(iii) Within 300 yards from all other park shorelines.

(3) PWC are allowed to beach at any point along the shore except as follows:

(i) PWC may not beach in any restricted area listed in paragraph (c)(1) of this section; and

(ii) PWC may not beach above the mean high tide line on the designated wilderness islands of Horn and Petit Bois.

(4) The Superintendent may temporarily limit, restrict or terminate access to the areas designated for PWC use after taking into consideration public health and safety, natural and cultural resource protection, and other management activities and objectives.

Dated: April 17, 2006.

Matthew Hogan,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 06–4180 Filed 5–3–06; 8:45 am]

BILLING CODE 4310–X8–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WT Docket No. 05–211; FCC 06–52]

Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document adopts a number of modifications to the Commission's competitive bidding rules and procedures. The Commission believes the rule modifications it adopts will allow it to achieve its statutory mandates to ensure that designated entities are given the opportunity to participate in spectrum-based services and that in providing such opportunity it prevents the unjust enrichment of ineligible entities.

DATES: Effective June 5, 2006.

FOR FURTHER INFORMATION CONTACT: Brian Carter at (202) 418–0660.

SUPPLEMENTARY INFORMATION: This is a summary of the *Second Report and Order* released on April 25, 2006. The complete text of the *Second Report and Order* including attachments and related Commission documents is available for public inspection and copying from 8 a.m. to 4:30 p.m. Monday through Thursday or from 8 a.m. to 11:30 a.m. on Friday at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The *Second Report and Order* and related Commission documents may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–488–5300, facsimile 202–488–5563, or you may contact BCPI at its Web site: *http://www.BCPIWEB.com*. When ordering documents from BCPI please provide the appropriate FCC document number, for example, FCC 06–52. The *Second Report and Order* and related documents are also available on the Internet at the Commission's Web site: *http://wireless.fcc.gov/auctions*.

Synopsis of the Second Report and Order

1. In the *Second Report and Order* (*Second R&O*), the Commission addresses its rules concerning the eligibility of applicants and licensees for designated entity benefits. In the *Second R&O*, the Commission modifies its rules in order to increase its ability to ensure that the recipients of designated entity benefits are limited to those entities and for those purposes Congress intended.

2. The Commission revises its general competitive bidding rules (Part 1 rules) governing benefits reserved for designated entities to include certain material relationships as factors in determining designated entity eligibility. Specifically, the Commission adopts rules to limit the award of designated entity benefits to any applicant or licensee that has impermissible material relationships or an attributable material relationship created by certain agreements with one or more other entities for the lease or resale of its spectrum capacity. These definitions of material relationships are necessary to strengthen the Commission's implementation of Congress's directives with regard to designated entities and to ensure that, in accordance with the intent of Congress, every recipient of the Commission's designated entity benefits is an entity that uses its licenses to directly provide facilities-based telecommunications services for the benefit of the public.

3. The Commission also adopts rule modifications to strengthen its unjust enrichment rules so as to better deter entities from attempting to circumvent the Commission's designated entity eligibility requirements and to recapture designated entity benefits when ineligible entities control designated entity licenses or exert impermissible influence over a designated entity. To ensure the Commission's continued ability to safeguard the award of designated entity benefits, the Commission provides clarification regarding how it will implement its rules concerning audits and refines its rules with respect to the reporting obligations of designated entities.

4. The rules the Commission adopts will apply to all determinations of eligibility for all designated entity benefits, including bidding credits and, as applicable, set-asides, and installment payments, unless excepted by the grandfathering provisions. These rules will be applied to any application filed to participate in auctions and to all long-form applications filed by winning bidders, as well as to all applications for an authorization, an assignment or transfer of control, a lease, or reports of events affecting a designated entity's ongoing eligibility, including impermissible material relationships or attributable material relationships, filed on or after release of the *Second R&O*. However, the rules will not apply to the upcoming auction of 800 MHz Air-Ground Radiotelephone Service licenses, scheduled to begin on May 10, 2006, nor to the Form 601 applications to be filed subsequent to the close of that auction by the winning bidders.

I. Background

5. Throughout the history of the auctions program, the Commission has endeavored to carry out its Congressional directive to promote the involvement of designated entities in the provision of spectrum-based services. The challenge for the Commission in carrying out Congress's plan has always been to find a reasonable balance between the competing goals of, first, providing designated entities with reasonable flexibility in being able to obtain needed financing from investors and, second, ensuring that the rules effectively prevent entities ineligible for designated entity benefits from circumventing the intent of the rules by obtaining those benefits indirectly, through their investments in qualified businesses.

6. The Commission's primary method of promoting the participation of designated entities in competitive bidding has been to award bidding credits—percentage discounts on winning bid amounts—to small business applicants. The Commission also has utilized other incentives, such as installment payments and, in broadband Personal Communications Services, a license set-aside to encourage designated entities to participate in spectrum auctions and in the provision of service.

7. In the *FNPRM*, 71 FR 6992 (February 10, 2006), the Commission tentatively concluded that it should restrict the award of designated entity benefits to an otherwise qualified applicant where it has a material relationship with a large in-region incumbent wireless service provider. The Commission sought comment on how to define the specific elements of such restriction. Further, the Commission sought comment on whether such a restriction on the award of designated entity benefits should apply where a designated entity applicant has a material relationship with a large entity that has a significant interest in communication services, and whether the Commission should include in such a definition a broad category of communications-related businesses or instead exclude or include certain types of entities. In addition, the Commission sought comment on whether it should adopt unjust enrichment provisions that would require reimbursement of designated entity benefits in the event that a designated entity makes a change in its material relationships or makes any other changes that would result in the loss of or change in its eligibility subsequent to acquiring a license with a designated entity benefit. Finally, in the *FNPRM*, the Commission sought comment on changes to its auction application rules to facilitate the application of any rule modifications to upcoming auctions.

A. Material Relationship

8. In order to define material relationship the *FNPRM* sought comment on the specific nature of the types of additional relationships that should trigger a restriction on the availability of designated entity benefits. The *FNPRM* also sought comment on whether restricting certain agreements as a material relationship would be too harsh or unnecessarily limit a designated entity applicant's ability to gain access to capital or industry expertise. Additionally, the *FNPRM* sought comment on whether there might be instances where the existence of either a material financial agreement or a material operational agreement might be appropriate and might not raise issues of undue influence. In this regard, the *FNPRM* asked whether the Commission should allow designated entity applicants to obtain a bidding credit or other benefits if they had only a material financial agreement or only a material operational agreement but not both, and what factors should the Commission consider in determining the types of relationships that might not adversely affect an applicant's designated entity eligibility. Finally, the Commission sought comment on whether a spectrum leasing arrangement should be defined as a material relationship, and whether it should consider any other arrangements for the purposes of such a definition.

9. In considering how to define material relationships the Commission seeks to balance the designated entity applicant's needs for flexibility to structure its business relationships against its statutory obligation to award these small business benefits only to entities intended by statute to be eligible. In the Commission's experience in administering the designated entity program over the last several years, it has witnessed a growing number of complex agreements between designated entities and those with whom they choose to enter into financial and operational relationships. Although some of these agreements may have contributed to the wireless industry becoming a thriving sector of the nation's economy, the relationships underpinning such contracts underscore the need for stricter regulatory parameters to ensure, as Congress intended, that: (1) Benefits are awarded to provide opportunities for designated entities to become robust independent facilities-based service providers with the ability to provide new and innovative services to the public; and (2) the Commission employs methods to prevent unjust enrichment.

10. In considering how to evaluate which specific relationships should trigger additional eligibility restrictions, the Commission concludes that certain agreements, by their very nature, are generally inconsistent with an applicant's or licensee's ability to achieve or maintain designated entity eligibility because they are inconsistent with Congress's legislative intent. In this regard, where an agreement concerns the actual use of the designated entity's spectrum capacity, it is the agreement, as opposed to the party with whom it is entered into, that causes the relationship to be ripe for abuse and creates the potential for the relationship to impede a designated entity's ability to become a facilities-based provider, as intended by Congress.

11. As the Commission indicated in the *Secondary Markets Second Report and Order*, 69 FR 77522 (December 27, 2004), Congress specifically intended that, in order to prevent unjust enrichment, the licensee receiving designated entity benefits must actually provide facilities-based services as authorized by its license. In that proceeding, the Commission stated that leasing by a designated entity licensee of substantially all of the spectrum capacity of the licensee would cause attribution that would likely lead to a loss of eligibility, and that the leasing of a small portion of such capacity where there was no other relationship between the parties likely would not result in a finding of attribution.

12. The Commission modifies its rules regarding eligibility for designated entity benefits for applicants or licensees that have agreements that create material relationships. Specifically, except as grandfathered, the Commission concludes that an applicant or licensee has impermissible material relationships when it has agreements with one or more other entities for the lease or resale of, on a cumulative basis, more than 50 percent of its spectrum capacity of any individual license. Such impermissible material relationships render the applicant or licensee (i) ineligible for the award of designated entity benefits, and (ii) subject to unjust enrichment on a license-by-license basis. Except as grandfathered, the Commission finds that an applicant or licensee has an attributable material relationship when it has one or more agreements with any individual entity, including entities and individuals attributable to that entity, for the lease or resale of, on a cumulative basis, more than 25 percent of the spectrum capacity of any individual license that is held by the applicant or licensee. The attributable material relationship with that entity will be attributed to the applicant or licensee for the purposes of determining the applicant's or licensee's (i) eligibility for designated entity benefits, and (ii) liability for unjust enrichment on a license-by-license basis.

13. The Commission concludes that these definitions of material relationship are necessary to ensure that the recipient of the Commission's designated entity benefits is an entity that uses its licenses to directly provide facilities-based telecommunications services for the benefit of the public; that the Commission employs methods to prevent unjust enrichment; and that its statutory-based benefits are awarded only to those that Congress intended to receive them.

14. Spectrum manager and *de facto* transfer leasing agreements and resale agreements with a single entity for 25 percent and less of the designated entity licensee's total spectrum capacity on a license-by-license basis, or cumulative agreements with multiple entities for 50 percent or less of a designated entity licensee's total spectrum capacity on a license-by-license basis will continue to

be reviewed under the Commission's existing designated entity eligibility rules, and pursuant to existing rules and policies may result in unjust enrichment obligations.

15. Recognizing that there are numerous agreements in existence that might fall within the Commission's newly defined impermissible material relationships and attributable material relationship, the Commission will apply these eligibility restrictions on a prospective basis. The Commission will grandfather the existence of impermissible and attributable material relationships that were in existence before the release date of the *Second R&O* for the purposes of assessing unjust enrichment payments on benefits previously awarded or pending award. In assessing the imposition of unjust enrichment for future events, if any, the Commission will consider unjust enrichment implications on a license-by-license basis.

16. Except as limited by the Commission's grandfathering provisions, the rules that the Commission adopts will apply to all determinations of eligibility for all designated entity benefits with regard to any application filed to participate in auctions in which bidding begins after the effective date of the rules, as well as to all applications for an authorization, an assignment or transfer of control, a spectrum lease, or reports of events affecting a designated entity's ongoing eligibility. Grandfathering the eligibility of all prior designated entity structures that involve impermissible and/or attributable material relationships would allow these designated entities to continue to acquire additional licenses and designated entity benefits using a structure that the Commission has determined would permit a third party to leverage improper influence over a designated entity in a manner that is inconsistent with the Congressional purposes for the designated entity program. Applying the Commission's rules in this manner is consistent with how the Commission currently determines an applicant's eligibility for designated entity benefits and how it applies its unjust enrichment obligations.

17. To address concerns of several commenters, the Commission will, however, grandfather certain relationships that were in existence before the release date of the *Second R&O* in the context of eligibility for future benefits. Specifically, an applicant will not be considered to be ineligible for benefits based solely on an attributable material relationship or impermissible material relationships of certain of its affiliates provided that the agreement that forms the basis of the affiliate's attributable material relationship or impermissible material relationship is otherwise in compliance with the Commission's designated entity eligibility rules, was entered into prior to the release date of the *Second R&O* and is subject to a contractual prohibition that prevents the affiliate from contributing to the designated entity's total financing. In taking this action, the Commission seeks to ensure that the additional eligibility requirements it adopted does not unnecessarily restrict applicants seeking designated entity benefits for relationships that were previously permissible under the Commission's rules.

B. Unjust Enrichment

18. The Commission also made changes to its unjust enrichment rules to provide additional safeguards designed to better ensure that designated entity benefits go to their intended beneficiaries. One of the Commission's primary objectives in administering its designated entity program is to prevent unjust enrichment. Accordingly, in conjunction with the eligibility restrictions the Commission adopted, the Commission also modifies its rules and strengthens its unjust enrichment schedule for licenses acquired with bidding credits.

19. In the *FNPRM*, the Commission sought comment on whether it should adopt revisions to its unjust enrichment rules, or whether the Commission should adopt other revisions to its unjust enrichment rules. Additionally, the Commission sought comment on whether an unjust enrichment payment should not be required in the case of natural growth of the revenues attributed to an incumbent carrier above the established benchmark.

20. Commenters discussing proposed changes to the unjust enrichment policies, contend that the Commission should continue to apply the current unjust enrichment standard. These entities argue that the current unjust enrichment rules are sufficient and provide adequate protection. Thus, they conclude that no increased regulation is needed or appropriate. Other commenters argue for the implementation of stricter unjust enrichment rules.

21. The Commission agrees with commenters that adoption of stricter unjust enrichment rules, applicable to all designated entities, will promote the objectives of the designated entity program. The designated entity and unjust enrichment rules were adopted to ensure the creation of new telecommunications businesses owned by small businesses that will continue to provide spectrum-based services. In addition, the unjust enrichment rules provide a deterrent to speculation and participation in the licensing process by those who do not intend to offer service to the public, or who intend to use bidding credits to obtain a license at a discount and later to sell it at the full market price for a windfall profit. By extending the unjust enrichment period to ten years, the Commission increased the probability that the designated entity will develop to be a competitive facilities-based service provider.

22. In addition to revising the unjust enrichment payment schedule, the Commission will impose a requirement that the Commission must be reimbursed for the entire bidding credit amount owed, plus interest, if a designated entity loses its eligibility for a bidding credit for any reason, including but not limited to, entering into an impermissible material relationship or an attributable material relationship, seeking to assign or transfer control of a license, or entering into a *de facto* transfer lease with an entity that is not eligible for bidding credits prior to the filing of the notification informing the Commission that the construction requirements applicable at the end of the license term have been met.

23. The Commission imposes the above-mentioned reimbursement obligations on any licensee that acquires licenses with bidding credits and subsequently loses its eligibility for a bidding credit for any reason because the implementation of such a policy is consistent with the policies underlying the Commission's designated entity and unjust enrichment requirements. By expanding the unjust enrichment period and requiring full payment of the bidding credit until a license has been constructed, the Commission is fulfilling Congress's mandate that designated entities are given the opportunity to participate in the provision of spectrum-based services, while ensuring that entities that are not eligible for designated entity benefits cannot benefit from the designated entity program by acquiring the licenses or entering into impermissible or attributable material relationships with a designated entity after it acquires a license at auction or in the secondary market.

24. The Commission agrees with a commenter's proposal that unjust enrichment payments should not be required for licenses held by the designated entity in the case of natural

or permissible growth of the gross revenues of either a designated entity or an investor in a designated entity. Currently, there are no permissible growth provisions associated with bidding credits. However, Commission practice has been that a designated entity will not owe unjust enrichment for its licenses if the designated entity's increased gross revenues, or the increased gross revenues of any controlling interest or affiliate, are due to nonattributable equity investments, debt financing, revenue from operations or other investments, business development, or expanded service. Under the policies adopted in the *Second Report and Order,* the Commission similarly would evaluate an applicant's or licensee's eligibility for designated entity benefit at the time it files an application regarding a reportable eligibility event, as required in the new § 1.2114 that the Commission adopted. Thus, if the designated entity seeks to acquire licenses on the secondary market or in future auctions, all of the designated entity's gross revenues, along with the gross revenues of its controlling interests and affiliates, will be attributed to the designated entity.

C. Implementation

25. To prevent abuse of the designed entity program, the Commission will use the following combination of existing and new measures to ensure that designated entity incentives benefit solely those parties intended to receive them under both its rules and section 309(j) of the Communications Act of 1934. First, the Commission will review the agreements to which designated entity applicants and licensees are parties. Second, the Commission will require that applicants and licensees seek advance Commission approval for all events that might affect their ongoing eligibility for designated entity benefits. Third, the Commission will impose periodic reporting requirements on designated entities. Fourth, the Commission will conduct audits, including random audits, of those claiming designated entity benefits.

26. In light of the steps the Commission is taking in the *Second R&O* to aid its ability to ensure that only eligible entities obtain designated entity benefits, the Commission will undertake a thorough review of the long-form application (FCC Form 601) filed by every winning bidder claiming designated entity benefits and will carefully review all relevant contracts, agreements, letters of intent, and other such documents affecting that applicant. This review remains essential to the Commission's assessment of designated entity eligibility under the controlling interest standard and will be even more critical in ensuring that the rules and policies adopted in the *Second R&O* are fully effectuated. In order to implement this rule, the Commission delegated to the Bureau the authority to determine the method for designated entities to submit the appropriate and relevant documents.

27. Further, the Commission will also thoroughly review all relevant contracts, agreements, letters of intent, and other such documents affecting an applicant, which claims designated entity eligibility, seeking to acquire licenses with designated entity benefits in the secondary market.

28. In light of the changes that the Commission is making to the designated entity rules, the Commission will require additional information from applicants and licensees in order to ensure compliance with the policies and adopted rules. The Commission also adopted rules authorizing modifications to be made, as necessary, to and the creation, if necessary, of FCC forms to implement the rule changes.

29. The Commission will revise § 1.2110 of its rule to require designated entity licensees to file an annual report with the Commission, which will, at a minimum, include a list and summaries of all agreements and arrangements that relate to eligibility for designated entity benefits.

30. The Commission considers adoption of these reporting requirements to be a foreseeable component of the designated entity eligibility rules the Commission adopted, and the Commission believes them to be necessary to the successful implementation of these rules. The Commission delegates to the Bureau the authority to implement the necessary modifications to FCC forms and the Universal Licensing System to implement these rule changes and to determine the content of, and filing procedures for, the new annual filing requirement.

31. Pursuant to the Commission's existing rules, the Commission has broad power to conduct audits at any time and for any reason, including at random, of applicants and licensees claiming designated entity benefits. A commenter urges the Commission to employ its existing audit power and regularly conduct random audits to uncover manipulation of the program. The commenter recommends that these audits incorporate site visits to offices and physical plants, interviews with staff and meaningful inquiries into the management of the licenses. Another commenter suggested the imposition of periodic reporting requirements might dissuade some abuse of the Commission's rules.

32. The Commission agrees that its audit authority is an effective method by which to ascertain the initial and ongoing eligibility of the claimants of designated entity benefits. Applicants and licensees should therefore understand that the Commission can and will audit their continued designated entity eligibility as circumstances may necessitate or at will. Moreover, based on the significance of the upcoming AWS auction, the Commission commits to audit the eligibility of every designated entity that wins a license in that auction at least once during the initial license term. In order to effectively conduct these audits, the Commission delegates to the Bureau the authority to implement and create procedures to perform such audits.

33. In the *FNPRM,* the Commission intends any changes adopted to apply to AWS licenses currently scheduled to be offered in an auction beginning June 29, 2006. The Commission noted that in light of the current auction schedule, any changes that it adopts may become effective after the deadline for filing applications to participate in that auction. The Commission sought comment on its proposal to require applicants to amend their applications on or after the effective date of the rule changes with a statement declaring, under penalty of perjury, that the applicant is qualified as a designated entity pursuant to § 1.2110 of the Commission's rules effective as of the date of the statement. The Commission also notes that in the event applicants fail to file such a statement pursuant to procedures announced by public notice, they will be ineligible to qualify as a designated entity.

34. The vast majority of commenters did not address this issue. Under Commission rules, applicants asserting designated entity eligibility in a Commission auction are required to declare, under penalty of perjury, that they are qualified as a designated entity under § 1.2110 of the Commission's rules. After reviewing the record and considering the public interest benefits associated with the Commission's proposal, the Commission will require entities applying as designated entities to amend their applications for the AWS auction on or after the effective date of the rule changes with a statement declaring, under penalty of perjury, that the applicant is qualified as a designated entity pursuant to § 1.2110 of

the Commission's rules effective as of the date of the statement.

II. Conclusion

35. The Commission modifies its rules for determining the eligibility of applicants for size-based benefits in the context of competitive bidding.

III. Procedural Matters

36. As required by the Regulatory Flexibility Act, 5 U.S.C. 604, the Commission has prepared a Final Regulatory Flexibility Analysis.

IV. Final Regulatory Flexability Analysis

37. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the FNPRM of proposed Rule Making (*FNPRM*) in WT Docket No. 05–211. The Commission sought written public comment in the FNPRM on possible changes to its competitive bidding rules, as well as on the IRFA. One commenter addressed the IRFA. This Final Regulatory Flexibility Analysis conforms to the IRFA.

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

38. The *Second Report and Order* adopts modifications to the Commission's rules for determining the eligibility of applicants for size-based benefits in the context of competitive bidding. Over the last decade, the Commission has engaged in numerous rulemakings and adjudicatory investigations to prevent companies from circumventing the objectives of the designated entity eligibility rules. To that end, in determining whether to award designated entity benefits, the Commission adopted a strict eligibility standard that focused on whether the applicant maintained control of the corporate entity. The Commission's objective in employing such a standard was to deter the establishment of sham companies in a manner that permits easy resolution of eligibility issues without the delay of administrative hearings. The Commission intends its small business provisions to be available only to bona fide small businesses.

39. Consequently, the rules as modified by the *Second Report and Order* provide that certain material relationships of an applicant for designated entity benefits will be a factor in determining the applicant's eligibility. The *Second Report and Order* provides that if an applicant or licensee has agreements that together enable it to lease or resell more than 50 percent of the spectrum capacity of any individual licenses, the applicant or licensee will be ineligible for designated entity benefits. Further, the *Second Report and Order* also provides that if an applicant or licensee has agreements with any other entity, including entities or individuals attributable to that other entity that enable the applicant or licensee to lease or resell more than 25 percent of the spectrum capacity of any individual licenses, the other entity will be attributed to the applicant or licensee when determining the applicant's or licensee's eligibility for designated entity benefits. Finally, the modifications of the *Second Report and Order* strengthen the Commission's unjust enrichment rules to better deter attempts at circumvention and to recapture designated entity benefits when there has been a change in eligibility on a license-by-license basis. Similarly, to ensure its continued ability to safeguard the award of designated entity benefits, the Commission provides clarification regarding how it will implement its rules concerning audits and refines its rules with respect to the reporting obligations of designated entities.

40. These rule modifications will enhance the Commission's ability to carry out Congress's statutory plan in accordance with the intent of Congress that every recipient of designated entity benefits uses its licenses directly to provide facilities-based telecommunications services for the benefit of the public. In making these changes to the rules, the Commission takes another important step in fulfilling its statutory mandate to facilitate the participation of small businesses in the provision of spectrum based services.

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

41. The National Telecommunications Cooperative Association filed comments in response to the IRFA stating, among other things, that the Commission must take steps to minimize the economic impact of its proposed rules on small entities. NTCA asserts that the Commission must tailor its rules narrowly enough to target only real abuse, rather than capturing all rural telephone companies with any ties to a large in-region wireless provider, or it should exempt rural telephone companies from the rules' provision.

C. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

42. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term small entity as having the same meaning as the terms small organization, small business, and small governmental jurisdiction. 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 SBA.

43. A small organization is generally any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. Nationwide, as of 2002, there were approximately 1.6 million small organizations. The term small governmental jurisdiction is defined generally as governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand. Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States. The Commission estimates that, of this total, 84,377 entities were small governmental jurisdictions. Thus, the Commission estimates that most governmental jurisdictions are small. Nationwide, there are a total of approximately 22.4 million small businesses, according to SBA data.

44. The changes and additions to the Commission's rules adopted in the *Second Report and Order* are of general applicability to all services, applying to all entities of any size that seek eligibility to participate in Commission auctions as a designated entity and/or that hold licenses won through competitive bidding that are subject to designated entity benefits. Accordingly, this FRFA provides a general analysis of the impact of the proposals on small businesses rather than a service by service analysis. The number of entities that may apply to participate in future Commission auctions is unknown. The number of small businesses that have participated in prior auctions has varied. In all of our auctions held to date, 1,975 out of a total of 3,545 qualified bidders either have claimed eligibility for small business bidding credits or have self-reported their status as small businesses as that term has been defined under rules adopted by the Commission for specific services. In addition, the Commission notes 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 changes in control, changes in material relationships or assignments or transfers, unjust enrichment issues are implicated.

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

45. The Commission will require additional information from applicants in order to ensure compliance with the policies and rules adopted by the *Second Report and Order*. For example, designated entity applicants that have filed applications to participate in an auction for which bidding will begin on or after the effective date of the rules, will be required to amend their applications on or after the effective date of the rule changes with a statement declaring, under penalty of perjury, that the applicant is qualified as a designated entity pursuant to the Commission's rules effective as of the date of the statement. In addition, the Commission adopts rules to make modifications, as necessary, to FCC forms related to auction, licensing, and leasing applications. Specifically, the modifications will require that designated entities report any relevant material relationship(s), as defined in newly adopted sections of 1.2110, reached after the date the rules are published in the **Federal Register**, even if the material relationship between the designated entity and the other entity would not have triggered a reporting requirement under the rules prior to the *Second Report and Order.*

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

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

47. The *FNPRM* sought comment on several options for modifying its designated entity eligibility rules and specifically sought comment from small entities. The options included various ways to consider whether the Commission should award designated entity benefits where an applicant for such benefits also had financial or operational agreements with a larger entity. In considering these options, for the purposes of determining designated entity eligibility, the Commission defined the effect of entering certain agreements. By adopting the rules in the *Second Report and Order,* the Commission will enhance its ability to carry out Congress's statutory plan that every recipient of designated entity benefits uses their licenses directly to provide facilities-based telecommunications services, for the benefit of the public.

F. Report to Congress

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

V. Paperwork Reduction Analysis

49. The *Second Report and Order* contains new or modified information collection requirements subject to the Paperwork Reduction Act Of 1995 (PRA), Public Law 104–13. It has been submitted to the Office of Management and Budget (OMB) for review under section 3507(D) of the PRA. OMB, the general public, and other federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, 44 U.S.C. 3506(C)(4), the Commission previously sought specific comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees.

50. In the *Second Report and Order,* the Commission has assessed the effects of its new restriction on the award of designated entity benefits where an applicant or licensee has agreements that create a material relationship with one or more other entities for the lease (under either spectrum manager or *de facto* transfer leasing arrangements) or resale (including under a wholesale arrangement) of a portion of its spectrum capacity. The Commission finds that the rule it adopts will best ensure that it can continue to award designated entity benefits to entities that Congress intended. While the new rule may impose a new information collection on small businesses, including those with fewer than 25 employees, the Commission concludes that this information collection is necessary to ensure that the benefits of its designated entity program are reserved only for legitimate small businesses.

VI. Congressional Review Act

51. The Commission will include a copy of the *Second Report and Order and Second Further Notice of Proposed Rule Making* in a report it will send to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1(A).

VII. Ordering Clauses

52. Accordingly, *it is ordered* that, pursuant to sections 4(i), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. sections 154(i), 303(r), and 309(j), the *Second Report and Order* is hereby *adopted* and part 1, subpart Q of the Commission's rules, 47 CFR Part 1, is amended as set forth in Appendix B of the *Second Report and Order,* effective 30 days after publication in the **Federal Register**, except for the grandfathering provisions which are effective upon release.

53. *It is further ordered* that, pursuant to 47 U.S.C. 155(c) and 47 CFR 0.131(c) and 0.331, the Chief of the Wireless Telecommunications Bureau *is granted delegated authority* to prescribe and set forth procedures for the implementation of the provisions adopted herein.

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

List of Subjects in 47 CFR Part 1

Administrative practice and procedures, Auctions, Licensing, Telecommunications.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 1 as follows:

PART 1—PRACTICE AND PROCEDURE

■ 1. The authority citation for part 1 is revised to read as follows:

Authority: 15 U.S.C. 79 *et seq.*; 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 303(r), and 309.

■ 2. In § 1.913, paragraph (a) introductory text and the first sentence of paragraph (b) introductory text are revised and paragraph (a)(6) is added to read as follows:

§ 1.913 Application and notification forms; electronic and manual filing.

(a) *Application and notification forms.* Applicants, licensees, and spectrum lessees (see § 1.9003) shall use the following forms and associated schedules for all applications and notifications:

* * * * *

(6) FCC Form 609, Application to Report Eligibility Event. FCC Form 609 is used by licensees to apply for Commission approval of reportable eligibility events, as defined in § 1.2114.

(b) *Electronic filing.* Except as specified in paragraph (d) of this section or elsewhere in this chapter, all applications and other filings using the application and notification forms listed in this section or associated schedules must be filed electronically in accordance with the electronic filing instructions provided by ULS. * * *

* * * * *

■ 3. In § 1.919 revise paragraph (b) introductory text and add paragraph (b)(5) to read as follows:

§ 1.919 Ownership information.

* * * * *

(b) Any applicant or licensee that is subject to the reporting requirements of § 1.2112 or § 1.2114 shall file an FCC Form 602, or file an updated form if the ownership information on a previously filed FCC Form 602 is not current, at the time it submits:

* * * * *

(5) An application reporting any reportable eligibility event, as defined in § 1.2114.

* * * * *

■ 4. Revise paragraph (a)(2)(ii)(B) of § 1.2105 to read as follows:

§ 1.2105 Bidding application and certification procedures; prohibition of collusion.

(a) * * *

(2) * * *

(ii) * * *

(B) Applicant ownership and other information, as set forth in § 1.2112.

* * * * *

■ 5. In § 1.2110, paragraphs (b)(1)(i), (b)(1)(ii), and (j) are revised, paragraphs (n) and (o) are redesignated as paragraphs (o) and (p), and paragraphs (b)(3)(iv) and (n) are added to read as follows:

§ 1.2110 Designated entities.

* * * * *

(b) * * *

(1) * * *

(i) The gross revenues of the applicant (or licensee), its affiliates, its controlling interests, the affiliates of its controlling interests, and the entities with which it has an attributable material relationship shall be attributed to the applicant (or licensee) and considered on a cumulative basis and aggregated for purposes of determining whether the applicant (or licensee) is eligible for status as a small business, very small business, or entrepreneur, as those terms are defined in the service-specific rules. An applicant seeking status as a small business, very small business, or entrepreneur, as those terms are defined in the service-specific rules, must disclose on its short- and long-form applications, separately and in the aggregate, the gross revenues for each of the previous three years of the applicant (or licensee), its affiliates, its controlling interests, the affiliates of its controlling interests, and the entities with which it has an attributable material relationship.

(ii) If applicable, pursuant to § 24.709 of this chapter, the total assets of the applicant (or licensee), its affiliates, its controlling interests, the affiliates of its controlling interests, and the entities with which it has an attributable material relationship shall be attributed to the applicant (or licensee) and considered on a cumulative basis and aggregated for purposes of determining whether the applicant (or licensee) is eligible for status as an entrepreneur. An applicant seeking status as an entrepreneur must disclose on its short- and long-form applications, separately and in the aggregate, the gross revenues for each of the previous two years of the applicant (or licensee), its affiliates, its controlling interests, the affiliates of its controlling interests, and the entities with which it has an attributable material relationship.

* * * * *

(3) * * *

(iv) *Applicants or licensees with material relationships*—(A) *Impermissible material relationships.* An applicant or licensee that would otherwise be eligible for designated entity benefits under this section and applicable service-specific rules shall be ineligible for such benefits if the applicant or licensee has an impermissible material relationship. An applicant or licensee has an impermissible material relationship when it has arrangements with one or more entities for the lease or resale (including under a wholesale agreement) of, on a cumulative basis, more than 50 percent of the spectrum capacity of any one of the applicant's or licensee's licenses.

(B) *Attributable material relationships.* An applicant or licensee must attribute the gross revenues (and, if applicable, the total assets) of any entity, (including the controlling interests, affiliates, and affiliates of the controlling interests of that entity) with which the applicant or licensee has an attributable material relationship. An applicant or licensee has an attributable material relationship when it has one or more arrangements with any individual entity for the lease or resale (including under a wholesale agreement) of, on a cumulative basis, more than 25 percent of the spectrum capacity of any one of the applicant's or licensee's licenses.

(C) *Grandfathering*—(*1*) *Licensees.* An impermissible or attributable material relationship shall not disqualify a licensee for previously awarded benefits with respect to a license awarded before April 25, 2006, based on spectrum lease or resale (including wholesale) arrangements entered into before April 25, 2006.

(2) Applicants. An impermissible or attributable material relationship shall not disqualify an applicant seeking eligibility in an application for a license, authorization, assignment, or transfer of control or for partitioning or disaggregation filed before April 25, 2006, based on spectrum lease or resale (including wholesale) arrangements entered into before April 25, 2006. Any applicant seeking eligibility in an application for a license, authorization, assignment, or transfer of control or for partitioning or disaggregation filed after April 25, 2006, or in an application to participate in an auction in which bidding begins on or after June 5, 2006, need not attribute the material relationship(s) of those entities that are its affiliates based solely on § 1.2110(c)(5)(i)(C) if those affiliates entered into such material relationship(s) before April 25, 2006, and are subject to a contractual prohibition preventing them from contributing to the applicant's total financing.

Example to paragraph (b)(3)(iv)(C)*(2)*: Newco is an applicant seeking designated entity status in an auction in which bidding begins after the effective date of the rules. Investor is a controlling interest of Newco. Investor also is a controlling interest of Existing DE. Existing DE previously was

awarded designated entity benefits and has impermissible material relationships based on leasing agreements entered into before April 25, 2006, with a third party, Lessee, that were in compliance with the Commission's designated eligibility standards prior to April 25, 2006. In this example, Newco would not be prohibited from acquiring designated entity benefits solely because of the existing impermissible material relationships of its affiliate, Existing DE. Newco, Investor, and Existing DE, however, would need to enter into a contractual prohibition that prevents Existing DE from contributing to the total financing of Newco.

* * * * *

(j) Designated entities must describe on their long-form applications how they satisfy the requirements for eligibility for designated entity status, and must list and summarize on their long-form applications all agreements that affect designated entity status such as partnership agreements, shareholder agreements, management agreements, spectrum leasing arrangements, spectrum resale (including wholesale) arrangements, and all other agreements, including oral agreements, establishing, as applicable, de facto or *de jure* control of the entity or the presence or absence of impermissible and attributable material relationships. Designated entities also must provide the date(s) on which they entered into each of the agreements listed. In addition, designated entities must file with their long-form applications a copy of each such agreement. In order to enable the Commission to audit designated entity eligibility on an ongoing basis, designated entities that are awarded eligibility must, for the term of the license, maintain at their facilities or with their designated agents the lists, summaries, dates, and copies of agreements required to be identified and provided to the Commission pursuant to this paragraph and to § 1.2114.

* * * * *

(n) *Annual reports.* Each designated entity licensee must file with the Commission an annual report within five business days before the anniversary date of the designated entity's license grant. The annual report shall include, at a minimum, a list and summaries of all agreements and arrangements (including proposed agreements and arrangements) that relate to eligibility for designated entity benefits. In addition to a summary of each agreement or arrangement, this list must include the parties (including affiliates, controlling interests, and affiliates of controlling interests) to each agreement or arrangement, as well as the dates on which the parties entered into each agreement or arrangement. Annual reports will be filed no later than, and up to five business days before, the anniversary of the designated entity's license grant.

* * * * *

■ 6. Revise paragraphs (a), (b) introductory text, the first sentence of paragraph (c)(2), the first sentence of paragraph (c)(3), and paragraphs (d)(1) and (d)(2) of § 1.2111 to read as follows:

§ 1.2111 Assignment or transfer of control: unjust enrichment.

(a) *Reporting requirement.* An applicant seeking approval for a transfer of control or assignment (otherwise permitted under the Commission's Rules) of a license within three years of receiving a new license through a competitive bidding procedure must, together with its application for transfer of control or assignment, file with the Commission's statement indicating that its license was obtained through competitive bidding. Such applicant must also file with the Commission the associated contracts for sale, option agreements, management agreements, or other documents disclosing the local consideration that the applicant would receive in return for the transfer or assignment of its license (see § 1.948). This information should include not only a monetary purchase price, but also any future, contingent, in-kind, or other consideration (*e.g.*, management or consulting contracts either with or without an option to purchase; below market financing).

(b) *Unjust enrichment payment: set-aside.* As specified in this paragraph an applicant seeking approval for a transfer of control or assignment (otherwise permitted under the Commission's Rules) of, or for entry into a material relationship (see §§ 1.2110, 1.2114) (otherwise permitted under the Commission's rules) involving, a license acquired by the applicant pursuant to a set-aside for eligible designated entities under § 1.2110(c), or which proposes to take any other action relating to ownership or control that will result in loss of eligibility as a designated entity, must seek Commission approval and may be required to make an unjust enrichment payment (Payment) to the Commission by cashier's check or wire transfer before consent will be granted. The Payment will be based upon a schedule that will take account of the term of the license, any applicable construction benchmarks, and the estimated value of the set-aside benefit, which will be calculated as the difference between the amount paid by the designated entity for the license and the value of comparable non-set-aside license in the free market at the time of the auction. The Commission will establish the amount of the Payment and the burden will be on the applicants to disprove this amount. No payment will be required if:

* * * * *

(c) * * *

(2) If a licensee that utilizes installment financing under this section seeks to make any change in ownership structure or to enter into a material relationship (see § 1.2110) that would result in the licensee losing eligibility for installment payments, the licensee shall first seek Commission approval and must make full payment of the remaining unpaid principal and any unpaid interest accrued through the date of such change as a condition of approval. * * *

(3) If a licensee seeks to make any change in ownership or to enter into a material relationship (see § 1.2110) that would result in the licensee qualifying for a less favorable installment plan under this section, the licensee shall seek Commission approval and must adjust its payment plan to reflect its new eligibility status. * * *

(d) * * *

(1) A licensee that utilizes a bidding credit, and that during the initial term seeks to assign or transfer control of a license to an entity that does not meet the eligibility criteria for a bidding credit, will be required to reimburse the U.S. Government for the amount of the bidding credit, plus interest based on the rate for ten year U.S. Treasury obligations applicable on the date the license was granted, as a condition of Commission approval of the assignment or transfer. If, within the initial term of the license, a licensee that utilizes a bidding credit seeks to assign or transfer control of a license to an entity that is eligible for a lower bidding credit, the difference between the bidding credit obtained by the assigning party and the bidding credit for which the acquiring party would qualify, plus interest based on the rate for ten year U.S. treasury obligations applicable on the date the license is granted, must be paid to the U.S. Government as a condition of Commission approval of the assignment or transfer. If, within the initial term of the license, a licensee that utilizes a bidding credit seeks to make any ownership change or to enter into a material relationship (see § 1.2110) that would result in the licensee losing eligibility for a bidding credit (or qualifying for a lower bidding credit), the amount of the bidding credit (or the difference between the bidding credit originally obtained and the bidding

credit for which the licensee would qualify after restructuring or entry into a material relationship), plus interest based on the rate for ten year U.S. treasury obligations applicable on the date the license is granted, must be paid to the U.S. Government as a condition of Commission approval of the assignment or transfer or of a reportable eligibility event (see § 1.2114).

(2) *Payment schedule.* (i) The amount of payments made pursuant to paragraph (d)(1) of this section will be 100 percent of the value of the bidding credit prior to the filing of the notification informing the Commission that the construction requirements applicable at the end of the initial license term have been met. If the notification informing the Commission that the construction requirements applicable at the end of the initial license term have been met, the amount of the payments will be reduced over time as follows:

(A) A loss of eligibility in the first five years of the license term will result in a forfeiture of 100 percent of the value of the bidding credit (or in the case of eligibility changing to qualify for a lower bidding credit, 100 percent of the difference between the bidding credit received and the bidding credit for which it is eligible);

(B) A loss of eligibility in years 6 and 7 of the license term will result in a forfeiture of 75 percent of the value of the bidding credit (or in the case of eligibility changing to qualify for a lower bidding credit, 75 percent of the difference between the bidding credit received and the bidding credit for which it is eligible);

(C) A loss of eligibility in years 8 and 9 of the license term will result in a forfeiture of 50 percent of the value of the bidding credit (or in the case of eligibility changing to qualify for a lower bidding credit, 50 percent of the difference between the bidding credit received and the bidding credit for which it is eligible); and

(D) A loss of eligibility in year 10 of the license term will result in a forfeiture of 25 percent of the value of the bidding credit (or in the case of eligibility changing to qualify for a lower bidding credit, 25 percent of the difference between the bidding credit received and the bidding credit for which it is eligible).

(ii) These payments will have to be paid to the United States Treasury as a condition of approval of the assignment, transfer, ownership change, or reportable eligibility event (see § 1.2114).

* * * * *

■ 7. In § 1.2112, redesignate paragraph (b)(1)(iii) as (b)(1)(iv), add new paragraphs (b)(1)(iii) and (b)(2)(iv), and revise newly designated paragraphs (b)(1)(iv), (b)(2)(iii), and (b)(2)(v) to read as follows:

§ 1.2112 Ownership disclosure requirements for applications.

* * * * *

(b) * * *

(1) * * *

(iii) List all parties with which the applicant has entered into arrangements for the spectrum lease or resale (including wholesale agreements) of any of the capacity of any of the applicant's spectrum.

(iv) List separately and in the aggregate the gross revenues, computed in accordance with § 1.2110, for each of the following: The applicant, its affiliates, its controlling interests, the affiliates of its controlling interests, and the entities with which it has an attributable material relationship; and if a consortium of small businesses, the members comprising the consortium.

* * * * *

(2) * * *

(iii) List and summarize all agreements or instruments (with appropriate references to specific provisions in the text of such agreements and instruments) that support the applicant's eligibility as a small business under the applicable designated entity provisions, including the establishment of de facto or *de jure* control or the presence or absence of impermissible and attributable material relationships. Such agreements and instruments include articles of incorporation and bylaws, partnership agreements, shareholder agreements, voting or other trust agreements, management agreements, franchise agreements, spectrum leasing arrangements, spectrum resale (including wholesale) arrangements, and any other relevant agreements (including letters of intent), oral or written;

* * * * *

(v) List separately and in the aggregate the gross revenues, computed in accordance with § 1.2110, for each of the following: the applicant, its affiliates, its controlling interests, affiliates of its controlling interests, and parties with which it has attributable material relationships; and if a consortium of small businesses, the members comprising the consortium; and

* * * * *

(vii) List and summarize any agreements in which the applicant has entered into arrangements for the lease or resale (including wholesale agreements) of any of the spectrum capacity of the license that is the subject of the application.

■ 8. Add new § 1.2114 to read as follows:

§ 1.2114 Reporting of eligibility event.

(a) A designated entity must seek Commission approval for all reportable eligibility events. A reportable eligibility event is:

(1) Any spectrum lease (as defined in § 1.9003) or resale arrangement (including wholesale agreements) with one entity or on a cumulative basis that would cause a licensee to lose eligibility for installment payments, a set-aside license, or a bidding credit (or for a particular level of bidding credit) under § 1.2110 and applicable service-specific rules.

(2) Any other event that would lead to a change in the eligibility of a licensee for designated entity benefits.

(b) *Documents listed on and filed with application.* A designated entity filing an application pursuant to this section must—

(1) List and summarize on the application all agreements and arrangements (including proposed agreements and arrangements) that give rise to or otherwise relate to a reportable eligibility event. In addition to a summary of each agreement or arrangement, this list must include the parties (including each party's affiliates, its controlling interests, the affiliates of its controlling interests, its spectrum lessees, and its spectrum resellers and wholesalers) to each agreement or arrangement, as well as the dates on which the parties entered into each agreement or arrangement.

(2) File with the application a copy of each agreement and arrangement listed pursuant to this paragraph.

(3) Maintain at its facilities or with its designated agents, for the term of the license, the lists, summaries, dates, and copies of agreements and arrangements required to be provided to the Commission pursuant to this section.

(c) *Application fees.* The application reporting the eligibility event will be treated as a transfer of control for purposes of determining the applicable application fees as set forth in § 1.1102.

(d) *Streamlined approval procedures.* (1) The eligibility event application will be placed on public notice once the application is sufficiently complete and accepted for filing (see § 1.933).

(2) Petitions to deny filed in accordance with section 309(d) of the Communications Act must comply with the provisions of § 1.939, except that

such petitions must be filed no later than 14 days following the date of the Public Notice listing the application as accepted for filing.

(3) No later than 21 days following the date of the Public Notice listing an application as accepted for filing, the Wireless Telecommunications Bureau (Bureau) will grant the application, deny the application, or remove the application from streamlined processing for further review.

(4) Grant of the application will be reflected in a Public Notice (see § 1.933(a)(2)) promptly issued after the grant.

(5) If the Bureau determines to remove an application from streamlined processing, it will issue a Public Notice indicating that the application has been removed from streamlined processing. Within 90 days of that Public Notice, the Bureau will either take action upon the application or provide public notice that an additional 90-day period for review is needed.

(e) *Public notice of application.* Applications under this subpart will be placed on an informational public notice on a weekly basis (see § 1.933(a)).

(f) *Contents of the application.* The application must contain all information requested on the applicable form, any additional information and certifications required by the rules in this chapter, and any rules pertaining to the specific service for which the application is filed.

(g) The designated entity is required to update any change in a relationship that gave rise to a reportable eligibility event.

[FR Doc. 06–4257 Filed 5–3–06; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 060427113–6113–01; I.D. 042406A]

RIN 0648–AT34

Fisheries Off West Coast States; West Coast Salmon Fisheries; 2006 Management Measures and a Temporary Rule

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

ACTION: Final rule; and a temporary rule for emergency action; request for comments.

SUMMARY: NMFS establishes fishery management measures for the 2006 ocean salmon fisheries off Washington, Oregon, and California and the 2007 salmon seasons opening earlier than May 1, 2007. The temporary rule for emergency action, under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), implements the 2006 annual management measures for the west coast ocean salmon fisheries for the area from Cape Falcon, OR, to Point Sur, CA, from May 1 to August 31, 2006. The emergency rule is required because Klamath River fall Chinook (KRFC) are projected to not meet their conservation objective, or escapement floor, of 35,000 adult natural spawners established in the Pacific Coast Salmon Fishery Management Plan (Salmon FMP). Specific fishery management measures vary by fishery and by area. The measures establish fishing areas, seasons, quotas, legal gear, recreational fishing days and catch limits, possession and landing restrictions, and minimum lengths for salmon taken in the U.S. exclusive economic zone (EEZ) (3–200 nm) off Washington, Oregon, and California. The management measures are intended to prevent overfishing and to apportion the ocean harvest equitably among treaty Indian, non-treaty commercial, and recreational fisheries. The measures are also intended to allow a portion of the salmon runs to escape the ocean fisheries in order to provide for spawning escapement and to provide for inside fisheries (fisheries occurring in state internal waters).

DATES: Amendments to 50 CFR 660.410(a), (b)(1), (b)(4), and (d) are effective from 0001 hours Pacific daylight time, May 1, 2006, through 2359 hours Pacific daylight time, August 31, 2006. The remaining uncodified management measures, including the measures that apply from Cape Falcon to Pt. Sur beginning September 1, 2006, are effective from 0001 hours Pacific Daylight Time, May 1, 2006, until the effective date of the 2007 management measures, as published in the **Federal Register**.

Comments must be received by May 19, 2006.

ADDRESSES: Comments on the management measures and the related environmental assessment (EA) may be sent to D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way N.E., Seattle, WA 98115–0070, fax: 206–526–6376; or to Rod McInnis, Regional Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213, fax: 562–980–4018. Comments can also be submitted via e-mail at the *2006oceansalmonregs.nwr@noaa.gov* address, or through the Internet at the Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments, and include ''RIN 0648–AT34'' in the subject line of the message.

Copies of the FONSI and its supporting EA and other documents cited in this document are available from Dr. Donald O. McIsaac, Executive Director, Pacific Fishery Management Council, 7700 NE. Ambassador Place, Suite 200, Portland, OR 97220–1384, and are posted on its Web site *http://www.pcouncil.org*.

Send comments regarding the reporting burden estimate or any other aspect of the collection-of-information requirements in these management measures, including suggestions for reducing the burden, to one of the NMFS addresses listed above and to David Rostker, Office of Management and Budget (OMB), by e-mail at *David_Rostker@omb.eop.gov*, or by facsimile (fax) at (202) 395–7285

FOR FURTHER INFORMATION CONTACT: Frank Lockhart at 206–526–6140, or Mark Helvey at 562–980–4040.

SUPPLEMENTARY INFORMATION:

Background

The ocean salmon fisheries in the EEZ off Washington, Oregon, and California are managed under a ''framework'' fishery management plan entitled the Salmon FMP. Regulations at 50 CFR part 660, subpart H, provide the mechanism for making preseason and inseason adjustments to the management measures, within limits set by the Salmon FMP, by notification in the **Federal Register**.

These management measures for the 2006 and pre-May 2007 ocean salmon fisheries were recommended by the Pacific Fishery Management Council (Council) at its April 3 to 7, 2006, meeting.

Schedule Used To Establish 2006 Management Measures

The Council announced its annual preseason management process for the 2006 ocean salmon fisheries in the **Federal Register** on December 28, 2005 (70 FR 76783). This notice announced the availability of Council documents as well as the dates and locations of Council meetings and public hearings comprising the Council's complete schedule of events for determining the annual proposed and final modifications to ocean salmon fishery management measures. The agendas for