

operations of the hospital), medical staff, and administrative officials are responsible and accountable for ensuring the following:

(1) That an ongoing program for quality improvement and patient safety, including the reduction of medical errors, is defined, implemented, and maintained.

(2) That the hospital-wide quality assessment and performance improvement efforts address priorities for improved quality of care and patient safety; and that all improvement actions are evaluated.

(3) That clear expectations for safety are established.

(4) That adequate resources are allocated for measuring, assessing, improving, and sustaining the hospital's performance and reducing risk to patients.

(5) That the determination of the number of distinct improvement projects is conducted annually.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; Program No. 93778, Medical Assistance)

Dated: March 28, 2002.

**Thomas A. Scully,**

*Administrator, Centers for Medicare & Medicaid Services.*

Dated: September 23, 2002.

**Tommy G. Thompson,**

*Secretary.*

[FR Doc. 03–1293 Filed 1–23–03; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 2, 21 and 101

[ET Docket No. 00–258; FCC 02–304]

#### Advanced Wireless Services

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document allocates spectrum for advanced services in the 1710–1755 MHz, 2110–2150-MHz, and 2150–2155 MHz bands. The goal of this document is to promote the provision of advanced wireless services to the public, which supports the Commission's obligations under section 706 of the 1996 Telecommunication Act.

**DATES:** Effective February 24, 2003.

**FOR FURTHER INFORMATION CONTACT:** Jamison Prime, Office of Engineering and Technology, (202) 418–7474.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Second*

*Report and Order*, ET Docket No. 00–258, FCC 02–304, adopted November 7, 2002, and released November 15, 2002. The full text of this document is available for inspection and copying during regular business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room, CY–B402, Washington, DC 20554. The full text may also be downloaded at: <http://www.fcc.gov>. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365.

#### Summary of the Second Report and Order

1. This *Second Report and Order* allocated 90 MHz of spectrum in the 1710–1755 MHz and 2110–2155 MHz bands that can be used for Advanced Wireless Service (AWS). This spectrum comes from bands that the Commission previously identified as candidate bands for the provision of AWS, and includes spectrum used by Federal government entities that is slated for transfer to non-Federal government use, spectrum currently used by fixed microwave services and designated for emerging technologies, and spectrum currently used by the Multipoint Distribution Service (MDS).

#### Spectrum for AWS

2. 1710–1755 MHz—The 1710–1755 MHz band was initially identified in 1995 for transfer from Federal government use to mixed Federal government/non-Federal government use. At that time, National Telecommunications Information Administration (NTIA) determined that this band could be made available to non-Federal government users in 2004. NTIA also identified certain incumbent Federal government facilities that may continue to operate in the band and must be protected from interference. In its *2002 Viability Assessment*, NTIA outlined additional steps for reaccommodating existing Federal government users in the band segment, including some that have a right to remain in the band indefinitely. The NTIA plan offered a mechanism that could largely clear the band of Federal government users no later than December 31, 2008.

3. Commenters note that the 1710–1755 MHz band enjoys many characteristics that make it suitable for AWS. They note it is already being used in many countries for 2G-style wireless

services so it is likely to promote global spectrum harmonization in the long term, which in turn will foster roaming, and economies of scale that can translate into lower development costs and manufacturing efficiencies. They further state that this band can also help ensure that United States residents enjoy the same level of advanced services as in other countries. The parties observe that the 1710–1755 MHz band is slated to be made available for non-Federal Government commercial use, and that the *2002 Viability Assessment* offers a plan that can make the band even more useful for AWS. Catholic Television Network also states that the band “offers better propagation characteristics,” than other bands under consideration. We also note that the band size—45 megahertz would provide flexibility to accommodate a variety of channelization plans.

4. We find that it serves the public interest to allocate the 1710–1755 MHz band segment for mobile and fixed services on a co-primary basis contingent on its becoming available for non-Federal government mixed use January 1, 2004. In addition, we are removing the fixed and mobile allocations from the Federal government Table in the 1710–1755 MHz band, except as specified in the new United States footnote US378, which codifies Federal government residual rights. We also retain and modify footnote US311 in the Table of Frequency Allocations. This footnote identifies certain pre-existing radio astronomy activities that exist between 1718.8 MHz and 1722.2 MHz at observatories set forth in Appendix F of the *Notice of Proposed Rule Making* (NPRM) 66 FR 7438, January 23, 2001. Because radio astronomy facilities in this band operate on an unprotected basis, we conclude that it is not necessary to add rules setting forth coordination procedures and exclusion zones, as the National Academies of Science (NAS) suggests. The footnote, modified to update the list of radio astronomy facilities, will serve to apprise parties of these operations.

5. 2110–2150/2150–2155 MHz—Currently, the 2110–2150 band is used in the United States primarily for non-Federal Government fixed and mobile services licensed under the Fixed Microwave Service in part 101 of the rules, the Public Mobile Services under part 22 of the rules, and the Domestic Public Fixed Radio Services under part 21 of the rules. Federal government use of this band is generally on a secondary basis and is limited to space research earth stations for earth-to-space transmissions in the 2110–2120 MHz portion of the band. The Commission

originally identified this band for new advanced fixed and mobile services in the 1992 *Emerging Technologies* proceeding and adopted rules and procedures to permit new licensees to relocate existing fixed service microwave licensees from this spectrum band.

6. The 2110–2150 MHz band is already allocated to the fixed and mobile services on a primary basis, and thus it is not necessary that we reallocate this spectrum in order to make it available for AWS use. Instead we re-designate the band for new uses consistent with the general outline of our *Emerging Technologies* proceeding. We also note that the Balanced Budget Act of 1997 (BBA–97) identifies the 2110–2150 MHz band for advanced wireless use and specifies that the band must be assigned under the competitive bidding procedures.

7. In addition, we note that the National Aeronautical and Space Administration (NASA) operates on a primary basis a station in the 2110–2120 MHz band at Goldstone, California as part of the Space Research service. This station, which is authorized via United States footnote US252, is used by NASA's Deep Space Network (DSN) for uplink transmissions to interplanetary spacecraft. In the *NPRM*, we proposed not to relocate this facility. Moreover, the DSN earth station transmits with a nominal EIRP of 105.5 dBW. In the *NPRM*, we noted that during command link operations it is likely that mobile receivers on the 2110–2120 MHz segment (and possibly in adjacent bands above 2120 MHz) will not be able to operate within the areas surrounding Goldstone.

8. We examined the interference characteristics of the Goldstone DSN facility and based on its typical operation pattern, which is intermittent, the amount of its signal that would be blocked by terrain in many directions, and the low population density in the areas near Goldstone, we conclude that a significant amount of interference should not occur to AWS. Therefore, we will not formally restrict use of the 2110–2120 MHz band in the vicinity of Goldstone. However, we anticipate that this band will be unusable for advanced services at certain times in the immediate vicinity of Goldstone, and expect that potential licensees will take this fact into account and will develop their business and service plans accordingly. We believe that such an approach is practical, given the comments of the AWS proponents that discussed Goldstone interference, and we will work cooperatively with JPL and other interested parties to insure

that our approach does in fact achieve its goals.

9. The 2150–2160 MHz band is allocated internationally to the fixed and mobile services on a primary basis and is regulated under part 21 of our rules as part of MDS. This band is generally operated as two channels—Channel 1 (2150–2156 MHz) and Channel 2A (2156–2160 MHz). In addition, licensees may use channel 2 (2156–2162 MHz) on a limited basis in 50 cities. MDS may also use spectrum in the 2500–2690 MHz band.

10. The Commission concludes that the record supports reallocation of 5 megahertz of spectrum at 2150–2155 MHz to add a mobile allocation to support the provision of AWS. Because this spectrum is contiguous to the 2110–2150 MHz band, this reallocation will allow efficiencies in deploying new AWS. For example, there will be only one point where AWS and MDS bands are adjacent and interference issues will need to be addressed. We note that the 2150–2155 MHz band is part of the “worldwide” IMT–2000 base station transmit band that extends from 2110 MHz to 2170 MHz. Thus our action here more closely aligns U.S. spectrum with allocations in the rest of the world and could lead to lower equipment costs and promote global roaming. Furthermore, this action will provide two contiguous 45 megahertz blocks of paired spectrum (*i.e.*, 1710–1755 MHz paired with 2110–2155 MHz), and provide more options for assigning large spectrum blocks suitable for AWS use.

11. The Commission recognizes that our decision here to reallocate the 2150–2155 MHz band from MDS to AWS use requires that we address certain issues regarding MDS operations. In particular, we will have to consider relocation spectrum and propose relocation procedures for MDS, keeping in mind the need to avoid disruption to existing customers. Because we do not anticipate licensing the band for new services until after we adopt service rules, and because the companion Federal government transfer spectrum in the 1710–1755 MHz band will not be available until 2004, there is sufficient time for us to identify in a separate proceeding to be initiated in the near future any necessary relocation spectrum for MDS licensees and to craft appropriate relocation procedures. In addressing relocation, however, we recognize the importance of avoiding unnecessary delay so as to minimize uncertainty to existing licensees.

12. We now turn to the relocation procedures for incumbent fixed microwave service licensees that currently operate in the 2110–2150 MHz

band. Because this band was identified and reallocated for new uses in the *Emerging Technologies* proceeding, a mechanism already exists to clear these incumbent licensees. In the *NPRM*, we noted that fixed microwave service incumbents holding primary status (*see Second Report and Order, footnote 149*), in the 2110–2150 MHz band are entitled to compensation for relocation of facilities under these policies. *See Emerging Technologies Third Report and Order and Memorandum Opinion and Order*, 8 FCC Rcd 6589 (1993) 58 FR 46547, September 2, 1993. New licensees may relocate incumbent licensees' systems at their option. In general, a new licensee will relocate an incumbent system if it determines that the incumbent system will cause interference to the new licensee's system. The main elements of the relocation process include a set negotiation period or periods, usually triggered at the request of the new licensee; a requirement that the parties negotiate in good faith during the mandatory negotiation period; and the right of the incumbent to be relocated to comparable facilities at the expense of the new licensee. The relocation compensation includes all engineering, equipment, site, and FCC fees. The new licensee must complete all activities necessary for implementing the replacement facilities, and must test the new facilities to ensure comparability with the existing facilities. *See generally* 47 CFR 101.69 through 101.99. We further noted that certain fixed microwave incumbents in the 2110–2150 MHz band segment consist of links that are paired with frequencies in the 2165–2200 MHz band, which was previously reallocated to support MSS. Moreover, some microwave licensees at 2110–2115 MHz have paired links in the 2160–2165 MHz band.

13. In the *NPRM*, we noted that it would be possible for both relocation procedures to apply to the same new entrant in the 2110–2150 MHz band—the modified MSS relocation procedure for a link paired between the 2110–2150 MHz and 2165–2200 MHz bands and the *Emerging Technologies* procedure for all other relocations (including the relocation of a link paired between the 2110–2150 MHz and 2160–2165 MHz bands). We thus proposed to use the modified procedure for the relocation of any incumbent user in order to provide a single relocation process for this band. For microwave links paired in the 2110–2150 and 2160–2165 MHz bands, a new licensee would be required to relocate both paths (if such a relocation had not yet been done), but would retain a right

to seek reimbursement of 50 percent of its relocation costs from the licensee that ultimately uses frequencies in the second path. All new licensees, regardless of whether they relocate paired or unpaired microwave incumbents, would be subject to the modified relocation rules (such as the shortened mandatory negotiation period).

14. We conclude that the modified relocation procedures, as proposed, represent the best course. A unified approach to our rules and procedures serves the public interest, and can promote the rapid development of AWS, which many commenters support. Moreover, if the demand for the advanced services is as robust as commenters claim, incumbent licensees should find new licensees particularly eager to reach relocation agreements so as not to be competitively disadvantaged by a delay in their service deployment. Finally, we note that under our basic relocation principles, incumbents retain a right to comparable facilities. We stress that we are not altering this process, nor an incumbent's right to seek relief if it believes the relocation process has not been conducted in good faith. We observe, however, that we may need to modify the reimbursement provisions if MDS is reassigned to the 2155–2165 MHz band because Fixed Service microwave operations in the 2160–2165 MHz band would have to be relocated. Under the current rules, for example, MDS would have to reimburse a new AWS entrant who is trying to clear paired microwave links at 2110–2115 and 2160–2165 MHz.

#### Other Bands

15. 1755–1850 MHz. In the *NPRM*, we identified the 1755–1850 MHz band for consideration for the provision of AWS. The 1755–1770 MHz band segment was considered as part of the initial NTIA studies, and was again evaluated in the *2002 Viability Assessment*. In this most recent review, NTIA concluded that the 1755–1850 MHz band is not viable for use by AWS due to the extensive and critical Federal Government operations in the band, including DOD mobile systems operating in the 1755–1850 MHz range that “have recently been elevated in importance due [to] the war on terrorism, homeland defense, and possible requirements for ballistic missile defense.” Moreover, NTIA was unable to identify alternative spectrum bands that could readily accommodate many of these systems, including air combat training systems, the Land Warrior systems, and DOD satellite telemetry, tracking and command

facilities that operate in the 1761–1842 MHz band segment and which cannot be easily re-tuned. The 1770–1850 MHz band segment was previously rejected by NTIA as incompatible for shared use and was not included in the most recent band evaluation process. Throughout the evaluation process, Federal Government users have consistently expressed skepticism that any portion of the 1755–1850 MHz band segment can be made available for advanced commercial wireless systems, either through relocation of Federal users or by shared use. Moreover, NTIA anticipates that the process that will allow it to relocate Federal users from the 1710–1755 MHz band segment will result in system relocations to spectrum above 1755 MHz, as well as a generally more intensive use of the 1770–1850 MHz band segment for existing, relocated, and new systems. We note that some commenters identify benefits from the use of this band for AWS, including regional harmonization and the possibility that allocation of the 1755–1850 MHz band (in conjunction with the 1710–1755 MHz band) would serve as a catalyst for making these frequencies as globally accepted as the core bands identified in IMT–2000.

16. Given the statements by NTIA regarding the intense use of this band by military users and other Federal Government agencies that provide critical safety-of-life operations, and the concern expressed by many commenters about clearing existing government users, we conclude that this band is too encumbered to be used for the provision of AWS. We note that while some comments suggest that we explore a combination of sharing and migration for incumbent users, NTIA and other commenters do not believe that co-channel sharing is possible. We acknowledge the *2002 Viability Assessment's* conclusion that “[a] leap forward in technology may permit extensive sharing in all bands below 3 GHz in the future,” but that until such developments occur, it appears that use of the 1755–1770 MHz band for advanced wireless applications is not technically viable. Accordingly, we conclude that the 1755–1850 MHz band is not suitable for the provision of AWS at this time.

17. Currently Allocated Spectrum. In the *NPRM*, we noted that currently allocated spectrum may also be suitable for the provision of AWS. This spectrum includes television bands that were reallocated to commercial fixed, mobile, and broadcast services and are in the process of being vacated as part of the transition to digital television. We note that the disposition of these bands has

taken place in separate proceedings. The record in the instant proceeding contains nothing that would cause us to revisit these decisions, nor to reassess our general conclusion that the reallocated television bands will be available for new uses, including AWS. However, we reach an opposite conclusion with respect to the 2390–2400 MHz band. The record reflects little support for AWS use of this band, which is designated for UPCS and Amateur Service use, and the *2002 Viability Assessment* identified this spectrum as suitable replacement spectrum for some Government systems currently operating in the 1710–1755 MHz band. Therefore, we will not further examine the possible use of the 2390–2400 MHz band for the provision of AWS.

18. The 90 megahertz of spectrum that has been allocated will promote the robust deployment of AWS, and we will continue to strive to make allocation decisions that can lead to the widespread deployment of innovative new services. Moreover, technological developments may foster further efficiencies in the deployment of AWS. These technologies include software defined radio (SDR) and adaptive antenna technology (increasing directionality) or new modulation or coding techniques (more information in the same spectrum) that may allow for greater spectral efficiency than that which is typically associated with current wireless systems. Finally, we stress that this action is part of a continuing effort to identify and evaluate both the current and future spectrum needs for AWS. The further decisions that we make in this continuing proceeding may well result in the allocation of additional spectrum for commercial use, including the provision of AWS.

#### Final Regulatory Flexibility Analysis

19. As required by the Regulatory Flexibility Act (RFA)<sup>1</sup> an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rulemaking and Order (NPRM)*,<sup>2</sup> as well as the *Memorandum Opinion and Order and Further Notice of Proposed Rule Making (Further NPRM)*, 66 FR 47591, September 13,

<sup>1</sup> See 5 U.S.C. 603. The RFA (codified at 5 U.S.C. 601–612) has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, title II, 110 Stat. 857 (1996).

<sup>2</sup> Amendment of part 2 of the Commission's rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems, ET Docket No. 00–258, *Notice of Proposed Rulemaking and Order*, 16 FCC Rcd 596 (2001).

2001.<sup>3</sup> The Commission sought written public comments on the proposals in the *NPRM* and *Further NPRM*, including comment on each IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.<sup>4</sup>

*Need for, and Objectives of, the Second Report and Order*

20. The goal of the *Second Report and Order* (Second R&O) is to promote the provision of advanced wireless services (AWS) to the public, which in turn supports our obligations under section 706 of the 1996 Telecommunication Act<sup>5</sup> and, more generally, serves the public interest by promoting rapid and efficient radio communication facilities.

21. The *Second R&O* discusses the need for spectrum allocations of sufficient size and with particular characteristics so as to allow for the provision of AWS, and evaluates spectrum that could be allocated to support these services. Specifically, the *Second R&O* allocates spectrum that is suitable for advanced services in the 1710–1755 MHz, 2110–2150 MHz, and 2150–2155 MHz bands.

**Summary of Significant Issues Raised by Public Comments in Response to the IRFA**

22. There were no comments filed that specifically addressed the rules and policies proposed in the IRFA.

*Description and Estimate of the Number of Small Entities to Which the Rules Will Apply*

23. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the rules adopted herein.<sup>6</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>7</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>8</sup> A

<sup>3</sup> Amendment of part 2 of the Commission’s rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems, ET Docket No. 00–258, ET Docket No. 95–18, and IB Docket No. 99–81, *Memorandum Opinion and Order and Further Notice of Proposed Rule Making*, 16 FCC Rcd 16043 (2001) 66 FR 47591, September 13, 2001.

<sup>4</sup> See 5 U.S.C. 604.

<sup>5</sup> Section 706 of the Communications Act of 1934, as amended, codified at 47 U.S.C. 157.

<sup>6</sup> 5 U.S.C. 604(a)(3).

<sup>7</sup> 5 U.S.C. 601(6).

<sup>8</sup> 5 U.S.C. 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business

“small business concern” is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).<sup>9</sup>

24. A small organization is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”<sup>10</sup> Nationwide, as of 1992, there were approximately 275,801 small organizations.<sup>11</sup> “Small governmental jurisdiction” generally means “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.”<sup>12</sup> As of 1992, there were approximately 85,006 governmental entities in the United States.<sup>13</sup> This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96%, have populations of fewer than 50,000.<sup>14</sup> The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (96%) are small entities.

25. *Fixed Microwave Services.* Microwave services include common carrier,<sup>15</sup> private-operational fixed,<sup>16</sup> and broadcast auxiliary radio services.<sup>17</sup> At present, there are approximately

applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the *Federal Register*.”

<sup>9</sup> 15 U.S.C. 632.

<sup>10</sup> 5 U.S.C. 601(4).

<sup>11</sup> Department of Commerce, U.S. Bureau of the Census, 1992 Economic Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

<sup>12</sup> 5 U.S.C. 601(5).

<sup>13</sup> U.S. Dept. of Commerce, Bureau of the Census, “1992 Census of Governments.”

<sup>14</sup> *Id.*

<sup>15</sup> 47 CFR 101 *et seq.* (formerly, part 21 of the Commission’s rules).

<sup>16</sup> Persons eligible under parts 80 and 90 of the Commission’s rules can use Private Operational-Fixed Microwave services. See 47 CFR parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee’s commercial, industrial, or safety operations.

<sup>17</sup> Auxiliary Microwave Service is governed by part 74 of title 47 of the Commission’s rules. See 47 CFR part 74 *et seq.* Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of this FRFA, we will use the SBA’s definition applicable to wireless and other telecommunications companies—*i.e.*, an entity with no more than 1,500 persons.<sup>18</sup> According to Census Bureau data for 1997, there were 977 firms in this category, total, that operated for the entire year.<sup>19</sup> Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more.<sup>20</sup> Thus, under this size standard, the great majority of firms can be considered small.

26. We note that the number of firms does not necessarily track the number of licensees. We estimate that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition. Of these licenses, approximately 8,210 are issued for frequencies in the *Emerging Technologies* bands affected by this proceeding. In addition, these bands contain approximately 70 licenses in the paging and radiotelephone service and the general aviation and air-ground radio telephone services. Thus, assuming that these entities also qualify as small businesses, as many as 8,280 small business licensees could be affected by the rules we adopt. We note that these entities have been subject to relocation under rules originally adopted ten years ago in the Commission’s *Emerging Technologies* proceeding. The *Second Report and Order* anticipates that these general relocation rules will continue to apply to FS microwave licensees and does not modify the class of licensees that are subject to these relocation provisions.

27. *Multipoint Distribution Service (MDS).* This service has historically provided primarily point-to-multipoint, one-way video services to subscribers, and Local Multipoint Distribution Service (LMDS).<sup>21</sup> The Commission

<sup>18</sup> 13 CFR 121.201, NAICS code 517212 (formerly 513322).

<sup>19</sup> U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, “Employment Size of Firms Subject to Federal Income Tax: 1997,” Table 5, NAICS code 517212 (issued Oct. 2000).

<sup>20</sup> *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is “Firms with 1,000 employees or more.”

<sup>21</sup> For purposes of this item, MDS includes single channel Multipoint Distribution Service (MDS) and

recently amended its rules to allow MDS licensees to provide a wide range of high-speed, two-way services to a variety of users.<sup>22</sup> In connection with the 1996 MDS auction, the Commission defined small businesses as entities that had annual average gross revenues for the three preceding years not in excess of \$40 million.<sup>23</sup> The Commission established this small business definition in the context of this particular service and with the approval of the SBA.<sup>24</sup> The MDS auction resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs).<sup>25</sup> Of the 67 auction winners, 61 met the definition of a small business. At this time, we estimate that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent MDS licensees that are considered small entities.<sup>26</sup> After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 MDS licensees that are defined as small businesses under either the SBA or the Commission's rules. Because the Commission's action only affects MDS operations in the 2150–2155 MHz band, the actual number of MDS providers who will be affected by the *Second Report and Order* will only represent a small fraction of those 440 small business licensees.

the Multichannel Multipoint Distribution Service (MMDS). See 66 FR 36177.

<sup>22</sup> Amendment of parts 21 and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in Fixed Two-Way Transmissions, MM Docket No. 97–217, *Report and Order*, 13 FCC Rcd 19112 (1998), *recon.*, 14 FCC Rcd 12764 (1999), *further recon.*, 15 FCC Rcd 14566 (2000).

<sup>23</sup> 47 CFR 21.961 and 1.2110.

<sup>24</sup> Amendment of parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding, MM Docket No. 94–131, *Report and Order*, 10 FCC Rcd 9589, 9670 (1995), 60 FR 36524 (July 17, 1995).

<sup>25</sup> Basic Trading Areas (BTAs) were designed by Rand McNally and are the geographic areas by which MDS was auctioned and authorized. See *id.* at 9608.

<sup>26</sup> 47 U.S.C. 309(j). (Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of section 309(j) of the Communications Act of 1934, 47 U.S.C. 309(j)). For these pre-auction licenses, the applicable standard is SBA's small business size standard for "other telecommunications" (annual receipts of \$12.5 million or less). See 13 CFR 121.201.

#### *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements*

28. The *Second R&O* addressed the possible use of frequency bands below 3 GHz to support the introduction of new AWS, but does not propose service rules. Thus, the item contains no new reporting, recordkeeping, or other compliance requirements. Because the item does not establish procedures for the relocation of MDS incumbents from the 2150–2155 MHz band, there are no new compliance requirements for MDS at this time.

#### *Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered*

29. The RFA requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): "(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities."<sup>27</sup>

30. Providing spectrum to support the introduction of new advanced mobile and fixed terrestrial wireless services is critical to the continuation of technological advancement. First and foremost, the Commission believes that our proposal to explore the possible use of several frequency bands that could offer a wide range of voice, data, and broadband services over a variety of mobile and fixed networks may provide substantial new opportunities for small entities.

31. However, we realize that some entities must be displaced to clear a sufficient quantity of contiguous spectrum to support new services. We endeavored to avoid this effect by identifying unencumbered spectrum, but spectrum in the suitable frequency range is heavily used already and a sufficient amount of unencumbered spectrum simply does not exist. We have therefore sought to minimize an adverse impact by proposing to reallocate frequency bands for those incumbents, including small entities, which might be accommodated in other spectrum and could be relocated more easily. The spectrum we allocate in the

1710–1755 MHz band is currently used for Federal government services, and therefore there are no non-Federal government incumbent small entities that will be displaced by the reallocation of this band. Similarly, as noted in paragraph 28 of the *Second R&O*, the 2110–2150 MHz band was previously identified as an Emerging Technology band, and relocation procedures already exist for incumbents in this band. These existing procedures (as modified in the *Second R&O*) should serve to ease the relocation of small entity incumbents in the 2110–2150 MHz band, and make reallocation of this band preferable to the reallocation of other bands where we would have to establish new relocation rules.

32. Finally, the Commission has already received extensive comments in this proceeding on issues related to the possible reallocation of the 2150–2160 MHz (2.1 GHz) spectrum for advanced wireless purposes. Comments filed by the multipoint distribution/instructional television fixed services industry and several equipment manufacturers argue that the 2.1 GHz band is necessary for the continued roll-out of fixed wireless services across the country. Other commenters support the use of 2.1 GHz for advanced wireless services. Although many commenters ask that we reallocate a large contiguous spectrum block to include the entire 2150–2160 MHz band, we instead decide to reallocate 5 megahertz in the 2150–2160 MHz band as part of a 45 megahertz block of contiguous spectrum that can be used to provide advanced services. By doing so, we satisfy the need to designate a large block of contiguous spectrum that can be paired in order to allow for the deployment of advanced services (and thus, serve the goals of this proceeding). However, by allocating 5 megahertz of existing MDS spectrum, we retain greater flexibility to accommodate small entities that are MDS licensees than had we redesignated the entire 2.1 GHz MDS spectrum. For example, paragraph 39 of the *Second Report and Order*, notes that we retain the option to realign MDS spectrum to a 10 megahertz block in the 2155–2165 MHz band. Had we reallocated the entire 2.1 GHz MDS spectrum, as some commenters had suggested, this option would not have been available.

#### *Report to Congress*

33. The Commission will send a copy of the *Second Report and Order* including this FRFA, in a report to be sent to Congress pursuant to the

<sup>27</sup> 5 U.S.C. 603(c)(1) through (c)(4).

Congressional Review Act.<sup>28</sup> In addition, the Commission will send a copy of the Second Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA.

#### Ordering Clauses

34. Pursuant to sections 1, 4(i), 7(a), 301, 302(a), 303(f), 303(g), 303(r), 307, 308, 309(j), 316, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. sections 151, 154(i), 157(a), 301, 302(a), 303(f), 303(g), 303(r), 307, 308, 309(j), 316, and 332 the Second Report and Order is hereby adopted. The rules set forth will become effective February 24, 2003.

35. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Second Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

<sup>28</sup> See 5 U.S.C. 801(a)(1)(A).

#### List of Subjects

##### 47 CFR Part 2

Communications equipment.

##### 47 CFR Part 21

Communications equipment, Radio.

##### 47 CFR Part 101

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

**Marlene H. Dortch,**  
*Secretary.*

#### Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 2, 21, and 101 as follows:

#### PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for part 2 continues to read as follows:

**Authority:** 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

2. Section 2.106, the Table of Frequency Allocations, is amended as follows:

- a. Revise pages 47 and 49.
- b. In the list of United States (US) Footnotes, remove footnote US256, revise footnote US311, and add footnote US378.
- c. In the list of non-Federal Government (NG) Footnotes, revise footnote NG153 and add footnote NG176.

#### § 2.106 Table of Frequency Allocations.

The revisions and additions read as follows:

\* \* \* \* \*

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International Table		United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government
1670-1675 METEOROLOGICAL AIDS FIXED METEOROLOGICAL-SATELLITE (space-to-Earth) MOBILE 5.380			1670-1675 FIXED MOBILE except aeronautical mobile	1670-1675 FIXED MOBILE except aeronautical mobile
5.341			5.341 US211 US362	5.341 US211 US362
1675-1690 METEOROLOGICAL AIDS FIXED METEOROLOGICAL-SAT- ELLITE (space-to-Earth) MOBILE except aeronautical mobile	1675-1690 METEOROLOGICAL AIDS FIXED METEOROLOGICAL-SAT- ELLITE (space-to-Earth) MOBILE except aeronautical mobile MOBILE-SATELLITE (Earth-to-space)	1675-1690 METEOROLOGICAL AIDS FIXED METEOROLOGICAL-SAT- ELLITE (space-to-Earth) MOBILE except aeronautical mobile	1675-1700 METEOROLOGICAL AIDS (radiosonde) METEOROLOGICAL-SATELLITE (space-to-Earth)	
5.341	5.341 5.377	5.341		
1690-1700 METEOROLOGICAL AIDS METEOROLOGICAL-SAT- ELLITE (space-to-Earth) Fixed Mobile except aeronautical mobile	1690-1700 METEOROLOGICAL AIDS METEOROLOGICAL-SAT- ELLITE (space-to-Earth) MOBILE-SATELLITE (Earth-to-space)	1690-1700 METEOROLOGICAL AIDS METEOROLOGICAL-SAT- ELLITE (space-to-Earth)		
5.289 5.341 5.382	5.289 5.341 5.377 5.381	5.289 5.341 5.381	5.289 5.341 US211	
1700-1710 FIXED METEOROLOGICAL-SAT- ELLITE (space-to-Earth) MOBILE except aeronautical mobile	1700-1710 FIXED METEOROLOGICAL-SAT- ELLITE (space-to-Earth) MOBILE except aeronautical mobile MOBILE-SATELLITE (Earth-to-space)	1700-1710 FIXED METEOROLOGICAL-SAT- ELLITE (space-to-Earth) MOBILE except aeronautical mobile	1700-1710 FIXED G118 METEOROLOGICAL-SAT- ELLITE (space-to-Earth)	1700-1710 METEOROLOGICAL-SAT- ELLITE (space-to-Earth) Fixed
5.289 5.341	5.289 5.341 5.377	5.289 5.341 5.384	5.289 5.341	5.289 5.341
1710-1930 FIXED MOBILE 5.380 5.384A 5.388A			1710-1755	1710-1755 FIXED MOBILE
			5.341 US311 US378	5.341 US311 US378 NG176

1670-2110 MHz (UHF)

Page 47

2110-2345 MHz (UHF)			Page 49	
International Table		United States Table		
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government
2110-2120 FIXED MOBILE 5.388A SPACE RESEARCH (deep space) (Earth-to-space)			2110-2120	2110-2155 FIXED NG23 MOBILE
5.388			US252	
2120-2160 FIXED MOBILE 5.388A	2120-2160 FIXED MOBILE 5.388A Mobile-satellite (space-to-Earth)	2120-2160 FIXED MOBILE 5.388A	2120-2200	
5.388	5.388	5.388	US252	
2160-2170 FIXED MOBILE 5.388A	2160-2170 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth)	2160-2170 FIXED MOBILE 5.388A		2160-2165 FIXED NG23 NG153 MOBILE
5.388 5.392A	5.388 5.389C 5.389D 5.389E 5.390	5.388		2165-2200 MOBILE-SATELLITE (space-to-Earth)
2170-2200 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) 5.351A				
5.388 5.389A 5.389F 5.392A				
2200-2290 SPACE OPERATION (space-to-Earth) (space-to-space) EARTH EXPLORATION-SATELLITE (space-to-Earth) (space-to-space) FIXED MOBILE 5.391 SPACE RESEARCH (space-to-Earth) (space-to-space)			2200-2290 SPACE OPERATION (space-to-Earth) (space-to-space) EARTH EXPLORATION- SATELLITE (space-to- Earth) (space-to-space) FIXED (line-of-sight only)	NG23 NG168 2200-2290

FCC Rule Part(s)

Public Mobile (22)  
Fixed Microwave (101)

Domestic Public Fixed  
(21)  
Fixed Microwave (101)

Domestic Public Fixed  
(21)  
Public Mobile (22)  
Fixed Microwave (101)

Satellite  
Communications (25)

\* \* \* \* \*

**United States (US) Footnotes**

\* \* \* \* \*

US311 Radio astronomy observations may be made in the bands 1350–1400 MHz, 1718.8–1722.2 MHz, and 4950–4990 MHz on an unprotected basis at the following radio astronomy observatories:

Allen Telescope Array, Hat Creek, California .....	Rectangle between latitudes 40° 00' N and 42° 00' N and between longitudes 120° 15' W and 122° 15' W.	
NASA Goldstone Deep Space Communications Complex, Goldstone, California.	80 kilometers (50 mile) radius centered on latitude 35° 18' N, longitude 116° 54' W.	
National Astronomy and Ionosphere Center, Arecibo, Puerto Rico ...	Rectangle between latitudes 17° 30' N and 19° 00' N and between longitudes 65° 10' W and 68° 00' W.	
National Radio Astronomy Observatory, Socorro, New Mexico .....	Rectangle between latitudes 32° 30' N and 35° 30' N and between longitudes 106° 00' W and 109° 00' W.	
National Radio Astronomy Observatory, Green Bank, West Virginia	Rectangle between latitudes 37° 30' N and 39° 15' N and between longitudes 78° 30' W and 80° 30' W.	
National Radio Astronomy Observatory, Very Long Baseline Array Stations.	80 kilometer radius centered on:	
	Latitude (North)	Longitude (West)
Brewster, WA .....	48° 08'	119° 41'
Fort Davis, TX .....	30° 38'	103° 57'
Hancock, NH .....	42° 56'	71° 59'
Kitt Peak, AZ .....	31° 57'	111° 37'
Los Alamos, NM .....	35° 47'	106° 15'
Mauna Kea, HI .....	19° 48'	155° 27'
North Liberty, IA .....	41° 46'	91° 34'
Owens Valley, CA .....	37° 14'	118° 17'
Pie Town, NM .....	34° 18'	108° 07'
Saint Croix, VI .....	17° 46'	64° 35'
Owens Valley Radio Observatory, Big Pine, California .....	Two contiguous rectangles, one between latitudes 36° 00' N and 37° 00' N and between longitudes 117° 40' W and 118° 30' W and the second between latitudes 37° 00' N and 38° 00' N and between longitudes 118° 00' W and 118° 50' W.	

In the bands 1350–1400 MHz and 4950–4990 MHz, every practicable effort will be made to avoid the assignment of frequencies to stations in the fixed and mobile services that could interfere with radio astronomy observations within the geographic areas given above. In addition, every practicable effort will be made to avoid assignment of frequencies in these bands to stations in the aeronautical mobile service which

operate outside of those geographic areas, but which may cause harmful interference to the listed observatories. Should such assignments result in harmful interference to these observatories, the situation will be remedied to the extent practicable.

\* \* \* \* \*

US378 In the band 1710–1755 MHz, Federal government stations in the fixed and mobile services shall operate on a

primary basis until reaccommodated in accordance with the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999. Further, Federal government stations may continue to operate in the band 1710–1755 MHz as provided below:

(a) Federal fixed microwave and tactical radio relay stations may operate indefinitely on a primary basis at the sites listed below:

Location	Coordinates	Radius of operation (km)
Cherry Point, NC .....	34° 58' N 076° 56' W	80
Yuma, AZ .....	32° 32' N 113° 58' W	80

(b) Federal fixed microwave and tactical radio relay stations may operate on a secondary basis, and shall not cause harmful inference to, and must accept harmful interference from, primary non-Federal government operations at the sites listed below:

Location	Coordinates	Radius of operation (km)
China Lake, CA .....	35° 41' N 117° 41' W	80
Eglin AFB, FL .....	30° 29' N 086° 31' W	80

Location	Coordinates	Radius of operation (km)
Pacific Missile Test Range/Point Mugu, CA .....	34° 07' N 119° 30' W	80
Nellis AFB, NV .....	36° 14' N 115° 02' W	80
Hill AFB, UT .....	41° 07' N 111° 58' W	80
Patuxent River, MD .....	38° 17' N 076° 25' W	80
White Sands Missile Range, NM .....	33° 00' N 106° 30' W	80
Fort Irwin, CA .....	35° 16' N 116° 41' W	50
Fort Rucker, AL .....	31° 13' N 085° 49' W	50
Fort Bragg, NC .....	35° 09' N 079° 01' W	50
Fort Campbell, KY .....	36° 41' N 087° 28' W	50
Fort Lewis, WA .....	47° 05' N 122° 36' W	50
Fort Benning, GA .....	32° 22' N 084° 56' W	50
Fort Stewart, GA .....	31° 52' N 081° 37' W	50

(c) In the sub-band 1710–1720 MHz, precision guided munitions shall operate on a primary basis until inventory is exhausted or until December 31, 2008, whichever is earlier.

**Non-Federal Government (NG) Footnotes**

NG153 The band 2160–2165 MHz is reserved for future emerging technologies on a co-primary basis with the fixed and mobile services. Allocations to specific services will be made in future proceedings. Authorizations in the band 2160–2162 MHz for stations in the Multipoint Distribution Service applied for after January 16, 1992, shall be on a secondary basis to emerging technologies.

NG176 The allocations to the fixed and mobile services in the band 1710–1755 MHz shall come into effect on January 1, 2004.

**PART 21—DOMESTIC PUBLIC FIXED RADIO SERVICES**

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

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

**§ 21.50 [Removed and reserved]**

4. Remove and reserve § 21.50.

**PART 101—FIXED MICROWAVE SERVICES**

5. The authority citation for part 101 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

6. Section 101.69 is amended by revising paragraph (d) introductory text to read as follows:

**§ 101.69 Transition of the 1850–1990 MHz, 2110–2150 MHz, and 2160–2200 MHz bands from the fixed microwave services to personal communications services and emerging technologies.**

(d) Relocation of FMS licensees in the 2110–2150 and 2160–2200 MHz bands will be subject to mandatory negotiations only. Mandatory negotiation periods are defined as follows:

7. Section 101.73 is amended by revising the first and second sentences in paragraph (d) introductory text and the first and second sentences in paragraph (d)(3) to read as follows:

**§ 101.73 Mandatory negotiations.**

(d) Provisions for Relocation of Fixed Microwave Licensees in the 2110–2150 and 2160–2200 MHz bands. Mandatory negotiations will commence when the ET licensee informs the fixed microwave licensee in writing of its desire to negotiate.

(3) *Operating Costs.* Operating costs are the cost to operate and maintain the FMS system. ET licensees would compensate FMS licensees for any increased recurring costs associated with the replacement facilities (e.g., additional rental payments, and increased utility fees) for five years after relocation. ET licensees could satisfy this obligation by making a lump-sum payment based on present value using current interest rates.

8. Section 101.75 is amended by revising paragraph (d) to read as follows:

**§ 101.75 Involuntary relocation procedures.**

(d) *Twelve-month trial period.* If, within one year after the relocation to new facilities, the FMS licensee demonstrates that the new facilities are not comparable to the former facilities, the ET licensee must remedy the defects or pay to relocate the microwave licensee to one of the following: its former or equivalent 2 GHz channels, another comparable frequency band, a land-line system, or any other facility that satisfies the requirements specified in paragraph (b) of this section. This trial period commences on the date that the FMS licensee begins full operation of the replacement link. If the FMS licensee has retained its 2 GHz authorization during the trial period, it must return the license to the Commission at the end of the twelve months. FMS licensees relocated from the 2110–2150 and 2160–2200 MHz bands may not be returned to their former 2 GHz channels. All other remedies specified in paragraph (d) are available to FMS licensees relocated from the 2110–2150 MHz and 2160–2200 MHz bands, and may be invoked whenever the FMS licensee demonstrates that its replacement facility is not comparable, subject to no time limit.

9. Section 101.99 is amended by revising the section heading and paragraph (a) to read as follows:

**§ 101.99 Reimbursement and relocation expenses in the 2110–2150 MHz and 2160–2200 MHz bands.**

(a) Whenever an ET licensee (including Mobile-Satellite Service licensees) in the 2110–2150 or 2160–2200 MHz bands relocates an incumbent paired microwave link with one path in the 2110–2150 MHz band and the paired path in the 2160–2200 MHz band, the ET licensee is entitled to reimbursement of 50% of its relocation costs from any subsequently entering ET

licensee which would have been required to relocate the same fixed microwave link.

\* \* \* \* \*

[FR Doc. 03-1457 Filed 1-23-03; 8:45 am]

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## DEPARTMENT OF VETERANS AFFAIRS

### 48 CFR Parts 801, 806, 812, 837, 852, and 873

RIN 2900-AI71

#### VA Acquisition Regulation: Simplified Acquisition Procedures for Health-Care Resources

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** This document amends the Department of Veterans Affairs Acquisition Regulation (VAAR) to establish simplified procedures for the competitive acquisition of health-care resources, consisting of commercial services or the use of medical equipment or space pursuant to statute. The Veterans' Health Care Eligibility Reform Act of 1996 authorized VA to prescribe simplified procedures for the procurement of health-care resources. This rule prescribes those procedures.

**EFFECTIVE DATE:** February 24, 2003.

**FOR FURTHER INFORMATION CONTACT:** Dennis Foley, (202) 273-9225, Office of the General Counsel, Professional Staff Group V; or Don Kaliher, (202) 273-8819, Acquisition Resources Service, Office of Acquisition and Materiel Management, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420.

**SUPPLEMENTARY INFORMATION:** On June 7, 2001, we published in the **Federal Register** (66 FR 30659) a proposed rule to amend the Department of Veterans Affairs Acquisition Regulation (VAAR), pursuant to 38 U.S.C. 8151-8153, to establish simplified procedures for the competitive acquisition of health-care resources consisting of commercial services or the use of medical equipment or space.

Comments were solicited concerning the proposal for 60 days, ending August 6, 2001. We did not receive any comments.

The information presented in the proposed rule document still provides a basis for this final rule. In addition, the proposed rule requested Paperwork Reduction Act (PRA) comments concerning the collection of information regarding clauses for use in both commercial and non-commercial item

and service solicitations and contracts. No comments were received by VA or the Office of Management and Budget (OMB).

Therefore, based on the rationale set forth in the proposed rule document, we are adopting the provisions of the proposed rule as a final rule with no changes, except for a non-substantive change to reflect, at 48 CFR 801.301-70(c), the PRA clearance numbers assigned by OMB to clauses 852.207-70 and 852.237-7.

#### Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of \$100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

#### Executive Order 12866

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

#### Regulatory Flexibility Analysis

This rule may have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. An Initial Regulatory Flexibility Analysis was published in the **Federal Register** on June 7, 2001, (66 FR 30672) as part of the proposed rule. No comments were received. As required by the RFA (5 U.S.C. 601 *et. seq.*), the following Final Regulatory Flexibility Analysis is set forth.

a. A succinct statement of the need for and the objectives of the rule.

*Response:* The rule amends the VAAR to implement the provisions of 38 U.S.C. 8151-8153, which authorize the Secretary of Veterans Affairs, in consultation with the Administrator of Federal Procurement Policy, to prescribe simplified procedures for the procurement of health-care resources. We believe the simplified procedures will allow VA to become more efficient in procuring health-care resources.

The objective of the rule is to allow VA to become more efficient in procuring health-care resources and thereby strengthen the medical programs of the Department and improve the quality of health care provided to veterans.

b. A summary of the significant issues raised by public comments in response to the initial regulatory flexibility

analysis, a summary of the agency's assessment of such issues, and a statement of any changes made in the proposed rule as a result of such comments.

*Response:* No public comments were received and no changes were made to the proposed rule.

c. A description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available.

*Response:* The small entities that could be affected by the rule are any small entities that provide commercial services or the use of medical equipment or space to the health-care industry.

We do not have precise figures on the number of small entities that could potentially be affected by the rule. Any small entity that provides, or wishes to provide, commercial services or the use of medical equipment or space to VA health-care facilities could potentially be affected.

However, the rule will not apply to the majority of VA acquisitions. The rule applies only to competitive acquisitions of commercial services or the use of medical equipment or space conducted by the Veterans Health Administration (VHA) and which specifically reference the authority of 38 U.S.C. 8153. The rule does not apply to acquisitions of supplies or equipment made on behalf of VHA or to acquisitions made on behalf of the Veterans Benefits Administration (VBA) or the National Cemetery Administration (NCA). Except for section 873.108(b), the rule does not apply to VHA sole source acquisitions from affiliated institutions or entities associated with affiliated institutions. The authority for VHA to contract on a sole source basis with an institution affiliated with VA or with a medical practice group or other approved entity associated with an affiliate, addressed in the rule at 873.108(b), is authorized by law and is not dependent upon this rulemaking. The rule does not apply to acquisitions of services for which other specific authorities apply, such as acquisitions of nursing home care services, which are acquired under the authority of 38 U.S.C. 1720, or to acquisitions of non-commercial services, such as construction.

We have no relevant data regarding commercial service acquisitions below \$25,000. However, we expect little application of the rule to acquisitions below \$25,000. Existing FAR provisions for such acquisitions are already very simple and the provisions of the rule likely would not provide a significant benefit to the Government to warrant