

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 87

[ET Docket No. 98-197, FCC 98-289]

Radionavigation Service at 31.8-32.3 GHz

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: By this action, we propose to amend the Commission's Rules in order to delete the unused non-Government radionavigation service allocation at 31.8-32.3 GHz and to also remove this frequency segment from the list of available frequencies set forth in the rules for the Aviation Services. The adoption of this proposal would protect the Federal Government's deep space operations in the 31.8-32.3 GHz band from uncoordinated commercial radionavigation usage that may otherwise occur in the future, while maintaining adequate spectrum for future non-Government radionavigation services in the adjacent 32.3-33.4 GHz band.

DATES: Comments are due December 30, 1998, reply comments are due January 14, 1999.

ADDRESSES: All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, SW, TW-A-325, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Tom Mooring, Office of Engineering and Technology, (202) 418-2450.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking*, ET Docket 98-197, FCC 98-289, adopted October 28, 1998, and released November 6, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY-C404), 445 Twelfth Street, SW, Washington, DC, and also may be purchased from the Commission's duplication contractor, International Transcription Service, (202) 857-3800, 1231 20th Street, NW, Washington, DC 20036.

Summary of the Notice of Proposed Rulemaking

1. National Telecommunications and Information Administration ("NTIA"), at the request of the National Aeronautics and Space Administration ("NASA"), asks that we delete the non-Government radionavigation service

from the 31.8-32.3 GHz band. NASA bases its request on the potential for interference to its deep space receive site at Goldstone, California, from uncoordinated commercial radionavigation usage of the 31.8-32.3 GHz band. In support of its request, NASA cites International Telecommunication Union Recommendation ITU-R SA.1061 as documenting that space research (deep space) sharing with airborne operations in the radionavigation service is not feasible. NASA explains that signals received on Earth from spacecraft in deep space are extremely weak, and thus are highly susceptible to interference of all kinds. Further, NASA stresses that airborne interference sources, if present, would easily overwhelm the desired but weak signals from space. In its normal deep space operations, to bolster signal reception, NASA points out that it has fitted its large earth station antennas with cryogenically-cooled preamplifiers and has employed specialized receivers. NASA states that it has sited the earth stations in such a way as to provide radio shielding from *terrestrial* radio sources sharing the same frequency band, which are potential interferers. But, NASA states, its earth stations cannot be shielded from *airborne* radio sources operating in the 31.8-32.3 GHz band, because the potential interfering signals may emanate from the same general direction as the desired deep space signals.

2. NASA indicates that currently, the only radionavigation operations in the 31.8-32.3 GHz band are from Federal Government (military) operations. The coordination of these military operations with NASA/Goldstone has been successful, NASA says, largely because they occur infrequently. By contrast, NASA does not believe that deep space operations can be coordinated successfully with private or commercial aircraft using terrain-following or landing-aid radars operating on an unrestricted basis within line-of-sight of the Deep Space Network site at Goldstone. To avoid causing interference, NASA states, such aircraft would have to choose between the impractical solutions of either avoiding the airspace in the Goldstone vicinity or turning off their transmitters in the 31.8-32.3 GHz band while within line-of-sight of Goldstone.

3. NASA brought this issue before NTIA's Interdepartment Radio Advisory Committee ("IRAC"). During these discussions, the Federal Aviation Administration indicated that there are no known plans for commercial aeronautical radionavigation operations

in the 31.8-32.3 GHz band. After considering several options, IRAC recommended to NTIA that the 31.8-32.3 GHz band be limited to Federal Government operations. NTIA endorsed this recommendation, concluding that future demand for commercial or private radionavigation services could be adequately accommodated in the 1.1 gigahertz of radionavigation spectrum that would remain at 32.3-33.4 GHz.

4. We propose to implement NTIA's proposal to delete the non-Government radionavigation service allocation at 31.8-32.3 GHz. We agree with NTIA that the 32.3-33.4 GHz band appears adequate to accommodate commercial and private radionavigation services that may develop in the future. By limiting future non-Government radionavigation services to the 32.3-33.4 GHz band, we believe that adequate spectrum would be preserved for these potential services and that NASA's deep space operations in the 31.8-32.3 GHz band would be adequately protected from those services. We further propose to remove the 31.8-32.3 GHz segment from the list of frequencies that are available for use by the aeronautical radionavigation service under § 87.173 of the rules for the Aviation Services and to add a rule part cross reference to part 87 in the Table of Frequency Allocations entry for the 32.3-33.4 GHz band in § 2.106. In addition, as suggested in NTIA's letter, we propose to parallel the international table by changing the space research service (deep space) (space-to-Earth) allocation from a footnote allocation to a table entry allocation and, as a consequence of that proposal, to modify the text of footnote US262 to remove unneeded information. We request comment on these proposals.

Initial Regulatory Flexibility Certification

5. The Regulatory Flexibility Act ("RFA")¹ requires that an initial regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business"

¹ The RFA, see 5 U.S.C. 601 *et. seq.*, has been amended by the Contract with American Advancement Act of 1996, Pub. L. 104-121, 110 Stat. 847 (1996) ("CWAAA"). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA").

has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) Independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA").

6. In this *Notice of Proposed Rule Making*, we propose to delete an unused non-Government allocation for the radionavigation service at 31.8–32.3 GHz in order to protect existing Government operations in this band from harmful interference. In addition, we tentatively conclude that the remaining portion of the existing non-Government radionavigation allocation at 32.3–33.4 GHz will provide sufficient spectrum for future non-Government radionavigation services, if and when such services develop. Accordingly, we hereby certify that the proposed deletion of the non-Government radionavigation allocation at 31.8–32.3 GHz will not have a significant economic impact on a substantial number of small entities. The Commission's Office of Public Affairs, Reference Operations Division, will send a copy of this *Notice of Proposed Rule Making*, including this certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Parts 2 and 87

Communications equipment, Radio.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–31689 Filed 11–27–98; 8:45 am]

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DEPARTMENT OF DEFENSE

48 CFR Part 231

[DFARS Case 98–D019]

Defense Federal Acquisition Regulation Supplement; Restructuring Savings Repricing Clause

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: The Director of Defense Procurement is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to specify that contracting officers should consider using a repricing clause in noncompetitive fixed-price contracts that are negotiated during the period

between the time a business combination is announced and the time the contractor's forward pricing rates are adjusted to reflect the impact of restructuring.

DATES: Comments on the proposed rule should be submitted in writing to the address specified below on or before January 29, 1999, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments on the proposed rule to: Defense Acquisition Regulations Council, Attn: Ms. Sandra G. Haberlin, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 602–0350. E-mail comments submitted over the Internet should be addressed to: dfars@acq.osd.mil. Please cite DFARS Case 98–D019 in all correspondence related to this issue. E-mail correspondence should cite DFARS Case 98–D019 in the subject line.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra G. Haberlin, (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

Since the late 1980's, defense contractors have been restructuring their business operations to increase efficiencies and become more competitive in the defense marketplace. Many of the restructuring activities result from business combinations (such as mergers or acquisitions), and often lead to reduced overall costs and future savings. However, a significant amount of time may lapse between the announcement of the merger or acquisition and the point at which the contractor reflects the restructuring savings in reduced overhead rates and contract prices. During this uncertain period, fixed-price contracts without a repricing or reopener clause are risky because, once awarded, they cannot be repriced. Projected restructuring savings are difficult to estimate and may be significant in amount.

This rule proposes to amend DFARS 231.205–70, External restructuring costs, to specify that contracting officers should consider including a downward-only repricing clause in noncompetitive fixed-price contracts that are negotiated during the period between the time a business combination is announced and the time the contractor's forward pricing rates are adjusted to reflect the impact of restructuring. The repricing clause should ensure that DoD receives its appropriate share of restructuring savings.

B. Regulatory Flexibility Act

The proposed rule is not expected to 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 most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive fixed-price basis, and do not require application of the cost principle contained in this rule. An initial regulatory flexibility analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subpart also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite 5 U.S.C. 601, *et seq.* (DFARS Case 98–D019), in correspondence.

C. Paperwork Reduction Act

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

List of subjects in 48 CFR Part 231

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR part 231 is proposed to be amended as follows:

1. The authority citation for 48 CFR part 231 continues to read as follows:

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

PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES

2. Section 231.205–70 is amended by adding paragraph (f) to read as follows:

231.205–70 External restructuring costs.

* * * * *

(f) *Contracting officer responsibilities.*

(1) The contracting officer, in consultation with the cognizant ACO, should consider including a repricing clause in noncompetitive fixed-price contracts that are negotiated during the period between—

(i) The time a business combination is announced; and

(ii) The time the contractor's forward pricing rates are adjusted to reflect the impact of restructuring.

(2) The repricing clause should provide for downward-only price adjustment to ensure that DoD receives its appropriate share of restructuring savings.