together with its affiliates and controlling interests, has average gross revenues not to exceed \$3 million for the preceding three years.

(e) Bidding credits. A winning bidder that qualifies as a small business, as defined in this subsection, or a consortium of small businesses may use the bidding credit specified in § 1.2110(f)(2)(ii) of this chapter. A winning bidder that qualifies as a very small business, as defined in this section, or a consortium of very small businesses may use the bidding credit specified in accordance with § 1.2110(f)(2)(i) of this chapter.

(f) Winning bidders in Auction No. 2, which took place on July 28–29, 1994, that, at the time of auction, met the qualifications under the Commission's rules then in effect, for small business status will receive a twenty-five percent bidding credit pursuant to Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218–219 MHz Service, Report and Order and Memorandum Opinion and Order, FCC 99–239 (released September 10, 1999).

**§ 27.1406 License transferability.**

(a) A 218–219 MHz Service system license, together with all of its component cellular transmitter stations (CTS) licenses, may be transferred, assigned, sold, or given away only in accordance with the provisions and procedures set forth in § 1.948 of this chapter. For licenses acquired through competitive bidding procedures (including licenses obtained in cases of no mutual exclusivity), designated entities must comply with §§ 1.2110 and 1.2111 of this chapter (*see* § 1.948(a)(3) of this chapter).

(b) If the transfer, assignment, sale, or gift of a license is approved, the new licensee is held to the construction requirements set forth in § 27.14.

**§ 27.1407 Station identification.**

No response transmitter unit or cellular transmitter station is required to transmit a station identification announcement.

**§ 27.1408 Station inspection.**

Upon request by an authorized Commission representative, the 218–219 MHz Service system licensee must make any component cellular transmitter station available for inspection.

**§ 27.1409 Certification.**

Each cellular transmitter station and response transmitter unit must be certificated for use in the 218–219 MHz Service in accordance with subpart J of part 2 of this chapter.

**§ 27.1410 Interference.**

(a) When a 218–219 MHz Service system suffers harmful interference within its service area or causes harmful interference to another 218–219 MHz Service system, the licensees of both systems must cooperate and resolve the problem by mutually satisfactory arrangements. If the licensees are unable to do so, the Commission may impose restrictions including, but not limited to, specifying the transmitter power, antenna height or area, duty cycle, or hours of operation for the stations concerned.

(b) The use of any frequency segment (or portion thereof) at a given geographical location may be denied when, in the judgment of the Commission, its use in that location is not in the public interest; the use of a frequency segment (or portion thereof) specified for the 218–219 MHz Service system may be restricted as to specified geographical areas, maximum power, or other operating conditions.

(c) A 218–219 MHz Service licensee must provide a copy of the plan required by § 27.1404 (a) of this part to every TV Channel 13 station whose Noise Limited Contour, as determined in § 73.622(e), overlaps the licensed service area for the 218–219 MHz Service system. The 218–219 MHz Service licensee must send the plan to the TV Channel 13 licensee(s) within 10 days from the date the 218–219 MHz Service submits the plan to the Commission, and the 218–219 MHz Service licensee must send updates to this plan to the TV Channel 13 licensee(s) within 10 days from the date that such updates are filed with the Commission pursuant to § 95.815.

(d) Each 218–219 MHz Service system licensee must provide upon request, and install free of charge, an interference reduction device to any household within a TV Channel 13 station Noise Limited Contour that experiences interference due to a component cellular transmitter station or response transmitter unit (RTU).

(e) Each 218–219 MHz Service system licensee must investigate and eliminate harmful interference to television broadcasting and reception, from its component CTSs and RTUs, within 30 days of the time it is notified in writing, by either an affected television station, an affected viewer, or the Commission, of an interference complaint. Should the licensee fail to eliminate the interference within the 30-day period, the CTS(s) or RTU(s) causing the problem(s) must discontinue operation.

(f) The boundary of the 218–219 MHz Service system, as defined in its authorization, is the limit of interference protection for that 218–219 MHz Service system.

Part 95 of Chapter 1 of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

**Part 95 – Personal Radio Services**

1. The authority citation for Part 95 is amended to read as follows:

**Authority:** 47 U.S.C. §§ 154, 303, 307.

2. Part 95 is deleted in its entirety and a new Part 95 is added to read as follows:

**Part 95 – PERSONAL RADIO SERVICES**

**Subpart A – General Information**

Sec.

95.1 Basis and Purpose.

95.3 Definitions.

95.5 License requirement and eligibility.

95.7 Authorized locations.

95.9 Licensee responsibility.

95.11 Station inspection.

95.13 Correspondence from the FCC.

95.15 Penalties for violating the rules.

95.17 Contact the FCC

**Subpart B – Technical Information**

95.31 Scope.

95.33 Equipment certification requirements.

95.35 Power.

95.37 Frequency tolerance.

95.39 Bandwidth limitations.

95.41 Emission limitations.

95.43 Modulation standards.

95.45 Antenna limits.

95.47 Telephone interconnection.

95.49 RF safety.

95.51 Operation by remote control.

**Subpart C – General Mobile Radio Service (GMRS)**

95.101 Scope.

95.103 Channels available.

95.105 Permissible communications.

95.107 Station identification.

**Subpart D – Radio Control (R/C) Radio Service**

95.201 Scope.

95.203 Eligibility.

95.205 Channels available.

95.207 Permissible communications.

95.209 Special restrictions on the location of R/C stations.

95.211 Operation by remote control.

#### **Subpart E – Citizens Band (CB) Radio Service**

95.301 Scope.

95.303 Am I eligible to operate a CB station?

95.305 Are there any special restrictions on the location of my CB station?

95.307 On what channels may I operate?

95.309 Antenna Limits.

95.311 What equipment may I use at my CB station?

95.313 May I use power amplifiers?

95.315 What communications may be transmitted?

95.317 What communications are prohibited?

95.319 May I be paid to use my CB station?

95.321 Do I have to limit the length of my communications?

95.323 How do I use my CB station in an emergency or to assist a traveler?

95.325 May I operate my CB station transmitter by remote control?

95.327 May I connect my CB station transmitter to a telephone?

#### **Subpart F – Family Radio Service (FRS)**

95.401 Scope.

95.403 Channels available.

95.405 Permissible communications.

#### **Subpart G – Low Power Radio Service (LPRS)**

95.501 Scope.

95.503 Channels available.

95.505 Permissible communications.

95.507 Notification requirement

95.509 Marketing limitations.

#### **Subpart H – Wireless Medical Telemetry Service (WMTS)**

95.601 Scope.

95.603 Channels available.

95.605 Permissible communications.

95.607 Frequency coordination.

95.609 Frequency coordinator.

95.611 Special requirements for operating in the 608-614 MHz band.

95.613 Special requirements for operating in the 1395-1400 and 1427-1429.5 MHz bands.

95.615 Protection of medical equipment.

#### **Subpart I – Medical Device Radiocommunications Service (MedRadio)**

95.701 Scope.

95.703 Permissible communications.

95.705 Channel use policy.

95.707 Disclosure policies.

95.709 Labeling requirements.

95.711 Marketing limitations.

95.713 Certification procedures.

- 95.715 MedRadio transmitters.
- 95.717 Maximum transmitter power.
- 95.719 Emission types.
- 95.721 Emission bandwidth.
- 95.723 Unwanted radiation.
- 95.725 Antennas.
- 95.727 RF exposure.

#### **Subpart J – Multi-Use Radio Service (MURS)**

- 95.801 Scope.
- 95.803 Channels available.
- 95.805 Permissible communications.
- 95.807 Repeater operations and signal boosters prohibited.
- 95.809 Grandfathered MURS Stations.

#### **Subpart K – Personal Locator Beacons (PLB)**

- 95.901 Scope.
- 95.903 Channels available.
- 95.905 Permissible communications.
- 95.907 Special requirements for 406 MHz PLBs.
- 95.909 Marketing limitations.

#### **Subpart L – Dedicated Short-range Communications Service On-Board Units (DSRCS-OBUs)**

- 95.1001 Scope.
- 95.1003 ASTM E2213-03 DSRC Standard.
- 95.1005 Channels available.

#### **Subpart A – General Information**

##### **§ 95.1 Basis and purpose.**

This section contains a concise general statement of the basis and purpose of the rules in this part, pursuant to 5 U.S.C. 553(c).

(a) *Basis.* These rules are issued pursuant to the Communications Act of 1934, as amended, 47 U.S.C. 151 *et. Seq.*

(b) *Purpose.* The purpose of these rules is to establish the requirements and conditions under which radio stations may be licensed and used in the Personal Radio Services.

##### **§ 95.3 Definitions.**

*Antenna.* The radiating system (for transmitting, receiving or both) and the structure holding it up (tower, pole or mast).

*Authorized bandwidth.* Maximum permissible bandwidth of a transmission.

*Automated maritime telecommunications system (AMTS).* An automatic maritime communications system administered under Part 80 of the Commission's Rules.

*Base station.* A fixed station that communicates with mobile stations.

*Carrier power.* Average transmitter output power during one RF cycle under condition of no modulation.

*Channel center frequencies.* Reference frequencies from which the carrier frequency, suppressed or otherwise, may not deviate by more than the specified frequency tolerance.

*Citizens Band (CB) Radio Service.* The CB Radio Service is a private, two-way, short-distance voice communications service intended primarily for personal activities of the general public. The CB Radio Service may also be used for voice paging.

*Citizens Band Radio Services.* The Citizens Band Radio Services are the Citizens Band, Family Radio Service, Personal Locator Beacon, Low Power Radio Service, Medical Implant Communications Service, Multi-Use Radio Service, Wireless Medical Telemetry Service, and Dedicated Short-range Communications Service On-Board Units.

*CB transmitter.* A transmitter that operates or is intended to operate at a station authorized in the CB Radio Service.

*Dedicated Short-range Communications Service On-Board Units (DSRCS-OBUs).* DSRCS-OBUs may communicate with DSRCS Roadside Units (RSUs), which are authorized under part 90 of this chapter.

*Family Radio Service (FRS).* The FRS is a private, two-way, very short-distance voice and data communications service for facilitating family and group activities.

*General Mobile Radio Service (GMRS).* GMRS is a land mobile radio service available to persons for short-distance two-way communications intended primarily to facilitate personal communications.

*Health care facility.* A health care facility includes hospitals and other establishments that offer services, facilities and beds for use beyond a 24-hour period in rendering medical treatment, and institutions and organizations regularly engaged in providing medical services through clinics, public health facilities, and similar establishments, including government entities and agencies such as Veterans Administration hospitals; except the term health care facility does not include an ambulance or other moving vehicle.

*Low Power Radio Service (LPRS).* The LPRS is a private, short-distance communications service providing auditory assistance to persons with disabilities, persons who require language translations, and persons in educational settings, health care assistance to the ill, law enforcement tracking services in cooperation with law enforcement, and point-to-point network control communications for Automated Marine Telecommunications System (AMTS) coast stations licensed under part 80 of this chapter.

*Mean power.* Average transmitter output power over a time interval of at least 0.1 seconds.

*Medical Device Radiocommunications Service (MedRadio).* An ultra-low power radio service for the transmission of non-voice data for the purpose of facilitating diagnostic and/or therapeutic functions involving implanted and body-worn medical devices.

With regard to MedRadio, the following definitions apply:

(i) *EIRP.* Equivalent Isotropically Radiated Power. Antenna input power times gain for free-space or in-tissue measurement configurations required by MedRadio, expressed in watts, where the gain is referenced to an isotropic radiator.

(ii) *Emission bandwidth.* Measured as the width of the signal between the points on either side of carrier center frequency that are 20 dB down relative to the maximum level of the modulated carrier. Compliance will be determined using instrumentation employing a peak detector function and a resolution bandwidth approximately equal to 1% of the emission bandwidth of the device under test. (iii) *Medical body-worn device.* Apparatus that is placed on or in close proximity to the human body (e.g., within a few centimeters) for the purpose of performing diagnostic or therapeutic functions.

(iii) *Medical body-worn transmitter.* A MedRadio transmitter intended to be placed on or in close proximity to the human body (e.g., within a few centimeters) used to facilitate communications with other medical communications devices for purposes of delivering medical therapy to a patient or collecting medical diagnostic information from a patient.

(iv) *Medical implant device*. Apparatus that is placed inside the human body for the purpose of performing diagnostic and/or therapeutic functions.

(v) *Medical implant event*. An occurrence or the lack of an occurrence recognized by a medical implant device, or a duly authorized health care professional, that requires the transmission of data from a medical implant transmitter in order to protect the safety or well-being of the person in whom the medical implant transmitter has been implanted.

(vi) *Medical implant transmitter*. A MedRadio transmitter in which both the antenna and transmitter device are designed to operate within a human body for the purpose of facilitating communications from a medical implant device.

(vii) *MedRadio channel*. Any continuous segment of spectrum that is equal to the emission bandwidth of the device with the largest bandwidth that is to participate in a MedRadio communications session. (Note: The rules do not specify a channeling scheme for use by MedRadio systems.)

(viii) *MedRadio communications session*. A collection of transmissions, that may or may not be continuous, between MedRadio system devices.

(ix) *Medical implant transmitter*. A transmitter authorized to operate in the MedRadio service.

(x) *MedRadio programmer/control transmitter*. A MedRadio transmitter that operates or is designed to operate outside of a human body for the purpose of communicating with a receiver, or for triggering a transmitter, connected to a medical implant device or to a medical body-worn device used in the MedRadio Service; and which also typically includes a frequency monitoring system that initiates a MedRadio communications session.

(xi) *MedRadio Service*. Medical Device Radiocommunication Service.

*Multi-Use Radio Service (MURS)*. MURS is a private, two-way, short-distance voice, data or image communications service for personal or business activities of the general public.

*Personal Locator Beacon (PLB)*. PLBs are intended to provide individuals in remote areas a means to alert others of an emergency situation and to aid search and rescue personnel to locate those in distress.

*Radio Control (R/C) Radio Service*. The R/C Service is a private, one-way, short-distance non-voice communications service for the operation of devices at remote locations.

*R/C transmitter*. A transmitter that operates or is intended to operate at a station authorized in the R/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.

*Wireless Medical Telemetry Service (WMTS)*. The WMTS is a private, short-distance data communication service for the transmission of patient medical information to a central monitoring location in a hospital or other hospital care facility.

### **§ 95.5 License requirement and eligibility.**

(a) Except as set forth below, you are authorized by rule (no individual FCC license is required) to operate Personal Radio Service transmitters that have been approved as required in § 95.33 of this subpart.

(1) Stations belonging to and operated by the United States Government, and stations operated by foreign governments or their representatives are not authorized.

(2) Each entity operating a LPRS transmitter for AMTS purposes must hold an AMTS license under Part 80 of this chapter.

(3) Authorized health care providers are authorized by rule to operate transmitters in the Wireless Medical Telemetry Service without an individual license issued by the Commission provided the

coordination requirements in § 95.607 have been met. Manufacturers of wireless medical telemetry devices and their representatives are authorized to operate wireless medical telemetry transmitters in this service solely for the purpose of demonstrating such equipment to, or installing and maintaining such equipment for, duly authorized health care providers. No entity that is a foreign government or which is active in the capacity as a representative of a foreign government is eligible to operate a WMTS transmitter.

(4) Operation in the MedRadio service is permitted by rule and without an individual license issued by the FCC. Duly authorized health care professionals are permitted to operate MedRadio transmitters. Persons may also operate MedRadio transmitters to the extent the transmitters are incorporated into implanted or body-worn medical devices that are used by the person at the direction of a duly authorized health care professional; this includes medical devices that have been implanted in that person or placed on the body of that person by or under the direction of a duly authorized health care professional. Manufacturers of medical devices that include MedRadio transmitters, and their representatives, are authorized to operate transmitters in this service for the purpose of demonstrating such equipment to duly authorized health care professionals. No entity that is a foreign government or which is acting in its capacity as a representative of a foreign government is eligible to operate a MedRadio transmitter. The term “duly authorized health care professional” means a physician or other individual authorized under state or federal law to provide health care services. Operations that comply with the requirements of this part may be conducted under manual or automatic control.

#### **§ 95.7 Authorized locations.**

(a) Provided that you comply with the rules of this chapter, you are authorized to operate a Personal Radio Services transmitter from:

(1) Within the United States and its territories. Those areas include the fifty United States and the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands (50 islets and cays), American Samoa (seven islands), the Commonwealth of Northern Mariana Islands, and Guam Island;

(2) Aboard any vessel or aircraft registered in the United States, with the permission of the captain, that is within or over the United States or its territories, U.S. territorial waters, or upon or over international waters; or

(3) Aboard any unregistered vessel or aircraft owned or operated by a United States citizen or company that is within or over the United States or its territories, U.S. territorial waters or upon or over international waters.

(b) You may be subject to additional restrictions if you operate your Personal Radio Services transmitter:

(1) Near an FCC field office or in a quiet zone. *See* § 1.924 of this chapter.

(2) In an area subject to an international treaty or agreement.

(3) At an environmentally sensitive site, or in such a manner as to raise environmental problems. *See* §§ 1.1307, 1.1311 and 1.1312 of this chapter.

(4) In an area administered by the United States Government. For example, the Department of Defense may impose restrictions on a station transmitting on its land. Before placing a station at such a point, a licensee should consult with the commanding officer in charge of the land. Anyone intending to operate a Personal Radio Services transmitter on the islands of Puerto Rico, Desecheo, Mona, Vieques, and Culebra in a manner that could pose an interference threat to the Arecibo Observatory shall notify the Interference Office, Arecibo Observatory, HC3 Box 53995, Arecibo, Puerto Rico 00612, in writing or electronically, of the location of the unit. Operators may wish to consult interference guidelines, which will be provided by Cornell University. Operators who choose to transmit information electronically should send an e-mail to: [prcz@naic.edu](mailto:prcz@naic.edu).

(i) The notification to the Interference Office, Arecibo Observatory shall be made 45 days prior to commencing operation of the unit. The notification shall state the geographical coordinates of the unit.

(ii) After receipt of such notifications, the Commission will allow the Arecibo Observatory a period of 20 days for comments or objections. The operator will be required to make reasonable efforts in order to resolve or mitigate any potential interference problem with the Arecibo Observatory. If the Commission determines that an operator has satisfied its responsibility to make reasonable efforts to protect the Observatory from interference, the unit may be allowed to operate.

(c) Wireless Medical Telemetry Service devices shall not operate in mobile vehicles, such as ambulances, even if those vehicles are associated with a health care facility.

#### **§ 95.9 Licensee responsibility.**

(a) A licensee (including entities licensed by rule) of a Personal Radio Services transmitter is responsible at all times for the proper operation of the transmitter. Licensees must at all times and on all channels give priority to emergency communications.

(b) You must not use a Personal Radio Service station:

(1) In connection with any activity which is against federal, state or local law;

(2) For the transmission of advertisements or program material associated with television or radio broadcasting;

(3) To intentionally interfere with another stations transmissions;

(4) To transmit sound effects (music, whistling, etc.) or obscene, profane or indecent words, language or meaning; or

(5) To transmit messages for hire or provide a common carrier service.

(6) Additional service-specific prohibitions are set forth in the relevant subparts of this chapter.

#### **§ 95.11 Station inspection.**

(a) If an authorized FCC representative requests to inspect your Personal Radio Services station, you must make your station and records available for inspection.

(b) A Personal Radio Service station includes all of the radio equipment you use in connection with that station.

(c) Your station records include the following documents, as applicable:

(1) A copy of each response to an FCC violation notice or an FCC letter.

(2) Each written permission received from the FCC.

#### **§ 95.13 Correspondence and notices from the FCC.**

(a) If the FCC sends you a letter asking you questions about your Personal Radio Service radio station or its operation:

(1) You must answer each of the questions with a complete written statement within the time period stated in the letter;

(2) You must not shorten your answer by references to other communications or notices;

(3) You must send your answer to the FCC office which sent you the notice; and

(4) You must keep a copy of your answer in your station records.

(b) If it appears to the FCC that you have violated the Communications Act or these rules, the FCC may send you an official notice concerning the violation.

(1) Within the time period stated in the notice, you must send your answer to the FCC office which sent

you the notice and you must answer with:

- (A) A complete written statement which fully explains each violation;
  - (B) A complete written statement about any action you have taken to correct the violation and to prevent it from happening again; and
  - (C) The name of the person operating the station at the time of the violation.
- (2) If the FCC informs you that your Personal Radio Service station is causing interference for technical reasons, you must follow all instructions in the official notice. (This notice may require you to have technical adjustments made to your equipment.)
- (3) You must comply with any restricted hours of station operation which may be included in the official notice.
- (4) You must keep a copy of your answer in your station records.

#### **§ 95.15 Penalties for violating the rules.**

(a) If the FCC finds that you have willfully or repeatedly violated the Communications Act or the FCC Rules, you may have to pay as much as \$16,000 for each violation, up to a total of \$112,500. (*See* section 1.80 of this chapter.)

(b) If the FCC finds that you have violated any section of the Communications Act or the FCC Rules, you may be ordered to stop whatever action caused the violation. (*See* section 312(b) of the Communications Act.)

(c) If a federal court finds that you have willfully and knowingly violated any FCC Rule, you may be fined up to \$500 for each day you committed the violation. (*See* section 502 of the Communications Act.)

(d) If a federal court finds that you have willfully and knowingly violated any provision of the Communications Act, you may be fined up to \$10,000 or you may be imprisoned for one year, or both. (*See* section 501 of the Communications Act.)

#### **§ 95.17 Contact the FCC.**

You may contact the FCC in any of the following ways:

- (a) FCC National Call Center at 1-888-225-5322, TTY 1-888-835-5322;
- (b) FCC World Wide Web homepage: [www.fcc.gov](http://www.fcc.gov); or
- (c) In writing, to FCC, 1270 Fairfield Road, Gettysburg, PA 17325-7245, Attention: Personal Radio Services.

### **Subpart B – Technical Information**

#### **§ 95.31 Scope.**

This subpart covers technical standards pertaining to transmitters used or intended to be used in all the Part 95 Personal Radio Services.

#### **§ 95.33 Equipment certification requirements.**

(a) *General equipment certification requirement.* Except as provided below a Personal Radio Services transmitter must be certified to operate in the radio service in which it is intended to be used. Any entity may request certification for its transmitter when the transmitter is used in the Personal Radio Services following the procedures in part 2 of this chapter.

(b) *Non-certified transmitters.*

(1) Non-certified R/C transmitters may be used in the R/C Service if they only operate in the 26.995-27.255 MHz band and comply with the Part 95 technical standards.

(2) Non-certified medical implant or medical body-worn transmitters that are not marketed for use in the United States, but which otherwise comply with the MedRadio technical requirements, may be used by individuals who have traveled to the United States.

(c) *Modification of certified equipment.* Only the holder of the equipment certification may make modifications to the design of a certificated Personal Radio Services transmitter, and then only pursuant to and in full compliance with the requirements and procedures in Part 2 of this chapter. See §§ 2.932 and 2.1043 of this chapter.

(1) No person shall make any modification to any certificated Personal Radio Services transmitter that changes or affects the technical operation of that transmitter, including any modification to provide for additional transmitting frequencies, increased modulation level, a different form of modulation, or increased transmitter output power (either mean power or peak envelope power or both). Any such modification would void the certified status of that transmitter and render it unacceptable for use in the Personal Radio Services, pursuant to paragraph (a) of this section.

(2) No person shall willfully and knowingly use any Personal Radio transmitter which has been modified in violation of paragraph (c)(1) of this section.

(d) *Limitations.* No external device or accessory may be added on to a personal radio transmitter that can result in a violation of the rules.

(1) No control, switch or other type of adjustment which, when manipulated, can result in a violation of the rules shall be accessible to the user.

(2) No Personal Radio Services transmitter shall incorporate provisions for increasing its transmitter power to any level in excess of the maximum power permitted under the rules.

(3) No transmitter will be certified for use in a Personal Radio Service if the radio has the capability to operate on frequencies in a licensed or safety service (frequencies externally accessible). Safety service refers to communications involving the safety of life, property or health.

(e) *Specific equipment certification requirements.*

(1) GMRS, CB, FRS and MURS transmitters may transmit tones to make contact or to continue communications with a particular transmitter. If the tone is audible (more than 300 Hertz), it must last no longer than 15 seconds at one time. If the tone is subaudible (300 Hertz or less), it may be transmitted continuously only while you are talking.

(2) FRS and GMRS units may transmit digital data containing location information, or requesting location information from one or more other units within that service, or containing a brief text message to another specific unit or units. Digital data transmissions must be initiated by a manual action or command of a user, except that an FRS or GMRS unit receiving an interrogation request may automatically respond with its location. Digital data transmissions shall not exceed one second, and shall be limited to no more than one digital transmission within a thirty-second period, except that a unit may automatically respond to more than one interrogation request received within a thirty-second period.

(3) Applications for certification of GMRS transmitters received on or after [the effective date of these rules] will be granted only for equipment with a 12.5 kHz bandwidth.

(4) GMRS transmitters that are designed with a maximum channel bandwidth greater than 12.5 kHz shall not be manufactured in, imported into or marketed in the United States after [a specified date].

(5) FRS units are prohibited from transmitting data in store-and-forward packet operation mode.

(6) An R/C transmitter which incorporates plug-in frequency determining modules which are changed by the user must be certificated with the modules. Each module must contain all of the frequency determining circuitry including the oscillator. Plug-in crystals are not considered modules and must not be accessible to the user.