

status in this band, it is not necessary to implement a "safe harbor" for part 15 devices. Unlicensed devices operated in accordance with the part 15 rules should not cause interference to the amateur service, and amateur services can take into account these well known technical characteristics used by unlicensed devices as they operate in the band. The amateur service and unlicensed devices have successfully shared this band in the past, and we have no reason to conclude that these sharing arrangements will not continue to be successful.

Final Regulatory Flexibility Certification

15. The Regulatory Flexibility Act of 1980, as amended (RFA),¹ requires that an initial regulatory flexibility analysis be prepared for notice and comment rule making proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."² The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."³ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.⁴ 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).⁵

16. In the *R&O*, we make five channels in or near the 5250–5400 kHz frequency band available on a secondary basis and upgrade the allocation of the

2400–2402 MHz frequency band to the amateur service. The amateur radio service is a voluntary non-commercial communications service comprised of individuals or groups of individuals holding amateur radio licenses issued by the Commission.⁶ These individuals are prohibited from using spectrum allocated to the amateur service for communications for hire or for material compensation, or for communications in which the amateur radio operator has a pecuniary interest.⁷ Therefore, amateur radio operators do not fit any part of the definition of "small entities" described above, and thus are not classified as such.

17. In addition, even if the amateur radio licensees were hypothetically considered as "small entities," the rule changes promulgated in this *R&O* simply make spectrum available for the amateur radio operations and impose no additional fees, costs, or compliance burdens on an operator. Since the amateur radio service is a voluntary service, it would be up to each individual amateur to purchase or modify equipment to use the new bands. There is no cost associated with the upgrade of the allocation. On the contrary, the amateur radio service receives the positive benefits of access to additional spectrum.

18. Lastly, the use of these five new frequencies in or near the 5250–5400 kHz band on a secondary basis by the amateur service does not impact any small entities because it is primarily used by the Federal Government. The allocation upgrade in the 2400–2402 MHz band also does not impact any small entities because there are currently only part 15 and part 18 operations in that frequency band. The part 18 operations maintain their right to operate under international footnote 5.150.⁸ The current amateur service allocation status is higher than the status of part 15 operations, so that there will be no additional impact due to this action.

19. Therefore, we certify that the rules in this *R&O* will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the

Report and Order, including a copy of this Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act.⁹ In addition, the *Report and Order* and this Final Certification will be sent to the Chief Counsel for Advocacy of the SBA.¹⁰

Ordering Clauses

20. Pursuant to sections 1, 4, 301, 302(a), and 303(c) and (f), of the Communications Act of 1934, as amended, 47 U.S.C. sections 151, 154, 301, 302(a), and 303(c) and (f), parts 2 and 97 of the Commission's rules have been amended and will be effective July 3, 2003.

21. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of the *Report 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 Parts 2 and 97

Communications equipment, Radio.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 2 and 97 as follows:

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

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

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

■ 2. Section 2.106, the Table of Frequency Allocations, is amended by revising pages 11 and 51 and in the list of United States footnotes, add footnote US 381 to read as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

BILLING CODE 6712-01-P

¹ The RFA, see 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, title II, 110 Stat. 857 (1996).

² 5 U.S.C. 605(b).

³ 5 U.S.C. 601(6).

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

⁵ 15 U.S.C. 632.

⁶ See 47 CFR 97.1 and 97.3(a).

⁷ See 47 CFR 97.113(a)(2).

⁸ See 47 CFR 2.106, footnote 5.150.

⁹ See 5 U.S.C. 801(a)(1)(A).

¹⁰ See 5 U.S.C. 605(b).