

used to calculate the UWB emissions limit.

18. Because of the filing of an Application for Review of a grant of certification issued to Time Domain for its UWB transmitter along with an associated Request for Declaratory Ruling addressing the regulations regarding emissions from digital circuitry contained within UWB devices, the Commission clarified the regulation regarding limits on emissions produced by digital circuitry used within UWB devices. This clarification more closely comport with the text of the *First Report and Order*.

#### Administrative Provisions

19. *Paperwork Reduction Act*: This Memorandum Opinion and Order (MO&O) contains a modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection(s) contained in this MO&O as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due June 23, 2003.

20. *Final Regulatory Flexibility Certification*: The Regulatory Flexibility Act of 1980, as amended (RFA)<sup>1</sup> requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that "the rule will not have a significant economic impact on a substantial number of small entities."<sup>2</sup> The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."<sup>3</sup> In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.<sup>4</sup> A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria

established by the Small Business Administration (SBA).<sup>5</sup>

21. In this Memorandum Opinion and Order, we are responding to fourteen petitions for reconsideration regarding new rules adopted to permit the marketing and operation of new products incorporating ultra-wideband ("UWB") technology. UWB devices operate by employing very narrow or short duration pulses that result in very large or wideband transmission bandwidths. With appropriate technical standards, UWB devices can operate on spectrum occupied by existing radio services without causing interference, thereby permitting scarce spectrum resources to be used more efficiently. Further, as noted in the text we have continued to apply conservative limits to the standards applicable for UWB operation, until such time as we gain additional experience, to ensure that harmful interference would not be caused to other radio spectrum users. Further, the changes adopted in this proceeding will not affect any party legally manufacturing or marketing UWB devices. Thus, we expect that our actions do not amount to a significant economic impact. Accordingly, we certify that the rules being adopted in this Memorandum Opinion and Order will not have a significant economic impact on a substantial number of small entities.

22. We will send a copy of the Memorandum Opinion and Order, including a copy of this Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act.<sup>6</sup> In addition, the Memorandum Opinion and Order and this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration, and will be published in the **Federal Register**.<sup>7</sup>

23. *Ordering Clauses*: The Petitions for Reconsideration from MSSI, Siemens VDO, Time Domain, AGA and APGA, GPRIC, GPR Providers, and NUCA are granted to the extent described above. The Petitions for Reconsideration from Kohler, MSSI, Siemens, GPRIC, GPR Providers, Cingular, Qualcomm, Sprint, Sirius and XM, ARINC and ATA, and SIA are denied to the extent described above. Part 15 of the Commission's Rules and Regulations is amended as specified in the rule changes, effective May 22, 2003, except § 15.525 which contains information collection requirements that have not been approved by OMB. The FCC will publish a document in the **Federal**

**Register** announcing the effective date for that section. This action is taken pursuant to Sections 4(i), 302, 303(e), 303(f), 303(r), 304 and 307 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 302, 303(e), 303(f), 303(r), 304 and 307.

24. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Memorandum Opinion and Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

#### List of Subjects in 47 CFR Part 15

Communications equipment, Radio, Reporting and recordkeeping requirements, Security measures.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

#### Rule Changes

■ For the reasons discussed in the preamble, title 47 of the Code of Federal Regulations, part 15, is amended as follows:

#### PART 15—RADIO FREQUENCY DEVICES

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

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

■ 2. Section 15.509 is revised to read as follows:

#### § 15.509 Technical requirements for ground penetrating radars and wall imaging systems.

(a) The UWB bandwidth of an imaging system operating under the provisions of this section must be below 10.6 GHz.

(b) Operation under the provisions of this section is limited to GPRs and wall imaging systems operated for purposes associated with law enforcement, fire fighting, emergency rescue, scientific research, commercial mining, or construction.

(1) Parties operating this equipment must be eligible for licensing under the provisions of part 90 of this chapter.

(2) The operation of imaging systems under this section requires coordination, as detailed in § 15.525.

(c) A GPR that is designed to be operated while being hand held and a wall imaging system shall contain a manually operated switch that causes the transmitter to cease operation within 10 seconds of being released by the operator. In lieu of a switch located on the imaging system, it is permissible to

<sup>1</sup> The RFA, see 5 U.S.C. § 601 et seq., has been amended by the Contract With America Advancement Act of 1996, Pub. L. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

<sup>2</sup> 5 U.S.C. 605(b).

<sup>3</sup> 5 U.S.C. 601(6).

<sup>4</sup> 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**."

<sup>5</sup> Small Business Act, 15 U.S.C. 632.

<sup>6</sup> See 5 U.S.C. 801(a)(1)(A).

<sup>7</sup> See 5 U.S.C. 605(b).