

enactment of the 1996 Act. But as HSN and ValueVision state, "the Act's specific instruction that fees were to be assessed only on 'ancillary and supplementary' digital services was arrived at in the context of the Commission's contemporaneous consideration of [its then pending DTV rulemaking proceeding], in which the Commission repeatedly and consistently made clear that 'ancillary and supplementary' services are separate and distinct from existing, traditional over-the-air broadcast services." We believe Congress drew the same distinction in enacting Section 336, excluding free, over-the-air broadcast video programming service from fees. Traditional home shopping, infomercials, and direct marketing services have long been a free, over-the-air broadcast service, or, in § 73.624(c)'s rubric, a "video broadcast signal provided at no direct charge to viewers." It follows that in enacting Section 336 Congress did not intend to include these existing services within the phrase "ancillary or supplementary services" and subject them to fees.

23. Further evidence of this can be found in Section 336(b)(3), which states, among other things, that "no ancillary or supplementary service shall have any rights to carriage under section 614 or 615," *i.e.*, the statutory "must carry" rights broadcast television stations have to be carried on cable systems in their local area. 47 U.S.C. 336(b)(3). If a free, over-the-air home shopping broadcast service is considered an "ancillary or supplementary service," stations carrying such programming would be rendered ineligible for must carry rights under Section 336(b)(3). We do not think Congress could have intended such a result given that, in Section 4(g) of the Cable Television Consumer Protection and Competition Act of 1992 (the "1992 Cable Act"), it directed the FCC to determine whether home shopping stations served the public interest and were entitled to must carry rights. It would make little sense for Congress to charge us with this duty, and then four years later preclude home shopping stations from must carry rights under Section 336(b)(3) without a mention, either in the 1996 Act or its legislative history, of Section 4(g) of the 1992 Cable Act. A basic principle of statutory construction is to seek to construe statutory provisions so that they are consistent with each other. We think the most reasonable way to square Section 336 and Section 4(g) of the 1992 Cable Act is not to treat traditional home shopping, infomercials, and direct

marketing services as ancillary or supplementary services.

24. We do not agree with UCC, *et al.*'s suggestion that our decision not to apply fees to home shopping, infomercials and direct marketing services means any service provided without charge to the viewer is exempt from fees regardless of whether a third party compensates a broadcaster for carriage. Nor do we agree with UCC, *et al.*'s argument that our decision effectively nullifies Section 336(e)(1)(B), which requires us to impose fees on ancillary or supplementary services "for which the licensee directly or indirectly receives compensation from a third party in return for transmitting material furnished by such third party (other than commercial advertisements used to support broadcasting for which a subscription fee is not required)." Our decision today does not exempt, for example, payments made to a DTV licensee by a stock broker to transmit stock quote data to the broker's clients even though the clients pay no direct fee for this service. This clearly would be an "ancillary or supplementary service" that is feeable under Section 336(e)(1)(B).

25. But where, as here, the service is a video broadcast signal provided at no direct charge to viewers, it is not feeable, even though the broadcaster may be receiving compensation from a third party to carry the service. As HSN and ValueVision point out, to hold otherwise would mean that "all the affiliates of the ABC, CBS and NBC broadcast television networks arguably would be subject to fees for their free, over-the-air broadcast services because they receive compensation from their networks for airing network programming." These are video broadcast signals provided to viewers at no direct charge, and therefore are not ancillary or supplementary services and are not subject to fees. We consequently deny UCC, *et al.*'s Petition.

26. We make one final note. Our decision in the *R&O*, like our decision today, applies only to traditional home shopping, infomercials, direct marketing and similar services with no interactive or "clickable" elements and which can entail viewers purchasing products by calling a telephone number identified during the broadcast. We recognize that it may be possible in the future for these purchases to be made via an interactive system provided by the licensee on its DTV bitstream. For example, a DTV viewer may be able to purchase a product shown on a home shopping program by clicking a special icon displayed on the screen and transmitting a purchase order via the

licensee's DTV bitstream. In reply comments submitted in the initial round of comments of this proceeding, ValueVision and HSN stated that such an interactive purchase order system was being explored and argued that revenues generated from this sort of system should be exempt from fees. Because such services are only at a nascent stage and the particular circumstances are unclear at this point, we decline to decide whether they would constitute an ancillary or supplementary service subject to a fee under Section 336(e)(1)(B).

V. Administrative Matters

27. The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995 and found to impose no new or modified reporting and record-keeping requirements or burdens on the public. In addition, the Final Regulatory Flexibility Act Analysis set forth in the *R&O* in this proceeding remains unchanged.

28. Accordingly, pursuant to the authority granted by 47 U.S.C. 4(i), 303, 336(e), and 47 CFR 1.429, the Petition for Reconsideration filed jointly by the National Association of Broadcasters and the Association for Maximum Service Television, and the Petition for Reconsideration filed jointly by the Office of Communication Inc. of the United Church of Christ, the Benton Foundation, the Center for Media Education, the Civil Rights Forum and Media Access Project, are both hereby *denied*.

1. This proceeding is terminated.

List of Subjects in 47 CFR Part 97

Television, television broadcasting.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00-3068 Filed 2-9-00; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 97

[WT Docket No. 98-143, RM-9148, RM-9150, RM-9196; FCC 99-412]

Amateur Service Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document revises the Amateur Radio Service rules to simplify the Amateur Radio Service operator license structure; streamlines the

number of examination elements; and reduces the emphasis on telegraphy that underlies the current license structure to the greatest extent possible, consistent with the international radio regulations. This action will allow current Amateur Radio Service licensees to contribute more to the advancement of the radio art; reduce the administrative costs that the Commission incurs in regulating this service and streamline our licensing processes; eliminate unnecessary requirements that may discourage or limit individuals from becoming trained operators, technicians, and electronic experts; and promote efficient use of spectrum allocated to the Amateur Radio Service.

DATES: Effective April 15, 2000.

FOR FURTHER INFORMATION CONTACT: William T. Cross, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, (202) 418-0680, TTY (202) 418-7233.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, WT Docket No. 98-143, FCC 99-412, adopted December 22, 1999, and released December 30, 1999. The complete text of this *Report and Order* is available for inspection and copying during normal business hours in the FCC's Reference Information Center, 445 12th Street SW, Room CY-A257, Washington, DC. The complete text of this *Report and Order* may also be obtained from the Commission's copy contractor, International Transcription Services, Inc., 1231 20th St., NW, Washington, DC 20036, telephone (202) 857-3800. Alternative formats (computer diskette, large print, audio cassette, and Braille) are available to persons with disabilities by contacting Martha Contee at (202) 418-0620 (voice) or (202) 418-2555 (TTY), or at mcontee@fcc.gov. The complete (but unofficial) text is also available on the Commission's Internet site at >http://www.fcc.gov/Bureaus/Wireless/Orders/1999< under the file name "fcc99412.txt" in ASCII text and "fcc99412.wp" in WordPerfect format.

Summary of Report and Order

1. In the *Notice of Proposed Rule Making (Notice)* (63 FR 49059, September 14, 1998) in WT Docket No. 98-143, the Commission initiated the instant proceeding to examine the Amateur Radio Service rules in an effort to streamline its licensing processes and eliminate unnecessary and duplicative rules.

2. By this action, the Commission simplifies the Amateur Radio Service operator license structure; streamlines

the number of examination elements; and reduces the emphasis on telegraphy that underlies the current license structure to the greatest extent possible, consistent with the international Radio Regulations. Specifically, the Commission amends the rules to reduce the number of operator license classes from six to three, reduce the number of telegraphy examination elements from three to one, reduce the number of written examination elements from five to three, authorize Advanced Class amateur radio operators to prepare and administer examinations for the General Class amateur radio operator license, and eliminate Radio Amateur Civil Emergency Service (RACES) station licenses.

3. The Regulatory Flexibility Act (RFA) requires that an agency prepare a regulatory flexibility analysis 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." 5 U.S.C. 605(b). In the *Notice*, the Commission certified that the proposed rule amendments, if promulgated, would not have a significant economic impact on a substantial number of small business entities, as defined in Section 601(3) of the RFA because the rule amendments do not apply to small business entities. Rather, the rules apply to individuals who are interested in radio technique solely with a personal aim and without pecuniary interest. No comments were received concerning this certification. The Commission now affirms this certification with respect to the rules adopted in this *Report and Order*. Accordingly, the Commission certifies, pursuant to Section 605(b) of the RFA, that the rules adopted herein will not have a significant economic impact on a substantial number of small entities, as defined in the RFA.

List of Subjects in 47 CFR Part 97

Amateur radio, Examinations, Radio, Volunteer examiners.

Federal Communications Commission.

Magalie Roman Salas,
Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 97 as follows:

PART 97—AMATEUR RADIO SERVICE

1. The authority citation for part 97 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or

apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-155, 301-609, unless otherwise noted.

2. Section 97.9 is amended by revising paragraph (b) to read as follows:

§ 97.9 Operator license.

(a) * * *

(b) The person named in an operator license grant of Novice, Technician, Technician Plus, General or Advanced Class, who has properly submitted to the administering VEs a FCC Form 605 document requesting examination for an operator license grant of a higher class, and who holds a CSCE indicating that the person has completed the necessary examinations within the previous 365 days, is authorized to exercise the rights and privileges of the higher operator class until final disposition of the application or until 365 days following the passing of the examination, whichever comes first.

3. Section 97.13 is amended by revising paragraphs (b) and (c)(2) to read as follows:

§ 97.13 Restrictions on station location.

* * * * *

(b) A station within 1600 m (1 mile) of an FCC monitoring facility must protect that facility from harmful interference. Failure to do so could result in imposition of operating restrictions upon the amateur station by a District Director pursuant to § 97.121 of this part. Geographical coordinates of the facilities that require protection are listed in § 0.121(c) of this chapter.

(c) * * *

(2) If the routine environmental evaluation indicates that the RF electromagnetic fields could exceed the limits contained in § 1.1310 of this chapter in accessible areas, the licensee must take action to prevent human exposure to such RF electromagnetic fields. Further information on evaluating compliance with these limits can be found in the FCC's OET Bulletin Number 65, "Evaluating Compliance with FCC Guidelines for Human Exposure to Radiofrequency Electromagnetic Fields."

4. Section 97.17 is amended by revising paragraph (a) to read as follows:

§ 97.17 Application for new license grant.

(a) Any qualified person is eligible to apply for a new operator/primary station, club station or military recreation station license grant. No new license grant will be issued for a Novice, Technician Plus, or Advanced Class operator/primary station or a RACES station.

* * * * *

5. Section 97.21 is amended by revising paragraph (a)(3) introductory text and (a)(3)(iii) to read as follows:

§ 97.21 Application for a modified or renewed license.

(a) * * *

(3) May apply to the FCC for renewal of the license grant for another term in accordance with § 1.913 of this chapter. Application for renewal of a Technician Plus Class operator/primary station license will be processed as an application for renewal of a Technician Class operator/primary station license.

(iii) For a club station or military recreation station license grant showing

a call sign obtained through the sequential call sign system, and for a club or military recreation station license grant showing a call sign obtained through the vanity call sign system but whose grantee does not want to have the vanity call sign reassigned to the station, the application must be presented in document form to a Club Station Call Sign Administrator who must submit the information thereon to the FCC in an electronic batch file. The Club Station Call Sign Administrator must retain the collected information for at least 15 months and make it available to the FCC upon request. RACES station license grants will not be renewed.

6. Section 97.301 is amended by removing paragraph (f) and revising paragraph (e) to read as follows. The frequency tables in 97.301 (a), (b), (c), and (d) remain unchanged.

§ 97.301 Authorized frequency bands.

* * * * *

(e) For a station having a control operator who has been granted an operator license of Novice Class or Technician Class and who has received credit for proficiency in telegraphy in accordance with the international requirements.

Wavelength band	ITU region 1	ITU region 2	ITU region 3	Sharing requirements (see § 97.303 paragraph)
<i>HF</i>	<i>MHz</i>	<i>MHz</i>	<i>MHz</i>	
80 m	3.675–3.725	3.675–3.725	3.675–3.725	(a)
40 m	7.050–7.075	7.10–7.15	7.050–7.075	(a)
15 m	21.10–21.20	21.10–21.20	21.10–21.20	
10 m	28.10–28.50	28.10–28.50	28.10–28.50	
<i>VHF</i>	<i>MHz</i>	<i>MHz</i>	<i>MHz</i>	
1.25 m	222–225	(a)
<i>UHF</i>	<i>MHz</i>	<i>MHz</i>	<i>MHz</i>	
23 cm	1270–1295	1270–1295	1270–1295	(h)(i)

7. Section 97.307 is amended by revising paragraph (f) (10) to read as follows:

§ 97.307 Emission standards.

* * * * *

(f) * * *

(10) A station having a control operator holding a Novice Class operator license or a Technician Class operator license and who has received credit for proficiency in telegraphy in accordance with the international requirements may only transmit a CW emission using the international Morse code or phone emissions J3E and R3E.

8. Section 97.313 is amended by revising paragraphs (c)(2) and (f) to read as follows:

§ 97.313 Transmitter power standards.

* * * * *

(c) * * *

(2) The 28.1–28.5 MHz segment when the control operator is a Novice Class operator or a Technician Class operator who has received credit for proficiency in telegraphy in accordance with the international requirements; or

(f) No station may transmit with a transmitter power exceeding 50 W PEP on the UHF 70 cm band from an area specified in footnote US7 to § 2.106 of

Part 2, unless expressly authorized by the FCC after mutual agreement, on a case-by-case basis, between the District Director of the applicable field facility and the military area frequency coordinator at the applicable military base. An Earth station or telecommand station, however, may transmit on the 435–438 MHz segment with a maximum of 611 W effective radiated power (1 kW equivalent isotropically radiated power) without the authorization otherwise required. The transmitting antenna elevation angle between the lower half-power (–3 dB relative to the peak or antenna bore sight) point and the horizon must always be greater than 10°.

9. Section 97.407 is amended by revising paragraph (b) introductory text to read as follows:

§ 97.407 Radio Amateur Civil Emergency Service (RACES).

* * * * *

(b) The frequency bands and segments and emissions authorized to the control operator are available to stations transmitting communications in RACES on a shared basis with the amateur service. In the event of an emergency which necessitates the invoking of the President's War Emergency Powers

under the provisions of Section 706 of the Communications Act of 1934, as amended, 47 U.S.C. 606, RACES stations and amateur stations participating in RACES may only transmit on the following frequency segments:

* * * * *

10. Section 97.501 is revised to read as follows:

§ 97.501 Qualifying for an amateur operator license.

Each applicant must pass an examination for a new amateur operator license grant and for each change in operator class. Each applicant for the class of operator license grant specified below must pass, or otherwise receive examination credit for, the following examination elements:

- (a) Amateur Extra Class operator: Elements 1, 2, 3, and 4;
- (b) General Class operator: Elements 1, 2, and 3;
- (c) Technician Class operator: Element 2.

11. Section 97.503 is amended by removing paragraph (c) and revising paragraphs (a) and (b) to read as follows:

§ 97.503 Element standards.

(a) A telegraphy examination must be sufficient to prove that the examinee has the ability to send correctly by hand and

to receive correctly by ear texts in the international Morse code at not less than the prescribed speed, using all the letters of the alphabet, numerals 0–9, period, comma, question mark, slant mark, and prosigns AR, BT, and SK. Element 1: 5 words per minute

(b) A written examination must be such as to prove that the examinee possesses the operational and technical qualifications required to perform properly the duties of an amateur service licensee. Each written examination must be comprised of a question set as follows:

(1) Element 2: 35 questions concerning the privileges of a Technician Class operator license. The minimum passing score is 26 questions answered correctly.

(2) Element 3: 35 questions concerning the privileges of a General Class operator license. The minimum passing score is 26 questions answered correctly.

(3) Element 4: 50 questions concerning the privileges of an Amateur Extra Class operator license. The minimum passing score is 37 questions answered correctly.

12. Section 97.505 is amended by revising paragraph (a) to read as follows:

§ 97.505 Element credit.

(a) The administering VEs must give credit as specified below to an examinee holding any of the following license grants or license documents:

(1) An unexpired (or expired but within the grace period for renewal) FCC-granted Advanced Class operator license grant: Elements 1, 2, and 3.

(2) An unexpired (or expired but within the grace period for renewal) FCC-granted General Class operator license grant: Elements 1, 2, and 3.

(3) An unexpired (or expired but within the grace period for renewal) FCC-granted Technician Plus Class operator (including a Technician Class operator license granted before February 14, 1991) license grant: Elements 1 and 2.

(4) An unexpired (or expired but within the grace period for renewal) FCC-granted Technician Class operator license grant: Element 2.

(5) An expired or unexpired FCC-granted Novice Class operator license grant: Element 1.

(6) A CSCE: Each element the CSCE indicates the examinee passed within the previous 365 days.

(7) An unexpired (or expired less than 5 years) FCC-issued commercial radiotelegraph operator license or permit: Element 1.

(8) An expired FCC-issued Technician Class operator license document granted before March 21, 1987: Element 3.

(9) An expired or unexpired FCC-issued Technician Class operator license document granted before February 14, 1991: Element 1.

* * * * *

13. Section 97.507 is amended by revising paragraph (a) to read as follows:

§ 97.507 Preparing an examination.

(a) Each telegraphy message and each written question set administered to an examinee must be prepared by a VE holding an Amateur Extra Class operator license. A telegraphy message or written question set may also be prepared for the following elements by a VE holding an operator license of the class indicated:

(1) Element 3: Advanced Class operator.

(2) Elements 1 and 2: Advanced, General, or Technician (including Technician Plus) Class operators.

* * * * *

14. Section 97.509 amended by revising paragraphs (a) and (b)(3) to read as follows:

§ 97.509 Administering VE requirements.

(a) Each examination for an amateur operator license must be administered by a team of at least 3 VEs at an examination session coordinated by a VEC. Before the session, the administering VEs or the VE session manager must ensure that a public announcement is made giving the location and time of the session. The number of examinees at the session may be limited.

(b) * * *

(3) Be a person who holds an amateur operator license of the class specified below:

(i) Amateur Extra, Advanced or General Class in order to administer a Technician Class operator license examination;

(ii) Amateur Extra or Advanced Class in order to administer a General Class operator license examination;

(iii) Amateur Extra Class in order to administer an Amateur Extra Class operator license examination.

* * * * *

[FR Doc. 00-2983 Filed 2-9-00; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF DEFENSE

48 CFR Parts 201 and 225

[DFARS Case 99-D027]

Defense Federal Acquisition Regulation Supplement; Delegation of Class Deviation Authority

AGENCY: Department of Defense (DOD).

ACTION: Final rule.

SUMMARY: The Acting Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to authorize the senior procurement executives for the Army, Navy, and Air Force, and the Directors of the Defense Commissary Agency and the Defense Logistics Agency, to approve certain class deviations from the Federal Acquisition Regulation (FAR) and the DFARS.

EFFECTIVE DATE: February 10, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Kathleen Fenk, Defense Acquisition Regulations Council, PDUSD(AT&L)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0296; telefax (703) 602-0350. Please cite DFARS Case 99-D027.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends DFARS Parts 201 and 225 to authorize the senior procurement executives for the Army, Navy, and Air Force, and the Directors of the Defense Commissary Agency and the Defense Logistics Agency, to approve certain class deviations from the FAR and the DFARS. The rule also contains amendments to reflect the title change of the "Under Secretary of Defense for Acquisition and Technology" to the "Under Secretary of Defense for Acquisition, Technology, and Logistics."

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

B. Regulatory Flexibility Act

This final rule does not constitute a significant revision within the meaning of FAR 1.501 and Public Law 98-577 and publication for public comment is not required. However, DoD will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comment should cite DFARS Case 99-D027.