

Management and Budget (OMB) Circulars and government-wide regulations.

Subpart D—[Removed]

■ 6. Subpart D, consisting of § 1180.70, is removed.

Dated: June 5, 2013.

Nancy E. Weiss,

General Counsel, Institute of Museum and Library Services.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[ET Docket No. 10-26; FCC 13-59]

Definition of Auditory Assistance Device

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document modifies the definition of “auditory assistance device” in the Commission’s rules to permit these devices to be used by anyone at any location for simultaneous language interpretation (simultaneous translation), where the spoken words are translated continuously in near real time. The revised definition permits unlicensed auditory assistance devices to be used to provide either auditory assistance or simultaneous translation, or both, without impeding these devices’ capability to provide auditory assistance to persons with disabilities. This document also lowers the limit for these auditory assistance devices’ unwanted emissions to the limits provided for other unlicensed devices in the Commission’s rules.

DATES: Effective July 11, 2013.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: This is a summary of the Commission’s *Report and Order*, ET Docket No. 10-26, adopted May 1, 2013, and released May 2, 2013, FCC 13-59. The full text of the *Report and Order* is available on the Commission’s Internet site at www.fcc.gov. It is also available for inspection and copying during regular business hours in the FCC Reference Center (Room CY-A257), 445 12th Street SW., Washington, DC 20554. The full text of the *Report and Order* also

may be purchased from the Commission’s duplication contractor, Best Copy and Printing Inc., Portals II, 445 12th St. SW., Room CY-B402, Washington, DC 20554; telephone (202) 488-5300; fax (202) 488-5563; email FCC@BCPIWEB.COM.

Summary of the Report and Order

1. The *Report and Order* modified the definition of “auditory assistance device” in part 15 of the Commission’s rules to expand the permissible uses of these devices beyond solely providing auditory assistance to persons with disabilities (e.g., amplification of sounds for the hard of hearing and audio description for the blind) to include simultaneous translation for anyone at any location. This action harmonized the part 15 definition of “auditory assistance device” with the definition of “auditory assistance communications” in part 95 of the Commission’s rules. Under this expanded definition, part 15 auditory assistance devices that operate in the 72-73 MHz, 74.6-74.8 MHz, and 75.2-76 MHz (72-76 MHz) bands on an unlicensed basis may provide auditory assistance or simultaneous translation, or both, to anyone at any location.

2. The *Report and Order* also lowered the limit for part 15 auditory assistance devices’ unwanted emissions to the limits that are provided in § 15.209 of the Commission’s rules to help reduce the likelihood that the unwanted emissions from increased use of these devices for simultaneous translation will degrade the reception of very high frequency television (VHF TV) channels 2-4 (54-72 MHz) and 5-6 (76-88 MHz) and help improve the reception of VHF TV service.

3. On September 9, 2011, the Commission adopted an *Order and Notice of Proposed Rulemaking (Auditory Assistance Device NPRM)* in this proceeding in which it proposed to modify the part 15 definition of “auditory assistance device” to expand the permissible uses of these devices to include simultaneous language interpretation by any person at any location, in the same manner as permitted under part 95 for Low Power Radio Service stations that operate in the 216-217 MHz band. The Commission took this action in response to a petition for declaratory ruling filed by Williams Sound Corporation (Williams Sound), a provider of wireless auditory assistance devices.

4. In the *Auditory Assistance Device NPRM*, the Commission sought comment on the advantages and disadvantages and potential benefits of expanding the permissible uses of part 15 auditory assistance devices and any

qualitative or quantitative costs associated with this proposal. It also sought comment on whether increased use of part 15 auditory assistance devices for simultaneous language interpretation would increase the potential for harmful interference to authorized services in the 72-76 MHz and adjacent bands and whether additional safeguards or changes to the technical requirements for these devices would be necessary to prevent harmful interference to those services. In addition, the Commission sought comment on whether a more restrictive limit for part 15 auditory assistance devices’ out-of-band emissions is needed to prevent harmful interference to authorized services in the 72-76 MHz and adjacent bands and improve the reception of VHF TV channels 2-6.

5. Part 15 auditory assistance devices may operate in a full duplex mode of operation using necessary bandwidths up to 200 kilohertz wide. All fundamental emissions must be contained wholly within the 72-73 MHz, 74.6-74.8 MHz, and 75.2-76 MHz bands with a maximum field strength of 80 millivolts per meter (mV/m) measured at a distance of 3 meters, which is equivalent to a maximum effective radiated power (ERP) of 1.2 milliwatts (mW). The field strength of any unwanted emissions (emissions outside of the 200 kilohertz necessary bandwidth) must not exceed 1,500 microvolts per meter (µV/m) measured at a distance of 3 meters, which is equivalent to an ERP of 0.4 microwatts (µW). In the *Auditory Assistance Device NPRM*, the Commission asked what out-of-band emissions limit would be appropriate—the § 15.209 limit, the unlicensed TV bands device limit, or some other limit—what would be an appropriate transition period for compliance, and whether currently approved part 15 auditory assistance devices should be grandfathered for a limited time or permanently. In the *Report and Order*, the Commission noted that although it used the term “out-of-band” emissions in the *Auditory Assistance Devices NPRM* when referring to emissions outside of the frequency bands in which the auditory assistance devices operate (paras. 20 and 21), the correct term to describe the emissions outside of the necessary bandwidth of the transmitting system is “unwanted” emissions, and so it used the term “unwanted” emissions where appropriate throughout the *Report and Order*.

Discussion

6. In the *Report and Order*, the Commission modified the definition of

“auditory assistance device” in part 15 of its rules to expand the permissible uses of these devices to include simultaneous language interpretation. The expanded definition permits the use of part 15 auditory assistance devices by any person requiring translation services at any location. The Commission concluded that the public interest would be served by expanding the permissible uses of part 15 auditory assistance devices to include simultaneous translation. It also concluded that the benefits of expanding service to the public far outweighed any additional costs associated with implementing these changes. The majority of commenters, providers of auditory assistance devices and/or services, submitted that expanding the permissible uses of part 15 auditory assistance devices to include simultaneous interpretation would be in the public interest. The majority of commenters also agreed with the Commission’s tentative assessment that expanding the permissible uses of part 15 auditory assistance devices to include simultaneous translation would not increase costs to the public.

7. The Commission agreed that expanding the permissible uses of part 15 auditory assistance devices to include simultaneous translation was in the public interest and would not increase costs. It determined that permitting part 15 auditory assistance devices to be used for simultaneous translation could reduce the costs of translation services by increasing competition and allowing providers to use less expensive RF equipment for simultaneous translation instead of higher-cost infrared technology equipment. It also determined that expanding these devices permissible uses would likely reduce auditory assistance equipment costs, result in economies of scale in production and marketing, and introduce more competition for such devices. The Commission decided that this action would promote more flexible and efficient use of part 15 auditory assistance devices by allowing them to be used for either auditory assistance or simultaneous translation, or both, without impeding their ability to provide auditory assistance to persons with disabilities. It also decided that permitting such use of these devices would increase the comprehension of persons that need language translation in public venues while lowering the ambient noise level for all listeners, thereby enhancing the auditory experience of all listeners.

8. The Commission was not persuaded that allowing part 15

auditory assistance devices to be used for simultaneous language interpretation would penalize entities that provide translation services via higher-cost infrared technology equipment. Instead, it determined that the marketplace provides the best measure for determining which technology is optimal for addressing the translation needs of users. This approach would permit each interpreter to analyze customers’ needs in its market area and employ the technology that best meets their needs. For example, some customers may prefer the inherent security and privacy of infrared technology over the capabilities of RF technology. The Commission also decided that part 15 auditory assistance devices’ use of the 72–76 MHz bands should not be limited only to providing assistance to persons with disabilities under the Americans with Disabilities Act of 1990 (ADA). Although part 15 auditory assistance devices had previously been restricted under the Commission’s rules to solely providing aural assistance to persons with disabilities, unlicensed use of the 72–76 MHz bands is not restricted under the ADA or the Communications Act of 1934 to only uses covered by the ADA.

9. The Commission also concluded that permitting part 15 auditory assistance devices to be used for simultaneous language interpretation would not, *per se*, increase the potential for harmful interference (*i.e.*, interference that seriously degrades, obstructs, or repeatedly interrupts a radicom communication service) to authorized services in the 72–76 MHz and adjacent bands, especially since no commenter had expressed concern that increased use of part 15 auditory assistance devices for simultaneous interpretation would cause harmful interference to authorized services. As the Commission noted in the *Auditory Assistance Device NPRM*, the interference potential of a part 15 auditory assistance device is generally unrelated to the number of users or type of use. Rather, the interference potential is a function of the device’s operating characteristics and parameters. There is no difference in the interference potential of a part 15 auditory assistance device whether it is used for auditory assistance or simultaneous translation.

10. The Commission agreed with commenters that the existing limit for part 15 auditory assistance devices’ fundamental emissions was already sufficient to prevent increased use of these devices for simultaneous translation from causing harmful interference to authorized services. The absence of any reports of harmful

interference to date supported this conclusion. It also noted that although the locations and channels where part 15 auditory assistance devices are operated may increase by expanding their permissible uses to include simultaneous translation, the market for and use of these devices should remain limited and they would not be ubiquitously deployed. The Commission expected that this outcome, coupled with their relatively low fundamental emissions limit, would help prevent increased use of part 15 auditory assistance devices for simultaneous translation from causing harmful interference to authorized services.

11. The Commission was not persuaded that increased use of part 15 auditory assistance devices for simultaneous translation would interfere with other part 15 auditory assistance devices providing auditory assistance by “crowding” the frequencies. As noted, these devices’ fundamental signals may transmit in bandwidths up to 200 kilohertz wide in the 72–73 MHz, 74.6–74.8 MHz, and 75.2–76 MHz bands, so ample spectrum would be available for multiple applications. Further, part 15 auditory assistance devices’ low power levels would enable other parties to re-use their frequencies at nearby locations.

12. With respect to part 15 auditory assistance devices’ unwanted emissions (*i.e.*, emissions outside of the 200 kilohertz necessary bandwidths), comments were mixed on whether the Commission should modify the limit for these emissions. In the *Auditory Assistance Device NPRM*, the Commission proposed that part 15 auditory assistance devices’ out-of-band emissions limit be lowered to the general emissions limits for other unlicensed devices that are specified in rule § 15.209. The Commission noted that expanding the permissible use of these devices at any location could increase their use at locations where they are not also used to provide auditory assistance to disabled individuals as well as increase the number of channels operated at any given location to provide both auditory assistance and simultaneous translation. Out of concern that the unwanted emissions from increased use of part 15 auditory assistance devices for simultaneous interpretation could degrade the reception of particularly sensitive VHF TV channels 2–6, the Commission decided to lower the unwanted emissions limit of part 15 auditory assistance devices to the emissions limit in § 15.209 that is applicable to other unlicensed devices.

13. The current allowed unwanted emissions limit of 1,500 $\mu\text{V}/\text{m}$ at 3 meters for part 15 auditory assistance devices that operate in the 72–76 MHz bands is 15 times higher (23.5 dB more power) than the § 15.209 emissions limit of 100 $\mu\text{V}/\text{m}$ at 3 meters that applies to most other part 15 devices' unwanted emissions in the 72–76 MHz and adjacent bands. It is also 18 times higher (25 dB more power) than the unwanted emissions limit of 84 $\mu\text{V}/\text{m}$ at 3 meters that applies to part 15 personal/portable TV bands devices that operate in bands adjacent to occupied TV channels. Accordingly, the Commission lowered the limit for part 15 auditory assistance devices unwanted emissions to the general emission limits for other unlicensed devices that are specified in rule § 15.209. Although part 15 auditory assistance devices had not had a history of causing harmful interference to authorized services under the current rules, the Commission decided that this approach would help reduce the likelihood of harmful interference as their use increases and help improve the reception of VHF TV channels 2–6 and accordingly was in the public interest.

14. In support of this decision, the Commission noted in the *Report and Order* that since the time that it adopted the rules for part 15 auditory assistance device transmitters in 1972, all full service TV stations have converted from analog to digital transmissions. The Commission also noted that it had previously sought comment on measures to improve digital TV reception for consumers on VHF channels and encourage broadcasters to use these channels in the future. It further noted that one of the problems with indoor VHF TV reception is the high levels of noise on those channels from nearby consumer electronics equipment and that the Commission had previously stated that it would be desirable to reduce that noise and sought comment on what actions it might take to reduce such noise in the VHF TV bands.

15. In addition, since the Commission adopted the *Auditory Assistance Device NPRM*, the “Middle Class Tax Relief and Job Creation Act of 2012” (Spectrum Act) was enacted to enable the Commission to make more efficient use of the TV bands spectrum by freeing up broadcast TV spectrum for wireless broadband services. Section 6403(a)(2) of the Spectrum Act directs the Commission to conduct a reverse auction of broadcast television spectrum that includes, *inter alia*, a bid option for participants' voluntary relinquishment of “all usage rights with respect to an ultra high frequency television channel

in return for receiving usage rights with respect to a very high frequency television channel . . .” (UHF to VHF bid). In the incentive auction proceeding, the Commission sought comment on whether to permit eligible licensees to participate in the auction by agreeing to relinquish a high VHF channel in exchange for a low VHF channel. In that proceeding, the Commission again recognized that increased signal interference caused by the higher levels of ambient noise from other electronic devices operating on or near the low VHF frequency range can make the use of the low VHF channels difficult and could deter reverse auction participation.

16. The Commission decided that commenters' contention that most increased use of part 15 auditory assistance devices for simultaneous translation would not be proximate to VHF TV reception areas was not compelling—it was not self-evident, it disregarded the consequences of harmful interference where it could occur, and it disregarded locations at which these frequencies could be used post-auction. In light of its efforts to make the VHF channels more useful to broadcasters by improving the reception of VHF digital TV and consistent with the objectives in the Spectrum Act, the Commission concluded that it is in the public interest and sound public policy to require part 15 auditory assistance devices' unwanted emissions to comply with the § 15.209 emissions limits. The Commission provided a transition period to implement this requirement, and grandfathered all devices installed prior to the end of the transition period. The Commission was persuaded by the record that reducing the unwanted emissions limit of part 15 auditory assistance devices to the § 15.209 emissions limits could be accomplished using current technology at minimal cost, and that the § 15.209 emissions limits were achievable in part 15 auditory assistance devices using industry standard components employing relatively straight-forward designs at a small additional cost of 1 to 2 percent per device.

17. The Commission agreed with commenters that the 18-month and 3-year transition periods it had proposed should provide sufficient time for manufacturers to design part 15 auditory assistance devices with unwanted emissions that comply with § 15.209, obtain equipment certification, and plan the transition for manufacturing transmitters with the new design. It provided an 18-month transition period after the effective date of the new rules during which part 15

auditory assistance devices may continue to be certified under the current rules for such devices in § 15.237; after that time no such equipment will be certified unless its unwanted emissions are compliant with § 15.209. It also provided an additional 18 months during which such equipment certified under the current § 15.237 rules may continue to be manufactured and imported. After this 3-year period, no such equipment may be manufactured or imported unless its unwanted emissions are compliant with § 15.209. There is no deadline on the marketing of equipment that was manufactured or imported prior to the end of this 3-year period.

18. Beginning 18 months after the effective date of the new rules, equipment certification may no longer be obtained for part 15 auditory assistance devices with unwanted emissions that do not meet the § 15.209 limits. Until the end of the 3-year transition period, the Commission will permit Class II permissive changes for equipment certified prior to the 18-month transition date, as well as their continued manufacture, marketing, installation, and importation. After the end of the 3-year transition period, Class II permissive changes for such devices will not be permitted nor will their manufacture, marketing, installation, or importation. The Commission found that these requirements would facilitate the transition to tighter unwanted emissions limits without unduly impairing the availability or cost of part 15 auditory assistance devices or imposing undue burdens on manufacturers, translation services providers, or the public.

19. The Commission agreed with commenters that part 15 auditory assistance devices that are already installed or in use should be grandfathered for the life of the equipment. It decided that requiring the upgrade or replacement of existing part 15 auditory assistance devices with units having unwanted emissions that comply with the § 15.209 emissions limits would be an unnecessary financial burden on operators of these devices and could inhibit the ability of operators of public venues to provide auditory assistance to persons with disabilities as required by the ADA. It also decided that grandfathering existing equipment would ensure that entities will be permitted to operate their existing part 15 auditory assistance devices until replacement is necessary or desired due to age, malfunction, or other concerns, and would facilitate continued compliance with the ADA.

20. The Commission amended the definition of “auditory assistance device” in part 15 of the rules to expand the permissible uses of these devices to include simultaneous language interpretation for anyone at any location. It also amended § 15.237 to require that part 15 auditory assistance devices’ unwanted emissions comply with the § 15.209 emissions limits. In addition, it established a 3-year transition period after the effective date of the rules adopted in this proceeding for manufacturers to cease the domestic manufacture or importation for domestic sale of part 15 auditory assistance devices that do not comply with the revised unwanted emissions limits. The Commission also established a cutoff date of 18 months after the effective date of the new rules after which unwanted emissions from new part 15 auditory assistance devices must comply with the § 15.209 emissions limits in order to receive an equipment authorization. Except for the tighter unwanted emissions limits, the other administrative and technical requirements for operation of part 15 auditory assistance devices in the 72–73 MHz, 74.6–74.8 MHz, and 75.2–76 MHz bands remained unchanged.

Paperwork Reduction Analysis

21. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13.

Congressional Review Act

22. The Commission will send a copy of this *Report and Order*, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

Final Regulatory Flexibility Analysis

23. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rulemaking (Auditory Assistance Device NPRM)* in ET Docket No. 10–26.² The Commission sought written public comment on the proposals in the *Auditory Assistance*

Device NPRM, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.³

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

24. In the *Report and Order*, the Commission expanded the permissible uses of part 15 auditory assistance devices that operate in the 72.0–73.0 MHz, 74.6–74.8 MHz, and 75.2–76 MHz bands (72–76 MHz bands) beyond solely aural assistance for persons with disabilities to include simultaneous language interpretation for anyone at any location. It also reduced the limit for part 15 auditory assistance devices’ unwanted emissions to the radiated emissions limits specified in § 15.209. The objectives of the Commission in the *Report and Order* were to allow part 15 auditory assistance devices to be used for simultaneous translation by anyone at any location, remove barriers to communications, provide greater flexibility and enhanced benefits for persons wishing to use auditory assistance technologies, expand the opportunities to deploy auditory assistance devices, and improve the reception of VHF TV channels 2–6.

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

25. No public comments were received in response to the IRFA in the *Auditory Assistance Device NPRM*. However, in general comments on the *Auditory Assistance Device NPRM*, some commenters raised issues that might affect small entities. In particular, one commenter argued that allowing part 15 auditory assistance devices to be used for simultaneous translation would penalize entities that have purchased higher-cost infrared technology equipment to provide simultaneous translation. One commenter also argued that use of part 15 auditory assistance devices for simultaneous translation is not an Americans with Disabilities Act (ADA) of 1990 use and would interfere or disrupt other part 15 auditory assistance devices by crowding the frequencies. Commenters also requested that if the Commission imposed stricter out-of-band emissions limits on part 15 auditory assistance devices, then a transition period for compliance with the new limits should be established and existing part 15 auditory assistance devices should be grandfathered for the life of the equipment. The Commission carefully considered each of these

comments in reaching the decisions set forth in the *Report and Order*.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

26. Pursuant to the Small Business Jobs Act of 2010, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

D. Description and Estimate of the Number of Small Entities to Which the Rule Will Apply

27. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.⁴ The RFA 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.⁵ 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.⁶

28. *Small Businesses, Small Organizations, and Small Governmental Jurisdictions*. The Commission’s actions may, over time, affect small entities that are not easily categorized at present. It therefore described here, at the outset, three comprehensive, statutory small entity size standards that encompass entities that could be directly affected by the proposals under consideration.⁷ As of 2009, small businesses represented 99.9 percent of the 27.5 million businesses in the United States, according to the SBA.⁸ Additionally, a

⁴ *Id.* at 603(b)(3).

⁵ 5 U.S.C. 601(3) (incorporating by reference the definition of “small business concern” in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.” 5 U.S.C. 601(3).

⁶ Small Business Act, 15 U.S.C. 632 (1996).

⁷ *See* 5 U.S.C. 601(3)–(6).

⁸ *See* SBA, Office of Advocacy, “Frequently Asked Questions,” available at <http://web.sba.gov/>

¹ *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, 110 Stat. 857 (1996).

² *See* Amendment of part 15 of the Commission’s rules to Amend the Definition of Auditory Assistance Devices in Support of Simultaneous Language Interpretation, ET Docket No. 10–26, *Order and Notice of Proposed Rulemaking*, 26 FCC Rcd 13600, 13612–14 (2012) (*Auditory Assistance Device NPRM*).

³ *See* 5 U.S.C. 604.

“small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”⁹

Nationwide, as of 2007, there were approximately 1,621,315 small organizations.¹⁰ Finally, the term “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”¹¹ Census Bureau data for 2007 indicate that there were 89,527 governmental jurisdictions in the United States.¹² The Commission estimated that, of this total, as many as 88,761 entities may qualify as “small governmental jurisdictions.”¹³ Thus, the Commission estimated that most governmental jurisdictions are small.

29. *Fixed Microwave Services.* Fixed microwave services include common carrier,¹⁴ private operational-fixed,¹⁵

faqs/faqindex.cfm?areaID=24 (last visited Aug. 31, 2012).

⁹ 5 U.S.C. 601(4).

¹⁰ Independent Sector, *The New Nonprofit Almanac & Desk Reference* (2010).

¹¹ 5 U.S.C. 601(5).

¹² U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES: 2011, Table 427 (2007).

¹³ The 2007 U.S. Census data for small governmental organizations are not presented based on the size of the population in each such organization. There were 89,476 local governmental organizations in 2007. The Commission assumed that county, municipal, township, and school district organizations are more likely than larger governmental organizations to have populations of 50,000 or less, the total of these organizations is 52,095. The Commission made the same population assumption about special districts, specifically that they are likely to have a population of 50,000 or less, and also assumed that special districts are different from county, municipal, township, and school districts, in 2007 there were 37,381 such special districts. Therefore, there are a total of 89,476 local government organizations. As a basis of estimating how many of these 89,476 local government organizations were small, in 2011, the Commission noted that there were a total of 715 cities and towns (incorporated places and minor civil divisions) with populations over 50,000. CITY AND TOWNS TOTALS: VINTAGE 2011—U.S. Census Bureau, available at <http://www.census.gov/popest/data/cities/totals/2011/index.html>. The Commission subtracted the 715 cities and towns that meet or exceed the 50,000 population threshold, and concluded that approximately 88,761 are small. U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES 2011, Tables 427, 426 (Data cited therein are from 2007).

¹⁴ See 47 CFR part 101 *et seq.* for common carrier fixed microwave services (except Multipoint Distribution Service).

¹⁵ Persons eligible under parts 80 and 90 of the Commission's rules can use Private Operational-Fixed Microwave services. See 47 CFR parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station and only for communications related to the licensee's commercial, industrial, or safety operations.

and broadcast auxiliary radio services.¹⁶ At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission had not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission used the SBA small business size standard for the category Wireless Telecommunications Carriers (except Satellite), which is 1,500 or fewer employees.¹⁷ The Commission did not have data specifying the number of these licensees that have no more than 1,500 employees, and thus it was unable to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimated that there are 22,015 or fewer common carrier fixed licensees and 61,670 or fewer private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies proposed herein. The Commission noted, however, that the common carrier microwave fixed licensee category includes some large entities.

30. *Wireless Equipment Manufacturers.* This industry is comprised of businesses primarily engaged in manufacturing radio, television broadcast, and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, cordless phones, global positioning system (GPS) equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.¹⁸ In this category, the SBA has deemed a business manufacturing radio and television broadcasting equipment, wireless telecommunications equipment, or both, to be small if it has fewer than 750

¹⁶ Auxiliary Microwave Service is governed by part 74 of title 47 of the Commission's rules. See 47 CFR part 74. This service is available to licensees of broadcast stations and to broadcast and cable network entities. Broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile television pickups, which relay signals from a remote location back to the studio.

¹⁷ 13 CFR 121.201, NAICS code 517210.

¹⁸ <http://www.census.gov/econ/industry/def/d334220.htm>.

employees.¹⁹ For this category of manufacturing, Census data for 2007 showed that there were 919 firms that operated that year. Of those establishments, 531 had between 1 and 19 employees; 240 had between 20 and 99 employees; and 148 had more than 100 employees.²⁰ Since 771 establishments had fewer than 100 employees, and since only 148 had more than 100 employees, the vast majority of manufacturers in this category would be considered small under applicable standards. The rules adopted in the *Report and Order* will apply to small businesses that choose to use, manufacture, design, import, or sell part 15 auditory assistance devices. There is no requirement, however, for any entity to use, market, or produce these types of products.

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

31. The *Report and Order* expanded the permissible uses of part 15 auditory assistance devices to include simultaneous language interpretation for anyone at any location and reduced the permitted level of part 15 auditory assistance devices' unwanted emissions to the § 15.209 emissions limits. The item did not contain any new reporting or recordkeeping requirements.

32. After 18 months after the effective date of the new rules in this proceeding, the unwanted emissions of part 15 auditory assistance devices submitted for equipment authorization must comply with the § 15.209 emissions limits. After 3 years of the effective date of the new rules, the unwanted emissions of part 15 auditory assistance devices manufactured or imported for sale in the U.S. must comply with the emissions limits in § 15.209. Manufacturers will incur engineering services and production costs to design and produce part 15 auditory assistance devices whose unwanted emission comply with the § 15.209 emission's limits. The § 15.209 emissions limits are currently achievable for part 15 auditory assistance devices' unwanted emissions at an estimated additional cost of 1 to 2 percent per device using industry standard components employing relatively straight-forward designs.²¹ The Commission expected that these costs will be comparable for large and small entities.

¹⁹ See 13 CFR 121.201, NAICS code 334220.

²⁰ http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-skip=300&-ds_name=EC073111&-lang=en.

²¹ See Williams Sound comments at 3.

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

33. 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 (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.²²

34. To reduce the burdens on small entities, the Commission provided a 3-year transition period for manufacturers to produce new part 15 auditory assistance devices with unwanted emissions that comply with the § 15.209 emissions limits, after which the domestic manufacture and importation for domestic sale of part 15 auditory assistance devices with unwanted emissions that do not meet these lower emissions limits must cease. However, there is no limit on the marketing of part 15 auditory assistance devices manufactured or imported prior to the end of this 3-year transition period. In addition, the Commission provided 18 months after the effective date of the new rules in this proceeding for manufacturers to produce part 15 auditory assistance devices with unwanted emissions that comply with the § 15.209 emissions limits in order to receive an equipment authorization. The Commission determined that this should provide sufficient time for manufacturers to obtain equipment authorization from the Commission for any part 15 auditory assistance devices currently under development under the current rules and to design and submit to the Commission equipment authorization applications for part 15 auditory assistance devices with unwanted emissions that comply with the § 15.209 emissions limits. It also determined that his approach would facilitate the lowering of part 15 auditory assistance devices' unwanted emissions to the § 15.209 emissions limits without unduly impairing the availability or cost of these devices. To avoid imposing unnecessary financial burdens on entities that produce, market, or operate part 15 auditory assistance devices, the Commission

permitted part 15 auditory assistance devices that have already been installed or are in use prior to the end of the 3-year transition period to be operated without a cutoff date without having to meet the § 15.209 emissions limits.

Paperwork Reduction Analysis

35. This document does not contain any new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA). Public Law 104–13.

Congressional Review Act

36. The Commission will send a copy of the *Report and Order*, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act.²³ In addition, the Commission will send a copy of the *Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the SBA.

Ordering Clauses

37. Pursuant to §§ 4(i), 302, 303(e), 303(f), and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 302a, 303(e), 303(f), and 307, that this *Report and Order* in ET Docket No. 10–26 is hereby ADOPTED, and part 15 of the Commission's rules *is amended* as set forth in Final Rules effective July 11, 2013.

38. The Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Report and Order*, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 15

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 15 as follows:

PART 15—RADIO FREQUENCY DEVICES

■ 1. The authority citation for part 15 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, 304, 307, 336, 544a and 549.

■ 2. Section 15.3 is amended by revising paragraph (a) to read as follows:

§ 15.3 Definitions.

(a) *Auditory assistance device.* An intentional radiator used to provide auditory assistance communications (including but not limited to applications such as assistive listening, auricular training, audio description for the blind, and simultaneous language translation) for:

(1) Persons with disabilities: In the context of part 15 rules (47 CFR part 15), the term “disability,” with respect to the individual, has the meaning given to it by section 3(2)(A) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102(2)(A)), *i.e.*, a physical or mental impairment that substantially limits one or more of the major life activities of such individuals;

(2) Persons who require language translation; or

(3) Persons who may otherwise benefit from auditory assistance communications in places of public gatherings, such as a church, theater, auditorium, or educational institution.

* * * * *

■ 3. Section 15.37 is amended by adding paragraph (g) to read as follows:

§ 15.37 Transition provisions for compliance with the rules.

* * * * *

(g) The manufacture or importation of auditory assistance devices that operate in the 72.0–73.0 MHz, 74.6–74.8 MHz, and 75.2–76.0 MHz bands that do not comply with the requirements of § 15.237(c) shall cease on or before July 11, 2016. Effective January 12, 2015, equipment approval will not be granted for auditory assistance devices that operate in the 72.0–73.0 MHz, 74.6–74.8 MHz, and 75.2–76.0 MHz bands that do not comply with the requirements of § 15.237(c). These rules do not prohibit the sale or use of authorized auditory assistance devices that operate in the 72.0–73.0 MHz, 74.6–74.8 MHz, and 75.2–76.0 MHz bands manufactured in the United States, or imported into the United States, prior to July 11, 2016.

■ 4. Section 15.237 is amended by revising paragraph (c) to read as follows:

§ 15.237 Operation in the bands 72.0–73.0 MHz, 74.6–74.8 MHz and 75.2–76.0 MHz.

* * * * *

(c) The field strength within the permitted 200 kHz band shall not exceed 80 millivolts/meter at 3 meters. The field strength of any emissions radiated on any frequency outside of the specified 200 kHz band shall not exceed the general radiated emissions limits specified in § 15.209. The emission limits in this paragraph are based on measurement instrumentation employing an average detector. The

²² 5 U.S.C. 603(c).

²³ See 5 U.S.C. 801(a)(1)(A).

provisions in § 15.35 for limiting peak emissions apply.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 130219149-3524-03]

RIN 0648-BC97

Revisions to Framework Adjustment 50 to the Northeast Multispecies Fishery Management Plan and Sector Annual Catch Entitlements; Updated Annual Catch Limits for Sectors and the Common Pool for Fishing Year 2013

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

ACTION: Temporary final rule; adjustment to specifications.

SUMMARY: Based on the final Northeast (NE) multispecies sector rosters submitted as of May 1, 2013, we are adjusting the fishing year (FY) 2013 specification of annual catch limits for commercial groundfish vessels, as well as sector annual catch entitlements for groundfish stocks. This revision to fishing year 2013 catch levels is necessary to account for changes in the number of participants electing to fish in either sectors or the common pool fishery.

DATES: Effective June 10, 2013, through April 30, 2014.

FOR FURTHER INFORMATION CONTACT: Allison Murphy, Fishery Policy Analyst, (978) 281-9122.

SUPPLEMENTARY INFORMATION: The New England Fishery Management Council (Council) developed Amendment 16 to the NE Multispecies Fishery Management Plan (FMP), in part, to establish a process for setting groundfish annual catch limits (also

referred to as ACLs or catch limits) and accountability measures. The Council has a biennial review process to develop catch limits and revise management measures. Framework Adjustment (FW) 50 and concurrent emergency actions set annual catch limits for nine groundfish stocks and three jointly managed U.S./Canada stocks for FY 2013-2015. We recently partially approved FW 50, which became effective on May 1, 2013 (78 FR 26172; May 3, 2013). In addition to the specification set by FW 50, we took emergency action to set the catch limits for Georges Bank (GB) yellowtail flounder and white hake. For more information on these emergency actions, please see the preamble to FW 50.

Along with FW 50 and the concurrent emergency rule, we recently approved FY 2013 sector operations plans and allocations (78 FR 25591; May 2, 2013; "sector rule"). A sector receives an allocation of each stock, or annual catch entitlement (referred to as ACE, or allocation), based on its members' catch histories. State-operated permit banks also receive an allocation that can be transferred to qualifying sector vessels (for more information, see the final rule implementing Amendment 17 (77 FR 16942; March 23, 2012)). The sum of all sector and state-operated permit bank allocations is referred to as the sector sub-ACL in the FMP. Whatever groundfish allocation remains after sectors and state-operated permit banks receive their allocations is then allocated to vessels not enrolled in a sector (referred to as the common pool). This allocation is also referred to as the common pool sub-ACL.

Changes in sector membership require ACL and ACE adjustments. This rule adjusts the FY 2013 sector and common pool allocations based on final sector membership as of May 1, 2013. Permitted vessels that wish to fish in a sector must enroll by December 1 of each year, with the fishing year beginning the following May 1 and lasting through April 30 of the next year. However, due to a delay in distributing each vessel's potential contribution to a sector's quota for FY

2013, we delayed the deadline to join a sector until March 29, 2013. Because this deadline followed the publication of the FW 50 and sector proposed rules, FY 2012 membership was used to estimate sector ACEs for FY 2013. In addition, vessels had until April 30, 2013 (the day before the beginning of FY 2013) to drop out of a sector and fish in the common pool. If the sector allocation increases as a result of sector membership changes, the common pool allocation decreases—the opposite is true as well. Because sector membership has changed since FY 2012, which was used in the FW 50 and sector rules, we need to update the allocations to all sectors and to the common pool.

The final number of permits enrolled in a sector or state-operated permit bank for FY 2013 is 851 (the same number of permits enrolled in FY 2012 and a decrease of 3 permits from March 29, 2013). All sector allocations assume that each NE multispecies vessel enrolled in a sector has a valid permit for FY 2013. Tables 1, 2, and 3 (below) explain the revised FY 2013 allocations as a percentage and absolute amount (in metric tons and pounds).

Table 4 compares the preliminary allocations based on FY 2012 membership published in the FW 50 proposed and final rules, with the revised allocations based on the final sector and state-operated permit bank rosters as of May 1, 2013. The table shows that changes in sector allocations due to updated rosters range from a decrease of 0.32 percent of Gulf of Maine (GOM) haddock, to an increase of 4.04 percent of Southern New England/Mid-Atlantic (SNE/MA) yellowtail flounder. Common pool allocation adjustments range between a 16.17-percent decrease in SNE/MA yellowtail flounder, to a 59.09-percent increase in GOM haddock. The changes in the common-pool allocations are greater because the common pool has a significantly lower allocation for all stocks, so even small changes appear large when viewed as a percentage increase or decrease.

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