

ability to adjust discharge limits based on side-by-side-comparison of EPA Method 1664A to ASTM D7575-10 as it did when it replaced Freon with n-hexane. However, to the extent that permittees would elect to use ASTM D7575-10 and permitting authorities would accept the use of ASTM D-7575-10 rather than EPA Method 1664A, nothing would prevent them from conducting a side-by-side comparison of the two methods. EPA would recommend such a side-by-side comparison if permittees and/or permitting authorities have concerns about a specific matrix, particularly when the measured oil and grease values when switching to ASTM D7575-10 are more than 20% lower from values routinely measured by EPA Method 1664A (the 20% variability around oil and grease measurements is discussed in section III.A.2 of today's Notice).

#### IV. Request for Comments

Based on the new information and EPA's analysis of this information as described in this Notice, EPA is reconsidering whether to promulgate ASTM D7575-10 in 40 CFR Part 136 as an alternative method for oil and grease where the applicable ranges overlap (5-200 mg/L) and requests public comments on this reconsideration, the supporting data, and the resulting analysis. While ASTM D7575-10 has significant pollution prevention advantages over the currently approved method, EPA recognizes the potential impact that this new method could have on the hundreds of thousands of oil and grease determinations in regulatory Clean Water Act programs and desires to obtain additional input from stakeholders. Specifically, EPA requests comments on the following:

1. Whether EPA should reconsider promulgating this additional method for oil and grease based on different extractants and determinative techniques than EPA Method 1664A.
2. EPA's current view, based on the data it has reviewed to date, that ASTM D7575-10 is an acceptable choice for the determination of oil and grease for the range (5 to 200 mg/L) evaluated.
3. EPA's current conclusion that permit limit adjustment based on side-by-side comparisons of EPA Method 1664A and ASTM D7575-10 is not appropriate. EPA is particularly interested in obtaining comments from permitting authorities on this issue and estimates of the burden associated with reviewing such requests.
4. If EPA were to allow a side-by-side comparison with limit adjustment as necessary, should EPA look to the

approach used for n-hexane in place of Freon (see section III.C above) or should EPA consider a different approach?

#### V. Referenced New Docket Materials

1. January 16, 2009 Memorandum from Richard Reding on Modifications to Method 1664A.
2. May 14, 1999 **Federal Register** (64 FR 26315).
3. Preliminary Report of EPA Efforts to Replace Freon for the Determination of Oil and Grease, EPA-821-R-93-011, September 1993.
4. Report of EPA Efforts to Replace Freon for the Determination of Oil and Grease and Total Petroleum Hydrocarbons: Phase II, EPA-820-R-95-003, April 1995.
5. October 15, 2010 email from Tyler Martin containing the following data files:
  - a. Multi-Lab Validation Raw Data
  - b. Expanded ASTM D7575 Validation Report
  - c. Single-Lab Validation Raw Data
  - d. Comparability Analysis from Single-Lab Validation Results
6. October 19, 2010 email from Tyler Martin containing additional comparability data between Method 1664 and ASTM D7575.
7. October 21, 2010 email from Tyler Martin with clarification on data submitted.
8. June 28, 2011 letter from James A. Thomas, ASTM President to Mary Smith, EPA, with ASTM International D19 Water Response to US EPA Questions Concerning ASTM Standard D7575.
9. Analytical Method Guidance for EPA Method 1664A Implementation and Use (40 CFR part 136), EPA/821-R-00-003, February 2000.
10. Protocol for EPA Approval of New Methods for Organic and Inorganic Analytes in Wastewater and Drinking Water, March 1999.
11. Study Report from the Testing of Additional Industrial Wastewater Matrices in Support of ASTM D7575 for USEPA's Reconsideration of this Method in the Forthcoming Method Update Rule, November 2011.

Dated: December 2, 2011.

**Nancy K. Stoner,**

*Acting Assistant Administrator for Water.*

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 20

[WT Docket No. 07-250; DA 11-1707]

#### Amendment of the Commission's Rules Governing Hearing Aid-Compatible Mobile Handsets

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document the Commission seeks comment on

revisions to the Commission's wireless hearing aid compatibility rules. The Commission's rules define hearing aid compatibility by reference to a third party technical standard. Recently, a new version of that technical standard was developed to test the hearing aid compatibility of the newest generation of digital wireless handsets. The proposed rules would adopt the revised version of the technical standard into the Commission's rules.

**DATES:** Interested parties may file comments on or before January 13, 2012, and reply comments on or before January 30, 2012.

**ADDRESSES:** You may submit comments, identified by WT Docket No. 07-250, by any of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.
- **Federal Communications Commission's Web site:** <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.
- **Mail:** Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- **People with Disabilities:** Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone: (202) 418-0530 or TTY: (202) 418-0432.

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

**FOR FURTHER INFORMATION CONTACT:**

Michael Rowan, Wireless Telecommunications Bureau, (202) 418-1883, email [Michael.Rowan@fcc.gov](mailto:Michael.Rowan@fcc.gov), or Saurbh Chhabra, Wireless Telecommunications Bureau, (202) 418-2266, email [Saurbh.Chhabra@fcc.gov](mailto:Saurbh.Chhabra@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Second Further Notice of Proposed Rulemaking* (SFNPRM) in WT Docket No. 07-250, adopted November 1, 2010, and released on November 1, 2010. The full text of the SFNPRM is available for public inspection and copying during business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY-A257, Washington, DC 20554. It also may be purchased from the Commission's duplicating contractor at

Portals II, 445 12th Street SW., Room CY-B402, Washington, DC 20554; the contractor's Web site, <http://www.bcpweb.com> or by calling (800) 378-3160, facsimile (202) 488-5563, or email [FCC@BCPIWEB.com](mailto:FCC@BCPIWEB.com). Copies of the SFNPRM also may be obtained via the Commission's Electronic Comment Filing System (ECFS) by entering the docket number WT Docket No. 07-250. Additionally, the complete item is available on the Federal Communications Commission's Web site at <http://www.fcc.gov>.

## I. Introduction

1. The Commission's wireless hearing aid compatibility rules, 47 CFR 20.19, ensure that consumers with hearing loss are able to access wireless communications services through a wide selection of handsets without experiencing disabling radio frequency (RF) interference or other technical obstacles. In order to ensure that the hearing aid compatibility rules cover the greatest number of wireless handsets and reflect recent technological advances, the Wireless Telecommunications Bureau (WTB) and Office of Engineering and Technology (OET) (collectively, "the Bureaus") propose in the SFNPRM, pursuant to authority delegated by the Commission, to adopt the most current hearing aid compatibility technical standard into the Commission's rules.

## II. Background

2. To define and measure hearing aid compatibility, the Commission's rules reference the 2007 revision of American National Standards Institute (ANSI) technical standard C63.19 (the "2007 ANSI Standard"), formulated by the Accredited Standards Committee C63®—Electromagnetic Compatibility (ASC C63®). Grants of certification issued before January 1, 2010, under earlier versions of ANSI C63.19 remain valid. A handset is considered hearing aid-compatible for acoustic coupling if it meets a rating of at least M3 under the 2007 ANSI Standard. A handset is considered hearing aid-compatible for inductive coupling if it meets a rating of at least T3. The 2007 ANSI Standard specifies testing procedures for determining the M-rating and T-rating of digital wireless handsets that operate over air interfaces that, at the time it was promulgated, were commonly used for wireless services in the 800–950 MHz and 1.6–2.5 GHz bands.

3. When service rules were established for the 700 MHz band, the Commission stated its expectation that hearing aid compatibility standards would be developed for that band. It

encouraged ASC C63® and others to work together to develop such standards in a timely manner. ASC C63® recently adopted an updated version of the standard, the 2011 ANSI Standard, which includes the 700 MHz band as well as other new frequencies and technologies. The new standard was published on May 27, 2011. The standard may be purchased from the Institute of Electrical and Electronics Engineers, Inc. (IEEE) at the address indicated in Section 20.19(b)(5) of the Proposed Rules, and a copy is available for inspection at the Commission's Reference Information Center. ASC C63® has requested the Commission to adopt the newer version of the standard. Some of the features of the 2011 ANSI Standard that are different from the 2007 ANSI Standard include:

- The operating frequency range for wireless devices covered by the standard has been expanded to 698 MHz–6 GHz.
- The RF interference level of wireless devices to hearing aids is measured directly. Under the 2007 ANSI Standard, the RF field intensity of a wireless device was measured and then an adjustment was applied to estimate its potential for hearing aid interference. The new measurement method, along with the introduction of a Modulation Interference Factor (MIF), allows testing procedures to be applied to operations over any RF air interface or protocol. As a result of the change to a direct measurement methodology, the ANSI C63.19–2011 revision is also able to eliminate certain conservative assumptions that were incorporated into the 2007 standard. Thus, for example it will be approximately 2.2 dB easier for a Global System for Mobile Communications (GSM) phone to receive an M3 rating under the 2011 version.

- Certain low power transmitters that are unlikely to cause unacceptable RF interference to hearing aids are exempted from RF emissions testing and are deemed to meet an M4 rating. ASC C63® states that the improved tests in the 2011 ANSI Standard "are more correlated to the desired result." Thus, "[t]he new test methods are improved at measuring the potential for hearing aid interference."

4. The Commission has recognized that revisions to the ANSI Standard may be necessary over time to improve hearing aid compatibility technical standards and accommodate technological advances and that the Commission's rules should evolve to reflect such revisions. In particular, to ensure that the hearing aid

compatibility standard codified in the rules would remain current, the Commission in Section 20.19(k)(2) of the rules delegated to the Chief of WTB and the Chief of OET the authority, by notice-and-comment rulemaking, to approve the use of future versions of the standard that do not raise major compliance issues. In addition, the Commission in Section 20.19(k)(1) of the rules delegated authority to the Chief of WTB and the Chief of OET to initiate a rulemaking proceeding to adopt future versions of the ANSI Standard that add additional frequency bands or air interfaces not covered by previous versions, if the new version does not impose materially greater obligations than those imposed on services already subject to the hearing aid compatibility rules. Under Section 20.19(k)(1), new obligations imposed on manufacturers and Commercial Mobile Radio Service (CMRS) providers as a result of WTB's and OET's adoption of technical standards for additional frequency bands and air interfaces shall become effective no less than one year after release of the order for manufacturers and Tier I (nationwide) carriers and no less than 15 months after release for other service providers.

5. The SFNPRM is limited in scope and does not address all pending issues regarding hearing aid compatibility. Specifically, on August 5, 2010, the Commission released the 2010 SFNPRM, 75 FR 54546 September 8, 2010, which sought comment on extending the scope of the hearing aid compatibility rules beyond the current category of CMRS, extending the in-store testing requirement beyond retail stores owned or operated by service providers, and permitting a user-controlled reduction of power as a means to meet the hearing aid compatibility standard for all operations over the GSM air interface in the 1900 MHz band. In addition, on December 28, 2010, WTB sought comment on the operation and effectiveness of the Commission's hearing aid compatibility rules, 76 FR 2625 January 14, 2011. The issues raised in these notices will be addressed separately from the SFNPRM.

## III. Discussion

6. The Bureaus propose to adopt the 2011 ANSI Standard into the Commission's rules as an applicable technical standard for evaluating the hearing aid compatibility of wireless phones. The Bureaus believe doing so would serve the public interest by aligning the Commission's rules with advances in technology and by bringing additional frequency bands and air interfaces under the hearing aid

compatibility regime. The Bureaus further tentatively conclude that adoption of the new technical standard would not raise any major compliance issues or impose materially greater obligations with respect to newly covered frequency bands and air interfaces than those already imposed under Commission rules. The Bureaus seek comment on these tentative conclusions and whether adoption of the 2011 ANSI Standard would impose new or additional costs on handset manufacturers.

7. Under the rules the Bureaus propose, a manufacturer would be permitted to submit handsets for certification using either the 2007 or 2011 version of the ANSI Standard. Consistent with the Commission's direction in the *2010 Second Report and Order*, FR 54546 (2010), and the Multi-Band Principles agreed by representatives of industry and consumer groups, a multi-band and/or multi-mode handset model would be considered hearing aid-compatible for operations covered under the 2007 ANSI Standard if it obtains certification as meeting at least an M3 or T3 rating for those operations and is launched within 12 months of the **Federal Register** publication of rules adopting the 2011 ANSI Standard. The will apply even if the handset model has not obtained certification as hearing aid-compatible for operations not covered under the 2007 ANSI Standard. As under the existing rules, the Bureaus propose to continue requiring that a handset model meet ANSI technical standards over all frequency bands and air interfaces over which it operates in order to be considered hearing aid-compatible over any air interference for (1) multi-band and/or multi-mode handset models launched later than 12 months after **Federal Register** publication of rules adopting the 2011 ANSI Standard and (2) handset models that only include operations covered under the 2007 ANSI Standard. The Bureaus further note that the Commission's procedures do not permit a handset model to be tested and certified partly under one revision and partly under another. Therefore, if the proposed rule is adopted, during the 12-month transition period, a manufacturer that chooses to test the hearing aid compatibility of those operations within a handset that are only covered by the 2011 ANSI Standard and not covered under the 2007 ANSI Standard would have to test all of the operations in the handset using the 2011 ANSI Standard. Similarly, after the end of the transition

period, any new handset containing operations that are not covered under the 2007 ANSI Standard would effectively have to be tested using the 2011 ANSI Standard. The Bureaus seek comment on these proposals.

8. Under the existing rules, the Commission's benchmarks for manufacturers and service providers to deploy hearing aid-compatible handsets apply to operations over those frequency bands that are covered under the 2007 ANSI Standard. Upon adoption of the proposed rules, a transition period would commence to apply these benchmarks to operations covered under the 2011 ANSI Standard. In the *2010 SFNPRM*, the Commission sought comment on a two-year transition period for applying hearing aid compatibility benchmarks and other requirements to wireless handsets that fall outside the subset of CMRS that is currently covered by Section 20.19(a). The Bureaus seek comment on whether a similar transition period would appropriately balance the design, engineering, and marketing requirements of manufacturers and service providers with the needs of consumers with hearing loss in the context of the rulemaking. Would a shorter transition period, but no less than the minimum periods of 12 months for manufacturers and Tier I carriers and 15 months for other service providers, better serve the public interest in expediting the availability of hearing aid-compatible phones while affording manufacturers sufficient time to test, produce, and ship such handsets? Alternatively is a period longer than two years necessary? Consistent with the Commission's current rules and the minimum periods permitted under the Bureau's delegated authority, should non-Tier I service providers be given an additional three months to meet deployment benchmarks in order to account for the difficulties they face in timely obtaining new handset models? Or, based on experience under the existing rules, do these service providers need more than three months additional time?

9. Finally, the Commission's rules provide that whenever a manufacturer or service provider discloses the hearing aid compatibility rating of a handset that has not been tested for hearing aid compatibility over a newly covered air interface, the disclosure shall include language stated in Section 20.19(f)(2). Handsets that have been tested and received certification as hearing aid-compatible, including those deemed to meet an M4 rating without testing under ANSI C63.19-2011, shall be labeled as such. Handsets launched within 12

months of **Federal Register** publication of rules adopting the 2011 ANSI Standard that meet hearing aid compatibility criteria under previously covered air interfaces, but that have been tested and found not to meet such criteria under one or more newly covered air interfaces, shall include adequate disclosure of the fact under rules to be promulgated by WTB and OET. In the absence of any suggestions as to specific language to be used for handsets that have been tested under newly covered air interfaces and found not to meet hearing aid compatibility criteria, the Bureaus propose not to prescribe disclosure language in this situation but to rely on a general disclosure requirement backed by case-by-case resolution in the event of disputes. The Bureaus understand that most handsets are expected to have little difficulty meeting the hearing aid compatibility rating criteria over Wi-Fi (Wireless Fidelity) and other currently existing or imminently expected air interfaces that are outside the 2007 ANSI Standard. The Bureaus seek comment on this proposal and invite alternative proposals, including any proposed disclosure language.

#### IV. Procedural Matters

##### A. Initial Regulatory Flexibility Analysis

10. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), *see* 5 U.S.C. 603, the Wireless Telecommunications Bureau (WTB) and the Office of Engineering and Technology (OET) have prepared the present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities of the policies and rules proposed in the *Second Further Notice of Proposed Rule Making* (SFNPRM). Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the SFNPRM provided in the Dates section of this document. The Commission will send a copy of the SFNPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the SFNPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

11. Although Section 213 of the Consolidated Appropriations Act of 2000 provides that the RFA shall not apply to the rules and competitive bidding procedures for frequencies in the 746-806 MHz Band, the Bureaus believe that it would serve the public interest to analyze the possible

significant economic impact of the proposed policy and rule changes in the band on small entities. Accordingly, the IRFA contains an analysis of this impact in connection with all spectrum that falls within the scope of the SFNPRM, including spectrum in the 746–806 MHz Band.

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

12. The SFNPRM proposes to amend Section 20.19 of the Commission's rules by adopting the new ANSI C63.19–2011 standard (the "2011 ANSI Standard") as an applicable hearing aid compatibility technical standard. The standard establishes testing procedures to establish the M-rating (acoustic coupling) and T-rating (inductive coupling) to gauge the hearing aid compatibility of handsets. Specifically, the SFNPRM seeks comment on tentative conclusions that adopting the new 2011 ANSI Standard would raise no major compliance issues and would not impose materially greater obligations with respect to proposed newly covered frequency bands and air interfaces than those already imposed under the Commission's rules. By bringing additional frequency bands and air interfaces under the hearing aid compatibility regime, and by aligning the Commission's rules with the most current measurement practices, the proposed rule change would help ensure that consumers with hearing loss are able to access wireless communications services through a wide selection of handsets without experiencing disabling interference or other technical obstacles.

13. Under the rules the Bureaus propose, beginning on the date that final rules become effective, a manufacturer would be permitted to submit handsets for certification using either ANSI C63.19 2007 ("the 2007 ANSI Standard") or the 2011 ANSI Standard. A multi-band and/or multi-mode handset model launched earlier than 12 months after **Federal Register** publication of new rules codifying the 2011 ANSI Standard would be considered hearing aid-compatible for operations covered under the current the 2007 ANSI Standard. For multi-band and/or multi-mode handset models launched after this period, as well as for handset models that only include operations covered under the 2007 ANSI Standard, the Bureaus propose to continue applying the current principle that a handset model must meet ANSI C63.19 technical standards over all frequency bands and air interfaces over which it operates in order to be considered hearing aid-compatible over

any air interface. The SFNPRM seeks comment on the proposal. The purpose of this proposed rule change is to limit the compliance burdens on businesses, both large and small, with respect to handset models that are already deployed or in development at the time new rules are adopted.

14. The SFNPRM also seeks comment on how to phase in the 2011 ANSI Standard over a defined period of time. The Bureaus seek comment on whether a two-year period for applying the hearing aid-compatible handset deployment benchmarks to newly covered air interfaces would appropriately balance the design, engineering, and marketing requirements of manufacturers and service providers with the needs of consumers with hearing loss for compatible handsets over the newest network technologies. The Bureaus also seek comment on whether non-Tier I service providers should be given additional time to meet deployment benchmarks in order to account for the difficulties they face in timely obtaining new handset models. The purpose of this proposed rule change is to create a time frame for implementation that would be the most efficient and least burdensome for businesses, both large and small, while ensuring that consumers with hearing loss have timely access to wireless communications.

15. Finally, the SFNPRM seeks comment on a proposal not to prescribe specific disclosure language to be used for handsets that meet hearing aid compatibility criteria over previously covered air interfaces but have been tested and found not to meet such criteria over Wi-Fi (Wireless Fidelity) or other air interfaces that are outside the 2007 ANSI Standard. Rather, the Bureaus would rely on a general requirement to disclose the hearing aid compatibility status of such handsets. The Bureaus seek comment on this tentative conclusion and invite alternative proposals. This proposed rule change would be a minimally intrusive means of ensuring that consumers with hearing loss have the information they need to choose a handset that will operate correctly with their hearing aid or cochlear implant.

#### 2. Legal Basis

16. The potential actions about which comment is sought in the SFNPRM would be authorized pursuant to the authority contained in Sections 4(i), 303(r), and 710 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 610.

#### 3. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Would Apply

17. 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. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. To assist the Commission in analyzing the total number of potentially affected small entities, the Commission requests commenters to estimate the number of small entities that may be affected by any rule changes that might result from the SFNPRM.

18. *Small Businesses, Small Organizations, and Small Governmental Jurisdictions.* The Bureaus action may, over time, affect small entities that are not easily categorized at present. The Bureaus therefore describe here, at the outset, three comprehensive, statutory small entity size standards. First, nationwide, there are a total of approximately 27.5 million small businesses, according to the SBA. In addition, a "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 2007, there were approximately 1,621,315 small organizations. Finally, the term "small governmental jurisdiction" is defined generally as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand." Census Bureau data for 2011 indicate that there were 89,476 local governmental jurisdictions in the United States. The Bureaus estimate that, of this total, as many as 88,506 entities may qualify as "small governmental jurisdictions." Thus, the Bureaus estimate that most governmental jurisdictions are small.

19. *Cellular Licensees.* The SBA has developed a small business size standard for small businesses in the category "Wireless Telecommunications Carriers (except satellite)." Under that SBA category, a business is small if it has 1,500 or fewer employees. The census category of "Cellular and Other

Wireless Telecommunications” is no longer used and has been superseded by the larger category “Wireless Telecommunications Carriers (except satellite).” The Census Bureau defines this larger category to include “\* \* \* establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular phone services, paging services, wireless Internet access, and wireless video services.”

20. In this category, the SBA has deemed a wireless telecommunications carrier to be small if it has fewer than 1,500 employees. For this category of carriers, Census data for 2007, which supersedes similar data from the 2002 Census, shows 1,383 firms in this category. Of these 1,383 firms, only 15 (approximately 1%) had 1,000 or more employees. While there is no precise Census data on the number of firms in the group with fewer than 1,500 employees, it is clear that at least the 1,368 firms with fewer than 1,000 employees would be found in that group. Thus, at least 1,368 of these 1,383 firms (approximately 99%) had fewer than 1,500 employees. Accordingly, the Commission estimates that at least 1,368 (approximately 99%) had fewer than 1,500 employees and, thus, would be considered small under the applicable SBA size standard.

21. *Broadband Personal Communications Service.* The broadband personal communications services (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission initially defined a “small business” for C- and F-Block licenses as an entity that has average gross revenues of \$40 million or less in the three previous calendar years. For F-Block licenses, an additional small business size standard for “very small business” was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years. These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA. No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that claimed small business status in the first two C-Block auctions. A total of 93 bidders that claimed small business status won approximately 40 percent of the 1,479 licenses in the first auction for

the D, E, and F Blocks. On April 15, 1999, the Commission completed the re-auction of 347 C-, D-, E-, and F-Block licenses in Auction No. 22. Of the 57 winning bidders in that auction, 48 claimed small business status and won 277 licenses.

22. On January 26, 2001, the Commission completed the auction of 422 C and F Block Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in that auction, 29 claimed small business status. Subsequent events concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. On February 15, 2005, the Commission completed an auction of 242 C-, D-, E-, and F-Block licenses in Auction No. 58. Of the 24 winning bidders in that auction, 16 claimed small business status and won 156 licenses. On May 21, 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in Auction No. 71. Of the 12 winning bidders in that auction, five claimed small business status and won 18 licenses. On August 20, 2008, the Commission completed the auction of 20 C-, D-, E-, and F-Block Broadband PCS licenses in Auction No. 78. Of the eight winning bidders for Broadband PCS licenses in that auction, six claimed small business status and won 14 licenses.

23. *Specialized Mobile Radio.* The Commission awards “small entity” bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than \$15 million in each of the three previous calendar years. The Commission awards “very small entity” bidding credits to firms that had revenues of no more than \$3 million in each of the three previous calendar years. The SBA has approved these small business size standards for the 900 MHz Service. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction was completed in 1996. Sixty bidders claiming that they qualified as small businesses under the \$15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels was conducted in 1997. Ten bidders claiming that they qualified as small businesses under the \$15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band. A second auction for the 800 MHz band was conducted in 2002 and included 23

Basic Economic Area licenses. One bidder claiming small business status won five licenses.

24. The auction of the 1,050 800 MHz SMR geographic area licenses for the General Category channels was conducted in 2000. Eleven bidders that won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the \$15 million size standard. In an auction completed in 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were awarded. Of the 22 winning bidders, 19 claimed “small business” status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic area licenses in the 800 MHz SMR band claimed status as small businesses.

25. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. The Bureaus do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than \$15 million. One firm has over \$15 million in revenues. In addition, the Bureaus do not know how many of these firms have 1500 or fewer employees. The Bureaus assume, for purposes of the analysis, that all of the remaining existing extended implementation authorizations are held by small entities, as that small business size standard is approved by the SBA.

26. *Advanced Wireless Services (1710–1755 MHz and 2110–2155 MHz bands (AWS-1); 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz and 2175–2180 MHz bands (AWS-2); 2155–2175 MHz band (AWS-3).* For the AWS-1 bands, the Commission has defined a “small business” as an entity with average annual gross revenues for the preceding three years not exceeding \$40 million, and a “very small business” as an entity with average annual gross revenues for the preceding three years not exceeding \$15 million. In 2006, the Commission conducted its first auction of AWS-1 licenses. In that initial AWS-1 auction, 31 winning bidders identified themselves as very small businesses. Twenty-six of the winning bidders identified themselves as small businesses. In a subsequent 2008 auction, the Commission offered 35 AWS-1 licenses. Four winning bidders identified themselves as very small businesses, and three of the winning bidders identified themselves as small

businesses. For AWS-2 and AWS-3, although the Bureaus do not know for certain which entities are likely to apply for these frequencies, the Bureaus note that these bands are comparable to those used for cellular service and personal communications service. The Commission has not yet adopted size standards for the AWS-2 or AWS-3 bands but has proposed to treat both AWS-2 and AWS-3 similarly to broadband PCS service and AWS-1 service due to the comparable capital requirements and other factors, such as issues involved in relocating incumbents and developing markets, technologies, and services.

27. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System ("BETRS"). In the present context, the Bureaus will use the SBA's small business size standard applicable to Wireless Telecommunications Carriers (except Satellite), *i.e.*, an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Bureaus estimate that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies adopted herein.

28. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses in the 2305-2320 MHz and 2345-2360 MHz bands. The Commission defined "small business" for the wireless communications services (WCS) auction as an entity with average gross revenues of \$40 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of \$15 million for each of the three preceding years. The SBA has approved these definitions. The Commission auctioned geographic area licenses in the WCS service. In the auction, which commenced on April 15, 1997 and closed on April 25, 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity.

29. *700 MHz Guard Band Licenses.* In the *700 MHz Guard Band Order*, the Commission adopted size standards for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A small business in this

service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years. Additionally, a "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years. SBA approval of these definitions is not required. In 2000, the Commission conducted an auction of 52 Major Economic Area ("MEA") licenses. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced and closed in 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

30. *Upper 700 MHz Band Licenses.* In the *700 MHz Second Report and Order*, the Commission revised its rules regarding Upper 700 MHz licenses. On January 24, 2008, the Commission commenced Auction 73 in which several licenses in the Upper 700 MHz band were available for licensing: 12 Regional Economic Area Grouping licenses in the C Block, and one nationwide license in the D Block. The auction concluded on March 18, 2008, with 3 winning bidders claiming very small business status (those with attributable average annual gross revenues that do not exceed \$15 million for the preceding three years) and winning five licenses.

31. *Lower 700 MHz Band Licenses.* The Commission previously adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. The Commission defined a "small business" as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years. A "very small business" is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years. Additionally, the lower 700 MHz Service had a third category of small business status for Metropolitan/Rural Service Area (MSA/RSA) licenses—"entrepreneur"—which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years. The SBA approved these small size standards. An auction of 740 licenses (one license in each of the 734

MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)) was conducted in 2002. Of the 740 licenses available for auction, 484 licenses were won by 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won licenses. A second auction commenced on May 28, 2003, closed on June 13, 2003, and included 256 licenses. Seventeen winning bidders claimed small or very small business status, and nine winning bidders claimed entrepreneur status. In 2005, the Commission completed an auction of 5 licenses in the Lower 700 MHz band. All three winning bidders claimed small business status.

32. In 2007, the Commission reexamined its rules governing the 700 MHz band in the *700 MHz Second Report and Order*. An auction of A, B and E block 700 MHz licenses was held in 2008. Twenty winning bidders claimed small business status (those with attributable average annual gross revenues that exceed \$15 million and do not exceed \$40 million for the preceding three years). Thirty three winning bidders claimed very small business status (those with attributable average annual gross revenues that do not exceed \$15 million for the preceding three years).

33. *Offshore Radiotelephone Service.* These services operate on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico. There are presently approximately 55 licensees in the service. The Commission is unable to estimate at this time the number of Offshore Radiotelephone Service licensees that would qualify as small under the SBA's small business size standard for the category of Wireless Telecommunications Carriers (except Satellite). Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees. Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms in this category that operated that year. Of those 1,383, 1,368 had fewer than 1000 employees, and 15 firms had more than 1000 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small.

34. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service ("MDS") and Multichannel Multipoint Distribution Service ("MMDS") systems, and

“wireless cable,” transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (“BRS”) and Educational Broadband Service (“EBS”) (previously referred to as the Instructional Television Fixed Service (“ITFS”). In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than \$40 million in the previous three calendar years. The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (“BTAs”). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, the Bureaus estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities. After adding the number of small business auction licensees to the number of incumbent licensees not already counted, the Bureaus find that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA standard or the Commission’s rules. In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas. The Commission offered three levels of bidding credits: (i) A bidder with attributed average annual gross revenues that exceed \$15 million and do not exceed \$40 million for the preceding three years (small business) received a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed \$3 million and do not exceed \$15 million for the preceding three years (very small business) received a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed \$3 million for the preceding three years (entrepreneur) received a 35 percent discount on its winning bid. Auction 86 concluded in 2009 with the sale of 61 licenses. Of the ten winning bidders, two bidders that claimed small business status won four licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

35. In addition, the SBA’s Cable Television Distribution Services small business size standard is applicable to

EBS. There are presently 2,032 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in the analysis as small entities. Thus, the Bureaus estimate that at least 1,932 licensees are small businesses. Since 2007, Cable Television Distribution Services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: “This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.” For these services, the Commission uses the SBA small business size standard for the category “Wireless Telecommunications Carriers (except satellite),” which is 1,500 or fewer employees. To gauge small business prevalence for these cable services the Bureaus must, however, use the most current census data. Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small.

36. *Government Transfer Bands.* The Commission adopted small business size standards for the unpaired 1390–1392 MHz, 1670–1675 MHz, and the paired 1392–1395 MHz and 1432–1435 MHz bands. Specifically, with respect to these bands, the Commission defined an entity with average annual gross revenues for the three preceding years not exceeding \$40 million as a “small business,” and an entity with average annual gross revenues for the three preceding years not exceeding \$15 million as a “very small business.” SBA has approved these small business size standards for the aforementioned bands. Correspondingly, the Commission adopted a bidding credit of 15 percent for “small businesses” and a bidding credit of 25 percent for “very small businesses.” This bidding credit structure was found to have been consistent with the Commission’s schedule of bidding credits, which may be found at Section 1.2110(f)(2) of the Commission’s rules. The Commission found that these two definitions will provide a variety of businesses seeking

to provide a variety of services with opportunities to participate in the auction of licenses for this spectrum and will afford such licensees, who may have varying capital costs, substantial flexibility for the provision of services. The Commission noted that it had long recognized that bidding preferences for qualifying bidders provide such bidders with an opportunity to compete successfully against large, well-financed entities. The Commission also noted that it had found that the use of tiered or graduated small business definitions is useful in furthering its mandate under Section 47 U.S.C. 309(j) to promote opportunities for and disseminate licenses to a wide variety of applicants. An auction for one license in the 1670–1674 MHz band commenced on April 30, 2003 and closed the same day. One license was awarded. The winning bidder was not a small entity.

37. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* The Census Bureau defines this category as follows: “This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: Transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.” The SBA has developed a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, which is: All such firms having 750 or fewer employees. According to Census Bureau data for 2007, there were a total of 939 establishments in this category that operated for part or all of the entire year. Of this total, 784 had less than 500 employees and 155 had more than 100 employees. Thus, under this size standard, the majority of firms can be considered small.

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

38. The proposed rules will not impose any new reporting, recordkeeping, or information collection requirements on small entities.

#### 5. Steps Proposed To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

39. The RFA requires an agency to describe any significant, specifically

small business alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) exemption from coverage of the rule, or any part thereof, for small entities.”

40. The Bureaus seek comment generally on the effect the rule changes considered in the SFNPRM would have on small entities, on whether alternative rules should be adopted for small entities in particular, and on what effect such alternative rules would have on those entities. The Bureaus invite comment on ways in which the Commission can achieve its goals while minimizing the burden on small wireless service providers, equipment manufacturers, and other entities.

41. More specifically, the Bureaus seek comment on possible alternatives to their tentative conclusion to adopt the new 2011 ANSI Standard into the Commission’s rules as a permissible technical standard for evaluating the hearing aid compatibility of wireless phones. The Bureaus note that adopting the new technical standard as permissible rather than mandatory may ease burdens on manufacturers, including small entities, and the Bureaus invite commenters to suggest alternatives that may further reduce possible burdens on small entities. The Bureaus also tentatively conclude that adoption of this new technical standard would not raise any major compliance issues or impose materially greater obligations with respect to newly covered frequency bands and air interfaces than those already imposed under Commission rules. The Bureaus seek comment on whether alternatives to adopting this new technical standard would impose lesser obligations on small entities.

42. Under the rules the Bureaus propose in the SFNPRM, a multi-band and/or multi-mode handset model launched earlier than 12 months after **Federal Register** publication of new rules codifying the 2011 ANSI Standard would be considered hearing aid-compatible for operations covered under the 2007 ANSI Standard even if it has not obtained certification as being hearing aid-compatible for its other operations. This proposal is intended to reduce burdens on small entities and

others with respect to handset models that are currently deployed or in development. For multi-band and/or multi-mode handset models launched after this period, as well as for handset models that only include operations covered under the 2007 ANSI Standard, the Bureaus propose to retain the current principle that a handset model must meet ANSI C63.19 technical standards over all frequency bands and air interfaces over which it operates in order to be considered hearing aid-compatible over any air interface. The Bureaus invite commenters to suggest similar alternatives that may ease compliance burdens on small entities.

43. As a result of the proposed adoption of the 2011 ANSI Standard, after an appropriate transition period the deployment benchmarks set forth in paragraphs (c) and (d) of Section 20.19 would become applicable to manufacturers and service providers offering handsets that operate over newly covered frequency bands and air interfaces. The Bureaus seek comment on alternatives to the two-year transition period that would appropriately balance the design, engineering, and marketing requirements of manufacturers and service providers with the needs of consumers with hearing loss for compatible handsets over the newest network technologies. In recognition that smaller service providers may encounter greater difficulties transitioning to the 2011 ANSI Standard, the Bureaus propose in the SFNPRM that smaller service providers should have three months longer to transition than Tier I carriers. The Bureaus invite comment on whether alternative transition periods, particularly for small entities, would further lessen the burden on small entities while protecting the interest of hard-of-hearing consumers in having access to a wide variety of wireless handsets.

44. Finally, handsets launched up to 12 months after **Federal Register** publication of rules the 2011 ANSI Standard that meet hearing aid compatibility criteria under previously covered air interfaces, but that have been tested and found not to meet such criteria under one or more newly covered air interfaces, shall include adequate disclosure of this fact under rules to be promulgated by WTB and OET. In the absence of any suggestions as to specific language to be used for handsets that have been tested under newly covered air interfaces and found not to meet hearing aid compatibility criteria, the Bureaus propose not to prescribe disclosure language in this situation but to rely on a general

disclosure requirement backed by case-by-case resolution in the event of disputes. The Bureaus seek comment on whether any alternative proposals may further reduce the impact on small entities.

45. For the duration of the docketed proceeding, the Commission will continue to examine alternatives with the objectives of eliminating unnecessary regulations and minimizing any significant economic impact on small entities.

## 6. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

46. None.

### B. Initial Paperwork Reduction Act Analysis

47. The SFNPRM does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

### C. Other Procedural Matters

#### 1. Ex Parte Rules—Permit-But-Disclose

48. The proceeding the SFNPRM initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules, 47 CFR 1.1200 *et seq.* Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents



shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in the proceeding should familiarize themselves with the Commission's *ex parte* rules.

#### Comment Filing Procedures

49. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated in the **DATES** section of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

■ **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.

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

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

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

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

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

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

51. For further information regarding the SFNPRM, contact Michael Rowan, Wireless Telecommunications Bureau, (202) 418-1883, email [Michael.Rowan@fcc.gov](mailto:Michael.Rowan@fcc.gov), or Saurbh Chhabra, Wireless Telecommunications Bureau, (202) 418-2266, email [Saurbh.Chhabra@fcc.gov](mailto:Saurbh.Chhabra@fcc.gov).

#### Ordering Clauses

52. Accordingly, *it is ordered*, pursuant to Sections 4(i), 303(r), and 710 of the Communications Act of 1934, 47 U.S.C. 154(i), 303(r) and 610, that the *second further notice of proposed rulemaking is hereby adopted*.

53. *It is further ordered* that pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415, 1.419, interested parties may file comments on the *second further notice of proposed rulemaking* on or before 30 days after publication of the *second further notice of proposed rulemaking* in the **Federal Register** and reply comments on or before 45 days after publication in the **Federal Register**.

54. *It is further ordered* that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, shall send a copy of the *second further notice of proposed rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

55. The action is taken under delegated authority pursuant to Sections 0.241(a)(1), 0.331(d), and 20.19(k) of the Commission's rules, 47 CFR 0.241(a)(1), 0.331(d), and 20.19(k).

#### List of Subjects 47 CFR Part 20

Communications common carriers, Communications equipment, Incorporated by reference, and Radio. Federal Communications Commission.

**Rick Kaplan,**

*Chief, Wireless Telecommunications Bureau.*

**Julius P. Knapp,**

*Chief, Office of Engineering and Technology.*

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 20 as follows:

#### PART 20—COMMERCIAL MOBILE SERVICES

1. The authority citation for part 20 is revised to read as follows:

**Authority:** 47 U.S.C. 154, 160, 201, 251-254, 301, 303, 316, and 332 unless otherwise noted. Section 20.12 is also issued under 47 U.S.C. 1302. Section 20.19 is also issued under 47 U.S.C. 610.

2. Section 20.19 is amended by revising paragraphs (a)(1), (b)(1) and (2), adding paragraph (b)(3), revising paragraphs (b)(5), (c) introductory text, (d) introductory text, revising (f)(2), (f)(2)(i), and (f)(2)(ii) and adding paragraph (f)(2)(iii) to read as follows:

#### § 20.19 Hearing aid-compatible mobile handsets.

(a) \* \* \*

(1) The hearing aid compatibility requirements of this section apply to providers of digital CMRS in the United States to the extent that they offer real-time, two-way switched voice or data service that is interconnected with the public switched network and utilizes an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls, and such service is provided over frequencies in the 698 MHz to 6 GHz bands.

\* \* \* \* \*

(b) \* \* \*

(1) *For radio frequency interference.* A wireless handset submitted for equipment certification or for a permissive change relating to hearing aid compatibility must meet, at a minimum, the M3 rating associated with the technical standard set forth in either the standard document "American National Standard Methods of Measurement of Compatibility Between Wireless Communication Devices and Hearing Aids," ANSI C63.19-2007 (June 8, 2007) or ANSI C63.19-2011 (May 27, 2011). Any grants of certification issued before January 1, 2010, under previous versions of ANSI C63.19 remain valid for hearing aid compatibility purposes.

(2) *For inductive coupling.* A wireless handset submitted for equipment certification or for a permissive change relating to hearing aid compatibility must meet, at a minimum, the T3 rating associated with the technical standard set forth in either the standard document "American National Standard Methods of Measurement of Compatibility Between Wireless Communication Devices and Hearing Aids," ANSI C63.19-2007 (June 8, 2007) or ANSI C63.19-2011 (May 27, 2011). Any grants of certification issued before January 1, 2010, under previous

versions of ANSI C63.19 remain valid for hearing aid compatibility purposes.

(3) *Handsets operating over multiple frequency bands or air interfaces.*

(i) Except as provided in paragraph (b)(3)(ii) of this section, a wireless handset used for digital CMRS only over the 698 MHz to 6 GHz frequency bands is hearing aid-compatible with regard to radio frequency interference or inductive coupling if it meets the applicable technical standard(s) set forth in paragraphs (b)(1) and (b)(2) of this section for all frequency bands and air interfaces over which it operates, and the handset has been certified as compliant with the test requirements for the applicable standard pursuant to § 2.1033(d) of the chapter. A wireless handset that incorporates operations outside the 698 MHz to 6 GHz frequency bands is hearing aid-compatible if the handset otherwise satisfies the requirements of this paragraph.

(ii) A handset that is introduced by the manufacturer prior to [12 months after publication of the Final Rule in the **Federal Register**], and that does not meet the requirements for hearing aid compatibility under paragraph (b)(3)(i) of this section, is hearing aid-compatible for radio frequency interference or inductive coupling only with respect to those frequency bands and air interfaces for which technical standards are stated in ANSI C63.19–2007 (June 8, 2007) if it meets the applicable technical standard(s) set forth in paragraphs (b)(1) and (b)(2) of this section for all such frequency bands and air interfaces over which it operates, and the handset has been certified as compliant with the test requirements for the applicable standard pursuant to § 2.1033(d) of this chapter.

\* \* \* \* \*

(5) The following standards are incorporated by reference in this section: Accredited Standards Committee C63™—Electromagnetic Compatibility, “American National Standard Methods of Measurement of Compatibility Between Wireless Communication Devices and Hearing Aids,” ANSI C63.19–2007 (June 8, 2007), Institute of Electrical and Electronics Engineers, Inc., publisher; and Accredited Standards Committee C63™—Electromagnetic Compatibility, “American National Standard Methods of Measurement of Compatibility Between Wireless Communication Devices and Hearing Aids,” ANSI C63.19–2011 (May 27, 2011), Institute of Electrical and Electronics Engineers, Inc., publisher. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

These materials are incorporated as they exist on the date of the approval, and notice of any change in these materials will be published in the **Federal Register**. The materials are available for inspection at the Federal Communications Commission (FCC), 445 12th St. SW., Reference Information Center, Room CY–A257, Washington, DC 20554 and at the National Archives and Records Administration (NARA). For information on the availability of these materials at NARA, call (202) 741–6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

The materials are also available for purchase from IEEE Operations Center, 445 Hoes Lane, Piscataway, NJ 08854–4141, by calling (732) 981–0060, or going to <http://www.ieee.org/portal/site>.

(c) Phase-in of requirements relating to radio frequency interference. The following applies to each manufacturer and service provider that offers wireless handsets used in the delivery of the services specified in paragraph (a) of this section and that does not fall within the *de minimis* exception set forth in paragraph (e) of this section. However, prior to [24 months after date of publication of the Final Rule in the **Federal Register**] for manufacturers and Tier I carriers and [27 months after date of publication of the Final Rule in the **Federal Register**] for service providers other than Tier I carriers, the requirements of this section do not apply to handset operations over frequency bands and air interfaces for which technical standards are not stated in ANSI C63.19–2007 (June 8, 2007).

\* \* \* \* \*

(d) Phase-in of requirements relating to inductive coupling capability. The following applies to each manufacturer and service provider that offers wireless handsets used in the delivery of the services specified in paragraph (a) of this section and that does not fall within the *de minimis* exception set forth in paragraph (e) of this section. However, prior to [24 months after date of publication of the Final Rule in the **Federal Register**] for manufacturers and Tier I carriers and [27 month after date of publication of the Final Rules in the **Federal Register**] for service providers other than Tier I carriers, the requirements of this section do not apply to handset operations over frequency bands and air interfaces for which technical standards are not stated in ANSI C63.19–2007 (June 8, 2007).

\* \* \* \* \*

(f) \* \* \*

(2) Disclosure requirements relating to handsets treated as hearing aid-compatible over fewer than all their operations.

(i) Each manufacturer and service provider shall ensure that, wherever it provides hearing aid compatibility ratings for a handset that is considered hearing aid-compatible for some of its operations under paragraph (b)(3)(ii) of this section and that has not been tested for hearing aid compatibility under ANSI C63.19–2011 (May 27, 2011), or any handset that operates over frequencies outside of the 698 MHz to 6 GHz bands, it discloses to consumers, by clear and effective means (*e.g.*, inclusion of call-out cards or other media, revisions to packaging materials, supplying of information on Web sites), that the handset has not been rated for hearing aid compatibility with respect to some of its operation(s). The disclosure shall include the following language:

This phone has been tested and rated for use with hearing aids for some of the wireless technologies that it uses. However, there may be some newer wireless technologies used in this phone that have not been tested yet for use with hearing aids. It is important to try the different features of this phone thoroughly and in different locations, using your hearing aid or cochlear implant, to determine if you hear any interfering noise. Consult your service provider or the manufacturer of this phone for information on hearing aid compatibility. If you have questions about return or exchange policies, consult your service provider or phone retailer.

(ii) However, service providers are not required to include this language in the packaging material for handsets that incorporate a Wi-Fi air interface and that were obtained by the service provider before March 8, 2011, provided that the service provider otherwise discloses by clear and effective means that the handset has not been rated for hearing aid compatibility with respect to Wi-Fi operation.

(iii) Each manufacturer and service provider shall ensure that, wherever it provides hearing aid compatibility ratings for a handset that is considered hearing aid-compatible for some of its operations under paragraph (b)(3)(ii) of this section and that has been tested and found not to meet hearing aid compatibility requirements under ANSI C63.19–2011 (May 27, 2011) for operations over one or more air interfaces or frequency bands for which technical standards are not stated in ANSI C63.19–2007 (June 8, 2007), it discloses to consumers, by clear and

effective means (e.g., inclusion of call-out cards or other media, revisions to packaging materials, supplying of information on Web sites), that the handset does not meet the relevant rating or ratings with respect to such operation(s).

\* \* \* \* \*

[FR Doc. 2011-31404 Filed 12-13-11; 8:45 am]

BILLING CODE 6712-01-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 110627357-1409-01]

RIN 0648-BB24

#### Fisheries of the Exclusive Economic Zone Off Alaska; Chinook Salmon Bycatch Management in the Gulf of Alaska Pollock Fishery; Amendment 93

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes regulations to implement Amendment 93 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). The proposed regulations would apply exclusively to the directed pollock trawl fisheries in the Central and Western Reporting Areas of the Gulf of Alaska (GOA) (Central and Western GOA). If approved, Amendment 93 would establish separate prohibited species catch (PSC) limits in the Central and Western GOA for Chinook salmon (*Oncorhynchus tshawytscha*), which would cause NMFS to close the directed pollock fishery in the Central or Western regulatory areas of the Gulf of Alaska, if the applicable limit is reached. This action also would require retention of salmon by all vessels in the Central and Western GOA pollock fisheries until the catch is delivered to a processing facility where an observer is provided the opportunity to count the number of salmon and to collect scientific data or biological samples from the salmon. Amendment 93 would increase observer coverage on vessels less than 60 feet (18.3 m) length overall that participate in the directed pollock fishery in the Central or Western regulatory areas of the GOA by January 2013, unless the restructured North Pacific Groundfish Observer Program is in place by this time. Amendment 93 is

intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMP, and other applicable laws.

**DATES:** Written comments must be received no later than 5 p.m. Alaska local time (A.l.t.) January 30, 2012.

**ADDRESSES:** Send comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by FDMS Docket Number NOAA-NMFS-2011-0156, by any one of the following methods:

- **Electronic Submissions:** Submit all electronic public comments via the Federal eRulemaking Portal at <http://www.regulations.gov>. To submit comments via the e-Rulemaking Portal, first click the "submit a comment" icon, then enter NOAA-NMFS-2011-0156 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the "Submit a Comment" icon on the right of that line.

- **Mail:** Submit written comments to P.O. Box 21668, Juneau, AK 99802.
- **Fax:** (907) 586-7557.
- **Hand delivery to the Federal Building:** 709 West 9th Street, Room 420A, Juneau, AK.

Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered.

All comments received are a part of the public record and will generally be posted without change. All Personal Identifying Information (for example, name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Electronic copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for this action may be obtained from <http://www.regulations.gov> or from the Alaska Region Web site at <http://alaskafisheries.noaa.gov>.

Written comments regarding the burden-hour estimates or other aspects

of the collection-of-information requirements contained in this proposed rule may be submitted to NMFS at the above address, emailed to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov), or faxed to (202) 395-7285.

**FOR FURTHER INFORMATION CONTACT:** Mary Grady, (907) 586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fisheries in the U.S. exclusive economic zone (EEZ) of the GOA under the FMP. The North Pacific Fishery Management Council (Council) prepared, and NMFS approved, the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing the FMP appear at 50 CFR parts 600 and 679.

The Council has submitted Amendment 93 for review by the Secretary of Commerce, and a notice of availability of the FMP amendment was published in the **Federal Register** (76 FR 72384) on November 23, 2011, with written comments on the FMP amendment invited through January 23, 2012. Comments may address the FMP amendment, the proposed rule, or both, but must be received by NMFS, not just postmarked or otherwise transmitted, by 5 p.m. Alaska local time (A.l.t.) on January 23, 2012, to be considered in the approval/disapproval decision on the FMP amendment. All comments received by that time, whether specifically directed to the amendment or the proposed rule, will be considered in the decision to approve, partially approve, or disapprove the proposed amendment. Comments received after the comment period for the amendment will not be considered in that decision.

#### The Application of This Action to the GOA Pollock Fishery and Current Management

This proposed rule would apply to owners and operators of catcher vessels, catcher/processors, and inshore processors participating in the pollock (*Theragra chalcogramma*) trawl fisheries in the Central and Western Reporting Areas of the GOA. The Central and Western Reporting Areas, defined at § 679.2 and shown in Figure 3 to 50 CFR part 679, include the Central and Western Regulatory Areas (Statistical Areas 610, 620, and 630), and the adjacent State of Alaska (State waters).

The Council and NMFS annually establish biological thresholds and annual total allowable catch limits (TACs) for groundfish species to sustainably manage the groundfish