

Congress in the preemption provisions of section 408(n)(4) of FFDCFA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 1, 2010.

Lois Rossi,
Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.
■ 2. In § 180.439, revise paragraph (a) introductory text and paragraph (c) to read as follows:

§ 180.439 Thifensulfuron methyl; tolerances for residues.

(a) *General.* Tolerances are established for residues of thifensulfuron methyl, including its metabolites and degradates, in or on the commodities listed in the following table [below]. Compliance with the tolerance levels specified in the following table [below] is to be determined by measuring only thifensulfuron methyl (methyl 3-[[[(4-methoxy-6-methyl-1,3,5-triazin-2-yl)amino]carbonyl]amino] sulfonyl]-2-thiophenecarboxylate).

(c) *Tolerances with regional registrations.* Tolerances are established for residues of thifensulfuron methyl, including its metabolites and degradates, in or on the commodities listed in the following table [below]. Compliance with the tolerance levels specified in the following table [below] is to be determined by measuring only thifensulfuron methyl (methyl 3-[[[(4-methoxy-6-methyl-1,3,5-triazin-2-yl)amino]carbonyl]amino] sulfonyl]-2-thiophenecarboxylate).

Commodity	Parts per million
Safflower, seed	0.05

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[FR Doc. 2010-8135 Filed 4-13-10; 8:45 am]

BILLING CODE 6560-50-S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 90, and 95

[WP Docket No. 07-100, FCC 10-36]

PLMR Licensing; Frequency Coordination and Eligibility Issues

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) considers rule changes to certain of its rules that were addressed in a previous decision in this proceeding. In that decision, the Commission proposed various changes to its rules regarding PLMR licensing, including frequency coordination and eligibility issues. This proceeding is part of our continuing effort to provide clear and concise rules that facilitate new

wireless technologies, devices and services, and are easy for the public to understand.

DATES: Effective May 14, 2010.

FOR FURTHER INFORMATION CONTACT: Rodney P. Conway, at *Rodney.Conway@FCC.gov*, Wireless Telecommunications Bureau, (202) 418-2904, or TTY (202) 418-7233.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Second Report and Order* ("Second R&O") in WP Docket No. 07-100, FCC 10-36, adopted on March 3, 2010, and released March 10, 2010. In a *Notice of Proposed Rulemaking and Order (NPRM and Order)* published at 72 FR 32582, June 13, 2007, in this proceeding, the Commission proposed various changes to its rules regarding PLMR licensing, including frequency coordination and eligibility issues. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554. The full text may also be downloaded at: <http://www.fcc.gov>. Alternative formats are available to persons with disabilities by sending an e-mail to fcc504@fcc.gov or by calling the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

1. Part 90 contains the rules for both the Private Land Mobile Radio (PLMR) Services and certain Commercial Mobile Radio Services (CMRS). PLMR licensees generally do not provide for-profit communications services. Some examples of PLMR licensees are public safety agencies, businesses that use radio only for their internal operations, utilities, transportation entities, and medical service providers. CMRS licensees, by comparison, do provide for-profit communications services, such as paging and Specialized Mobile Radio services that offer customers communications that are interconnected to the public switched network.

2. *Frequency Coordination and Related Matters.* Applications for new and modified part 90 stations generally require frequency coordination before the application is submitted to the Commission, but certain types of applications are exempt from the frequency coordination requirement because they do not "have an impact on near-term frequency selections." The *NPRM* sought comment on whether to permit licensees to forgo frequency

coordination for other types of applications.

3. In the *NPRM*, the Commission noted that certain PLMR licensees are permitted to modify their licenses to authorize CMRS operations (and subsequently to modify such licenses to revert to PLMR operations), and proposed to exempt such modifications from the frequency coordination requirement because frequency coordinators do not make recommendations regarding changes between private and commercial status. With respect to PLMR-to-CMRS conversions, we agree with Land Mobile Communications Council (LMCC) and Motorola that we should retain the requirement for prior coordination. Such conversions involve interconnection with the public switched telephone network, which typically results in much higher levels of airtime usage on a channel. Such increased usage can affect other licensees, and for this reason we conclude that frequency coordinators should evaluate the implications of any proposed conversions to CMRS. We agree with the commenters, however, that frequency coordination should not be required when a licensee reverts from CMRS to PLMR operations, and amend our rules accordingly.

4. The *NPRM* also sought comment on whether to eliminate the frequency coordination requirement for applications where the only change is a reduction in authorized bandwidth on the licensed center frequencies. Half of the commenters addressing this issue argue that frequency coordination should be required for any change in technical parameters, including a reduction in authorized bandwidth, to protect nearby co-channel and adjacent channel licensee operations from new and potentially harmful interference. The other commenters contend that frequency coordination is not necessary for modifications that propose only a reduction in bandwidth on the licensee's currently authorized center frequency, because such a reduction cannot have an adverse impact on co-channel or adjacent channel licensees. They emphasize that such an exemption from the frequency coordination requirement should be limited to applications proposing only to reduce channel bandwidth while remaining on the original center frequency, and not seeking any other changes to the existing license, such as converting from analog to digital emission.

5. We agree that a simple reduction in authorized bandwidth cannot adversely impact co-channel or adjacent channel licensees. We therefore find no need for

a coordinator to review the proposal in advance. Removing the frequency coordination requirement for applications that modify existing licenses by reducing authorized bandwidth will not undermine the purpose of the frequency coordination process, *i.e.*, to ensure the quality of frequency selections, expedite licensing, and improve spectrum efficiency to the benefit of private land mobile users. It therefore is in the public interest and is consistent with the Commission's goal of reducing unnecessary regulatory burdens on licensees. In addition, we note that most PLMR licensees below 512 MHz will be required to migrate from 25 kHz operation to 12.5 kHz or narrower operation on their existing frequencies, and we find that removing the frequency coordination requirement for such applications will further the upcoming narrowbanding transition without disturbing the integrity of the frequency coordination process or the Commission's overall spectrum management objectives. As a result, we amend our rules to provide an exemption from the frequency coordination requirement for modification applications that only reduce authorized bandwidth while remaining on the original center frequencies, and do not seek any other changes in technical parameters.

6. In addition, the *NPRM* invited commenters to suggest other types of applications for which frequency coordination should no longer be required. We agree with Sprint Nextel that applications seeking to modify licenses by lowering antenna height and/or decreasing power should be exempted from frequency coordination. Not only would this have no adverse impact on co-channel or adjacent channel licensees, but, as Sprint Nextel points out, frequency coordinators do not recommend changes to applications seeking such modifications, and the technical information is readily available in the Universal Licensing System (ULS) database. Such modifications are similar in their effect on other licensees to applications to eliminate frequencies or transmitter site locations, for which frequency coordination is no longer required. We amend our rules accordingly.

7. *Mobile Repeaters*. The *NPRM* proposed to delete § 90.247(b) of the Commission's rules, which states that for Industrial/Business Pool frequencies below 450 MHz, only low power frequencies (where power is limited to two watts) may be assigned for use by mobile repeaters and associated hand-held units, when separate frequencies are assigned for that purpose. The

commenters generally support the proposal. Only Forest Industries Telecommunications (FIT) is concerned that removal of the mobile repeater power limits will lead to a "power war" among licensees, resulting in harmful interference to other licensees on those channels. While we understand FIT's concern, we believe that the benefits of greater flexibility from allowing mobile repeaters on full-power channels outweighs the speculative possibility of harmful interference, particularly given that mobile repeaters typically are deployed for a limited period of time. We note that mobile repeaters require frequency coordination, and the Commission's rules require licensees to work together to solve any interference issues. Operators may also be subject to enforcement action for causing interference to other users. As a result, we find that modification of our rules to remove the channel restriction concerning mobile repeaters below 450 MHz is appropriate. Similarly, we agree with Motorola that we should eliminate the related limitation in § 90.247(c) of the Commission's rules, which limits to 2.5 watts the output power of hand-held transmitters that communicate by way of a mobile repeater. Of course, such transmitters and mobile repeaters will be subject to other relevant part 90 power limitations, and may not exceed the Commission's radio frequency exposure criteria. Should mobile repeater operations under the rules as amended result in interference to other users, we may revisit this issue to examine whether we should address the situation by, for example, reinstating power limits or limiting the service area radius for mobile repeaters.

8. Motorola also notes that § 90.247(f) requires mobile repeaters to be controlled using a "continuous coded tone." This term is an analog reference, which Motorola recommends be replaced with "continuous access signal," which will accommodate both digital and analog control techniques. We agree, and will amend § 90.247 accordingly.

9. *Expired Licenses*. In general, frequencies associated with expired licenses become available for reassignment once the license is deleted from the Commission's ULS database of active licenses (*i.e.*, the licensee's status in ULS is changed from Active to Expired or Canceled). Ordinarily, there is a delay between the date a license expires and the date its status is changed from Active to Expired in our licensing records. During that period, frequency coordinators may select a frequency associated with the expired license for recommendation to the

Commission (coordinate the frequency), but the Commission does not accept applications for the frequency until the frequency becomes available for reassignment.

10. LMCC notified the Commission in 2004 that all part 90 frequency coordinators agreed not to coordinate frequencies associated with an expired license until the frequencies become available for reassignment, and requested the Commission's cooperation in enforcing this policy. As a result, the *NPRM* sought comment on whether the rules should be amended to prohibit the coordination of frequencies associated with expired licenses until those frequencies are deleted from the ULS database. In response, LMCC reports that the agreement has operated properly since 2004. While some commenters favor codifying the agreement in the Commission's rules, we agree with LMCC that no rule changes are required, and the Commission need only enforce the policy in the event that a third party objects to a premature coordination.

11. *Multiple Licensing*. As explained in the *NPRM*, most PLMR communication systems employ mobile relays (repeaters) with wide-area coverage so that communication may be maintained between mobile units that otherwise would be out of range of one another. It is common practice for an entity that owns and operates a repeater to share a base station with a number of other users. Under this practice, each user of the mobile relay station (commonly called a "community repeater") applies for and obtains an individual license for the station. Thus, a single base station is licensed to multiple users. The *NPRM* sought comment on the continued usefulness of multiple licensing, given that changes in the Commission's rules have created new means for multiple entities to share facilities or spectrum, or otherwise meet their communications needs.

12. Most commenters argue that multiple licensing continues to serve an important purpose and should be retained. We agree that multiple licensing provides for a cost effective licensing option to entities while also facilitating efficient use of spectrum. Therefore, we conclude that there are public interest benefits in allowing multiple licensing of the same facility, and we will take no action to phase it out at this time.

13. *Industrial/Business Pool Eligibility*. Section 90.35 of the Commission's rules permits entities engaged in, *inter alia*, "[t]he operation of a commercial activity" to operate on Industrial/Business Pool frequencies,

and by its language does not expressly exclude State or local government entities from eligibility. The *NPRM* concluded that § 90.35 is flexible, and that activities such as the operation of a utility, golf course, *etc.*, whether conducted by a government entity or a private entity, are "commercial activities" within the meaning of the rule. It sought comment on whether to amend § 90.35 to expressly provide that governmental entities are eligible to use Industrial/Business Pool frequencies for commercial enterprises.

14. Every commenter addressing the issue supports amending § 90.35 to clarify that State and local government entities are eligible for Industrial/Business Pool frequencies when they engage in commercial activities. Some commenters, while supporting the rule change, indicate that the Commission should condition such authorizations to prevent the use of Industrial/Business Pool frequencies for mission-critical public safety services. We agree that State and local government entities should be able to be licensed for Industrial/Business Pool spectrum for use in commercial activities but not for public safety operations. We amend § 90.35(a) accordingly.

15. The *NPRM* also sought comment on a request that the Commission's rules be amended to permit government surveying operations to utilize Industrial/Business Pool itinerant frequencies. Commenters unanimously support this request, stating that it would enable government entities to utilize modern surveying equipment, which currently is manufactured to operate only on Industrial/Business Pool frequencies. We agree with the commenters, and will amend the rules to permit government surveying operations to utilize the Industrial/Business Pool itinerant frequencies.

16. *Disturbance of AM Broadcast Station Antenna Patterns*. The *NPRM* requested comment on whether to modify part 90 to include provisions for the correction of any disturbance of AM broadcast stations' antenna patterns by new land mobile towers and antennas. We agree with commenters' consensus that this issue would be more appropriately considered in another pending Commission proceeding, so we will not amend part 90 at this time.

17. *FB8T Station Class*. In 2000, the Commission established a new station class code, FB8, to identify those trunked radio systems' base and mobile relay channels that are not subject to a monitoring requirement because the applicant/licensee has obtained the necessary consent from co-channel licensees or has exclusive use of the

channel. All channels associated with a centralized trunked system and any channels in a hybrid system for which the necessary consent has been obtained or that are licensed on an exclusive basis must have an FB8 code for the base/mobile relay station.

Approximately thirty-five authorizations were subsequently issued with a station class of FB8T, allowing temporary use of base and mobile relay channels in systems that are not subject to a monitoring requirement.

Authorizing temporary base stations anywhere within a licensee's authorized operating area could, however, allow the licensee to expand the contour of its unmonitored operations into areas where it does not have exclusivity, which could result in interference to other licensees. Consequently, we no longer issue authorizations for systems with a station class of FB8T.

18. In the *NPRM*, the Commission proposed to renew existing FB8T authorizations with a station class code of FBT (temporary base) in order to make it clear that these operations are subject to the monitoring requirement, and sought comment on whether any corresponding amendment to part 90 was necessary. Commenters support the proposal, but an applicant whose FB8T application subsequently was granted as FBT suggested that station class code FB6T (the station class code used for decentralized trunked temporary stations) is more appropriate. We agree that current FB8T stations should use a more specific station class code than FBT. As a result, we hereby clarify that FB8T stations will be renewed as FB2T (private, internal systems) or FB6T (for-profit private carriers), as appropriate. No rule changes or other action are necessary to implement this proposal at this time.

19. *Reorganization of Part 90*. The *NPRM* sought comment on whether it would be appropriate to reorganize the part 90 rules. It noted that many of the services regulated under part 90 differ significantly from the "traditional" PLMR services on which the original part 90 rules were premised in 1978, and that the current rules cover PLMR and CMRS services, site-based and geographically licensed services, and public safety and non-public safety services, on frequencies ranging from 530 kHz to 4990 MHz. Nearly all of the commenters addressing this issue believe that changing the organizational structure of the part 90 rules is unnecessary and would likely result in a more complex regulatory burden being placed on Commission licensees without any likely benefit to the licensees or the Commission.

Accordingly, we decline to adopt any structural changes to the part 90 rules.

20. *Editorial Amendments.* Finally, we take this opportunity to make minor editorial amendments to part 90. Specifically, we amend § 90.35(b)(3) to associate the correct limitations with frequency 27.86 MHz and frequency band 5850–5925 MHz. We also take this opportunity to remove references in §§ 90.35 and 90.267 to the freeze on high power applications for 12.5 kHz offset channels in the 460–470 MHz band, which has expired. Additionally, we amend the table in § 90.103 to correct references to certain limitations that were renumbered in another proceeding, and to delete a reference to the International Fixed Public Radiocommunications Service, which was eliminated in another proceeding. Further, we amend § 175(j)(5) to remove references to frequencies that have been redesignated from part 90 to part 95. We also amend § 90.621(a) to restore language that was inadvertently deleted when the rule was amended in another proceeding. Further, we utilize this opportunity to amend §§ 90.353(f) and 90.357(a) to correct typographical errors.

21. *Wireless Medical Telemetry Issues.* The Wireless Medical Telemetry Service (WMTS) was established in 2000 to enhance the reliability of medical telemetry equipment that is vital to the effective care of patients with acute and chronic health problems, and to ensure that wireless medical telemetry devices can operate free of harmful interference. Fourteen megahertz of spectrum, in three bands, was allocated for WMTS operations. The band 1427–1432 MHz is shared between medical and non-medical telemetry operations. Generally, WMTS has primary status in the lower half of the band (1427–1429.5 MHz), and non-medical telemetry in the upper half of the band (1429.5–1432 MHz). Non-medical telemetry licenses may not exceed a measured or predicted field strength of 150 µV/m into the WMTS portion of the band at the site of any WMTS operation. WMTS operations are licensed by rule, without separate Commission authorization, but must be registered with the American Society of Health Care Engineering of the American Hospital Association (ASHE), the WMTS frequency coordinator, prior to operation.

22. In addition, in order to avoid interference between medical and non-medical telemetry operations in the 1427–1432 MHz shared band, ASHE and the part 90 frequency coordinators are required to share with each other information about newly deployed WMTS equipment and part 90

frequency recommendations. At the Commission's request, ASHE and LMCC formulated a mutually agreeable coordination plan, which was filed with the Commission on August 18, 2004. The *NPRM* tentatively concluded that implementation of the joint ASHE–LMCC coordination agreement would be in the public interest because it will further the Commission's continuing efforts to ensure protection of WMTS operations from harmful interference, and sought comment on whether the ASHE–LMCC coordination agreement should be reflected in the rules.

23. The agreement sets forth different coordination procedures, depending on whether medical telemetry and non-medical telemetry are co-channel or adjacent channel, and whether each is primary or secondary. The WMTS service rules in part 95 do not explicitly authorize WMTS systems to operate on a secondary basis on those portions of the 1427–1432 MHz shared band where non-medical telemetry is primary. In response to conflicting requests, the *NPRM* sought comment on amending the rules to clarify whether such operations are permitted.

24. Commenters support the joint ASHE–LMCC coordination agreement and agree that it should be cross-referenced or codified in the rules. We conclude, however, that no rule change is necessary or appropriate. The ASHE–LMCC agreement is self-executing. As the *NPRM* concluded, the agreement does not conflict with the existing rules. Codification or incorporation by reference of the agreement would prevent ASHE and LMCC from making amendments to the agreement by mutual consent. Moreover, our decision not to amend the rules to reflect the agreement is consistent with our current treatment of other agreements between or among other frequency coordinators, which are not codified or incorporated by reference in the rules.

25. Commenters are split on the issue of whether WMTS operations should be permitted to operate on a secondary basis in the portions of the 1427–1432 MHz band where non-medical telemetry has primary status. Some WMTS operations in the portions of the 1427–1432 MHz band where non-medical telemetry has primary status already are registered with ASHE. ASHE and one equipment manufacturer argue that the part 95 rules should be amended to expressly permit such WMTS operations. Philips states that many secondary WMTS devices operate free from unwanted interference because they use smart radio technology with cognitive functions, which can sense and avoid other transmissions, and

change channels if necessary. ASHE supports permitting secondary WMTS operations, but suggests that WMTS users be notified and cautioned that such operations should not be relied upon for functions that are critical to patient safety, because secondary operations would be subject to receiving interference from part 90 operations. On the other hand, LMCC and two manufacturers request that WMTS not be permitted to operate on a secondary basis in the non-medical telemetry portion of the band because patient health and safety could be jeopardized. LMCC states that nearly all WMTS systems implemented at health-care facilities are deployed and registered by the equipment manufacturer and not by facility telecommunications staff, so health-care facility personnel do not understand that they have only secondary status on certain frequencies.

26. The Commission created the WMTS in order to make available spectrum where medical telemetry services could operate on a primary basis, free from harmful interference. The authorization of secondary WMTS operations would subject such operations to the same interference concerns that the WMTS allocation was intended to address. We conclude, based on the current record, that permitting WMTS devices to operate on a secondary basis is not in the public interest, because of the risk of unwanted interference that can jeopardize patient safety. In addition, we note that while the 1427–1432 MHz band is the most commonly utilized WMTS band, it is not the only WMTS band available. WMTS devices are authorized to operate on a primary basis on a total of fourteen megahertz of spectrum, and the record does not establish that secondary spectrum is needed to meet WMTS communication needs. Accordingly, we amend § 95.1111 of the Commission's rules to clarify that the registration of WMTS devices on those portions of the 1427–1432 MHz band where WMTS operations do not hold primary status is prohibited. WMTS devices already registered to operate on secondary frequencies will be grandfathered, and may continue operating for the time being. Nonetheless, we encourage users of such equipment to investigate whether those operations can or should be migrated to primary WMTS frequencies in order to maximize patient safety.

27. We adopt ASHE's suggested editorial revisions to §§ 90.259(b)(4) (to clarify one of the carve-out areas); 95.1101, 95.1103(c), 95.1111(a) (to clarify the registration and notification process), 95.1115(a) and (d) and 95.1121

(to clarify that WMTS operates beyond the 1427–1429.5 MHz segment in the carve-out areas). ASHE further requests that the Commission amend both §§ 95.1105 and 95.1115 of the Commission's rules to make it “even more expressly understood” that authorized health care providers are licensed by rule to operate WMTS equipment only when the registration requirements in § 95.1111(a) have been met. We do not find such clarification necessary. Sections 95.1105 and 95.1111 clearly state that frequency coordination is required prior to commencement of WMTS operations. The Commission to date has not received any complaints from operators of WMTS devices about the clarity and meaning of these rules, and no incidents have been reported where WMTS operations were commenced prior to registration with ASHE. Therefore, we believe that the relevant language in the part 95 rules is sufficient. Similarly, we also reject Itron's proposal that the rules should specify that WMTS users must coordinate operations prior to construction, because we are not persuaded that the current pre-activation registration requirement is inadequate. Moreover, we reject LMCC's proposal that the rules be amended to require ASHE to notify part 90 coordinators using the same electronic batch filing format that the part 90 coordinators use to notify each other of part 90 coordinations. We agree with ASHE that such details should be negotiated between the parties.

I. Procedural Matters

A. Ex Parte Rules—Permit-but-Disclose Proceeding

28. 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 as provided in the Commission's rules.

B. Paperwork Reduction Act

29. This document 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).

II. Final Regulatory Flexibility Analysis

30. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in the *NPRM* in this proceeding was incorporated in the *NPRM*. *See* 5 U.S.C. 603. Written public comments were requested on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA. *See* 5 U.S.C. 604. The Commission will send a copy of the *Second R&O*, including this FRFA, to the Chief Counsel for Advocacy of the U.S. Small Business Administration. In addition, a copy of the *Second R&O* and FRFA (or summaries thereof) will also be published in the **Federal Register**.

Need for, and Objectives of, the Proposed Rules

31. This proceeding is part of our continuing effort to provide clear and concise rules that facilitate new wireless technologies, devices and services, and are easy for licensees to comprehend and understand. We believe it appropriate to review all of our regulations relating to administering Private Land Mobile Radio (PLMR) Services to determine which regulations can be clarified, streamlined or eliminated. In the *NPRM*, we sought comment on miscellaneous rule amendments that were intended to clarify part 90 of the Commission's rules. In addition, the *NPRM* sought comment on eliminating certain regulatory requirements contained in part 90 of the Commission's rules. The *NPRM* also sought comment regarding changes to the rules governing the part 95 Wireless Medical Telemetry Service, to clarify those rules and implement a joint coordination agreement among the relevant frequency coordinators. We also solicited comment on other potential part 90 rules changes, including suggestions to revise or eliminate provisions that are duplicative, outmoded or otherwise unnecessary.

Legal Basis for Proposed Rules

32. Authority for issuance of this item is contained in sections 4(i), 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 403.

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

33. No comments were submitted specifically in response to the IRFA. However, some commenters to the *NPRM* contend that the Commission's

suggestion that part 90 be reorganized would result in a more complex regulatory burden on Commission licensees. We have considered the potential economic impact on small entities of these rules, and we have considered alternatives that would reduce the potential economic impact of the rules enacted herein, regardless of whether the potential economic impact was discussed in any comments.

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

34. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” *See* 5 U.S.C. 601(6). In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. *See* 5 U.S.C. 601(3). 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). *See* Small Business Act, 5 U.S.C. 632 (1996). A small organization is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.” *See* 5 U.S.C. 601(4). Below, we further describe and estimate the number of small entity licensees and regulatees that may be affected by the rules changes proposed in the *NPRM*.

35. *Private Land Mobile Radio Licensees*. Private land mobile radio (PLMR) systems serve an essential role in a vast range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories. Because of the vast array of PLMR users, the Commission has not developed a small business size standard specifically applicable to PLMR users. The SBA rules do, however, contain a size standard for small radiotelephone (wireless) companies which encompasses, business entities engaged in radiotelephone communications employing no more than 1,500 persons. *See* 13 CFR 121.201, NAICS code 517212. The SBA rules contain a definition for cellular and other wireless telecommunications companies which encompass business entities engaged in radiotelephone communications

employing no more than 1,500 persons. The Commission's fiscal year 1994 annual report indicates that, at the end of fiscal year 1994, there were 1,101,711 licenses operating 12,882,623 transmitters in the PLMR bands below 512 MHz. See Federal Communications Commission, 60th Annual Report, Fiscal Year 1994 at 120–121.

36. *Frequency Coordinators.* Neither the Commission nor the SBA has developed a small business size standard specifically applicable to spectrum frequency coordinators. The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of "Paging" and "Cellular and Other Wireless Telecommunications." See 13 CFR 121.201, NAICS code 517212. Under both categories, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 2002 show that there were 807 firms in this category that operated for the entire year. See 13 CFR 121.201, NAICS code 517211. Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more. Thus, under this category and associated small business size standard, the majority of firms can be considered small. For the census category of Cellular and Other Wireless Telecommunications, Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year. See 13 CFR 121.201, NAICS code 517212. Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more. Thus, under this second category and size standard, the majority of firms can, again, be considered small.

37. *RF Equipment Manufacturers.* 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." See 13 CFR 121.201, NAICS code 334220. 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

2002, there were a total of 1,041 establishments in this category that operated for the entire year. See *U.S. Census Bureau, American FactFinder, 2002 Economic Census, Industry Series, Industry Statistics by Employment Size, NAICS code 334220 (released May 26, 2005)*. Of this total, 1,010 had employment of under 500, and an additional 13 had employment of 500 to 999. Thus, under this size standard, the majority of firms can be considered small.

38. *Hospitals, Nursing Care Facilities, and Other Residential Care Facilities.* The SBA has developed small business size standards for these three categories and other, related categories. For the commercial census category of General Medical and Surgical Hospitals, the SBA deems an entity to be small if it has \$31.5 million or less in annual revenues. See 13 CFR 121.201, NAICS code 622110. Census Bureau data for 2002 show that there were 3,200 firms in this category that operated for the entire year. *U.S. Census Bureau, 2002 Economic Census, Subject Series: Health Care and Social Assistance, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4, NAICS code 622110 (issued Nov. 2005)*. Of this total, 1,313 firms had revenues of under \$25 million, and 471 had revenues of \$25 million to \$49,999,999. Thus, in this category, over 41 percent of the firms can be considered small. For the category of Nursing Care Facilities, the SBA deems an entity to be small if it has \$12.5 million or less in annual revenues. See 13 CFR 121.201, NAICS code 623110. Census Bureau data for 2002 show that there were 7,826 firms in this category that operated for the entire year. *U.S. Census Bureau, 2002 Economic Census, Subject Series: Health Care and Social Assistance, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4, NAICS code 623110 (issued Nov. 2005)*. Of this total, 6,594 firms had revenues of under \$10 million, and 871 had revenues of \$10 million to \$24,999,999. Thus, in this category, the majority of firms can be considered small. For the category of Other Residential Care Facilities, the SBA deems an entity to be small if it has \$6.5 million or less in annual revenues. See 13 CFR 121.201, NAICS code 623990. Census Bureau data for 2002 show that there were 3,131 firms in this category that operated for the entire year. *U.S. Census Bureau, 2002 Economic Census, Subject Series: Health Care and Social Assistance, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4, NAICS code 623990 (issued Nov. 2005)*.

Of this total, 2,774 firms had revenues of under \$5 million, and 202 had revenues of \$5 million to \$9,999,999. Thus, in this category, the majority of firms can be considered small.

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

39. There are no projected reporting, recordkeeping or other compliance requirements.

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

40. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. See 5 U.S.C. 603(c).

41. We believe the changes adopted in the 2nd R&O will promote flexibility and more efficient use of the spectrum, reduce administrative burdens on both the Commission and licensees, and allow licensees to better meet their communication needs. In this 2nd R&O, we will not change rules concerning multiple licensing because it still appears to be a viable and is not obsolete. Additionally, the 2nd R&O decides that determining the feasibility of protection to broadcast AM station antenna patterns in part 90 of our rules would be best handled in another ongoing Commission proceeding. The 2nd R&O also clarifies the Commission's stance on the discontinuance of station classes FB8T and MO8T. The 2nd R&O declines to reorganize the part 90 rules. The 2nd R&O also clarifies that WMTS operations are not permitted on a secondary basis.

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

42. None.

III. Ordering Clauses

43. Pursuant to §§ 4(i), 303(r), and 403 of the Communications Act of 1934, 47 U.S.C. 154(i), 303(r), and 403, that this *Second FNPRM* is hereby adopted.

44. Notice is hereby given of the proposed regulatory changes described in this *Second FNPRM* and comment is sought on these proposals.

45. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Second FNPRM*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Parts 2, 90, and 95

Communications equipment, Radio, Reporting and recordkeeping requirements.

Marlene H. Dortch,
Secretary, Federal Communications Commission.

Final Rules

■ Parts 2, 90 and 95 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

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

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

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

■ 2. Section 2.106 is amended by revising note US350 to read as follows:

§ 2.106 Table of Frequency Allocations

* * * * *

US350 In the band 1427–1432 MHz, Federal use of the land mobile service and non-Federal use of the fixed and land mobile services is limited to telemetry and telecommand operations as described further:

(a) *Medical operations.* The use of the band 1427–1432 MHz for medical

telemetry and telecommand operations (medical operations) shall be authorized for both Federal and non-Federal stations.

(1) Medical operations shall be authorized in the band 1427–1429.5 MHz in the United States and its insular areas, except in the following locations: Austin/Georgetown, Texas; Detroit and Battle Creek, Michigan; Pittsburgh, Pennsylvania; Richmond/Norfolk, Virginia; Spokane, Washington; and Washington, DC metropolitan area (collectively, the “carved-out” locations). See Section 47 CFR 90.259(b)(4) for a detailed description of these areas.

(2) In the carved-out locations, medical operations shall be authorized in the band 1429–1431.5 MHz.

(3) Medical operations may operate on frequencies in the band 1427–1432 MHz other than those described in paragraphs (a)(1) and (2) only if the operations were registered with a designated frequency coordinator prior to April 14, 2010.

(b) *Non-medical operations.* The use of the band 1427–1432 MHz for non-medical telemetry and telecommand operations (non-medical operations) shall be limited to non-Federal stations.

(1) Non-medical operations shall be authorized on a secondary basis to the Wireless Medical Telemetry Service (WMTS) in the band 1427–1429.5 MHz and on a primary basis in the band 1429.5–1432 MHz in the United States and its insular areas, except in the carved-out locations.

(2) In the carved-out locations, non-medical operations shall be authorized on a secondary basis in the band 1429–1431.5 MHz and on a primary basis in the bands 1427–1429 MHz and 1431.5–1432 MHz.

* * * * *

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

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

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

■ 4. Section 90.20 is amended by adding paragraph (e)(7) to read as follows:

§ 90.20 Public Safety Pool

* * * * *

(e) * * *

(7) Frequencies governed by § 90.35(c)(17).

* * * * *

■ 5. Amend § 90.35 as follows:

■ a. Remove paragraphs (c)(61)(v) and (c)(68)(iv).

■ b. Add paragraphs (a)(5) and (c)(91).

■ c. In the table of paragraph (b)(3) place the entry for “5850–5925” in numerical order.

■ d. In the table of paragraph (b)(3), revise the entries for “27.86” and “5850–5925”.

■ e. Revise paragraph (c)(67).

The additions and revisions read as follows:

§ 90.35 Industrial/Business Pool.

(a) * * *

(5) Public Safety Pool eligibles are eligible for Industrial/Business Pool spectrum only to the extent that they are engaged in activities listed in paragraphs (a)(1) through (4) of this section. Industrial/Business Pool spectrum may not be utilized for the purposes set forth in § 90.20(a).

* * * * *

(b) * * *

(3) * * *

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations	Coordinator
27.86	Base or mobile	89.	
5850–5925do	90, 91	Not applicable.

* * * * *

(c) * * *
(67) Medical telemetry operations are authorized on this frequency on a secondary basis. Medical telemetry operations are subject to the provisions of § 90.267(h)(2).

* * * * *

(91) Subpart M of this part contains rules for assignment of frequencies in the 5850–5925 MHz band.

* * * * *

■ 6. Section 90.103 is amended by revising the entries in the table in paragraph (b) for “1900 to 1950,” “1950

to 2000,” “13,750 to 14,000,” and paragraph (c)(1), to read as follows:

§ 90.103 Radiolocation Service.

* * * * *

(b) * * *

Frequency or band	Class of station(s)	Limitation(s)
Kilohertz		
* * * * *	* * * * *	* * * * *
1900 to 1950do	6, 25, 26, 27 and 28.
1950 to 2000do	6, 25, 27 and 28.
Megahertz		
* * * * *	* * * * *	* * * * *
13,750 to 14,000do	29.

(c) * * *
 (1) This frequency band is shared with and stations operating in this frequency band in this service are on a secondary basis to stations licensed in the Maritime Mobile Service.

* * * * *
 ■ 7. Section 90.175 is amended by revising paragraph (j)(5) and adding paragraphs (j)(19), (j)(20), and (j)(21) to read as follows:

§ 90.175 Frequency coordinator requirements.

* * * * *
 (j) * * *
 (5) Applications in the Industrial/Business Pool requesting a frequency designated for itinerant operations.
 * * * * *

(19) Applications filed exclusively to return channels that had been authorized for commercial operation pursuant to § 90.621(e) or (f) to non-commercial operation (including removal of the authorization to interconnect with the public switched telephone network).

(20) Applications for a reduction in the currently authorized emission bandwidth or a deletion of an existing emission designator.

(21) Applications for a reduction in antenna height or authorized power.

■ 8. Section 90.247 is amended by removing and reserving paragraphs (b) and (c) and revising paragraph (f) to read as follows:

§ 90.247 Mobile repeater stations.

* * * * *
 (f) When automatically retransmitting messages originated by or destined for hand-carried units, each mobile station shall activate the mobile transmitter only with a continuous access signal, the absence of which will de-activate the mobile transmitter. The continuous access signal is not required when the mobile unit is equipped with a switch

that activates the automatic mode of the mobile unit and an automatic time-delay device that de-activates the transmitter after any uninterrupted transmission period in excess of 3 minutes. For the purposes of this rule section the continuous access signal can be achieved by use of digital or analog methods.

■ 9. Section 90.259 is amended by revising paragraph (b)(4)(ii) to read as follows:

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

* * * * *
 (b) * * *
 (4) * * *
 (ii) Washington, DC metropolitan area—Counties of Montgomery, Prince George’s and Charles in Maryland; Counties of Arlington, Prince William, Fauquier, Loudon, and Fairfax, and Cities of Alexandria, Falls Church, Fairfax, Manassas and Manassas Park in Virginia; and District of Columbia;
 * * * * *

§ 90.267 [Amended]

■ 10. Section 90.267 is amended by removing paragraph (e)(3) and redesignating paragraph (e)(4) as (e)(3).

■ 11. Section 90.353 is amended by revising paragraph (f) to read as follows:

§ 90.353 LMS operations in the 902–928 MHz band.

* * * * *
 (f) Multilateration EA licensees may be authorized to operate on both the 919.75–921.75 MHz and 921.75–927.75 MHz bands within a given EA (see § 90.209(b)(5)).
 * * * * *

■ 12. Section 90.357 is amended by revising paragraph (a) to read as follows:

§ 90.357 Frequencies for LMS systems in the 902–928 MHz band.

(a) Multilateration LMS systems will be authorized on the following LMS sub-bands:

LMS sub-band	Forward link ¹
904.000–909.750 MHz.	927.750–928.000 MHz.
919.750–921.750 MHz. ²	927.500–927.750 MHz.
921.750–927.250 MHz.	927.250–927.500 MHz.

¹ Forward links for LMS systems may also be contained within the LMS sub-band. However, the maximum allowable power in these sub-bands is 30 Watts ERP in accordance with § 90.205(l).

² The frequency band 919.750–921.750 MHz is shared co-equally between multilateration and non-multilateration LMS systems.

* * * * *

■ 13. Section 90.621 is amended by revising paragraph (a) to read as follows:

§ 90.621 Selection and assignment of frequencies.

(a) Applicants for frequencies in the Public Safety and Business/Industrial/Land Transportation Categories must specify on the application the frequencies on which the proposed system will operate pursuant to a recommendation by the applicable frequency coordinator. Applicants for frequencies in the SMR Category must request specific frequencies by including in their applications the frequencies requested.

(1) For trunked systems, the assignment of frequencies will be made in accordance with applicable loading criteria and in accordance with the following:

(i) Channels will be chosen and assigned in accordance with §§ 90.615, 90.617, or 90.619.

(ii) A mobile station is authorized to transmit on any frequency assigned to its associated base station.

(iii) There are no limitations on the number of frequencies that may be trunked. Authorizations for non-SMR stations may be granted for up to 20 trunked frequency pairs at a time in accordance with the frequencies listed in §§ 90.615, 90.617, and 90.619.

(2) For conventional systems the assignment of frequencies will be made in accordance with applicable loading criteria. Accordingly, depending upon the number of mobile units to be served, an applicant may either be required to share a channel, or, if an applicant shows a sufficient number of mobile units to warrant the assignment of one or more channels for its exclusive use, it may be licensed to use such channel or channels on an unshared basis in the area of operation specified in its application.

(i) Channels will be chosen and assigned in accordance with §§ 90.615, 90.617, or 90.619.

(ii) A mobile station is authorized to transmit on any frequency assigned to its associated base station.

* * * * *

PART 95—PERSONAL RADIO SERVICES

■ 14. The authority citation for part 95 continues to read as follows:

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

■ 15. Section 95.1101 is revised to read as follows:

§ 95.1101 Scope.

This subpart sets out the regulations governing the operation of Wireless Medical Telemetry Devices in the 608–614 MHz, 1395–1400 MHz, and 1427–1432 MHz frequency bands. See § 95.630 regarding permissible frequencies.

■ 16. Section 95.1103 is amended by revising paragraph (c) to read as follows:

§ 95.1103 Definitions.

* * * * *

(c) *Wireless medical telemetry.* The measurement and recording of physiological parameters and other patient-related information via radiated bi-or unidirectional electromagnetic signals in the 608–614, 1395–1400 MHz and 1427–1432 MHz frequency bands.

■ 17. Section 95.1111 is amended by revising paragraph (a) introductory text and adding paragraph (c) to read as follows:

§ 95.1111 Frequency coordination.

(a) Prior to operation, authorized health care providers who desire to use wireless medical telemetry devices must

register all devices with a designated frequency coordinator. Except as specified in § 95.1105, operation of WMTS equipment prior to registration is not authorized under this part. The registration must include the following information:

* * * * *

(c) As of April 14, 2010, no registrations may be accepted for frequencies where WMTS does not have primary status. Previously registered secondary facilities may continue to operate as registered.

■ 18. Section 95.1115 is amended by revising paragraphs (a)(2) and (d)(1) as follows:

§ 95.1115 General technical requirements.

(a) * * *

(2) In the 1395–1400 MHz and 1427–1432 MHz bands, the maximum allowable field strength is 740 mV/m, as measured at a distance of 3 meters, using measuring equipment with an averaging detector and a 1MHz measurement bandwidth.

* * * * *

(d) * * *

(1) In the 1395–1400 MHz and 1427–1432 MHz bands, no specific channels are specified. Wireless medical telemetry devices may operate on any channel within the bands authorized for wireless medical telemetry use in this part.

* * * * *

■ 19. Section 95.1121 is revised to read as follows:

§ 95.1121 Specific requirements for wireless medical telemetry devices operating in the 1395–1400 and 1427–1432 MHz bands.

Due to the critical nature of communications transmitted under this part, the frequency coordinator in consultation with the National Telecommunications and Information Administration shall determine whether there are any Federal Government systems whose operations could affect, or could be affected by, proposed wireless medical telemetry operations in the 1395–1400 MHz and 1427–1432 MHz bands. The locations of government systems in these bands are specified in footnotes US351 and US352 of § 2.106 of this chapter.

[FR Doc. 2010-7648 Filed 4-13-10; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 22

[Docket No OST-2008-0236]

RIN 2105-AD50

Short-Term Lending Program (STLP)

AGENCY: Office of the Secretary (OST), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule governs the Short Term Lending Program (STLP), which provides financial assistance in the form of guarantees of short-term revolving lines of credit from Participating Lenders (PLs) to disadvantaged Business Enterprises (DBEs) and other certified small and disadvantaged business (SDBs) in connection with transportation-related contracts at the local, state and federal levels. The program is administered through cooperative agreements between DOT's Office of Small and Disadvantaged Business Enterprise (OSDBU) and Participating Lenders and under the STLP's governing policies and procedures.

DATES: This rule is effective May 14, 2010.

FOR FURTHER INFORMATION CONTACT: Nancy Strine, Financial Assistance Division Manager, U.S Department of Transportation, OSDBU, 1200 New Jersey Ave, SE., Room W56-497, Washington, DC 20590. Telephone: (800) 532-1169 or e-mail: Nancy.Strine@dot.gov.

SUPPLEMENTARY INFORMATION:

Background

On August 21, 2008, the Office of Small and Disadvantaged Business Utilization (OSDBU) of the Office of the Secretary (OST) of the Department of Transportation (DOT) issued a Notice of Proposed Rulemaking (NPRM) in Docket OST-2008-0236 proposing to adopt regulations governing its Short Term Lending Program (STLP) and published the NPRM in the **Federal Register**. See "Department of Transportation, Office of the Secretary, 49 CFR part 22 [Docket NO: OST-2008-0236], RIN 2105-AD50, 73 FR 49386 *et seq.* (August 21, 2008)." In the NPRM, we announced that we were considering regulations to replace the internal policies and guidelines that had for years been used to manage the STLP.

As noted in the NPRM, the Secretary of Transportation has delegated the authority to carry out the functions in