

Publication 800–111, *Guide to Storage Encryption Technologies for End User Devices*.¹⁷

(ii) Valid encryption processes for data in motion are those that comply with the requirements of Federal Information Processing Standards (FIPS) 140–2. These include, as appropriate, standards described in NIST Special Publications 800–52, *Guidelines for the Selection and Use of Transport Layer Security (TLS) Implementations*; 800–77, *Guide to IPsec VPNs*; or 800–113, *Guide to SSL VPNs*, and may include others which are FIPS 140–2 validated.¹⁸

(b) The media on which the PHI is stored or recorded has been destroyed in one of the following ways:

(i) Paper, film, or other hard copy media have been shredded or destroyed such that the PHI cannot be read or otherwise cannot be reconstructed.

(ii) Electronic media have been cleared, purged, or destroyed consistent with NIST Special Publication 800–88, *Guidelines for Media Sanitization*,¹⁹ such that the PHI cannot be retrieved.

III. Solicitation of Comments

A. Guidance Specifying the Technologies and Methodologies That Render Protected Health Information Unusable, Unreadable, or Indecipherable to Unauthorized Individuals

The Department is seeking comments on its guidance regarding the technologies and methodologies that render PHI unusable, unreadable, or indecipherable to unauthorized individuals for purposes of section 13402(h)(2) of the Act. In particular, the Department is interested in receiving comments on the following:

1. Are there particular electronic media configurations that may render PHI unusable, unreadable, or indecipherable to unauthorized individuals, such as a fingerprint protected Universal Serial Bus (USB) drive, which are not sufficiently covered by the above and to which guidance should be specifically addressed?

2. With respect to paper PHI, are there additional methods the Department should consider for rendering the information unusable, unreadable, or indecipherable to unauthorized individuals?

3. Are there other methods generally the Department should consider for rendering PHI unusable, unreadable, or indecipherable to unauthorized individuals?

4. Are there circumstances under which the methods discussed above would fail to render information unusable, unreadable, or indecipherable to unauthorized individuals?

5. Does the risk of re-identification of a limited data set warrant its exclusion from the list of technologies and methodologies that render PHI unusable, unreadable, or indecipherable to unauthorized individuals? Can risk of re-identification be alleviated such that the creation of a limited data set could be added to this guidance?

6. In the event of a breach of protected health information in limited data set form, are there any administrative or legal concerns about the ability to comply with the breach notification requirements?

7. Should future guidance specify which off-the-shelf products, if any, meet the encryption standards identified in this guidance?

B. Breach Notification Provisions Generally

In addition to public comment on the guidance, the Department also requests comments concerning any other areas or issues pertinent to the development of its interim final regulations for breach notification. In particular, the Department is interested in comment in the following areas:

1. Based on experience in complying with state breach notification laws, are there any potential areas of conflict or other issues the Department should consider in promulgating the federal breach notification requirements?

2. Given current obligations under state breach notification laws, do covered entities or business associates anticipate having to send multiple notices to an individual upon discovery of a single breach? Are there circumstances in which the required federal notice would not also satisfy any notice obligations under the state law?

3. Considering the methodologies discussed in the guidance, are there any circumstances in which a covered entity or business associate would still be required to notify individuals under state laws of a breach of information that has been rendered secured based on federal requirements?

4. The Act's definition of "breach" provides for a variety of exceptions. To what particular types of circumstances do entities anticipate these exceptions applying?

Dated: April 22, 2009.

Charles E. Johnson,

Acting Secretary.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 27

[WT Docket Nos. 03–66; 03–67; 02–68; IB Docket No. 02–364; ET Docket No. 00–258]

Small Business Size Standards for the Broadband Radio Service in the 2495–2690 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Final rule; notification of Small Business Administration approval.

SUMMARY: This document announces that the U.S. Small Business Administration (SBA) has approved the small business size standards adopted by the Commission for the Broadband Radio Service (BRS) in the 2495–2690 MHz band.

DATES: This announcement is made as of April 27, 2009.

FOR FURTHER INFORMATION CONTACT: Gary D. Michaels, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, (202) 418–0660.

SUPPLEMENTARY INFORMATION:

1. Pursuant to SBA regulations, the Commission consulted with the SBA on March 7, 2003, and June 29, 2004, regarding small business size standards under which certain small businesses would be eligible for bidding credits in any auction of BRS licenses in the 2495–2650 MHz band and Educational Broadband Service (EBS) licenses in the 2500–2690 MHz band. Both the March 7, 2003, and June 29, 2004 consultation letters proposed the following small business definitions: "Small business"—an entity with average annual gross revenues for the preceding three years not exceeding \$40 million; "Very small business"—an entity with average annual gross revenues for the preceding three years not exceeding \$15 million; and "Entrepreneur"—an entity with average gross revenues not exceeding \$3 million for the preceding three years. The SBA responded to the Commission on July 22, 2004, replying to both of the Commission's requests and stating that the contemplated BRS and EBS size standards appeared reasonable. The Commission subsequently proposed those same small business size standards for BRS and EBS in the *BRS/EBS Further Notice of Proposed Rulemaking*, FCC 04–135, released on July 29, 2004, 69 FR 72048, December 10, 2004. The Commission received no comments from the public regarding the proposed size standards.

2. On March 20, 2008, the Commission released the *Big LEO Third*

¹⁷ Available at <http://www.csrc.nist.gov/>.

¹⁸ Available at <http://www.csrc.nist.gov/>.

¹⁹ Available at <http://www.csrc.nist.gov/>.

Order on Reconsideration and AWS Sixth Memorandum Opinion and Order and BRS/EBIS Fourth Memorandum Opinion and Order and Declaratory Ruling, FCC 08–83, 73 FR 26032, May 8, 2008 (“*BRS/EBIS 4th MO&O*”), in which it adopted the following small business definitions for BRS in the 2496–2690 MHz band: (1) Small business—An entity with average gross revenues for the preceding three years not exceeding \$40 million; (2) Very small business—An entity with average annual gross revenues for the preceding three years not exceeding \$15 million; and (3) Entrepreneur—An entity with average gross revenues not exceeding \$3 million for the preceding three years. Under these definitions, the Commission would provide small businesses with a bidding credit of 15 percent, very small businesses with a bidding credit of 25 percent, and entrepreneurs with a bidding credit of 35 percent.

3. On May 6, 2008, prior to publication of a summary of the *BRS/EBIS 4th MO&O* in the **Federal Register**, the Commission requested the SBA’s approval of the final rule adopting small business size standards for the BRS.

4. By letter dated January 22, 2009, the SBA approved the Commission’s final rule adopting small business size standards for BRS subject to republication of the size standards in the **Federal Register**.

5. This notice satisfies the SBA’s condition of approval as stated in the SBA’s January 22, 2009 letter.

Federal Communications Commission.

Gary D. Michaels,

Deputy Chief, Auctions and Spectrum Access Division, WTB.

[FR Doc. E9–9463 Filed 4–24–09; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 0809121213–9221–02]

RIN 0648–AX84

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Biennial Specifications and Management Measures; Inseason Adjustments

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

ACTION: Final rule; inseason adjustments to biennial groundfish management measures; request for comments.

SUMMARY: This final rule announces inseason changes to management measures in the commercial Pacific Coast groundfish fisheries. These actions, which are authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP), are intended to allow fisheries to access more abundant groundfish stocks while protecting overfished and depleted stocks. The rule also implements changes to the incidental retention allowance for halibut in the primary sablefish fishery under the authority of the Northern Pacific Halibut Act.

DATES: Effective 0001 hours (local time) May 1, 2009. Comments on this final rule must be received no later than 5 p.m., local time on May 27, 2009.

ADDRESSES: You may submit comments, identified by RIN 0648–AX84 by any one of the following methods:

- **Electronic Submissions:** Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>.
- **Fax:** 206–526–6736, Attn: Gretchen Arentzen
- **Mail:** Barry Thom, Acting Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115–0070, Attn: Gretchen Arentzen.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter “N/A” in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT:

Gretchen Arentzen (Northwest Region, NMFS), phone: 206–526–6147, fax: 206–526–6736 and e-mail gretchen.arentzen@noaa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Access

This final rule is accessible via the Internet at the Office of the **Federal Register**’s Website at <http://www.gpoaccess.gov/fr/index.html>.

Background information and documents are available at the Pacific Fishery Management Council’s website at <http://www.pcouncil.org/>.

Background

The Pacific Coast Groundfish FMP and its implementing regulations at title 50 in the Code of Federal Regulations (CFR), part 660, subpart G, regulate fishing for over 90 species of groundfish off the coasts of Washington, Oregon, and California. Groundfish specifications and management measures are developed by the Pacific Fishery Management Council (Council), and are implemented by NMFS. A proposed rule to implement the 2009–2010 groundfish harvest specifications and management measures published on December 31, 2008, (73 FR 80516). The final rule to implement the 2009–2010 specifications and management measures for the Pacific Coast Groundfish Fishery was published on March 6, 2009 (74 FR 9874). These specifications and management measures are codified in the CFR (50 CFR part 660, subpart G).

Changes to current groundfish management measures implemented by this action were recommended by the Council, in consultation with Pacific Coast Treaty Indian Tribes and the States of Washington, Oregon, and California, at its April 4–9, 2009, meeting in Millbrae, California. The Council recommended adjustments to current groundfish management measures to respond to updated fishery information and other inseason management needs. This action is not expected to result in greater impacts to overfished species than originally projected through the end of 2009. Estimated mortality of overfished and target species are the result of management measures designed to meet the Pacific Coast Groundfish FMP objective of achieving, to the extent possible, but not exceeding, OYs of target species, while fostering the rebuilding of overfished stocks by remaining within their rebuilding OYs.

Limited Entry Fixed Gear Fishery Management Measures

Sablefish Daily Trip Limit Fishery

Over the past several years, the amount of sablefish harvested in the limited entry fixed gear sablefish daily trip limit (DTL) fishery North of 36° N. lat. has been lower than their sablefish allocation. In 2006, 106 mt of the 356 mt allocation was harvested. In 2007 and 2008, 116 mt and 150 mt, respectively, of the 2007 and 2008 allocations of 276 mt were taken. Over the 2006 to 2008