MOTOR CARRIER RADIO SERVICE FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations
* * * * *		
44.16	do	5, 23.
44.18	do	5, 23.
44.20	do	5, 20, 23.
* * * * *		
44.32	do	5, 23.
* * * * *		
44.36	do	5, 6, 23.
* * * * *		
44.40	do	5, 6, 23.
* * * * *		
44.46	do	1, 23.
44.48	do	1, 23.
* * * * *		

(c) * * *

(23) This frequency is also used on a secondary basis for cordless telephones under part 15 of this chapter.

* * * * *

[FR Doc. 95–11012 Filed 5–3–95; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 90

[PR Docket No. 89–553, GN Docket No. 93–252, PP Docket No. 93–253, FCC 95–159]

Service Rules for SMR Systems in the 900 MHz Frequency Band

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission adopted a *Second Report and Order,* implementing final service rules to complete the licensing of the 900 MHz Specialized Mobile Radio (SMR) service. This Order implements the Commission's decision in the *Third Report & Order* in GN Docket No. 93–252, (*CMRS Third Report & Order*), to license the 900 MHz band on a Major Trading Area (MTA) basis. The *Second Report and Order* also establishes technical and operational rules for the new MTA licensees, and defines the rights of SMR licensees already operating in the 900 MHz band. This Second Report and Order also addresses issues raised on reconsideration of the *CMRS Third Report & Order* pertaining specifically to the 900 MHz SMR service.

EFFECTIVE DATE: June 5, 1995.

FOR FURTHER INFORMATION CONTACT: Amy Zoslov, (202) 418–0620, Wireless Telecommunications Bureau.

SUPPLEMENTARY INFORMATION: This is a synopsis of the *Second Report and Order,* adopted April 14, 1995, released April 17, 1995. The complete text of this *Second Report and Order* is available for inspection and copying during normal business hours in the FCC Dockets Branch, Room 239, 1919 M Street NW., Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Service, at (202) 857–3800, 2100 M Street NW., Suite 140, Washington, D.C. 20037.

Synopsis of the Second Report and Order

Adopted: April 14, 1995
Released: April 17, 1995
Comment Date: May 24, 1995
Reply Comment Date: June 1, 1995

I. Background

1. When the Commission established the 900 MHz SMR service in 1986, it elected to use a two-phase licensing process. In Phase I, licenses were assigned in 46 ''Designated Filing Areas'' (DFAs) comprised of the top 50 markets. Phase II licensing, for facilities outside the DFAs, was frozen after 1986, when the Commission opened its filing window for the DFAs. In 1989, the Commission adopted a *Notice of Proposed Rule Making* in PR Docket 89–553, proposing to begin Phase II licensing of SMR facilities nationwide. In 1993, the Commission adopted a *First Report & Order & Further Notice of Proposed Rule Making* in PR Docket 89–553 (*Phase II First R&O & Further Notice*), 58 FR 12176 (March 3, 1993), modifying its Phase II proposal and seeking comment on whether to license the 900 MHz SMR band to a combination of nationwide, regional and local systems. Shortly thereafter, Congress amended the Communications Act to reclassify most SMR licensees as Commercial Mobile Radio Service (CMRS) providers and establish the authority to use competitive bidding to select from among mutually exclusive applicants for certain licensed services. The Commission deferred further consideration of Phase II and incorporated the 900 MHz SMR docket into its CMRS proceeding.

2. In the *CMRS Third Report & Order,* 59 FR 59,945 (Nov. 21, 1994), the Commission further revised its Phase II proposals and established the broad outlines for the completion of licensing in the 900 MHz SMR band. The Commission left the specific service rules for the Phase II *Order,* which the Commission adopted herein. This Order also considers petitions for reconsideration of the *CMRS Third Report & Order,* 59 FR 59,945 (Nov. 21, 1994) and *ex parte* presentations concerning, *inter alia,* secondary sites, loading requirements, treatment of incumbents *vis a vis* the MTA licensees, and coverage requirements. The Commission also affirms its rules governing channel blocks and MTA service areas; addresses coverage requirements for MTA licensees; provides incumbent licensees protection from interference by MTA licensees through geographic separation and short-spacing rules; provides for co-channel interference protection between adjacent MTA licensees, including signal level limitation, coordination of frequency usage, and emission mask rules; partially reconsiders its rules governing primary site protection; affirms its rules regarding loading requirements; provides channel block allocation for MTA licensees in Mexican and Canadian border areas; and modifies its rule regarding discontinuance of operation. Finally, the Commission applies the CMRS spectrum cap to 900 MHz SMR licensees, and establish rules grandfathering incumbent PMRS licensees and foreign-ownership of private land mobile providers.

II. Second Report and Order

A. Service Rules

3. *Service Areas.* In the *CMRS Third Report & Order,* 59 FR 59,945 (Nov. 21, 1994), the Commission found that MTAs are the preferable service area for future 900 MHz SMR licensing. The limited success of existing 900 MHz SMR systems confined to providing service in DFAs weighs against the use of more numerous Basic Trading Areas (BTAs) or similarly small service areas. The Commission also found that MTA licensing is more likely to create opportunities for both existing licensees and new entrants to meet customer demands for wide-area service, and unlike larger regional or nationwide service areas, will not unnecessarily restrict entry to a small number of licensees. *CMRS Third Report & Order,* 59 FR 59,945 (Nov. 21, 1994). For those reasons, the Commission affirms its initial decision to license 900 MHz SMR licenses on an MTA basis.

4. The Commission notes that Rand McNally & Company is the copyright owner of MTA listings, and an agreement in principal for a blanket copyright license has been reached between Rand McNally and the American Mobile Telecommunications Association. MTA licensees would

obtain a license to use Rand McNally's copyrighted material pursuant to this agreement upon payment to Rand McNally of $125.00 per each ten-channel block MTA license a grantee obtains. The agreement, along with the MTA listings and map, are available for public inspection at the Wireless Telecommunications Bureau's public reference room, Room 628, 1919 M Street NW., Washington, D.C. 20554. Copies also can be obtained by contacting Kim McLean, Marketing Coordinator, Rand McNally & Company, 8255 North Central Park, Skokie, IL 60076 (tel. (800) 333–0134) or AMTA, 1150 18th Street N.W., Suite 250 Washington, D.C. 20036 (tel. (202) 331–7773). Grantees are free to negotiate their own licensing arrangement with Rand McNally. Grantees may not, however, rely on grant of an MTA–based SMR license as a defense to any claim of copyright infringement brought by Rand McNally.

5. *Channel Blocks.* The 900 MHz SMR band is comprised of 20 blocks of 10 contiguous channels each, interleaved with channels assigned to other Part 90 services. The *CMRS Third Report & Order,* 59 FR 59,945 (Nov. 21, 1994), provides that each 10-channel block would be separately licensed and that applicants would be permitted to aggregate blocks. Eligibility for any channel block would not be restricted, and both incumbents and new entrants would be allowed to bid without restriction for one or more 900 MHz blocks. An MTA licensee will be authorized to construct stations anywhere in its MTA on unoccupied channels that are available for construction, and to expand or modify facilities throughout its MTA provided that the system remains in compliance with the Commission's technical and operational rules, protects incumbents, and the licensee notifies the Commission of such changes. *CMRS Third Report & Order,* 59 FR 59,945 (Nov. 21, 1994). These rules will afford 900 MHz SMR MTA licensees the same flexibility afforded cellular and PCS licensees.

6. *Coverage Requirements.* The *CMRS Third Report & Order,* 59 FR 59,945 (Nov. 21, 1994), provides MTA licensees five years to construct and operate their systems, but deferred adoption of interim requirements to this proceeding. In this *Second Report and Order,* the Commission will require that MTA licensees provide coverage to one-third of the population of their service area within three years of initial license grant and to two-thirds of the population of their service area within five years. Alternatively, at the five-year mark, MTA licensees may submit a showing to the Commission demonstrating that they are providing substantial service. In addition, licenses may resell party of their geographic area to help them fulfill coverage requirements. An MTA licensee must satisfy its coverage requirements regardless of the extent of the presence of incumbents within its MTA block, and failure to comply with these requirements will result in forfeiture of the entire MTA license. These standards are similar to those imposed on other wide-area CMRS licensees such as cellular and broadband PCS. The Commission states that these standards will allow for ubiquitous wide-area service to the public and protect incumbents, while deterring competitors from seeking MTA licenses for anticompetitive warehousing.

7. *Treatment of Incumbents.* In the *CMRS Third Report & Order,* 59 FR 59,945, (Nov. 21, 1994), the Commission determined that incumbent SMR systems in the 900 MHz MTA blocks are entitled to co-channel protection by MTA licensees, and that mandatory relocation of incumbents was not feasible in the 900 MHz band because no alternative 900 MHz SMR channels were available for relocation. The Commission instead stated that MTA licensees could negotiate mergers, buyouts, frequency swaps, or similar arrangements with incumbent systems on a voluntary basis. In furtherance of that policy, this *Second Report & Order* requires that MTA licensees afford protection to incumbent SMR systems pursuant to 47 C.F.R. § 90.621(b), by locating their stations at least 113 km (70 mi.) from the facilities of any incumbent, by complying with the co-channel separation standards set forth in our ''short-spacing'' rule, or by negotiating an even shorter distance with the incumbent licensee. *See* 47 C.F.R. § 90.621(b)(4). This will adequately protect incumbent operations without hampering the ability of MTA licensees to construct stations throughout their authorized service area.

8. While the *CMRS Third Report & Order,* 59 FR 59,945 (Nov. 21, 1994), provides full co-channel interference protection for existing facilities, incumbent systems may not expand beyond existing service areas unless they obtain the MTA license for the relevant channels; the Commission did not, however, specifically define an incumbent's ''existing service area.'' To provide incumbent licensees with additional flexibility, the Commission is defining an incumbent licensee's existing service area by its originally-licensed 40 dBu signal strength contour.

9. Thus, incumbent licensees may add new transmitters in their existing service area without prior notification to the Commission, so long as their original 40 dBu signal strength contour is not expanded. Incumbent licensees will be required to notify the Commission of any changes in technical parameters or additional stations constructed through a minor modification of their license, including agreements with an MTA licensee to expand beyond their signal strength contour. These minor modification applications, however, will not be subject to public notice and petition to deny requirements or mutually exclusive applications. These rules will allow incumbents to continue existing operations without harmful interference and give them flexibility to modify or augment their systems so long as they do not encroach on the MTA licensee's operations.

10. *Interference Between Adjacent MTA Licensees.* In the *CMRS Third Report & Order,* 59 FR 59,945 (Nov. 21, 1994), the Commission concluded that co-channel interference criteria for adjacent MTA licensees would be similar to those imposed on the cellular and PCS services in that they would only apply to transmitting locations near the boundaries of each licensee's MTA. Consistent with that objective, this *Second Report and Order* prohibits MTA licensees from exceeding a signal level of 40 dBuV/M at their service area boundaries, unless all affected parties agree to a higher level. Co-channel adjacent MTA licensees and other affected parties must coordinate frequency usage. To the extent that a single licensee obtains licenses for adjacent MTAs on the same channel block, it will not be required to coordinate its operations in this manner. This approach provides MTA licensees a signal strength level sufficient to operate their systems up to the borders of their MTA licenses while protecting adjacent operations.

11. *Secondary Sites.* In the *CMRS Third Report & Order,* 59 FR 59,945 (Nov. 21, 1994), the Commission determined that incumbent systems are entitled to full co-channel interference protection for existing facilities, but are not allowed to expand beyond existing service areas unless they obtain the MTA license for the relevant channels. Several incumbent 900 MHz licensees have been granted authorizations to construct facilities outside of their DFAs on a secondary (*i.e.,* unprotected) basis to link their facilities in different markets. As a practical matter, these

sites developed on an interference-free basis due to the freeze on primary licensing outside the DFAs. To prevent unnecessary disruption of existing operations, the Commission concluded that 900 MHz secondary sites licensed on or before August 9, 1994, would be afforded primary status, thus requiring new MTA licensees to afford them full co-channel interference protection.

12. On reconsideration, the Commission amends its rules to extend protected status to all secondary sites filed on or before August 9, 1994, even if they were not granted until after August 9. Granting primary site protection for these sites will promote uninterrupted service, and protect only a *de minimis* amount of new spectrum. Moreover, the Commission's delays in processing secondary site applications in the 900 MHz SMR service appear to have produced an inequitable result for applicants who otherwise would have been entitled to protection under the *CMRS Third Report & Order,* 59 FR 59,945 (Nov. 21, 1994). Therefore, this *Second Report and Order* provides that all MTA licensees provide complete co-channel protection to all sites for which applications were filed on or before August 9, 1994. Secondary sites based on applications filed after August 9, 1994, however, will not be afforded such protection.

13. *Loading Requirements.* In the *CMRS Third Report & Order,* 59 FR 59,945 (Nov. 21, 1994), the Commission determined that loading requirements, which were adopted in the SMR services to protect against spectrum warehousing, are not necessary for MTA-based licensing of 900 MHz SMR, provided that licensees are subject to strict construction and coverage requirements. However, the Commission retained the loading/automatic cancellation requirement for 900 MHz SMR incumbent licensees. *See* 47 C.F.R. § 90.631(i). Because the 900 MHz SMR market is less mature than the 800 MHz SMR market, and because incumbent licensees are not required to achieve significant coverage of their service areas, the Commission found that loading requirements continue to serve a public interest purpose in the former.

14. Based on the unique history and nature of the 900 MHz service as it has developed to date, the Commission affirms its decision in the *CMRS Third Report & Order* to retain loading requirements for incumbent 900 MHz SMR licensees. The 900 MHz service is not a mature service, both because it was licensed more recently than 800 MHz and because Phase I licensing has been confined to limited service areas. Based on these factors, the Commission has already granted special relief to 900 MHz licensees by providing them an additional two years to load their systems, on top of the five years originally granted. *Report & Order,* PR Docket No. 92–17, 57 FR 37731 (August 20, 1992). Having granted this relief, eliminating loading requirements for incumbent licensees who have failed to fully load their systems would not be in the public interest. Incumbents may overcome this obstacle by obtaining an MTA license, which exempts them from all previously applicable loading requirements. Moreover our policy of retaining loading requirements for incumbents will prevent the warehousing of spectrum, as once the Commission takes back channels from an incumbent who has not met loading requirements, the spectrum covered by the incumbent's authorization will automatically revert to the MTA licensee who has obtained the contingent rights to that spectrum. *See, e.g., Further Notice of Proposed Rule Making,* PR Docket No. 83–144, 59 FR 60111 (November 22, 1994).

15. *Emission Masks.* The Commission generally subjects mobile radio services to emission mask rules to restrict transmitter emissions on spectrum adjacent to the licensee's adjacent channel. In the *CMRS Third Report & Order,* 59 FR 59,945 (November 21, 1994), the Commission affirmed that the out-of-band emission rules should apply only where emissions have the potential to affect other licensees' operations. Consistent with the *CMRS Third Report & Order,* 59 FR 59,945 (Nov. 21, 1994), the Commission will only apply emission mask rules to ''outer'' MTA channels in each block (*i.e.,* channels on the outer edges of an MTA licensee's channel block that may present adjacent channel interference to other MTA licensees) and to ''interior'' MTA channels (*i.e.* channels inside of the MTA licensee's channel block assignment that are adjacent only to the licensee's channels and not to other licensees) where there are incumbent SMR licensees who will be affected by the MTA licensee's operations.

16. These channels alone have the potential to affect operations outside of the MTA licensee's authorized bandwidth, and that the emission mask established in this Order will adequately protect other MTA licensees. Specifically, for wide-area licensees in the 900 MHz SMR band on any frequency outside the MTA licensee's frequency block, the peak power of any emission shall be attenuated below the transmitter power (P) by at least 43 plus 10 $\log_{10}$(P) decibels or 80 decibels, whichever is the lesser attenuation. As an exception to this requirement, if a single entity aggregates adjacent channel blocks, it will not be required to mask its emissions at the band edge of each ten-channel block.

17. *Mexican/Canadian Border Areas.* In the *CMRS Third Report & Order,* 59 FR 59,945 (Nov. 21, 1994), the Commission noted that 900 MHz channel availability is limited in the Mexican and Canadian border areas and that limitations on ERP and antenna height have been placed on a number of the channels. *See* 47 C.F.R. §§ 90.619(b)(2), 90.619(d). Consequently, some channels may not be available to MTA licensees operating in border areas, and restrictions on ERP or antenna height will make them less attractive for MTA licensees. The creation of different channel allocations in border areas is administratively unworkable. Because applicants can assess the impact of border requirements in their valuation of these blocks for competitive bidding purposes, the Commission will use the same allocation of MTA channel blocks in border areas as in non-border areas. Therefore, use of channels in MTAs that encompass border areas will be subject to the relevant rules regarding international assignments and coordination of such channels.

18. *Discontinuance of Operation.* Section 90.631(f) of the Commission's rules, 47 CFR § 90.631(f), provides that SMR licenses cancel automatically if a licensee discontinues station operations for more than 60 consecutive days, unless the Commission authorizes additional time for station operations to remain discontinued. If additional time is not authorized, the license cancels automatically unless the station resumes operations within five days after the licensee receives the Commission's letter declining to authorize additional time. The Omnibus Budget Reconciliation Act of 1993, however, requires the Commission to modify its rules, to the extent ''necessary and practical,'' to ensure that substantially similar services are subject to ''comparable technical requirements.'' 47 U.S.C. § 332(d)(3). Because the Commission concluded in the *CMRS Third Report & Order,* 59 FR 59,945 (Nov. 21, 1994), that 900 MHz SMR services compete or have the potential to compete with existing wide-area CMRS service providers, the rules governing MTA licensees must be substantially similar to the rules governing cellular and PCS providers. Therefore, the Commission modifies Section 90.631(f) to include provisions comparable to those contained in

Section 22.317 for cellular operations. This will permit licensees to discontinue operations for 90 continuous days and removes any provisions for licensees to request an additional extension of this period.

B. Miscellaneous Matters

19. *Spectrum Cap and Attribution.* An entity may hold up to 45 MHz of spectrum in the three radio services (broadband PCS, cellular, and SMR) in any geographic area. *CMRS Third Report & Order,* 59 FR 59,945 (Nov. 21, 1994). The Commission will also apply a 20 percent cross-ownership attribution rule for purposes of the spectrum aggregation limit. For example, an entity with 20 percent or greater ownership of a 900 MHz SMR license who has 40 MHz of broadband PCS spectrum in a geographic market would reach the spectrum cap with 5 MHz of SMR spectrum in an MTA within that geographic market. Where cellular, broadband PCS and SMR licensees are held indirectly through intervening corporate entities, attribution will be determined through a multiplier. *Memorandum Opinion & Order,* GEN Docket No. 90–314, 60 FR 13915 (March 15, 1995). Finally, 900 MHz SMR channels count toward the 10 percent population overlap threshold adopted in the *CMRS Third Report & Order,* 59 FR 59,945 (Nov. 21, 1994). Thus, a 900 MHz SMR provider's spectrum counts toward the spectrum cap if the carrier is licensed to serve ten percent or more of the population of the MTA.

20. *Grandfathering—Regulatory Classification.* In the *CMRS Second Report & Order,* 59 FR 59,945 (Nov. 21, 1994), the Commission stated that SMR licensees are classified as CMRS if they offer interconnected service, and are otherwise classified as PMRS. All 900 MHz MTA licensees presumptively will be classified as CMRS providers. An MTA licensee, however, who was an incumbent in the 900 MHz service before August 10, 1993, is not subject to CMRS regulation until August 10, 1996. 47 U.S.C. § 332(c)(2)(B)).

21. *Foreign Ownership Waivers.* The Budget Act amendments to the Communications Act permit the Commission to waive the application of Section 310(b) to any foreign ownership that lawfully existed before May 24, 1993, of any provider of a private land mobile service that will be treated as a common carrier, as a result of the Budget Act amendments, on the condition that the extent of foreign ownership not increase above the pre-May 24, 1993, level, and that no subsequent transfer of ownership is made to anyone in violation of Section 310(b). 47 U.S.C. § 332(b)(6). The Commission's decision to treat incumbent licensees as new applicants raise the question as to whether a waiver filed by an incumbent licensee will cover the MTA license, in the event that the incumbent wins the MTA license. The Commission will grandfather any timely filed waiver petitions with respect to the MTA license. Although the MTA license is considered a ''new'' license, the provider's existing facilities will be entirely subsumed in the new license. Thus, the Commission believes it is unnecessary to require an additional filing by an incumbent who wins the MTA license.

III. Procedural Matters

22. *Final Regulatory Flexibility Analysis.* Pursuant to the Regulatory Flexibility Act of 1980, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rule Making in GN Docket No. 93–252. Written comments on the IRFA were requested. The Commission's final analysis is as follows:

A. *Need for and purpose of the action.* This rulemaking proceeding was initiated to implement Sections 332 and 3(n), respectively, of the Communications Act, as amended. The rules adopted herein will carry out Congress's intent to establish a consistent regulatory framework for all commercial mobile radio service (CMRS).

B. *Issues raised in response to the IRFA.* No comments were submitted in response to the IRFA in GN Docket No. 93–252.

C. *Significant alternatives considered and rejected.* All significant alternatives have been addressed in the *Second Report & Order,* and the *CMRS Third Report & Order,* 59 FR 59,945 (Nov. 21, 1994).

23. *Ordering Clauses.* Accordingly, IT IS ORDERED, That the petitions for reconsideration ARE GRANTED to the extent described above and DENIED in all other respects.

24. It is further ordered that Part 90 of the Commission's rules, 47 C.F.R. Part 90, IS AMENDED, as indicated below. It is ordered that the rule changes herein will become effective 30 days after publication in the **Federal Register**.

List of Subjects in 47 CFR Part 90

Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Amendatory Text

Part 90 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for Part 90 is revised to read as follows:

Authority: 47 U.S.C. 154, 303, 309 and 332.

2. Section 90.7 is amended by adding the definition for ''MTA license'' following the definition for ''Mobile station'' to read as follows:

§ 90.7 Definitions.

* * * * *

MTA-based license or MTA license. A license authorizing the right to use a specified block of SMR spectrum within one of the 51 Major Trading Areas (''MTAs''), as embodied in Rand McNally's Trading Area System MTA Diskette and geographically represented in the map contained in Rand McNally's Commercial Atlas & Marketing Guide (the ''MTA Map.'') The MTA Listings, the MTA Map and the Rand McNally/AMTA license agreement are available for public inspection at the Wireless Telecommunications Bureau's public reference room, Room 628, 1919 M Street NW., Washington, DC 20554.

* * * * *

3. Section 90.617 is amended by revising paragraph (d) introductory text, to read as follows:

§ 90.617 Frequencies in the 809.750–824/854.750–869 MHz, and 896–901/935–940 MHz bands available for trunked or conventional system use in non-border areas.

* * * * *

(d) The channels listed in Tables 4A and 4B are available only to eligibles in the SMR category, which consists of Specialized Mobile Radio (SMR) stations and eligible end users. The frequencies listed in Table 4B are available to SMR eligibles desiring to be authorized on MTA service areas in accordance with Section 90.661. SMR licensees licensed on the channels listed in Table 4B on or before August 9, 1994 may continue to utilize these frequencies within their existing service areas, as provided in Section 90.661. This paragraph deals with the assignment of frequencies only in areas farther than 110 km (68.4 miles) from the U.S./Mexico border and farther than 140 km (87 miles) from the U.S./Canada border. See § 90.619 for the assignment

of SMR frequencies in these border areas. For stations located within 113 km (70 miles) of Chicago, channels 401–600 will be assigned in groups as outlined in Table 4C.

* * * * *

4. Section 90.631 is amended by revising paragraphs (f) and (i) to read as follows:

§ 90.631 Trunked systems loading, construction and authorization requirements.

* * * * *

(f) If a station is not placed in permanent operation, in accordance with the technical parameters of the station authorization, within one year, except as provided in § 90.629, its license cancels automatically and must be returned to the Commission. For purposes of this section, a base station is not considered to be placed in operation unless at least two associated mobile stations, or one control station and one mobile station, are also placed in operation. An SMR licensee with facilities that have discontinued operations for 90 continuous days is presumed to have permanently discontinued operations, unless the licensee notifies the FCC otherwise prior to the end of the 90 day period and provides a date on which operation will resume, which date must not be in excess of 30 additional days.

* * * * *

(i) For SMRS category trunked systems licensed in the 896–901/935–940 MHz band (other than MTA-licensed systems), if at the end of the initial five-year license term the licensee of such a trunked system has not satisfied the loading requirements of paragraph (b) of this section, the licensee requesting renewal of its license will be granted a renewal for only a two-year period. Regardless of the date of grant of the two-year renewal, the licensee will be required to comply fully with the minimum requirements set forth in paragraph (b) of this section at the end of the two-year renewal term. As an exception to this requirement, if the licensee obtains the MTA license covering its assigned spectrum in accordance with Sections 90.661 through 90.671, these loading requirements will no longer be applicable and the coverage requirements of Section 90.665 will govern.

5. Subpart S is amended by adding a new heading following § 90.659 to read as follows:

Policies Governing the Licensing and Use of MTA-Based SMR Systems in the 896–901/935–940 MHZ Band

6. A new § 90.661 is added to Subpart S to read as follows:

§ 90.661 MTA-based SMR service areas.

MTA licenses for SMR spectrum blocks in the 896–901/935–940 MHz band listed in Table 4B of Section 90.617(d) are available in 51 Major Trading Areas (MTAs) as defined in Section 90.7. Within these MTAs, licenses will be authorized in ten channel blocks as specified in Table 4B of Section 90.617(d) through the competitive bidding procedures described in Subpart U of this Part.

7. A new § 90.663 is added to Subpart S to read as follows:

§ 90.663 MTA-based SMR system operations.

(a) MTA-based licensees authorized in the 896–901/935–940 MHz band pursuant to Section 90.661 may construct and operate base stations using any frequency identified in their spectrum block anywhere within their authorized MTA, provided that:

(1) The MTA licensee affords protection, in accordance with Section 90.621(b), to all sites for which applications were filed on or prior to August 9, 1994.

(2) The MTA licensee complies with any rules and international agreements that restrict use of frequencies identified in their spectrum block, including the provisions of Section 90.619 relating to U.S./Canadian and U.S./Mexican border areas.

(3) The MTA licensee limits its field strength at any location on the border of the MTA service area in accordance with Section 90.671 and masks its emissions in accordance with Section 90.669.

(b) In the event that the authorization for a previously authorized co-channel station within the MTA licensee's authorized spectrum block is terminated or revoked, the MTA licensee's co-channel obligations to such station will cease upon deletion of the facility from the Commission's licensing record. The MTA licensee then will be able to construct and operate base stations using such frequency.

8. A new § 90.665 is added to Subpart S to read as follows:

§ 90.665 Authorization, construction and implementation of MTA licenses.

(a) MTA licenses in the 896–901/935–940 MHz band will be issued for a term not to exceed ten years.

(b) MTA licensees in the 896–901/935–940 MHz band will be permitted five years to construct their stations. This five-year period will commence with the issuance of the MTA-wide authorization and will apply to all of the licensee's stations within the MTA spectrum block, including any stations that may have been subject to an earlier construction deadline arising from a pre-existing authorization.

(c) MTA licensees in the 896–901/935–940 MHz band must, within three years, construct and place into operation a sufficient number of base stations to provide coverage to at least one-third of the population of the MTA. Further, each MTA licensee must provide coverage to at least two-thirds of the population of the MTA within five years or, alternatively, submit a showing to the Commission demonstrating that they are providing substantial service.

(d) MTA licensees who fail to meet the coverage requirements imposed at either the third or fifth years of their construction period, or to make a convincing showing of substantial service, will forfeit their entire MTA license.

9. A new § 90.667 is added to Subpart S to read as follows:

§ 90.667 Grandfathering provisions for incumbent licensees.

(a) These provisions apply to all 900 MHz SMR licensees who obtained licenses or filed applications on or before August 9, 1994 (''incumbent licensees''). An incumbent licensee's service area shall be defined by its originally-licensed 40 dBu signal strength contour. Incumbent licensees are permitted to add new transmit sites in this existing service area without prior notification to the Commission so long as their original 40 dBu signal strength contour is not expanded. Incumbents will be required to notify the Commission of any changes in technical parameters or additional stations constructed with a minor modification application. These minor modification applications will not be subject to public notice and petition to deny requirements or mutually exclusive applications.

(b) Applications in the 900 MHz SMR service for secondary sites filed after August 9, 1994 shall be authorized on a secondary, non-interference basis to MTA licensee operations. No secondary sites shall be granted on this basis in an MTA once the MTA licensee has been selected.

10. A new § 90.669 is added to Subpart S to read as follows:

§ 90.669 Emission limits.

(a) On any frequency in an MTA licensee's spectrum block that is adjacent to a non-MTA frequency, the power of any emission shall be attenuated below the transmitter power (P) by at least 43 plus 10 $\log_{10}$(P) decibels or 80 decibels, whichever is the lesser attenuation.

Note: The measurements of emission power can be expressed in peak or average values, provided they are expressed in the same parameters as the transmitter power.

(b) When an emission outside of the authorized bandwidth causes harmful interference, the Commission may, at its discretion, require greater attenuation than specified in this section.

11. A new § 90.671 is added to Subpart S to read as follows:

§ 90.671 Field strength limits.

The predicted or measured field strength at any location on the border of the MTA service area for MTA licensees shall not exceed 40 dBuV/m unless all bordering MTA licensees agree to a higher field strength. MTA licensees are also required to coordinate their frequency usage with so-channel adjacent MTA licensees and all other affected parties. To the extent that a single entity obtains licenses for adjacent MTAs on the same channel block, it will not be required to coordinate its operations in this manner. In the event that this standard conflicts with the MTA licensee's obligation to provide co-channel protection to incumbent licensees under Section 90.621(b), the requirements of Section 90.621(b) shall prevail.

[FR Doc. 95–11009 Filed 5–2–95; 12:52 pm]

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DEPARTMENT OF DEFENSE

Defense Logistics Agency

48 CFR Part 5452

DLA Acquisition Regulation; Fuel Allocation Procedures

AGENCY: Defense Logistics Agency, DoD.

ACTION: Final rule.

SUMMARY: The Defense Logistics Agency establishes a new 48 CFR Chapter 54 to contain Defense Logistics Agency acquisition regulations. New part 5452 is added to supplement Federal Acquisition Regulation 49.504(a)(1) and its requirement to use FAR Default clause 52.249–8. The Defense Fuel Supply Center (DFSC) proposed three nonstandard clauses for bulk, bunkers, into-plane, and posts, camps, and stations petroleum solicitations and contracts concerning fuel allocation procedures. The three clauses have been incorporated into one clause for use by DFSC. This allocation clause permits DFSC contractors to supply less than the full amount of fuel contracted by the government, without being terminated for default, during periods of exceptional fuel shortages, provided that the shortage is beyond the control and without the fault or negligence of the contractor.

EFFECTIVE DATE: May 4, 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Melody Reardon, (703) 274–6431.

SUPPLEMENTARY INFORMATION:

A. Background

On April 28, 1994, DFSC published a proposed rule in the **Federal Register** to incorporate three nonstandard clauses into the DLAR. Public comments were requested, received, addressed, and resolved by DFSC. As a result, the three nonstandard clauses were consolidated into one clause by DFSC, to be used in domestic and overseas petroleum solicitations and contracts. DFSC has historically utilized deviations to FAR termination for default clauses in order to provide for contingencies in the case of fuel allocations by contractors. These deviations have been approved on an annual basis since 1974. DFSC incorporates the nonstandard fuel allocation clause in DLAR in order to eliminate the need for annual review and approval. The clause is necessary to protect potential contractors from default proceedings and ensure the continuance of a competitive procurement environment for government petroleum requirements. Allocation of fuel to customers on a pro rata basis during periods of extreme shortage is a standard practice in the petroleum industry.

B. Regulatory Flexibility Act

The final clause is not expected to have 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.* since the previous clauses have been utilized for many years by Defense Fuel Supply Center as deviations to FAR. An initial regulatory flexibility analysis has, therefore, not been performed.

C. Paperwork Reduction Act

The final rule does not impose any reporting or record keeping requirements which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 5452

Government procurement.

Accordingly, 48 CFR Chapter 54 is added to read:

CHAPTER 54—DEFENSE LOGISTICS AGENCY, DEPARTMENT OF DEFENSE

PART 5452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 5452.2—Texts of Provisions and Clauses

5452.249 Allocation

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, 48 CFR part 1, subpart 1.3 and 48 CFR part 201, subpart 201.3

5452.249 Allocation

The Defense Fuel Supply Center is authorized to use the following clause in domestic and overseas petroleum solicitations/contracts, including those for Canal Zone and Puerto Rico, when a fixed-price contract is contemplated and the contract amount is expected to exceed the small purchase limitation.

Allocation (DFSC 1995) (Deviation) (9F01)

(a) Reduced Supplies.

If, for any cause beyond the control and without the fault or negligence of the Contractor, the total supply of crude oil and/or refined petroleum product is reduced below the level that would have otherwise been available to the Contractor, the Contractor allocates to its regular customers its remaining available supplies of crude oil or product, then the Contractor may also allocate to the U.S. Government supplies to be delivered under this contract, provided—

(1) Prompt notice of and evidence substantiating the necessity to allocate and describing the allocation rate for all the Contractor's customers are submitted to the Contracting Officer;

(2) Allocation among the Contractor's regular customers is made on a fair and reasonable basis (except where allocation on a different basis is required by a governmental authority, agency or instrumentality); and

(3) Reduction of the quantity of product due the Government under this contract shall not exceed the pro rata amount by which the Contractor reduces delivery to its other contractual customers.

(b) Additional Supplies.

If, after the event causing the shortage of crude oil and/or refined petroleum product as described in (a) above, additional supply becomes available to the Contractor, the Contracting Officer may choose any one of the following three possible courses of action:

(1) Accept an updated pro rata reduction as outlined in (a);

(2) Determine that continuance of the contract with the quantities as originally stated in the Schedule is in the best interests of the Government; or

(3) Terminate the contract as permitted in (d) below.