

under this section shall not exceed \$27,500 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of \$300,000 for any single act or failure to act described in paragraph (a) of this section. There is no limit on forfeiture assessments for EEO violations by cable operators that occur after notification by the Commission of a potential violation. See Section 634(f)(2) of the Communications Act.

(2) If the violator is a common carrier subject to the provisions of the Communications Act or an applicant for any common carrier license, permit, certificate, or other instrument of authorization issued by the Commission, the amount of any forfeiture penalty determined under this section shall not exceed \$120,000 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of \$1,200,000 for any single act or failure to act described in paragraph (a) of this section.

(3) In any case not covered in paragraphs (b)(1) or (b)(2) of this section, the amount of any forfeiture

penalty determined under this section shall not exceed \$11,000 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of \$87,500 for any single act or failure to act described in paragraph (a) of this section.

**Note to paragraph (b)(3):** For information concerning notices of apparent liability and notices of opportunity for hearing, see paragraphs (e), (f), and (g) of this section.

(4) *Factors considered in determining the amount of the forfeiture penalty.* In determining the amount of the forfeiture penalty, the Commission or its designee will take into account the nature, circumstances, extent and gravity of the violations and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.

**Note to paragraph (b)(4):**  
**Guidelines for Assessing Forfeitures**

The Commission and its staff may use these guidelines in particular cases. The Commission and its staff retain the discretion to issue a higher or lower forfeiture than provided in the guidelines, to issue no forfeiture at all, or to apply alternative or

additional sanctions as permitted by the statute. The forfeiture ceiling per violation or per day for a continuing violation stated in Section 503 of the Communications Act and the Commission's Rules are described in § 1.80(b)(5)(iii). These statutory maxima are effective November 13, 2000. Forfeitures issued under other sections of the Act are dealt with separately in Section III of this note.

\* \* \* \* \*

*Section III. Non-Section 503 Forfeitures That Are Affected by the Downward Adjustment Factors*

Unlike Section 503 of the Act, which establishes maximum forfeiture amounts, other sections of the Act, with one exception, state prescribed amounts of forfeitures for violations of the relevant section. These amounts are then subject to mitigation or remission under Section 504 of the Act. The one exception is Section 223 of the Act, which provides a maximum forfeiture per day. For convenience, the Commission will treat this amount as if it were a prescribed base amount, subject to downward adjustments. The following amounts are adjusted for inflation pursuant to the Debt Collection Improvement Act of 1996 (DCIA), 28 U.S.C. 2461. These non-Section 503 forfeitures may be adjusted downward using the "Downward Adjustment Criteria" shown for Section 503 forfeitures in Section II of this note.

Violation	Statutory amount (\$)
Sec. 202(c) Common Carrier Discrimination	7,600 330/day.
Sec. 203(e) Common Carrier Tariffs	7,600 330/day.
Sec. 205(b) Common Carrier Prescriptions	13,200.
Sec. 214(d) Common Carrier Line Extensions	1,200/day.
Sec. 219(b) Common Carrier Reports	1,200.
Sec. 220(d) Common Carrier Records & Accounts	7,600/day.
Sec. 223(b) Dial-a-Porn	60,000 maximum/day.
Sec. 364(a) Ship Station Inspection	5,500 (owner).
Sec. 364(b) Ship Station Inspection	1,100 (vessel master).
Sec. 386(a) Forfeitures	5,500/day (owner).
Sec. 386(b) Forfeitures	1,100 (vessel master).
Sec. 634 Cable EEO	500/day.

(5) \* \* \*

(iii) The application of the inflation adjustments required by the DCIA, 28 U.S.C. 2461, results in the following adjusted statutory maximum forfeitures authorized by the Communications Act:

U.S. Code citation	Maximum penalty after DCIA adjustment
47 U.S.C. 202(c)	\$7,600 330
47 U.S.C. 203(e)	7,600 330
47 U.S.C. 205(b)	13,200
47 U.S.C. 214(d)	1,200
47 U.S.C. 219(b)	1,200
47 U.S.C. 220(d)	7,600
47 U.S.C. 223(b)	60,000
47 U.S.C. 362(a)	5,500

U.S. Code citation	Maximum penalty after DCIA adjustment
47 U.S.C. 362(b)	1,100
47 U.S.C. 386(a)	5,500
47 U.S.C. 386(b)	1,100
47 U.S.C. 503(b)(2)(A)	27,500 300,000
47 U.S.C. 503(b)(2)(B)	120,000 1,200,000
47 U.S.C. 503(b)(2)(C)	11,000 87,500
47 U.S.C. 507(a)	550
47 U.S.C. 507(b)	110
47 U.S.C. 554	500

**Note to paragraph (b)(5):** Pursuant to Public Law 104-134, the first inflation

adjustment cannot exceed 10 percent of the statutory maximum amount.

\* \* \* \* \*

[FR Doc. 00-26193 Filed 10-12-00; 8:45 am]

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**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Parts 2, 90 and 95**

[WT Docket No. 98-182; RM-9222; FCC 00-235]

**1998 Biennial Regulatory Review—Private Land Mobile Radio Services**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document consolidates and streamlines the Commission's Rules concerning the private land mobile radio services (PLMRS). Several licensing and operational requirements are modified or eliminated in order to reduce the regulatory burden on PLMR licensees and to promote greater flexibility and more efficient use of the private land mobile radio frequency spectrum.

**DATES:** Effective November 13, 2000.

**FOR FURTHER INFORMATION CONTACT:** Guy Benson (202) 418-2946 <gbenson@fcc.gov> or Ghassen Khalek (202) 418-2771 <gkhalek@fcc.gov>, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, or Les Smith, AMD-PERM, Office of Managing Director at (202) 418-0217.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Report and Order, (R&O)*, in the *R&O and Further Notice of Proposed Rule Making, (FNPRM)*, FCC 00-235 in WT Docket No. 98-182 and PR Docket No. 92-235, adopted on June 28, 2000, and released on July 12, 2000. The full text of this *R&O and FNPRM* is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY-A257, 445 12th Street, S.W., Washington, D.C. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W. Washington, D.C. 20037. The full text may also be downloaded at: [www.fcc.gov](http://www.fcc.gov). Alternative formats are available to persons with disabilities by contacting Martha Contee at (202) 418-0260 or TTY (202) 418-2555.

### Summary of the R&O

1. The Commission initiated this proceeding in conjunction with the 1998 biennial regulatory review under section 11 of the Communications Act of 1934, 47 U.S.C. 161. Section 11 requires the Commission to review all the regulations applicable to providers of telecommunications service and determine whether any rule is no longer in the public interest as a result of meaningful economic competition between providers of telecommunications service, and whether such regulations should be deleted or modified. As part of this review, however, the Commission found it appropriate to consider all of the regulations relating to administering wireless services, not just those pertaining to providers of a telecommunications service, to determine which regulations can be

streamlined or eliminated. As a result, the *R&O* consolidates and streamlines the part 90 Rules.

2. First, the Commission amends the rules to eliminate the distinction between cargo handling and other uses of certain frequencies in the 450-470 MHz band.

3. Second, the Commission amends the rules to change the duration of the license term for stations authorized under part 90 from five years to ten years from the date of initial issuance or renewal. This change will result in decreased costs for licensees.

4. Third, the Commission amends the rules to change the time in which a station must be placed in operation from eight months to twelve months, thereby giving licensees more flexibility in building their stations and simplifying regulatory requirements.

5. Fourth, the Commission amends the rules to require applicants for any of the fifteen 220 MHz public safety channels set forth in §§ 90.719(c) and 90.720 of the Commission's Rules to submit their applications to a public safety frequency coordinator for frequency coordination prior to submission of the applications to the Commission.

6. Fifth, the Commission amends the rules to provide that a radio facility authorized to a public safety licensee may be shared with a Federal Government entity on a cost-shared, non-profit basis.

7. Sixth, the Commission amends the rules to clarify definitions for centralized and decentralized trunking and to establish a new process for licensing trunked systems.

8. Finally, the Commission amends the rules to reassign five low power VHF frequencies from the part 90 PLMRS to the part 95 Citizens Band Radio Service, and eliminates the licensing requirement for these frequencies.

### Final Regulatory Flexibility Act and Final Analysis

9. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the 1998 Biennial Regulatory Review, *Notice of Proposed Rule Making (NPRM)*, FCC 98-251, 63 FR 65568 (Nov. 27, 1998) *NPRM*. The Commission sought written public comment on the proposals in the *NPRM*, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

#### *Reason for, and Objectives of, the R&O*

10. The Commission's objective in this proceeding is to streamline part 90

of the Commission's Rules and reduce regulatory requirements, and to promote more efficient use of the spectrum.

Therefore, the Commission amends part 90 to: (i) Ease restrictions on uses of certain frequencies in the 450-470 MHz band; (ii) extend the license term for stations authorized under part 90; (iii) increase the time in which a station must be placed in operation; (iv) require frequency coordination for public safety applications at 220 MHz; (v) provide that a radio facility authorized to a public safety licensee may be shared with a Federal Government entity on a cost-shared, non-profit basis; (vi) clarify definitions for centralized and decentralized trunking and establishment of a new process for licensing trunked systems; and (vii) reassign five low power VHF frequencies from the part 90 Private Land Mobile Radio (PLMR) Services to the part 95 Citizens Band Radio Service, and eliminate the licensing requirement for these frequencies. The Commission believes that these changes will encourage growth of land mobile systems and enhance telecommunications offerings for consumers, producers and new entrants.

#### *Summary of Significant Issues Raised by Public Comments in Response to the Initial Regulatory Flexibility Analyses*

11. No petitions or comments were filed in direct response to the IRFA. The Commission has nonetheless considered the effect of these rule changes on small entities and considered other alternatives. These actions should benefit all entities subject to the rule changes, including small businesses.

#### **Description and Estimate of the Number of Small Entities to Which the Rules Will Apply**

12. 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 business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate for its activities.

Under the Small Business Act, a "small business concern" is one that: (i) Is independently owned and operated; (ii) is not dominant in its field of operation; and (iii) satisfies any additional criteria established by the

Small Business Administration (SBA). A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Last, the definition of "small governmental entity" is one with populations of fewer than 50,000. There are 85,006 governmental entities in the nation. This number includes such entities as states, counties, cities, utility districts and school districts. There are no figures available on what portion of this number has populations of fewer than 50,000. However, this number includes 38,978 counties, cities and towns, and of those, 37,556, or ninety-six percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all government entities. Thus, of the 85,006 governmental entities, we estimate that ninety-six percent, or about 81,600, are small entities that may be affected by our rules.

The rules adopted in this *R&O* affect a number of small entities who are either licensees, or may choose to become applicants for licenses, in the PLMR Service. The adopted rules apply to businesses and local government entities that operate radio systems for their own internal use in the PLMR services. Traditionally, PLMR services have provided for the private, internal communications needs of public safety entities, state and local government entities, large and small businesses, transportation providers, the medical community, and other diverse users of two-way radio systems.

PLMR systems currently serve an essential role in a vast range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories. Because of the vast array of PLMR users, the Commission has not developed nor would it be possible to develop a definition of small businesses specifically applicable to PLMR users. Therefore, for the purpose of determining whether a licensee is a small business as defined by the Small Business Administration (SBA), each licensee would need to be evaluated within its own business area. Therefore, the appropriate definition for PLMR small businesses is the SBA's definition for radiotelephone (wireless) companies. That definition provides that a small entity is a radiotelephone company employing no more than 1,500 persons.

### **Reporting, Recordkeeping, and Other Compliance Requirements**

13. The Rules adopted in this document have minimal additional reporting or recordkeeping requirements for PLMR licensees. In fact, our decision to increase the license term from five to ten years will result in a decrease in the amount of fees paid and paperwork required. On the other hand, applicants for certain channels are now required to coordinate their frequencies prior to submission of an application, which is achieved through the use of registered frequency coordinators.

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

14. In the IRFA, the Commission indicated that many of the proposed rules will result in economic benefits to small business and local government entities. The Commission believes that relaxing the restrictions on cargo/non-cargo operations will help to satisfy demand for communications on these frequencies. Continued exclusion of non-cargo operations is an alternative to the approach here, but that would result in the underutilization of important spectrum resources.

15. The Commission also believes that there will be several public interest benefits gained by the decision to extend the license term for all part 90 licensees to ten years. First, there will be an economic benefit to new applicants in that their licensing costs would effectively be lowered. Under the Commission's current license fee structure, a part 90 licensee with a ten-year authorization has an economic advantage over a licensee with a five-year license in that it enjoys a longer license term at less cost. Second, existing five-year licenses will receive a ten-year renewal period upon expiration of the five-year license, thus halving the licensee's long-term renewal costs. One alternative to this action would be to leave the license term at five years. This alternative would not benefit small businesses. In addition, it would result in administrative inefficiencies for the agency.

16. Regarding the decision to increase the time in which a station must be placed in operation from eight to twelve months, the Commission envisions that this change in the regulatory treatment of PLMR stations will reduce the necessity for a licensee to request an extension of the time to construct, and thus would eliminate the costs necessary to make such a request. It will also give licensees more flexibility in determining how and when to construct

their stations. The alternative to this situation is to leave the requirement date at eight months and require licensees to continue requesting extensions of time. The changes we undertake herein, however, will benefit small businesses and enhance administrative efficiencies.

17. By requiring frequency coordination for the 220 MHz public safety channels, the Commission is benefiting small entities and other applicants in a number of ways. For example, requiring frequency coordination will prevent the filing of mutually exclusive applications and will result in applications for the most appropriate channels, thereby minimizing interference potential and congestion. The alternative would be to make no changes to these licensing procedures, but then the benefits of frequency coordination would not be realized.

18. Permitting a public safety licensee to share its station with a Federal Government entity on a non-profit, cost-sharing basis, will be beneficial to both parties. It will lower the operational costs of the public safety system in that the public safety licensee would obtain cost-sharing benefits from the Federal agency, and it would enable the Federal agency to obtain needed communications at a lower cost than if the Federal agency had to implement its own communications system. An alternative to this change would be to continue prohibiting such sharing arrangements, but the Commission believes that adopting these Rules and thereby lowering costs and increasing access to needed spectrum will ease the regulatory burden on small businesses.

19. By requiring all trunked operations to be specifically licensed, the Commission is promoting licensee flexibility, facilitating more efficient use of the spectrum, and minimizing interference concerns and congestion. The alternative, *i.e.*, to not require such licensing, would not achieve these benefits.

### **Report to Congress**

The Commission will send a copy of the *R&O*, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. In addition, the Commission will send a copy of the *R&O*, including FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *R&O* and FRFA (or summaries thereof) will also be published in the **Federal Register**.

**List of Subjects**

*47 CFR Parts 2 and 95*

Communications equipment, Radio.

*47 CFR Part 90*

Administrative practice and procedure, Business and industry, Communications equipment, Radio.

Federal Communications Commission.

**Magalie Roman Salas,**  
*Secretary.*

**Rule Changes**

For reasons discussed in the preamble, the Federal Communications Commission amends parts 2, 90, and 95 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. Amend § 2.106 of the Table of Frequency Allocations by revising page 29 of the Table.

**§ 2.106 Table of Frequency Allocations.**

\* \* \* \* \*

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148-162.0125 MHz (VHF)

International Table		United States Table		FCC Rule Part(s)
Region 1	Region 2	Federal Government	Non-Federal Government	
148-149.9 FIXED MOBILE except aeronautical mobile (R) MOBILE-SATELLITE (Earth-to-space) S5.209	148-149.9 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space) S5.209	148-149.9 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space) 599B US319 US320 US323 US325	148-149.9 MOBILE-SATELLITE (Earth-to-space) 599B US319 US320 US323 US325	Satellite Communications (25)
S5.218 S5.219 S5.221	S5.218 S5.219 S5.221	S5.218 608A US10 G30	S5.218 608A US10	
149.9-150.05 MOBILE-SATELLITE (Earth-to-space) S5.209 S5.224A RADIONAVIGATION-SATELLITE S5.224B		149.9-150.05 MOBILE-SATELLITE (Earth-to-space) 599B US319 US322 RADIONAVIGATION-SATELLITE		
S5.220 S5.222 S5.223		S5.223 608B		
150.05-153 FIXED MOBILE except aeronautical mobile RADIO ASTRONOMY	150.05-156.7625 FIXED MOBILE	150.05-150.8 FIXED MOBILE	150.05-150.8	
S5.149		US216 G30	US216	
153-154 FIXED MOBILE except aeronautical mobile (R) Meteorological aids		150.8-152.855	150.8-152.855 FIXED LAND MOBILE	Public Mobile (22) Private Land Mobile (90) Personal Radio (95)
154-156.7625 FIXED MOBILE except aeronautical mobile (R)		US216	US216 NG4 NG51 NG112 NG124	
		152.855-154	152.855-154 LAND MOBILE	Auxiliary Broadcasting (74) Private Land Mobile (90)
		154-156.2475	NG4 NG124	
		S5.226	154-156.2475 FIXED LAND MOBILE	Maritime (80) Private Land Mobile (90) Personal Radio (95)
S5.226 S5.227	S5.225 S5.226 S5.227	156.2475-157.0375	S5.226 NG112 NG117 NG124 NG148 156.2475-157.0375 MARITIME MOBILE	

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\* \* \* \* \*

**PART 90—PRIVATE LAND MOBILE RADIO SERVICES**

3. The authority citation for part 90 continues to read as follows:

**Authority:** Sections 4(i), 11, 303(g), 303(r) and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

4. Section 90.1 is amended by revising paragraph (b) to read as follows:

**§ 90.1 Basis and purpose.**

\* \* \* \* \*

(b) *Purpose.* This part states the conditions under which radio communications systems may be licensed and used in the Public Safety Radio Pool, Industrial/Business Radio Pool, and the Radiolocation Service. The rules in this part do not govern radio systems employed by agencies of the Federal Government.

5. Section 90.7 is amended by revising the definition of Trunked radio system to read as follows:

**§ 90.7 Definitions.**

\* \* \* \* \*

*Trunked radio system.* A radio system employing technology that provides the ability to search two or more available channels and automatically assign a user an open channel.

\* \* \* \* \*

6. Section 90.20 (c)(3) is amended in the table by removing the entry for 453.025 MHz and by revising the entries for 453.0125 MHz and 453.03125 MHz to read as follows:

**§ 90.20 Public Safety Pool.**

\* \* \* \* \*

(c) \* \* \*

(3) \* \* \*

**PUBLIC SAFETY POOL FREQUENCY TABLE**

Frequency or band	Class of station(s)	Limitations	Coordinator
* * * * *			
<b>Megahertz</b>			
453.0125 .....	Mobile .....	57, 78 .....	PX
453.03125 .....	Base or mobile .....	44, 59, 60, 61, 62 .....	PM
* * * * *			

\* \* \* \* \*

7. Section 90.22 is amended by revising the introductory text to read as follows:

**§ 90.22 Paging operations.**

Unless specified elsewhere in this part, paging operations may be authorized in the Public Safety Pool on any frequency except those assigned under the provisions of § 90.20(d)(78). Paging operations on frequencies subject

to § 90.20(d)(78) authorized before August 17, 1974, may be continued only if they do not cause harmful interference to regular operations on the same frequencies. Such paging operations may be renewed indefinitely on a secondary basis to regular operations, except within 125 km (75 mi) of the following urbanized areas:

\* \* \* \* \*

8. Section 90.35 is amended in paragraph (b)(3) in the table under Megahertz by removing the entries for 151.820, 151.880, 151.940, 154.570, 154.600 and by revising the entries for 153.560 and 154.585 and revising paragraph (c)(60) to read as follows:

**§ 90.35 Industrial/Business Pool.**

\* \* \* \* \*

(b) \* \* \*

(3) \* \* \*

**INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE**

Frequency or band	Class of stations(s)	Limitations	Coordinator
* * * * *			
<b>Megahertz</b>			
153.560 .....	.....	80 .....	IP, IW
154.585 .....	Mobile .....	8, 46 .....	IP
* * * * *			

\* \* \* \* \*

(c) \* \* \*  
(60)(i) This frequency is available for voice or non-voice communications concerned with cargo handling from a

dock or cargo handling facility, a vessel alongside the dock, or cargo handling facility. The effective radiated power (ERP) shall not exceed 2 watts. Mobile relay stations may be temporarily

installed on vessels located at or in the vicinity of a dock or cargo handling facility. The center of the radiating system of the mobile relay shall be

located no more than 3 meters (10 feet) above the vessel's highest working dock.

(ii) This frequency is also available for low power non-cargo handling operations, both voice and non-voice, on a secondary basis to cargo handling communications. This frequency will not be assigned for non-cargo handling operations at temporary locations.

(iii) Mobile relay frequency table as follows:

Mobile relay (MHz) <sup>1</sup>	Mobile (MHz)
457.525 .....	467.750
457.53125 .....	467.75625
457.5375 .....	467.7625
457.54375 .....	467.76875
457.550 .....	467.775
457.55625 .....	467.78125
457.5625 .....	467.7875
457.56875 .....	467.79375
457.575 .....	467.800
457.58125 .....	467.80625
457.5875 .....	467.8125
457.59375 .....	467.81875
457.600 .....	467.825
457.60625 .....	467.83125
457.6125 .....	
457.61875 .....	

<sup>1</sup> The mobile relay frequencies may also be used for single frequency simplex

\* \* \* \* \*

9. Section 90.135 is revised to read as follows:

**§ 90.135 Modification of license.**

(a) In addition to those changes listed in § 1.929(k) of this chapter and in accordance with § 1.947 of this chapter the following modifications may be made to an existing authorization without prior Commission approval:

(1) Change in the number and location of station control points or of control stations operating below 470 or above 800 MHz meeting the requirements of § 90.119(b).

(2) Change in the number of mobile units operated by Radiolocation Service licensees.

(b) Unless specifically exempted in § 90.175, licensees must submit a Form 601 application for modification to the applicable frequency coordinator for any change listed in § 1.929(c)(4) of this chapter.

10. Section 90.149 is amended by revising paragraph (a) to read as follows:

**§ 90.149 License term.**

(a) Licenses for stations authorized under this part will be issued for a term not to exceed ten (10) years from the date of the original issuance or renewal.

\* \* \* \* \*

11. Section 90.155 is revised to read as follows:

**§ 90.155 Time in which station must be placed in operation.**

(a) All stations authorized under this part, except as provided in §§ 90.629, 90.631(f), 90.665, and 90.685, must be placed in operation within twelve (12) months from the date of grant or the authorization cancels automatically and must be returned to the Commission.

(b) A local government entity in the Public Safety Pool, applying for any frequency in this part, may also seek extended implementation authorization pursuant to § 90.629.

(c) For purposes of this section, a base station is not considered to be placed in operation unless at least one associated mobile station is also placed in operation. See also §§ 90.633(d) and 90.631(f).

(d) Multilateration LMS systems authorized in accordance with § 90.353 must be constructed and placed in operation within twelve (12) months from the date of grant or the authorization cancels automatically and must be returned to the Commission. MTA-licensed multilateration LMS systems will be considered constructed and placed in operation if such systems construct a sufficient number of base stations that utilize multilateration technology (see paragraph (e) of this section) to provide multilateration location service to a substantial portion of at least one BTA in the MTA.

(e) A multilateration LMS station will be considered constructed and placed in operation if it is built in accordance with its authorized parameters and is regularly interacting with one or more other stations to provide location service, using multilateration technology, to one or more mobile units. Specifically, LMS multilateration stations will only be considered constructed and placed in operation if they are part of a system that can interrogate a mobile, receive the response at 3 or more sites, compute the location from the time of arrival of the responses and transmit the location either back to the mobile or to a subscriber's fixed site.

(f) For purposes of this section, a station licensed to provide commercial mobile radio service is not considered to have commenced service unless it provides service to at least one unaffiliated party.

(g) Application for extension of time to commence service may be made on FCC Form 601. Extensions of time must be filed prior to the expiration of the construction period. Extensions will be granted only if the licensee shows that the failure to commence service is due to causes beyond its control. No extensions will be granted for delays

caused by lack of financing, lack of site availability, for the assignment or transfer of control of an authorization, or for failure to timely order equipment. If the licensee orders equipment within 90 days of the license grant, a presumption of due diligence is created.

(h) An application for modification of an authorization (under construction) at the existing location does not extend the initial construction period. If additional time to commence service is required, a request for such additional time must be submitted on FCC Form 601, either separately or in conjunction with the submission of the FCC Form 601 requesting modification.

**§ 90.167 [Removed]**

12. Remove § 90.167.

13. Section 90.175 is amended by revising paragraph (i)(14) to read as follows:

**§ 90.175. Frequency coordination requirements.**

\* \* \* \* \*

(i) \* \* \*

(14) Except for applications for the frequencies set forth in §§ 90.719(c) and 90.720, applications for frequencies in the 220–222 MHz band.

14. Section 90.179 is amended by redesignating paragraph (g) as paragraph (i) and adding new paragraphs (g) and (h) to read as follows:

**§ 90.179 Shared use of radio stations.**

\* \* \* \* \*

(g) Notwithstanding paragraph (a) of this section, licensees authorized to operate radio systems on Public Safety Pool frequencies designated in § 90.20 may share their facilities with Federal Government entities on a non-profit, cost-shared basis. Such a sharing arrangement is subject to the provisions of paragraphs (b), (d), and (e) of this section.

(h) Notwithstanding paragraph (a) of this section, licensees authorized to operate radio systems on Industrial/Business Pool frequencies designated in § 90.35 may share their facilities with Public Safety Pool entities designated in § 90.20 and with Federal Government entities on a non-profit, cost-shared basis. Such a sharing arrangement is subject to the provisions of paragraphs (b), (d), and (e) of this section.

\* \* \* \* \*

15. Section 90.187 is revised to read as follows:

**§ 90.187 Trunking in the bands between 150 and 512 MHz.**

(a) Applicants for trunked systems operating on frequencies between 150 and 512 MHz (except 220–222 MHz)

must indicate on their applications (class of station code, instructions for FCC Form 601) that their system will be trunked. Licensees of stations that are not trunked, may trunk their systems only after modifying their license (see § 1.927 of this chapter).

(b) Trunked systems operating under this section must employ equipment that prevents transmission on a trunked frequency if a signal from another system is present on that frequency. The level of monitoring must be sufficient to avoid causing harmful interference to other systems. However, this monitoring requirement does not apply if the conditions in paragraph (b)(1) or (b)(2) of this section, are met:

(1) Where applicants for or licensees operating in the 470–512 MHz band meet the loading requirements of § 90.313 and have exclusive use of their frequencies in their service area.

(2) On frequencies where an applicant or licensee does not have an exclusive service area provided that all frequency coordination requirements are complied with and written consent is obtained from affected licensees using either the procedure set forth in paragraphs (b)(2)(i) and (b)(2)(ii) of this section (mileage separation) or the procedure set forth in paragraph (b)(2)(iii) of this section (protected contours).

(i) Affected licensees for the purposes of this section are licensees of stations that have assigned frequencies (base and mobile) that are 15 kHz or less removed from proposed stations that will operate with a 25 kHz channel bandwidth; stations that have assigned frequencies (base and mobile) that are 7.5 kHz or less removed from proposed stations that will operate with a 12.5 kHz bandwidth; or stations that have assigned frequencies (base and mobile) 3.75 kHz or less removed from proposed stations that will operate with a 6.25 kHz bandwidth.

(ii) Where such stations' service areas (37 dBu contour for stations in the 150–174 MHz band and 39 dBu contour for stations in the 421–512 MHz bands; see § 90.205) overlap a circle with radius 113 km (70 mi.) from the proposed base station.

(iii) In lieu of the mileage separation procedure set forth in paragraphs (b)(2)(i) and (b)(2)(ii) of this section, applicants for trunked facilities may obtain consent only from stations that would be subjected to objectionable interference from the trunked facilities. Objectionable interference will be considered to exist when the interference contour (19 dBu for VHF stations, 21 dBu for UHF stations) of a proposed trunked station would intersect the service contour (37 dBu for

VHF stations, 39 dBu for UHF stations) of an existing station. The existing stations that must be considered in a contour overlap analysis are a function of the channel bandwidth of the proposed trunked station, as follows:

(A) For trunked stations proposing 25 kHz channel bandwidth: Existing co-channel stations and existing stations that have an operating frequency 15 kHz or less from the proposed trunked station.

(B) For trunked stations proposing 12.5 kHz channel bandwidth: Existing co-channel stations and existing stations that have an operating frequency 7.5 kHz or less from the proposed trunked station.

(C) For trunked stations proposing 6.25 kHz channel bandwidth: Existing co-channel stations and existing stations that have an operating frequency 3.75 kHz or less from the proposed trunked station.

(iv) The calculation of service and interference contours referenced in paragraph (b)(2)(iii) of this section shall be done using generally accepted engineering practices and standards which, for purposes of this section, shall presumptively be the practices and standards agreed to by a consensus of all certified frequency coordinators.

(v) The written consent from the licensees specified in paragraphs (b)(2)(i) and (b)(2)(ii) or (b)(2)(iii)(A), (b)(2)(iii)(B) and (b)(2)(iii)(C) of this section shall specifically state all terms agreed to by the parties and shall be signed by the parties. The written consent shall be maintained by the operator of the trunked station and be made available to the Commission upon request. The submission of a coordinated trunked application to the Commission shall include a certification from the applicant that written consent has been obtained from all licensees specified in paragraphs (b)(2)(i) and (b)(2)(ii) or (b)(2)(iii)(A), (b)(2)(iii)(B) and (b)(2)(iii)(C) of this section that the written consent documents encompass the complete understandings and agreements of the parties as to such consent; and that the terms and conditions thereof are consistent with the Commission's rules. Should a potential applicant disagree with a certified frequency coordinator's determination that objectionable interference exists with respect to a given channel or channels, that potential applicant may request the Commission to overturn the certified frequency coordinator's determination. In that event, the burden of proving by clear and convincing evidence that the certified frequency coordinator's determination is incorrect shall rest

with the potential applicant. If a licensee has consented to the use of trunking, but later decides against the use of trunking, that licensee may request that the licensee(s) of the trunked system(s) cease the use of trunking. Should the trunked station(s) decline the licensee's request, the licensee may request a replacement channel from the Commission. A new applicant whose interference contour overlaps the service contour of a trunked licensee will be assigned the same channel as the trunked licensee only if the trunked licensee consents in writing and a copy of the written consent is submitted to the certified frequency coordinator responsible for coordination of the application.

(c) Trunking of systems licensed on paging-only channels or licensed in the Radiolocation Service (subpart F) is not permitted.

(d) Potential applicants proposing trunked operation may file written notice with any certified frequency coordinator for the pool (Public Safety or Industrial/Business) in which the applicant proposes to operate. The notice shall specify the channels on which the potential trunked applicant proposes to operate and the proposed effective radiated power, antenna pattern, height above ground, height above average terrain and proposed channel bandwidth. On receipt of such a notice, the certified frequency coordinator shall notify all other certified frequency coordinators in the relevant pool within one business day. For a period of sixty days thereafter, no application will be accepted for coordination which specifies parameters that would result in objectionable interference to the channels specified in the notice. Potential applicants shall not file another notice for the same channels within 10 km (6.2 miles) of the same location unless six months shall have elapsed since the filing of the last such notice. Certified frequency coordinators shall return without action, any coordination request which violates the terms of this paragraph (d).

(e) No more than 10 channels for trunked operation in the Industrial/Business Pool may be applied for in a single application. Subsequent applications, limited to an additional 10 channels or fewer, must be accompanied by a certification, submitted to the certified frequency coordinator coordinating the application, that all of the applicant's existing channels authorized for trunked operation have been constructed and placed in operation. Certified frequency coordinators are authorized to require documentation in support of the

applicant's certification that existing channels have been constructed and placed in operation. Applicants in the Public Safety Pool may request more than 10 channels at a single location provided that any application for more than 10 Public Safety Pool channels must be accompanied by a showing of sufficient need. The requirement for such a showing may be satisfied by submission of loading studies demonstrating that requested channels in excess of 10 will be loaded with 50 mobiles per channel within a five year period commencing with grant of the application.

(f) If a licensee authorized for trunked operation discontinues trunked operation for a period of 30 consecutive days, the licensee, within 7 days of the expiration of said 30 day period, shall file a conforming application for modification of license with the Commission. Upon grant of that application, new applicants may file for the same channel or channels notwithstanding the interference contour of the new applicant's proposed channel or channels overlaps the service contour of the station that was previously engaged in trunked operation.

16. Section 90.242 is amended by revising paragraph (a)(3) to read as follows:

**§ 90.242 Travelers' information stations.**

(a) \* \* \*

(3) Travelers Information Stations will be authorized on a secondary basis to stations authorized on a primary basis in the bands 510–1715 kHz.

\* \* \* \* \*

17. Section 90.421 is revised to read as follows:

**§ 90.421 Operation of mobile station units not under the control of the licensee.**

Mobile stations, as defined in § 90.7, include vehicular-mounted and hand-held units. Such units may be operated by persons other than the licensee, as provided for below, when necessary for the licensee to meet its requirements in connection with the activities for which it is licensed. If the number of such units, together with units operated by the licensee, exceeds the number of mobile units authorized to the licensee, license modification is required. The licensee is responsible for taking necessary precautions to prevent unauthorized operation of such units not under its control.

(a) *Public Safety Pool.* (1) Mobile units licensed in the Public Safety Pool may be installed in any vehicle which in an emergency would require cooperation and coordination with the licensee, and

in any vehicle used in the performance, under contract, of official activities of the licensee. This provision does not permit the installation of radio units in non-emergency vehicles that are not performing governmental functions under contract but with which the licensee might wish to communicate.

(2) Mobile units licensed under § 90.20(a)(2)(iii) may be installed in a vehicle or be hand-carried for use by any person with whom cooperation or coordinations is required for medical services activities.

(b) *Industrial/Business Pool.* Mobile units licensed in the Industrial/Business Pool may be installed in vehicles of persons furnishing under contract to the licensee and for the duration of the contract, a facility or service directly related to the activities of the licensee.

(c) In addition to the requirements in paragraphs (a) and (b) of this section, frequencies assigned to licensees in the Private Land Mobile Radio Services may be installed in the facilities of those who assist the licensee in emergencies and with whom the licensee must communicate in situations involving imminent safety to life or property.

**§ 90.449 [Removed]**

18. Remove § 90.449.

19. Section 90.629 is amended by revising paragraphs (a)(1) and (a)(2) and adding paragraph (f) to read as follows:

**§ 90.629 Extended implementation period.**

\* \* \* \* \*

(a) \* \* \*

(1) The proposed system will require longer than twelve (12) months to construct and place in operation because of its purpose, size, or complexity; or

(2) The proposed system is to be part of a coordinated or integrated wide-area system which will require more than twelve (12) months to plan, approve, fund, purchase, construct, and place in operation; or

\* \* \* \* \*

(f) Pursuant to § 90.155(b), the provisions of this section shall apply to local government entities applying for any frequency in the Public Safety Pool.

**PART 95—PERSONAL RADIO SERVICES**

20. The authority citation for part 95 continues to read as follows:

**Authority:** Secs 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

21. Section 95.401 is amended by adding a new paragraph (f) to read as follows:

**§ 95.401 (CB Rule 1) What are the Citizens Band Radio Services?**

\* \* \* \* \*

(f) The Multi-Use Radio Service (MURS)—a private, two-way, short-distance voice, data or image communications service for personal or business activities of the general public. The rules for this service are contained in subpart J of this part.

22. Section 95.601, as amended at 65 FR 44008 effective October 16, 2000, is further amended by revising the last sentence to read as follows:

**§ 95.601 Basis and purpose.**

\* \* \* \* \* The Personal Radio Services are the GMRS (General Mobile Radio Service)—subpart A, the Family Radio Service (FRS)—subpart B, the R/C (Radio Control Radio Service)—subpart C, the CB (Citizens Band Radio Service)—subpart D, the Low Power Radio Service (LPRS)—subpart G, the Wireless Medical Telemetry Service (WMTS)—subpart H, the Medical Implants Communication Service (MICS)—subpart I, and the Multi-Use Radio Service (MURS)—subpart J.

23. Section 95.603 is amended by adding a new paragraph (g) to read as follows:

**§ 95.603 Certification required.**

\* \* \* \* \*

(g) Each Multi-Use Radio Service transmitter (a transmitter that operates or is intended to operate in the MURS) must be certified in accordance with § 90.203 of this chapter.

24. Section 95.605 is amended by revising the first sentence to read as follows:

**§ 95.605 Certification procedures.**

Any entity may request certification for its transmitter when the transmitter is used in the GMRS, FRS, R/C, CB, IVDS, LPRS, MURS, or MICS following the procedures in part 2 of this chapter.

\* \* \*

25. Section 95.631 is amended by adding a new paragraph (j) to read as follows:

**§ 95.631 Emission types.**

\* \* \* \* \*

(j) A MURS station may transmit any emission type as specified in § 90.207 of this chapter.

26. A new section 95.632 is added to read as follows:

**§ 95.632 MURS transmitter frequencies.**

(a) The MURS transmitter channel frequencies are 151.820 MHz, 151.880 MHz, 151.940 MHz, 154.570 MHz, 154.600 MHz.

(b) The authorized bandwidth is 11.25 kHz on frequencies 151.820 MHz, 151.880 MHz and 151.940 MHz. The authorized bandwidth is 12.5 kHz on frequencies 154.570 and 154.600 kHz.

(c) MURS transmitters must maintain a frequency stability of 5.0 ppm, or 2.0 ppm if designed to operate with a 6.25 kHz bandwidth.

27. Section 95.633 is amended by adding a new paragraph (f) to read as follows:

**§ 95.633 Emission bandwidth.**

\* \* \* \* \*

(f) The authorized bandwidth for any emission type transmitted by a MURS transmitter is specified in § 90.209 of this chapter.

28. Section 95.635 is amended by adding a new paragraph (e) to read as follows:

**§ 95.635 Unwanted radiation.**

\* \* \* \* \*

(e) For transmitters designed to operate in the MURS, transmitters shall comply with § 90.210 of this chapter.

29. Section 95.639 is amended by adding a new paragraph (h) to read as follows:

**§ 95.639 Maximum transmitter power.**

\* \* \* \* \*

(h) No MURS unit, under any condition of modulation, shall exceed 2 W effective radiated power (ERP).

30. Section 95.649 is revised to read as follows:

**§ 95.649 Power capability.**

No CB, R/C, LPRS, FRS, MICS, MURS or WMTS unit shall incorporate provisions for increasing its transmitter power to any level in excess of the limits specified in § 95.639.

31. Section 95.651 is revised to read as follows:

**§ 95.651 Crystal control required.**

All transmitters used in the Personal Radio Services must be crystal controlled, except an R/C station that transmits in the 26–27 MHz frequency band, a FRS unit, a LPRS unit, a MURS unit, a MICS transmitter, or a WMTS unit.

32. Appendix 1 to Subpart E is revised to read as follows:

**Appendix 1 to Subpart E of Part 95—Glossary of Terms**

The definitions used in this subpart E are:  
*Authorized bandwidth.* Maximum permissible bandwidth of a transmission.  
*Carrier power.* Average TP during one unmodulated RF cycle.  
*CB.* Citizens Band Radio Service.

*CB transmitter.* A transmitter that operates or is intended to operate at a station authorized in the CB.

*Channel frequencies.* Reference frequencies from which the carrier frequency, suppressed or otherwise, may not deviate by more than the specified frequency tolerance.

*Crystal.* Quartz piezo-electric element.

*Crystal controlled.* Use of a crystal to establish the transmitted frequency.

*dB.* Decibels.

*EIRP.* Effective Isotropic Radiated Power. Antenna input power times gain for free-space or in-tissue measurement configurations required by MICS, expressed in watts, where the gain is referenced to an isotropic radiator.

*FCC.* Federal Communications Commission.

*Filtering.* Refers to the requirement in § 95.633(b).

*FRS.* Family Radio Service.

*GMRS.* General Mobile Radio Service.

*GMRS transmitter.* A transmitter that operates or is intended to operate at a station authorized in the GMRS.

*Harmful interference.* Any transmission, radiation or induction that endangers the functioning of a radionavigation or other safety service or seriously degrades, obstructs or repeatedly interrupts a radiocommunication service operating in accordance with applicable laws, treaties and regulations.

*Mean power.* TP averaged over at least 30 cycles of the lowest modulating frequency, typically 0.1 seconds at maximum power.

*Medical Implant Communications Service (MICS) transmitter.* A transmitter authorized to operate in the MICS.

*Medical implant device.* Apparatus that is placed inside the human body for the purpose of performing diagnostic or therapeutic functions.

*Medical implant event.* An occurrence or the lack of an occurrence recognized by a medical implant device, or a duly authorized health care professional, that requires the transmission of data from a medical implant transmitter in order to protect the safety or well-being of the person in whom the medical implant transmitter has been implanted.

*Medical implant programmer/control transmitter.* A MICS transmitter that operates or is designed to operate outside of a human body for the purpose of communicating with a receiver connected to a medical implant device.

*Medical implant transmitter.* A MICS transmitter that operates or is designed to operate within a human body for the purpose of facilitating communications from a medical implant device.

*MICS.* Medical Implant Communications Service.

*MURS.* Multi-Use Radio Service.

*Peak envelope power.* TP averaged during one RF cycle at the highest crest of the modulation envelope.

*R/C.* Radio Control Radio Service.

*R/C transmitter.* A transmitter that operates or is intended to operate at a station authorized in the R/C.

*RF.* Radio frequency.

*TP.* RF transmitter power expressed in W, either mean or peak envelope, as measured at the transmitter output antenna terminals.

*Transmitter.* Apparatus that converts electrical energy received from a source into RF energy capable of being radiated.

*W.* Watts.

33. A new Subpart J is added to Part 95 to read as follows:

**Subpart J—Multi-Use Radio Service (MURS)**

**General Provisions**

- 95.1301 Eligibility.
- 95.1303 Authorized locations.
- 95.1305 Station identification.
- 95.1307 Permissible communications.
- 95.1309 Channel use policy.

**Subpart J—Multi-Use Radio Service (MURS)**

**General Provisions**

**§ 95.1301 Eligibility.**

An entity is authorized by rule to operate a MURS transmitter if it is not a foreign government or a representative of a foreign government and if it uses the transmitter in accordance with § 95.1309 and otherwise operates in accordance with the rules contained in this subpart. No license will be issued.

**§ 95.1303 Authorized locations.**

(a) MURS operation is authorized:  
 (1) Anywhere CB station operation is permitted under § 95.405; and  
 (2) Aboard any vessel of the United States, with the permission of the captain, while the vessel is travelling either domestically or in international waters.

(b) MURS operation is not authorized aboard aircraft in flight.

(c) Anyone intending to operate a MURS unit on the islands of Puerto Rico, Desecheo, Mona, Vieques, and Culebra in a manner that could pose an interference threat to the Arecibo Observatory shall notify the Interference Office, Arecibo Observatory, Post Office Box 995, Arecibo, Puerto Rico 00613, in writing or electronically, of the location of the unit. Operators may wish to consult interference guidelines, which will be provided by Cornell University. Operators who choose to transmit information electronically should e-mail to: prcz@naic.edu.

(1) The notification to the Interference Office, Arecibo Observatory shall be made 45 days prior to commencing operation of the unit. The notification shall state the geographical coordinates of the unit.

(2) After receipt of such notifications, the Commission will allow the Arecibo Observatory a period of 20 days for comments or objections. The operator will be required to make reasonable

efforts in order to resolve or mitigate any potential interference problem with the Arecibo Observatory. If the Commission determines that an operator has satisfied its responsibility to make reasonable efforts to protect the Observatory from interference, the unit may be allowed to operate.

**§ 95.1305 Station identification.**

A MURS station is not required to transmit a station identification announcement.

**§ 95.1307 Permissible communications.**

(a) MURS stations may transmit voice, data or image signals as permitted in this subpart.

(b) A MURS station may transmit any emission type, subject to the limitations contained in § 90.207 of this chapter.

(c) MURS frequencies may be used for remote control and telemetering functions. Emission types A1D, A2D, F1D, F2D are authorized and stations used to control remote objects or devices may be operated on the continuous carrier transmit mode, except on frequency 154.600 MHz.

**§ 95.1309 Channel use policy.**

(a) The channels authorized to MURS systems by this part are available on a shared basis only and will not be assigned for the exclusive use of any entity.

(b) Those using MURS transmitters must cooperate in the selection and use of channels in order to reduce interference and make the most effective use of authorized facilities. Channels must be selected in an effort to avoid interference to other MURS transmissions.

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**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**RIN 1018-AG26**

**Endangered and Threatened Wildlife and Plants; Establishment of a Nonessential Experimental Population of Black-Footed Ferrets in North-Central South Dakota**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** We, the Fish and Wildlife Service (Service), in cooperation with the Cheyenne River Sioux Tribe, the Forest Service, and the Bureau of Indian

Affairs (BIA), will reintroduce black-footed ferrets (*Mustela nigripes*) into north-central South Dakota on the Cheyenne River Sioux Reservation. The purposes of this reintroduction are to implement actions required for recovery of the species and to evaluate and improve reintroduction techniques and management applications. We will release surplus captive-raised black-footed ferrets in October 2000, and release additional animals annually for several years thereafter until we establish a self-sustaining population. If this reintroduction program is successful, a wild population could be established in 5 years or less. The Cheyenne River Sioux Reservation population is established as a nonessential experimental population in accordance with section 10(j) of the Endangered Species Act of 1973, as amended. We will manage this population under provisions of this final special rule.

**DATES:** The effective date of this rule is October 13, 2000.

**ADDRESSES:** You may inspect the complete file for this rule during normal business hours at the U.S. Fish and Wildlife Service, Ecological Services Office, 420 South Garfield Avenue, Suite 400, Pierre, South Dakota 57501 or telephone 605/224-8693. You must make an appointment in advance if you wish to inspect the file.

**FOR FURTHER INFORMATION CONTACT:** Mike Lockhart at 307/721-8805.

**SUPPLEMENTARY INFORMATION:**

**Background**

**1. Legislative**

Congress made significant changes to the Endangered Species Act of 1973 (Act), as amended, with the addition of section 10(j) to allow for the designation of specific populations of listed species as "experimental populations." Previously, we had authority to reintroduce populations into unoccupied portions of a listed species' historical range when doing so would foster the conservation and recovery of the species. However, local citizens often opposed these reintroductions because they were concerned about the placement of restrictions and prohibitions on Federal and private activities. Under section 10(j), the Secretary of the Department of the Interior can designate reintroduced populations established outside the species' current range but within its historical range as "experimental." Based on the best available information, the Secretary will determine whether such populations are "essential," or "nonessential," to the continued

existence of the species. Regulatory restrictions are considerably reduced under a Nonessential Experimental Population (NEP) designation.

Species listed as endangered or threatened are afforded protection primarily through the prohibitions of section 9 and the requirements of section 7. Section 9 of the Act prohibits the take of a listed species. "Take" is defined by the Act as harass, harm, pursue, hunt, shoot, wound, trap, capture, or collect, or attempt to engage in any such conduct. Section 7 of the Act outlines the procedures for Federal interagency cooperation to conserve federally listed species and designated critical habitats. It mandates all Federal agencies to determine how to use their existing authorities to further the purposes of the Act to aid in recovering listed species. It also states that Federal agencies will, in consultation with the Service, ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. Section 7 of the Act does not affect activities undertaken on private lands unless they are authorized, funded, or carried out by a Federal agency.

For the purposes of section 9 of the Act, a population designated as experimental is treated as threatened regardless of the species' designation elsewhere in its range. Threatened designation allows us greater discretion in devising management programs and allows us to adopt whatever regulations are necessary to provide for the conservation of a threatened species. In these situations, the general regulations applying most section 9 prohibitions to threatened species do not apply to that species, and the special rule contains the prohibitions and exceptions necessary and appropriate to conserve that species. Regulations for NEP's are usually more compatible with human activities in the reintroduction area.

For the purposes of section 7 of the Act, we treat NEP's as if the population is proposed for listing, but we treat NEP's as threatened species when they are located within a National Wildlife Refuge or National Park. When NEP's occur outside of such refuges or parks, Federal agencies are required to confer with the Service, in accordance with section 7(a)(4) of the Act, on their actions that are likely to jeopardize the continued existence of a proposed species. The results of a conference are advisory in nature, and agencies are not restricted from committing resources to projects regardless of conference findings and recommendations.