

parties submitting documents electronically to BIS via the SNAP-R system are not required to retain copies of documents so submitted;

\* \* \* \* \*

(10) Notification from BIS of an application being returned without action; notification by BIS of an application being denied; notification by BIS of the results of a commodity classification or encryption review request conducted by BIS; and,

\* \* \* \* \*

■ 9. Section 762.4 is amended by adding a sentence at the end of the section to read as follows:

**§ 762.4 Original records required.**

\* \* \* With respect to documents that BIS issues to a party in SNAP-R, either an electronically stored copy in a format that makes the document readable with software possessed by that party or a paper print out of the complete document is deemed to be an original record for purposes of this section.

Dated: March 29, 2010.

**Kevin J. Wolf,**

*Assistant Secretary for Export Administration.*

[FR Doc. 2010-7639 Filed 4-2-10; 8:45 am]

**BILLING CODE 3510-33-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**15 CFR Part 922**

[Docket No. 090122043-0128-03]

**RIN 0648-AX37**

**Gray's Reef National Marine Sanctuary Regulations on the Use of Spearfishing Gear; Correction**

**AGENCY:** Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

**ACTION:** Correcting amendment.

**SUMMARY:** The National Oceanic and Atmospheric Administration (NOAA) published a document in the **Federal Register** on February 19, 2010 (75 FR 7361) on the use and possession of spearfishing gear in Gray's Reef National Marine Sanctuary. That document was inadvertently missing a word in § 922.92(a)(11)(iii). This document corrects the final regulations by revising that section.

**DATES:** *Effective Date:* April 5, 2010.

**FOR FURTHER INFORMATION CONTACT:** Resource Protection Coordinator Becky Shortland at (912) 598-2381.

**SUPPLEMENTARY INFORMATION:** NOAA issued final regulations, effective March 22, 2010, that included a description of new requirements on the use and possession of spearfishing gear in Gray's Reef National Marine Sanctuary (75 FR 7361). After the regulations were published NOAA became aware of a word that was inadvertently left out of the regulatory text. This notice corrects the grammatical error in Part 922.92(a)(11)(iii) by adding the word "it" to the paragraph. The intent of the regulation is not affected by this correction.

**Classification**

*A. Executive Order 12866: Regulatory Impact*

This final rule has been determined to be not significant within the meaning of Executive Order 12866.

*B. Administrative Procedure Act/Regulatory Flexibility Act*

The Acting Assistant Administrator finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive the notice and comment requirements because it is unnecessary. This rule corrects a grammatical error in the regulations that does not have substantive impacts. The intent of the regulation is not affected by the error. NOAA has decided to make this document effective immediately because public comment and delayed effective date are not necessary due to the minimal nature of the correcting amendment. This rule corrects a grammatical error in the regulations that does not have substantive impacts. For the reasons above, the Acting Assistant Administrator finds good cause to waive the 30-day delay in effectiveness.

*C. Regulatory Flexibility Act*

Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: March 31, 2010.

**Holly Bamford,**

*Deputy Acting Assistant Administrator for Ocean Services and Coastal Zone Management.*

■ Accordingly, for the reasons set forth above, 15 CFR part 922 is corrected by making the following correcting amendments:

**PART 922—NATIONAL MARINE SANCTUARY PROGRAM REGULATIONS**

■ 1. The authority citation for part 922 continues to read as follows:

*Authority:* 16 U.S.C. 1431 *et seq.*

■ 2. Amend § 922.92 by revising paragraph (a)(11)(iii) as follows:

**§ 922.92 Prohibited or otherwise regulated activities.**

(a) \* \* \*

(11) \* \* \*

(iii) Spearfishing gear provided that it is stowed on a vessel, not available for immediate use, and the vessel is passing through the Sanctuary without interruption; and

\* \* \* \* \*

[FR Doc. 2010-7665 Filed 4-2-10; 8:45 am]

**BILLING CODE 3510-NK-P**

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Parts 74 and 78**

[ET Docket No. 03-254; FCC 10-15]

**Coordination Between the Non-Geostationary and Geostationary Satellite Orbit**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document the Commission specifies rules and procedures to be used for frequency coordination between terrestrial Broadcast Auxiliary Service and Cable Television Relay Service (BAS/CARS) operations and geostationary satellite orbit (GSO) or non-geostationary satellite orbit (NGSO) fixed-satellite service (FSS) operations in the 6875-7075 MHz (7 GHz) and 12750-13250 MHz (13 GHz) bands. At this time the Commission did not adopt a "Growth Zone" proposal that would have supplemented our existing terrestrial coordination procedures between NGSO FSS space-to-Earth operations and existing fixed service (FS) operations in the 10.7-11.7 GHz (10 GHz) band, and will retain our existing coordination rules.

**DATES:** Effective May 5, 2010.

**FOR FURTHER INFORMATION CONTACT:** James Miller, (202) 418-7351, e-mail [James.Miller@fcc.gov](mailto:James.Miller@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, ET Docket No. 03-254, FCC 10-15, adopted January 14, 2010, and

released January 20, 2010. The full text of the document is available on the Commission's Internet site at <http://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 St., SW., Washington, DC 20554. The full text may also be purchased from the Commission's duplication contractor, Best Copy and Printing Inc., Portals II, 445 12th St., SW., Room CY-B402, Washington, DC 20554, telephone (202) 488-5300; fax (202) 488-5563; e-mail [FCC@BCPIWEB.com](mailto:FCC@BCPIWEB.com).

### Summary of the Report and Order

1. In the *Report and Order (R&O)*, the Commission specified rules and procedures to be used for frequency coordination between terrestrial Broadcast Auxiliary Service and Cable Television Relay Service (BAS/CARS) operations and geostationary satellite orbit (GSO) or non-geostationary satellite orbit (NGSO) fixed-satellite service (FSS) operations in the 6875–7075 MHz (7 GHz) and 12750–13250 MHz (13 GHz) bands. The Commission did not adopt at this time a “Growth Zone” proposal that would have supplemented our existing terrestrial coordination procedures between NGSO FSS space-to-Earth operations and existing fixed service (FS) operations in the 10.7–11.7 GHz (10 GHz) band, and will retain our existing coordination rules. The Commission decisions supports actions intended to allow new satellite services in frequency bands used by various fixed and mobile operations and addresses issues raised in the *Notice of Proposed Rulemaking (NPRM)*, 69 FR 4908, February 2, 2004, in this proceeding. This action permits satellite and terrestrial services operating in these bands to continue to coordinate their spectrum use in an efficient manner.

2. Based on the record, the Commission requires the use of the “notice and response” prior coordination procedures for coordination between GSO or NGSO FSS and fixed BAS/CARS operations. The Commission concludes that requiring the use of these procedures for coordination of operations in these services will enable more efficient use of the 7 GHz and 13 GHz bands by permitting the different services to coordinate and operate on a cooperative basis. Moreover, as indicated in the *NPRM*, the Commission believes that uniform coordination procedures for similar services will simplify our rules and the frequency coordination process.

3. The Commission also requires GSO or NGSO FSS applicants to use the

“notice and response” prior coordination procedures when they initiate coordination with mobile BAS/CARS licensees. The prior coordination process provides the opportunity for GSO or NGSO FSS applicants, prior to the licensing and operation of an earth station, to identify and implement measures to protect against potential harmful interference, and will facilitate sharing during mobile BAS/CARS service deployments. For example, FSS applicants can consider existing BAS/CARS receiver locations when making site selections, and can incorporate attenuation measures into their facility designs.

4. The Commission permits mobile BAS/CARS to coordinate with GSO or NGSO FSS entities under either the “notice and response” prior coordination procedures or the *ad hoc* coordination procedures discussed in further detail in the R&O. The record reflects that local broadcast coordinators should be able to assist in identifying mobile television pickup operations (“TVPU”) receive sites for protection, thereby facilitating GSO or NGSO FSS coordination. Further, as noted by Boeing, GSO and NGSO FSS earth stations can work cooperatively with TVPU licensees regarding the specifics of sharing agreements pursuant to such coordination.

5. The Commission finds that the “notice and response” process in the prior coordination procedures will provide ample opportunity for fixed or mobile BAS/CARS incumbents to identify and provide details regarding potentially affected facilities when coordinating with GSO or NGSO FSS operators. The process provides sufficient flexibility for all affected parties to reach agreement concerning measures for reducing the likelihood of interference. The Commission recognizes that there are challenges inherent in coordination between a permanent fixed operation, such as GSO or NGSO FSS earth station, and temporary fixed or mobile BAS/CARS operations, such as those involving news gathering trucks or helicopters. Unlike coordination between one fixed operation and another fixed operation—a scenario to which “notice and response” prior coordination procedures typically apply, coordination between fixed operations and temporary fixed or mobile operations requires an anticipation of where the temporary fixed or mobile operations may occur at a future time beyond the coordination.

6. The Commission looks to the parties to exercise flexibility in order to ensure successful sharing through these procedures. For example, the

Commission expects prospective FSS licensees to select sites sufficiently removed from typical mobile BAS/CARS areas of use to reasonably accommodate the frequencies and look angles for which the FSS licensees seek coordination. Moreover, because NGSO FSS use of the 7 GHz and 13 GHz bands is limited to feeder links, the Commission expects NGSO FSS licensees to seek coordination only for frequencies and look angles that they reasonably anticipate using over the life of the system. Similarly, while BAS and CARS licensees are often authorized to operate over a large geographic area, such as a metropolitan area, the Commission does not envision that they will object to prior coordination requests from FSS licensees on the sole basis that an earth station placed in or near their licensed area could impinge upon future deployment of temporary fixed or mobile BAS/CARS operations anywhere in that area. Rather, BAS/CARS licensees should object only where they anticipate interference into fixed receive sites used in conjunction with mobile BAS/CARS transmitters, or into areas in which they reasonably expect to operate. Such areas may include, for example, those in which they have operated on past occasions or which are likely to require coverage for news events in the future, such as convention centers, court houses, or sports venues. The Commission envisions that such coordination between FSS and BAS/CARS licensees in the band will lead to efficient shared use of the bands, including the availability of some spectrum for both FSS and BAS/CARS licensees in or near high-demand markets.

7. While the Commission sets forth expectations, it does not believe that it is necessary to modify the rules for “notice and response” prior coordination procedures in this regard. The Commission rejects SBE's suggestions for additional protection for BAS/CARS operations as “preclusion” or “keep away” areas, as the overall record generated in the proceeding offers no compelling reason for deviating from a “notice and response” coordination approach. Moreover, the Commission agrees with those commenting parties that argue that many of SBE's proposals would make the coordination process potentially more burdensome and complex with minimal benefit in return. Also, to the extent that SBE requests that the Commission revisit those rules relating to the scope of FSS operations in the band—such as limiting the coordination of earth stations to only the spectrum

and look angles to be put in use at the start of operations—the Commission agrees with other commenters that such matters have been fully considered and addressed in prior proceedings and see no need to revisit them here.

8. In the *NPRM*, the Commission expressed its belief that use of these criteria will be as successful for protecting fixed BAS/CARS receivers as they have proven to be for FS and other receivers. The Commission had sought comment as to whether or to what values the interference protection criteria contained in §§ 101.105(a), (b), and (c) should be amended in order to address the protection of mobile and fixed receivers used in conjunction with mobile BAS/CARS stations. Commenters provided no views on this matter.

9. Accordingly, the Commission extends the existing “notice and response” coordination procedures in §§ 25.203(c) and 25.251(a) to coordination of new GSO and NGSO FSS earth stations with fixed BAS/CARS stations in the 7 GHz and 13 GHz bands. For coordination of new fixed BAS/CARS stations with GSO or NGSO FSS earth stations, the Commission apply the coordination procedures set forth in § 101.103(d) by amending §§ 74.638(b) and 78.36(b) to reflect the part 101 procedures. The Commission adopted the approach described in the *NPRM*, and applies the existing FS interference protection criteria in §§ 101.105(a), (b), and (c) for the protection of fixed BAS/CARS receivers by new GSO or NGSO FSS earth stations. While the Commission recognizes that mobile BAS/CARS facilities have somewhat different characteristics from fixed facilities that can affect their potential to cause and receive interference, the Commission continues to believe that the overall structure of the Commission’s existing prior coordination procedures provide sufficient flexibility for the parties to negotiate solutions that will reduce the likelihood of interference. As indicated in the *NPRM* and demonstrated by the success of its use with coordination of related services, the Commission believes that the approaches described for coordinating FSS (both NGSO and GSO) and BAS/CARS mobile operations achieve a balance between the needs of FSS licensees for certainty and reliability and the needs of BAS/CARS for flexibility. Thus, the Commission will apply the existing FS interference protection criteria in §§ 101.105(a), (b), and (c) for the protection of mobile BAS/CARS receivers by new GSO or NGSO FSS earth stations.

10. The Commission continues to believe that allowing BAS/CARS operators to choose between “notice and response” and *ad hoc* coordination will promote sharing in the 7 GHz and 13 GHz bands and minimize the coordination burdens and need for its regulatory oversight. The Commission notes that the *ad hoc* coordination process requires the cooperation of the affected parties, but affords mobile services maximum flexibility with regard to deployment. However, the more formal “notice and response” coordination procedures can provide GSO or NGSO FSS operators with additional certainty of protection from mobile BAS/CARS operations by providing the opportunity to identify potential sharing concerns and take appropriate action prior to licensing and operation. For example, the Commission notes that some of these decisions—such as site location and design—are most logically made before FSS operators begin operation; if later, a mobile BAS/CARS licensee opts to exercise *ad hoc* coordination, the Commission would expect the coordination process to be facilitated because those prior decisions promoted a more favorable overall sharing environment. Furthermore, as discussed in the *NPRM*, these two coordination approaches have been adequate to address sharing with BAS/CARS fixed operations and offer sufficient protection between mobile BAS/CARS and GSO or NGSO FSS operations while achieving an important goal of avoiding unnecessary burden and regulatory oversight.

11. For the foregoing reasons, the Commission allows mobile BAS/CARS entities initiating coordination to use either prior coordination or *ad hoc* procedures when coordinating with GSO or NGSO FSS operations in the 7 GHz and 13 GHz bands (as discussed, GSO or NGSO FSS and fixed BAS/CARS applicants must use the prior coordination rules). Accordingly, the Commission modifies its rules to clarify the bands in which applicants for mobile BAS/CARS have the flexibility to use either the informal *ad hoc* or more structured “notice and response” prior coordination procedures.

#### **Growth Zones Proposal**

12. In the *NPRM*, the Commission sought comment on a “Growth Zones” proposal that would change the NGSO FSS earth station siting rules in part 25 of the Commission rules to promote sharing between NGSO FSS and terrestrial fixed services in the 10 GHz band. The “Growth Zones” proposal was based on a pleading by SkyBridge L.L.C.

(“SkyBridge”), an NGSO FSS applicant, and the Fixed Wireless Communications Coalition (“FWCC”), an association representing FS licensees in the 10 GHz band. The proposal was intended to modify and supplement the prior coordination procedures between NGSO FSS and FS operations in the band. The parties proposed a mechanism to identify counties where the growth of fixed point-to-point operations was likely (referred to as “growth zones”). Skybridge and FWCC proposed that siting of NGSO FSS earth stations in a growth zone be subject to a list of conditions in order to permit the siting of earth stations in areas of intense FS use while ensuring the deployment of future fixed service operations in those areas. The proposal was designed to address what was expected to be an imminent, substantial, and novel sharing scenario between the newly authorized NGSO FSS and terrestrial incumbents.

13. The Commission sought comment on the “Growth Zones” proposal offered by SkyBridge and FWCC. Subsequently, SkyBridge contacted the Commission and declined to accept its 10 GHz band NGSO FSS authorization. The only other remaining NGSO FSS licensee, Virtual Geosatellite LLC (“VirtualGeo”), subsequently surrendered its license. Thus, the imminent deployment of NGSO FSS earth stations in this band that was anticipated at the time of the *NPRM* is no longer at issue.

14. The Commission concludes that, given the developments with respect to the NGSO FSS applicants and licensees, the “Growth Zones” proposal is no longer ripe for consideration. The proposal was intended to address the needs and compromises reached by those specific parties. Now, with neither the original satellite proponent nor any other NGSO FSS applicant currently pursuing licensing in the 10 GHz band, it would be inappropriate to act on the proposal at this time, therefore, the Commission is not adopting the “Growth Zones” proposal. The Commission’s decision not to adopt that plan is without prejudice to the merits of the proposal, and the Commission notes that parties are free to bring this matter before the Commission again if changing conditions warrant its consideration. Further, the prior coordination procedures between NGSO FSS and FS operations in the band that the Commission had previously adopted remain in effect.

### Final Regulatory Flexibility Analysis

15. As required by the Regulatory Flexibility Act (“RFA”),<sup>1</sup> an Initial Regulatory Flexibility Analysis (“IRFA”) was incorporated in the *Notice of Proposed Rule Making* (“NPRM”) in this proceeding. The Commission sought written comment on the proposals in the *NPRM*, including comments on the IRFA.<sup>2</sup> The present Final Regulatory Flexibility Analysis (“FRFA”) conforms to the RFA.

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

16. By this action (“Report & Order”), the Commission modifies our frequency coordination rules to promote sharing between non-geostationary satellite orbit (“NGSO”) and geostationary satellite orbit (“GSO”) fixed-satellite service (“FSS”) operations and various terrestrial services operating in several frequency bands. The Commission declined to adopt a joint proposal by SkyBridge L.L.C. and the Fixed Wireless Communications Coalition (“SkyBridge/FWCC Growth Zone Proposal”) to supplement our existing coordination procedures to promote sharing between new NGSO FSS space-to-Earth (“downlink”) operations and existing Fixed Service (“FS”) operations in the 10.7–11.7 GHz (“10 GHz”) band.<sup>3</sup> The Commission adopts such proposals for amending our frequency coordination rules to address situations where NGSO FSS and GSO FSS operations share spectrum with terrestrial operations in the FS, Broadcast Auxiliary Service (“BAS”) and Cable Television Relay Service (“CARS”) in various bands. Specifically, it:

- Apply the existing parts 25 and 101 “notice and response” coordination rules for coordination of new FSS (both NGSO and GSO) earth stations with mobile BAS/CARS operations in the 6875–7075 MHz (“7 GHz”) and 12750–13250 MHz (“13 GHz”) bands, and consider whether any additions or modifications to the rules are needed to

address the operating characteristics of mobile services;

- Allow either the parts 74 and 78 informal *ad hoc* coordination rules or the part 101 “notice and response” coordination rules to be used for the coordination of mobile BAS/CARS operations with FSS (both NGSO and GSO) earth stations, in the 7 GHz and 13 GHz bands, and consider whether any additions or modifications of these rules are needed; and,

- Apply the existing parts 25 and 101 “notice and response” coordination rules for sharing between new NGSO FSS earth stations and fixed BAS/CARS operations in the 7 GHz and 13 GHz bands.

The Commission undertook this proceeding to facilitate the introduction of new satellite and terrestrial services while promoting interference protection among the various users in these bands.

#### B. Summary of Significant Issues Raised by Public Comments and Response to IRFA

17. There were no comments filed that specifically addressed the rules and policies proposed in the IRFA.

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

18. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>4</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>5</sup> A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (“SBA”).<sup>6</sup> A small organization is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”<sup>7</sup> Nationwide, there are a total of approximately 29.6 million small businesses, according to

the SBA.<sup>8</sup> A “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”<sup>9</sup> Nationwide, as of 2002, there were approximately 1.6 million small organizations.<sup>10</sup> The term “small governmental jurisdiction” is defined generally as “governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”<sup>11</sup> Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States.<sup>12</sup> We estimate that, of this total, 84,377 entities were “small governmental jurisdictions.”<sup>13</sup> Thus, we estimate that most governmental jurisdictions are small.

19. *Cable Television Distribution Services*. Since 2007, these services have been newly defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: “This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.”<sup>14</sup> The SBA has developed an associated small business size standard for this category, and that is: All such firms having 1,500 or fewer employees. To gauge small business prevalence for these cable services we must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: All such firms having \$13.5 million or less in annual receipts.<sup>15</sup> According to Census Bureau data for 2002, there were a total of 1,191

<sup>8</sup> See SBA, Office of Advocacy, “Frequently Asked Questions,” <http://web.sba.gov/faqs/faqindex.cfm?areaID=24> (revised Sept. 2009).

<sup>9</sup> 5 U.S.C. 601(4).

<sup>10</sup> Independent Sector, *The New Nonprofit Almanac & Desk Reference* (2002).

<sup>11</sup> 5 U.S.C. 601(5).

<sup>12</sup> U.S. Census Bureau, *Statistical Abstract of the United States: 2006*, Section 8, page 272, Table 415.

<sup>13</sup> We assume that the villages, school districts, and special districts are small, and total 48,558. See U.S. Census Bureau, *Statistical Abstract of the United States: 2006*, section 8, page 273, Table 417. For 2002, Census Bureau data indicate that the total number of county, municipal, and township governments nationwide was 38,967, of which 35,819 were small. *Id.*

<sup>14</sup> U.S. Census Bureau, 2007 NAICS Definitions, “517110 Wired Telecommunications Carriers” (partial definition); <http://www.census.gov/naics/2007/def/ND517110.HTM#N517110>.

<sup>15</sup> 13 CFR 121.201, NAICS code 517110.

<sup>1</sup> 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 No. 104–121, Title II, 110 Stat. 857 (1996).

<sup>2</sup> *NPRM*, 69 FR 4908 (Feb. 02, 2004), para. 64 and Appendix B.

<sup>3</sup> SkyBridge/FWCC *Ex Parte* comments in ET Docket No. 98–206, filed December 8, 1999, at 3. These *ex parte* comments are included in the docket file for this proceeding. SkyBridge filed one of the petitions for rulemaking (RM–9147) to which ET Docket No. 98–206 responds and was one of four applicants for NGSO FSS satellite systems in the 10 GHz band. The FWCC is a coalition of microwave equipment manufacturers, licensees, and their associations, and communications service providers and their associations, interested in terrestrial fixed microwave communications.

<sup>4</sup> 5 U.S.C. 601(6).

<sup>5</sup> See *Id.* 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**.” *Id.*

<sup>6</sup> See Small Business Act, 15 U.S.C. 632.

<sup>7</sup> 5 U.S.C. 601(4).

firms in this category that operated for the entire year.<sup>16</sup> Of this total, 1,087 firms had annual receipts of under \$10 million, and 43 firms had receipts of \$10 million or more but less than \$25 million.<sup>17</sup> Thus, the majority of these cable firms can be considered to be small.

20. *Cable Companies and Systems.* The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers, nationwide.<sup>18</sup> Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard.<sup>19</sup> In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.<sup>20</sup> Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have under 10,000 subscribers, and an additional 379 systems have 10,000–19,999 subscribers.<sup>21</sup> Thus, under this second size standard, most cable systems are small.

21. *Cable System Operators.* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000."<sup>22</sup> The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not

exceed \$250 million in the aggregate.<sup>23</sup> Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard.<sup>24</sup> We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million,<sup>25</sup> and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

22. *Satellite Telecommunications and All Other Telecommunications.* These two economic census categories address the satellite industry. The first category has a small business size standard of \$15 million or less in average annual receipts, under SBA rules.<sup>26</sup> The second has a size standard of \$25 million or less in annual receipts.<sup>27</sup> The most current Census Bureau data in this context, however, are from the (last) economic census of 2002, and we will use those figures to gauge the prevalence of small businesses in these categories.<sup>28</sup>

23. The category of Satellite Telecommunications "comprises establishments primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications."<sup>29</sup> For this category, Census Bureau data for 2002 show that there were a total of 371 firms that operated for the entire year.<sup>30</sup> Of this total, 307 firms had annual receipts of under \$10 million, and 26 firms had receipts of \$10 million to \$24,999,999.<sup>31</sup>

<sup>23</sup> 47 CFR 76.901(f); see Public Notice, *FCC Announces New Subscriber Count for the Definition of Small Cable Operator*, DA 01-158 (Cable Services Bureau, Jan. 24, 2001).

<sup>24</sup> These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006*, "Top 25 Cable/Satellite Operators," pages A-8 & C-2 (data current as of June 30, 2005); Warren Communications News, *Television & Cable Factbook 2006*, "Ownership of Cable Systems in the United States," pages D-1805 to D-1857.

<sup>25</sup> The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to 76.901(f) of the Commission's rules. See 47 CFR 76.909(b).

<sup>26</sup> 13 CFR 121.201, NAICS code 517410.

<sup>27</sup> 13 CFR 121.201, NAICS code 517919.

<sup>28</sup> 13 CFR 121.201, NAICS codes 517410 and 517910 (2002).

<sup>29</sup> U.S. Census Bureau, 2007 NAICS Definitions, "517410 Satellite Telecommunications"; <http://www.census.gov/naics/2007/def/ND517410.HTM>.

<sup>30</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4, NAICS code 517410 (issued Nov. 2005).

<sup>31</sup> *Id.* An additional 38 firms had annual receipts of \$25 million or more.

Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

24. The second category of All Other Telecommunications comprises, *inter alia*, "establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems."<sup>32</sup> For this category, Census Bureau data for 2002 show that there were a total of 332 firms that operated for the entire year.<sup>33</sup> Of this total, 303 firms had annual receipts of under \$10 million and 15 firms had annual receipts of \$10 million to \$24,999,999.<sup>34</sup> Consequently, we estimate that the majority of All Other Telecommunications firms are small entities that might be affected by our action.

25. *Television Broadcasting.* This Economic Census category "comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public."<sup>35</sup> The SBA has created the following small business size standard for Television Broadcasting firms: Those having \$14 million or less in annual receipts.<sup>36</sup> The Commission has estimated the number of licensed commercial television stations to be 1,379.<sup>37</sup> In addition, according to Commission staff review of the BIA Publications, Inc., Master Access Television Analyzer Database (BIA) on March 30, 2007, about 986 of an

<sup>32</sup> U.S. Census Bureau, 2007 NAICS Definitions, "517919 All Other Telecommunications"; <http://www.census.gov/naics/2007/def/ND517919.HTM#N517919>.

<sup>33</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4, NAICS code 517910 (issued Nov. 2005).

<sup>34</sup> *Id.* An additional 14 firms had annual receipts of \$25 million or more.

<sup>35</sup> U.S. Census Bureau, 2007 NAICS Definitions, "515120 Television Broadcasting" (partial definition); <http://www.census.gov/naics/2007/def/ND515120.HTM#N515120>.

<sup>36</sup> 13 CFR 121.201, NAICS code 515120 (updated for inflation in 2008).

<sup>37</sup> See *FCC News Release*, "Broadcast Station Totals as of December 31, 2007," dated March 18, 2008; [http://www.fcc.gov/Daily\\_Releases/Daily\\_Business/2008/db0318/DOC-280836A1.pdf](http://www.fcc.gov/Daily_Releases/Daily_Business/2008/db0318/DOC-280836A1.pdf).

<sup>16</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005).

<sup>17</sup> *Id.* An additional 61 firms had annual receipts of \$25 million or more.

<sup>18</sup> 47 CFR 76.901(e). The Commission determined that this size standard equates approximately to a size standard of \$100 million or less in annual revenues. *Implementation of Sections of the 1992 Cable Act: Rate Regulation*, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408 (1995).

<sup>19</sup> These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006*, "Top 25 Cable/Satellite Operators," pages A-8 & C-2 (data current as of June 30, 2005); Warren Communications News, *Television & Cable Factbook 2006*, "Ownership of Cable Systems in the United States," pages D-1805 to D-1857.

<sup>20</sup> 47 CFR 76.901(c).

<sup>21</sup> Warren Communications News, *Television & Cable Factbook 2006*, "U.S. Cable Systems by Subscriber Size," page F-2 (data current as of Oct. 2005). The data do not include 718 systems for which classifying data were not available.

<sup>22</sup> 47 U.S.C. 543(m)(2); see 47 CFR 76.901(f) & nn. 1-3.

estimated 1,374 commercial television stations (or approximately 72 percent) had revenues of \$13 million or less.<sup>38</sup> The Commission therefore estimates that the majority of commercial television broadcasters are small entities.

26. The Commission notes, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations<sup>39</sup> must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, an element of the definition of “small business” is that the entity not be dominant in its field of operation. The Commission is unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive to that extent. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 380.<sup>40</sup> These stations are non-profit, and therefore considered to be small entities.<sup>41</sup> There are also 2,295 low power television stations (LPTV).<sup>42</sup> Given the nature of this service, we will presume that all LPTV licensees qualify as small entities under the above SBA small business size standard.

27. *Radio Stations.* This Economic Census category “comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in their own studio, from an affiliated network, or from external sources.”<sup>43</sup> The SBA has established a small business size standard for this category, which is: Such firms having \$7 million

or less in annual receipts.<sup>44</sup> According to Commission staff review of BIA Publications, Inc.’s *Master Access Radio Analyzer Database* on March 31, 2005, about 10,840 (95%) of 11,410 commercial radio stations had revenues of \$6 million or less. Therefore, the majority of such entities are small entities.

28. The Commission notes, however, that in assessing whether a business concern qualifies as small under the above size standard, business affiliations must be included.<sup>45</sup> In addition, to be determined to be a “small business,” the entity may not be dominant in its field of operation.<sup>46</sup> It notes that it is difficult at times to assess these criteria in the context of media entities, and our estimate of small businesses may therefore be over-inclusive.

29. *Wireless Telecommunications Carriers (except Satellite).* Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category.<sup>47</sup> Prior to that time, such firms were within the now-superseded categories of “Paging” and “Cellular and Other Wireless Telecommunications.”<sup>48</sup> Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.<sup>49</sup> Because Census Bureau data are not yet available for the new category, we will estimate small business prevalence using the prior categories and associated data. For the category of Paging, data for 2002 show that there were 807 firms that operated for the entire year.<sup>50</sup> Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or

more.<sup>51</sup> For the category of Cellular and Other Wireless Telecommunications, data for 2002 show that there were 1,397 firms that operated for the entire year.<sup>52</sup> Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.<sup>53</sup> Thus, we estimate that the majority of wireless firms are small.

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

30. The Commission adopted changes to the parts 74 and 78 rules governing coordination between NGSO FSS and other terrestrial services. Generally our “notice and response” and *ad hoc* coordination rules will govern the use of shared frequencies between FSS and BAS/CARS terrestrial services in the 7 and 13 GHz bands.<sup>54</sup> As noted in the section titled “Need for, and Objectives of, the Proposed Rules,” *supra*, in the 7 and 13 GHz bands, we are applying existing parts 25 and 101 “notice and response” coordination rules for coordination of new FSS earth stations with mobile BAS/CARS operations; allowing either existing part 74, and 78 *ad hoc* coordination rules or part 101 “notice and response” coordination rules for coordination of new BAS/CARS mobile operations with FSS earth stations; and applying existing parts 25 and 101 “notice and response” coordination rules for coordination of new FSS earth stations and new fixed BAS/CARS operations.<sup>55</sup>

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

31. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small

<sup>38</sup> We recognize that BIA’s estimate differs slightly from the FCC total given *supra*.

<sup>39</sup> “[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has to power to control both.” 13 CFR 21.103(a)(1).

<sup>40</sup> See FCC News Release, “Broadcast Station Totals as of December 31, 2007,” dated March 18, 2008; [http://www.fcc.gov/Daily\\_Releases/Daily\\_Business/2008/db0318/DOC-280836A1.pdf](http://www.fcc.gov/Daily_Releases/Daily_Business/2008/db0318/DOC-280836A1.pdf).

<sup>41</sup> See generally 5 U.S.C. 601(4), (6).

<sup>42</sup> See FCC News Release, “Broadcast Station Totals as of December 31, 2007,” dated March 18, 2008; [http://www.fcc.gov/Daily\\_Releases/Daily\\_Business/2008/db0318/DOC-280836A1.pdf](http://www.fcc.gov/Daily_Releases/Daily_Business/2008/db0318/DOC-280836A1.pdf).

<sup>43</sup> U.S. Census Bureau, 2007 NAICS Definitions, “515112 Radio Stations”; <http://www.census.gov/naics/2007/def/ND515112.HTM#N515112>.

<sup>44</sup> 13 CFR 121.201, NAICS code 515112 (updated for inflation in 2008).

<sup>45</sup> “Concerns and entities are affiliates of each other when one controls or has the power to control the other, or a third party or parties controls or has the power to control both. It does not matter whether control is exercised, so long as the power to control exists.” 13 CFR 121.103(a)(1) (an SBA regulation).

<sup>46</sup> 13 CFR 121.102(b) (an SBA regulation).

<sup>47</sup> U.S. Census Bureau, 2007 NAICS Definitions, “517210 Wireless Telecommunications Categories (Except Satellite)”; <http://www.census.gov/naics/2007/def/ND517210.HTM#N517210>.

<sup>48</sup> U.S. Census Bureau, 2002 NAICS Definitions, “517211 Paging”; <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>; U.S. Census Bureau, 2002 NAICS Definitions, “517212 Cellular and Other Wireless Telecommunications”; <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>.

<sup>49</sup> 13 CFR 121.201, NAICS code 517210 (2007 NAICS). The now-superseded, pre-2007 CFR citations were 13 CFR 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

<sup>50</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 5, NAICS code 517211 (issued Nov. 2005).

<sup>51</sup> *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

<sup>52</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 5, NAICS code 517212 (issued Nov. 2005).

<sup>53</sup> *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

<sup>54</sup> See NPRM paras. 11–14, *supra*. See list of obligations at Notice para. 9, *supra*.

<sup>55</sup> See NPRM paras. 22, 34.

entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.<sup>56</sup>

32. The Commission adopted its proposals to provide adequate spectrum sharing criteria to minimize the potential for interference of these new NGSO FSS operations on incumbent operations, many of which qualify as small entities. Our coordination rules will ensure that BAS, CARS, and NGSO FSS services can operate sharing these bands without impacting other services' operations. We also note that, in the Discussion Section of the *NPRM*, the Commission requested comment from small businesses and other small entities concerning the alternatives proposed for our coordination rules.<sup>57</sup> The Commission also requested comment on our conclusions and any alternatives to our proposals that could minimize the impact of this action on small entities.

*F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules*

33. None.

*Report to Congress:* The Commission will send a copy of this Report and Order, including this FRFA in a report to be sent to Congress pursuant to the Congressional Review Act.<sup>58</sup> In addition, the Commission will send a copy of the Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA.

**Ordering Clauses**

34. Pursuant to sections 4(i), 303(c), 303(f), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(c), 303(f), and 303(r), the Report and Order *is adopted* and that parts 74 and 78 of the Commission's rules *are amended* as specified in Appendix C, effective 30 days after publication in the **Federal Register**.

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

36. *It is further ordered* that ET Docket No. 03-254 *is terminated*.

**List of Subjects**

*47 CFR Part 74*

Communications equipment, Reporting and recordkeeping requirements, and Television.

*47 CFR Part 78*

Cable television, Communications equipment, and Reporting and recordkeeping requirements.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

**Final Rules**

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 74 and 78 as follows:

**PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTION SERVICES**

■ 1. The authority citation for part 74 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303,307, 336(f), 336(h) and 554.

■ 2. Section 74.638 is amended by revising paragraph (a), paragraph (b), the introductory text of paragraph (c), and paragraph (d) to read as follows:

**§ 74.638 Frequency coordination.**

(a) Coordination of all frequency assignments for fixed stations in all bands above 2110 MHz, and for mobile (temporary fixed) stations in the bands 6425–6525 MHz and 17.7–19.7 GHz, will be in accordance with the procedure established in paragraph (b) of this section, except that the prior coordination process for mobile (temporary fixed) assignments may be completed orally and the period allowed for response to a coordination notification may be less than 30 days if the parties agree. Coordination of all frequency assignments for all mobile (temporary fixed) stations in all bands above 2110 MHz, except the bands 6425–6525 MHz and 17.7–19.7 GHz, will be conducted in accordance with the procedure established in paragraph (b) of this section or with the procedure in paragraph (d) of this section. Coordination of all frequency assignments for all fixed stations in the band 1990–2110 MHz will be in accordance with the procedure established in paragraph (c) of this section. Coordination of all frequency assignments for all mobile (temporary fixed) stations in the band 1990–2110 MHz will be conducted in accordance

with the procedure in paragraph (d) of this section.

(b) For each frequency coordinated under this paragraph, the interference protection criteria in 47 CFR 101.105(a), (b), and (c) and the frequency usage coordination procedures in 47 CFR 101.103(d) will apply.

(c) For each frequency coordinated under this paragraph, the following frequency usage coordination procedures will apply:

\* \* \* \* \*

(d) For each frequency coordinated under this paragraph, applicants are responsible for selecting the frequency assignments that are least likely to result in mutual interference with other licensees in the same area. Applicants may consult local frequency coordination committees, where they exist, for information on frequencies available in the area. In selecting frequencies, consideration should be given to the relative location of receive points, normal transmission paths, and the nature of the contemplated operation.

**PART 78—CABLE TELEVISION RELAY SERVICE**

■ 3. The authority citation for part 78 continues to read as follows:

**Authority:** Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085; 47 U.S.C. 152, 153, 154, 301, 303, 307, 308, 309.

■ 4. Section 78.36 is amended by revising paragraph (a), the introductory text of paragraph (b), paragraph (b)(1), the introductory text of paragraph (c), and paragraph (d) to read as follows:

**§ 78.36 Frequency coordination.**

(a) Coordination of all frequency assignments for fixed stations in all bands above 2110 MHz, and for mobile (temporary fixed) stations in the bands 6425–6525 MHz and 17.7–19.7 GHz, will be in accordance with the procedure established in paragraph (b) of this section, except that the prior coordination process for mobile (temporary fixed) assignments may be completed orally and the period allowed for response to a coordination notification may be less than 30 days if the parties agree. Coordination of all frequency assignments for all mobile (temporary fixed) stations in all bands above 2110 MHz, except the bands 6425–6525 MHz and 17.7–19.7 GHz, will be conducted in accordance with the procedure established in paragraph (b) of this section or with the procedure in paragraph (d) of this section. Coordination of all frequency

<sup>56</sup> 5 U.S.C. 603(c)(1)–(c)(4).

<sup>57</sup> See *NPRM* para. 28, *supra*.

<sup>58</sup> See 5 U.S.C. 801(a)(1)(A).

assignments for all fixed stations in the band 1990–2110 MHz will be in accordance with the procedure established in paragraph (c) of this section. Coordination of all frequency assignments for all mobile (temporary fixed) stations in the band 1990–2110 MHz will be conducted in accordance with the procedure in paragraph (d) of this section.

(b) For each frequency coordinated under this part, the interference protection criteria in 47 CFR 101.105(a), (b), and (c) and the following frequency usage coordination procedures will apply:

(1) *General requirements.* Proposed frequency usage must be prior coordinated with existing licensees, permittees, and applicants in the area, and other applicants with previously filed applications, whose facilities could affect or be affected by the new proposal in terms of frequency interference on active channels, applied-for channels, or channels coordinated for future growth. Coordination must be completed prior to filing an application for regular authorization, or a major amendment to a pending application, or any major modification to a license. In coordinating frequency usage with stations in the fixed satellite service, applicants must also comply with the requirements of 47 CFR 101.21(f). In engineering a system or modification thereto, the applicant must, by appropriate studies and analyses, select sites, transmitters, antennas and frequencies that will avoid interference in excess of permissible levels to other users. All applicants and licensees must cooperate fully and make reasonable efforts to resolve technical problems and conflicts that may inhibit the most effective and efficient use of the radio spectrum; however, the party being coordinated with is not obligated to suggest changes or re-engineer a proposal in cases involving conflicts. Applicants should make every reasonable effort to avoid blocking the growth of systems as prior coordinated. The applicant must identify in the application all entities with which the technical proposal was coordinated. In the event that technical problems are not resolved, an explanation must be submitted with the application. Where technical problems are resolved by an agreement or operating arrangement between the parties that would require special procedures be taken to reduce the likelihood of interference in excess of permissible levels (such as the use of artificial site shielding) or would result in a reduction of quality or capacity of

either system, the details thereof may be contained in the application.

\* \* \* \* \*

(c) For each frequency coordinated under this part, the following frequency usage coordination procedures will apply:

\* \* \* \* \*

(d) For each frequency coordinated under this part, applicants are responsible for selecting the frequency assignments that are least likely to result in mutual interference with other licensees in the same area. Applicants may consult local frequency coordination committees, where they exist, for information on frequencies available in the area. In selecting frequencies, consideration should be given to the relative location of receive points, normal transmission paths, and the nature of the contemplated operation.

[FR Doc. 2010-7567 Filed 4-2-10; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[Docket No. FWS-R8-ES-2010-0016]  
[MO 92210-0-0008-B2]

#### Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List Thorne's Hairstreak Butterfly as or Endangered

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

**ACTION:** Notice of petition finding and initiation of status review.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list Thorne's hairstreak butterfly (*Callophrys [Mitoura] grynea thornei* or *Callophrys [Mitoura] thornei*) as endangered under the Endangered Species Act of 1973, as amended and to designate critical habitat. We find the petition and information currently available in our records presents substantial scientific or commercial information indicating that listing Thorne's hairstreak butterfly may be warranted. Therefore, with the publication of this notice, we are initiating a status review to determine if the petitioned action is warranted. To ensure that the status review is comprehensive, we are requesting scientific and commercial data and other information regarding this species. Based on the status review, we will

issue a 12-month finding on the petition, which will address whether the petitioned action is warranted, as provided in section 4(b)(3)(B) of the Act.

**DATES:** To allow us adequate time to conduct this review, we request that we receive information on or before June 4, 2010. After this date, you must submit information directly to the Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section below). Please note that we may not be able to address or incorporate information that we receive after the above requested date.

**ADDRESSES:** You may submit comments by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Search for Docket No. FWS-R8-ES-2010-0016 and then follow the instructions for submitting comments.

- U.S. mail or hand-delivery: Public Comments Processing, Attn: FWS-R8-ES-2010-0016; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will post all information received on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the Information Requested section below for more details).

**FOR FURTHER INFORMATION CONTACT:** Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 6010 Hidden Valley Road, Suite 101, Carlsbad, CA 92011; by telephone at 760-431-9440; or by facsimile to 760-431-9624. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339.

#### SUPPLEMENTARY INFORMATION:

##### Information Requested

When we make a finding that a petition presents substantial information indicating that listing a species may be warranted, we are required to promptly review the status of the species (status review). For the status review to be complete and based on the best available scientific and commercial information, we request information on the Thorne's hairstreak butterfly from governmental agencies, Native American Tribes, the scientific community, industry, and any other interested parties. We seek information on:

- (1) The species' biology, range, and population trends, including:
  - (a) Habitat requirements for feeding, breeding, and sheltering;
  - (b) Genetics and taxonomy;