

**§ 27.1135 Protection of non-Federal Government Meteorological-Satellite operations.**

AWS licensees operating fixed stations in the 1710–1755 MHz band, if notified that such stations are causing interference to meteorological-satellite earth receivers operating in the Meteorological-Satellite Service in the 1675–1710 MHz band, shall be required to modify the stations' location and/or technical parameters as necessary to eliminate the interference.

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**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Parts 54 and 64**

[CC Docket Nos. 96–45 and 03–123; FCC 03–232]

**Application of Federal Accounting and Auditing Standards to the Universal Service Fund and Telecommunications Relay Services Fund**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Commission amends its rules governing certain financial reporting and auditing requirements applicable to the Universal Service Fund and the Telecommunications Relay Services Fund to ensure that the Commission can maintain its obligations under federal financial management and reporting statutes and directives of the Office of Management and Budget. The Commission also clarifies its rules regarding compensation limitations for employees of the Universal Service Administrative Company.

**DATES:** Effective March 8, 2004.

**FOR FURTHER INFORMATION CONTACT:** Cara Voth, Attorney, Telecommunications Access Policy Division, Wireline Competition Bureau, (202) 418–7400.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Order in CC Docket Nos. 96–45 and 03–123, FCC 03–232 released on October 3, 2003. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC 20554.

**I. Introduction**

1. By this Order, we amend our rules governing certain financial reporting and auditing requirements applicable to the Universal Service Fund and the

Telecommunications Relay Services (TRS) Fund (collectively referred to as the Funds) to ensure that the Commission can maintain its obligations under federal financial management and reporting statutes and directives of the Office of Management and Budget (OMB). Specifically, we will require the administrators of the Funds (hereafter “Administrators”) to prepare financial statements for the Funds consistent with generally accepted accounting principles for federal agencies (Federal GAAP) and to keep the Funds in accordance with the United States Government Standard General Ledger (USGSL). We will also require the Administrators to conduct audits of the Funds pursuant to generally accepted government auditing standards (GAGAS). Further, because the Funds are agency programs included on the Commission's annual financial statement, the Funds may be subject to a number of federal financial and reporting statutes. We revise our rules to reflect this, and to note that, where appropriate under relevant law, the Funds may be subject to similar statutes that are enacted in the future. We also clarify our rules regarding compensation limitations for employees of the Universal Service Administrative Company (USAC).

**II. Discussion**

2. The Universal Service Fund and the TRS Fund are components of the Commission's annual financial statements. In preparing these financial statements, the Commission is required to follow Federal GAAP and maintain its accounts according to the USGSL pursuant to the Federal Financial Management Improvement Act of 1996 (FFMIA). Because the OMB has concluded that all components included on agency financial statements must comply with Federal GAAP, we direct the Administrators of the Universal Service Fund and the TRS Fund to prepare financial statements for those funds consistent with Federal GAAP and to keep any related accounts in accordance with the USGSL as of October 1, 2004. Similarly, as discussed more specifically below, because audits of the Commission's financial statements are conducted according to GAGAS, we direct the Administrators to conduct certain audits of the Universal Service Fund and the TRS Fund according to GAGAS.

3. The modifications we make to our rules regarding audits are intended to reflect the distinction between audits of the Funds and audits of the Administrators of the Funds. When the Administrators of the Universal Service

Fund or TRS Fund, or any independent auditors hired by such Administrators, conduct audits of the beneficiaries of the Universal Service Fund, contributors to the Universal Service Fund or TRS Fund, or any providers of service under the universal service support mechanisms and the TRS program, such audits shall be conducted in accordance with GAGAS. For example, audits conducted of beneficiaries of the schools and libraries support mechanism pursuant to § 54.516 of the Commission's rules must follow GAGAS. In contrast, audits conducted of the Administrators may be conducted according to generally accepted auditing standards (GAAS). For example, the required audit of the Universal Service Fund Administrator pursuant to § 54.717 of the Commission's rules may continue to be conducted according to GAAS. Similarly, any audit of the TRS Fund Administrator may be conducted pursuant to GAAS. Because the TRS Fund will be audited as a component of the Commission's financial statements, we find that the yearly audit of the TRS Fund pursuant to § 64.604(c)(5)(iii)(D) is no longer necessary, and we delete § 64.604(c)(5)(iii)(D) from the Commission's rules.

4. Because the Funds are components of the Commission's financial statements, the Administrators, in their capacity as administrators of the Funds, may also need to comply with relevant provisions of certain federal financial management and reporting statutes and rules. We therefore amend our rules to reflect the fact that the Funds are also subject to certain existing legal requirements, *e.g.*, the Debt Collection Improvement Act of 1996 and relevant portions of the Federal Financial Management Improvement Act of 1996. As appropriate under federal law, the Commission will also apply relevant provisions of similar federal laws that may be enacted in the future.

5. Finally, we take this opportunity to clarify our rules by adding a note to § 54.715(b) of the Commission's rules. Section 54.715(b) provides that the annual rate of pay for officers and employees of the Administrator of the universal service support mechanisms may not “exceed the annual rate of basic pay for level I of the Executive schedule.” The note we add clarifies that the compensation to be included when calculating whether an employee's rate of pay exceeds Level I of the Executive Schedule does not include life insurance benefits, retirement benefits (including payments to 401(k) plans), health insurance benefits, or other similar benefits,

provided that any such benefits are reasonably comparable to benefits that are provided to employees of the federal government. To the extent any of these clarifications require adjustments to benefits that are currently provided to employees of the Administrator, they shall be applied prospectively.

6. We understand that the Administrators will need time to update accounting systems and train accountants, auditors and other relevant employees in order to comply with the rule changes adopted herein. To ensure adequate time for implementation of these new rules, the Administrators will have until October 1, 2004, to update their financial accounting and audit procedures for financial reporting for fiscal year 2005. These rules will go into effect March 8, 2004. We find for good cause that these rule changes may be adopted without affording prior notice and an opportunity for public comment because, for the most part, the rules merely reflect existing legal requirements. Other parts of the rule amendments are exempt from the notice and comment requirements of the Administrative Procedure Act because they concern interpretations of existing rules. The Commission will send a copy of this Order in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the Order to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Order will also be published in the **Federal Register**.

### III. Ordering Clauses

7. Pursuant to sections 4(i), 225, 254, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 225, 254, and 303(r), parts 54 and 64 of the Commission's rules are amended, as set forth, effective March 8, 2004.

### List of Subjects

#### 47 CFR Part 54

Reporting and recordkeeping requirements, Telecommunications, Telephone.

#### 47 CFR Part 64

Communications common carriers, Individuals with disabilities, Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

**Marlene H. Dortch,**

Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 54 and 64 as follows:

### PART 54—UNIVERSAL SERVICE

1. The authority citation for part 54 continues to read as follows:

**Authority:** 47 U.S.C. 1, 4(i), 201, 205, 214 and 254 unless otherwise noted.

2. Amend § 54.702 by adding paragraph (n) to read as follows:

#### § 54.702 Administrator's functions and responsibilities.

\* \* \* \* \*

(n) The Administrator shall account for the financial transactions of the Universal Service Fund in accordance with generally accepted accounting principles for federal agencies and maintain the accounts of the Universal Service Fund in accordance with the United States Government Standard General Ledger. When the Administrator, or any independent auditor hired by the Administrator, conducts audits of the beneficiaries of the Universal Service Fund, contributors to the Universal Service Fund, or any other providers of services under the universal service support mechanisms, such audits shall be conducted in accordance with generally accepted government auditing standards. In administering the Universal Service Fund, the Administrator shall also comply with all relevant and applicable federal financial management and reporting statutes.

3. Amend § 54.715 by adding a note to paragraph (b) to read as follows:

#### § 54.715 Administrative expenses of the Administrator.

\* \* \* \* \*

(b) \* \* \*

**Note to paragraph (b):** The compensation to be included when calculating whether an employee's rate of pay exceeds Level I of the Executive Schedule does not include life insurance benefits, retirement benefits (including payments to 401(k) plans), health insurance benefits, or other similar benefits, provided that any such benefits are reasonably comparable to benefits that are provided to employees of the federal government.

\* \* \* \* \*

### PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

4. The authority citation for part 64 continues to read as follows:

**Authority:** 47 U.S.C. 154, 254(k); secs. 403(b)(2)(B), (C), Public Law 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 225, 226, 228, and 254(k) unless otherwise noted.

5. In § 64.604, remove and reserve paragraph (c)(5)(iii)(D) and revise paragraph (c)(5)(iii)(H) to read as follows:

#### § 64.604 Mandatory minimum standards.

\* \* \* \* \*

(c) \* \* \*

(5) \* \* \*

(iii)\* \* \*

(H) Administrator reporting, monitoring, and filing requirements. The administrator shall perform all filing and reporting functions required in paragraphs (c)(5)(iii)(A) through (c)(5)(iii)(J) of this section. TRS payment formulas and revenue requirements shall be filed with the Commission on May 1 of each year, to be effective the following July 1. The administrator shall report annually to the Commission an itemization of monthly administrative costs which shall consist of all expenses, receipts, and payments associated with the administration of the TRS Fund. The administrator is required to keep the TRS Fund separate from all other funds administered by the administrator, shall file a cost allocation manual (CAM) and shall provide the Commission full access to all data collected pursuant to the administration of the TRS Fund. The administrator shall account for the financial transactions of the TRS Fund in accordance with generally accepted accounting principles for federal agencies and maintain the accounts of the TRS Fund in accordance with the United States Government Standard General Ledger. When the administrator, or any independent auditor hired by the administrator, conducts audits of providers of services under the TRS program or contributors to the TRS Fund, such audits shall be conducted in accordance with generally accepted government auditing standards. In administering the TRS Fund, the administrator shall also comply with all relevant and applicable federal financial management and reporting statutes. The administrator shall establish a non-paid voluntary advisory committee of persons from the hearing and speech disability community, TRS users (voice and text telephone), interstate service providers, state representatives, and TRS providers, which will meet at reasonable intervals (at least semi-annually) in order to monitor TRS cost recovery matters. Each group shall select its own representative to the committee. The administrator's annual

report shall include a discussion of the advisory committee deliberations.

\* \* \* \* \*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 216

[Docket No. 031112277-4018-02;  
I.D.080603B]

RIN 0648-AR70

#### Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Space Vehicle and Test Flight Activities From Vandenberg Air Force Base (VAFB), CA

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

**ACTION:** Final rule.

**SUMMARY:** NMFS, upon application from the U.S. Air Force (USAF), is issuing regulations to govern the unintentional takings of small numbers of marine mammals incidental to space vehicle and test flight activities from Vandenberg Air Force Base, CA (VAFB) over a 5-year period. Issuance of regulations is required by the Marine Mammal Protection Act (MMPA) when the Secretary of Commerce (Secretary), after notice and opportunity for comment, finds, as here, that such takes will have a negligible impact on the species or stocks of marine mammals and will not have an unmitigable adverse impact on their availability for subsistence uses. These regulations prescribe methods of taking and other means of effecting the least practicable adverse impact on marine mammal species and their habitat, and on the availability of the species for subsistence uses.

**DATES:** Effective from February 6, 2004, through February 6, 2009.

**ADDRESSES:** A copy of the USAF application, which contains a list of the references used in this document, may be obtained by writing to P. Michael Payne, Chief, Marine Mammal Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3226 or by telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**). NMFS'

Administrative Record for this action will be maintained at the above address. Copies of letters and documents are available from this address.

**FOR FURTHER INFORMATION CONTACT:** Kimberly Skrupky (301) 713-2322, ext. 163.

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 101(a)(5)(A) of the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued.

Permission may be granted for periods of 5 years or less if the Secretary finds that the total taking will have a negligible impact on the species or stock(s) of affected marine mammals, and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and if regulations are prescribed setting forth the permissible methods of taking and the requirements pertaining to the monitoring and reporting of such taking. NMFS has defined "negligible impact" in 50 CFR 216.103 as:

an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Under section 18(A), the MMPA defines "harassment" as:

any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

##### Summary of Request

On September 2, 2003, NMFS received an application from the USAF requesting authorization under section 101(a)(5)(A) of the MMPA to harass small numbers of marine mammals incidental to space vehicle and test flight activities conducted by the USAF on Vandenberg. These regulations will allow NMFS to issue annual Letters of Authorization (LOAs) to the USAF. The current regulations and LOA expired on December 31, 2003. A detailed description of the operations is contained in the USAF application (USAF, 2003) which is available upon request (see **ADDRESSES**).

##### Description of the Specified Activity

VAFB is the main west coast launch facility for placing commercial, government, and military satellites into polar orbit on expendable (*i.e.* not reusable) launch vehicles, and for testing and evaluation of intercontinental ballistic missiles (ICBM) and sub-orbital target and interceptor missiles. In addition to space vehicle and missile launches, there are security and search and rescue helicopter operations, as well as test and evaluation flights of fixed-wing aircraft. The USAF expects to launch a total of 30 rockets and missiles from VAFB.

Currently five space launch vehicle programs use VAFB to launch satellites into polar orbit: Atlas IIAS, Delta II, Minotaur, Taurus, and Titan (II and IV). Two new programs, the Evolved Expendable Launch Vehicle (EELV) and Space X, are scheduled to make their inaugural launches at VAFB in 2004. The EELV will use a Boeing Delta IV vehicle and a Lockheed-Martin Atlas V. Eventually, these vehicles will replace many of the other programs such as Atlas II and Titan, but initially there will be an overlap in the launches of each program. The Space X is a commercial program which will launch small payloads into low earth orbit. There is also a variety of small missiles, several types of interceptor and target vehicles, and fixed-wing aircrafts that are launched from VAFB.

##### Atlas IIAS

The Atlas IIAS is launched from Space Launch Complex (SLC) 3E on south VAFB, approximately 9.9 km (6.2 mi) from the Rocky Point harbor seal haul-out area and 11.1 km (6.9 mi) from the Spur Road haul-out site. The Atlas IIAS is a medium-sized (up to 48m, 157.5 ft, tall) launch vehicle with approximately 724,800 lbs of thrust. Two Atlas IIAS launch vehicles have been launched from SLC 3E (the Atlas IIAS AC-141 Terra launched on 18 December 1999 and the Atlas IIAS MLV-10 launched on 8 September 2001).

The received sound level at south VAFB from the Atlas IIAS launches was relatively quiet, due to the great amount of attenuation from the 9.9 km (6.2 mi) distance between the measurement site and SLC-3E. Measurements at the south VAFB haul-out site were similar to those measured at the north base Spur Road monitoring site, but slightly higher. The A-weighted sound exposure levels (ASEL), measured at the south haul-out site for the two launches, were 87.3 and 88.5 dB, the unweighted SELs were measured at 124.2 and 118.0 dB