

PUBLIC SAFETY POOL FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations	Coordinator
* 156.240 *	* do *	* 43, 79 *	* PH *

* * * * *

7. Section 90.20(d) is amended by designating the second paragraph (77) as (78) and by adding paragraph (79) to read as follows:

(d) * * *

(79) This frequency will be secondary to marine port operations within 100 miles of Los Angeles (coordinates 34° 03' 15" north latitude and 118° 14' 28" west longitude).

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PR Docket No. 93-144, GN Docket No. 93-252, PP Docket No. 93-253; FCC 99-368]

Rules To Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: In this document, the Commission addresses petitions for reconsideration of the 800 MHz Specialized Mobile Radio (SMR) proceeding in which the Commission reconsidered the rules governing the upper 200 channels of the SMR.

DATES: Effective July 14, 2000.

FOR FURTHER INFORMATION CONTACT:

Alice Elder, Wireless Telecommunications Bureau, Industry Analysis Division (202) 418-0660.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Memorandum Opinion and Order on Reconsideration (*Second MO&O*) in PR Docket No. 93-144, adopted November 23, 1999 and released December 2, 1999. The complete text of this *Second MO&O* is available for inspection and copying during normal business hours in the Commission's Reference Center, room CY-A257, 445 12th Street SW, Washington, DC. This *Second MO&O* is also available through the Internet at

<http://www.fcc.gov/Bureaus/Wireless/Orders/1999/>. The complete text may be purchased from the Commission's duplicating contractor, International Transcription Service, Inc. (ITS, Inc.) at 1231 20th Street NW, Washington, DC 10036, (202) 857-3800.

1. Two petitions for reconsideration ("Petitions"), were filed with the Commission seeking reconsideration of the Amendment of Part 1 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, *Memorandum Opinion and Order on Reconsideration (First MO&O)*, 62 FR 41225 (July 31, 1997). In that document the Commission reconsidered the rules governing the upper 200 channels of the 800 MHz Specialized Mobile Radio (SMR). No pleadings were filed in response to these petitions.

2. First, petitioners request reconsideration of the Commission's decision to modify its competitive bidding rules to eliminate installment payments and adopt larger bidding credits for entities qualifying as small businesses for the auction of the upper 200 channels of the 800 MHz SMR service. Second, one petitioner claims that the Commission acted in violation of its rules regarding delegation of authority and the Administrative Procedure Act (APA), by delegating the authority to set the level of upfront payments to the Wireless Telecommunications Bureau ("Bureau"). Third, one petitioner requests review of the Commission's decisions to license the upper 200 channels of the 800 MHz SMR spectrum in contiguous blocks, eliminate the finder's preference program, and use competitive bidding to license the upper 200 channels in the 800 MHz spectrum band. Finally, one petitioner requests clarification of the Commission's decision to require incumbents seeking geographic licenses to show that their external site facilities are constructed and operational.

3. On reconsideration, the Commission affirms its decision to eliminate installment payments. At the outset, the Commission notes that Congress did not require the use of installment payments in all auctions,

but rather recognized them as one means of promoting the objectives of section 309(j)(3) of the Communications Act. However, Congress has not dictated that installment payments are the only tool in assisting small business. The Commission's experience with the installment payment program has led it to conclude that installment payments may not always serve the public interest. As noted in the First MO&O, the Commission has found that obligating licensees to pay for their licenses as a condition of receipt requires greater financial accountability from applicants. The Commission determined in its Amendment of Part 1 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, *Third Report and Order and Second Further Notice of Proposed Rule Making (Third R&O)*, 63 FR 2315 (January 15, 1998), that installment payments should not be used in the immediate future as a means of financing small business participation in our auction program. Moreover, in recent legislation, Congress dictated that certain future auctions effectively be conducted without installment payments. The Balanced Budget Act of 1997 requires the Commission to conduct the competitive bidding required by that act in a manner that ensures that the proceeds of such bidding are deposited in the U.S. Treasury by September 30, 2002. After careful consideration, the Commission concludes that it has met its statutory obligations without offering installment payment plans for 800 MHz SMR licensees. The Commission notes further that in place of installment payments, it established larger bidding credits for the 800 MHz SMR auction to provide for qualifying small businesses.

4. The Commission disagrees with petitioner's contentions that installment payments are necessary to ensure a meaningful opportunity for small businesses to participate in the 800 MHz SMR auction. The rules were changed more than ten weeks before the filing deadline, providing an adequate opportunity for the parties to alter their business plans, if necessary. The Commission also notes that the elimination of installment payments

and the timing of that auction did not prevent the participation of small businesses in the 800 MHz SMR auction, in which 52 of the 62 qualified bidders were eligible for small or very small business credits.

5. Second, the Commission rejects the claim that the Bureau's authority to set the level of upfront payments constitutes an illegal delegation of authority. Section 0.131 of the Commission's rules explicitly states that the Bureau has delegated authority to develop, recommend and administer policies, programs and rules concerning auctions of spectrum for wireless telecommunications. In the Amendment of Part 1 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, *Order and Memorandum Opinion & Order (Part 1 Order)*, 62 FR 13540 (March 21, 1997), rulemaking, the Commission clarified that pursuant to § 0.131 of its rules, the Chief of the Wireless Telecommunications Bureau has delegated authority to implement all of the Commission's rules pertaining to auctions procedures. This includes the authority to choose competitive bidding designs and methodologies; conduct auctions; administer application, payment, licenses grant and denial procedures; and determine upfront and down payment amounts as well as minimum opening bids. These actions do not fall under the prohibited activities set forth in § 0.331 of the Commission's rules, which include acting upon complaints, petitions, requests, applications for review and notices of proposed rulemaking. The Commission concludes that the Bureau's actions are valid, as they affect procedural rather than substantive issues, and are, therefore, in compliance with our rules. Furthermore, the Bureau's actions were in compliance with the APA. Pursuant to 5 U.S.C. 553(b), an agency may modify procedural rules without notice and comment. Because the rule modifications were procedural in nature and did not affect the substantive rights of interested parties, the Bureau's actions fall within that exception.

6. Third, the Commission dismisses as repetitions the request that it reconsider its decisions to allocate licenses in the upper 200 channels of the 800 MHz SMR spectrum in contiguous blocks, eliminate the finder's preference program, and use competitive bidding as the licensing mechanism for the upper 200 channels in the 800 MHz band. The Commission disagrees with petitioner's contention that these decisions were unsupported by

evidence and therefore, arbitrary and capricious. These conclusions were set forth first in the Amendment of Part 1 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, *First Report and Order, Eighth Report and Order and Second Further Notice of Proposed Rulemaking (First R&O)*, 61 FR 6212 (February 16, 1996), and reaffirmed in the *First MO&O*. In each case, the Commission set forth reasoned explanations for its decision. It is not in the public interest to revisit these issues.

7. Finally, the Commission finds it unnecessary to address the request for clarification of the Commission's decision to require incumbents seeking geographic licenses to show that their facilities are constructed and operational. In the *First R&O*, the Commission stated that such licensees are required to make a one-time filing of specific information for each of their external base station sites to assist the staff in updating the Commission database after the close of the auction for the upper 200 channels of the 800 MHz SMR spectrum. Under that decision, the Commission also requires evidence that such facilities are constructed and placed in operation and that, by operation of its rules, no other licensees would be able to use these channels within a geographic area.

8. It is ordered that the Petitions are denied.

List of Subjects in 47 CFR Part 90

Radio.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

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NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1804 and 1852

Security Requirements for Unclassified Information Technology Resources

AGENCY: National Aeronautics and Space Administration.

ACTION: Final Rule.

SUMMARY: This final rule amends the NASA FAR Supplement (NFS) to: include a requirement for contractors and subcontractors working with NASA unclassified Information Technology Systems to take certain Information Technology (IT) security related actions;

document those actions; and submit related reports to NASA.

EFFECTIVE DATE: July 14, 2000.

FOR FURTHER INFORMATION CONTRACT: Karl Beisel, NASA Headquarters (Code HC), Washington, DC, (202) 358-0416, email: Karl.Beisel@hq.nasa.gov.

SUPPLEMENTARY INFORMATION:

A. Background

A proposed rule was published in the **Federal Register** on January 5, 2000 (65 FR 429-431). Comments were received from two respondents, an industry association and the NASA Office of Inspector General (OIG). All comments were considered in the development of this final rule. This final rule includes changes for clarification of meaning, consistency of wording (and phrasing), and to eliminate informational redundancies within the clause as it references information in other related documents.

This final rule requires NASA contractors and subcontractors to comply with the security requirements outlined in NASA Policy Directive (NPD) 2810.1, Security of Information Technology, and NASA Procedures and Guidelines (NPG) 2810.1, Security of Information Technology, and additional safeguarding requirements delineated in the contract clause. Currently, NASA contractors have no definitive contractual requirement to follow NASA directed policy in safeguarding unclassified NASA data held via information technology (computer systems). This final rule establishes these requirements in a contract clause. These policies apply to all IT systems and networks under NASA's purview operated by or on behalf of the Federal Government, regardless of location.

B. Regulatory Flexibility Act

NASA 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.* The changes merely formalize standard procedures in using Government computer systems and databases. Small entities will not need to significantly revise internal procedures to satisfy the NFS changes.

C. Paperwork Reduction Act

An Office of Management and Budget (OMB) approval for data collection has been approved under OMB Control No. 2700-0098.