

being authorized by EPA. EPA's authorization does not impose any additional burdens on these small entities. This is because EPA's authorization would simply result in an administrative change, rather than a change in the substantive requirements imposed on these small entities.

Therefore, EPA provides the following certification under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act. Pursuant to the provision at 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization approves regulatory requirements under existing State law to which small entities are already subject. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments and the private sector. Under sections 202 and 205 of the UMRA, EPA generally must prepare a written statement of economic and regulatory alternatives analyses for proposed and final rules with Federal mandates, as defined by the UMRA, that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. The section 202 and 205 requirements do not apply to today's action because it is not a "Federal mandate" and because it does not impose annual costs of \$100 million or more.

Today's rule contains no Federal mandates for State, local or tribal governments or the private sector for two reasons. First, today's action does not impose new or additional enforceable duties on any State, local or tribal governments or the private sector

because the requirements of the Arizona program are already imposed by the State and subject to State law. Second, the Act also generally excludes from the definition of a "Federal mandate" duties that arise from participation in a voluntary Federal program. Arizona's participation in an authorized hazardous waste program is voluntary.

Even if today's rule did contain a Federal mandate, this rule will not result in annual expenditures of \$100 million or more for State, local, and/or tribal governments in the aggregate, or the private sector. Costs to State, local and/or tribal governments already exist under the Arizona's program, and today's action does not impose any additional obligations on regulated entities. In fact, EPA's approval of state programs generally may reduce, not increase, compliance costs for the private sector.

The requirements of section 203 of UMRA also do not apply to today's action. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, section 203 of the UMRA requires EPA to develop a small government agency plan. This rule contains no regulatory requirements that might significantly or uniquely affect small governments. The Agency recognizes that although small governments may be hazardous waste generators, transporters, or own and/or operate TSDFs, they are already subject to the regulatory requirements under existing state law which are being authorized by EPA, and, thus, are not subject to any additional significant or unique requirements by virtue of this program approval.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and Record keeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated: February 17, 1997.

Felicia Marcus,

Regional Administrator.

[FR Doc. 97-5622 Filed 3-6-97; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[ET Docket No. 94-45; FCC 97-31]

Marketing and Equipment Authorizations

AGENCY: Federal Communications Commission

ACTION: Final rule

SUMMARY: By this *Report and Order*, the Commission amends its regulations to consolidate and harmonize the marketing rules, as proposed in the *Notice of Proposed Rule Making* in this proceeding. This amendment permits radio frequency devices, prior to authorization or a determination of compliance with the technical standards, to be announced, advertised, displayed, and operated for compliance testing, demonstrated at trade shows, or evaluated at the manufacturer's facilities. In addition, non-consumer devices that have not been tested or authorized can be offered for conditional sale or supplied to the user for evaluation or compliance testing. The equipment authorizations regulations are also amended to provide clarification, to resolve inconsistencies, to remove unnecessary restrictions and obsolete regulations, and to incorporate several interpretations. These amendments will stimulate economic growth by permitting products to be developed on a cooperative basis by manufacturers and retailers, and by potentially decreasing the time for a product to reach the marketplace.

EFFECTIVE DATE: April 7, 1997.

FOR FURTHER INFORMATION CONTACT: John A. Reed, Office of Engineering and Technology, (202) 418-2455.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order* in ET Docket No. 94-45, adopted February 3, 1997, and released February 12, 1997.

The complete text of this *Report and Order* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, D.C. 20037.

Summary of the Report and Order

1. In the *Report and Order*, the Commission amended Part 2 of its rules regarding the marketing and operation of radio frequency (RF) devices.

Marketing includes the sale or lease, offer for sale or lease, including advertising for sale or lease, and importation, shipment or distribution for the purpose of sale or lease or offering for sale or lease. Previously, the rules prohibited the marketing and operation of an RF device unless it complies with all of the standards and the equipment authorization procedures. Certain exceptions to these rules were provided for verified digital devices and non-consumer ISM products operated under Part 18 of the rules.

2. The order harmonizes the marketing rules by permitting RF devices, prior to authorization or a determination of compliance with the technical standards, to be announced, advertised, displayed, and, if compliant with any Commission license requirements, operated for compliance testing, demonstrated at trade shows, or evaluated at the manufacturer's facilities. In addition, non-consumer RF devices, *i.e.*, products employed at business, commercial, industrial, scientific or medical sites, prior to testing or authorization, may be offered for conditional sale or supplied to the user for evaluation or compliance testing. As under the previous rules, no products may be marketed or supplied to the general public prior to testing or authorization. Further, these products must be designed with the intent of complying with all applicable regulations.

3. On its own motion, the Commission also adopted several additional changes to the equipment authorization rules to resolve inconsistencies, to provide clarification, to remove unnecessary restrictions and obsolete regulations, and to incorporate several interpretations. Specifically, the Commission amended the rules to indicate, explicitly, that, as with any request for authorization, an anti-drug abuse statement is required with requests for permissive changes. In addition, the rules now state that proper labelling of a product is a condition of the grant of equipment authorization and is required prior to marketing. The Commission also clarified that a product is considered to be "electrically identical" if no changes are made to the product or if any changes to the product could be treated as Class I permissive changes. Further, duplicative or outdated regulations, *e.g.*, references to type approval which is no longer employed, were removed, and erroneous rule citations were corrected.

4. The Commission amended its rules to state that any party that modifies an authorized RF device becomes

responsible for ensuring that the modified product continues to comply with the appropriate standards and must maintain whatever records are required to demonstrate such compliance. In order to facilitate identification, the Commission also stated that a product modified by someone other than the original responsible party be labelled with the name, address and telephone number of the new responsible party along with a statement that the product has been modified. Alternatively, the party modifying the equipment could obtain a new equipment authorization.

5. Finally, the Commission amended the regulations regarding authorization under the verification procedure to clarify what information needs to be retained by the responsible party, to indicate the time period within which requests by the Commission for product samples must be submitted, and to identify the party that is responsible for submitting those samples.

Final Regulatory Flexibility Analysis

6. As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603 ("RFA"), an Initial Regulatory Flexibility Analysis ("IRFA") was incorporated into the *Notice of Proposed Rule Making* ("NPRM"), in ET Docket No. 94-45.¹ The Commission sought written public comments on the proposals in the Notice, including the IRFA. The Commission's Final Regulatory Flexibility Analysis ("FRFA") in this Report and Order conforms to the RFA, as amended by the Contract With America Advancement Act of 1996 (CWAAA), Public Law 104-121, 110 Stat. 847 (1996).²

7. Need For and Objective of the Rules

Our objectives are to facilitate the marketing and early use of radio frequency (RF) devices by permitting vendors, manufacturers, and importers to market such devices prior to a demonstration of compliance with applicable technical standards and equipment authorization procedures, and to promote efficiency and equity in our rules by requiring that any party that modifies an RF device be responsible for ensuring compliance with applicable technical standards. This action will also facilitate the retrieval of RF device test records by the Commission, remove outdated regulations, and correct existing errors and ambiguities in the rules.

¹ See 9 FCC Rcd 2702 (1994), 59 FR 31966, June 21, 1994.

² Subtitle II of the CWAAA is "The Small Business Regulatory Enforcement Fairness Act of 1996" (SBREFA), codified at 5 U.S.C. 601 *et seq.*

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

No comments were submitted in direct response to the IRFA. However, Alcatel Network Systems, Inc. (ANS), AT&T Corp., Computer and Business Equipment Manufacturer's Association (CBEMA) and International Business Machines Corp. (IBM) suggested changes to our proposed reporting and record keeping requirements for modified RF devices. ANS and CBEMA oppose the proposal that a party modifying equipment be required to label the modified equipment with additional information, *i.e.*, the name, address and telephone number of the party performing the modifications. AT&T, with support from ANS, CBEMA and IBM, requests that the party modifying the equipment not be required to obtain and retain the original equipment design drawings.

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

For the purposes of this Order, the RFA defines a "small business" to be the same as a "small business concern" under the Small Business Act, 15 U.S.C. 632, unless the Commission has developed one or more definitions that are appropriate to its activities.³ Under the Small Business Act, a "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).⁴ These new rules will apply to computer manufacturers and other RF device manufacturers as well as those entities that modify and market RF equipment.

(a) Computer Manufacturers: According to SBA regulations, a computer manufacturer must have 1,000 or fewer employees in order to qualify as a small entity.⁵ Census Bureau data indicates that there are 716 firms that manufacture electronic computers and of those, 659 have fewer than 500 employees and qualify as small entities.⁶ The remaining 57 firms have 500 or more employees; however, we are unable to determine how many of those have fewer than 1,000 employees

³ See 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in 5 U.S.C. 632).

⁴ See 15 U.S.C. 632.

⁵ See 13 CFR 121.201, (SIC) code 3571.

⁶ See U.S. Small Business Administration 1995 Economic Census Industry and Enterprise Report, Table 3, SIC Code 3571, (Bureau of the Census data adapted by the Office of Advocacy of the U.S. Small Business Administration).

and therefore also qualify as small entities under the SBA definition.

(b) RF Equipment Manufacturers: The Commission has not developed a definition of small entities applicable to RF equipment manufacturers. Therefore, we will utilize the SBA definition applicable to manufacturers of Radio and Television Broadcasting and Communications Equipment. According to the SBA's regulations, an RF equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern.⁷ Census Bureau data indicates that there are 858 U.S. companies that manufacture radio and television broadcasting and communications equipment, and that 778 of these firms have fewer than 750 employees and would be classified as small entities.⁸ The Census Bureau category is very broad, and specific figures are not available as to how many of these firms are manufacturers of RF devices. However, we believe that many of them may qualify as small entities.

10. The Commission has not developed a definition of small entities applicable to services which are related specifically to RF devices. Therefore, the applicable definition of small entity is the definition under the Small Business Administration (SBA) rules applicable to Communications Services, Not Elsewhere Classified. This definition provides that a small entity is expressed as one with \$11.0 million or less in annual receipts.⁹ The Census Bureau data indicates that of the 848 firms in the "Communications Services, Not Elsewhere Classified" category, 775 are small businesses.¹⁰ We estimate that under this definition the majority of entities that market and modify RF devices may be small entities.

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

Our new rules transfer the responsibility for ensuring that a modified RF device complies with our technical standards from the vendor, manufacturer, or importer to the modifying party. However, requirements to measure the equipment to show that it continues to comply with these standards are consistent with the former rules. Further, even under the former

rules—while they were not clearly defined—a party modifying an RF device was required to retain its measurement data showing that the modified device complied with these standards. A modifying party must also label the equipment with its name, address and telephone number, unless it obtains a new authorization for the modified equipment. The type of skills needed to label equipment is usually clerical.

12. Under our new rules greater flexibility will be provided to vendors, manufacturers, and importers, thus decreasing the regulatory burden on such entities. Further, when an RF device is modified, any increased reporting and record keeping requirement imposed on the modifying party will be offset by a decreased reporting requirement on the vendor, manufacturer, or importer. Moreover, there is no requirement that any RF device be modified. Therefore, to the extent that a small entity chooses to modify an RF device, it is because that entity believes the benefits of modifying the device outweigh its costs, including reporting and record keeping requirements.

13. Significant Alternatives and Steps Taken to Minimize Significant Economic Impact on a Substantial Number of Small Entities Consistent with Stated Objectives

As proposed in the *NPRM*, any entity that remanufactures or otherwise modifies an authorized RF device would be designated as responsible for ensuring that the device continues to comply with our applicable technical standards, and would be required to retain records of its modification relative to the original design drawings. However, after reviewing comments, we conclude that it is unnecessary for the modifying party to obtain the original design drawings. Accordingly, in this Report and Order, we are requiring only that the modifying party retain records showing the changes made to the device, together with test records demonstrating that the device continues to comply with the applicable standards.¹¹ We also are changing another proposal in the *NPRM* by not requiring that a modified RF device be labelled with the name, address, and telephone number of the modifying party, provided the party performing the modifications obtains a new equipment authorization. These changes will reduce the impact of our new regulations on small entities.

14. Report to Congress

The Commission shall send a copy of this Final Regulatory Flexibility Analysis, along with this Report and Order, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 2

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Title 47 of the Code of Federal Regulations, Part 2, is amended as follows:

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

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

Authority: Sections 4, 302, 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154, 302, 303, and 307, unless otherwise noted.

2. Section 2.803 is revised to read as follows:

§ 2.803 Marketing of radio frequency devices prior to equipment authorization.

(a) Except as provided elsewhere in this section, no person shall sell or lease, or offer for sale or lease (including advertising for sale or lease), or import, ship, or distribute for the purpose of selling or leasing or offering for sale or lease, any radio frequency device unless:

(1) In the case of a device subject to type acceptance, certification, or notification, such device has been authorized by the Commission in accordance with the rules in this chapter and is properly identified and labelled as required by § 2.925 and other relevant sections in this chapter; or

(2) In the case of a device that is not required to have a grant of equipment authorization issued by the Commission, but which must comply with the specified technical standards prior to use, such device also complies with all applicable administrative (including verification of the equipment or authorization under a Declaration of Conformity, where required), technical, labelling and identification requirements specified in this chapter.

(b) The provisions of paragraph (a) of this section do not prohibit conditional sales contracts between manufacturers

⁷ See 13 CFR 121.201, (SIC) Code 3663.

⁸ See U.S. Dept. of Commerce, *1992 Census of Transportation, Communications and Utilities* (issued May 1995), SIC category 3663.

⁹ See 13 CFR 121.201, Standard Industrial Classification (SIC) Code 4899.

¹⁰ See U.S. Small Business Administration 1995 Economic Census Industry and Enterprise Report, Table 2D, SIC Code 3571, (Bureau of the Census data adapted by the Office of Advocacy of the U.S. Small Business Administration).

¹¹ See paras. 28–29 of this Report and Order.

and wholesalers or retailers where delivery is contingent upon compliance with the applicable equipment authorization and technical requirements, nor do they prohibit agreements between such parties to produce new products, manufactured in accordance with designated specifications.

(c) Notwithstanding the provisions of paragraphs (a), (b), (d) and (f) of this section, a radio frequency device may be advertised or displayed, *e.g.*, at a trade show or exhibition, prior to equipment authorization or, for devices not subject to the equipment authorization requirements, prior to a determination of compliance with the applicable technical requirements *provided* that the advertising contains, and the display is accompanied by, a conspicuous notice worded as follows:

This device has not been authorized as required by the rules of the Federal Communications Commission. This device is not, and may not be, offered for sale or lease, or sold or leased, until authorization is obtained.

(1) If the product being displayed is a prototype of a product that has been properly authorized and the prototype, itself, is not authorized due to differences between the prototype and the authorized product, the following disclaimer notice may be used in lieu of the notice stated in paragraph (c) introductory text of this section:

Prototype. Not for sale.

(2) Except as provided elsewhere in this chapter, devices displayed under the provisions of paragraphs (c) introductory text, and (c)(1) of this section may not be activated or operated.

(d) Notwithstanding the provisions of paragraph (a) of this section, the offer for sale solely to business, commercial, industrial, scientific or medical users (but not an offer for sale to other parties or to end users located in a residential environment) of a radio frequency device that is in the conceptual, developmental, design or pre-production stage is permitted prior to equipment authorization or, for devices not subject to the equipment authorization requirements, prior to a determination of compliance with the applicable technical requirements *provided* that the prospective buyer is advised in writing at the time of the offer for sale that the equipment is subject to the FCC rules and that the equipment will comply with the appropriate rules before delivery to the buyer or to centers of distribution. If a product is marketed in compliance with the provisions of this paragraph, the

product does not need to be labelled with the statement in paragraph (c) of this section.

(e)(1) Notwithstanding the provisions of paragraph (a) of this section, prior to equipment authorization or determination of compliance with the applicable technical requirements any radio frequency device may be operated, but not marketed, for the following purposes and under the following conditions:

(i) Compliance testing;

(ii) Demonstrations at a trade show provided the notice contained in paragraph (c) of this section is displayed in a conspicuous location on, or immediately adjacent to, the device;

(iii) Demonstrations at an exhibition conducted at a business, commercial, industrial, scientific, or medical location, but excluding locations in a residential environment, provided the notice contained in paragraphs (c) or (d) of this section, as appropriate, is displayed in a conspicuous location on, or immediately adjacent to, the device;

(iv) Evaluation of product performance and determination of customer acceptability, provided such operation takes place at the manufacturer's facilities during developmental, design, or pre-production states; or

(v) Evaluation of product performance and determination of customer acceptability where customer acceptability of a radio frequency device cannot be determined at the manufacturer's facilities because of size or unique capability of the device, provided the device is operated at a business, commercial, industrial, scientific, or medical user's site, but not at a residential site, during the development, design or pre-production stages. A product operated under this provision shall be labelled, in a conspicuous location, with the notice in paragraph (c) of this section.

(2) For the purpose of paragraphs (e)(1)(iv) and (e)(1)(v) of this section, the term "manufacturer's facilities" includes the facilities of the party responsible for compliance with the regulations and the manufacturer's premises, as well as the facilities of other entities working under the authorization of the responsible party in connection with the development and manufacture, but not marketing, of the equipment.

(3) The provisions of paragraphs (e)(1)(i), (e)(1)(ii), (e)(1)(iii), (e)(1)(iv), and (e)(1)(v) of this section do not eliminate any requirements for station licenses for products that normally require a license to operate, as specified elsewhere in this chapter.

Manufacturers should note that station licenses are not required for some products, *e.g.*, products operating under part 15 of this chapter and certain products operating under part 95 of this chapter.

(4) Marketing, as used in this section, includes sale or lease, or offering for sale or lease, including advertising for sale or lease, or importation, shipment, or distribution for the purpose of selling or leasing or offering for sale or lease.

(5) Products operating under the provisions of this paragraph (e) shall not be recognized to have any vested or recognizable right to continued use of any frequency. Operation is subject to the conditions that no harmful interference is caused and that any interference received must be accepted. Operation shall be required to cease upon notification by a Commission representative that the device is causing harmful interference and shall not resume until the condition causing the harmful interference is corrected.

(f) For radio frequency devices subject to verification and sold solely to business, commercial, industrial, scientific, and medical users (excluding products sold to other parties or for operation in a residential environment), parties responsible for verification of the devices shall have the option of ensuring compliance with the applicable technical specifications of this chapter at each end user's location after installation, provided that the purchase or lease agreement includes a proviso that such a determination of compliance be made and is the responsibility of the party responsible for verification of the equipment. If the purchase or lease agreement contains this proviso and the responsible party has the product measured to ensure compliance at the end user's location, the product does not need to be labelled with the statement in paragraph (c) of this section.

(g) The provisions in paragraphs (b) through (f) of this section apply only to devices that are designed to comply with, and to the best of the responsible party's knowledge will, upon testing, comply with all applicable requirements in this chapter. The provisions in paragraphs (b) through (f) of this section do not apply to radio frequency devices that could not be authorized or legally operated under the current rules. Such devices shall not be operated, advertised, displayed, offered for sale or lease, sold or leased, or otherwise marketed absent a license issued under part 5 of this chapter or a special temporary authorization issued by the Commission.

(h) The provisions in subpart K of this part continue to apply to imported radio frequency devices.

§ 2.805 [Removed]
3. Section 2.805 is removed.

§ 2.806 [Removed]
4. Section 2.806 is removed.
5. Section 2.807 is amended by revising the introductory paragraph to read as follows:

§ 2.807 Statutory exceptions.
As provided by Section 302(c) of the Communications Act of 1934, as amended, § 2.803 shall not be applicable to:

* * * * *

§ 2.809 [Removed]
6. Section 2.809 is removed.
7. Section 2.811 is revised to read as follows:

§ 2.811 Transmitters operated under part 73 of this chapter.

Section 2.803(a) through (d) shall not be applicable to a transmitter operated in any of the Radio Broadcast Services regulated under part 73 of this chapter, provided the conditions set out in part 73 of this chapter for the acceptability of such transmitter for use under licensing are met.

8. Section 2.813 is revised to read as follows:

§ 2.813 Transmitters operated in the Instructional Television Fixed Service.

Section 2.803(a) through (d) shall not be applicable to a transmitter operated in the Instructional Television Fixed Service regulated under part 74 of this chapter, provided the conditions in § 74.952 of this chapter for the acceptability of such transmitter for licensing are met.

9. Section 2.815 is amended by revising paragraphs (d) and (e) to read as follows:

§ 2.815 External radio frequency power amplifiers.

* * * * *

(d) The proscription in paragraph (b) of this section shall not apply to the marketing, as defined in paragraph (b) of this section, by a licensed amateur radio operator to another licensed amateur radio operator of an external radio frequency power amplifier fabricated in not more than one unit of the same model in a calendar year by that operator provided the amplifier is for the amateur operator's personal use at his licensed amateur radio station and the requirements of §§ 97.315 and 97.317 of this chapter are met.

(e) The proscription in paragraph (c) of this section shall not apply in the

marketing, as defined in paragraph (c) of this section, by a licensed amateur radio operator to another licensed amateur radio operator of an external radio frequency power amplifier if the amplifier is for the amateur operator's personal use at his licensed amateur radio station and the requirements of §§ 97.315 and 97.317 of this chapter are met.

§ 2.901 [Amended]
10. Section 2.901 is amended by removing the words in paragraphs (a) and (b) "type approval,".

§ 2.903 [Removed]
11. Section 2.903 is removed.
12. Section 2.909 is amended by adding a last sentence to paragraphs (a) and (b) and by adding new paragraphs (c)(3) and (d) to read as follows:

§ 2.909 Responsible party.

* * * * *

(a) * * * If the radio frequency equipment is modified by any party other than the grantee and that party is not working under the authorization of the grantee pursuant to § 2.929(b), the party performing the modification is responsible for compliance of the product with the applicable administrative and technical provisions in this chapter.

(b) * * * If subsequent to manufacture and importation, the radio frequency equipment is modified by any party not working under the authority of the responsible party, the party performing the modification becomes the new responsible party.

(c) * * *
(3) If the radio frequency equipment is modified by any party not working under the authority of the responsible party, the party performing the modifications, if located within the U.S., or the importer, if the equipment is imported subsequent to the modifications, becomes the new responsible party.

(d) If, because of modifications performed subsequent to authorization, a new party becomes responsible for ensuring that a product complies with the technical standards and the new party does not obtain a new equipment authorization, the equipment shall be labelled, following the specifications in § 2.925(d), with the following: "This product has been modified by [insert name, address and telephone number of the party performing the modifications]."

13. Section 2.913 is amended by revising paragraph (a) to read as follows:

§ 2.913 Submittal of equipment authorization application or information to the Commission.

(a) Unless otherwise directed, applications with fees attached for the equipment authorization, pursuant to § 1.1103 of this chapter, must be submitted following the procedures described in § 0.401(b) of this chapter. The address for applications submitted by mail is: Federal Communications Commission, Equipment Approval Services, P. O. Box 358315, Pittsburgh, PA 15251-5315. If the applicant chooses to make use of an air courier/package delivery service, the following address must appear on the outside of the package/envelope: Federal Communications Commission, c/o Mellon Bank, Three Mellon Bank Center, 525 William Penn Way, 27th floor, Room 153-2713, Pittsburgh, Pennsylvania 15259-0001, Attention: Wholesale Lockbox Supervisor.

* * * * *

§ 2.915 [Amended]
14. Section 2.915 is amended by removing the words "type approval," in paragraphs (a) introductory text and (c).

§ 2.917 [Amended]
15. Section 2.917 is amended by removing paragraph (d).
16. Section 2.924 is revised to read as follows:

§ 2.924 Marketing of electrically identical equipment having multiple trade names and models or type numbers under the same FCC Identifier.

The grantee of an equipment authorization may market devices having different model/type numbers or trade names without additional authorization from the Commission, provided that such devices are electrically identical and the equipment bears an FCC Identifier validated by a grant of equipment authorization. A device will be considered to be electrically identical if no changes are made to the device authorized by the Commission, or if the changes made to the device would be treated as class I permissive changes within the scope of §§ 2.1001(b)(1) and 2.1043(b)(1). Changes to the model number or trade name by anyone other than the grantee, or under the authorization of the grantee, shall be performed following the procedures in § 2.933.

17. Section 2.925 is amended by removing paragraph (g) and by revising paragraphs (b)(4), (d) introductory text and (f) to read as follows:

§ 2.925 Identification of equipment.

* * * * *

(b) * * *

(4) For a transceiver, the receiver portion of which is subject to verification pursuant to § 15.101 of this chapter, the FCC Identifier required for the transmitter portion shall be preceded by the term "FCC ID".

* * * * *

(d) In order to validate the grant of equipment authorization, the nameplate or label shall be permanently affixed to the equipment and shall be readily visible to the purchaser at the time of purchase.

* * * * *

(f) The term "FCC ID" and the coded identification assigned by the Commission shall be in a size of type large enough to be readily legible, consistent with the dimensions of the equipment and its nameplate. However, the type size for the FCC Identifier is not required to be larger than eight-point.

§ 2.926 [Amended]

18. Section 2.926 is amended by removing the reference in paragraph (e) "§ 15.69" and adding in its place "§ 15.101 of this chapter".

19. Section 2.927 is amended by removing paragraph (d) and by revising paragraphs (a) and (b) to read as follows:

§ 2.927 Limitations on grants.

(a) A grant of equipment authorization is valid only when the FCC Identifier is permanently affixed on the device and remains effective until revoked or withdrawn, rescinded, surrendered, or a termination date is otherwise established by the Commission.

(b) A grant of an equipment authorization signifies that the Commission has determined that the equipment has been shown to be capable of compliance with the applicable technical standards if no unauthorized change is made in the equipment and if the equipment is properly maintained and operated. The issuance of a grant of equipment authorization shall not be construed as a finding by the Commission with respect to matters not encompassed by the Commission's rules, especially with respect to compliance with 18 U.S.C. 2512.

* * * * *

20. Section 2.929 is amended by revising paragraph (b)(1) and its Note to read as follows:

§ 2.929 Nonassignability of an equipment authorization.

* * * * *

(b) * * *

(1) The equipment manufactured by such second party bears the identical FCC Identifier as set out in the grant of the equipment authorization.

Note to paragraph (b)(1): Any change in the FCC Identifier desired as a result of such production or marketing agreement will require the filing of a new application for an equipment authorization as specified in § 2.933.

* * * * *

21. Section 2.931 is revised to read as follows:

§ 2.931 Responsibility of the grantee.

In accepting a grant of an equipment authorization, the grantee warrants that each unit of equipment marketed under such grant and bearing the identification specified in the grant will conform to the unit that was measured and that the data (design and rated operational characteristics) determined by the grantee for notification or filed with the application for type acceptance or certification continues to be representative of the equipment being produced under such grant within the variation that can be expected due to quantity production and testing on a statistical basis.

22. Section 2.932 is amended by adding new paragraph (f) to read as follows:

§ 2.932 Modification of equipment.

* * * * *

(f) All requests for permissive changes submitted to the Commission must be accompanied by the anti-drug abuse certification required under § 1.2002 of this chapter.

23. Section 2.933 is amended by revising paragraphs (a), (b)(7) and (c) to read as follows:

§ 2.933 Change in identification of equipment.

(a) A new application for equipment authorization shall be filed whenever there is a change in the FCC Identifier for the equipment with or without a change in design, circuitry or construction. However, a change in the model/type number or trade name performed in accordance with the provisions in § 2.924 is not considered to be a change in identification and does not require additional authorization from the Commission.

(b) * * *

(7) In the case of certified equipment, the photographs required by § 2.1033(b)(7) showing the exterior appearance of the equipment, including the operating controls available to the user and the identification label. Photographs of the construction, the component placement on the chassis, and the chassis assembly are not required to be submitted unless specifically requested by the Commission.

(c) If the change in the FCC Identifier also involves a change in design or circuitry which falls outside the purview of a permissive change described in §§ 2.977, 2.1001 or 2.1043, a complete application shall be filed pursuant to § 2.911.

§ 2.934 [Amended]

24. Section 2.934 is amended by removing the reference "§ 2.910(b)" and adding in its place "§ 2.913(b)".

25. Section 2.936 is revised to read as follows:

§ 2.936 FCC inspection.

Upon reasonable request, each responsible party shall submit the following to the Commission or shall make the following available for inspection:

(a) The records required by §§ 2.938, 2.955, and 2.1075.

(b) A sample unit of the equipment covered under an authorization.

(c) The manufacturing plant and facilities.

26. Section 2.938 is revised to read as follows:

§ 2.938 Retention of records.

(a) For each equipment subject to the Commission's equipment authorization standards, the responsible party shall maintain the records listed as follows:

(1) A record of the original design drawings and specifications and all changes that have been made that may affect compliance with the standards and the requirements of § 2.931.

(2) A record of the procedures used for production inspection and testing to ensure conformance with the standards and the requirements of § 2.931.

(3) A record of the test results that demonstrate compliance with the appropriate regulations in this chapter.

(b) The provisions of paragraph (a) of this section shall also apply to a manufacturer of equipment produced under the provisions of § 2.929(b). The retention of the records by the manufacturer under these circumstances shall satisfy the grantee's responsibility under paragraph (a) of this section.

(c) The records listed in paragraph (a) of this section shall be retained for one year for equipment subject to authorization under the type acceptance or certification procedure, or for two years for equipment subject to authorization under any other procedure, after the manufacture of said equipment has been permanently discontinued, or until the conclusion of an investigation or a proceeding if the responsible party (or under paragraph (b) of this section the manufacturer) is officially notified that an investigation

or any other administrative proceeding involving its equipment has been instituted.

(d) If radio frequency equipment is modified by any party other than the original responsible party, and that party is not working under the authorization of the original responsible party, the party performing the modifications is not required to obtain the original design drawings specified in paragraph (a)(1) of this section. However, the party performing the modifications must maintain records showing the changes made to the equipment along with the records required in paragraphs (a)(3) of this section. A new equipment authorization may also be required. See, for example, §§ 2.909, 2.924, 2.933, and 2.1043.

27. Section 2.941 is revised to read as follows:

§ 2.941 Availability of information relating to grants.

(a) Grants of equipment authorization, other than for receivers and equipment authorized for use under parts 15 or 18 of this chapter, will be publicly announced in a timely manner by the Commission. Information about the authorization of a device using a particular FCC Identifier may be obtained by contacting the Commission's Office of Engineering and Technology Laboratory.

(b) Information relating to equipment authorizations, such as data submitted by the applicant in connection with an authorization application, laboratory tests of the device, etc., shall be available in accordance with §§ 0.441 through 0.470 of this chapter.

28. Section 2.953 is amended by revising the section heading and paragraphs (a), (b) and (d) to read as follows:

§ 2.953 Responsibility for compliance.

(a) In verifying compliance, the responsible party, as defined in § 2.909 warrants that each unit of equipment marketed under the verification procedure will be identical to the unit tested and found acceptable with the standards and that the records maintained by the responsible party continue to reflect the equipment being produced under such verification within the variation that can be expected due to quantity production and testing on a statistical basis.

(b) The importer of equipment subject to verification may upon receiving a written statement from the manufacturer that the equipment complies with the appropriate technical standards rely on the manufacturer or independent testing agency to verify compliance. The test

records required by § 2.955 however should be in the English language and made available to the Commission upon a reasonable request, in accordance with § 2.956.

* * * * *

(d) Verified equipment shall be reverified if any modification or change adversely affects the emanation characteristics of the modified equipment. The party designated in § 2.909 bears responsibility for continued compliance of subsequently produced equipment.

29. Section 2.954 is revised to read as follows:

§ 2.954 Identification.

Devices subject only to verification shall be uniquely identified by the person responsible for marketing or importing the equipment within the United States. However, the identification shall not be of a format which could be confused with the FCC Identifier required on certified, notified or type accepted equipment. The importer or manufacturer shall maintain adequate identification records to facilitate positive identification for each verified device.

30. Section 2.955 is amended by revising the introductory text of paragraph (a) and paragraph (a)(3) to read as follows:

§ 2.955 Retention of records.

(a) For each equipment subject to verification, the responsible party, as shown in § 2.909 shall maintain the records listed as follows:

* * * * *

(3) A record of the measurements made on an appropriate test site that demonstrates compliance with the applicable regulations in this chapter. The record shall:

(i) Indicate the actual date all testing was performed;

(ii) State the name of the test laboratory, company, or individual performing the verification testing. The Commission may request additional information regarding the test site, the test equipment or the qualifications of the company or individual performing the verification tests;

(iii) Contain a description of how the device was actually tested, identifying the measurement procedure and test equipment that was used;

(iv) Contain a description of the equipment under test (EUT) and support equipment connected to, or installed within, the EUT;

(v) Identify the EUT and support equipment by trade name and model number and, if appropriate, by FCC Identifier and serial number;

(vi) Indicate the types and lengths of connecting cables used and how they were arranged or moved during testing;

(vii) Contain at least two drawings or photographs showing the test set-up for the highest line conducted emission and showing the test set-up for the highest radiated emission. These drawings or photographs must show enough detail to confirm other information contained in the test report. Any photographs used must be focused originals without glare or dark spots and must clearly show the test configuration used;

(viii) List all modifications, if any, made to the EUT by the testing company or individual to achieve compliance with the regulations in this chapter;

(ix) Include all of the data required to show compliance with the appropriate regulations in this chapter; and

(x) Contain, on the test report, the signature of the individual responsible for testing the product along with the name and signature of an official of the responsible party, as designated in § 2.909.

* * * * *

31. Section 2.956 is revised to read as follows:

§ 2.956 FCC inspection and submission of equipment for testing.

(a) Each responsible party shall upon receipt of reasonable request:

(1) Submit to the Commission the records required by § 2.955.

(2) Submit one or more sample units for measurements at the Commission's Laboratory.

(i) Shipping costs to the Commission's Laboratory and return shall be borne by the responsible party.

(ii) In the event the responsible party believes that shipment of the sample to the Commission's Laboratory is impractical because of the size or weight of the equipment, or the power requirement, or for any other reason, the responsible party may submit a written explanation why such shipment is impractical and should not be required.

(b) Requests for the submission of the records in § 2.955 or for the submission of sample units are covered under the provisions of § 2.946.

§ 2.957 [Removed]

32. Section 2.957 is removed.

§§ 2.961, 2.963, 2.965, 2.967, 2.969 [Removed]

33. The undesignated centerheading preceding § 2.961 and § 2.961 are removed.

34. Section 2.963 is removed.

35. Section 2.965 is removed.

36. Section 2.967 is removed.

37. Section 2.969 is removed.

38. Section 2.975 is amended by revising paragraphs (b) and (g) to read as follows:

§ 2.975 Application for notification.

* * * * *

(b) The statement required in paragraph (a)(6) of this section shall be signed pursuant to § 2.911(c).

* * * * *

(g) The records of measurement data, measurement procedures, photographs, circuit diagrams, etc. for a device subject to notification shall be retained for two years after the manufacture of said equipment has been permanently discontinued, or, if the responsible party is officially notified that an investigation or any other administrative proceeding involving the equipment has been instituted prior to the expiration of such two year period, until the conclusion of that investigation or proceeding.

§ 2.979 [Removed]

39. Section 2.979 is removed.

§ 2.983 [Amended]

40. Section 2.983 is amended by removing and reserving paragraph (h) and by removing the reference "subpart C of part 97" in the last sentence of paragraph (i) and adding in its place "subpart D of part 97".

§ 2.1003 [Removed]

41. Section 2.1003 is removed.

42. Section 2.1005 is amended by revising paragraph (a), the introductory text of paragraphs (c) and (c)(4) and paragraph (d) to read as follows:

§ 2.1005 Equipment for use in the Amateur Radio Service.

(a) The general provisions of §§ 2.981, 2.983, 2.991, 2.993, 2.997, 2.999, and 2.1001 shall apply to applications for, and grants of, type acceptance for equipment operated under the requirements of part 97 of this chapter, the Amateur Radio Service.

* * * * *

(c) Any supplier of an external radio frequency power amplifier kit as defined by § 97.3(a)(17) of this chapter shall comply with the following requirements:

* * * * *

(4) The identification label required by § 2.925 shall be permanently affixed to the assembled unit and shall be of sufficient size so as to be easily read. The following information shall be shown on the label:

* * * * *

(d) Type acceptance of external radio frequency power amplifiers and amplifier kits may be denied when

denial serves the public interest, convenience and necessity by preventing the use of these amplifiers in services other than the Amateur Radio Service. Other uses of these amplifiers, such as in the Citizens Band Radio Service, are prohibited (§ 95.411 of this chapter). Examples of features which may result in the denial of type acceptance are contained in § 97.317 of this chapter.

§ 2.1033 [Amended]

43. Section 2.1033 is amended by removing and reserving paragraph (b)(10) and by removing the reference "§ 15.257(e)" in paragraph (b)(11) and adding in its place "§ 15.247(e)".

§ 2.1045 [Removed]

44. Section 2.1045 is removed.

45. Section 2.1300 is revised to read as follows:

§ 2.1300 Cross reference.

The general provisions of this part, §§ 2.911, 2.923, 2.929, 2.935, 2.936, and 2.946 shall apply to applications for and grants of registration for telephone terminal equipment pursuant to part 68 of this chapter.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 961210346-7035-02; I.D. 120596A]

RIN 0648-XX76

Summer Flounder Fishery; Final Specifications for 1997; Adjustment to 1997 State Quotas; Commercial Quota Harvested for Delaware

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

ACTION: Final specifications for the 1997 summer flounder fishery and adjustments to state commercial quotas.

SUMMARY: NMFS issues the final specifications for the 1997 summer flounder fishery that include commercial catch quotas and an increase in commercial minimum fish size, makes adjustments to the commercial quota for the 1997 summer flounder fishery as a result of overages in the 1996 fishing year and, as a consequence of these overages, announces that the summer flounder

quota available to the State of Delaware for 1997 has been harvested. The intent of this document is to comply with implementing regulations for the summer flounder fishery that require NMFS to publish measures for the upcoming fishing year that will prevent overfishing of this species, require overages in any state to be deducted from that state's commercial quota for the following year, require publication of a notice to advise the State of Delaware that its quota has been harvested, and to advise vessel and dealer permit holders that no commercial quota is available for landing summer flounder in Delaware. **EFFECTIVE DATE:** March 4, 1997 through December 31, 1997, except for § 648.103(a) which will be effective April 7, 1997.

ADDRESSES: Copies of the Environmental Assessment and supporting documents used by the Monitoring Committee are available from: Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 S. New Street, Dover, DE 19901-6790.

FOR FURTHER INFORMATION CONTACT: Dana Hartley, Fishery Management Specialist, 508-281-9226.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Summer Flounder Fishery (FMP) was developed jointly by the Atlantic States Marine Fisheries Commission (Commission) and the Mid-Atlantic Fishery Management Council (Council) in consultation with the New England and South Atlantic Fishery Management Councils. The management unit for the FMP is summer flounder (*Paralichthys dentatus*) in U.S. waters of the Atlantic Ocean from the southern border of North Carolina northward to the Canadian border. Implementing regulations for the fishery are found at 50 CFR part 648, subparts A and G.

Section 648.100(a) of the regulations implementing the FMP specifies the process for setting annual management measures in order to achieve the fishing mortality (F_{gr}) rates specified in the FMP. Under Amendment 7 to the FMP, the schedule of F rates sets a target fishing mortality rate of 0.41 in 1996, 0.3 in 1997, and 0.23 in 1998 and thereafter, provided the allowable levels of fishing in 1996 and 1997 may not exceed 18.51 million lb (8.4 million kg), unless the fishing mortality rate (F) of 0.23 is met.

Pursuant to § 648.100, the Regional Administrator, Northeast Region, NMFS, implements certain measures for the fishing year to ensure achievement of the appropriate fishing mortality rate.