

Please note the following:

For a few regulations, the authorized regulation is an earlier version of the North Dakota State regulation. For these regulations, EPA authorized the version of the regulations that appear in the North Dakota Administrative Code dated July 1, 1997. North Dakota made later changes to these regulations, but these changes have not been authorized by EPA. The regulations where the authorized regulation is an earlier version of the regulation are noted below by inclusion in parentheses of July 1, 1997 after the regulatory citations.

Chapter 33–24–01—General Provisions: Sections 33–24–01–01 through 33–24–01–14.

Chapter 33–24–02—Identification and Listing of Hazardous Waste; 33–24–02–01; 33–24–02–02; 33–24–02–03 except .1.b(3) and (6); 33–24–02–04 through 33–24–02–06; 33–24–02–07; 33–24–02–08 through 33–24–02–19; 33–24–02–22; and Appendices I through V.

Chapter 33–24–03—Standards for Generators: Sections 33–24–03–01; 33–24–03–02; 33–24–03–03.1 and .2; 33–24–03–03.3, (except the phrases “and a transporter permit” and “and applied for a permit”); 33–24–03–03.4; 33–24–03–04 through 33–24–03–12; 33–24–03–13, (except the phrase “March first of each even-numbered year” in .2); 33–24–03–14 through 33–24–03–24; 33–24–03–30; 33–24–03–40; and Appendix I.

Chapter 33–24–04—Standards for Transporters: Sections 33–24–04–01, (except .4); 33–24–04–02.1, (except the phrase “, a transporter permit, and a registration certificate”); 33–24–04–02.2, (except the phrases “and a registration certificate, or a transporter permit,” and “and issue a registration certificate”); and 33–24–04–03 through 33–24–04–08.

Chapter 33–24–05—Standards for Treatment, Storage, and Disposal Facilities and for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities: Sections 33–24–05–01; 33–24–05–02, (except the second sentence); 33–24–05–03 through 33–24–05–10; 33–24–05–15 through 33–24–05–20; 33–24–05–26 through 33–24–05–31; 33–24–05–37 through 33–24–05–44; 33–24–05–47 through 33–24–05–50; 33–24–05–51, (except Table 1); 33–24–05–51, Table 1 (July 1, 1997); 33–24–05–52 through 33–24–05–55; 33–24–05–56, (except .11); 33–24–05–57 through 33–24–05–69; 33–24–05–74 through 33–24–05–81; 33–24–05–89 through 33–24–05–93; 33–24–05–94, (except .4.b); 33–24–05–95 through 33–24–05–98; 33–24–05–103 through 33–24–05–115; 33–24–05–118 through 33–24–05–128; 33–24–05–130 through 33–24–05–138; 33–24–05–144 through 33–24–05–151; 33–24–05–160 through 33–24–05–170; 33–24–05–176 through 33–24–05–188; 33–24–05–201 through 33–24–05–204; 33–24–05–230; 33–24–05–235; 33–24–05–250 through 33–24–05–252; 33–24–05–253, (except .3); 33–24–05–256, (except .1.b(2)); 33–24–05–258, (except .4.b(2)); 33–24–05–265; 33–24–05–270 through 33–24–05–279; 33–24–05–280, (except .9); 33–24–05–281; 33–24–05–282, (except .2); 33–24–05–283; 33–24–05–284.8 through .13; 33–24–05–285; 33–24–05–286; 33–24–05–288 through 33–24–05–290; 33–

24–05–300 through 33–24–05–303; 33–24–05–400, (except .4); 33–24–05–401 through 33–24–05–406; 33–24–05–420 through 33–24–05–435; 33–24–05–450 through 33–24–05–460; 33–24–05–475 through 33–24–05–477; 33–24–05–501 through 33–24–05–506; 33–24–05–525 through 33–24–05–537; 33–24–05–550 through 33–24–05–553; 33–24–05–554, (except .1.b); 33–24–05–555; 33–24–05–600; 33–24–05–610 through 33–24–05–612; 33–24–05–620 through 33–24–05–624; 33–24–05–630 through 33–24–05–632; 33–24–05–640 through 33–24–05–647; 33–24–05–650 through 33–24–05–667; 33–24–05–670 through 33–24–05–675; 33–24–05–680; 33–24–05–681; 33–24–05–701 through 33–24–05–705; 33–24–05–708 through 33–24–05–720; 33–24–05–730 through 33–24–05–740; 33–24–05–750 through 33–24–05–756; 33–24–05–760 through 33–24–05–762; 33–24–05–770; 33–24–05–780; 33–24–05–781; 33–24–05–800 through 33–24–05–802; 33–24–05–820 through 33–24–05–826; 33–24–05–850; 33–24–05–855 through 33–24–05–857; 33–24–05–860; 33–24–05–865; 33–24–05–866; 33–24–05–870; 33–24–05–875; 33–24–05–880; 33–24–05–885; 33–24–05–890; 33–24–05–895 through 33–24–05–900; 33–24–05–905; 33–24–05–910; 33–24–05–915; 33–24–05–916; and Appendices I through VIII, X through XIII, XVI through XXIV; and XXVI through XXIX.

Chapter 33–24–06—Permits: Sections 33–24–06–01, (except .2.a); 33–24–06–01.2.a (July 1, 1997); 33–24–06–02 through 33–24–06–04; 33–24–06–05.1.c; 33–24–06–06, (except .2 and .3); 33–24–06–07; 33–24–06–08; 33–24–06–10 through 33–24–06–13; 33–24–06–14, (except .3.a(4)); 33–24–06–14, Appendix I; 33–24–06–15 introductory paragraph through .1.a; 33–24–06–16.5 through .7; 33–24–06–17, (except .2.k and .2.z); 33–24–06–18 through 33–24–06–20; 33–24–06–30 through 33–24–06–35; and 33–24–06–100.

Chapter 33–24–07—Permitting Procedures: Sections 33–24–07–01; 33–24–07–02; and 33–24–07–03, (except .4).

Copies of the North Dakota regulations that are incorporated by reference are available from North Dakota Legislative Counsel, Second Floor, State Capitol, 600 E Boulevard, Bismarck, ND 58505, phone number: (701) 328–2916.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 20

[PS Docket No. 07–114; CC Docket No. 94–102; WC Docket No. 05–196; FCC 07–166]

Wireless E911 Location Accuracy Requirements

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) amends its rules in order to require wireless Enhanced 911 (E911) Phase II location accuracy and reliability standards at a geographical level defined by the coverage area of a Public Safety Answering Point (PSAP). The Commission takes this step in order to ensure an appropriate and consistent compliance methodology with respect to location accuracy standards.

DATES: The rules in 47 CFR 20.18(h) contain information collection requirements that have not been approved by the Office of Management and Budget (OMB). The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date.

FOR FURTHER INFORMATION CONTACT: Carol Simpson, Policy Division, Public Safety and Homeland Security Bureau, (202) 418–2391.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission’s *Report and Order* (Order) in PS Docket No. 07–114, CC Docket No. 94–102, WC Docket No. 05–196, FCC 07–166, adopted September 11, 2007, and released November 20, 2007. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. This document may also be obtained from the Commission’s duplicating contractor, Best Copy and Printing, Inc., in person at 445 12th Street, SW., Room CY–B402, Washington, DC 20554, via telephone at (202) 488–5300, via facsimile at (202) 488–5563, or via e-mail at FCC@BCPIWEB.COM. Alternative formats (computer diskette, large print, audio cassette, and Braille) are available to persons with disabilities by sending an e-mail to FCC504@fcc.gov or calling the Consumer and Governmental Affairs Bureau at (202) 418–0530, TTY (202) 418–0432. This document is also available on the Commission’s Web site at <http://www.fcc.gov>.

1. On June 1, 2007, we released a *Notice of Proposed Rulemaking* (NPRM) seeking comment on how to improve 911 location accuracy and reliability. We found that although measuring location accuracy at the PSAP level may present challenges, the public interest demands that carriers and technology providers strive to ensure that when wireless callers dial 911, emergency responders are provided location information that enables them to reach the site of the emergency as quickly as possible. In recognition of the fact that

many carriers are not currently measuring and testing location accuracy at the PSAP service area level, we sought comment on whether we should defer enforcement of § 20.18(h) if we adopted our tentative conclusion to require compliance at the PSAP level.

Compliance With § 20.18(h) at the PSAP Level

2. Consistent with the *NPRM*, we find that carriers should be required to meet the Commission's Phase II accuracy requirements set forth in § 20.18(h) at the PSAP service area level. Use of a PSAP-based geographic area for compliance purposes is most consistent with the purpose of the E911 rules, which, as we stated in the *NPRM*, is to ensure that PSAPs receive accurate, meaningful location information in order to dispatch local emergency responders to the correct location. Although § 20.18(h) does not explicitly state that accuracy must be measured and tested at the PSAP level, it is unreasonable to think that the Commission ever envisioned averaging of location accuracy on a large geographic basis, such as a carrier's entire national footprint.

3. As we stated in the *NPRM*, measuring over large geographic areas such as a carrier's entire national footprint could allow a service provider to claim compliance with the Commission's accuracy requirements even though the carrier cannot meet them in individual PSAP areas, or even entire states. In those circumstances, certain PSAPs receive either meaningless location information or no location information. Even worse, PSAPs may receive location information yet not know that the information is not reliable. Any of these results could extend the amount of time necessary for a 911 call taker to obtain the location of the caller or the site of an emergency—including cases as serious as callers attempting to report criminal activity impacting homeland security—and thus result in longer dispatch times, and perhaps even no response by public safety officials who lack sufficient information to locate the caller. In fact, PSAPs often answer calls with: "911. What is the address of your emergency?" because they cannot rely on carriers to meet location accuracy requirements in their PSAP service area. A lack of meaningful data regarding a caller's location would thus render the purpose of the rule—which is intended to ensure that carriers provide meaningful location information to emergency responders—a nullity. Measurement of compliance at the PSAP level is the most appropriate way

to avoid this otherwise absurd result consistent with the purpose of the rule.

4. The record in this proceeding supports our conclusion that requiring PSAP-level accuracy is necessary to ensure that the goal of providing meaningful location information to emergency responders is met. The public safety organizations that filed comments in response to the *NPRM* are nearly unanimous in their support for our tentative conclusion. These organizations represent a cross-section of the public safety community, ranging from nationwide associations such as APCO and NENA, to first responders in densely populated urban areas such as New York City, Chicago, and Orlando, to emergency response organizations in smaller communities such as Lufkin, Texas and San Juan County, New Mexico. The public safety commenters are uniquely qualified to attest to the importance of accurate and reliable location information. Their comments support our observation in the *NPRM* that averaging location accuracy over large geographic areas is likely to produce inadequate and unreliable location information in some parts of a provider's service area. The New York City Police Department, for example, emphasizes how difficult it is for PSAPs to ensure that the location information they receive from carriers is accurate and reliable. And *Consumer Reports* estimates that accurate location information is not delivered at the PSAP level in nearly half of the country.

5. Some commenters support measuring and testing location accuracy on a statewide basis, rather than at the PSAP service area level. These commenters, however, fail to address how measurement at the state level furthers the goals of § 20.18(h). State-level compliance would not solve the problem that APCO described in its 2004 request for declaratory ruling and that public safety commenters in this proceeding have also identified: State-level compliance would still allow service providers to average accuracy results over a geographic area large enough to render the location information provided to some PSAPs within the state "virtually useless." As a result, carriers may achieve acceptable levels of location accuracy in urban areas of a given state, yet provide location information of limited or no use to first responders in rural areas. Indeed, this approach would particularly shortchange residents of larger states with a significant number of PSAPs as they would be more likely to reside in a PSAP where location information of limited or no use would be provided than would residents of

smaller states. Moreover, if it is possible for carriers to comply with location accuracy requirements on a statewide basis in small states, this suggests that it would be feasible for carriers to comply with location accuracy requirements at the PSAP level across the nation were they willing to invest appropriate resources. These commenters also provide no persuasive reasons or evidence why the Commission should require compliance at any level other than the PSAP level. In the absence of any such evidence, we reject this approach.

6. Commenters also argue that we should not require location accuracy compliance at the PSAP level before completing the second phase of this rulemaking, or that we should first convene an industry forum or advisory council to assess the possibilities for improving 911 location accuracy. We reject this argument as without merit. The step we take today is necessary to ensure first responders receive meaningful location accuracy information as soon as possible, and should not be delayed while we explore additional issues regarding improving location accuracy. By making clear that compliance with § 20.18(h) must be measured at the PSAP level, we also effectively "set the stage" for the examination that lies ahead, ensuring that all stakeholders are properly discussing location accuracy at the correct geographic level.

7. Our action today, however, does not depend on that examination, nor does it preclude a more comprehensive approach to our E911 location accuracy rules, as some commenters suggest, or otherwise "plac[e] the cart before the horse." Although the *NPRM* sought comment on whether hybrid location technologies can provide even *better* location accuracy results, we do not resolve those questions in the *Order*. We only require service providers to comply with § 20.18(h) at what may be a smaller geographic area than they are currently using to measure their compliance, with whatever location technology they are now using to locate 911 callers. More specifically, we are not mandating any specific location technology or approach in the *Order*, nor are we requiring carriers to implement new location technologies. For example, carriers that currently employ a network-based location solution need not incorporate handset-based location technologies into their networks to comply with our ruling in the *Order*, or vice versa. And, as noted above, our determination here will serve to better inform the discussion going forward. For these

reasons, we are not persuaded that the action we take today is premature.

8. We also reject as without merit commenters' assertions that we should not move forward because the location technologies that are currently available are not capable of satisfying the requirements of § 20.18(h) at the PSAP service area level. In the first instance, our decision to allow carriers five years to achieve compliance at the PSAP level substantially mitigates these concerns. Furthermore, the record indicates that in many cases, PSAP-level compliance is technologically feasible today and would require only the investment of additional financial resources. In this regard, we note that while it is obviously in carriers' financial interests to argue that any meaningful requirement will not be possible to meet, carriers too often blur the distinction between that which is infeasible and that which simply requires the expenditure of additional resources. Finally, even though the record indicates that some service providers are not currently prepared to meet our current location accuracy requirements at the PSAP level, that fact alone should not prevent us from establishing the PSAP service areas as the geographic basis for compliance with the § 20.18(h) location accuracy requirements. Indeed, the Commission has consistently found it appropriate to set aggressive benchmarks for carriers and providers when public safety is at stake, and it is our judgment based on the record as well as our experience regarding the implementation of similar public safety mandates that carriers will be able to meet the compliance deadline and interim benchmarks set forth in the *Order*. While we acknowledge that meeting the deadline and benchmarks may require the investment of significant resources by certain carriers, we believe that such expenditures are more than justified by the accompanying public safety benefits. Furthermore, we believe that the *Order* will have a catalyzing effect on efforts to improve location accuracy measurement because it will create significant incentives for industry.

9. In short, the public interest demands that we no longer allow service providers to nullify our longstanding location accuracy requirements by measuring their compliance over unreasonably large geographic areas. While deployment of E911 Phase II service continues to expand, such service has no significance to local emergency responders if the location information so provided does not permit 911 call takers to locate the caller. In the interests of public safety

and homeland security, our action today thus closes any "loopholes" that may allow service providers to avoid providing meaningful location accuracy information. It is clear based on the inability to date of wireless carriers and technology vendors to provide meaningful PSAP-level accuracy that it is incumbent on us to clearly establish that compliance must be achieved at the PSAP level.

Compliance Deadline and Interim Benchmarks

10. The record in this proceeding contains encouraging evidence that location technology providers have developed and are developing technologies that can achieve PSAP-level compliance. The record also reflects that the technology exists to test, monitor, and report compliance at the PSAP level. Moreover, as noted above, PSAP-level compliance is possible in many instances through the deployment of existing resources and technologies presently available to carriers. We recognize, however, that many service providers are not currently measuring and testing location accuracy at the PSAP level, and that meeting our location accuracy requirements in every PSAP may take time to achieve. We do not intend to penalize carriers that are making good faith efforts to comply with our location accuracy requirements at the PSAP level. At the same time, we must ensure that carriers begin to transition to PSAP-level compliance without delay.

11. Accordingly, we establish a deadline of September 11, 2012 for achieving compliance with § 20.18(h) at the PSAP level. We find that allowing sufficient time for carriers to achieve compliance alleviates parties' concerns about the challenges of PSAP-level compliance with § 20.18(h), yet still leads to appreciable and swift improvements to E911 service that will result from compliance at the appropriate geographic level. The record in this proceeding supports giving carriers five years to achieve PSAP-level compliance.

12. In order to ensure that carriers are making progress toward compliance with the Commission's location accuracy requirements at the PSAP level, we establish a series of interim requirements, which carriers must also meet in order to comply with § 20.18(h). These benchmarks consist of the following:

- By September 11, 2008—one year from the date of adoption of the *Order*—each carrier subject to the rule must satisfy the location accuracy requirements of § 20.18(h) within each

Economic Area (EA) in which that carrier operates.

- By September 11, 2009—two years from the date of adoption of this *Order*—each carrier subject to the rule must file with the Commission a report describing the status of its ongoing efforts to comply with § 20.18(h).

- By September 11, 2010—three years from the date of adoption of the *Order*—each carrier subject to the rule must (1) satisfy the location accuracy requirements of § 20.18(h) within each Metropolitan Statistical Area (MSA) and Rural Service Area (RSA) in which that carrier operates; (2) demonstrate PSAP-level compliance with § 20.18(h) within at least 75% of the PSAPs the carrier serves; and (3) demonstrate accuracy in all PSAP service areas within at least 50% of the applicable location accuracy standard (in other words, a carrier subject to the accuracy standard for handset-based technologies in § 20.18(h)(2), which is 50 meters for 67 percent of calls, must achieve location accuracy of 75 meters for 67 percent of calls in all PSAPs in order to comply with this requirement).

- By September 11, 2011—four years from the date of adoption of the *Order*—each carrier subject to the rule must file with the Commission a report describing the status of its ongoing efforts to comply with § 20.18(h).

- By September 11, 2012—five years from the date of adoption of the *Order*—each carrier subject to the rule must be in full compliance with § 20.18(h) at the PSAP service area level.

In determining their compliance with these benchmarks and preparing their reports to the Commission, carriers must include only those PSAPs that are capable of receiving Phase II location data.

I. Procedural Matters

A. Paperwork Reduction Act Analysis

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

B. Congressional Review Act

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

II. Final Regulatory Flexibility Analysis

15. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was included in the NPRM in PS Docket No. 07-114; CC Docket No. 94-102; and WC Docket No. 05-196. The Commission sought written public comment on the proposals in these dockets, including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

Need for, and Objectives of, the Rules

16. In the NPRM, we sought comment on how to best ensure that public safety answering points (PSAPs) receive location information that is as accurate as possible for all wireless E911 calls. The objective was to ensure that PSAPs receive reliable and accurate location information irrespective of the location of the caller or the technology that may be used.

17. The *Report and Order* requires that Commercial Mobile Radio Service (CMRS) carriers comply by September 11, 2012, with § 20.18(h) of the Commission’s rules at the PSAP service area level and adopts interim benchmarks in each of the preceding years to achieve this level. Section 20.18(h) sets forth the standards for Phase II wireless E911 location accuracy and reliability. This action responds to a petition for declaratory ruling filed by the Association of Public-Safety Communications Officials-International, Inc. (APCO) expressing concern that by measuring and testing location accuracy over geographic areas larger than PSAP service areas, a wireless carrier can assert that it satisfies the requirements of § 20.18(h) even when it is not meeting the location accuracy requirements in substantial segments of its service area.

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

18. There were no comments filed that specifically addressed the IRFA.

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

19. 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. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

Telecommunications Service Entities

Wireless Telecommunications Service Providers

20. Below, for those services subject to auctions, we note that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

21. *Cellular Licensees.* The SBA has developed a small business size standard for wireless firms within the broad economic census category “Cellular and Other Wireless Telecommunications.” Under this SBA category, a wireless business is small if it has 1,500 or fewer employees. 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. 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 category and size standard, the great majority of firms can be considered small. Also, according to Commission data, 437 carriers reported that they were engaged in the provision of cellular service, Personal Communications Service (PCS), or Specialized Mobile Radio (SMR) Telephony services, which are placed together in the data. We have estimated that 260 of these are small, under the SBA small business size standard.

22. *Common Carrier Paging.* The SBA has developed a small business size standard for wireless firms within the broad economic census category, “Cellular and Other Wireless Telecommunications.” Under this SBA category, a wireless business is 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. 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. In the *Paging Third Report and Order*, we developed a small business size standard for “small businesses” and “very small businesses” for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A “small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. Additionally, a “very small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years. The SBA has approved these small business size standards. An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won. Also, according to Commission data, 375 carriers reported that they were engaged in the provision of paging and messaging services. Of those, we estimate that 370 are small, under the SBA-approved small business size standard.

23. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services (PCS), and specialized mobile radio (SMR) telephony carriers. As noted earlier, the SBA has developed a small business size standard for “Cellular and Other Wireless Telecommunications” services. Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees. According to Commission data, 445 carriers reported that they were engaged in the provision of wireless telephony. We have estimated that 245 of these are small under the SBA small business size standard.

24. *Broadband Personal Communications Service.* The broadband Personal Communications Service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined “small entity” for Blocks C and F as an entity that has average gross revenues of \$40 million or less in the three previous calendar years. For Block F, an additional classification for “very small business”

was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years. These standards defining "small entity" in the context of broadband PCS auctions have been approved by the SBA. No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses. There were 48 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as "small" or "very small" businesses. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant.

25. Narrowband Personal Communications Services. To date, two auctions of narrowband personal communications services (PCS) licenses have been conducted. For purposes of the two auctions that have already been held, "small businesses" were entities with average gross revenues for the prior three calendar years of \$40 million or less. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses. To ensure meaningful participation of small business entities in future auctions, the Commission has adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order*. A "small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$40 million. A "very small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$15 million. The SBA has approved these small business size standards. In the future, the Commission will auction 459 licenses to serve Metropolitan Trading Areas (MTAs) and 408 response channel licenses. There is also one megahertz of narrowband PCS spectrum that has been held in reserve and that the Commission has not yet decided to release for

licensing. The Commission cannot predict accurately the number of licenses that will be awarded to small entities in future auctions. However, four of the 16 winning bidders in the two previous narrowband PCS auctions were small businesses, as that term was defined. The Commission assumes, for purposes of this analysis, that a large portion of the remaining narrowband PCS licenses will be awarded to small entities. The Commission also assumes that at least some small businesses will acquire narrowband PCS licenses by means of the Commission's partitioning and disaggregation rules.

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

27. Air-Ground Radiotelephone Service. The Commission has not adopted a small business size standard specific to the Air-Ground Radiotelephone Service. We will use SBA's small business size standard applicable to "Cellular and Other Wireless Telecommunications," *i.e.*, an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA small business size standard.

28. Offshore Radiotelephone Service. This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico. There are presently approximately 55 licensees in this service. We are unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard for "Cellular and Other Wireless Telecommunications" services. Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.

Wireline Carriers and Service Providers

29. The SBA has developed a small business size standard for wireline firms within the broad economic census category, "Wired Telecommunications Carriers." Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees. Census Bureau data for 2002 show that there were 2,432 firms in this category that operated for the entire year. Of this total, 2,395 firms had employment of 999 or fewer employees, and 37 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.

30. We have included small incumbent local exchange carriers in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation." The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not "national" in scope. We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

31. Incumbent Local Exchange Carriers (LECs). Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category *Wired Telecommunications Carriers*. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,303 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,303 carriers, an estimated 1,020 have 1,500 or fewer employees and 283 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our action.

32. Competitive Local Exchange Carriers, Competitive Access Providers (CAPs), "Shared-Tenant Service Providers," and "Other Local Service Providers." Neither the Commission nor the SBA has developed a small business

size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 769 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 769 carriers, an estimated 676 have 1,500 or fewer employees and 93 have more than 1,500 employees. In addition, 12 carriers have reported that they are "Shared-Tenant Service Providers," and all 12 are estimated to have 1,500 or fewer employees. In addition, 39 carriers have reported that they are "Other Local Service Providers." Of the 39, an estimated 38 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, "Shared-Tenant Service Providers," and "Other Local Service Providers" are small entities that may be affected by our action.

33. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 143 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 141 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by our action.

34. *Toll Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 770 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 747 have 1,500 or fewer employees and 23 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by our action.

35. *Payphone Service Providers (PSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for payphone services providers. The appropriate size standard under SBA rules is for the

category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 613 carriers have reported that they are engaged in the provision of payphone services. Of these, an estimated 609 have 1,500 or fewer employees and four have more than 1,500 employees. Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by our action.

36. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 316 carriers have reported that they are engaged in the provision of interexchange service. Of these, an estimated 292 have 1,500 or fewer employees and 24 have more than 1,500 employees. Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by our action.

37. *Operator Service Providers (OSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 23 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 20 have 1,500 or fewer employees and three have more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by our action.

38. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 89 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, 88 are estimated to have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that all or the majority of

prepaid calling card providers are small entities that may be affected by our action.

39. *800 and 800-Like Service Subscribers.* Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service ("toll free") subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. The most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, and 877 numbers in use. According to our data, at the end of January 1999, the number of 800 numbers assigned was 7,692,955; the number of 888 numbers assigned was 7,706,393; and the number of 877 numbers assigned was 1,946,538. We do not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, we estimate that there are 7,692,955 or fewer small entity 800 subscribers; 7,706,393 or fewer small entity 888 subscribers; and 1,946,538 or fewer small entity 877 subscribers.

International Service Providers

40. The Commission has not developed a small business size standard specifically for providers of international service. The appropriate size standards under SBA rules are for the two broad census categories of "Satellite Telecommunications" and "Other Telecommunications." Under both categories, such a business is small if it has \$13.5 million or less in average annual receipts.

41. The first category of Satellite Telecommunications "comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications." For this category, Census Bureau data for 2002 show that there were a total of 371 firms that operated for the entire year. Of this total, 307 firms had annual receipts of under \$10 million, and 26 firms had receipts of \$10 million to \$24,999,999. Consequently, we estimate that the

majority of Satellite Telecommunications firms are small entities that might be affected by our action.

42. The second category of Other Telecommunications "comprises establishments primarily engaged in (1) providing specialized telecommunications applications, such as satellite tracking, communications telemetry, and radar station operations; or (2) providing satellite terminal stations and associated facilities operationally connected with one or more terrestrial communications systems and capable of transmitting telecommunications to or receiving telecommunications from satellite systems." For this category, Census Bureau data for 2002 show that there were a total of 332 firms that operated for the entire year. Of this total, 303 firms had annual receipts of under \$10 million and 15 firms had annual receipts of \$10 million to \$24,999,999. Consequently, we estimate that the majority of Other Telecommunications firms are small entities that might be affected by our action.

Cable and OVS Operators

43. *Cable and Other Program Distribution.* The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged as third-party distribution systems for broadcast programming. The establishments of this industry deliver visual, aural, or textual programming received from cable networks, local television stations, or radio networks to consumers via cable or direct-to-home satellite systems on a subscription or fee basis. These establishments do not generally originate programming material." The SBA has developed a small business size standard for Cable and Other Program Distribution, which is: all such firms having \$13.5 million or less in annual receipts. According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year. Of this total, 1,087 firms had annual receipts of under \$10 million, and 43 firms had receipts of \$10 million or more but less than \$25 million. Thus, under this size standard, the majority of firms can be considered small.

44. *Cable Companies and Systems.* The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers, nationwide. Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size

standard. In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers. Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have under 10,000 subscribers, and an additional 379 systems have 10,000–19,999 subscribers. Thus, under this second size standard, most cable systems are small.

45. *Cable System Operators.* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000." The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate. Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million, and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

46. *Open Video Services (OVS).* In 1996, Congress established the open video system (OVS) framework, one of four statutorily recognized options for the provision of video programming services by local exchange carriers (LECs). The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services, OVS falls within the SBA small business size standard of Cable and Other Program Distribution Services, which consists of such entities having \$13.5 million or less in annual receipts. The Commission has certified 25 OVS operators, with some now providing service. Broadband service providers (BSPs) are currently the only significant holders of OVS certifications or local OVS franchises. As of June, 2005, BSPs served approximately 1.4 million subscribers, representing 1.5 percent of all MVPD households. Affiliates of Residential Communications Network, Inc. (RCN), which serves about 371,000 subscribers as of June, 2005, is currently the largest BSP and 14th largest MVPD. RCN

received approval to operate OVS systems in New York City, Boston, Washington, DC and other areas. The Commission does not have financial information regarding the entities authorized to provide OVS, some of which may not yet be operational. We thus believe that at least some of the OVS operators may qualify as small entities.

Internet Service Providers

47. *Internet Service Providers.* The SBA has developed a small business size standard for Internet Service Providers (ISPs). ISPs "provide clients access to the Internet and generally provide related services such as web hosting, web page designing, and hardware or software consulting related to Internet connectivity." Under the SBA size standard, such a business is small if it has average annual receipts of \$23 million or less. According to Census Bureau data for 2002, there were 2,529 firms in this category that operated for the entire year. Of these, 2,437 firms had annual receipts of under \$10 million, and 47 firms had receipts of \$10 million or more but less than \$25 million. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

48. *All Other Information Services.* "This industry comprises establishments primarily engaged in providing other information services (except new syndicates and libraries and archives)." The SBA has developed a small business size standard for this category; that size standard is \$6.5 million or less in average annual receipts. According to Census Bureau data for 1997, there were 195 firms in this category that operated for the entire year. Of these, 172 had annual receipts of under \$5 million, and an additional nine firms had receipts of between \$5 million and \$9,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

Equipment Manufacturers

49. *Wireless Communications Equipment Manufacturing.* The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment." The SBA has

developed a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, which is: all such firms having 750 or fewer employees. According to Census Bureau data for 2002, there were a total of 1,041 establishments in this category that operated for the entire year. 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.

50. Telephone Apparatus Manufacturing. The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged in manufacturing wire telephone and data communications equipment. These products may be standalone or board-level components of a larger system. Examples of products made by these establishments are central office switching equipment, cordless telephones (except cellular), PBX equipment, telephones, telephone answering machines, LAN modems, multi-user modems, and other data communications equipment, such as bridges, routers, and gateways." The SBA has developed a small business size standard for Telephone Apparatus Manufacturing, which is: all such firms having 1,000 or fewer employees. According to Census Bureau data for 2002, there were a total of 518 establishments in this category that operated for the entire year. Of this total, 511 had employment of under 1,000, and an additional 7 had employment of 1,000 to 2,499. Thus, under this size standard, the majority of firms can be considered small.

51. Semiconductor and Related Device Manufacturing. These establishments manufacture "computer storage devices that allow the storage and retrieval of data from a phase change, magnetic, optical, or magnetic/optical media." The SBA has developed a small business size standard for this category of manufacturing; that size standard is 500 or fewer employees. According to Census Bureau data for 1997, there were 1,082 establishments in this category that operated for the entire year. Of these, 987 had employment of under 500, and 52 establishments had employment of 500 to 999.

52. Computer Storage Device Manufacturing. These establishments manufacture "computer storage devices that allow the storage and retrieval of data from a phase change, magnetic, optical, or magnetic/optical media." The

SBA has developed a small business size standard for this category of manufacturing; that size standard is 1,000 or fewer employees. According to Census Bureau data for 1997, there were 209 establishments in this category that operated for the entire year. Of these, 197 had employment of under 500, and eight establishments had employment of 500 to 999.

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

53. In this *Report and Order*, we have taken steps to advance our public safety mission by establishing a requirement that CMRS carriers comply by September 11, 2012, at the PSAP service area level, with § 20.18(h) of the Commission's rules. The Order requires carriers to submit compliance reports to the Commission at the two-year and four-year marks, explaining their progress in achieving compliance with § 20.18(h) at the PSAP level. In addition, some carriers may have to revise their internal recordkeeping procedures to comply with the Order's requirements, although the Order imposes no specific requirements in this regard.

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

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

55. In the *Notice*, the Commission specifically considered the impact of potential revisions to the wireless E911 accuracy rules on small entities. The *Notice* asked whether certain classes of carriers and/or rural networks should be held to a uniform standard of accuracy if the Commission were to adopt one, and if so, by what date they should be required to come into compliance with a more stringent, uniform accuracy requirement. In previous rulemakings, the Commission has established different compliance deadlines for small wireless carriers. The questions posed in the *Notice* enabled the Commission to

assess whether similar concessions to small entities were warranted with respect to wireless E911 accuracy requirements.

56. The Commission has determined that the benefits of requiring all CMRS carriers to comply with the requirements of § 20.18(h) at the PSAP service area level far outweigh any burdens associated with implementing these requirements. E-911 represents a significant and valuable investment that enables emergency responders to reach the site of an emergency as quickly as possible. The public safety comments in response to the *Notice* were nearly unanimous in support of this requirement. We acknowledge that compliance with the rule adopted in the order may impose cost burdens on small entities. However, given the great public interest benefits of the rules, we find that the public interest benefits outweigh the economic burdens. Furthermore, the Order gives carriers a full five years to come into compliance with § 20.18(h) at the PSAP level, in large part because we have taken into account the specific economic and technological concerns that small entities face. In the Initial Regulatory Flexibility Analysis, we sought comment on these rules and no commenter proposed an alternative version that would serve these benefits while lessening the economic burdens. Accordingly, we find that we have discharged our duty to consider the burdens imposed on small entities.

Report to Congress

57. 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. In addition, the Commission will send a copy of the Second Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Second Report and Order and FRFA (or summaries thereof) will also be published in the *Federal Register*.

III. Ordering Clauses

58. Accordingly, *it is ordered*, pursuant to sections 1, 4(i), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 332, that the Report and Order in PS Docket No. 07-114, CC Docket No. 94-102, and WC Docket No. 05-196 is adopted, and that part 20 of the Commission's rules, 47 CFR part 20, is amended. The Order shall become effective April 14, 2008, subject to OMB approval for new information collection requirements.

59. *It is further ordered* that the Request for Declaratory Ruling filed by APCO is granted to the extent indicated herein.

60. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 20

Communications equipment, Radio. Federal Communications Commission.

Marlene H. Dortch,
Secretary.

Final Rules

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 20 to read as follows:

PART 20—COMMERCIAL MOBILE RADIO SERVICES

■ 1. The authority for part 20 continues to read as follows:

Authority: 47 U.S.C. 154, 160, 201, 251–254, 303, and 332 unless otherwise noted.

■ 2. Section 20.18 paragraph (h) is revised to read as follows:

§ 20.18 911 Services.

* * * * *

(h) *Phase II accuracy.* (1) By September 11, 2012, licensees subject to this section shall comply with the following standards for Phase II location accuracy and reliability, to be tested and measured at the PSAP service area geographic level:

(i) For network-based technologies: 100 meters for 67 percent of calls, 300 meters for 95 percent of calls;

(ii) For handset-based technologies: 50 meters for 67 percent of calls, 150 meters for 95 percent of calls.

(iii) For the remaining 5 percent of calls, location attempts must be made and a location estimate must be provided to the appropriate PSAP.

(2) By the dates specified in this paragraph, carriers must satisfy the following requirements:

(i) By September 11, 2008, carriers must satisfy the location accuracy standards in paragraph (h)(1) of this section within each Economic Area (EA) in which that carrier operates;

(ii) By September 11, 2009, carriers must file with the Commission a report describing the status of their ongoing efforts to comply with § 20.18(h);

(iii) By September 11, 2010, carriers must:

(A) Satisfy the location accuracy standards in paragraph (h)(1) of this section within each Metropolitan Statistical Area (MSA) and Rural Service Area (RSA) in which that carrier operates;

(B) Demonstrate PSAP-level compliance with the location accuracy standards in paragraph (h)(1) of this section within at least 75% of the PSAPs the carrier serves; and

(C) Demonstrate accuracy in all PSAP service areas within at least 50% of the applicable location accuracy standard (i.e., a carrier subject to the location accuracy standards in paragraph (h)(1)(ii) of this section must achieve location accuracy of 75 meters for 67 percent of calls in all PSAPs).

(iv) By September 11, 2011, carriers must file with the Commission a report describing the status of their ongoing efforts to comply with § 20.18(h).

(v) By September 11, 2012, carriers must be in full compliance with § 20.18(h) at the PSAP service area level.

(3) In assessing their compliance with the requirements of this section, carriers must include only those PSAPs that are capable of receiving Phase II location data.

* * * * *

[FR Doc. E8-2797 Filed 2-13-08; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 080208139-8152-01]

RIN 0648-XF58

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan

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

ACTION: Temporary rule.

SUMMARY: The Assistant Administrator for Fisheries (AA), NOAA, announces temporary restrictions consistent with the requirements of the Atlantic Large Whale Take Reduction Plan's (ALWTRP) implementing regulations. These regulations apply to lobster trap/pot and anchored gillnet fishermen in an area totaling approximately 2,708 nm² (9,288 km²) in February and 2,648 nm² (9,082 km²) in March, southeast of

Portland, Maine, for 15 days. The purpose of this action is to provide protection to an aggregation of northern right whales (right whales).

DATES: Effective beginning at 0001 hours February 19, 2008, through 2400 hours March 3, 2008.

ADDRESSES: Copies of the proposed and final Dynamic Area Management (DAM) rules, Environmental Assessments (EAs), Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, and progress reports on implementation of the ALWTRP may also be obtained by writing Diane Borggaard, NMFS/Northeast Region, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT:

Diane Borggaard, NMFS/Northeast Region, 978-281-9300 x6503; or Kristy Long, NMFS, Office of Protected Resources, 301-713-2322.

SUPPLEMENTARY INFORMATION:

Electronic Access

Several of the background documents for the ALWTRP and the take reduction planning process can be downloaded from the ALWTRP web site at <http://www.noro.noaa.gov/whaletrp/>.

Background

The ALWTRP was developed pursuant to section 118 of the Marine Mammal Protection Act (MMPA) to reduce the incidental mortality and serious injury of three endangered species of whales (right, fin, and humpback) due to incidental interaction with commercial fishing activities. In addition, the measures identified in the ALWTRP would provide conservation benefits to a fourth species (minke), which are neither listed as endangered nor threatened under the Endangered Species Act (ESA). The ALWTRP, implemented through regulations codified at 50 CFR 229.32, relies on a combination of fishing gear modifications and time/area closures to reduce the risk of whales becoming entangled in commercial fishing gear (and potentially suffering serious injury or mortality as a result).

On January 9, 2002, NMFS published the final rule to implement the ALWTRP's DAM program (67 FR 1133). On August 26, 2003, NMFS amended the regulations by publishing a final rule, which specifically identified gear modifications that may be allowed in a DAM zone (68 FR 51195). The DAM program provides specific authority for NMFS to restrict temporarily on an expedited basis the use of lobster trap/pot and anchored gillnet fishing gear in areas north of 40° N. lat. to protect right