

therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

#### List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

#### PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334 and 336.

##### § 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by removing Booneville, Channel 257A, and by adding Guntown, Channel 257C3.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

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#### FEDERAL COMMUNICATIONS COMMISSION

##### 47 CFR Part 73

[DA 05-573; MB Docket No. 05-85, RM-11164; MB Docket No. 05-86, RM-11165; and MB Docket No. 05-87, RM-11166]

##### Radio Broadcasting Services; Hennessey, OK; Odin, IL; and Spur, TX

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document sets forth three proposals to amend the FM Table

of Allotments, section 73.202(b) of the Commission's rules, 47 CFR 73.202(b). The Commission requests comment on a petition filed by Charles Crawford. Petitioner proposes the allotment of Channel 249A at Hennessey, Oklahoma, as a first local service. Channel 249A can be allotted at Hennessey in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.2 km (3.2 miles) west of Hennessey. The proposed coordinates for Channel 249A at Hennessey are 36-06-09 North Latitude and 97-57-18 West Longitude. *See* SUPPLEMENTARY INFORMATION *infra*.

**DATES:** Comments must be filed on or before April 25, 2005, and reply comments on or before May 10, 2005.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the designated petitioner as follows: Charles Crawford, 4553 Bordeaux Avenue, Dallas, Texas 75205; Jeraldine Anderson, 1702 Cypress Drive, Irving, Texas 75061.

**FOR FURTHER INFORMATION CONTACT:** Deborah A. Dupont, Media Bureau (202) 418-7072.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket Nos. 05-85, 05-86, and 05-87, adopted March 2, 2005, and released March 4, 2005. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY-A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554, (800) 378-3160, or via the company's Web site, <http://www.bcpweb.com>.

The Commission further requests comment on a petition filed by Charles Crawford. Petitioner proposes the allotment of Channel 288A at Odin, Illinois, as a first local service. Channel 288A can be allotted at Odin in compliance with the Commission's minimum distance separation requirements with a site restriction of 10.5 km (6.5 miles) east of Odin. The proposed coordinates for Channel 288A at Odin are 38-37-17 North Latitude and 88-55-53 West Longitude.

The Commission further requests comment on a petition filed by Jeraldine Anderson. Petitioner proposes the allotment of Channel 260C3 at Spur, Texas, as a second local service. Channel 260C3 can be allotted at Spur

in compliance with the Commission's minimum distance separation requirements with a site restriction of 13.4 km (8.4 miles) west of Spur. The proposed coordinates for Channel 260C3 at Spur are 33-28-30 North Latitude and 101-00-00 West Longitude.

The Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

#### List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

#### PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334 and 336.

##### § 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Illinois, is amended by adding Odin, Channel 288A.

3. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by adding Hennessey, Channel 249A.

4. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 260C3 at Spur.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. 05-5317 Filed 3-16-05; 8:45 am]

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## GENERAL SERVICES ADMINISTRATION

### 48 CFR Parts 546 and 552

[GSAR ANPR 2005–N01]

#### General Services Administration Acquisition Regulation; Waiver of Consequential Damages and “Post Award” Audit Provisions (Correction)

**AGENCY:** Office of the Chief Acquisition Officer, General Services Administration (GSA).

**ACTION:** Correction to advance notice of proposed rulemaking and notice of public meeting.

**SUMMARY:** The General Services Administration (GSA) is requesting comments from both Government and industry on whether the General Services Administration Acquisition Regulation (GSAR) should be revised to include a waiver of consequential damages for contracts awarded for commercial item under the FAR. GSA is also requesting comments on whether “post award” audit provisions should be included its Multiple Award Schedules (MAS) contracts and Governmentwide acquisition contracts (GWACs). The notice published in the *Federal Register* at 70 FR 12167, March 11, 2005, is amended to extend the public comment date to May 10, 2005, and to allow interested parties to submit presentations by April 7, 2005.

**DATES:** *Comment Date:* Interested parties should submit comments on or before May 10, 2005 to be considered in the formulation of a proposed rulemaking.

*Public Meeting Presentation Date:* Interested parties may register and submit presentations by April 7, 2005.

**ADDRESSES:** Submit written comments to: General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to: [gsaranpr.2005–N01@gsa.gov](mailto:gsaranpr.2005–N01@gsa.gov)

Submit electronic presentations via the Internet to: [meeting.2005–N01@gsa.gov](mailto:meeting.2005–N01@gsa.gov).

Please submit comments or presentations only and cite GSAR ANPR 2005–N01 in all correspondence related to this case. All comments received will be posted without change to <http://www.acqnet.gov/far/ProposedRules/proposed.htm>, including any personal information provided.

*Public Meeting:* The public meeting will be conducted at the General Services Administration, National Capital Region, 301 7th and D street, SW., Washington, DC 20407,

Auditorium, starting at 9 a.m. to 4 p.m. EST., on April 14, 2005, to ensure open dialogue between the Government and interested parties on this important topic.

*Special Instructions.* The submitted presentations will be the only record of the public meeting. If you intend to have your presentation considered as a public comment in the formulation of the proposed rulemaking, the presentation must be submitted separately as a public comment as instructed above.

*Special Accommodations:* The public meeting is physically accessible to people with disabilities. Request for sign language interpretation or other auxiliary aids should be directed to Ernest Woodson, at 202–501–3775, at least 5 working days prior to the meeting date.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ernest Woodson, Procurement Analyst, Contract Policy Division, 202–501–3775.

#### SUPPLEMENTARY INFORMATION:

##### Background

Currently, FAR Part 12, Acquisition of Commercial Items, prescribes policies and procedures unique to the acquisition of commercial items under FAR Part 12. FAR Part 12 implements the Government’s preference for the acquisition of commercial items as contained in Title VIII of the Federal Acquisition Streamlining Act of 1994 by establishing policies more closely resembling those of the commercial marketplace. The clause, FAR 52.212–4, Contract Terms and Conditions—Commercial Items, that includes terms and conditions applicable to each acquisition procured under FAR Part 12 is, to the maximum extent practicable, consistent with customary commercial practices. The clause includes a provision, FAR 52.212–4(p), Limitation of liability, that provides; “Except as otherwise provided by an express warranty, the Contractor will not be liable to the Government for consequential damages resulting from any defect or deficiencies in accepted items.” Also, FAR 12.302(b) allows the contracting officer to tailor the clause at FAR 52.212–4 to adapt to market conditions of reach commercial acquisition. In addition to the limitation of liability clause and the provision at FAR 12.302, Federal contracts typically include a broad range of standard contract clauses such as warranties and liquidated damages that provide exclusive remedies for nonperformance that limit the Government to the specific remedies set forth in the clause.

Likewise, the Contract Disputes Act of 1978 provides for the resolution of any failure on the part of the Government and the contractor to reach agreement on any request for equitable adjustment, claim, appeal, or action arising under or relating to a Government contract to be a dispute to be resolved in accordance with FAR 52.233–1, disputes.

Notwithstanding specific adjustments and other remedies provided in Government contracts for contractor deficiencies or nonperformance, concerns have been raised that—

- FAR clause 52.212–4(p) and the “tailoring” provision at FAR 12.302, do not reach the level of commercial standards and that unlimited consequential or other incidental or special damages are not necessary and are, in fact, counterproductive to efficient procurement, raising costs and establishing barriers to commercial companies considering whether to do business with the Federal Government;
- Although FAR 12.302 permits contracting officers to tailor the limitation of liability clause at FAR 52.212–4(p), some companies assert that contracting officers are unwilling to do so, leaving contractors with a take-it or leave-it option and contracts that deviate from the commercial marketplace, making contractors in general less willing to sign on to such contracts;

- The commercial practice, unlike FAR 52.212–4(p), that waives liability for consequential damages resulting from any defect or deficiencies in accepted items, provides for a complete waiver of consequential damages;

- Contractors would make risk decisions and negotiate Government contracts without having to add an uncertainty premium as to liability protection, if FAR Part 12 were appropriately amended to reflect commercial practices; and

- Contractors also request that we make the waiver of consequential damages for commercial products and services available under other provisions of the FAR.

Similarly, the General Accounting Office and periodically GSA’s IG raise concerns regarding GSA’s right to access and examine contractor records after contract award. GSA’s primary vehicle for conducting post-award audits is GSAR 552.215–70, Examination of Records by GSA, that gives the Administrator of GSA, or any duly authorized representative, typically the GSA Inspector General’s Office of Audits, access to and the right to examine contractor records relating to over billings, billing errors, compliance with the Industrial Funding Fee (IFF)

clause of the contract, and compliance with the Price Reduction Clause under MAS contracts.

In addition to the GSA Examination of Records clause, GSA may use a number of other authorities to conduct a post-award review of a contractor's records. These other authorities include FAR 52.212-5 which authorizes the Comptroller General of the United States to access and examine a contractor's directly pertinent records involving transactions related to the contract; GSAR 515.209-70(b) that permits a contracting officer to modify the GSA Examination of Records Clause to define the specific area of audit (*e.g.*, the use or disposition of Government-furnished property, compliance with price reduction clause, etc.), and the

right of the GSA Inspector General to issue subpoenas for contractor records under the Inspector General Act of 1978.

Contractors' major concerns with GSA's post-award audit authority include complaints that they are too broad and not consistent with commercial contract practices.

In consideration of the above concerns, we have questions as to how the taxpayer may benefit from any revisions to the GSAR to address contractor concerns regarding limitation of liability or post-award audits. We are also interested in learning what, if any, impact the Services Acquisition Reform Act of 2002 and 2003 has on the issue of revising the GSAR to address limitations of liability.

In this advance notice of proposed rulemaking and notice of public meeting, GSA is seeking input from both Government and industry on whether the GSAR should be revised to waive consequential damages in the purchase of commercial items under FAR Parts 12, 13, 14, and 15 and whether GSA should modify its policy and practices with regard to the addition of post award audit clauses into contracts it awards.

Dated: March 11, 2005.

**David A. Drabkin,**

*Senior Procurement Executive, Office of the Chief Acquisition Officer, General Services Administration.*

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