

revocation date "12/31/04" to read "12/31/07."

§ 180.368 [Amended]

■ 5. In § 180.368, in the table to paragraph (b)(2), amend the entry for sweet potato, roots by revising the expiration/revocation date "12/31/04" to read "12/31/07."

§ 180.371 [Amended]

■ 6. In § 180.371, in the table to paragraph (b), amend the entries for blueberry and citrus by revising the expiration/revocation date "6/30/04" to read "6/30/07" and amend the entry for mushroom by revising the expiration/revocation date "12/31/04" to read "12/31/07."

§ 180.377 [Amended]

■ 7. In § 180.377, in the table to paragraph (b), amend the entries for alfalfa, forage and alfalfa, hay by revising the expiration/revocation date "6/30/04" to read "6/30/07."

§ 180.442 [Amended]

■ 8. In § 180.442, in the table to paragraph (b), amend the entries for orchardgrass, forage and orchardgrass, hay by revising the expiration/revocation date "6/30/04" to read "6/30/07."

§ 180.443 [Amended]

■ 9. In § 180.443, in the table to paragraph (b), amend the entries for beet, sugar, dried pulp; beet, sugar, molasses; beet, sugar, refined sugar; and beet, sugar, roots by revising the expiration/revocation date "12/31/04" to read "12/31/07."

§ 180.464 [Amended]

■ 10. In § 180.464, in the table to paragraph (b), amend the entries for beet, sugar; beet, sugar, dried pulp; beet, sugar, molasses; beet, sugar, tops; and onion, dry, bulb by revising the expiration/revocation date "12/31/04" to read "12/31/07."

§ 180.480 [Amended]

■ 11. In § 180.480, in the table to paragraph (b), amend the entry for blueberry by revising the expiration/revocation date "12/31/04" to read "12/31/07."

§ 180.498 [Amended]

■ 12. In § 180.498, in the table to paragraph (b), amend the entries for flax, seed and strawberry by revising the expiration/revocation date "12/31/04" to read "12/31/07."

§ 180.510 [Amended]

■ 13. In § 180.510, in the table to paragraph (b), amend the entry for strawberry by revising the expiration/revocation date "12/31/04" to read "12/31/07."

§ 180.515 [Amended]

■ 14. In § 180.515, in the table to paragraph (b), amend the entries for tomato, paste; tomato, puree; and vegetable, fruiting, group 8 by revising the expiration/revocation date "6/30/04" to read "6/30/07."

§ 180.564 [Amended]

■ 15. In § 180.564, in the table to paragraph (b), amend the entry for cranberry by revising the expiration/revocation date "12/31/04" to read "12/31/07."

[FR Doc. 04-11673 Filed 5-21-04; 8:45 am]

BILLING CODE 6560-50-S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0 and 15

[ET Docket No. 01-278; FCC 04-98]

Radio Frequency Identification

AGENCY: Federal Communications Commission

ACTION: Final rule.

SUMMARY: This document allows for operation of improved radio frequency identification (RFID) systems in the 433.5-434.5 MHz ("433 MHz") band. Specifically, we are increasing the maximum permitted field strength and transmission duration for 433 MHz RFID systems used to identify the contents of commercial shipping containers in commercial and industrial areas to allow more rapid and reliable data transmission. Such improved RFID systems could benefit commercial shippers and have significant homeland security benefits by enabling the entire contents of shipping containers to be easily and immediately identified, and by allowing a determination of whether tampering with their contents has occurred during shipping.

DATES: Effective June 23, 2004, except for § 15.240 which contains information collection requirements that have not been approved by the Office of Management and Budget. Written comments by the public on the new or modified information collection requirements must be submitted on or before July 23, 2004. Written comments must be submitted by the Office of Management and Budget on the

information collection requirements on or before July 23, 2004. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date of § 15.240.

ADDRESSES: Comments on the information collection requirements should be addressed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the Secretary, a copy should be submitted to Leslie Smith, Federal Communications Commission, Room 1-C804, 445 12th Street, SW., Washington, DC 20554, or via Internet to Leslie.Smith@fcc.gov, and to Kristy L. LaLonde, OMB Desk Officer, 10234 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to Kristy.L.LaLonde@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT:

Hugh Van Tuyl, Office of Engineering and Technology, (202) 418-7506, e-mail Hugh.VanTuyl@fcc.gov, TTY (202) 418-2989. For additional information concerning the information collection requirements, contact Leslie Smith, Federal Communications Commission, Room 1-C804, 445 12th Street, SW., Washington, DC 20554, at (202) 418-0217 or via the Internet to Leslie.Smith@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Third Report and Order*, ET Docket No. 01-278, FCC 04-98, adopted April 15, 2004 and released April 23, 2004. The full text of this document is available on the Commission's Internet site at www.fcc.gov. It is also available for inspection and copying during regular business hours in the FCC Reference Center (Room CY-A257), 445 12th Street, SW., Washington, DC 20554. The full text of this document also may be purchased from the Commission's duplication contractor, Qualex International, Portals II, 445 12th St., SW., Room CY-B402, Washington, DC 20554; telephone (202) 863-2893; fax (202) 863-2898; e-mail qualexint@aol.com.

Summary of the Third Report and Order

1. In the Third Report and Order, the Commission adopted regulations to allow for operation of improved radio frequency identification (RFID) systems in the 433.5-434.5 MHz ("433 MHz") band. Specifically, we are increasing the maximum permitted field strength and transmission duration for 433 MHz RFID systems used to identify the contents of commercial shipping

containers in commercial and industrial areas to allow more rapid and reliable data transmission. Such improved RFID systems could benefit commercial shippers and have significant homeland security benefits by enabling the entire contents of shipping containers to be easily and immediately identified, and by allowing a determination of whether tampering with their contents has occurred during shipping.

2. RFID systems use radio signals to track and identify items such as shipping containers and merchandise in stores. A system typically consists of a tag mounted on the item to be identified, and a transmitter/receiver unit that interrogates the tag and receives identification data back from the tag. The tag may be a self-powered transmitter, or it may receive power from the interrogating transmitter and re-radiate an RF signal to the receiver. RFID systems can operate in a number of frequency bands under part 15 of the rules, such as the 13.110–14.010 MHz (13.56 MHz) and 902–928 MHz bands. RFID systems can also operate in the 40.66–40.70 MHz band and above 70 MHz.

3. On October 15, 2001, the Commission adopted a *Notice of Proposed Rule Making and Order*, (NPRM), 66 FR 59209, November 27, 2001, in this proceeding that proposed a number of changes to part 15 and other parts of the rules. These proposals were based on recommendations contained within the *Biennial Regulatory Review 2000 Updated Staff Report*, staff recommendations, and two petitions for rule making concerning RFID systems. The petitions for rule making were filed by the National Council for Information Technology Standardization Technical Committee B10 (“NCITS B10”) and Savi Technology, Inc. (Savi). The NCITS B10 petition requested rule changes for RFID systems operating in the 13.56 MHz band, and the Savi petition requested rule changes for RFID systems operating at 433 MHz.

4. Savi requests that the Commission modify the requirements in § 15.231 of the rules for RFID systems operating at 433 MHz. This section allows the operation of intentional radiators, including RFID systems, in the 40.66–40.70 MHz band and at any frequency above 70 MHz, except in designated restricted bands. There are two separate provisions for operation under this section. The first provision, in paragraph (a) of this rule section, contains operational requirements for devices that transmit control signals, such as those used with alarm systems, door openers and remote switches. A

device operated under this paragraph must cease transmission within 5 seconds after being activated automatically or after a manually operated switch is released. Continuous transmissions such as voice and video are not permitted. Data is permitted to be transmitted with a control signal. Periodic transmissions at regular predetermined intervals are not permitted except for transmissions of not more than two seconds per hour per transmitter to verify the integrity of security transmitters in a system. The second provision, in § 15.231(e), allows any type of transmission, including data and transmissions at regular periodic intervals. However, the field strength limits for devices operating under the provisions of paragraph (e) are lower than the field strength limits for devices operating under the provisions of paragraph (a). In addition, the provisions of paragraph (e) limit transmissions to no more than one second, with a silent period between transmissions of at least 30 times the duration of the transmission, but in no case less than 10 seconds. The field strength limits for intentional radiators operating under either provision in this section are based on the average value of the measured emissions. The peak level of emissions must comply with a limit of 20 dB (ten times) higher than emission limits specified in § 15.231.

5. In the NPRM, the Commission proposed to create a new rule section for RFID systems operating in the 425–435 MHz band. The proposed rule would allow RFID tags to transmit data at the higher level normally permitted for control signals, with an average field strength of 11,000 $\mu\text{V}/\text{m}$ and a peak field strength of 110,000 $\mu\text{V}/\text{m}$ measured at a distance of 3 meters. Out-of-band emissions would have to meet the current limit in § 15.209. The Commission proposed to limit transmissions to 120 seconds with at least a 10 second silent period between transmissions, and to permit retransmissions in case of data errors. It also proposed to allow powered tags and readers to be approved either separately or under a single application, as proposed in the NPRM for RFID devices operating in the 13.56 MHz band. These proposals were intended to allow greater range for 433 MHz RFID systems and to allow data to be transferred from an RFID tag more quickly.

6. We are implementing these changes by adding a new rule section specifically for RFID systems operating in the band 433.5–434.5 MHz that contains the technical and operational requirements for these devices. The

field strength limits will be 11,000 $\mu\text{V}/\text{m}$ average and 55,000 $\mu\text{V}/\text{m}$ peak, measured at a distance of 3 meters. The maximum permitted transmission duration will be 60 seconds rather than 120 seconds as proposed in the NPRM, with a ten second silent period between transmissions. While this change will result in somewhat slower data transmission speeds in cases where all the data in a device cannot be transmitted within 60 seconds, it represents a substantial improvement in speed over that which the current rules allow. In recognition of the fact that data transmission errors may occasionally occur, re-transmission of data will be permitted in case of transmission error without the need for a ten second silent period. As proposed in the NPRM, we are adopting the current out-of-band emission limits in § 15.209 for 433 MHz RFID devices because these limits have a long and successful history of controlling interference.

7. We recognize that the interference concerns raised with respect to 433 MHz RFID systems can be largely ameliorated by restricting the locations where they operate and the types of uses permitted. Such restrictions will limit the use of 433 MHz RFID systems to locations where they will not operate in close proximity to other users on the same frequency. Accordingly, we are restricting operation under the new RFID rule to the identification of the contents of commercial shipping containers. Voice communications will not be permitted. Further, we will require that operations be limited to commercial and industrial areas such as ports, rail terminals and warehouses. These requirements are essentially consistent with the conditions that Savi proposed and with which NTIA agreed that limit the types of devices and their operating locations to RFID systems used in commercial and industrial areas. We do not believe that these restrictions will inhibit the development of this technology for important homeland security applications. We are permitting two-way operation by 433 MHz RFID devices as currently allowed for remote control devices. Two-way operation will make RFID devices more useful by allowing a single device to both read data from, and write data to, remote devices. For example, an interrogator that reads data from a tag in a shipping container could also be used to update the data stored in the tag when items are added to or removed from the container. As proposed in the NPRM and consistent with our actions in the *Second Report and Order*, 68 FR 68531, December 9, 2003, for 13.56 MHz

RFID tags, we will allow 433 MHz RFID tags to be approved either as part of a system with a tag reader under one FCC identification number, or under separate FCC identification numbers. Allowing powered tags and readers to be approved together will simplify the filing requirements in cases where the devices are always sold together, and permitting tags and readers to be approved separately will provide increased flexibility to manufacturers by permitting the sale of different combinations of tags and readers.

8. In the NPRM, the Commission proposed to require that 433 MHz RFID devices be self-contained with no external or readily accessible controls that may be adjusted to cause operation out of compliance with the rules, and proposed to require that devices have permanently attached antennas that are not readily modifiable by the user. Upon further consideration, we find that it is not necessary to specify these requirements in the final rules. Section 15.15(b) already prohibits readily accessible controls that can cause a device to operate in violation of the rules. Further, § 15.203 specifies that intentional radiators must have either a permanently attached antenna or other means to prevent a user from installing an antenna that causes a device to operate in violation of the rules. Because the existing rules provide adequate safeguards against these types of changes, the proposed requirements concerning external adjustments and antenna substitutions are not necessary.

9. NTIA requested that operation of 433 MHz RFID systems be prohibited for a distance of 40 kilometers around five Federal Government radar sites to prevent harmful interference to radar operations. NTIA supplied a list of these locations and their geographic coordinates that is shown in Appendix A of the Third Report and Order. None of the five sites are within 40 kilometers of large metropolitan areas. Such a prohibition will still allow 433 MHz RFID tags to be used in the vast majority of commercial and industrial areas in the United States. In light of the need to protect government radar operations from interference, we are prohibiting 433 MHz RFID operation within 40 kilometers of these five radar sites. The coordinates of these sites are specified in rule changes.

10. Consistent with NTIA's letter stating the need to protect critical government radar operations from interference, we are requiring grantees to register the locations of users of 433 MHz RFID systems with the Commission. Registration of 433 MHz RFID systems is not a coordination, pre-

approval, or licensing process, and it is not intended to give unlicensed devices protection from interference from other unlicensed devices. Rather, registration will allow the Commission and NTIA to monitor the deployment of 433 MHz RFID systems and help pinpoint the source of interference to government operations in case such interference occurs. The information that the grantee must supply to the Commission in registering the devices shall include the name, address, telephone number and e-mail address of the user, the address and geographic coordinates of the operating location, and the FCC identification number of the device. The user will be responsible for submitting updated information in the event the operating location or other information changes after the initial registration. The registration information must be submitted to the Commission's Office of Engineering and Technology at the address provided in § 15.240 of the rules. The Commission will provide this information to NTIA. As a condition of the grant, we will require the grantee of an equipment authorization for a 433 MHz RFID device to inform purchasers of the locations where the devices may and may not be used, *i.e.*, that they may be used only in commercial and industrial areas, and that they may not be used within 40 kilometers of the five Federal Government radar sites specified in the rules. We are also requiring grantees to notify users of their responsibility to register any changes in the operating location of devices or other registration information with the Commission.

11. We are also requiring grantees to register the locations of 433 MHz RFID system users as NTIA requests raises confidentiality issues for grantees. Savi states that a list of users and locations where equipment is used would likely be company sensitive information and that access should be restricted by password protection or otherwise limited to personnel at NTIA, the Department of Defense (DoD) or the Commission. We recognize Savi's concern that such a list would be commercial and/or financial information that a manufacturer would want to remain confidential because it would be the manufacturer's customer list and could indicate approximately how many units of a device have been sold. Consistent with statute, the Commission does not make certain information available for public inspection, including trade secrets and commercial and financial information that are privileged and confidential. The rules explicitly list certain types of

materials in the category of trade secrets and commercial and financial information that are automatically afforded certain degrees of protection from public inspection. If material in this category is not explicitly listed as being protected from public inspection, the party submitting the material to the Commission must accompany it with a request for non-disclosure if it wants the material to remain confidential.

12. Because 433 MHz RFID registration information does not fall into a category that is explicitly listed as being protected from public inspection, the party supplying registration information would have to submit a request for confidentiality each time it files with the Commission, and the Commission would have to act upon each individual request. We expect that grantees would routinely request confidentiality for registration information filed with the Commission because they would consider this to be commercial and financial information that they do not want made available for public inspection. Each of these requests would be essentially identical and we expect that the Commission would grant them because the required registration information would fall into a category of information that the rules allow to be held confidential. Rather than process individual confidentiality requests each time a grantee registers a user's location or submits updated information, we find that it would be more efficient to adopt a change to § 0.457(d) of the rules to state that 433 MHz RFID registration information is not routinely available for public inspection. This action would save Commission resources that would be used for processing numerous confidentiality requests and would be less burdensome on grantees because grantees will not have to file a request for confidentiality each time new or updated registration information is submitted to the Commission. Therefore, we are adding 433 MHz RFID registration information to the list of materials that are automatically afforded protection from public inspection. We will, however, make this information available to NTIA, DoD or other Federal Government entities with a need for it.

13. We have made a number of adjustments from our proposal that will eliminate any significant risk of interference to garage door controls. First, we have restricted installation to use at only commercial and industrial areas for the express purpose of identifying the contents of shipping containers. Therefore, we do not anticipate widespread deployment in close proximity to door opener controls.

Further, we have narrowed the frequency range for RFID systems from the proposed 10 MHz to 1 MHz. We note that garage door controls can operate anywhere in the 425–435 MHz band where we originally proposed operation for RFIDs, thus reducing the likelihood of interference to such controls. In addition, we have reduced both the peak signal level and the maximum permitted transmission duration for 433 MHz RFID systems by a factor of two from the proposed levels, further reducing the likelihood of interference. We find the arguments that 433 MHz RFID systems would cause interference unpersuasive in any event because the signal levels proposed in the NPRM are no greater than the rules permit for garage door controls. Further, users of unlicensed devices have no protection from interference from other devices and no vested right to the continued use of any frequency by virtue of prior certification of equipment. Because operation of 433 MHz RFID systems will be limited to commercial and industrial areas such as ports, rail yards and warehouses, there will generally be substantial geographic separation between 433 MHz RFID devices and most other devices such as residential garage door openers that could receive interference. Door opener controls used in close proximity to 433 MHz RFID devices would most likely be under the control of the party operating the RFID devices, who could take appropriate steps in the event interference occurs, including changing the frequency of a door opener control, if possible, or ceasing operation of a device that causes interference.

14. We observe that any potential interference to amateur operations is mitigated for the same reasons discussed for door opener controls. ARRL expressed concern that the 425–435 MHz band originally proposed for RFID systems encompasses several bands that it has designated for weak signal use in its band plan. However, the rules we are adopting limit 433 MHz RFID systems to the 433.5–434.5 MHz band. This band is separated by 500 kHz from the nearest weak signal band listed in ARRL's band plan, thus addressing ARRL's concern about RFID operation in weak signal bands.

15. The 433.5–434.5 MHz RFID band we are adopting falls within the 433–435 MHz band that ARRL has designated for auxiliary and repeater links. Auxiliary stations are required by the Commission's rules to operate on a point-to-point basis and are permitted to operate with a maximum power of 50 watts. Because point-to-point operations typically use directional antennas, there

is less likelihood of interference from other sources. The rules we are adopting for 433 MHz RFID systems reduce the peak transmit level by a factor of 6 dB (two times) from the proposal, to a level 47 dB (55,000 times) lower than the level permitted for amateur auxiliary stations, further reducing the likelihood of interference. Additionally, the rules we are adopting limit operation to commercial and industrial areas such as ports and rail yards, so operation will not be permitted in residential areas and on delivery trucks as many parties expressed concern. While there are other bands besides 433 MHz where RFID systems could operate, such as the 902–928 MHz and 2400–2483.5 MHz bands, we recognize that there are advantages to allowing operation in the 433 MHz band. Signals at lower frequencies, *i.e.*, 433 MHz, are attenuated less passing through objects, thus allowing more reliable operation. Further, although the 433 MHz band may not be available for use by unlicensed devices worldwide with the same technical parameters we are adopting for RFID systems, operation in the 433.05–434.79 MHz band is permitted in Europe, potentially allowing the development of RFID systems that are capable of operating in multiple countries.

16. We disagree with ARRL that the Commission lacks authority under § 301 of the Communications Act to authorize 433 MHz RFID devices to operate at the power levels adopted on an unlicensed basis because they will pose a significant potential for interference to licensed services. ARRL advanced a similar argument in a proceeding concerning certification of transmitters in the 24.05–24.25 GHz band. The Commission stated in that proceeding that it need not reach this statutory argument when it finds no significant interference potential. It also noted that ARRL concurs that it is appropriate for the Commission to make reasonable regulations regarding part 15 devices pursuant to § 302(a) of the Act. Because we find that the rules we are adopting for 433 MHz RFID systems will not result in an interference risk to amateur services, we reject ARRL's argument in this proceeding that the Commission lacks legal authority to adopt such rules.

Procedural Matters

17. The Third Report and Order contains new or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under § 3507(d) of the PRA. OMB, the general public, and

other Federal agencies are invited to comment on the new or modified information collection(s) contained in this proceeding.

Final Regulatory Flexibility Analysis

18. As required by the Regulatory Flexibility Act (RFA),¹ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rule Making and Order, Review of Part 15 and other Parts of the Commission's Rules* (NPRM).² The Commission sought written public comments on the proposals in the NPRM, including comment on the IRFA.³ The Final Regulatory Flexibility Analysis conforms to the RFA.⁴

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

19. Section 11 of the Communications Act of 1934, as amended, and § 202(h) of the Telecommunications Act of 1996 require the Commission (1) to review biennially its regulations pertaining to telecommunications service providers and broadcast ownership; and (2) to determine whether economic competition has made those regulations no longer necessary in the public interest. The Commission is directed to modify or repeal any such regulations that it finds are no longer in the public interest.

20. As part of the biennial review for the year 2000, the Commission reviewed its regulations pertaining to telecommunications service providers and broadcast ownership and recommended a number of changes to those rules. While not specifically required by statute, the Commission also reviewed parts 2, 15 and 18 as part of this process.

21. The Third Report and Order increases the maximum permitted field strength and transmission duration for radio frequency identification (RFID) systems operating in the 433.5–434.5 MHz band to allow more rapid and reliable data transmission. Operation of such systems is limited to commercial shipping containers in commercial and industrial areas. Improved RFID systems could benefit commercial shippers and have significant homeland security benefits by enabling the entire contents of shipping containers to be easily and immediately identified, and by allowing

¹ See 5 U.S.C. 603. 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 See *Notice of Proposed Rule Making and Order* in ET Docket No. 01–278, 16 FCC Rcd 18205 (2001).

³ *Id.*

⁴ See 5 U.S.C. 604.

a determination of whether tampering with the contents has occurred during shipping.

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

22. None.

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

23. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein.⁵ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁶ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.⁷ A small business concern is one which: is independently owned and operated; is not dominant in its field of operation; and satisfies any additional criteria established by the SBA.⁸

24. The SBA has developed small business size standards for two pertinent Economic Census categories, "Radio and Television Broadcasting and Communications Equipment" (RTB) and "Other Communications Equipment," both of which consist of all such companies having 750 or fewer employees.⁹ According to Census Bureau data for 1997, there were a total of 1,215 establishments in the first category, total, that had operated for the entire year.¹⁰ Of this total, 1,150 had

499 or fewer employees, and an additional 37 establishments had 500 to 999 employees.¹¹ Consequently, we estimate that the majority of businesses in the first category are small businesses that may be affected by the rules and policies adopted herein. Concerning the second category, the data for 1997 show that there were a total of 499 establishments that operated for the entire year.¹² Of this total, 491 had 499 or fewer employees, and an additional 3 establishments had 500 to 999 employees.¹³ Consequently, we estimate that the majority of businesses in the second category are small businesses that may be affected by the rules and policies adopted in the Third Report and Order.

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

25. Manufacturers of 433 MHz RFID systems will have to obtain certification for the equipment before it can be marketed. This requires the manufacturer to have the equipment tested for compliance, file an application with the Commission or a designated Telecommunication Certification Body (TCB) and wait for an approval before the equipment may be imported into or marketed within the United States. There will be no change to the certification procedure from what the rules currently require. There will be a new requirement for the grantee of certification to supply information to the Commission on where the devices are used. The information that must be submitted includes the name, address and other pertinent contact information of the user, the address and geographic coordinates of the operating location, and the FCC identification number of the device. In addition, the user of the device will have to notify the Commission of any changes to this information after the initial registration by the grantee.

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

26. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include

category, including the numbers of small businesses. Census data in this context are available only for establishments.

¹¹ *Id.*

¹² U.S. Census Bureau, 1997 Economic Census, Industry Series: Manufacturing, Other Communications Equipment Manufacturing, "Industry Statistics by Employment Size: 1997," Table 4, NAICS code 334290 (issued Sept. 1999).

¹³ *Id.*

the following four alternatives (among others): the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; the use of performance, rather than design, standards; and an exemption from coverage of the rule, or any part thereof, for small entities.¹⁴

27. The rules specify performance standards for RFID equipment such as emission levels, as opposed to design standards. Because the rules are intended to minimize the potential for interference to authorized services in the 433 MHz band, and it is not possible to exempt small entities from complying with any requirements without increasing the risk of harmful interference. We note that a number of entities expressed concern about the possibility of interference from 433 MHz RFID systems to door opener controls. As discussed in paragraph 23 of the Third Report and Order, we have made a number of changes from our proposals that will eliminate any significant risk of interference to door opener controls.

28. *Report to Congress:* The Commission will send a copy of the Third Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the Third Report and Order, including FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

Ordering Clauses

29. Pursuant to the authority contained in sections 4(i), 301, 302, 303(e), 303(f) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. sections 154(i), 301, 302, 303(e), 303(f) and 303(r), the Third Report and Order is hereby adopted. The rule changes set forth in the Third Report and Order contains an information collection requirement that has not yet been approved by OMB. The FCC will publish a document in the **Federal Register** announcing the effective date of these rule changes.

30. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *Shall send* a copy of the Third Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

¹⁴ *See* 5 U.S.C. 603(c).

⁵ U.S.C. 604.

⁶ 5 U.S.C. 601(6).

⁷ 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. 632). Pursuant to the RFA, 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 U.S.C. 601(3).

⁸ Small Business Act, 15 U.S.C. 632 (1996).

⁹ 13 CFR 121.201, NAICS codes 334220, 334290.

¹⁰ U.S. Census Bureau, 1997 Economic Census, Industry Series: Manufacturing, Radio and Television and Wireless Communications Equipment Manufacturing, "Industry Statistics by Employment Size: 1997," Table 4, NAICS code 334220 (issued Aug. 1999). The number of "establishments" is a less helpful indicator of small business prevalence in this context than would be the number of "firms" or "companies," because the latter take into account the concept of common ownership or control. Any single physical business location is an establishment, and that location and others may be under the common ownership of a given firm. Thus, the numbers given in text may reflect inflated numbers of businesses in this

List of Subjects

47 CFR Part 0

Privacy, Reporting and recordkeeping requirements.

47 CFR Part 15

Communications equipment, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch, Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 0 and 15 as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for part 0 continues to read as follows:

Authority: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, 225, unless otherwise noted.

2. Add new paragraph (d)(1)(vii) to § 0.457 to read as follows:

§ 0.457 Records not routinely available for public inspection.

* * * * *

(d) * * *

(1) * * *

(vii) Information on the users and locations of radio frequency

identification systems submitted to the Commission pursuant to § 15.240 will be made available to other Federal Government agencies but will not otherwise be made available for inspection.

* * * * *

PART 15—RADIO FREQUENCY DEVICES

3. The authority citation for part 15 continues to read as follows:

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

4. Add § 15.240 to read as follows:

§ 15.240 Operation in the band 433.5–434.5 MHz.

(a) Operation under the provisions of this section is restricted to devices that use radio frequency energy to identify the contents of commercial shipping containers. Operations must be limited to commercial and industrial areas such as ports, rail terminals and warehouses. Two-way operation is permitted to interrogate and to load data into devices. Devices operated pursuant to the provisions of this section shall not be used for voice communications.

(b) The field strength of any emissions radiated within the specified frequency band shall not exceed 11,000 microvolts per meter measured at a distance of 3 meters. The emission limit in this paragraph is based on measurement instrumentation employing an average

detector. The peak level of any emissions within the specified frequency band shall not exceed 55,000 microvolts per meter measured at a distance of 3 meters. Additionally, devices authorized under these provisions shall be provided with a means for automatically limiting operation so that the duration of each transmission shall not be greater than 60 seconds and be only permitted to reinitiate an interrogation in the case of a transmission error. Absent such a transmission error, the silent period between transmissions shall not be less than 10 seconds.

(c) The field strength of emissions radiated on any frequency outside of the specified band shall not exceed the general radiated emission limits in § 15.209.

(d) In the case of radio frequency powered tags designed to operate with a device authorized under this section, the tag may be approved with the device or be considered as a separate device subject to its own authorization. Powered tags approved with a device under a single application shall be labeled with the same identification number as the device.

(e) To prevent interference to Federal Government radar systems, operation under the provisions of this section is not permitted within 40 kilometers of the following locations:

Table with 3 columns: DoD Radar Site, Latitude, Longitude. Rows include Beale Air Force Base, Cape Cod Air Force Station, Clear Air Force Station, Cavalier Air Force Station, Eglin Air Force Base.

(f) As a condition of the grant, the grantee of an equipment authorization for a device operating under the provisions of this section shall provide information to the user concerning compliance with the operational restrictions in paragraphs (a) and (e) of this section. As a further condition, the grantee shall provide information on the locations where the devices are installed to the FCC Office of Engineering and Technology, which shall provide this information to the Federal Government through the National Telecommunications and Information Administration. The user of the device shall be responsible for submitting updated information in the event the operating location or other information changes after the initial registration. The grantee shall notify the user of this

requirement. The information provided by the grantee or user to the Commission shall include the name, address, telephone number and e-mail address of the user, the address and geographic coordinates of the operating location, and the FCC identification number of the device. The material shall be submitted to the following address:

Experimental Licensing Branch, OET, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554, ATTN: RFID Registration.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 040429134-4135-01; I.D. 051704B]

Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Inseason Action #1 - Adjustment of the Commercial Fishery from the U.S.-Canada Border to Cape Falcon, Oregon

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

ACTION: Closure; request for comments.