

**Authority:** 46 U.S.C. 2113, 3306; Department of Homeland Security Delegation No. 0170.1.

### § 3.03–1 [Amended]

■ 2. In § 3.03–1, remove the words “in this subchapter” and add, in their place, the words “in this part”.

### PART 10—LICENSING OF MARITIME PERSONNEL

■ 3. The authority citation for part 10 continues to read as follows:

**Authority:** 14 U.S.C. 633; 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, and 2110; 46 U.S.C. chapter 71; 46 U.S.C. 7502, 7505, 7701, and 8906; Department of Homeland Security Delegation 0170.1. Section 10.107 is also issued under the authority of 44 U.S.C. 3507.

### § 10.201 [Amended]

■ 4. In § 10.201(c), remove the text “§ 10.464(i)” and add, in its place, the text “10.467(h)”.

### § 10.467 [Amended]

■ 5. In § 10.467(b), after the words “under paragraph”, remove the text “(f)” and add, in its place, the text “(g)”.

### PART 114—GENERAL PROVISIONS

■ 6. The authority citation for part 114 continues to read as follows:

**Authority:** 46 U.S.C. 2103, 3306, 3703; Pub. L. 103–206, 107 Stat. 2439; 49 U.S.C. App. 1804; Department of Homeland Security No. 0170.1; Sec. 114.900 also issued under 44 U.S.C. 3507.

### § 114.400 [Amended]

■ 7. In § 114.400(b) in the definition for “High speed craft”, after the text “V=3.7xdispl<sup>.1667</sup>”, remove the text “h”.

### PART 147—HAZARDOUS SHIPS' STORES

■ 8. The authority citation for part 147 continues to read as follows:

**Authority:** 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

### § 147.30 [Amended]

■ 9. In § 147.30(b), after the words “Federal Hazardous Substances Act Regulations in”, remove the text “26 CFR” and add, in its place, the text “16 CFR”.

### PART 151—BARGES CARRYING BULK LIQUID HAZARDOUS MATERIAL CARGOES

■ 10. The authority citation for part 151 continues to read as follows:

**Authority:** 33 U.S.C. 1903; 46 U.S.C. 3703; Department of Homeland Security Delegation No. 0170.1.

### § 151.15–10 [Amended]

■ 11. In § 151.15–10(b), remove the text “151.03–43” and add, in its place, “151.03–49”

### PART 175—GENERAL PROVISIONS

■ 12. The authority citation for part 175 continues to read as follows:

**Authority:** 46 U.S.C. 2103, 3205, 3306, 3703; Pub. L. 103–206, 107 Stat. 2439; 49 U.S.C. App. 1804; Department of Homeland Security Delegation No. 0170.1; 175.900 also issued under authority of 44 U.S.C. 3507.

### § 175.400 [Amended]

■ 13. In § 175.400 in the definition for “High speed craft”, after the text “V=3.7xdispl<sup>.1667</sup>”, remove the text “h”.

Dated: September 15, 2005.

**Stefan G. Venckus,**

Chief, Office of Regulations and Administrative Law, United States Coast Guard.

[FR Doc. 05–19723 Filed 9–28–05; 1:31 pm]

**BILLING CODE 4910–15–P**

### FEDERAL COMMUNICATIONS COMMISSION

#### 47 CFR Part 1

[WT Docket No. 97–82; FCC 04–295]

#### Competitive Bidding Procedures

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In the *Second Order on Reconsideration of the Fifth Report and Order* the Commission grants two petitions for reconsideration filed in response to the Commission's *Part 1 Order on Reconsideration of the Fifth Report and Order*, 68 FR 42984 (July 21, 2003) (*Part 1 Reconsideration Order*). The Commission revises one element of the exemption from part 1 attribution rules for certain rural telephone cooperatives that participate in the Commission's spectrum auction program. The revised rule permits a rural telephone cooperative applicant or its controlling interest to demonstrate that either it is eligible for tax-exempt status under the Internal Revenue Code or it adheres to the cooperative principles enumerated in a previous decision of the United States Tax Court. **DATES:** Effective December 9, 2005.

**FOR FURTHER INFORMATION CONTACT:** William Huber, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, (202) 418–0660.

**SUPPLEMENTARY INFORMATION:** This is a summary of the *Second Order on*

*Reconsideration of the Fifth Report and Order* adopted December 22, 2004 and released on January 31, 2005. The complete text of the *Second Order on Reconsideration of the Fifth Report and Order*, is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. *The Second Order on Reconsideration of the Fifth Report and Order* and related Commission documents may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–488–5300, facsimile 202–488–5563, or you may contact BCPI at its Web site: <http://www.BCPIWEB.com>. When ordering documents from BCPI, please make sure you provide the appropriate FCC document number (for example, FCC 04–295 for the *Second Order on Reconsideration of the Fifth Report and Order*) and related documents are also available on the Internet at the Commission's Web site: <http://wireless.fcc.gov/auctions/>.

#### I. Overview

1. In the *Second Order on Reconsideration of the Part 1 Fifth Report and Order*, the Commission grants two petitions for reconsideration of the Commission's *Part 1 Reconsideration Order*. The petitioners seek to modify one of the elements of the three-part test that rural telephone cooperatives must satisfy to receive a limited exemption from the attribution rules that are part of the Commission's part 1 competitive bidding rules. In particular, petitioners seek to refine a portion of the rule that defines the category of eligible rural telephone cooperatives so as not to limit the flexibility of rural telephone cooperatives to provide new telecommunications services to consumers in rural areas. In this decision, the Commission revises the third element of the exemption to permit a rural telephone cooperative applicant (or its controlling interest) to demonstrate that either it is eligible for tax-exempt status pursuant to section 501(c)(12) of the Internal Revenue Code or it adheres to the cooperative principles enumerated in *Puget Sound Plywood, Inc. v. Commissioner of Internal Revenue (Puget Sound)*, 44 T.C. 305 (1965). The Commission also clarifies how the first element of this rule applies in cases where a rural telephone cooperative applicant is organized in a jurisdiction

that lacks a specific statute governing organization as a cooperative.

## II. Background

### A. Section 1.2110 Controlling Interest Standard

2. In the *Part 1 Fifth Report and Order*, 65 FR 52323 (August 29, 2000), the Commission adopted as part of its attribution rule for competitive bidding a controlling interest standard, § 1.2110(c)(2), to be used to determine which applicants are eligible for small business status. Applicants that qualify as small businesses may apply for bidding credits if they are available in a particular service. Through the attribution rule, including the controlling interest standard, the Commission ensures that only those entities truly meriting small business status qualify for the small business provisions.

3. Section 1.2110(c) also provides specific guidance on attribution of interests and gross revenues in certain circumstances. For example, § 1.2110(c)(2)(ii)(F) provides that the officers and directors of any applicant will be considered to have a controlling interest in the applicant. Because the gross revenues of all affiliates of the applicant and affiliates of the applicant's controlling interests are attributed to the applicant in calculating an applicant's gross revenues, the gross revenues of other entities controlled by such officers and directors must be included.

### B. Exemption From Part 1 Attribution for Officers and Directors of Rural Telephone Cooperatives

4. Following the adoption of the *Part 1 Fifth Report and Order*, certain rural telephone cooperative interests petitioned for reconsideration, seeking an exemption for rural telephone cooperatives from the requirement that the gross revenues of entities controlled by an applicant's officers and directors are attributed to the applicant. The petitioners argued that the typical structure and operation of a rural telephone cooperative makes it unlikely that affiliates of officers and directors of a rural telephone cooperative could exercise control over the cooperative.

5. Acknowledging the unique characteristics of rural telephone cooperatives, as compared with traditional business forms, the Commission in its *Part 1 Reconsideration Order*, adopted a narrow exemption from the attribution rule for the officers and directors of a rural telephone cooperatives pursuant to which the gross revenues of the

affiliates of the cooperative's officers and directors are not attributed to the applicant. Specifically, the gross revenues of the affiliates of a cooperative's officers and directors will not be attributed if either the applicant or a controlling interest, as the case may be, meets all of the following conditions: (1) The applicant (or the controlling interest) is validly organized as a cooperative pursuant to state law; (2) the applicant (or the controlling interest) is a "rural telephone company" as defined by section 153(37) of the Communications Act, as amended; and (3) the applicant (or the controlling interest) is eligible for tax-exempt status under section 501(c)(12) of the Internal Revenue Code. In the *Part 1 Reconsideration Order*, the Commission noted that the exemption will not apply if the gross revenues or other financial and management resources of the affiliates of the applicant's officers and directors (or the controlling interests' officers and directors) are available to the applicant. Also, the Commission noted that if an officer or director of a rural telephone cooperative is considered a controlling interest of the applicant under another subsection of the controlling interest attribution rule, this exemption does not apply. Through these measures the Commission has sought to prevent sham small businesses from obtaining bidding credits while ensuring that bidding credits are received by rural telephone cooperatives that are *bona fide* small businesses.

6. Consistent with the policy objectives underlying that decision, the Commission also granted three pending waiver requests filed by rural telephone cooperative applicants in Auction No. 44. Specifically, three winning bidders that are rural telephone cooperatives (or wholly-owned by rural telephone cooperatives) and which had filed substantively identical requests for waiver of § 1.2110(c)(2)(ii)(F) were granted waivers conditioned upon the submission of information demonstrating each applicant's compliance with rule adopted in the *Part 1 Reconsideration Order*. Certain winning bidders in Auction No. 49 also requested similar relief.

## III. Discussion

### A. Proposed Change to Exemption's Tax-Exempt Element

7. After adoption of the rural telephone cooperative exemption, the Commission received two petitions for reconsideration of the *Part 1 Reconsideration Order* asking the Commission to modify the eligibility requirements for the exemption by

changing one part of the three-part eligibility standard. Specifically, petitioners ask the Commission to eliminate the prerequisite that the rural telephone cooperative applicant (or its controlling interest) be eligible for tax-exempt status under section 501(c)(12) of the Internal Revenue Code. Petitioners suggest that the Commission should instead employ a test based on a showing that the cooperative operates consistent with the cooperative principles enumerated in *Puget Sound*. For the reasons discussed below, the Commission revises the eligibility criteria in § 1.2110(b)(3)(iii)(A) to provide an alternative eligibility showing pursuant to which a rural telephone cooperative seeking to exempt from attribution gross revenues (or, where applicable, total assets) attributable through its officers or directors may show that it operates pursuant to the cooperative principles described in *Puget Sound*.

### 1. Section 501(c)(12) Tax-Exempt Status Criterion

8. The Commission included the tax-exemption criterion in the rule as a means of ensuring that only *bona fide* rural telephone cooperatives would be eligible to receive the benefits of this exemption. Parties participating in earlier stages of this proceeding had advised the Commission that rural telephone cooperatives were typically characterized by their tax-exempt status. Section 501(c)(12) of the Internal Revenue Code exempts a telephone cooperative from federal income tax only if 85 percent or more of the cooperative's income consists of amounts collected from members for the sole purpose of meeting losses and expenses. The Commission crafted this exemption based, in part, on the Commission's belief that a cooperative's tax status provided a bright-line rule for which compliance would create no additional burdens on cooperatives beyond their current obligations to comply with the tax code.

9. Petitioners maintain that compliance with the tax code's 85 percent member revenue test is an overly narrow standard for weeding out shams.

10. Petitioners argue that a rural telephone cooperative's tax status is irrelevant to whether or not the entity is controlled by an outside interest or has access to the resources of outside interests.

11. The Commission agrees that the tax-status of a rural telephone cooperative is independent of whether it is a *bona fide* cooperative.

## 2. Puget Sound Cooperative Principles

12. RCC suggests that the Commission should instead use the *Puget Sound* principles as an element of the eligibility standard for the part 1 attribution exemption. In *Puget Sound*, the Tax Court identified three basic principles of a cooperative: (1) Subordination of capital, both as regards control over the cooperative undertaking, and as regards the ownership of the cooperative's pecuniary benefits; (2) democratic control by the members; and (3) the vesting in and the allocation among the members of the excess of the operating revenues over the costs incurred in generating those revenues, and that this occur in proportion to the members' active participation in the cooperative endeavor. The IRS has regarded the *Puget Sound* principles as "fundamental to cooperative operation" and has subsequently incorporated these principles into analysis of the tax treatment of rural telephone cooperatives.

13. The Commission finds these principles of cooperative organization and operation are useful criteria for determining whether a rural telephone cooperative is a *bona fide* cooperative. The Commission believes that this change will ensure that the benefits of this exemption are limited to *bona fide* rural telephone cooperatives while providing such entities with the flexibility to further the public interest in expanding telecommunications and other advanced services to the public in rural areas. This revision may enhance the ability of rural telephone cooperatives to participate in spectrum auctions, which, in turn, will promote the deployment of advanced telecommunications services in rural areas as Congress mandated in section 309(j). Therefore, the Commission amends §§ 1.2110(b)(3)(iii)(A)(3) and 1.2112(b)(2)(iv) to require that an applicant (or its controlling interest) that seeks to exempt the gross revenues (or, if applicable for purposes of determining entrepreneur eligibility pursuant to §§ 1.2110(b)(1)(ii) and 24.709, the total assets) of its officers or directors from attribution under § 1.2110(c) of the rules must demonstrate either that it is eligible for tax-exempt status under the Internal Revenue Code or that it operates pursuant to the cooperative principles set forth in *Puget Sound*.

14. Consistent with the Commission's approach in the *Part 1 Reconsideration Order* and the Commission's decision here, the Commission grant three pending waiver requests filed by rural

telephone cooperative applicants in Auction No. 49.

### B. Showing of Cooperative Organization in the Absence of State Certification

15. Among the eligibility criteria for the exemption to the Commission's attribution rules for rural telephone cooperatives is the requirement that the applicant for the exemption (or its controlling interest) be validly organized as a cooperative pursuant to state law. Petitioners point out that the *Puget Sound* cooperative principles are not duplicative of this first element of the three-part qualification test because the validity of a cooperative as a legal entity is independent of the structural factors that make it highly unlikely that rural telephone cooperatives could engage in the kinds of sham transaction that the attribution rule is designed to protect against.

16. Upon further review, the Commission clarifies how the Commission intends to apply this first element of § 1.2110(b)(3)(iii)(A) where there is no state incorporation statute specifically for cooperatives. In these circumstances, the applicant (or the controlling interest) must at the auction short-form application stage certify that it is validly organized under the most closely applicable organizing statute, and that such organization is reflected in its articles of incorporation, by-laws, and/or other relevant organic documents. Copies of all such relevant documents must be submitted to the Commission by winning bidders relying on this exemption in connection with its long-form license application in order to receive a license. The Commission believes that this clarification will provide flexibility for *bona fide* cooperatives to demonstrate their status in the absence of the possibility of state certification.

## IV. Procedural Matters

### A. Regulatory Flexibility Analysis

17. As required by the Regulatory Flexibility Act, 5 U.S.C. 604, the Commission has prepared a Supplemental Final Regulatory Flexibility Analysis for this *Second Part 1 Reconsideration Order*.

### B. Paperwork Reduction Act Analysis

18. The *Second Order on Reconsideration of the Part 1 Fifth Report and Order* contains new or modified information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Pub. Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the

PRA. OMB, the general public and other Federal agencies are invited to comment on the new or modified collection(s) contained in the proceeding.

## V. Supplemental Final Regulatory Flexibility Analysis (Second Order on Reconsideration of the Part 1 Fifth Report and Order)

19. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), a Final Regulatory Flexibility Analysis (FRFA) was incorporated into the report and order section of the *Part 1 Fifth Report and Order* in WT Docket No. 97-82. In addition, a Supplemental FRFA was incorporated into the *Part 1 Reconsideration Order*. The Commission received two petitions for reconsideration in response to the *Part 1 Reconsideration Order*. This present second supplemental FRFA conforms to the RFA.

### A. Need for, and Objectives of, the Second Order on Reconsideration of the Part 1 Fifth Report and Order

20. In May 2003, the Commission released its *Part 1 Reconsideration Order*, which addressed petitions received in response to the *Part 1 Fifth Report and Order* regarding the amendment of general competitive bidding rules for all auctionable services. Most pertinent for purposes of this Second Order on Reconsideration of the *Part 1 Fifth Report and Order*, the Commission in the *Part 1 Reconsideration Order* adopted a limited exemption from its general attribution rules for rural telephone cooperatives that meet specific conditions.

21. Based on the petitions and comments received in response to the *Part 1 Fifth Report and Order*, the Commission in its *Part 1 Reconsideration Order* adopted a narrow exemption for the officers and directors of a rural telephone cooperative so that the gross revenues of the affiliates of a rural telephone cooperative's officers and directors need not be attributed to the applicant. Specifically, the exemption provided that the gross revenues of the affiliates of an applicant's officers and directors would not be attributed if either the applicant or a controlling interest, as the case may be, meets all of the following conditions: (1) The applicant (or the controlling interest) is validly organized as a cooperative pursuant to state law; (2) the applicant (or the controlling interest) is a "rural telephone cooperative" as defined by the Communications Act; and (3) the applicant (or the controlling interest) is eligible for tax-exempt status under the

Internal Revenue Code. However, the exemption would not apply if the gross revenues or other financial and management resources of the affiliates of the applicant's officers and directors (or the controlling interest's officers and directors) are available to the applicant.

22. The Commission received two petitions for reconsideration of the *Part 1 Reconsideration Order*. Petitioners request reconsideration of the tax-exempt criteria that the Commission uses to determine eligibility for the attribution rule exemption. Specifically, petitioners seek removal of the requirement that rural telephone cooperatives have tax-exempt status pursuant to section 501(c)(12) of the Internal Revenue Code. Petitioners suggest that this prerequisite be replaced by the requirement that the rural telephone cooperative applicant (or its controlling interest) adheres to the cooperative principles articulated by the U.S. Tax Court in *Puget Sound*. In the *Second Order on Reconsideration of the Part 1 Fifth Report and Order* the Commission resolves the petitions for reconsideration filed in response to the *Part 1 Reconsideration Order*.

23. Based upon the petitions for reconsideration, we will permit a rural telephone cooperative applicant (or its controlling interest) to demonstrate that the rural telephone cooperatives in question is eligible for tax-exempt status pursuant to section 501(c)(12) of the Internal Revenue Code or that it (or its controlling interest) adheres to the cooperative principles articulated in *Puget Sound*. The purpose of the exemption for rural telephone cooperatives, which is to identify the *bona fide* small businesses among rural telephone cooperatives and prevent sham small businesses rural telephone cooperatives from obtaining designated entity preferences. The Commission has determined that a requirement that rural telephone cooperative be section 501(c)(12) tax-exempt organizations may inadvertently exclude *bona fide* rural telephone cooperatives in some cases and may therefore undercut the purpose of the exemption.

24. Also, on its own motion, the Commission has decided that if the applicant is organized in a state that does not have rules or regulations specific to organizing an entity as a cooperative, the applicant may use its by-laws or other relevant documents to demonstrate that it is a cooperative. This new provision provides a means by which applicants can demonstrate organization as a *bona fide* cooperative even if organized in a state that does not designate specific conditions for cooperative organization.

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

25. 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 proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small organization," "small business" and "small governmental jurisdiction." The term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A 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 SBA.

26. The rule modifications and clarifications adopted in the *Part 1 Reconsideration Order* are of general applicability to all services and do not apply on a service-specific basis. Therefore, this SFRFA provides a general analysis of the impact of the revised part 1 rule on small businesses rather than a service by service analysis. Accordingly, the revised rules will apply to all entities that apply to participate in Commission auctions, including both small and large entities. The number of entities that may apply to participate in future Commission auctions is unknown. The number of small businesses that have participated in prior auctions has varied. In all of our auctions held to date, 1899 out of a total of 2432 qualified bidders have either claimed eligibility for small business bidding credits or self-reported status as a small business as that term has been defined under rules adopted by the Commission for specific services. (These figures do not generally include applicants for auctions of broadcast licenses where sized-based bidding preferences have not been available).

#### *C. Description of the Projected Reporting, Record-keeping, and Other Compliance Requirements*

27. All license applicants that are rural telephone cooperative seeking an exemption from the attribution rules that are part of the Commission's general competitive bidding rules found in part 1 of the Commission's rules are subject to the reporting and record-keeping requirements associated with qualifying for the exemption. These requirements apply in the same way to both large and small entities. Furthermore, applicants are required to apply for spectrum auctions by filing a short-form application (FCC Form 175)

prior to the auction. Applicants are also required to file a long-form application (FCC Form 601) at the conclusion of the auction. Specifically, entities seeking status as a small business must disclose on their FCC Form 175s, FCC Form 601s, and on their application for assignment or transfer of control (FCC Form 603), separately and in the aggregate, the gross revenues of the applicant (or licensee), its affiliates, its controlling interests and affiliates of the applicant's controlling interests for each of the previous three years.

28. As a result of the actions taken in the, rural telephone cooperative auction applicants, or those controlled by rural telephone cooperatives, seeking an exemption from the requirement that the gross revenues of entities controlled by an applicant's officers and directors are attributed to the applicant must establish eligibility for this exemption based upon the factors listed above, which have been modified, in part, by the *Second Order on Reconsideration of the Part 1 Fifth Report and Order*.

#### *D. Steps Taken to Minimize the 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 reaching its proposed 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 or reporting requirements under the rule for 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 small entities. The Commission has considered the economic impact on small entities of the following modifications and clarifications adopted in the *Second Order on Reconsideration of the Part 1 Fifth Report and Order* and has taken steps to minimize the burdens on small entities.

30. Application of attribution rule to rural telephone cooperatives. Based on the petitions and comments received in response to the *Second Order on Reconsideration of the Part 1 Fifth Report and Order* the Commission modifies a narrow exemption for the officers and directors of a rural telephone cooperative that it adopted so that the rural telephone cooperative does not have to be tax-exempt entity pursuant to section 501(c)(12) of the Internal Revenue Code in order to qualify for the exemption from the

attribution rules for the Commission part 1 competitive bidding rule. Specifically, the gross revenues of the affiliates of an applicant's officers and directors will not be attributed if either the applicant or a controlling interest, as the case may be, meets all of the following conditions: (1) The applicant (or the controlling interest) is validly organized as a cooperative pursuant to state law or, where there is no state law, the applicant must certify that it is organized according to commonly accepted cooperative principles as demonstrated by its by-laws, charter, or any other relevant document(s); (2) the applicant (or the controlling interest) is a "rural telephone company" as defined by the Communications Act; and (3) the applicant (or the controlling interest) demonstrates either that it is eligible for tax-exempt status under the Internal Revenue Code or that it adheres to the cooperative principles articulated in Puget Sound. However, the exemption will not apply if the gross revenues or other financial and management resources of the affiliates of the applicant's officers and directors (or the controlling interest's officers and directors) are available to the applicant.

31. The Commission believes that this action will increase the number of rural telephone cooperatives that are eligible for small business status (and the corresponding bidding credits). Such a result will enhance the ability of rural telephone cooperatives to participate in spectrum auctions. This, in turn, will promote the deployment of advanced telecommunications services in rural areas as Congress mandated in section 309(j).

#### E. Report to Congress

32. The Commission will send a copy of the *Second Order on Reconsideration of the Fifth Report and Order*, including this SFRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *Second Order on Reconsideration of the Fifth Report and Order*, including this SFRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Second Order on Reconsideration of the Third Report and Order* and SFRFA (or summaries thereof) will also be published in the **Federal Register**.

#### VI. Ordering Clauses

33. Accordingly, *it is ordered that*, pursuant to the authority granted in sections 4(i), 303(r) and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r) and 309(j), the petitions for reconsideration

of the *Part 1 Reconsideration Order* filed by a group comprising National Telecommunications Cooperative Association, the Rural Telecommunications Group, the law firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast, and the law firm of Kraskin, Lesse & Cosson, and a group comprising Cable & Communications Corporation, Northeast Nebraska Telephone Company, and Poka Lambro Telecommunications, Ltd. ARE, to the extent they are addressed herein, *granted*.

34. *It is further ordered* that pursuant to the authority granted in sections 4(i), 5(b), 5(c)(1), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 155(b), 155(c)(1), 303(r), and 309(j), the *Second Order on Reconsideration of the Part 1 Fifth Report and Order*, is hereby adopted and part 1, subpart Q of the Commission's rules is amended as set forth in Appendix A of the *Second Order on Reconsideration of the Part 1 Fifth Report and Order*, effective 60 days after publication in the **Federal Register**. The information collection contained in these rules will become effective 70 days after publication in the **Federal Register**, following Office of Management and Budget approval, unless a notice published in the **Federal Register** stating otherwise.

35. *It is further ordered* that the requests of Adams Telecom, Inc., Cable and Communications Corporation, Grand River Communications, Inc., Northeast Nebraska Telephone Company, Poka Lambro Telecommunications, Ltd., S.E.I. Data, Inc., and WCTA Wireless, Inc. for waiver of § 1.2110(c)(2)(ii)(F) as presented in their Applications to Participate in an FCC Auction (FCC Form 175) for Auction No. 49 are *granted*, conditioned upon the submission to the Commission of information demonstrating compliance with 47 CFR 1.2112(b)(2)(iv), as revised herein, and petitioners Cable and Communications Corporation, Northeast Nebraska Telephone Company, and Poka Lambro Telecommunications, Ltd. will also be permitted to qualify for this exemption by submitting to the Commission information demonstrating the applicant's compliance with 47 CFR 1.2112(b)(2)(vi), as revised herein.

36. *It is further ordered* that, pursuant to 47 U.S.C. 155(c) and 47 CFR 0.331, the Chief of the Wireless Telecommunications Bureau is *granted delegated authority* to prescribe and set forth procedures for the implementation of the provisions adopted herein.

#### List of Subjects in 47 CFR Part 1

Communications common carriers.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

#### Final Rules

■ Part 1 of Title 47 of the Code of Federal Regulations is amended to read as follows:

#### PART 1—PRACTICE AND PROCEDURE

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

**Authority:** 15 U.S.C. 79 *et seq.*; 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, and 303(r).

■ 2. Amend § 1.2110 by revising paragraph (b)(3)(iii)(A) to read as follows:

#### § 1.2110 Designated entities

\* \* \* \* \*

(b) \* \* \*

(3) \* \* \*

(iii) \* \* \*

(A)(1) An applicant will be exempt from § 1.2110(c)(2)(ii)(F) for the purpose of attribution in § 1.2110(b)(1), if the applicant or a controlling interest in the applicant, as the case may be, meets all of the following conditions:

(i) The applicant (or the controlling interest) is organized as a cooperative pursuant to state law;

(ii) The applicant (or the controlling interest) is a "rural telephone company" as defined by the Communications Act; and

(iii) The applicant (or the controlling interest) demonstrates either that it is eligible for tax-exempt status under the Internal Revenue Code or that it adheres to the cooperative principles articulated in *Puget Sound Plywood, Inc. v. Commissioner of Internal Revenue*, 44 T.C. 305 (1965).

(2) If the condition in paragraph (b)(3)(iii)(A)(1)(i) above cannot be met because the relevant jurisdiction has not enacted an organic statute that specifies requirements for organization as a cooperative, the applicant must show that it is validly organized and its articles of incorporation, by-laws, and/or other relevant organic documents provide that it operates pursuant to cooperative principles.

\* \* \* \* \*

3. Amend § 1.2112 by revising paragraph (b)(2)(vi) to read as follows:

#### § 1.2112 Ownership disclosure requirements for applications.

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(vi) List and summarize, if seeking the exemption for rural telephone cooperatives pursuant to § 1.2110, all documentation to establish eligibility pursuant to the factors listed under § 1.2110(b)(3)(iii)(A).

[FR Doc. 05-19519 Filed 9-29-05; 8:45 am]

BILLING CODE 6712-01-P

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## DEPARTMENT OF DEFENSE

### 48 CFR Parts 204, 212, 213, and 252

[DFARS Case 2003-D040]

#### Defense Federal Acquisition Regulation Supplement; Central Contractor Registration

**AGENCY:** Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD has adopted as final, with changes, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to remove policy on Central Contractor Registration (CCR) that duplicated policy found in the Federal Acquisition Regulation (FAR). The rule also addresses requirements for use of Commercial and Government Entity (CAGE) codes in DoD contracts.

**EFFECTIVE DATE:** September 30, 2005.

**FOR FURTHER INFORMATION CONTACT:** Ms. Deborah Tronic, Defense Acquisition Regulations Council, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0289; facsimile (703) 602-0350. Please cite DFARS Case 2003-D040.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

DoD published an interim rule at 68 FR 64557 on November 14, 2003, to remove DFARS requirements for contractors to register in the CCR database, since policy on this subject had been added to the FAR. The interim rule also addressed requirements for inclusion of CAGE codes on contracts and in the CCR database to accommodate DoD payment systems.

Three sources submitted comments on the interim DFARS rule. A discussion of the comments is provided below.

1. *Comment: Provision of DUNS numbers and CAGE codes.* One respondent stated that the interim rule appeared to require contracting officers to provide both a DUNS number and a CAGE code on contractual documents submitted to the payment office, whereas the previous DFARS coverage

required either a DUNS number or a CAGE code.

*DoD Response:* The final rule revises DFARS 204.1103(e) to clarify that contracting officers must include the contractor's CAGE code on contractual documents transmitted to the payment office, instead of the DUNS number.

2. *Comment: Timely assignment of CAGE codes.* One respondent recommended adding a statement to the rule to address the need for the Defense Logistics Information Service to assign CAGE codes in a timely manner, to avoid payment delays and payment of interest.

*DoD Response:* DoD agrees that timely assignment of CAGE codes is important. However, such a statement is considered unnecessary for inclusion in the DFARS.

3. *Comment: Contractor failure to provide correct or current CCR information.* One respondent provided an example of a contractor's failure to maintain current information in the CCR database.

*DoD Response:* Contractors are responsible for maintaining CCR information and are required to review and update their information annually to ensure it is current, accurate, and complete.

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

##### B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule adds no new requirements for contractors. The rule removes DFARS text on Central Contractor Registration that has become obsolete as a result of policy that was added to the FAR, and retains existing requirements for use of Commercial and Government Entity codes in DoD contracts.

##### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

### List of Subjects in 48 CFR Part 204, 212, 213, and 252

Government procurement.

**Michele P. Peterson,**

*Editor, Defense Acquisition Regulations System.*

Accordingly, the interim rule amending 48 CFR parts 204, 212, 213, and 252, which was published at 68 FR 64557 on November 14, 2003, is adopted as a final rule with the following change:

#### PART 204—ADMINISTRATIVE MATTERS

■ 1. The authority citation for 48 CFR part 204 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

■ 2. Section 204.1103 is revised to read as follows:

##### 204.1103 Procedures.

■ (e) On contractual documents transmitted to the payment office, provide the Commercial and Government Entity code, instead of the DUNS number or DUNS+4 number, in accordance with agency procedures.

[FR Doc. 05-19464 Filed 9-29-05; 8:45 am]

BILLING CODE 5001-08-P

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## DEPARTMENT OF DEFENSE

### 48 CFR Parts 209, 217, and 246

[DFARS Case 2003-D101]

#### Defense Federal Acquisition Regulation Supplement; Quality Control of Aviation Critical Safety Items and Related Services

**AGENCY:** Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD has adopted as final, with changes, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 802 of the National Defense Authorization Act for Fiscal Year 2004. Section 802 requires DoD to establish a quality control policy for the procurement of aviation critical safety items and the modification, repair, and overhaul of those items.

**EFFECTIVE DATE:** September 30, 2005.

**FOR FURTHER INFORMATION CONTACT:** Ms. Robin Schulze, Defense Acquisition Regulations Council, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0326; facsimile (703) 602-0350. Please cite DFARS Case 2003-D101.