

#### D. Public Comment and Proposed Action

As authorized in section 110(k)(3) of the Act, the EPA proposes to fully approve District Rule 26.13 into the Ventura County portion of the SIP because we believe it fulfills all relevant CAA requirements. We also propose to remove District Rule 26.10 from the SIP concurrent with our final approval of Rule 26.13, for the reasons discussed above. If we take final action to approve Rule 26.13, our final action will incorporate Rule 26.13 into the federally enforceable SIP and remove Rule 26.10 from the SIP.

We will accept comments from the public on this proposal until October 24, 2016.

#### III. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference VCAPCD Rule 26.13 as described in Table 1 of this notice. The EPA has made, and will continue to make, this document available electronically through [www.regulations.gov](http://www.regulations.gov) and in hard copy at U.S. Environmental Protection Agency Region IX (AIR-3), 75 Hawthorne Street, San Francisco, CA 94105-3901.

#### IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely proposes to approve State law as meeting federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);

- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- does not provide EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Greenhouse gases, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: September 14, 2016.

**Alexis Strauss,**

*Acting Regional Administrator, Region IX.*

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#### FEDERAL COMMUNICATIONS COMMISSION

##### 47 CFR Parts 1 and 90

[WP Docket No. 16-261; RM-11719; RM-11722; FCC 16-110]

#### Amendment To Improve Access to Private Land Mobile Radio Spectrum

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Federal Communications Commission (Commission or FCC) proposes and seeks comment on proposals to revise the Commission's rules governing private land mobile radio (PLMR) services, such as allowing 806-824/851-869 MHz (800 MHz) band incumbent licensees in a market a window in which to apply for Expansion Band and Guard Band frequencies before the frequencies are made available to applicants for new systems, extending conditional licensing authority to applicants for site-based licenses in the 800 MHz and 896-901/935-940 MHz (900 MHz) bands, making available for PLMR use frequencies that are on the band edge between the Industrial/Business (I/B) Pool and either General Mobile Radio Service (GMRS) or Broadcast Auxiliary Service (BAS) spectrum, making certain frequencies that are designated for central station alarm operations available for other PLMR uses, and accommodating certain railroad operations.

**DATES:** Submit comments on or before November 22, 2016 and reply comments on or before December 22, 2016.

**ADDRESSES:** You may submit comments, identified by WP Docket No. 16-261, by any of the following methods:

- *Federal Communications Commission's Web site:* <http://fjallfoss.fcc.gov/ecfs2/>.

Follow the instructions for submitting comments.

- *Mail:* Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone: 202-418-0530 or TTY: 202-418-0432.

#### FOR FURTHER INFORMATION CONTACT:

Melvin Spann, [Melvin.Spann@fcc.gov](mailto:Melvin.Spann@fcc.gov), Wireless Telecommunications Bureau, (202) 418-1333, or TTY (202) 418-7233.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM), adopted August 17, 2016, and released August 18, 2016. The full text of this document

is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW., Room CY-A257, Washington, DC 20554. The full text may also be downloaded at: [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2016/db0728/FCC-16-95A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2016/db0728/FCC-16-95A1.pdf). Alternative formats are available to persons with disabilities by sending an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or by calling the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

## I. Introduction

### A. Proposal To Revise Part 90 and Make Related Changes

1. In this NPRM, we propose to amend part 90 of the Commission's rules to expand access to private land mobile radio (PLMR) spectrum. Specifically, we grant in part petitions for rulemaking filed by the Land Mobile Communications Council (LMCC) proposing to amend our Rules to allow 806-824/851-869 MHz (800 MHz) band incumbent licensees in a market a six-month period in which to apply for Expansion Band and Guard Band frequencies before the frequencies are made available to applicants for new systems; and to amend section 90.159 of our rules to extend conditional licensing authority to applicants for site-based licenses in the 800 MHz and 896-901/935-940 MHz (900 MHz) bands. In addition, on our own motion but suggested by recent waiver requests, we propose to amend section 90.35 of our rules to make available for PLMR use frequencies that are on the band edge between the Industrial/Business (I/B) Pool and either General Mobile Radio Service (GMRS) or Broadcast Auxiliary Service (BAS) spectrum, to make certain frequencies that are designated for central station alarm operations available for other PLMR uses, and to make certain updates and corrections; and to amend sections 90.219(d)(3) and 90.261(f) of our rules to accommodate certain railroad operations.

2. Spectrum in the 450-470 MHz band is designated for use by various services, including part 74 BAS, part 90 PLMR, and part 95 GMRS. The I/B Pool frequency table in section 90.35(b)(3) of the Commission's rules sets forth the assignable frequencies in those segments of the band that are available to I/B eligibles. Frequencies at or near the band edges between part 90 spectrum and part 74 or 95 spectrum were not designated for use by any of these services because they could not be

utilized without overlapping spectrum designated for the other service.

3. When these frequency designations were adopted, PLMR stations operated in wideband (25 kilohertz) mode. Since the beginning of 2013, however, the Commission has required narrowbanding (maximum 12.5 kilohertz bandwidth or equivalent efficiency) by PLMR licensees in the 150-174 MHz and 421-470 MHz bands. With the implementation of narrowbanding and the availability of very-narrowband 4-kilohertz equipment, some frequencies near the band edges now can be used without overlapping spectrum designated for other services. In 2014, the Mobility Division (Division) of the Wireless Telecommunications Bureau (WTB) granted waivers to permit PLMR licensees to operate with a 4-kilohertz emission designator on frequency pairs 451/456.00625 MHz and 451/456.0125 MHz, which are between BAS spectrum and PLMR spectrum but not designated for use on a primary basis by any service; and on frequency pairs 462/467.5375 MHz and 462/467.7375 MHz, which are between PLMR spectrum and GMRS spectrum but not designated for use by any service. The Division concluded that waivers were appropriate because very-narrowband PLMR stations can operate on these frequencies without overlapping BAS or GMRS channels, so the public interest would be served by facilitating access to spectrum in congested areas.

4. We propose to amend the I/B Pool frequency table to add frequency pairs 451/456.00625 MHz and 451/456.0125 MHz, with the limitation that the authorized bandwidth not exceed 6 kilohertz (the widest bandwidth that will avoid overlap between the frequency pairs). We tentatively conclude that it would be in the public interest to make additional frequencies available to PLMR applicants that can be utilized without overlapping the occupied bandwidth of currently assignable frequencies and without causing harmful interference. We seek comment on this proposal. We note that frequency pairs 451/456.00625 MHz and 451/456.0125 MHz are lower-adjacent to a set of frequency pairs for which the concurrence of the Power Coordinator is required if the proposed interference contour overlaps an existing service contour. We therefore also seek comment on whether to require such concurrence for either of these frequency pairs. We ask commenters to address whether any operational restrictions should be imposed to preclude interference to other users, such as limits on antenna height or

power. We also seek comment from operators that have received waivers and any operators with adjacent frequency assignments in the same geographic area about whether they have experienced any interference issues, and if so, how and if they have been resolved.

5. The Division also granted waivers to permit operation on frequency pair 451/456.009375 MHz with an 8-kilohertz emission designator in locations where no applicant had requested frequency pairs 451/456.00625 MHz and 451/456.0125 MHz. The purpose of our proposed rule change is to permit the most efficient use of scarce spectrum. We therefore believe that this purpose is better served by adding two 6-kilohertz channels in an area than one 8-kilohertz channel, in order to accommodate more users and encourage the deployment of more efficient equipment. Therefore, we tentatively conclude that we should not add frequency pair 451/456.009375 MHz to the I/B Pool frequency table, though stations authorized on the channel pursuant to waiver would be grandfathered. We seek comment on this tentative conclusion, and on whether any other interstitial frequencies should be added to the table.

6. In the same Order, the Division denied requests for waivers to operate on frequency pair 451/456.0000 with a 4-kilohertz emission designator. It noted that the proposed operations would overlap the 450-451 MHz and 455-456 MHz bands, in which BAS low power auxiliary stations are authorized to operate. The Division concluded that assigning channels for PLMR operations that overlap designated BAS spectrum would not serve the public interest. We seek comment on whether I/B use of frequency pair 451/456.0000 would in fact cause harmful interference to BAS operations. In particular, commenters should address whether BAS low power auxiliary stations operate over the entire 450-451 MHz and 455-456 MHz bands, and whether PLMR operations that overlap two kilohertz of these one megahertz bands would cause harmful interference to BAS operations.

7. We seek comment on the costs and benefits of each of the above-described proposals or possible rule changes regarding the expansion of PLMR spectrum use to frequencies located between BAS spectrum and PLMR spectrum.

8. Finally, we propose to amend the I/B Pool frequency table to add frequency pairs 462/467.5375 MHz and 462/467.7375 MHz, with the limitation that the authorized bandwidth not

exceed 4 kilohertz (the widest bandwidth that will avoid overlapping GMRS frequencies).<sup>1</sup> When the Division granted a waiver to permit operation on frequency pair 462/467.7375 MHz, it noted that adjacent frequency pair 462/467.750 MHz is exempt from narrowbanding and still may be assigned with a channel bandwidth of 25 kilohertz, which would be overlapped by 4-kilohertz operation on frequency pair 462/467.7375 MHz. The Division nevertheless granted the waiver because there was no incumbent licensee on frequency pair 462/467.750 MHz in any of the particular areas where a waiver was requested that had an occupied bandwidth greater than 20 kilohertz, so there was no overlap of occupied bandwidth with the proposed 4-kilohertz emission. We seek comment on our proposal—including its costs and benefits—and on whether we should instead refrain from adding frequency pair 462/467.7375 MHz in order to preserve the availability of adjacent frequency pair 462/467.750 MHz for wideband operations, but grandfather stations authorized on the channel pursuant to waiver. Commenters are asked to discuss whether wideband use of frequency pair 462/467.750 MHz is common, and whether we should expect any growth of wideband operations on the channel.

9. The alarm industry uses a number of methods to maintain communications paths used to monitor alarm systems at customer premises from central station alarm monitoring centers. Certain frequencies are designated for the use of persons rendering a central station commercial protection service. Specifically, four 12.5-kilohertz frequency pairs and the upper-adjacent 6.25-kilohertz interstitial frequency pairs are designated for central station protection service use nationwide (nationwide frequencies), and six 12.5-kilohertz frequency pairs and the upper-adjacent 6.25-kilohertz interstitial frequency pairs are set aside for central station protection service in the 88 urbanized areas with a population over 200,000 in the 1960 Census (urban frequencies).

10. A recent review of the Commission's Universal Licensing System suggests that these frequencies

<sup>1</sup> GMRS frequencies 462.5500 MHz, 462.7250 MHz, 467.5500 MHz, and 467.7250 MHz have an authorized bandwidth of twenty kilohertz. The Commission has proposed to migrate GMRS to narrowband technology. We nonetheless conclude that it would be premature to permit PLMR operation on frequency pairs 462/467.5375 MHz and 462/467.7375 MHz with an authorized bandwidth exceeding four kilohertz prior to a determination of what the GMRS narrowbanding timetable would be.

are currently underutilized. In particular, 39 of the urbanized areas where the additional frequencies are set aside for central station protection service have no central station protection service licensees,<sup>2</sup> and no more than half of the frequencies are assigned in any of the other 49 areas.<sup>3</sup> The need of central stations for these frequencies appears to have diminished since this spectrum was set aside for their use over 40 years ago, which may be attributable to advancements in services and technologies that can be used to complete the communications path between the location of the alarm and the alarm services' central office, such as cellular telephone, satellite communication services, and the Internet. In recent years, entities that do not provide central station commercial protection service have expressed interest in utilizing these frequencies for other purposes.

11. As an initial matter, we propose to modify section 95.35(c)(63) to remove the use limitation in the urbanized areas where the urban frequencies are not in use. We tentatively conclude that it would be in the public interest to make these frequencies available for other PLMR operations in those areas. We seek comment on this proposal, including its costs and benefits.

12. In addition, we seek comment on other ways to expand PLMR users' access to frequencies that are designated, but no longer needed, for central station commercial protection services, including by making available channels in urbanized areas where some

<sup>2</sup> Akron, OH; Albuquerque, NM; Baltimore, MD; Canton, OH; Chicago, IL/IN; Cleveland, OH; Columbus, OH; Dallas, TX; Des Moines, IA; El Paso, TX; Ft. Lauderdale–Hollywood, FL; Ft. Worth, TX; Harrisburg, PA; Honolulu, HI; Houston, TX; Indianapolis, IN; Jacksonville, FL; Memphis, TN; Miami, FL; Oklahoma City, OK; Omaha, NE; Orlando, FL; Pittsburgh, PA; Salt Lake City, UT; San Antonio, TX; Scranton, PA; Seattle, WA; Spokane, WA; Springfield, MA; St. Louis, MO/IL; St. Petersburg, FL; Syracuse, NY; Tacoma, WA; Tampa, FL; Tulsa, OK; Washington, DC; Wichita, KS; Wilkes-Barre, PA; and Youngstown–Warren, OH/PA.

<sup>3</sup> Albany–Troy–Schenectady, NY; Allentown–Bethlehem, PA; Atlanta, GA; Birmingham, AL; Boston, MA; Bridgeport, CT; Buffalo, NY; Charlotte, NC; Chattanooga, TN; Cincinnati, OH/KY; Davenport–Rock Island–Moline, IA/IL; Dayton, OH; Denver, CO; Detroit, MI; Flint, MI; Fresno, CA; Grand Rapids, MI; Hartford, CT; Kansas City MO/KS; Los Angeles, CA; Louisville, KY; Milwaukee, WI; Minneapolis–St. Paul, MN; Mobile, AL; Nashville, TN; New Haven, CT; New Orleans, LA; New York, NY/NJ; Newport News–Hampton, VA; Norfolk–Portsmouth, VA; Oakland, CA; Philadelphia, PA/NJ; Phoenix, AZ; Portland, OR; Providence–Pawtucket, RI/MA; Richmond, VA; Rochester, NY; Sacramento, CA; San Bernardino, CA; San Francisco, CA; San Jose, CA; Shreveport, LA; South Bend, IN; Springfield, MA; Toledo, OH; Trenton, NJ/PA; Tucson, AZ; Wilmington, DE; and Worcester, MA.

of the urban frequencies are in use. Commenters should address related costs and benefits associated with such proposals. Commenters also should address the current and expected future need for central station commercial protection service channels in the 460–470 MHz band. For example, in the areas where some frequencies are in use, how many urban frequencies should continue to be set aside? Are the nationwide frequencies sufficient to meet demand, without any urban frequencies? Can central station commercial protection service and other PLMR operations coexist? Commenters advocating eliminating the use restriction on any frequency in any area where it currently is in use should discuss how to protect incumbent central station commercial protection service operations from harmful interference.

13. We also take this opportunity to propose to correct certain errors in section 90.35. Specifically, we propose to restore to the list of airports at or near which certain frequencies are reserved for commercial air transportation services two airports (Kahului and Ke-Ahole) that inadvertently were deleted, and correct the coordinates for one airport that were listed incorrectly (Boeing/King County International), the last time the list was updated. We also seek comment on whether any airports should be added to or removed from the list, which has not been updated since 2002. In addition, we propose to correct the entries in the I/B Pool table for frequencies from 153.0425 MHz to 153.4025 MHz for which the notation indicating that the concurrence of the Petroleum Coordinator is required was inadvertently deleted when certain narrowbanding rules were adopted. We seek comment on these proposals.

14. Pursuant to section 90.159(b), most applicants proposing to operate a new PLMR station, or to modify an existing PLMR station, on frequencies below 470 MHz that require frequency coordination are permitted to operate the proposed station during the pendency of the application for a period of up to 180 days, beginning 10 days after the application is submitted to the Commission. This conditional authority is not available for applicants in the PLMR frequency bands above 470 MHz, where spectrum is available on an exclusive basis. When the Commission enacted the rule granting conditional authority below 470 MHz, it stated that it was being conservative by implementing conditional authority only in shared bands, and could consider expanding the concept in the

future if experience demonstrated that such action is appropriate.

15. LMCC argues in its Conditional Authority Petition that expansion of conditional authority to 470–512 MHz (T-Band), 800 MHz, and 900 MHz PLMR frequencies is now appropriate. It asserts that, over time, frequency assignments below 470 MHz have become more technically complex, whereas the rules governing the 800 and 900 MHz bands have become less technically complex. Thus, “in the opinion of LMCC, the rules governing frequency assignments in the bands below 470 MHz no longer provide a justification for distinguishing between below- and above-470 MHz for purposes of authorizing conditional licensing.” It also states that recent experience with conditional licensing authority in the PLMR bands above 470 MHz pursuant to a temporary waiver supports the proposed rule change.

16. Commenters support extending the conditional licensing rules to applications filed with WTB and the Public Safety and Homeland Security Bureau (the Bureaus) for facilities above 470 MHz. We tentatively conclude that LMCC and the commenters are correct in asserting that expanding conditional authority will enable more applicants to meet pressing communications requirements without needing to seek special temporary authority, and will provide greater flexibility and earlier deployment of spectrum without compromising quality of service. Accordingly, we propose to amend section 90.159 to expand conditional authority to 800 MHz and 900 MHz I/B and Public Safety Pool frequencies, as well as section 1.931 of our rules to provide an appropriate cross-reference to such a rule amendment. We request comment on this tentative conclusion and our proposal, including its costs and benefits. In light of the Spectrum Act and the current T-Band freeze, we do not at this time propose to extend conditional licensing to T-Band frequencies.

17. While LMCC proposes to extend conditional authority to T-Band, 800 MHz, and 900 MHz I/B Pool and Public Safety Pool frequencies, neither it nor any commenter discusses whether conditional authority should apply to applicants for 769–775/799–805 MHz (700 MHz) Public Safety narrowband frequencies. We therefore seek comment on whether conditional authority should be expanded to the 700 MHz Public Safety narrowband spectrum, and what the associated costs and benefits of such an approach would be.

18. We also seek comment on how conditional licensing could affect public

safety licensees operating in these bands and ask commenters to address, without limitation, the specific issues identified below, as well as information on related costs and benefits. Should applicants be required to obtain Regional Planning Committee concurrence for proposed facilities in the 800 MHz National Public Safety Planning Advisory Committee (NPSAPAC) band and in the 700 MHz band prior to conditional licensing? Does the mission-critical nature of public safety communications argue against allowing conditional licensing of public safety facilities that potentially would interfere with existing public safety communications systems?

19. Although Mobile Relay Associates (MRA) does not oppose extending conditional licensing to applications filed with the Bureaus for facilities above 470 MHz, MRA asserts that all Part 90 conditional licensing (both below and above 470 MHz) should be limited to unopposed applications and should be permitted only on a secondary, non-interfering basis. It states that it has encountered interference from stations operating pursuant to conditional authorization, which it argues reveals a flaw in the conditional licensing system. MRA, however, acknowledges that conditional authority functions properly “[i]n the vast majority of cases.” While MRA observes that part 22 conditional authority has similar limitations to those it proposes, we note that part 22 applications, unlike part 90 applications eligible for conditional authority, do not require frequency coordination prior to being filed with the Commission. To the extent that part 90 conditional authority functions properly without the limitations suggested by MRA, we do not believe that the possibility of discrete incidents of interference warrants imposing those limitations upon all applicants.

20. MRA also argues that a conditionally authorized applicant should be required to discontinue operation upon the filing of a petition to deny or informal objection supported by a declaration under penalty of perjury. We note that section 90.159(d) provides that conditional authorization does not prejudice any action the Commission may take on the subject application. Thus, the Commission has discretion to modify or cancel such conditional authority at any time without a right to a hearing; and the applicant assumes all risks associated with operation under conditional authority, the termination or modification of conditional authority, or the subsequent dismissal or denial of its application.

21. Nonetheless, we seek comment on MRA’s proposal that all part 90 conditional licensing be granted on a secondary basis and limited to applications that are unopposed, and that a conditionally authorized applicant must discontinue operation upon the filing of a petition to deny or informal objection supported by a declaration under penalty of perjury. Commenters should discuss whether, regardless of whether any new limitations on conditional authority are imposed, section 90.159(d) should be amended to better address MRA’s concerns, and the costs and benefits of such action. For example, we seek comment on MRA’s request that the Commission amend the rule to reiterate that conditional licensing is only for six months and that if the application remains pending at the end of six months, the pending applicant must then discontinue operation and await the processing of its application.

22. Fixed use of frequencies in the 450–470 MHz band generally is permitted on a secondary basis to land mobile operations, but section 90.261(f) excludes certain frequencies in order to reserve them for other specialized uses. Among the excluded frequencies are railroad frequencies at 452/457.925 MHz to 452/457.96875 MHz.

23. A signal booster is a device at a fixed location that automatically receives, amplifies, and retransmits on a one-way or two-way basis the signals received from base, fixed, mobile, and portable stations, with no change in frequency or authorized bandwidth. In order to reduce the potential for interference to other users, section 90.219(f)(3) limits the radiated power of each retransmitted channel to five watts effective radiated power (ERP).

24. In 2014, the Division granted in part a request of the Association of American Railroads (AAR) for waiver of sections 90.219(d)(3) and 90.261(f) concerning use of signal boosters to maintain communications between the front and rear of trains. Specifically, the Division permitted use of fixed location trackside signal boosters with up to 30 watts ERP on frequencies 452/457.90625 to 452/457.9625 MHz in areas where coverage is unsatisfactory due to distance or intervening terrain barriers. The Division concluded that the purpose of the fixed use restriction in the subject rules would not be served by applying them strictly to trackside signal boosters, because the rules operate to protect railroad operations, and grant of the waiver would further support railroad operations. In order to address concerns about interference to non-railroad frequencies, the Division

excluded the channel pairs at the edge of frequencies coordinated by AAR (452/457.9000 MHz and 452/457.96875 MHz), and required the use of single-channel Class A signal boosters.

25. We propose to amend sections 90.219(d)(3) and 90.261(f) to codify the terms of the waiver. We propose to authorize railroad licensees to use single-channel Class A signal boosters with up to 30 watts ERP on frequencies 452/457.90625 to 452/457.9625 MHz in areas where communications between the front and rear of trains is unsatisfactory due to distance or intervening terrain barriers. We seek comment on this proposal. We also ask commenters to address whether we should permit such operations on the outermost railroad channels (452/457.9000 MHz and 452/457.96875 MHz) and whether it is necessary to require the use of single-channel Class A signal boosters. We also seek comment on the costs and benefits of these proposals.

26. As part of the rebanding of the 800 MHz band to resolve interference between commercial and public safety systems, the Commission created the Expansion (815–816/860–861 MHz) and Guard (816–817/861–862 MHz) Bands in order to provide spectral separation between commercial licensees operating Enhanced Specialized Mobile Radio systems above 817/862 MHz and public safety licensees operating below 815/860 MHz. Expansion Band (EB) spectrum is designated mostly for Specialized Mobile Radio (SMR) stations, with the remainder for Business/Industrial/Land Transportation (B/ILT) Pool eligible. EB users also include Public Safety licensees that chose not to relocate out of the band. Guard Band (GB) spectrum is in the General Pool, and thus is available for Public Safety, B/ILT, and SMR operations. EB/GB channels become available for licensing when the Bureaus announce that the required level of clearing has been achieved in that NPSPAC region.

27. The LMCC EB/GB Petition proposes that the Commission modify its rules to provide a 6-month window for incumbent 800 MHz licensees in a market to acquire EB/GB channels to expand existing systems before accepting applications from new entrants. LMCC states that expansion spectrum for incumbent 800 MHz systems in urban areas is urgently needed but sparsely available. It argues that a limited opportunity for expansion of incumbent systems would serve the public interest because those licensees had to undergo the disruptive rebanding process without deriving any economic benefit, and use of the EB/GB

frequencies to expand the capacity of existing systems would promote spectral efficiency.

28. Commenters are split regarding this LMCC proposal. PLMR frequency coordinators support it. They argue that affording incumbents temporary exclusivity will allow them to address existing needs that have been growing during the rebanding process. They also argue that such priority will encourage existing licensees to upgrade to more efficient systems because the cost will be spread over a larger number of channels. Most commenters—generally prospective applicants for SMR channels in regions where EB/GB spectrum has not yet been made available—oppose the proposal. They argue that giving priority to incumbent operators would effectively bar new entrants, and particularly small businesses, in areas of high spectrum demand. They also dispute LMCC's assumption that new entrants are less likely than incumbents to place spectrum into operation efficiently and expeditiously.

29. We propose to adopt the LMCC proposal in part. Specifically, we propose to provide a window for incumbent 800 MHz licensees in the market to acquire or expand coverage and improve their quality of service on EB B/ILT Pool channels before accepting applications from new entrants. We also propose to provide this window to Public Safety licensees that elected to remain in the Expansion Band so that they may expand coverage on their existing EB channels. Incumbent 800 MHz licensees already have deployed facilities and demonstrated a commitment to utilizing the band in a given market and are unlikely to acquire spectrum for other than operational purposes and can be expected to put additional channels into service promptly to meet existing operational needs. Moreover, although some commenters point out that a filing window for incumbent 800 MHz licensees might lessen the spectrum available to new entrants in spectrum-constrained markets, a new entrant's ability to establish a new system in a constrained market could be limited. We also note that the membership of LMCC, the proponent of this rule change, includes all of the part 90 frequency coordinators. We tentatively agree with them that an incumbent preference would be the most effective way to distribute these EB channels among present and future B/ILT users.

30. LMCC suggests 6 months as a reasonable window. We seek comment on whether, given the pressing need and likely prompt deployment, we should

provide a shorter window, such as 3 months. We also ask commenters to address whether any limits on this priority should be imposed in order to preserve the availability of channels for new licensees. In addition, we ask commenters to address the costs and benefits of the above-described approach for facilitating 800 MHz B/ILT and Public Safety licensees' opportunities to acquire channels or expand coverage.

31. Although we have tentatively concluded that a window is appropriate for EB B/ILT Pool channels, we tentatively conclude that the LMCC proposal for incumbent priority is not appropriate with respect to EB SMR channels. Unlike B/ILT licensees, SMR licensees compete for customers in the commercial wireless marketplace. Therefore, both incumbents and new licensees have similar economic motives to utilize the spectrum in a timely manner, and new entrants may have an even greater interest in deploying new or innovative services. On this basis, we do not believe that incumbents should be given priority over new entrants for these channels. We seek comment on this tentative conclusion. Commenters should explain whether incumbent priority is appropriate under these circumstances, and the related costs and benefits.

32. We also seek comment on whether we should provide a window for 800 MHz licensees in a market to acquire, or expand coverage on, GB channels, as well as the related costs and benefits. As noted above, GB spectrum is in the General Pool, in which eligible users include non-cellular SMR and Public Safety entities as well as B/ILT eligibles. As noted above, it is not at all clear that preferring incumbent 800 MHz SMR licensees over potential competitors would further the public interest. Commenters should address whether these concerns outweigh the benefits noted above of affording priority to incumbent B/ILT licensees, and whether those benefits apply equally to incumbent Public Safety licensees.

33. Finally, we seek comment on how we should implement a decision to provide a period of incumbent exclusivity for any EB/GB channels. The Commission established the procedure for making EB/GB channels available for licensing in the 800 MHz rebanding proceeding, but never codified it. We seek comment on whether the procedure should be codified (as revised in this proceeding to provide priority for incumbents), or whether we should, without any rule change, simply announce a modification to the procedure that the Commission set forth

in the 800 MHz proceeding. Commenters may also suggest other means of implementing a period of incumbent exclusivity. Those supporting codification should provide suggested rule language.

34. The proposed rule changes discussed in this Notice of Proposed Rulemaking are intended to expand access to PLMR spectrum. We welcome the industry's assistance in eliminating unnecessary impediments to the most efficient use of this scarce resource.

## II. Procedural Matters

### A. *Ex Parte* Presentations

35. The proceeding this *NPRM* initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. Persons making presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule section 1.1206(b). In proceedings governed by rule section 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system ("ECFS") available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

### B. Filing Requirements

36. This document contains proposed new and modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

37. As required by the Regulatory Flexibility Act of 1980 (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) for this Notice of Proposed Rulemaking, of the possible significant economic impact on small entities of the policies and rules addressed in this document.

38. Interested parties may find authority for the actions proposed in this *NPRM* in sections 4(i), 4(j), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r), as well as section 1.407 of the Commission's rules, 47 CFR 1.407.

### III. Initial Regulatory Flexibility Certification

39. 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. Below, we further describe and estimate the number of small entity licensees and regulatees that may be affected by the rules changes we propose in this *FNPRM*.

40. Private land mobile radio (PLMR) systems serve an essential role in a vast range of industrial, business, land transportation, and public safety activities. Because of the vast array of PLMR users, the Commission has not developed a small business size standard specifically applicable to PLMR users. The SBA rules, however, contain a definition for Wireless Telecommunications Carriers (except Satellite) which encompasses business entities engaged in radiotelephone communications employing no more than 1,500 persons. According to the Commission's records, there are a total of 3,374 licenses in the frequencies range 173.225 MHz to 173.375 MHz, which is the range affected by this *NPRM*. Despite the lack of specific

information, however, the Commission believes that a substantial number of PLMR licensees may be small entities.

41. Neither the Commission nor the SBA has developed a small business size standard specifically applicable to spectrum frequency coordinators. There are nine frequency coordinators certified by the Commission to coordinate frequencies allocated for public safety use. The Commission has not developed a small business size standard specifically applicable to frequency coordinators. The SBA rules, however, contain a definition for Wireless Telecommunications Carriers (except Satellite) which encompasses business entities engaged in radiotelephone communications employing no more than 1,500 persons. Under this category and size standard, we estimate that a majority of frequency coordinators can be considered small.

42. The Census Bureau defines the category of Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing as follows: "This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: Transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment." The SBA has developed a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, which is: All such firms having 750 or fewer employees. According to Census Bureau data for 2011, there were a total of 809 establishments in this category that operated for part or all of the entire year. According to Census bureau data for 2011, there were a total of 939 firms in this category that operated for the entire year. Of this total, 784 had less than 500 employees and 12 had 1000 or more employees. Thus, under that size standard, the majority of firms can be considered small.

43. The proposed rule changes discussed in this Notice of Proposed Rulemaking are intended to expand access to PLMR spectrum, using existing licensing mechanisms. Because this simply gives licensees new options for spectrum to use, but does not impose a new burden, licensees, frequency coordinators, and manufacturers should not incur new costs.

44. We believe that the rule changes discussed in this Notice of Proposed

Rulemaking will promote flexibility and more efficient use of the spectrum, reduce administrative burdens on both the Commission and licensees, and allow licensees to better meet their communications needs.

**List of Subjects**

*47 CFR Part 1*

Administrative practice and procedure.

*47 CFR Part 90*

Radio.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

**Proposed Rules**

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 1 and 90 as follows:

**PART 1—PRACTICE AND PROCEDURE**

- 1. The authority citation for Part 1 continues to read as follows:

**Authority:** 47 U.S.C. 151, 154(i), 155, 157, 225, 303(r), 309, 1403, 1404, 1451, and 1452.

- 2. Section 1.931 is amended by revising paragraph (b)(11) to read as follows:

**§ 1.931 Application for special temporary authority.**

\* \* \* \* \*

(b) \* \* \*

(11) An applicant for an itinerant station license, an applicant for a new private land mobile radio station license in the frequency bands below 470 MHz or in the 806–824/851–866 MHz band, the 896–901/935–940 MHz band, or the one-way paging 929–930 MHz band (other than a commercial radio service applicant or licensee on these bands) or an applicant seeking to modify or acquire through assignment or transfer an existing station below 470 MHz or in the 806–824/851–866 MHz band, the 896–901/935–940 MHz band, or the one-way paging 929–930 MHz band may operate the proposed station during the pendency of its application for a period of up to 180 days under a conditional permit. Conditional operations may commence upon the filing of a properly completed application that complies with § 90.127 if the application, when frequency coordination is required, is accompanied by evidence of frequency coordination in accordance with § 90.175 of this chapter. Operation under such a permit is evidenced by the properly executed Form 601 with certifications that satisfy the requirements of § 90.159(b).

\* \* \* \* \*

**PART 90—PRIVATE LAND MOBILE RADIO SERVICES**

- 3. The authority citation for Part 90 continues to read as follows:

**Authority:** Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), and 332(c)(7), and Title VI of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112–96, 126 Stat. 156.

- 4. Section 90.35 is amended by:
  - a. Amending paragraph (b)(3) by revising entries for 153.0425, 153.0575, 153.0725, 153.0875, 153.1025, 153.1175, 153.1325, 153.1475, 153.1625, 153.1775, 153.1925, 153.2075, 153.2225, 153.2375, 153.2525, 153.2675, 153.2825, 153.2975, 153.3125, 153.3275, 153.3425, 153.3575, 153.3725, 153.3875, and 153.4025, and adding entries for 451.00625, 451.0125, 456.00625, 456.0125, 462.5375, 462.7375, 467.5375, and 467.7375,
  - b. Revising paragraph (c)(2),
  - c. Amending paragraph (c)(61)(iv) by adding entries for Kahului, HI, and Kailua-Kona, HI, and revising the entry for Boeing/King County Int'l (BFI), and
  - d. Revising paragraph (c)(63).

The revisions and additions read as follows:

**§ 90.35 Industrial/Business Pool.**

\* \* \* \* \*

(b) \* \* \*

(3) *Frequencies.*

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations	Coordinator
153.0425	.....do	30	IP
153.0575	.....do	4, 7, 30	IP
153.0725	.....do	30	IP
153.0875	.....do	4, 7, 30	IP
153.1025	.....do	30, 80	IP
153.1175	.....do	4, 7, 30	IP
153.1325	.....do	30	IP
153.1475	.....do	4, 7, 30	IP
153.1625	.....do	30	IP
153.1775	.....do	4, 7, 30	IP

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
* * * * *	* * * * *	* * * * *	* * * * *
153.1925 .....	.....do .....	30	IP
* * * * *	* * * * *	* * * * *	* * * * *
153.2075 .....	.....do .....	4, 7, 30	IP
* * * * *	* * * * *	* * * * *	* * * * *
153.2225 .....	.....do .....	30	IP
* * * * *	* * * * *	* * * * *	* * * * *
153.2375 .....	.....do .....	4, 7, 30	IP
* * * * *	* * * * *	* * * * *	* * * * *
153.2525 .....	.....do .....	30	IP
* * * * *	* * * * *	* * * * *	* * * * *
153.2675 .....	.....do .....	4, 7, 30	IP
* * * * *	* * * * *	* * * * *	* * * * *
153.2825 .....	.....do .....	30	IP
* * * * *	* * * * *	* * * * *	* * * * *
153.2975 .....	.....do .....	4, 7, 30	IP
* * * * *	* * * * *	* * * * *	* * * * *
153.3125 .....	.....do .....	30	IP
* * * * *	* * * * *	* * * * *	* * * * *
153.3275 .....	.....do .....	4, 7, 30	IP
* * * * *	* * * * *	* * * * *	* * * * *
153.3425 .....	.....do .....	30	IP
* * * * *	* * * * *	* * * * *	* * * * *
153.3575 .....	.....do .....	4, 7, 30	IP
* * * * *	* * * * *	* * * * *	* * * * *
153.3725 .....	.....do .....	30	IP
* * * * *	* * * * *	* * * * *	* * * * *
153.3875 .....	.....do .....	30	IP
* * * * *	* * * * *	* * * * *	* * * * *
153.4025 .....	.....do .....	30	IP
* * * * *	* * * * *	* * * * *	* * * * *
451.00625 .....	Base or mobile	33	.....
451.0125 .....	.....do .....	33	.....
* * * * *	* * * * *	* * * * *	* * * * *
456.00625 .....	.....do .....	33	.....
456.0125 .....	.....do .....	33	.....
* * * * *	* * * * *	* * * * *	* * * * *
462.5375 .....	.....do .....	2	.....
462.7375 .....	.....do .....	2	.....
* * * * *	* * * * *	* * * * *	* * * * *
467.5375 .....	.....do .....	2	.....
467.7375 .....	.....do .....	2	.....
* * * * *	* * * * *	* * * * *	* * * * *

(c) \* \* \*

(2) This frequency will be assigned with an authorized bandwidth not to exceed 4 kHz.

(61) \* \* \*

(iv) \* \* \*

\* \* \* \* \*

City and airport	Reference coordinates	
	N. Latitude	W. Longitude
Kahului, HI: Kahului (OGG) .....	20°53'55.4"	156°25'48.9"
Kailua-Kona, HI: Ke-Ahole (KOA) .....	19°43'57.3"	156°24'56.0"
Seattle, WA: Boeing/King County Int'l (BFI) .....	47°31'48.4"	122°18'07.4"

\* \* \* \* \*

(63) Within the boundaries of the urbanized areas listed below, this frequency may be used only by persons rendering a central station commercial protection service within the service area of the radio station utilizing the frequency and may be used only for communications pertaining to safety of life and property, and for maintenance or testing of the protection facilities. Central station commercial protection service is defined as an electrical protection and supervisory service rendered to the public from and by a central station accepted and certified by one or more of the recognized rating agencies, or the Underwriters Laboratories' (UL), or Factory Mutual System. Other stations in the Industrial/Business Pool may be licensed on this frequency only when all base, mobile relay and control stations are located at least 120 km (75 miles) from the city center or centers of the specified urban areas. With respect to combination urbanized areas containing more than one city, 120 km (75 mile) separation shall be maintained from each city center which is included in the urbanized area. The locations of centers of cities are determined from appendix, page 226, of the U.S. Commerce publication "Air Line Distance Between Cities in the United States." This limitation applies to the following urbanized areas: Albany-Troy-Schenectady, NY; Allentown-Bethlehem, PA; Atlanta, GA; Birmingham, AL; Boston, MA; Bridgeport, CT; Buffalo, NY; Charlotte, NC; Chattanooga, TN; Cincinnati, OH/KY; Davenport-Rock Island-Moline, IA/IL; Dayton, OH; Denver, CO; Detroit, MI; Flint, MI; Fresno, CA; Grand Rapids, MI; Hartford, CT; Kansas City MO/KS; Los Angeles, CA; Louisville, KY; Milwaukee, WI; Minneapolis-St. Paul, MN; Mobile, AL; Nashville, TN; New Haven, CT; New Orleans, LA; New York, NY/NJ; Newport News-Hampton, VA; Norfolk-Portsmouth, VA; Oakland, CA; Philadelphia, PA/NJ; Phoenix, AZ; Portland, OR; Providence-Pawtucket,

RI/MA; Richmond, VA; Rochester, NY; Sacramento, CA; San Bernardino, CA; San Francisco, CA; San Jose, CA; Shreveport, LA; South Bend, IN; Springfield, MA; Toledo, OH; Trenton, NJ/PA; Tucson, AZ; Wilmington, DE; and Worcester, MA.

\* \* \* \* \*

■ 5. Section 90.159 is amended by revising paragraphs (b), (b)(1), and (c) to read as follows:

**§ 90.159 Temporary and conditional permits.**

\* \* \* \* \*

(b) An applicant proposing to operate a new land mobile radio station or modify an existing station below 470 MHz or in the 806-824/851-866 MHz band, the 896-901/935-940 MHz band, or the one-way paging 929-930 MHz band (other than a commercial radio service applicant or licensee on these bands) that is required to submit a frequency coordination recommendation pursuant to paragraphs (b) through (h) of § 90.175 of this part may operate the proposed station during the pendency of its application for a period of up to one hundred eighty (180) days upon the filing of a properly completed formal Form 601 application that complies with § 90.127 of this part if the application is accompanied by evidence of frequency coordination in accordance with § 90.175 of this part and provided that the following conditions are satisfied:

(1) The proposed station location is west of Line C as defined in § 90.7, and (for applicants proposing to operate below 470 MHz or in the 806-824/851-866 MHz band or the 896-901/935-940 MHz band) south of Line A as defined in § 90.7.

\* \* \* \* \*

(c) An applicant proposing to operate an itinerant station or an applicant seeking the assignment of authorization or transfer of control for an existing station below 470 MHz or in the 806-824/851-866 MHz band, the 896-901/935-940 MHz band, or the one-way paging 929-930 MHz band (other than

a commercial radio service applicant or licensee on these bands) may operate the proposed station during the pendency of its application for a period of up to one hundred eighty (180) days upon the filing of a properly completed formal Form 601 application that complies with § 90.127 of this part. Conditional authority ceases immediately if the application is dismissed by the Commission. All other categories of applications listed in § 90.175 of this part that do not require evidence of frequency coordination are excluded from the provisions of this section.

\* \* \* \* \*

■ 6. Section 90.219 is amended by revising paragraph (d)(3) to read as follows:

**§ 90.219 Use of signal boosters.**

\* \* \* \* \*

(d) \* \* \*

(3)(i) Except as set forth in paragraph (d)(3)(ii) of this section, signal boosters must be deployed such that the radiated power of each retransmitted channel, on the forward link and on the reverse link, does not exceed 5 Watts effective radiated power (ERP).

(ii) Railroad licensees may operate Class A signal boosters transmitting on a single channel with up to 30 Watts ERP on frequencies 452/457.90625 to 452/457.9625 MHz in areas where communications between the front and rear of trains is unsatisfactory due to distance or intervening terrain barriers.

\* \* \* \* \*

■ 7. Section 90.261 is amended by revising paragraph (f) introductory text to read as follows:

**§ 90.261 Assignment and use of the frequencies in the band 450-470 MHz for fixed operations.**

\* \* \* \* \*

(f) Secondary fixed operations pursuant to paragraph (a) of this section will not be authorized on the following frequencies or on frequencies subject to

§ 90.267, except as provided in § 90.219(d)(3)(ii):

\* \* \* \* \*

[FR Doc. 2016–21638 Filed 9–22–16; 8:45 am]

BILLING CODE 6712–01–P

## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Parts 211, 215, 219, 242, and 252

[Docket DARS–2016–0027]

RIN 0750–AJ00

#### Defense Federal Acquisition Regulation Supplement: Temporary Extension of Test Program for Comprehensive Small Business Subcontracting Plans (DFARS Case 2015–D013)

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Proposed rule.

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2015 and a section of the National Defense Authorization Act for Fiscal Year 2016, both of which provide revisions to the Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before November 22, 2016, to be considered in the formation of a final rule.

**ADDRESSES:** Submit comments identified by DFARS Case 2015–D013, using any of the following methods:

○ *Federal eRulemaking Portal:* <http://www.regulations.gov>. Search for “DFARS Case 2015–D013.” Select “Comment Now” and follow the instructions provided to submit a comment. Please include “DFARS Case 2015–D013” on any attached documents.

○ *Email:* [osd.dfars@mail.mil](mailto:osd.dfars@mail.mil). Include DFARS Case 2015–D013 in the subject line of the message.

○ *Fax:* 571–372–6094.

○ *Mail:* Defense Acquisition Regulations System, Attn: Ms. Jennifer Johnson, OUSD (AT&L) DPAP/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to <http://www.regulations.gov>.

[www.regulations.gov](http://www.regulations.gov), including any personal information provided. To confirm receipt of your comment(s), please check [www.regulations.gov](http://www.regulations.gov), approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

**FOR FURTHER INFORMATION CONTACT:** Ms. Jennifer Johnson, telephone 571–372–6100.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

DoD is proposing to revise the DFARS to implement section 821 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2015 and section 872 of the NDAA for FY 2016, both of which revise the Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans. Section 821 of the NDAA for FY 2015 provides for contractors participating in the Test Program to report, on a semiannual basis, the amount of first-tier subcontract dollars awarded; the total number of subcontracts active under the Test Program that would have otherwise required a subcontracting plan under 15 U.S.C. 637(d); costs incurred in negotiating, complying with, and reporting on comprehensive subcontracting plans; and costs avoided by adoption of a comprehensive subcontracting plan. This information is expected to assist in determining if Test Program participants have achieved cost savings while enhancing opportunities for small businesses.

In addition, section 821—

- Repeals section 402 of Public Law 101–574, which suspended liquidated damages under comprehensive small business subcontracting plans;

- Requires consideration, as part of the past performance evaluation of an offeror, of any failure to make a good faith effort to comply with its comprehensive subcontracting plan;

- Extends the Test Program through December 31, 2017;

- Increases the threshold for participation in the Test Program from \$5,000,000 to \$100,000,000; and

- Prohibits negotiation of comprehensive subcontracting plans with contractors who failed to meet the subcontracting goals of their comprehensive subcontracting plan for the prior fiscal year.

Section 872 of the NDAA for FY 2016 removes the prohibition on negotiation of comprehensive subcontracting plans with contractors who failed to meet the subcontracting goals of their comprehensive subcontracting plan for the prior fiscal year.

## II. Discussion and Analysis

This rule proposes to amend DFARS subparts 211.5, 215.3, 219.7, 242.15, and 252.2 as summarized in the following paragraphs:

### A. Subpart 211.5, Liquidated Damages

Section 211.500 is added to clarify that subpart 211.5 and Federal Acquisition Regulation (FAR) subpart 11.5 do not apply to liquidated damages for comprehensive subcontracting plans under the Test Program, and to include a reference to DFARS 219.702–70.

### B. Subpart 215.3, Source Selection

Section 215.305 is amended to require contracting officers to consider an offeror’s failure to make a good faith effort to comply with its comprehensive subcontracting plan as part of the past performance evaluation.

### C. Subpart 219.7, The Small Business Subcontracting Program

- Section 219.702–70, Statutory requirements for the Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans, rennumbers section 219.702 and incorporates new requirements stemming from section 821 of the NDAA for FY 2015.

- Paragraph (1) is renumbered as paragraph (a) and amended to include the title of the Test Program.

- Paragraph (2), which addressed the nonapplicability of liquidated damages, is deleted in its entirety.

- Paragraph (b) is added to provide the current requirements for participation in the Test Program. These requirements are expressly stated in 15 U.S.C. 637 note, as amended by section 821 of the NDAA for FY 2015 and section 872 of the NDAA for FY 2016. To participate in the Test Program, the contractor must have furnished to DoD, during the immediately preceding fiscal year under at least three contracts, supplies, services, or construction in the aggregate amount of at least \$100 million.

- Paragraph (c) is added to describe the establishment and use of comprehensive subcontracting plans.

- Paragraph (d) is added to provide the process to determine the need to assess liquidated damages for failure to make a good faith effort to comply with the comprehensive subcontracting plan. Paragraph (e) is added to describe the calculation and application of liquidated damages. This rule sets forth the following methodology for assessing liquidated damages:

- The participant contractor shall be subject to the payment of liquidated damages if, after allowing the contractor