

entire 50 MHz of spectrum in this band and to choose the types of operations that best suit their individual needs. An alternative would be to license this spectrum on a state-wide basis or to require the use of some type of formal frequency coordination committee. The FCC does not believe, however, that frequency coordination would benefit licensees in all parts of the country, and state-wide licenses would not give smaller, local jurisdictions control over what types of operations might best suit their individual needs.

21. Regarding the FCC's decision to allow both fixed and mobile use, as well as point-to-point microwave operations on a secondary basis in the 4.9 GHz band, the FCC does not anticipate any adverse affect on small entities. Instead, the FCC's approach here should benefit public safety entities by allowing greater flexibility in meeting each licensee's particular operational needs.

22. Regarding the FCC's decision to implement a frequency utilization plan in the 4.9 GHz band consisting of one and five MHz channels, the FCC does not anticipate any adverse affect on small entities. In the event that public safety entities determine that greater channel bandwidths are needed, licensees may aggregate their channels.

23. Regarding the FCC's decision declining to require use of a particular technology for equipment in the 4.9 GHz band, the FCC does not anticipate any adverse affect on small entities. The FCC believes that the imposition of specific technology could impede the utilization of emerging technologies in the band and that greater flexibility is consequently warranted.

24. The FCC's decisions regarding fixed and mobile technical standards should not result in any adverse impact to small entities. Alternatively, the FCC could have adopted higher or lower power and emissions limits, but the FCC believes that the rules it adopts herein strike an appropriate balance between offering licensees maximum flexibility in their utilization of the 4.9 GHz band and minimizing the risk of harmful interference.

Report to Congress

25. The FCC will send a copy of this *Third R&O*, including this FRFA, in a report to Congress pursuant to the Congressional Review Act. In addition, the FCC will send a copy of this *Third R&O*, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this *Third R&O* and FRFA (or summaries thereof) will also be published in the **Federal Register**.

Ordering Clauses

26. Pursuant to sections 4(i), 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), 403, this *Third R&O* IS HEREBY ADOPTED.

27. Parts 2 and 90 of the FCC's rules ARE AMENDED as specified in rule changes and effective July 30, 2003.

List of Subjects in 47 CFR Parts 2 and 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 FCC amends 47 CFR parts 2 and 90 as follows:

I. 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 2.103 is amended by revising paragraph (b) introductory text to read as follows:

§ 2.103 Government use of non-Government frequencies.

* * * * *

(b) Government stations may be authorized to use channels in the 764–776 MHz, 794–806 MHz and 4940–4990 MHz public safety bands with non-Government entities if the Commission finds such use necessary; where:

* * * * *

■ 3. Section 2.1091 is amended by revising paragraph (c) as follows:

§ 2.1091 Radiofrequency radiation exposure evaluation: mobile devices.

* * * * *

(c) Mobile devices that operate in the Cellular Radiotelephone Service, the Personal Communications Services, the Satellite Communications Services, the General Wireless Communications Service, the Wireless Communications Service, the Maritime Services, the 4.9 GHz Band Service and the Specialized Mobile Radio Service authorized under subpart H of part 22 of this chapter, part 24 of this chapter, part 25 of this chapter, part 26 of this chapter, part 27 of this chapter, part 80 of this chapter (ship earth stations devices only) and part 90 of this chapter are subject to

routine environmental evaluation for RF exposure prior to equipment authorization or use if they operate at frequencies of 1.5 GHz or below and their effective radiated power (ERP) is 1.5 watts or more, or if they operate at frequencies above 1.5 GHz and their ERP is 3 watts or more. Unlicensed personal communications service devices, unlicensed millimeter wave devices and unlicensed NII devices authorized under § 15.253, § 15.255, and subparts D and E of part 15 of this chapter are also subject to routine environmental evaluation for RF exposure prior to equipment authorization or use if their ERP is 3 watts or more or if they meet the definition of a portable device as specified in § 2.1093 (b) requiring evaluation under the provisions of that section. All other mobile and unlicensed transmitting devices are categorically excluded from routine environmental evaluation for RF exposure prior to equipment authorization or use, except as specified in §§ 1.1307(c) and 1.1307(d) of this chapter. Applications for equipment authorization of mobile and unlicensed transmitting devices subject to routine environmental evaluation must contain a statement confirming compliance with the limits specified in paragraph (d) of this section as part of their application. Technical information showing the basis for this statement must be submitted to the Commission upon request.

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■ 4. Section 2.1093 is amended by revising paragraph (c) as follows:

§ 2.1093 Radiofrequency radiation exposure evaluation: portable devices.

* * * * *

(c) Portable devices that operate in the Cellular Radiotelephone Service, the Personal Communications Service (PCS), the Satellite Communications Services, the General Wireless Communications Service, the Wireless Communications Service, the Maritime Services, the Specialized Mobile Radio Service, the 4.9 GHz Band Service, the Wireless Medical Telemetry Service (WMTS) and the Medical Implant Communications Service (MICS), authorized under subpart H of part 22 of this chapter, parts 24, 25, 26, 27, 80, 90, subparts H and I of part 95 of this chapter, and unlicensed personal communication service, unlicensed NII devices and millimeter wave devices authorized under subparts D and E, § 15.253 and § 15.255 of part 15 of this chapter are subject to routine environmental evaluation for RF