

preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it authorizes a State program.

Compliance With Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies with consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

This rule is not subject to Executive Order 13084 because it does not significantly or uniquely affect communities of Indian tribal governments. Virginia is not authorized to implement the RCRA hazardous waste program in Indian country, since there are no Federally-recognized Indian lands in the Commonwealth.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law No. 104-113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve such technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: July 17, 2000.

Bradley M. Campbell,

Regional Administrator, EPA Region III.

[FR Doc. 00-19114 Filed 7-28-00; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 21 and 74

[MM Docket 97-217; FCC 00-244]

MDS and ITFS Two-Way Transmissions

AGENCY: Federal Communications Commission.

ACTION: Final rule; further reconsideration.

SUMMARY: Previously, the Commission adopted a series of legal and technical rule changes to enhance the ability of Multipoint Distribution Service ("MDS") and Instructional Television Fixed Service ("ITFS") licensees to provide non-video services, including transmission of high speed computer

data applications such as Internet access. We later expanded the streamlined application processing system to cover all major modifications of ITFS facilities, modified certain rules related to interference issues, modified certain other rules related to the obligations of ITFS licensees and clarified certain other rules. The FCC is taking two actions. The first action, a rule, which is described in detail below, modifies rules related to ITFS leases, modifies some technical rules and clarifies other rules. The modifications and clarifications are designed to increase the flexibility of the service, lessen the burdens on the parties and preserve the services' interference protections. The second action is the proposed rulemaking, which is published elsewhere in this issue of the **Federal Register**.

DATES: Effective September 29, 2000, except for §§ 21.902(m), 21.913(b) introductory text, 21.913(b)(8), 21.913(e)(4)(ix), 74.931(d)(1), 74.985(b)(8), and 74.985(e)(4)(ix), which contain information collection requirements that have not been approved by OMB. The Commission will publish a document in the **Federal Register** announcing the effective date of these sections.

FOR FURTHER INFORMATION CONTACT: Dave Roberts (202) 418-1600, Video Services Division, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order on Further Reconsideration and Further Notice of Proposed Rulemaking* ("Further Reconsideration Order"), MM Docket, 97-217, FCC 00-244, adopted July 7, 2000 and released July 20, 2000. The full text of this *Further Reconsideration Order* is available for inspection and copying during normal business hours in the FCC Reference Room, Room CY-A257, Portals II, 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services, Inc. ("ITS"), Portals II, 445 12th Street, S.W. Room CY-B402, Washington, D.C. 20554.

Synopsis of Report and Order on Further Reconsideration and Further Notice of Propose Rulemaking

I. Introduction

1. This *Further Reconsideration Order* is adopted by the Commission after receiving petitions for further reconsideration of its *Reconsideration Order*, 64 FR 63727 (November 22, 1999), in this docket. Previously, the *Two-Way Order*, 63 FR 65087 (November 25, 1998), was issued

following a notice of proposed rulemaking, which arose from a petition for rulemaking filed by a group of 111 educators and participants in the wireless cable industry (collectively, "Petitioners"), comprised of MDS and ITFS licensees, wireless cable operators, equipment manufacturers, and industry consultants and associations. In the *Two-Way Order*, the Commission amended parts 21 and 74 of our rules to provide MDS and ITFS licensees with substantially increased operational and technical flexibility. Traditionally, the MDS service traditionally functioned as a one-way point-to-multipoint video transmission service that is often referred to as "wireless cable," whereas ITFS licensees ordinarily used their frequencies for one-way transmission of educational and instructional material to students.

2. The *Two-Way Order* (1) Permitted both MDS and ITFS licensees to provide two-way services on a regular basis; (2) permitted increased flexibility on permissible modulation types; (3) permitted increased flexibility in spectrum use and channelization, including combining multiple channels to accommodate wider bandwidths, dividing 6 MHz channels into smaller bandwidths, and channel swapping; (4) adopted a number of technical parameters to mitigate the potential for interference among service providers and to ensure interference protection to existing MDS and ITFS services; (5) simplified and streamlined the licensing process for stations used in cellularized systems; and (6) modified the ITFS programming requirements in a digital environment. Following the release of the *Two-Way Order*, we received petitions for reconsideration which focused primarily on requests that we expand our new streamlined processing system to cover all ITFS modifications; formalize an interference complaint process; modify some rules regarding ITFS leased capacity and make certain technical clarifications to our rules. In the *Reconsideration Order*, we expanded on some of our MDS/ITFS rules and clarified others. In response to that decision, we received further petitions for reconsideration, asking that we: (1) Permit certain lease provisions; (2) review the treatment of booster stations and receive sites; and (3) further refine our technical rules. In this document, we make additional modifications and clarifications to our MDS/ITFS rules in order to facilitate further the provision of these services to the public. The *Further Notice of Proposed Rulemaking* section of this

document is published elsewhere in this issue of the **Federal Register**.

II. Changes to the Rules

A. Lease Assignments

3. In both the *Two-Way Order* and the *Reconsideration Order*, we determined to leave in place the existing ban on excess-capacity lease terms that would require assumption of the lease obligations by any assignee or transferee. BellSouth asked us to reconsider this position. We do not believe that there is any contradiction between an ITFS licensee performing its educational mission and that same licensee securing financial returns from the lease of its excess capacity. In fact, those financial returns can and do provide substantial resources to the ITFS licensee in the performance of its educational mission. We believe that the probable loss to ITFS licensees unable to freely negotiate an existing lease outweighs the potential effect on some hypothetical future transfer. Therefore, we will permit ITFS licensees to agree to clauses in excess capacity leases that would require that the lease be assigned if the underlying license is assigned. We do emphasize that no ITFS licensee is required to accept an assignment clause and any licensee is free to reject such a clause in its lease.

B. Lease Renewals

4. We have been asked to reconsider our decision not to grandfather ITFS leases entered into prior to March 31, 1997 that contain automatic renewal provisions effective after March 31, 1997. In the *Reconsideration Order*, we did not grant this relief because we were concerned that this could permit leases that would avoid compliance with the new rules into perpetuity. Petitioners argue that the class of leases for which they were seeking grandfathering could only have a total term of ten years. Because these leases cannot be continued without end, we will grant the requested relief. Therefore, ITFS excess capacity leases entered into prior to March 31, 1997 which contain a provision for automatic renewal which would be effective after March 31, 1997 are grandfathered provided that the total term for such a lease does not exceed fifteen years. Although the Petitioners only referred to leases with a total term of ten years in the petition for reconsideration, we will also grandfather any leases entered into during the relevant time that contained both an automatic renewal provision and the automatic five-year extension period we previously grandfathered.

C. Booster Station Licenses

5. In the *Reconsideration Order*, we authorized ITFS excess capacity lessees to hold booster station licenses on their leased frequencies subject to written approval by the ITFS licensee. We also required that the relevant lease contain a provision that the lessee must offer to assign the license to the ITFS licensee for purely nominal consideration at the end of the lease term. ITFS licensees argue that this amounts to reallocation of the spectrum and urge us to reconsider this point. BellSouth asks us to clarify that a party leasing capacity from an MDS licensee also is permitted to hold a booster station license on those frequencies subject to the same terms.

6. We modify our rules to state that lessees of ITFS excess capacity, who hold booster station licenses on that leased capacity, must either assign the booster station license to the underlying ITFS licensee or, if the ITFS licensee does not want the booster station license, turn the license into the Commission at the end of the lease term. Furthermore, the lessee must meet the educational set aside requirement that would be required if the ITFS licensee held the booster license in its own name. In addition, we will permit lessees of MDS capacity to hold booster station licenses on their leased channels. We will still require the lessee to either assign the booster license to the underlying MDS licensee or turn it into the Commission if the MDS licensee does not wish to receive the license at the end of the lease term.

7. Petitioners have requested that we exempt ITFS booster stations operating within their protected service area ("PSA"), but in areas where the licensee has no educational mission, from the minimum programming rules, but not from the reservation and recapture rules. Otherwise, the Petitioners argue that the affected spectrum would lie fallow because a party would be precluded from using it unless and until the ITFS licensee determined that it had an educational mission in that area. We agree with the Petitioners. We will permit a lessee of an ITFS channel to construct and operate a station on the leased frequency, even if the ITFS licensee has no need to utilize a station in that part of its PSA at the time of construction. However, the lessee must at all times set aside capacity on the channel in accord with the reservation and recapture rules. In no event, will we waive the reservation and recapture rules.

8. The Petitioners have also made an unopposed request that we defer booster

service area protection for low powered boosters until after the initial filing window established in the *Two-Way Order*. Because low-powered boosters are often cross-polarized relative to their main transmitter in order to minimize intra-system co-channel interference, and main antennas of neighboring systems are cross-polarized relative to each other in order to minimize inter-system interference, the result is that a low-power booster is often co-polarized to a neighboring system. This makes interference protection and system design particularly difficult and provides an unwarranted preference to these low-powered boosters. Therefore, we will grant the Petitioners request. We note that these boosters will not be left completely unprotected because they will benefit from the protection accorded their PSA or Basic Trading Area.

D. Treatment of Receive Sites

9. In the *Two-Way Order*, we granted a PSA to every ITFS licensee and granted individual protection to all receive sites registered through the date of adoption of the *Two-Way Order*. In the *Reconsideration Order*, we stated that the ITFS licensee's PSA is a 35 mile circle centered either on the fixed reference point of the associated wireless cable system, or on the authorized ITFS main station transmitter site, as elected by the ITFS licensee.

10. BellSouth asks that we exclude limited, point-to-point ITFS stations from the category of stations granted a 35-mile PSA and to clarify that licensees of "secondary" ITFS facilities are not entitled to an automatic 35-mile PSA. Notably, stations operating on a primary basis are not required to give protection to those stations operating on a secondary basis. We agree with BellSouth that point-to-point ITFS stations authorized on a secondary basis should not receive PSA protection. These stations, which operate mostly as studio to transmitter links have traditionally been subordinate to primary stations and we see no reason to change that arrangement. We do not agree with BellSouth, however, that all point-to-point stations should lose PSA protection. Licensees of primary ITFS point-to-point stations are making use of their allotted spectrum. Although their educational needs at this time only necessitate the use of point-to-point transmissions, those needs could easily change as the licensees exploit the benefits of two-way systems.

11. The Catholic Television Network ("CTN") asks that we "clarify" our rules and state that ITFS receive sites outside

the 35-mile PSA can request a waiver and be treated as registered as of September 17, 1998. We decline to adopt this clarification. As we made clear in the *Reconsideration Order*, providing this kind of protection outside of the 35-mile radius is "inconsistent with the plain meaning of the rule. Limiting protection to a 35 mile radius provides certainty to co-channel and adjacent channel entities, especially now that booster stations can originate signals." ITFS licensees operating outside of their PSA are like any other qualified applicant and will have their sites protected only against subsequently filed applications.

12. CTN also asks that we clarify that an ITFS receive site that is registered does not lose that status even if it engages in substantial technical modifications, such as channel swapping. We agree with CTN's requested clarification. We also affirm that licensees may participate in channel shifting and channel swapping whether their operations are digital or analog. There is no reason to limit the flexibility provided by channel shifting and swapping to digital systems. Furthermore, some systems may be partially analog and partially digital and permitting channel shifting and swapping will help parties in those systems to make the most efficient use of their licensed spectrum.

13. Petitioners ask that we permit channel shifting and channel swapping without regard to whether the affected licensees are part of "the same system." We agree with the Petitioners that these activities should not be limited to licensees in the same system and should be allowed in any situation where they will facilitate the most efficient use of the spectrum.

E. Interference Resolution

14. CTN asks us to clarify that all ITFS and MDS licensees are obligated to help identify sources of harmful interference in connection with resolving complaints of interference. We emphasize that cooperation is essential to identify the source of interference and to attempt to resolve any interference issues once the source has been located.

F. Technical Issues

15. IPWireless requests that we conform the out-of-band emission limitations for MDS and ITFS low power response stations (i.e., response stations with an EIRP not exceeding -6 dBW) employing digital modulation to those adopted for certain fixed and mobile wireless stations in other frequency bands. Specifically,

IPWireless requests the following requirements be applied to such stations: (a) At the edge of a 6 MHz channel, out-of-band power shall be attenuated by 25 dB relative to the power (P) within the 6 MHz channel; (b) Attenuated along a linear slope to at least 40 dB or $33+10\log(P)$ dB, whichever is the lesser attenuation, at 250 kHz beyond the nearest channel edge; and, (c) Attenuated along a linear slope from that level to at least 60 dB or $43+10\log(P)$ dB, whichever is the lesser attenuation, at all other frequencies removed from the channel. We agree with IPWireless that it would be unreasonable to require low power response stations to comply with emission limitations crafted for much higher power levels. Therefore, we amend our rules as requested by IPWireless.

16. Also, with respect to low power MDS and ITFS response stations, IPWireless requests that the Commission amend its rules to incorporate into them certain provisions which were included in the *Reconsideration Order* in the form of a waiver of the rules. Specifically, referring to the blanket waiver in the *Reconsideration Order* of the requirement that low power response stations must use directional antennas, IPWireless states that " * * * the Commission must assure fixed wireless subscribers that they have a clear and unequivocal legal right under the Commission's Rules to use an omnidirectional antenna in connection with any MDS/ITFS Response Station equipment they purchase at retail."

17. The issue of the waiver was first raised by Qualcomm, which presented a type of low power response station which was small enough to easily be placed on a desktop or shelf and could be used as part of a very localized system of many such units, all communicating with a nearby hub station. The antenna for this unit is a very short 'whip' type metal rod, which is omnidirectional, i.e., radiates and receives signals equally on all azimuthal headings. Qualcomm contended, and we agreed, that the use of such antennas at low power stations posed very little risk of interference to neighboring systems and should therefore be permitted. With respect to the impact of omnidirectional antennas on interference from neighboring systems, we conditioned our waiver of the rules by requiring that all interference calculations involving protection of low power/omnidirectional response stations be conducted as if those stations were using a directional antenna for reception. This proviso was included so

that the use of omnidirectional antennas for reception would not result in such stations receiving greater interference protection than that provided to non-omnidirectional stations. Although we believe that our blanket waiver of the pertinent rules was sufficient to provide the relief sought by Qualcomm, we believe that IPWireless has presented sufficient justification for amending our rules in order to codify our position on this matter. We therefore amend our rules as requested by IPWireless.

18. We also amend our rules to clarify the relationship between the provisions that permit subdivision of 6 MHz channels and the provisions that limit the number of response stations that may be operated. It was not our intent to impose a ceiling on the maximum number of permissible response stations within a 6 MHz channel that would limit the flexibility of licensees to create subchannels. In footnote 44 of the *Two-Way Order*, we explained how the power for a 6 MHz channel was to be subdivided when the channel was subdivided, and in §§ 21.902 and 74.903 governing interference protection standards for two-way systems, we required that, for channels other than 6 MHz in width, a power spectral density adjustment be applied to the interference criteria in order to account for the actual bandwidth in use. Nevertheless, in light of the concern for clarity expressed by the Wireless Communications Association ("WCA"), we amend our rules to clearly state that the numerical limitations imposed on the response stations in a 6 MHz channel are subject to adjustment, without Commission approval, when the 6 MHz channel is subdivided, so long as the appropriate power flux density requirements are observed. With respect to the CTN's position that such flexibility should be permissible only if the Commission also amends its rules to require that all subchannels be within the original 6 MHz response service area ("RSA"), we agree with WCA that such a requirement already exists and can be found in §§ 21.909(g)(1) and 74.939(g)(1). The creation of an RSA without an application for, and approval of, a separate hub station license is not permitted by our rules.

19. We recently released a revised version of the Appendix D of the *Two-Way Order*, the Methodology for Predicting Interference from Response Station Transmitters and to Response Station Hubs and for Supplying Data on Response Station Systems ("Methodology"), which addresses all of the issues raised by these parties and we have also incorporated a number of clarifying amendments on our own

motion. The full text of the revised Methodology can be found at <http://www.fcc.gov/mmb/vsd/files/methodology.doc>.

G. Other Matters

20. We have made some minor changes to our application filing and service rules. The data files required pursuant to the Methodology and the demonstrations and certifications required by our rules are to be filed with the Commission's Reference Room, rather than with the Commission's copy contractor. We will require that the Appendix D data files be in ASCII format on either CD-ROM or 3.5 inch diskette media. No hard copy version of these data files will be required. Demonstrations and certifications may be in either hard copy or ASCII or PDF format on CD-ROM or 3.5 inch diskette media. (If CD-ROM or 3.5 inch diskette media are used, no hard copy version is required.) Applicants serving the data files, demonstrations and certifications on other applicants and/or licensees will be required to do so using the same format(s) and media as used in their submissions to the Commission's Reference Room.

21. The *Further Notice of Proposed Rulemaking* section of this *Further Reconsideration Order* is published elsewhere in this issue of the **Federal Register**. The *Further Notice of Proposed Rulemaking* section addresses the issue of possible Gaussian noise interference that can occur in certain limited circumstances.

III. Second Supplemental Final Regulatory Analysis

22. As required by the Regulatory Flexibility Act (RFA), 5 U.S.C. 603, a Final Regulatory Flexibility Analysis (FRFA) was incorporated in Appendix B of the *Two-Way Order* and a Supplement was incorporated in Appendix B of the *Reconsideration Order* in this proceeding. The Commission's Second Supplemental Final Regulatory Flexibility Analysis (Second Supplemental FRFA) in the *Further Reconsideration Order* reflects revised or additional information to that contained in the FRFA and Supplement. This Second Supplemental FRFA is thus limited to matters raised in response to the *Two-Way Order* and the *Reconsideration Order* and that are granted on reconsideration in the *Further Reconsideration Order*. The Second Supplemental FRFA conforms to the RFA, as amended by the Contract With America Advancement Act of 1996, Public Law 104-121, 110 Stat. 847 (1996) (CWAAA); see generally 5 U.S.C. 601 et seq. Title II of the CWAAA is the

Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

A. Need For and Objectives of Action

23. In the *Two-Way Order*, we amended parts 21 and 74 of our rules to enhance the ability of MDS and ITFS licensees to provide two-way communication services. The actions taken in the *Further Reconsideration Order* are in response to petitions for reconsideration, clarification or expansion of the rules and policies adopted in the *Two-Way Order* and the *Reconsideration Order*. The petitions have been granted in part and denied in part. The *Further Reconsideration Order* grants the petitions that sought to allow excess capacity leases between ITFS licensees and MDS operators to contain a provision that would require that the lease be assigned if the underlying license is assigned. We also grant those petitions that request we grandfather ITFS leases entered into prior to March 31, 1997 that contain automatic renewal provisions effective after March 31, 1997. We further grant those petitions for reconsideration that sought a modification of our rules to allow ITFS/MDS excess capacity to hold booster station licenses provided that at the end of the lease time such lessees either assign the booster station license to the underlying licensee or, if the ITFS licensee does not want the booster station license, turn the license into the Commission. We also grant those petitions that request that we permit lessees of ITFS capacity to request waivers of the ITFS programming requirements in areas within its Protected Service Area where the ITFS licensee does not yet provide educational service. Moreover, we grant those petitions seeking that we clarify our rules that an ITFS receive site does not lose its register status even if it engages in substantial technical modifications such as channel swapping. Finally, we grant those petitions seeking that we defer booster service area protection for low powered boosters until after the initial filing window. We believe these final rule amendments will facilitate further two-way transmission and other improvements to the MDS and ITFS services.

B. Significant Issues Raised by the Public in Response to the Initial Analysis

24. No comments were received specifically in response to the FRFA contained in the *Two-Way Order* or the Supplement in the *Reconsideration Order*.

C. Description and Number of Small Entities Involved

25. The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small business concern." 5 U.S.C. 601(6). In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act ("SBA"). 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 SBA. Small Business Act, 15 U.S.C. 632.

26. The Commission has defined "small entity" for the auction of MDS as an entity that, together with its affiliates, has average gross annual revenues that are not more than \$40 million for the preceding three calendar years. 47 CFR 21.961(b)(1). This definition of a small entity in the context of MDS auctions has been approved by the SBA. The Commission completed its MDS auction in March 1996 for authorizations in 493 basic trading areas. Of 67 winning bidders, 61 qualified as small entities. One of these small entities, O'ahu Wireless Cable, Inc., was subsequently acquired by GTE Media Ventures, Inc., which did not qualify as a small entity for purposes of the MDS auction.

27. MDS is also heavily encumbered with licensees of stations authorized prior to the auction. The SBA has developed a definition of small entities for pay television services, which includes all such companies generating \$11 million or less in annual receipts. 13 CFR 121.201. This definition includes multipoint distribution systems, and thus applies to MDS licensees and wireless cable operators which did not participate in the MDS auction. Information available to us indicates that there are 832 of these licensees and operators that do not generate revenue in excess of \$11 million annually. Therefore, for purposes of this FRFA, we find there are approximately 892 small MDS providers as defined by the SBA and the Commission's auction rules, and some of these providers may take advantage of our amended rules to provide two-way MDS.

28. There are presently 2032 ITFS licensees. All but 100 of these licenses are held by educational institutions (these 100 fall in the MDS category, above). Educational institutions may be included in the definition of a small entity. See 5 U.S.C. 601(3)-(5). ITFS is a non-pay, non-commercial broadcast service that, depending on SBA categorization, has, as small entities,

entities generating either \$10.5 million or less, or \$11.0 million or less, in annual receipts. See 13 CFR 121.210 (SIC 4833, 4841, and 4899). However, we do not collect, nor are we aware of other collections of, annual revenue data for ITFS licensees. Thus, we find that up to 1932 of these educational institutions are small entities that may take advantage of our amended rules to provide two-way ITFS.

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

29. The *Further Reconsideration Order* adopts the following proposals that include reporting, recordkeeping, and compliance requirements: We refined our rules to require that lessees of ITFS excess capacity, who hold booster station licenses on that leased capacity, must either assign the booster station license to the underlying ITFS licensee, or if the ITFS licensee does not want the booster station license, turn it into the Commission at the end of the lease term. We allowed lessees of ITFS capacity to request waivers of the ITFS programming requirements in areas within the ITFS licensee's Protected Service Area where that ITFS licensee does not yet provide educational service. As stated above, we extended our filing requirements to allow filings to the Commission to be submitted electronically and via CD-ROM. These provisions are intended to give an added measure of flexibility to applicants and at the same time provide for administrative convenience.

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

30. The following step was taken in the *Further Reconsideration Order* to minimize the significant economic impact on small entities: We extended our filing requirements to allow filings to the Commission to be submitted electronically and via CD-ROM. This provision is intended to give an added measure of flexibility to applicants and at the same time provide for administrative convenience.

F. Report to Congress

31. The Commission will send a copy of the *Further Reconsideration Order*, including this Second Supplemental FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. See 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *Further Reconsideration Order*, including the Second Supplemental FRFA, to the Chief

Counsel for Advocacy of the Small Business Administration. A copy of the *Further Reconsideration Order* and Second Supplemental FRFA (or summaries thereof) will also be published in the **Federal Register**. See 5 U.S.C. 604(b).

IV. Procedural Matters

A. Ordering Clauses

32. Accordingly, the above-referenced petitions for further reconsideration and/or clarification of the Order Are Granted in Part and Denied in Part, as described.

33. *It is Further Ordered* that, pursuant to the authority contained in Sections 4(i) and (j), 301, 303(f), 303(g), 303(h), 303(r), 308(b), 403, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 301, 303(f), 303(g), 303(h), 303(j), 308(b), 403, and 405, this Report and Order on Further Reconsideration is Adopted, the Order Is Modified and Clarified to the extent specified, and parts 21 and 74 of the Commission's Rules, 47 CFR 21 and 74, Are Amended.

34. The *Notice is Hereby Given and Comment is Sought* on the proposed clarification described in the Further Notice of Proposed Rulemaking.

35. The rule amendments set forth not pertaining to new or modified reporting or recordkeeping requirements will become effective September 29, 2000, except for §§ 21.902(m), 21.913(b) introductory text, 21.913(b)(8), 21.913(e)(4)(ix), 74.931(d)(1), 74.985(b)(8), and 74.985(e)(4)(ix), which contain information collection requirements that have not been approved by OMB. The Commission will publish a document in the **Federal Register** announcing the effective date of these sections.

36. The Commission's Office of Public Affairs, Reference Operations Division, Shall Send a copy of this Report and Order on Further Consideration and Further Notice of Proposed Rulemaking including the Supplemental Final and Initial Regulatory Flexibility Analyses, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 21

Communications common carriers, Communications equipment, Reporting and recordkeeping requirements, Television.

47 CFR Part 74

Communications equipment, Education, Reporting and Recordkeeping requirements, Television.

Federal Communications Commission.
Magalie Roman Salas,
Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 21 and 74 as follows:

PART 21—DOMESTIC PUBLIC FIXED RADIO SERVICES

1. The authority citation for part 21 continues to read as follows:

Authority: Secs. 1, 2, 4, 201–205, 208, 215, 218, 303, 307, 313, 403, 404, 410, 602, 48 Stat. as amended, 1064, 1066, 1070–1073, 1076, 1077, 1080, 1082, 1083, 1087, 1094, 1098, 1102; 47 U.S.C. 151, 154, 201–205, 208, 215, 218, 303, 307, 313, 314, 403, 404, 602; 47 U.S.C. 552, 554.

2. In § 21.23, paragraph (c)(2) is revised to read as follows:

§ 21.23 Amendment of applications.

* * * * *

(c) * * *

(2) Except during the sixty (60) day amendment period provided for in § 21.27(d), any amendment to an application for a new or modified response station hub, booster station or point-to-multipoint I channel(s) station or to an application for a modified main station that reflects any change in the technical specifications of the proposed facility, includes any new or modified analysis of potential interference to another facility or submits any interference consent from a neighboring licensee, shall result in the application being assigned a new file number and being treated as newly filed.

* * * * *

3. In § 21.31, paragraph (a) is revised to read as follows:

§ 21.31 Mutually exclusive applications.

(a) Except with respect to applications for new or modified response stations hubs, booster stations, and point-to-multipoint I channel stations, and to applications for modified main stations, filed on the same day or during the same window, the Commission will consider applications to be mutually exclusive if their conflicts are such that grant of one application would effectively preclude by reason of harmful electrical interference, or other practical reason, the grant of one or more of the other applications.

* * * * *

4. In § 21.42, paragraph (c)(8) is revised to read as follows:

§ 21.42 Certain modifications not requiring prior authorizations.

* * * * *

(c) * * *

(8) A change to a sectorized antenna system comprising an array of directional antennas, provided that such system does not change polarization or result in an increase in radiated power by more than one dB in any horizontal or vertical direction; provided, however, that notice of such change is provided to the Commission on FCC Form 331 within ten (10) days of installation.

* * * * *

5. In § 21.106, paragraph (a)(2) is revised to read as follows:

§ 21.106 Emission limitations.

(a) * * *

(2) When using transmissions employing digital modulation techniques (see § 21.122(b)) in situations other than those covered by subpart K of this part:

* * * * *

6. In § 21.902, paragraphs (c) introductory text and (i)(1) are revised, and paragraph (m) is added to read as follows:

§ 21.902 Interference.

* * * * *

(c) The following interference studies must be prepared:

* * * * *

(i) * * *

(1) For each application for a new station, or amendment thereto, proposing MDS facilities, filed on October 1, 1995, or thereafter, on or before the day the application or amendment is filed, the applicant must prepare an analysis demonstrating that operation of the MDS applicant's transmitter will not cause harmful electrical interference to each receive site registered as of September 17, 1998, nor within a protected service area as defined in paragraph (d)(1) of this section, of any cochannel or adjacent channel ITFS station licensed, with a conditional license, or proposed in a pending application on the day such MDS application is filed, with an ITFS transmitter site within 50 miles of the coordinates of the MDS station's proposed transmitter site.

* * * * *

(m) The following information formats and storage media are to be used in connection with applications for new and modified MDS and ITFS stations:

(1) The data file prepared for submission to the Commission's Reference Room pursuant to the requirements set out at paragraph 74 of Appendix D to the *Report and Order* in

MM Docket 97–217, FCC 98–231, must be in ASCII format on either CD-ROMs or 3.5" diskettes. Any supplementary information submitted in connection with Appendix D may be in either ASCII or PDF format (graphics must be in PDF format) on either CD-ROMs or 3.5" diskettes. Applicants serving such data/information on other applicants and/or licensees should do so using the same format(s) and media as used in their submission to the Commission's Reference Room.

(2) Demonstrations and certifications prepared for submission to the Commission's Reference Room may be in either hard copy or in ASCII or PDF format on CD-ROM's or 3.5" diskettes. (Graphics must be either hard copy or PDF format) Applicants serving such demonstrations and certifications on other applicants and/or licensees should do so using the same format(s) and media as used in their submission to the Commission's Reference Room.

7. In § 21.906, paragraph (d) is revised to read as follows:

§ 21.906 Antennas.

* * * * *

(d) Directive receiving antennas shall be used at all points other than response station hubs and response stations operating with an EIRP no greater than –6 dBW per 6 MHz channel and shall be elevated no higher than necessary to assure adequate service. Receiving antenna height shall not exceed the height criteria of Part 17 of this chapter, unless authorization for use of a specific maximum height (above ground and mean sea level) for each location has been obtained from the Commission prior to the erection of the antenna. (See part 17 of this chapter concerning construction, marking and lighting of antenna structures.) A response station operating with an EIRP no greater than –6 dBW per 6 MHz channel may use an omnidirectional receiving antenna. However, for the purpose of interference protection, such response stations will be treated as if utilizing a receive antenna meeting the requirements of the reference receiving antenna of Figure 1 of § 21.902(f)(3).

8. In § 21.908, paragraph (d) is revised to read as follows:

§ 21.908 Transmitting equipment.

* * * * *

(d) The maximum out-of-band power of an MDS response station using all or part of a 6 MHz channel, employing digital modulation and transmitting with an EIRP greater than –6 dBW per 6 MHz channel shall be attenuated (as measured in accordance with paragraph (e) of this section) at the 6 MHz channel

edges at least 25 dB relative to the average 6 MHz channel power level, then attenuated along a linear slope to at least 40 dB at 250 kHz beyond the nearest channel edge, then attenuated along a linear slope from that level to at least 60 dB at 3 MHz above the upper and below the lower licensed channel edges, and attenuated at least 60 dB at all other frequencies. The maximum out-of-band power of an MDS response station using all or part of a 6 MHz channel, employing digital modulation and transmitting with an EIRP no greater than -6 dBW per 6 MHz channel shall be attenuated (as measured in accordance with paragraph (e) of this section) at the channel edges at least 25 dB relative to the average 6 MHz channel transmitter output power level (P), then attenuated along a linear slope to at least 40 dB or $33+10\log(P)$ dB, whichever is the lesser attenuation, at 250 kHz beyond the nearest channel edge, then attenuated along a linear slope from that level to at least 60 dB or $43+10\log(P)$ dB, whichever is the lesser attenuation, at 3 MHz above the upper and below the lower licensed channel edges, and attenuated at least 60 dB or $43+10\log(P)$ dB, whichever is the lesser attenuation, at all other frequencies. Where MDS response stations with digital modulation utilize all or part of more than one contiguous 6 MHz channel to form a larger channel (e.g., a channel of width 12 MHz), the above-specified attenuations shall be applied only at the upper and lower edges of the overall combined channel. Notwithstanding these provisions, should harmful interference occur as a result of emissions outside the assigned channel(s), additional attenuation may be required by the Commission.

* * * * *

9. In § 21.909, paragraphs (c)(1), (c)(2), (d), (d)(1), (g)(3), (g)(4), (g)(6), (g)(6)(i), (g)(6)(ii), (g)(6)(iii), (h) and (o) are revised to read as set forth below and paragraphs (c)(3) and (g)(6)(iv) are removed.

§ 21.909 MDS response stations.

* * * * *

(c) * * *

(1) File FCC Form 331 with Mellon Bank, and certify on that form that it has complied with the requirements of paragraphs (c)(2) and (d) of this section and that the interference data submitted under paragraph (d) of this section is complete and accurate. Failure to certify compliance and to comply completely with the requirements of paragraphs (c)(2) and (d) of this section shall result in dismissal of the application or revocation of the response station hub

license, and may result in imposition of a monetary forfeiture; and

(2) Submit the following (see § 21.902(m) for permissible formats and media) to the Commission's Reference Room:

(i) The data files required by Appendix D to the *Report and Order* in MM Docket 97-217, FCC 98-231, "Methods For Predicting Interference From Response Station Transmitters And To Response Station Hubs And For Supplying Data on Response Station Systems"; and

(ii) The demonstrations and certifications required by paragraph (d) of this section.

(d) An applicant for a response station hub license shall prepare the following:

(1) A demonstration describing the system channel plan, to the extent that such information is not contained in the data file required in (c)(2)(i) of this section; and

* * * * *

(g) * * *

(3) No response station shall operate with an EIRP in excess of that specified in the application for the response station hub for the particular regional class of characteristics with which the response station is associated, and such response station shall not operate with an EIRP in excess of $33 \text{ dBW} + 10\log(X/6)$ dBW, where X is the channel width in MHz, and

(4) Each response station shall employ a transmission antenna oriented towards the response station hub with which the response station communicates and such antenna shall be no less directive than the worst-case outer envelope pattern specified in the application for the response station hub for the regional class of characteristics with which the response station is associated; and

* * * * *

(6) The response stations transmitting simultaneously at any given time within any given region of the response service area utilized for purposes of analyzing the potential for interference by response stations shall conform to the numerical limits for each class of response station proposed in the application for the response station hub license. Notwithstanding the foregoing, where a response station hub licensee subchannelizes pursuant to § 21.909(a) and limits the maximum EIRP emitted by any individual response station proportionately to the fraction of the channel that the response station occupies, the licensee may operate simultaneously on each subchannel the number of response stations specified in the license. Moreover, the licensee of a response station hub may alter the

number of response stations of any class operated simultaneously in a given region, without prior Commission authorization, provided that the licensee:

(i) Files with the Commission (see § 21.902(m) for permissible format(s) and media) a demonstration indicating the number of response stations of such class(es) to be operated simultaneously in such region and a certification that it has complied with the requirements of paragraphs (g)(6)(ii) and (iii) of this section and that the interference data submitted pursuant to paragraph (g)(6)(ii) is complete and accurate; and

(ii) Provides the Commission's Reference Room (see § 21.902(m) for permissible formats and media) with an update of the previously-filed response station data and with a demonstration that such alteration will not result in any increase in interference to the protected service area or protected receive sites of any existing or previously-proposed, cochannel or adjacent channel MDS or ITFS station or booster station, to the protected service area of any MDS Basic Trading Area or Partitioned Service Area licensee entitled to protection pursuant to paragraph (d)(3) of this section, or to any existing or previously-proposed, cochannel or adjacent channel response station hub, or response station under § 21.949 or § 74.949 of this chapter; or that the applicant for or licensee of such facility has consented to such interference; and

(iii) Serves a copy of such demonstration and certification upon each party entitled to be served pursuant to paragraph (d)(3) of this section; and

* * * * *

(h) Applicants must comply with Part 17 of this chapter concerning notification to the Federal Aviation Administration of proposed antenna construction or alteration for all hub stations and associated response stations.

* * * * *

(o) Interference calculations shall be performed in accordance with Appendix D (as amended) to the *Report and Order* in MM Docket 97-217, FCC 98-231, "Methods For Predicting Interference From Response Station Transmitters And To Response Station Hubs And For Supplying Data on Response Station Systems." (Note: This document is subject to change and will be updated/amended as needed without prior notification. Applicants should always utilize the most current version of the document, as found at the Commission's internet web site, <http://>

www.fcc.gov/mmb/vsd/files/methodology.doc). Compliance with out-of-band emission limitations shall be established in accordance with § 21.908(e).

10. In § 21.913, paragraphs (a), (b) introductory text, (b)(2), (e) introductory text, (e)(4)(vi), (e)(4)(viii) are revised, and paragraphs (b)(8) and (e)(4)(ix) are added to read as follows:

§ 21.913 Signal booster stations.

(a) An MDS booster station may reuse channels to repeat the signals of MDS stations or to originate signals on MDS channels. The aggregate power flux density generated by an MDS station and all associated signal booster stations and all simultaneously operating cochannel response stations may not exceed -73 dBW/m² (or the appropriately adjusted value based on the actual bandwidth used if other than 6 MHz, see § 21.902(b)(7)(i)) at or beyond the boundary of the protected service area, as defined in §§ 21.902(d) and 21.933, of the main MDS station whose channels are being reused, as measured at locations for which there is an unobstructed signal path, unless the consent of the affected cochannel licensee is obtained.

(b) A licensee or conditional licensee of an MDS station, or the capacity lessee of such MDS station upon the written consent of the licensee or conditional licensee, may secure a license for a high power signal booster station that has a maximum EIRP in excess of -9 dBW + $10 \log(X/6)$ dBW where X is the channel width in MHz, if it complies with the out-of-band emission requirements of § 21.908. Any licensee of a high-power booster station that is a capacity lessee shall, upon termination or expiration of the capacity lease, automatically assign the booster station license to the licensee or conditional licensee of the MDS station by and upon written notice to the Commission signed by the lessee and such licensee or conditional licensee. If upon termination or expiration of the capacity lease the licensee or conditional licensee no longer desires or needs the high-power booster station license, such a license must be returned to the Commission. The applicant for a high-power station, or for modification thereto, where not subject to § 21.41 or § 21.42, shall file FCC Form 331 with Mellon Bank, and certify on that form that the applicant has complied with the additional requirements of this paragraph (b), and that the interference data submitted under this paragraph is complete and accurate. Failure to certify compliance and to comply completely with the following requirements of this

paragraph (b) shall result in dismissal of the application or revocation of the high-power MDS signal booster station license, and may result in imposition of a monetary forfeiture. The applicant is additionally required to submit (see § 21.902(m) for permissible format(s) and media) to the Commission's Reference Room the following information:

* * * * *

(2) A study which demonstrates that the aggregate power flux density of the MDS station and all associated booster stations and simultaneously operating cochannel response stations licensed to or applied for by the applicant, measured at or beyond the boundary of the protected service area of the MDS station whose channels are to be reused, does not exceed -73 dBW/m² (or the appropriately adjusted value based on the actual bandwidth used if other than 6 MHz, see § 21.902(b)(7)(i)) at locations for which there is an unobstructed signal path, unless the consent of the affected licensees has been obtained; and

* * * * *

(8) If the applicant is a capacity lessee, a certification that:

(i) The licensee or conditional licensee has provided its written consent to permit the capacity lessee to apply for the booster station license; and
(ii) The applicant and the licensee or conditional licensee have entered into a lease that is in effect at the time of such filing.

* * * * *

(e) A licensee or conditional licensee of an MDS station, or the capacity licensee of such MDS station upon the written consent of the licensee or conditional licensee, shall be eligible to install and operate a low power signal booster station that has a maximum EIRP of -9 dBW + $\log_{10}(X/6)$ dBW, where X is the channel width in MHz. A low-power MDS signal booster station may operate only on one or more MDS channels that are licensed to the licensee of the MDS booster station, but may be operated by a third party with a fully-executed lease or consent agreement with the MDS conditional licensee or licensee. Any licensee of a low-power booster station that is a capacity lessee shall, upon termination or expiration of the capacity lease, automatically assign the booster station license to the licensee or conditional licensee of the MDS station by and upon written notice to the Commission signed by the lessee and such licensee or conditional licensee. If upon termination or expiration of the capacity lease the licensee or conditional

licensee no longer desires or needs the low-power booster station license, such a license must be returned to the Commission. An MDS licensee, conditional licensee, or capacity lessee thereof, may install and commence operation of a low-power MDS signal booster station for the purpose of retransmitting the signals of the MDS station or for originating signals. Such installation and operation shall be subject to the condition that for sixty (60) days after installation and commencement of operation, no objection or petition to deny is filed by the licensee of a, or applicant for a previously-proposed, cochannel or adjacent channel ITFS or MDS station with a transmitter within 8.0 kilometers (5 miles) of the coordinates of the low-power MDS signal booster station. An MDS licensee, conditional licensee, or capacity lessee thereof seeking to install a low-power MDS signal booster station under this rule must submit a FCC Form 331 to the Commission within 48 hours after installation. In addition, the MDS licensee, conditional licensee, or capacity lessee must submit the following information (see § 21.902(m) for permissible format(s) and media) to the Commission's Reference Room:

* * * * *

(4) * * *

(vi) The aggregate power flux density of the MDS station and all associated booster stations and simultaneously operating cochannel response stations licensed to or applied for by the applicant, measured at or beyond the boundary of the protected service areas of the MDS stations whose channels are to be reused, does not exceed -73 dBW/m² (or the appropriately adjusted value based on the actual bandwidth used if other than 6 MHz, see § 21.902(b)(7)(i)) at locations for which there is an unobstructed signal path, unless the consent of the affected licensees has been obtained; and

* * * * *

(viii) The applicant understands and agrees that, in the event harmful interference is claimed by the filing of an objection or petition to deny, it must terminate operation within two (2) hours of notification by the Commission, and must not recommence operation until receipt of written authorization to do so by the Commission; and

(ix) If the applicant is a capacity lessee, a certification that:

(A) The licensee or conditional licensee has provided its written consent to permit the capacity lessee to apply for the booster station license; and

(B) The applicant and the licensee or conditional licensee have entered into a lease that is in effect at the time of such filing.

* * * * *

PART 74—EXPERIMENTAL RADIO, AUXILLIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

11. The authority for part 74 continues to read as follows:

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

12. In § 74.902, paragraphs (f) and (i) are revised to read as follows:

§ 74.902 Frequency assignments.

* * * * *

(f) An ITFS licensee may apply to exchange evenly one or more of its assigned channels with another ITFS licensee, or with an MDS licensee or conditional licensee, except that an ITFS licensee may not exchange one of its assigned channels for MDS channel 2A. The licensees seeking to exchange channels shall file in tandem with the Commission separate pro forma assignment of license applications, each attaching an exhibit which clearly specifies that the application is filed pursuant to a channel exchange agreement. The exchanged channel(s) shall be regulated according to the requirements applicable to the assignee; provided, however, that an ITFS licensee which receives one or more E or F Group channels through a channel exchange with an MDS licensee or conditional licensee shall not be subject to the restrictions on ITFS licensees who were authorized to operate on the E or F Group channels prior to May 26, 1983.

* * * * *

(i) On the E and F-channel frequencies, a point-to-point ITFS station may be involuntarily displaced by an MDS applicant or licensee, provided that suitable alternative spectrum is available and that the MDS entity bears the expenses of the migration. Suitability of spectrum will be determined on a case-by-base basis; at a minimum, the alternative spectrum must be licensable by ITFS operators on a primary basis (although it need not be specifically allocated to the ITFS service), and must provide a signal that is equivalent to the prior signal in picture quality and reliability, unless the ITFS licensee will accept an inferior signal. Potential expansion of the ITFS licensee may be considered in

determining whether alternative available spectrum is suitable.

* * * * *

13. In § 74.903, paragraphs (b)(4), (c) and (d) are revised to read as follows:

§ 74.903 Interference.

* * * * *

(b) * * *

(4) In lieu of the interference analyses required by paragraphs (b)(1) and (2) of this section, an applicant may submit (a) statement(s) from the affected cochannel or adjacent channel licensee(s) that any resulting interference is acceptable.

* * * * *

(c) Existing licensees and prospective applicants, including those who lease or propose to lease excess capacity pursuant to § 74.931(c) or (d), are expected to cooperate fully and in good faith in attempting to resolve problems of potential interference before bringing the matter to the attention of the Commission.

(d) Each authorized or previously-proposed applicant, or licensee must be protected from harmful electrical interference at each of its receive sites registered previously as of September 17, 1998, and within a protected service area as defined at § 21.902(d) of this chapter and in accordance with the reference receive antenna characteristics specified at § 21.902(f) of this chapter. An ITFS entity which did not receive protected service area protection prior to September 17, 1998 shall be accorded such protection by a cochannel or adjacent channel applicant for a new station or station modification, including a booster station, response station or response station hub, where the applicant is required to prepare an analysis, study or demonstration of the potential for harmful interference. An ITFS entity receiving interference protection provided by this section will continue to receive such protection if it elects to swap channels with another ITFS or MDS station as specified in § 74.902(f).

14. In § 74.911, paragraphs (b), (d), and (e) are revised to read as follows:

§ 74.911 Processing of ITFS station applications.

* * * * *

(b) A new file number will be assigned to an application for a new station or for major changes in the facilities of an authorized station, when it is amended so as to effect a major change, as defined in paragraph (a)(2) of this section, or results in a situation where the original party or parties to the application do not retain control of the applicant as originally filed. An

application for change in the facilities of any existing station will continue to carry the same file number even though (pursuant to Commission approval) an assignment of license or transfer of control of such licensee has taken place if, upon consummation, the application is amended to reflect the new ownership.

* * * * *

(d) Notwithstanding any other provisions of this part, effective as of September 17, 1998, there shall be a one-week window, at such time as the Commission shall announce by public notice, for the filing of applications for all major changes, high-power signal booster station, response station hub, and I channels point-to-multipoint transmissions licenses, during which all applications shall be deemed to have been filed as of the same day for purposes of 74.939 and 74.985. Following the publication of a public notice announcing the tendering for filing of applications submitted during that window, applicants shall have a period of sixty (60) days to amend their applications, provided such amendments do not result in any increase in interference to any previously-proposed or authorized station, or to facilities proposed during the window, absent consent of the applicant for or licensee of the station that would receive such additional interference. At the conclusion of that sixty (60) day period, the Commission shall publish a public notice announcing the acceptance for filing of all applications submitted during the initial window, as amended during the sixty (60) day period. All petitions to deny such applications must be filed within sixty (60) days of such second public notice. On the sixty-first (61st) day after the publication of such second public notice, applications for major changes, new or modified response station hub, high powered signal booster and booster station licenses may be filed and will be processed in accordance with the provisions of 74.939 and 74.985. Each application submitted during the initial window shall be granted on the sixty-first (61st) day after the Commission shall have given such public notice of its acceptance for filing, unless prior to such date either a party in interest timely files a formal petition to deny or for other relief pursuant to § 74.912, or the Commission notifies the applicant that its application will not be granted. Where an application is granted pursuant to the provisions of this paragraph, licensee shall maintain a copy of the application at the transmitter site or response station hub

until such time as the Commission issues a license.

(e) Except as provided in paragraph (d) of this section, major change applications may be filed at any time. Except during the sixty (60) day amendment period provided for in paragraph (d) of this section, any amendment to a major change application that reflects any change in the technical specifications of the proposed facility, includes any new or modified analysis of potential interference to another facility, or submits any interference consent from a neighboring licensee, shall cause the application to be considered newly-filed. Notwithstanding any other provision of part 74, major change applications meeting the requirements of part 74 shall cut-off applications that are filed on a subsequent day for facilities that would cause harmful electromagnetic interference to the facilities proposed in the major change application. A facility proposed in a major change application shall not be entitled to protection from interference caused by any facilities proposed on or prior to the day the major change application is filed. A facility proposed in a major change application shall not be required to protect from interference facilities proposed on or after the day the major change application is filed. Except as provided by paragraph (d) of this section, any petition to deny a major change application shall be filed no later than the sixtieth (60th) day after the date of public notice announcing the filing of such application. Except as provided in paragraph (d) of this section a major change application that meets the requirements of part 74 shall be granted on the sixty-first (61st) day after the Commission shall have given public notice of the acceptance for filing of it, unless prior to such date either a party in interest files a timely petition to deny or files for other relief pursuant to § 74.912, or the Commission notifies the applicant that its application will not be granted at such time. Where an application is granted pursuant to the provisions of this paragraph, the licensee shall maintain a copy of the application at the facility until such time as the Commission issues a license for that facility's operations.

15. In § 74.931, paragraphs (c) and (d) are revised, paragraphs (e), (f), (g), (h), (i) and (j) are redesignated as paragraphs (f), (g), (h), (i), (j) and (k), and a new paragraph (e) is added to read as follows:

§ 74.931 Purpose and permissible service.

* * * * *

(c) A licensee solely utilizing analog transmissions may use excess capacity on each channel to transmit material other than the ITFS subject matter specified in paragraphs (a) and (b) of this section, subject to the following conditions:

(1) Before leasing excess capacity on any one channel, the licensee must provide at least 20 hours per week of ITFS educational usage on that channel, except as provided in paragraph (c)(2) and (c)(3) of this section. An additional 20 hours per week per channel must be strictly reserved for ITFS use and not used for non-ITFS purposes, or reserved for recapture by the ITFS licensee for its ITFS educational usage, subject to one year's advance, written notification by the ITFS licensee to its lessee and accounting for all recapture already exercised, with no economic or operational detriment to the licensee. These hours of recapture are not restricted as to time of day or day of the week, but may be established by negotiations between the ITFS licensee and the lessee. This 20 hours per channel per week ITFS educational usage requirement and this recapture and/or reservation requirement of an additional 20 hours per channel per week shall apply spectrally over the licensee's whole actual service area.

(2) For the first two years of operation, an ITFS entity may lease excess capacity if it provides ITFS educational usage for at least 12 hours per channel per week, provided that the entity does not employ channel loading technology.

(3) The licensee may shift its requisite ITFS educational usage onto fewer than its authorized number of channels, via channel mapping or channel loading technology, so that it can lease full-time channel capacity on its ITFS station and/or associated ITFS booster stations, subject to the condition that it provide a total average of at least 20 hours per channel per week of ITFS educational usage on its authorized channels. The use of channel mapping or channel loading consistent with the Rules shall not be considered adversely to the ITFS licensee in seeking a license renewal. The licensee also retains the unbridgeable right to recapture, subject to six months' advance written notification by the ITFS licensee to its lessee, an average of an additional 20 hours per channel per week, accounting for all recapture already exercised. Regardless of whether the licensee has educational receive sites within its psa, the licensee may lease booster stations in the entire psa, provided that the licensee maintains the unbridgeable right to ready recapture at least 40 hours per channel per week for ITFS

educational usage. The licensee may agree to the transmission of this recapture time on channels not authorized to it, but which are included in the wireless system of which it is a part. A licensee under this paragraph which leases excess capacity on any one of its channels to an operator may "channel shift" pursuant to and under the conditions of paragraph (d)(2) of this section.

(4) An ITFS applicant or licensee may specify an omnidirectional antenna for point-to multipoint transmissions to facilitate the leasing of excess capacity.

(5) Leasing activity may not cause unacceptable interference to cochannel or adjacent channel operations.

(6) When an ITFS licensee makes capacity available on a common carrier basis, it will be subject to common carrier regulation.

(i) A licensee operating as a common carrier is required to comply with all policies and rules applicable to that service. Responsibility for making the initial determination of whether a particular activity is common carriage rests with the ITFS licensee. Initial determinations by the licensees are subject to Commission examination and may be reviewed at the Commission's discretion.

(ii) An ITFS licensee also may alternate, without further authorization required, between rendering service on a common carrier and non-common carrier basis, provided that the licensee notifies the Commission of any service status changes at least 30 days in advance of such changes. The notification shall state whether there is any affiliation or relationship to any intended or likely subscriber or program originator.

(iii) Licensees under paragraph (c)(6) of this section additionally shall comply with the provisions of §§ 21.304, 21.900(b), 21.903(b)(1) and (2) and (c), and 21.910 of this chapter.

(d) A licensee utilizing digital transmissions on any of its licensed channels may use excess capacity on each channel to transmit material other than the ITFS subject matter specified in paragraphs (a) and (b) of this section, subject to the following conditions:

(1) The licensee must reserve a minimum of 5% of the capacity of its channels for instructional purposes only, and may not lease this reserved capacity. In addition, before leasing excess capacity, the licensee must provide at least 20 hours per licensed channel per week of ITFS educational usage. This 5% reservation and this 20 hours per licensed channel per week ITFS educational usage requirement shall apply spectrally over the licensee's

whole actual service area. However, regardless of whether the licensee has an educational receive sites within its psa served by a booster, the licensee may lease excess capacity without making at least 20 hours per licensed channel per week of ITFS educational usage, provided that the licensee maintains the unabridgeable right to recapture on one months' advance notice such capacity as it requires over and above the 5% reservation to make at least 20 hours per channel per week of ITFS educational usage.

(2) The licensee may shift its requisite ITFS educational usage onto fewer than its authorized number of channels, via channel mapping or channel loading technology, and may shift its requisite ITFS educational usage onto channels not authorized to it, but which are included in the wireless system of which it is a part ("channel shifting"), so that it can lease full-time channel capacity on its ITFS station, associated ITFS booster stations, and/or ITFS response stations and associated response station hubs, subject to the condition that it provide a total average of at least 20 hours per licensed channel per week of ITFS educational usage. The use of channel mapping, channel loading, and/or channel shifting consistent with the Rules shall not be considered adversely to the ITFS licensee in seeking a license renewal. In addition, an ITFS entity receiving interference protection provided by § 74.903, will continue to receive such protection if it elects to swap channels with another ITFS or MDS station as specified in § 74.902(f).

(3) An ITFS applicant or licensee may specify an omnidirectional antenna for point-to-multipoint transmissions to facilitate the leasing of excess capacity.

(4) Leasing activity may not cause unacceptable interference to cochannel or adjacent channel operations.

(5) A licensee leasing any of its licensed channels to be used as response channels shall be required to maintain at least 25% of the capacity of its channels for point-to-multipoint transmissions during the term of the lease and following termination of the leasing arrangement. This 25% preservation may be over the licensee's own authorized channels or over channels not authorized to it, but which are included in the wireless system of which it is a part.

(6) When an ITFS licensee makes capacity available on a common carrier basis, it will be subject to common carrier regulation.

(i) A licensee operating as a common carrier is required to comply with all policies and rules applicable to that

service. Responsibility for making the initial determination of whether a particular activity is common carriage rests with the ITFS licensee. Initial determinations by the licensees are subject to Commission examination and may be reviewed at the Commission's discretion.

(ii) An ITFS licensee also may alternate, without further authorization required, between rendering service on a common carrier and non-common carrier basis, provided that the licensee notifies the Commission of any service status changes at least 30 days in advance of such changes. The notification shall state whether there is any affiliation or relationship to any intended or likely subscriber or program originator.

(iii) Licensees under paragraph (d)(6) of this section additionally shall comply with the provisions of §§ 21.304, 21.900(b), 21.903(b)(1) and (2) and (c), and 21.910 of this chapter.

(e) ITFS excess capacity leases entered into prior to March 31, 1997, which contain a provision for automatic renewal which would be effective after March 31, 1997, are exempt for the duration of said lease from compliance with subsequently adopted Commission rules. However, the total term of such applicable lease may not exceed fifteen years.

* * * * *

16. § 74.936(f) is revised to read as follows:

§ 74.936 Emissions and bandwidth.

* * * * *

(f) The maximum out-of-band power of an ITFS response station using all or part of a 6 MHz channel, employing digital modulation and transmitting with an EIRP greater than -6 dBW per 6 MHz channel shall be attenuated (as measured in accordance with § 21.908(e)) at the 6 MHz channel edges at least 25 dB relative to the average 6 MHz channel power level, then attenuated along a linear slope to at least 40 dB at 250 kHz beyond the nearest channel edge, then attenuated along a linear slope from that level to at least 60 dB at 3 MHz above the upper and below the lower licensed channel edges, and attenuated at least 60 dB at all other frequencies. The maximum out-of-band power of an ITFS response station using all or part of a 6 MHz channel, employing digital modulation and transmitting with an EIRP no greater than -6 dBW per 6 MHz channel shall be attenuated (as measured in accordance with § 21.908(e)) at the channel edges at least 25 dB relative to the average 6 MHz

channel transmitter output power level (P), then attenuated along a linear slope to at least 40 dB or $33+10\log(P)$ dB, whichever is the lesser attenuation, at 250 kHz beyond the nearest channel edge, then attenuated along a linear slope from that level to at least 60 dB or $43+10\log(P)$ dB, whichever is the lesser attenuation, at 3 MHz above the upper and below the lower licensed channel edges, and attenuated at least 60 dB or $43+10\log(P)$ dB, whichever is the lesser attenuation, at all other frequencies. Where ITFS response stations with digital modulation utilize all or part of more than one contiguous 6 MHz channel to form a larger channel (e.g., a channel of width 12 MHz), the above-specified attenuations shall be applied only at the upper and lower edges of the overall combined channel. Notwithstanding these provisions, should harmful interference occur as a result of emissions outside the assigned channel(s), additional attenuation may be required by the Commission.

* * * * *

17. In § 74.937, the text of paragraph (a) preceding Figure 1 and paragraph (b) are revised to read as follows:

§ 74.937 Antennas.

(a) In order to minimize the hazard of harmful cochannel and adjacent channel interference from other stations, directive receiving antennas should be used at all receiving locations other than response station hubs and response stations operating with an EIRP no greater than -6 dBW per 6 MHz channel. The choice of receiving antennas is left to the discretion of the licensee. However, for the purpose of interference calculations, except as set forth in § 74.939, the general characteristics of the reference receiving antenna shown in Figure 1 of this section (i.e., a 0.6 meter (2 foot) parabolic reflector antenna, are assumed to be used in accordance with the provisions of § 74.903(a)(3) unless pertinent data is submitted of the actual antenna in use for reception. Licensees may install receiving antennas with general characteristics superior to those of the reference antenna. Should interference occur and it can be demonstrated that the existing receiving antenna is inadequate, a more suitable antenna should be installed. In such cases, installation of the new receiving antenna will be the responsibility of the system operator serving the receive site. A response station operating with an EIRP no greater than -6 dBW per 6 MHz channel may use an omnidirectional receiving antenna. However, for the purpose of interference

protection, such response stations will be treated as if utilizing a receive antenna meeting the requirements of the reference receiving antenna shown in Figure 1 of this section.

* * * * *

(b) Except as set forth in § 74.931(c)(4) and (d)(3), directive transmitting antennas shall be used whenever feasible so as to minimize interference to other licensees. The radiation pattern shall be designed to minimize radiation in directions where no reception is intended. When an ITFS station is used for point-to-point service, an appropriate directional antenna must be used. Notwithstanding these provisions, response stations operating with an EIRP no greater than -6 dBW per 6 MHz channel may utilize omnidirectional transmitting antennas.

* * * * *

18. In § 74.939, paragraphs (c)(2), (d) introductory text, (d)(1), (g)(3), (g)(4), (g)(6), (h), (l)(2), and (q) are revised as set forth below and paragraph (c)(3) is removed:

§ 74.939 ITFS response stations.

* * * * *

(c) * * *

(2) Submit the following (see § 21.902(m) for permissible formats and media) to the Commission's Reference Room:

(i) The data files required by Appendix D (as amended) to the *Report and Order* in MM Docket 97-217, FCC 98-231, "Methods For Predicting Interference From Response Station Transmitters And To Response Station Hubs And For Supplying Data on Response Station Systems"; and

(ii) The demonstrations and certifications required by paragraph (d) of this section.

(d) An applicant for a response station hub license shall prepare the following:

(1) A demonstration describing the system channel plan, to the extent that such information is not contained in the data file required in (c)(2)(i) of this section; and

* * * * *

(g) * * *

(3) No response station shall operate with an EIRP in excess of that specified in the application for the response station hub for the particular regional class of characteristics with which the response station is associated, and such response station shall not operate with an EIRP in excess of 33 dBW + 10log(X/6) dBW, where X is the channel width in MHz, and

(4) Each response station shall employ a transmission antenna oriented towards the response station hub with which the

response station communicates and such antenna shall be no less directive than the worst-case outer envelope pattern specified in the application for the response station hub for the regional class of characteristics with which the response station is associated; and

* * * * *

(6) The response stations transmitting simultaneously at any given time within any given region of the response service area utilized for purposes of analyzing the potential for interference by response stations shall conform to the numerical limits for each class of response station proposed in the application for the response station hub license. Notwithstanding the foregoing, where a response station hub licensee subchannelizes pursuant to § 74.939(a) and limits the maximum EIRP emitted by any individual response station proportionately to the fraction of the channel that the response station occupies, the licensee may operate simultaneously on each subchannel the number of response stations specified in the license. Moreover, the licensee of a response station hub may alter the number of response stations of any class operated simultaneously in a given region, without prior Commission authorization, provided that the licensee:

(i) Files with the Commission (see § 21.902(m) for permissible format(s) and media) a demonstration indicating the number of response stations of such class(es) to be operated simultaneously in such region and a certification that it has complied with the requirements of paragraphs (g)(6)(ii) and (iii) of this section and that the interference data submitted pursuant to paragraph (g)(6)(ii) is complete and accurate; and

(ii) Provides the Commission's Reference Room (see § 21.902(m) for permissible formats and media) with an update of the previously-filed response station data and with a demonstration that such alteration will not result in any increase in interference to the protected service area or protected receive sites of any existing or previously-proposed, cochannel or adjacent channel MDS or ITFS station or booster station, to the protected service area of any MDS Basic Trading Area or Partitioned Service Area licensee entitled to protection pursuant to paragraph (d)(3) of this section, or to any existing or previously-proposed, cochannel or adjacent channel response station hub, or response station under § 21.949 or § 74.949 of this chapter; or that the applicant for or licensee of such facility has consented to such interference; and

(iii) Serves a copy of such demonstration and certification upon each party entitled to be served pursuant to paragraph (d)(3) of this section; and

* * * * *

(h) Applicants must comply with part 17 of this chapter concerning notification to the Federal Aviation Administration of proposed antenna construction or alteration for all hub stations and associated response stations.

* * * * *

(l) * * *

(2) Submit to the Commission's Reference Room (see § 21.902(m) for permissible format(s) and media) the following:

* * * * *

(q) Interference calculations shall be performed in accordance with Appendix D (as amended) to the *Report and Order* in MM Docket 97-217, FCC 98-231, "Methods For Predicting Interference From Response Station Transmitters And To Response Station Hubs And For Supplying Data on Response Station Systems." (Note: This document is subject to change and will be updated/amended as needed without prior notification. Applicants should always utilize the most current version of the document, as found at the Commission's internet web site, <http://www.fcc.gov/mmb/vsd/files/methodology.doc>). Compliance with out-of-band emission limitations shall be established in accordance with § 21.908(e) of this chapter.

* * * * *

19. In § 74.951, paragraph (b) is revised to read as follows:

§ 74.951 Modification of transmission systems.

* * * * *

(b) Any change in the antenna system affecting the direction of radiation, directive radiation pattern, antenna gain, or radiated power; provided, however, that a licensee may install a sectorized antenna system without prior consent if such system does not change polarization or result in an increase in radiated power by more than one dB in any direction, and notice of such installation is provided to the Commission on FCC Form 331 within ten (10) days of installation. When an applicant proposes to employ a directional antenna, or a licensee notifies the Commission pursuant to this paragraph of the installation of a sectorized antenna system, the applicant shall provide the Commission with information regarding the orientation of the directional antenna(s), expressed in

degree of azimuth, with respect to true north, and the make and model of such antenna(s).

* * * * *

20. In § 74.985, paragraphs (b) introductory text, (b)(5), (b)(7), (d), (e) introductory text, (e)(4)(viii) are revised, and paragraphs (b)(8), (e)(4)(ix) are added, to read as follows:

§ 74.985 Signal booster stations.

* * * * *

(b) A licensee or the capacity lessee of such ITFS station upon the written consent of the licensee, may secure a license for a high power signal booster station that has a maximum EIRP in excess of $-9 \text{ dBW} + 10 \log(X/6) \text{ dBW}$ where X is the channel width in MHz, if it complies with the out-of-band emission requirements of § 21.908. Any licensee of a high-power booster station that is a capacity lessee shall, upon termination or expiration of the capacity lease, automatically assign the booster station license to the licensee of the ITFS station by and upon written notice to the Commission signed by the lessee and such. If upon termination or expiration of the capacity lease the licensee no longer desires or needs the high-power booster station license, such a license must be returned to the Commission. Furthermore, such capacity lessee must reserve 20 hours per week per channel for ITFS use, or reserve for recapture by the ITFS licensee for its ITFS educational usage, subject to one year's advance, written notification by the ITFS licensee to its lessee and accounting for all recapture already exercised, with no economic or operational detriment to the licensee, for a lessor using analog transmissions. Alternatively, the capacity lessee must reserve a minimum of 5% of the capacity of its channels for instructional purposes only and provide at least 20 hours per licensed channel per week of ITFS educational usage for the lessor using digital transmissions. The applicant for a high-power station, or for modification thereto, shall file FCC Form 331 with the Commission Reference Room in Washington, DC, and certify on that form that the applicant has complied with the additional requirements of this paragraph (b), and that the interference data submitted under this paragraph is complete and accurate. Failure to certify compliance and to comply completely with the following requirements of this paragraph (b) shall result in dismissal of the application or revocation of the high-power ITFS signal booster station license, and may result in imposition of a monetary forfeiture. The applicant is

additionally required to submit (see § 21.902(m) for permissible format(s) and media) to the Commission's Reference Room the following information:

* * * * *

(5) In lieu of the requirements of § 74.903, a study which demonstrates that the proposed signal booster station will cause no harmful interference (as defined in § 74.903(a)(1) and (2)) to cochannel and adjacent channel, authorized or previously-proposed ITFS and MDS stations with protected service area center coordinates as specified in § 21.902(d) of this chapter, to any authorized or previously-proposed response station hubs, booster service areas, or I channel stations associated with such ITFS and MDS stations, or to any ITFS receive sites registered as of September 17, 1998, within 160.94 kilometers (100 miles) of the proposed booster station's transmitter site. Such study shall consider the undesired signal levels generated by the proposed signal booster station, the main station, all other licensed or previously-proposed associated booster stations, and all simultaneously operating cochannel response stations licensed to or applied for by the applicant. In the alternative, a statement from the affected MDS or ITFS licensee stating that it does not object to operation of the high-power ITFS signal booster station may be submitted; and

* * * * *

(7) A certification that copies of the materials set forth in paragraph (b) of this section have been served upon the licensee of each station (including each response station hub and booster station) required to be studied pursuant to paragraph (b)(5) of this section, and upon any affected holder of a BTA or PSA authorization pursuant to paragraph (b)(4) of this section.

(8) If the applicant is a capacity lessee, a certification that:

(i) The licensee has provided its written consent to permit the capacity lessee to apply for the booster station license; and

(ii) The applicant and the licensee have entered into a lease that is in effect at the time of such filing.

* * * * *

(d) Notwithstanding the provisions of § 74.912 and except as provided in § 74.911(e), any petition to deny an application for a high-power ITFS signal booster station license shall be filed no later than the sixtieth (60th) day after the date of public notice announcing the filing of such application or major amendment thereto. Except as provided in § 74.911(e), an application for a high-

power ITFS signal booster station license that meets the requirements of paragraph (b) of this section shall be granted on the sixty-first (61st) day after the Commission shall have given public notice of the acceptance for filing of it, or of a major amendment to it if such major amendment has been filed, unless prior to such date either a party in interest timely files a formal petition to deny or for other relief pursuant to § 74.912, or the Commission notifies the applicant that its application will not be granted. Where an application is granted pursuant to the provisions of this paragraph, the licensee shall maintain a copy of the application at the ITFS booster station until such time as the Commission issues a high-power ITFS signal booster station license.

(e) A licensee or the capacity lessee of such ITFS station upon the written consent of the licensee, shall be eligible to install and operate a low power signal booster station that has a maximum EIRP of $-9 \text{ dBW} + \log_{10}(X/6) \text{ dBW}$, where X is the channel width in MHz. A low-power ITFS signal booster station may operate only on one or more ITFS channels that are licensed to the licensee of the ITFS booster station, but may be operated by a third party with a fully-executed lease or consent agreement with the ITFS licensee. Any licensee of a low-power booster station that is a capacity lessee shall, upon termination or expiration of the capacity lease, automatically assign the booster station license to the licensee of the ITFS station by and upon written notice to the Commission signed by the lessee and such licensee. If upon termination or expiration of the capacity lease the licensee no longer desires or needs the low-power booster station license, such a license must be returned to the Commission. An ITFS licensee or capacity lessee thereof may install and commence operation of a low-power ITFS signal booster station for the purpose of retransmitting the signals of the ITFS station or for originating signals. Such installation and operation shall be subject to the condition that for sixty (60) days after installation and commencement of operation, no objection or petition to deny is filed by the licensee of a, or applicant for a previously-proposed, cochannel or adjacent channel ITFS or MDS station with a transmitter within 8.0 kilometers (5 miles) of the coordinates of the low-power ITFS signal booster station. An ITFS licensee or capacity lessee thereof seeking to install a low-power ITFS signal booster station under this rule must submit a FCC Form 331 to the Commission within 48 hours after

installation. In addition, the ITFS licensee, or capacity lessee must submit the following information (see § 21.902(m) for permissible format(s) and media) to the Commission's Reference Room:

(4) * * *

(viii) The applicant understands and agrees that in the event harmful interference is claimed by the filing of an objection or petition to deny, it must terminate operation within two (2) hours of notification by the Commission, and must not recommence operation until receipt of written authorization to do so by the Commission; and

(ix) If the applicant is a capacity lessee, a certification that:

(A) The licensee has provided its written consent to permit the capacity lessee to apply for the booster station license; and

(B) The applicant and the licensee have entered into a lease that is in effect at the time of such filing.

* * * * *

[FR Doc. 00-19034 Filed 7-28-00; 8:45 am]

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DEPARTMENT OF DEFENSE

48 CFR Parts 208, 212, 213, 214, 215, 232, and 252

[DFARS Case 98-D026]

Defense Federal Acquisition Regulation Supplement; Streamlined Payment Practices

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to require use of the Governmentwide commercial purchase card as the method of purchase and/or method of payment for purchases valued at or below the micro-purchase threshold, unless an exception is authorized. Use of the purchase card streamlines purchasing and payment procedures and, therefore, increases operational efficiency.

EFFECTIVE DATE: July 31, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Susan L. Schneider, Defense Acquisition Regulations Council, OUSD(AT&L)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0326; telefax (703) 602-0350. Please cite DFARS Case 98-D026.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends the DFARS to require use of the Governmentwide commercial purchase card as the method of purchase and/or method of payment for DoD purchases valued at or below the micro-purchase threshold of \$2,500, unless an exception is authorized. The rule implements a policy memorandum issued by the Principal Deputy Under Secretary of Defense (Acquisition and Technology) on October 2, 1998, Subject: Streamlined Payment Practices for Awards/Orders Valued at or below the Micro-Purchase Threshold; and a policy memorandum issued by the Under Secretary of Defense (Personnel and Readiness) on September 25, 1998, Subject: Use of Government-Wide Purchase Cards. The October 2, 1998, memorandum is available via the Internet at <http://www.acq.osd.mil/dp/micro2.pdf>. The September 25, 1998, memorandum is available via the Internet at <http://purchasecard.sarda.army.mil/deleon.htm>.

DoD published a proposed rule at 64 FR 38878 on July 20, 1999. Six sources submitted comments on the proposed rule. DoD considered all comments in the development of the final rule.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the Governmentwide commercial purchase card is similar in nature to commercial credit cards that are commonly used in the commercial marketplace.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the final rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 208, 212, 213, 214, 215, 232, and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR parts 208, 212, 213, 214, 215, 232, and 252 are amended as follows:

1. The authority citation for 48 CFR parts 208, 212, 213, 214, 215, 232, and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

2. Section 208.405-2 is amended by revising paragraph (4) to read as follows:

208.405-2 Order placement.

* * * * *

(4) If permitted under the schedule contract, use of the Governmentwide commercial purchase card—

(i) Is mandatory for placement of orders valued at or below the micro-purchase threshold; and

(ii) Is optional for placement of orders valued above the micro-purchase threshold.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

3. Section 212.301 is amended by adding paragraph (f)(vi) to read as follows:

212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

* * * * *

(f) * * *

(vi) Use the clause at 252.232-7009, Mandatory Payment by Governmentwide Commercial Purchase Card, as prescribed in 232.1110.

4. Section 212.303 is added to read as follows:

212.303 Contract format.

Structure awards valued above the micro-purchase threshold (*e.g.*, contract line items, delivery schedule, and invoice instructions) in a manner that will minimize the generation of invoices valued at or below the micro-purchase threshold.

PART 213—SIMPLIFIED ACQUISITION PROCEDURES

5. Section 213.101 is added to read as follows:

213.101 General.

Structure awards valued above the micro-purchase threshold (*e.g.*, contract line items, delivery schedule, and invoice instructions) in a manner that will minimize the generation of invoices valued at or below the micro-purchase threshold.

6. Subpart 213.2 is added to read as follows: