

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[WT Docket No. 02-318; RM-10184; FCC 05-16]

Amendment of the Commission's Rules Concerning Airport Terminal Use Frequencies in the 450-470 MHz Band of the Private Land Mobile Radio Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document the Commission addresses comments received in response to a *Notice of Proposed Rulemaking*, released by the Commission on October 10, 2002, which sought comment on proposed revisions to the Commission's rules and policies regarding Airport Terminal Use (ATU) frequencies in the 450-470 MHz Private Land Mobile Radio (PLMR) Industrial Business (I/B) Pool. The *Notice of Proposed Rulemaking* was issued in response to a Petition for Rulemaking filed on June 25, 2001 by the Personal Communications Industry Association, Inc. (PCIA), an FCC-certified frequency coordinator. Generally, the *Notice of Proposed Rulemaking* considered PCIA's recommendations and proposed to revise the power limits on ATU

frequencies in order to facilitate communications at large airports.

DATES: Effective April 25, 2005.

FOR FURTHER INFORMATION CONTACT: Thomas Eng, *Thomas.Eng@fcc.gov*, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau, (202) 418-0019, TTY (202) 418-7233.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's *Report and Order*, FCC 05-16, adopted on January 18, 2005, and released on January 24, 2005. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the FCC's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554. The full text may also be downloaded at: <http://www.fcc.gov>. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418-7426 or TTY (202) 418-7365 or at brian.millin@fcc.gov.

1. As discussed below, the *Report and Order (R&O)* implements many of the proposals set forth in the *Notice of Proposed Rulemaking (NPRM)*, as well as additional changes related to operations on ATU frequencies. The

R&O furthers the public interest by improving spectrum efficiency, both in and around airports, and by allowing airport personnel and other licensees on ATU frequencies to communicate with fewer restrictions. Moreover, licensees will benefit from increased power limits, which should result in more reliable radio communication, with fewer dead spots and greater communications range. These improvements are important to the general public because airports depend on reliable communications for conducting safe and efficient ground operations, and because they ensure the safety of passengers and airport employees.

2. The major decisions in the *R&O* are as follows:

- We convert all power limits on ATU frequencies from transmitter power output (TPO) to effective radiated power (ERP).
- We increase the power limits for primary ATU mobile units operating at the 242 airports listed in § 90.35(c)(61)(iv) of our rules.
- We increase the power limits for mobile units operating on a secondary basis at locations more than fifty miles (eighty kilometers) from the 242 airports listed in part 90 of our rules.

3. The following chart summarizes the power limits for ATU frequencies based on the decisions in this *R&O*.

POWER LIMITS FOR ATU FREQUENCIES

Service and status	Distance from protected airports	Power limits
ATU Primary	0-10 miles (0-16 km)	100 watts ERP for base stations (460 MHz side of pair). 40 watts ERP for mobile units (465 MHz side of pair).
I/B Secondary	10-50 miles (16-80 km)	10 watts ERP for base stations (460 MHz side of pair). 6 watts ERP for mobile units (465 MHz side of pair).
I/B Secondary	>50 miles (80 km)	300 watts ERP for base stations (460 MHz side of pair). 120 watts ERP for mobile units (465 MHz side of pair).

I. Procedural Matters

A. Regulatory Flexibility Act Analysis

4. As required by section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) of the expected impact on small entities of the proposals suggested in this document. The FRFA is set forth below.

B. Paperwork Reduction Act of 1995 Analysis

5. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified "information collection burden for

small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4).

C. Report to Congress

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

II. Final Regulatory Flexibility Analysis

7. As required by the Regulatory Flexibility Act of 1980 as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rule Making*

(*NPRM*). The Commission sought written public comment on the proposals in the *NPRM*, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

Need for, and Objectives of, the Final Rules

8. The rule changes implemented herein are needed in order to facilitate the communications needs of Airport Terminal Use (ATU) licensees in the 460-470 MHz band. We believe that certain rule modifications are in the public interest because they will enhance the efficient use of spectrum, permit greater efficiency in use of airport terminal communications, and

facilitate Homeland Security measures at airports. We further believe that certain modifications are in the public interest because they will enhance the efficient use of spectrum for mobile units at fifty miles or more from protected airports.

9. In this *Report and Order (R&O)*, we convert all power limits on ATU frequencies from transmitter power output (TPO) to effective radiated power (ERP); we amend the maximum output power for ATU frequencies identified in 47 CFR 90.35(c)(48) to a 100-watt maximum ERP. We also amend the maximum output power for ATU frequencies identified in 47 CFR 90.35(c) and (68), from 3 watts TPO to 40 watts ERP; for ATU frequencies identified in 47 CFR 90.35(c)(11), we increase the power limit from 2 watts TPO to 120 watts ERP for mobile units operating on a secondary basis at locations more than fifty miles (eighty kilometers) from airports listed in 47 CFR 90.35(c)(61)(iv); we delay any increase or conversion in power on ATU frequencies subject to 47 CFR 90.35(c)(69) until the freeze on high-power applications for land mobile applications on 460–470 MHz band “offset” channels is lifted, in order to protect wireless medical telemetry systems (WMTS) that have yet to migrate out of the band; we delegate authority to the Wireless Telecommunications Bureau (WTB) to create new station class codes for the Universal Licensing System (ULS) that will identify primary ATU users; we will allow licensees to submit applications requesting the new ATU station class codes without requiring frequency coordination so long as no other modifications are made to the licenses; we grandfather stations authorized to operate on ATU frequencies at power levels in excess of our current rules; and we will allow licensees to submit applications voluntarily to convert power levels on licenses from TPO to ERP, but we require frequency coordination for such modifications.

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

10. There were no comments filed that specifically addressed the rules and policies proposed in the IRFA.

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

11. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by

the rules adopted herein. 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 “small business concern” 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) satisfies any additional criteria established by the Small Business Administration (SBA).

12. *Estimates for Private Land Mobile Radio (PLMR) Licensees.* PLMR systems serve an essential role in a vast range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories. Because of the vast array of PLMR users, the Commission has not developed a definition of small entities specifically applicable to PLMR users, nor has the SBA developed any such definition. The SBA rules do, however, contain a definition for Cellular and Other Wireless Telecommunications, which has the small business size standard of no more than 1,500 employees. According to Census Bureau data for 1997, in this category there was a total of 977 firms that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional twelve firms had employment of 1,000 employees or more. Thus, under this size standard, the majority of firms can be considered small. Currently, the Commission’s licensing database indicates that there are approximately 174,000 active licenses in the PLMR bands below 512 MHz.

13. *Equipment Manufacturers.* The SBA has established a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing. Under this standard, business firms are considered small if they have 750 or fewer employees. Census data for 1997 indicate that, for that year, there were a total of 1,215 establishments in this category. Of those, there were 1150 that had employment under 500, and an additional 37 that had employment of 500 to 999. The percentage of broadcast equipment manufacturers to others in this category is approximately 22 percent, so we estimate that the number of broadcast equipment manufacturers with employment under 500 was actually closer to 253, with an additional eight establishments having employment of between 500 and 999.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

14. No new reporting, recordkeeping, or other compliance requirements would be imposed on applicants or licensees as a result of the rules adopted in this proceeding.

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

15. The RFA requires an agency to describe any significant alternatives that it has considered in developing its 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 and reporting requirements under the rule for such 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 such small entities.”

16. With respect to the conversion of units on power limits on ATU frequencies TPO to ERP, the Commission believes that small businesses will experience minimal impact and will benefit from improved frequency coordination. Licensees that choose to modify their licenses to take advantage of new power limits will need to report ERP values instead of TPO. Further, we require that applications for power modification on these channels be frequency coordinated, and this requirement will further minimize any impact our rule revisions impose on licensees. The combination of improved frequency coordination and new power limits will benefit both large and small businesses.

17. Admittedly, there may be some minor inconveniences during the transition to the new regulatory regime. First, we anticipate that small businesses may experience a minor inconvenience as a result of the change in power unit terminology. Second, small businesses may also view the modification as a minor administrative burden. Third, there may be a transition period where some licenses reflect TPO values while others reflect ERP.

18. Despite these inconveniences, we believe they are acceptable for the following reasons. We note that license modifications are voluntary. We encourage, but do not require, licensees to modify their licenses to take advantage of new power limits. We also note that modifications can be

performed at the time of license renewal to minimize administrative costs. The incentives for more licenses to have ERP power values on ATU frequencies are: a better overall frequency coordination process, and having a power limit that more accurately represents station power than does TPO. Improved frequency coordination results in better interference protection to all licensees, including small entities. We reject the alternative of leaving power limits in terms of TPO because the Commission noted that it generally favors ERP terminology and because TPO values can result in a variety of actual power levels due to a variety of antenna gains. We believe that TPO limits frustrate the frequency coordination process, and therefore incumbent licensees would not be assured of interference protection.

19. The next rule change we adopt herein increases the power limits for ATU primary users at the protected airports. Although increasing the power limits on these channels could decrease the number of operators possible in a given area, thereby potentially reducing opportunities for smaller entities, nevertheless we believe that regardless of the possible impact on smaller entities, the need for higher power on these channels outweighs the potential for reduction of the number of licensees. Maintaining the current power limits as an alternative to these rule changes is unacceptable because it maintains the current power restriction of 20 watts output power for base stations and 3 watts output power for mobile units at protected airports. Thus, to retain lower power levels disserves the public interest by restricting efficient radio communications by primary licensees at airports.

20. A second alternative to the increased power limits adopted herein for ATU primary base/mobile frequencies would be to implement the power limits of § 90.205 of the Commission's rules. We have considered but reject this option because § 90.205 of the Commission's rules lowers power limits to unacceptably low levels or raises power limits to exceptionally high levels, depending on the size of the designated service area of a station. For service area radii smaller than three kilometers (approximately two miles), § 90.205 of the Commission's rules limits power to 2 watts ERP, which is less than the 20 watts TPO that is currently authorized. Such a power reduction could further hamper the ability of airport personnel to communicate. Section 90.205 of the Commission's rules also allows 500 watts ERP for service areas between

thirteen and sixteen kilometers (eight and ten miles). We believe that such a large power limit could subject secondary I/B users and small businesses to excessive interference at distances from ten to fifty miles from protected airports. We reject the implementation of § 90.205 of the Commission's rules in favor of the more moderate power limit changes adopted herein, which strike a balance between enhancing wireless communications and providing interference protection.

21. We note, however, that our decision to raise power levels involved consideration of other alternatives that could improve the communications capabilities of mobiles on the ATU frequencies, such as signal boosters and wireline connections. These alternatives, however, do not address the need, especially at large airports, for enhanced wireless communications. Moreover, as the Personal Communications Industry Association, Inc. (PCIA) stated in its comments, there are other problems with signal boosters, which are expensive and require extensive electrical conduit modifications. Further, no commenters supported signal boosters and wireline connections in favor of increasing wireless power limits.

22. The next rule change we adopt herein increases the power limit for Industrial/Business (I/B), secondary, mobile units operating on the forty ATU mobile channels at distances of fifty miles or more from protected airports. The mobile power limit increase from 3 watts TPO to 120 watts ERP lessens the incongruity with the power limit of base stations, which is 300 watts ERP. All licensees, including small businesses, will benefit from this mobile power limit increase because mobile units will have increased communications range within the service area footprint of their base stations. The power limit increase enables radio systems to make more efficient use of their assigned spectrum. At the same time, we anticipate little additional interference to primary ATU licensees and secondary non-ATU licensees within fifty miles of the protected airports because the base station power limit remains unchanged. The service area footprint is determined by the base station's ERP and antenna height. Maintaining the current mobile unit power limit as an alternative to this rule change is unacceptable because it maintains the current power restriction of 2 watts output power for mobile units at fifty miles or more from protected airports. Thus, to retain lower power levels disserves the public interest by restricting efficient radio

communications by secondary licensees in designated areas around airports.

23. Our decision to delay the implementation date of the new rules on the ATU/wireless medical telemetry frequencies until thirty days after the lifting of the freeze on high power applications, scheduled for December 31, 2005, will protect wireless medical telemetry users in the 460–470 MHz band, which includes small businesses at hospitals and medical facilities. An alternative would be to implement the rules concurrently with the non-telemetry frequencies. However, we reject this alternative because it increases the risk of harmful interference to wireless medical telemetry users from the ATU primary and I/B secondary power limit increases.

24. We believe that the implementation of new station class codes is a benefit to all users that are licensed on ATU frequencies, including small businesses. We anticipate only a minor administrative burden in voluntarily modifying licenses to reflect new station class codes. We note that no fee will be charged and frequency coordination is not required for such modification. The station class codes will distinguish between primary ATU and secondary I/B licenses in ULS. The major benefits will be to allow licensees on ATU frequencies to take advantage of the appropriate new power limits and eliminate the ambiguity as to what rules apply to which licensees. The identification of ATU primary licenses through station class codes also facilitates the frequency coordination process and ensures interference protection to airport stations.

25. Our decision to grandfather stations authorized to operate on ATU frequencies at power levels in excess of our current rules will minimize the impact of our rules on such stations, including small entities. Such stations may continue to operate as usual and are not required to comply with the rules adopted herein. However, the Commission will investigate any reports of harmful interference from such stations and take appropriate action. Our decision allows such stations to avoid or defer the administrative burden of modifying their licenses. As discussed above, we do not require license modifications to take advantage of the new power limits. However, at such time when a grandfathered station desires to modify its license to take advantage of the power limits adopted herein, we will require compliance with the new rules, power levels in the form of ERP, and frequency coordination as discussed above. We have considered

the alternative to grandfathering, which is requiring the compliance of all licensees on ATU frequencies. We reject this alternative because it imposes immediate administrative burdens on stations and small entities that do not want license modification, and we are concerned that it may force such entities to discontinue operations.

Report to Congress

26. The Commission will send a copy of this *Report and Order*, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of this *Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of this *Report and Order* and FRFA (or summaries thereof) will also be published in the **Federal Register**.

III. Ordering Clauses

27. Accordingly, pursuant to sections 4(i), 303(f), 303(r), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(f), 303(r) and 332, this Report and Order is adopted.

28. *It is further ordered* that part 90 of the Commission's rules is amended, effective April 25, 2005.

29. *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 U.S. Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 601-612.

List of Subjects in 47 CFR Part 90

Communications equipment, Radio, Reporting and recordkeeping requirements.
Federal Communications Commission.
Marlene H. Dortch,
Secretary.

Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 90 as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

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

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

■ 2. Amend § 90.35 as follows:

■ a. Amend the table in paragraph (b)(3) by revising the Limitations entries in the Frequency or band entries 460.650 through 460.89375 and 465.650 through 465.89375;

■ b. Revise paragraph (c)(48);

■ c. Revise paragraph (c)(61)(i) through (c)(61)(iii) (The table following paragraph (c)(61)(iv) remains unchanged);

■ d. Add paragraph (c)(61)(v); and

■ e. Revise paragraph (c)(68).

§ 90.35 Industrial/Business Pool.

*	*	*	*	*
(b)	*	*	*	*
(3)	*	*	*	*

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations	Coordinator
* * * * *	* * * * *	* * * * *	* * * * *
460.650	.....do	61, 62	
460.65625	.....do	33, 61, 62	
460.6625	.....do	30, 61, 62, 69	
460.66875	.....do	33, 61, 62	
460.675	.....do	61, 62	
460.68125	.....do	33, 61, 62	
460.6875	.....do	30, 61, 62, 69	
460.69375	.....do	33, 61, 62	
460.700	.....do	61, 62	
460.70625	.....do	33, 61, 62	
460.7125	.....do	30, 61, 62, 69	
460.71875	.....do	33, 61, 62	
460.725	.....do	61, 62	
460.73125	.....do	33, 61, 62	
460.7375	.....do	30, 61, 62, 69	
460.74375	.....do	33, 61, 62	
460.750	.....do	61, 62	
460.75625	.....do	33, 61, 62	
460.7625	.....do	30, 61, 62, 69	
460.76875	.....do	33, 61, 62	
460.775	.....do	61, 62	
460.78125	.....do	33, 61, 62	
460.7875	.....do	30, 61, 62, 69	
460.79375	.....do	33, 61, 62	
460.800	.....do	61, 62	
460.80625	.....do	33, 61, 62	
460.8125	.....do	30, 61, 62, 69	
460.81875	.....do	33, 61, 62	
460.825	.....do	61, 62	
460.83125	.....do	33, 61, 62	
460.8375	.....do	30, 61, 62, 69	
460.84375	.....do	33, 61, 62	
460.850	.....do	61, 62	
460.85625	.....do	33, 61, 62	
460.8625	.....do	30, 61, 62, 69	
460.86875	.....do	33, 61, 62	

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
460.875	.....do	61, 62	
460.88125	.....do	33, 61, 62	
460.8875	.....do	30, 61, 62, 69	
460.89375	.....do	33, 61, 62	
* * * * *			
465.650	.....do	62, 68	
465.65625	.....do	33, 62, 68	
465.6625	.....do	30, 62, 68, 69	
465.66875	.....do	33, 62, 68	
465.675	.....do	62, 68	
465.68125	.....do	33, 62, 68	
465.6875	.....do	30, 62, 68, 69	
465.69375	.....do	33, 62, 68	
465.700	.....do	62, 68	
465.70625	.....do	33, 62, 68	
465.7125	.....do	30, 62, 68, 69	
465.71875	.....do	33, 62, 68	
465.725	.....do	62, 68	
465.73125	.....do	33, 62, 68	
465.7375	.....do	30, 62, 68, 69	
465.74375	.....do	33, 62, 68	
465.750	.....do	62, 68	
465.75625	.....do	33, 62, 68	
465.7625	.....do	30, 62, 68, 69	
465.76875	.....do	33, 62, 68	
465.775	.....do	62, 68	
465.78125	.....do	33, 62, 68	
465.7875	.....do	30, 62, 68, 69	
465.79375	.....do	33, 62, 68	
465.800	.....do	62, 68	
465.80625	.....do	33, 62, 68	
465.8125	.....do	30, 62, 68, 69	
465.81875	.....do	33, 62, 68	
465.825	.....do	62, 68	
465.83125	.....do	33, 62, 68	
465.8375	.....do	30, 62, 68, 69	
465.84375	.....do	33, 62, 68	
465.850	.....do	62, 68	
465.85625	.....do	33, 62, 68	
465.8625	.....do	30, 62, 68, 69	
465.86875	.....do	33, 62, 68	
465.875	.....do	62, 68	
465.88125	.....do	33, 62, 68	
465.8875	.....do	30, 62, 68, 69	
465.89375	.....do	33, 62, 68	

* * * * *

(c) * * *

(48) Operation on this frequency is limited to a maximum output power of 20 watts.

* * * * *

(61) This frequency is available for assignment as follows:

(i) To persons furnishing commercial air transportation service or, pursuant to § 90.179, to an entity furnishing radio communications service to persons so engaged, for stations located on or near the airports listed in paragraph (c)(61)(iv) of this section. Stations will be authorized on a primary basis and may be used only in connection with servicing and supplying of aircraft. Operation on this frequency is limited to a maximum effective radiated power

(ERP) of 100 watts at locations within 16 km (10 miles) of the coordinates of the listed airports.

(ii) To stations in the Industrial/Business Pool for secondary use at locations 80 km (approximately 50 miles) or more from the coordinates of the listed airports. Operation will be limited to a maximum ERP of 300 watts.

(iii) To stations in the Industrial/Business Pool for secondary use at locations greater than 16 km (approximately 10 miles) but less than 80 km (approximately 50 miles) from the coordinates of the listed airports. Operation will be limited to a maximum ERP of 10 watts. Use of this frequency is restricted to the confines of an industrial complex or manufacturing yard area. Stations licensed prior to

April 25, 2005, may continue to operate with facilities authorized as of that date.

* * * * *

(v) Stations operating on the frequencies subject to the provisions of § 90.35(b)(69) will be limited to a maximum output power of 2 watts until January 30, 2006, which is thirty days after the December 31, 2005 lifting of the freeze on the filing of high powered applications for 12.5 kHz offset channels in the 460–470 MHz band.

* * * * *

(68) Each station authorized on this frequency will be classified and licensed as a mobile station. Any units of such a station, however, may provide the operational functions of a base station on a secondary basis to mobile service operations provided that the

vertical separation between control point or ground level and the center of the radiating portion of the antenna of any units so used does not exceed 8 meters (approximately 25 feet). This frequency is available for assignment as follows:

(i) To persons furnishing commercial air transportation service or, pursuant to § 90.179, to an entity furnishing radio communications service to persons so engaged, for stations located on or near the airports listed in paragraph (c)(61)(iv) of this section. Stations will be authorized on a primary basis and may be used only in connection with servicing and supplying of aircraft. Operation on this frequency is limited to a maximum effective radiated power (ERP) of 40 watts at locations within 16 km (approximately 10 miles) of the coordinates of the listed airports.

(ii) To stations in the Industrial/Business Pool for secondary use at locations 80 km (approximately 50 miles) or more from the coordinates of the listed airports. Operation will be limited to a maximum ERP of 120 watts. Wide area operation will not be permitted. The area of normal, day-to-day operations will be described in the application.

(iii) To stations in the Industrial/Business Pool for secondary use at locations greater than 16 km (approximately 10 miles) but less than 80 km (approximately 50 miles) from the coordinates of the listed airports. Operation will be limited to a maximum ERP of 6 watts. Use of this frequency is restricted to the confines of an industrial complex or manufacturing yard area. Stations licensed prior to April 25, 2005, may continue to operate with facilities authorized as of that date.

(iv) Stations operating on the frequencies subject to the provisions of § 90.35(b)(69) will be limited to a maximum output power of 2 watts until January 30, 2006, which is thirty days after the December 31, 2005 lifting of the freeze on the filing of high powered applications for 12.5 kHz offset channels in the 460–470 MHz band.

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[FR Doc. 05–5843 Filed 3–23–05; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 041110318–5055–02; I.D. 110504E]

RIN 0648–AS00

Fisheries of the Exclusive Economic Zone Off Alaska; Revisions to Western Alaska Community Development Quota Program

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to revise regulations governing the Western Alaska Community Development Quota (CDQ) Program. These regulatory amendments will simplify the processes for making quota transfers, for authorizing vessels as eligible to participate in the CDQ fisheries, and for obtaining approval of alternative fishing plans. This action is necessary to improve NMFS's ability to effectively administer the CDQ Program. It is intended to further the goals and objectives of the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP).

DATES: Effective April 25, 2005.

ADDRESSES: Copies of the Categorical Exclusion and the Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA) and the Final Regulatory Flexibility Analysis (FRFA) prepared for this action may be obtained by mail from the Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Durall, or from the NMFS Alaska Region website at www.fakr.noaa.gov.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228 or obren.davis@noaa.gov.

SUPPLEMENTARY INFORMATION: The groundfish fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands Area (BSAI) are managed under the BSAI FMP. The North Pacific Fishery Management Council (Council) prepared the BSAI FMP pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801, *et seq.* Regulations governing the BSAI FMP appear at 50 CFR part 679. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

Background and Need for Action

The existing management background and explanation of the need for this action were described in the preamble to the proposed rule published in the **Federal Register** on November 26, 2004 (69 FR 68865). In summary, the Council recommended simplifying certain administrative processes associated with CDQ transfers, prohibited species quota (PSQ) transfers, and alternative fishing plans (collectively, Issue 8) as part of its comprehensive recommendation for the eight separate issues comprising Amendment 71 to the BSAI FMP. This action will implement the particular changes recommended for Issue 8, as well as associated changes to the eligible vessel approval process that NMFS has determined are related in nature and scope to the Council's recommendations for alternative fishing plans.

Elements of this Rule

This rule will make the following revisions to CDQ Program regulations at 50 CFR part 679:

1. Revise § 679.30(e) to allow CDQ groups to transfer groundfish CDQ and halibut CDQ by submitting transfer requests directly to NMFS and to remove the requirement that these transfers be made through amendments to CDQ groups' community development plans (CDPs). CDQ transfer requests will no longer have to be submitted to the State of Alaska (State) for review before being submitted to NMFS.

2. Revise § 679.30(e) to allow CDQ groups to transfer prohibited species quota (PSQ) by submitting transfer requests directly to NMFS and to remove the requirement that these transfers be made through amendments to the CDPs. PSQ transfer requests will no longer have to be submitted to the State for review before being submitted to NMFS. In addition, this action will allow the transfer of PSQ during any month of the year and allow transfers of PSQ without an associated transfer of CDQ. The CDQ and PSQ transfer process will become an in-season management function of NMFS.

3. Remove the requirements at § 679.30(a) that fishing plan forms and a list of eligible vessels be included in a group's CDP. Vessel eligibility requirements are added to redesignated and revised § 679.32(c) to require that: CDQ groups request and obtain eligibility approval from NMFS for all vessels groundfish CDQ fishing and for vessels equal to or greater than 60 feet (18.3 meters) length overall (LOA) that are halibut CDQ fishing before these