The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 million to $29 million in any 1 year. Individuals and States are not considered to be small entities. Because this regulation merely deletes these unenforceable provisions from our regulations, we have determined and we certify that this final rule will not have a significant economic impact on a substantial number of small entities. Therefore, we are not preparing an analysis for the RFA.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule or notice having the effect of a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. We have determined that this final rule will not have a significant effect on the operations of a substantial number of small rural hospitals. Therefore, we are not preparing an analysis for section 1102(b) of the Act.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule or notice having the effect of a rule that may result in expenditures in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This final rule has no consequential effect on State, local, or tribal governments or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a rule or notice having the effect of a rule that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This final rule will not have a substantial effect on State or local governments.

In accordance with the provisions of Executive Order 12866, this final rule was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 411

Kidney diseases, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 485

Grant programs—health, Health facilities, Medicaid, Medicare, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as follows:

PART 411—EXCLUSIONS FROM MEDICARE AND LIMITATIONS ON MEDICARE PAYMENT

■ 1. The authority citation for part 411 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

■ 2. Section 411.54 is amended by revising paragraphs (c) and (d) to read as follows:

§ 411.54 Limitation on charges when a beneficiary has received a liability insurance payment or has a claim pending against a liability insurer.

* * * * *

(c) *Itemized bill.* A hospital must, upon request, furnish to the beneficiary or his or her representative an itemized bill of the hospital's charges.

(d) *Exception—(1) Prepaid health plans.* If the services were furnished through an organization that has a contact under section 1876 of the Act (that is, an HMO or CMP), or through an organization that is paid under section 1833(a)(1)(A) of the Act (that is, through an HCPP) the rules of § 417.528 of this chapter apply.

(2) *Special rules for Oregon.* For the State of Oregon, because of a court decision, and in the absence of a reversal on appeal or a statutory clarification overturning the decision, there are the following special rules:

(i) The provider or supplier may elect to bill a liability insurer or place a lien against the beneficiary's liability settlement for Medicare covered services, rather than bill only Medicare for Medicare covered services, if the liability insurer pays within 120 days after the earlier of the following dates:

(A) The date the provider or supplier files a claim with the insurer or places a lien against a potential liability settlement.

(B) The date the services were provided or, in the case of inpatient hospital services, the date of discharge.

(ii) If the liability insurer does not pay within the 120-day period, the provider or supplier:

(A) Must withdraw its claim with the liability insurer and/or withdraw its lien against a potential liability settlement.

(B) May only bill Medicare for Medicare covered services.

(C) May bill the beneficiary only for applicable Medicare deductible and co-insurance amounts plus the amount of any charges that may be made to a beneficiary under 413.35 of this chapter (when cost limits are applied to these services) or under 489.32 of this chapter (when services are partially covered).

PART 489—PROVIDER AGREEMENTS AND SUPPLIER APPROVAL

■ 1. The authority citation for part 489 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

■ 2. Section 489.20 is amended by revising paragraph (g) to read as follows:

§ 489.20 Basic commitments.

* * * * *

(g) To bill other primary payers before Medicare.

* * * * *

Authority: Section 1862(b)(2)(A) of the Social Security Act (42 U.S.C. 1395Y)

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: June 6, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Approved: June 30, 2003.

Tommy G. Thompson,

Secretary.

[FR Doc. 03–18509 Filed 7–17–03; 10:06 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 25 and 101

[ET Docket No. 98–206; RM–9147; RM–9245; FCC 03–97]

Order To Deny Petitions for Reconsideration of MVDDS Technical and Licensing Rules in the 12 GHz Band

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document the Commission affirms the technical rules and procedures dealing with sharing of

spectrum between Multichannel Video Distribution and Data Service (MVDDS) and Direct Broadcast Satellite (DBS) and Non-geostationary (NGSO) fixed satellite service (FSS) in the 12.2–12.7 GHz band that the Commission adopted in the *Memorandum Opinion and Order and Second Report and Order (Second R&O).* The Commission also affirms the dismissal of the pending license applications to provide terrestrial service in the 12.2–12.7 GHz band. The Commission takes these actions in the course of addressing the petitions for reconsideration that were filed in response to the *Second R&O* in this proceeding. The Commission amends or clarifies certain rule sections, but otherwise denies the petitions for reconsideration. The adoption of the amended rules and the disposition of the petitions for reconsideration will facilitate initiation of MVDDS in the 12.2–12.7 GHz band.

DATES: Effective August 25, 2003, except § 25.146 which contains information collection requirements that have not been approved by OMB. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date. Written comments on the new and/or modified information collection(s) must be submitted by the public, Office of Management and Budget (OMB) and other interested parties on or before September 23, 2003.

FOR FURTHER INFORMATION CONTACT: Gary Thayer, Office of Engineering and Technology, (202) 418–2290, TTY (202) 418–2989, e-mail: *gthayer@fcc.gov;* Jennifer Burton, Wireless Telecommunications Bureau, (202) 418–7581, TTY (202) 418–7581, e-mail *jburton@fcc.gov.* For additional information concerning the information collections contained in this document, contact Les Smith at (202) 418–0217, or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Fourth Memorandum Opinion and Order,* ET Docket No. 98–206, FCC 03–97, adopted April 22, 2003, and released April 29, 2003. The full text of this Commission decision is available on the Commission's Internet site at *http://www.fcc.gov.* It is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room, CY–B402, Washington, DC 20554. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365. File comments with the Office of the Secretary, a copy of any comments on the information collection contained herein should be submitted to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Leslie.Smith@fcc.gov,* and to Kim A. Johnson, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to *Kim A.Johnson@omb.eop.gov.*

Summary of the Fourth Memorandum Opinion and Order

1. *DBS Issues.* In this *Fourth Memorandum Opinion and Order (Fourth MO&O),* the Commission affirms that the four regional EPFD limits and the 14 dBm EIRP limit adopted for MVDDS operation constitute objective standards that will prevent harmful interference to DBS as defined by § 2.1 of the Commission's rules and will provide certainty that, along with other reasonable procedures that were adopted, can be discerned and relied upon by DBS operators. The Commission declines to adopt higher EIRP and EPFD limits for rural areas because the adopted standards are sufficiently conservative to protect DBS in general application while preserving the flexibility for each MVDDS provider to make its own business decisions about what type of transmission system best suits its needs.

2. The Commission affirms that the rules and procedures adopted in the Second R&O, (ET Docket No. 98–206), 67 FR 43031, June 26, 2002 comply with the legislative history and provisions of the *Rural Local Broadcast Signal Act (RLBSA)* and the *Satellite Home Viewer Protection Act (SHVIA)* [1] that prohibit harmful interference to DBS. The Commission finds that, under the powers granted by the Communications Act, it was proper to define interference standards in terms of EPFD and EIRP limits on MVDDS that it concluded would prevent harmful interference to DBS. The Commission further finds that the adoption of these standards complies with the *Administrative Procedure Act (APA)* because they were developed through the usual notice and comment rule making process.

3. The Commission affirms that the rules and procedures adopted in the *Second R&O* do not violate other Commission rules or international radio regulations, and are consistent with the regulatory history of DBS and FS allocations in the 12 GHz band because MVDDS, unlike previous FS operations, is designed to coexist with DBS and because the adopted rules and procedures will prevent harmful interference to DBS.

4. The Commission affirms the self-mitigation responsibilities adopted in the *Second R&O* for new DBS receivers and finds that they are consistent with the primary status of DBS because, due to their modest, effective and infrequently required nature, they strike an appropriate public interest balance that will result in more efficient spectrum utilization and will facilitate compliance with the non-harmful interference provisions of the statutes while allowing initiation of a new service.

5. The Commission finds that adequate notice was given for the computer model used to derive the EPFD limits on MVDDS, and that the various inputs for this model—including using a 10% increase in DBS unavailability as a starting point rather than as a hard limit, the ''double averaging'' of EPFDs, and the decision not to include ''wing satellites''—are reasonable and supported by the evidence of record particularly in light of the deficiencies or impracticalities involved in other models that were considered.

6. The Commission affirms that the ''safety valve'' rule, as written, is sufficiently specific and is a useful tool to ensure that MVDDS operations fully protect DBS. Consistent with past practice, the Commission notes that in many cases it has provided opportunities for licensees to petition for adjustments to rules (outside the waiver process) without specifying in exacting detail how such a filing should be made.

7. The Commission affirms its decision to require that MVDDS conduct a site survey as specified in § 101.1440(b) of the Commission's rules and finds that, in conjunction with other adopted procedures, it has provided sufficient detail and specificity—similar in nature to the broad good-faith-based guidelines that have proven to be both workable and beneficial in other proceedings—that the Commission concludes will protect DBS customers in this proceeding.

[1] *Satellite Home Viewer Improvement Act Of 1999 (SHVIA)/Rural Local Broadcast Signal Act (RLBSA). See* Public Law 106–113, 113 STAT. 1501, 1501A–544 TO 101A–545, Act of Nov. 29, 1999 (enacting S.1948, including the SHVIA and RLBSA. Titles I and II of the Intellectual Property and Communications Omnibus Reform Act of 1999).

8. The Commission affirms the 45-day DBS response time specified in § 101.1440(d)(2) of the Commission's rules, because it provides a reasonable balance between the needs of DBS licensees to ensure protection of their customers before MVDDS begins operation while affording MVDDS licensees the ability to initiate service on a reasonably expeditious basis. Further, the Commission concludes that DBS customers are protected once MVDDS begins operation because the MVDDS provider must correct interference or cease operation if it causes harmful interference to or exceeds the permitted EPFD limits to a DBS customer of record.

9. The Commission amends § 101.1440(e) of the rules to clarify the responsibility of DBS licensees in regard to future DBS receive antenna installations. The Commission recognizes that § 101.1440(e) of the rules adopted in the *Second R&O* appears to require a DBS licensee to oversee all future DBS receive antenna installations, which they currently may not do. It was not intent of the Commission to alter these arrangements. Rather, the Commission only expects a DBS licensee to provide information that they deem necessary so that other entities installing DBS receive antennas may take into account the presence of MVDDS operations. Typically, this information could be conveyed with installation guidelines for DBS equipment.

10. The Commission amends § 101.1440(d)(2) of the rules to allow DBS providers to identify—instead of all DBS customers of record—only those new DBS customers of record that they believe would receive harmful interference from the proposed MVDDS transmitter during the 30-day period specified in the rule. The Commission takes this action to address petitioners' concern regarding the possible uses to which other parties could put such information.

11. The Commission declines to adopt a methodology for measuring EPFD values in the field because any measurement techniques that might be described would artificially limit the flexibility of the licensees to perform these measurements, and could seemingly prohibit the use of a technique that is satisfactory for this purpose.

12. Concerning dispute resolution procedures, the Commission clarifies that an MVDDS transmitter can be turned on after expiration of the 90-day period specified in § 101.1440 of the rules. The Commission believes that the adopted EPFD contour methodology will reduce disputes to a minimum, and this time frame will ensure that licensees participate in conflict resolution in good faith.

13. The Commission affirms its decision to dismiss the pending applications of Broadwave Network, LLC (Northpoint), PDC Broadband Corporation (Pegasus), and Satellite Receivers, Ltd. (SRL) because the original *Ku-band Cut-Off Notice* did not provide adequate notice for all entities interested in filing applications for licenses to provide terrestrial services in the 12 GHz band. The Commission further finds that its decision to dismiss the pending applications is consistent with the *LOCAL TV Act* because there is no evidence that Congress explicitly ordered the Commission to limit terrestrial applications in this band to those already on file and validated by independent testing.

14. The Commission finds that the rules and procedures adopted in the Second R&O do not violate the *Administrative Procedure Act* (*APA*) because the decisions were fully explained and rationally based upon all the information in the record and, therefore, are not arbitrary, capricious or contrary to law.

15. The Commission finds that the adoption of the Second R&O did not violate the provisions of the *Government in the Sunshine Act (Sunshine Act)* because the item was not adopted at an open meeting as defined by the Act and that, therefore, the *Sunshine Act* is not applicable.

16. The Commission dismisses, as repetitious, the petitions for reconsideration to the extent that they challenge the underlying decision in the *First Report and Order,* 66 FR 10601, February 16, 2001, and *Further Notice of Proposed Rulemaking,* 66 FR 7607, January 24, 2001, in this proceeding to authorize MVDDS in the 12 GHz band, and to the extent they challenge the determination made in the memorandum opinion and order portion of the *Second R&O* that MVDDS is authorized on a primary, rather than secondary, non-harmful interference basis as to DBS.

17. The Commission denies as not ripe, because it relies upon purely speculative conjecture, a petition for reconsideration that asserts that DBS providers might at some time in the future suffer a ''regulatory taking'' as the result of being required to increase satellite power to overcome MVDDS interference.

18. *NGSO FSS Issues.* The Commission affirms the −135 dBW/m^2/4kHz PFD limit at 3 km, and the 10 km separation rules for MVDDS because they provide reasonable interference protection to NGSO FSS and strike a reasonable balance between affording the first in service provider with easier and better use of the band while not unduly precluding deployment by the later-in provider. The Commission affirms its finding that an alternate NGSO FSS protection scheme proposed by one petitioner is unduly complex and provides no benefit over the adopted limits.

19. The Commission amends § 25.139(a) to reflect that the information NGSO FSS licensees are required to provide MVDDS should be construed narrowly and that only information necessary to achieve the required 10 km separation under § 25.139(b) needs to be provided.

20. The Commission clarifies the NGSO FSS low-angle PFD limit of § 25.208(o) for MVDDS protection. The limit will be treated in a manner consistent with the rules for NGSO FSS and BSS sharing where validation (*i.e.*, ''hard limit'') and operational (*i.e.*, can be exceeded so long as they are not exceeded into an operational receiver) EPFD limits were adopted. The low-angle PFD limit adopted by the Commission in the *Second R&O* for MVDDS protection is therefore intended to be an operational limit which means that it does not need to be met in all cases so long as it is not exceeded into an operational MVDDS receiver. To clarify this intent, the Commission modifies § 25.146 to add paragraph (g) to specify that the required technical showing shall demonstrate the NGSO FSS system is *capable* of meeting the limits specified in § 25.208(o). The Commission also amends § 25.208(o) to require that the specified power flux density shall not be exceeded into an *operational* MVDDS receiver.

21. The Commission clarifies the MVDDS emission mask by amending the footnote immediately after the definition of ''B'' in § 101.111(a)(2)(i) to add the proviso that the emission mask only applies at the 12.2–12.7 GHz band edges and does not restrict MVDDS channelization bandwidths within the band.

22. *Paperwork Reduction Act Analysis:* This Fourth Memorandum Opinion and Order contains a new or modified information collections. This Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget to comment on the information collections contained in the Fourth Memorandum Opinion and Order, as required by the Paperwork Reduction Act of 1995,

Public Law 104–13. Public and agency comments are due September 23, 2003.

Final Regulatory Flexibility Certification

23. The Regulatory Flexibility Act of 1980, as amended (RFA),[2] requires that a regulatory flexibility analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' [3] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' [4] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[5] 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 Small Business Administration (SBA).[6]

24. Under the amended rules adopted in the Fourth Memorandum Opinion and Order, DBS licensees are required to provide the MVDDS licensee with a list of only those new DBS customer locations that have been installed in the 30-day period following the MVDDS notification and that the DBS licensee believes may receive harmful interference or where the prescribed equivalent power flux density (EPFD) limits may be exceeded. This requirement is less burdensome than the rule adopted in the *Second R&O*[7] that required disclosure of all DBS customer locations under similar circumstances. Furthermore, under the amended rules, DBS licensees are required to provide merely the information deemed necessary by DBS licensees to enable others to take into account the presence of MVDDS transmitters. This requirement is less burdensome than the rule adopted in the *Second R&O* that imposed direct responsibility on DBS licensees for proper siting of future DBS receivers to take into account the presence of MVDDS.

25. Licensees of NGSO FSS systems are required to submit, ninety days prior to the initiation of service to the public, a technical showing that demonstrates that they are capable of meeting low-angle radiation limits specified in § 25.208(o) of the Commission's rules for the 12.2–12.7 GHz band. Finally, licensees of NGSO FSS systems are required under the amended rules to ensure that the PFD limit is not exceeded into an operational MVDDS receiver. Taken together, these requirements are less burdensome than those adopted in the *Second R&O* because they merely require a showing that the NGSO FSS system is *capable* of meeting (instead of demonstrating the system has factually met) the specified technical limits, and because the PFD limit need only be met into *operational*, rather than *all*, MVDDS receivers.

26. These changes are deregulatory because they lessen compliance requirements. Therefore, we certify that the requirements of the Fourth Memorandum Opinion and Order will not have a significant economic impact on a substantial number of small entities.

27. The Commission will send a copy of the Fourth Memorandum Opinion and Order, including a copy of this Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act.[8] In addition, the Fourth Memorandum Opinion and Order and this final certification will be sent to the Chief Counsel for Advocacy of the SBA.[9]

Ordering Clauses

28. Pursuant to sections 4(i), 302, 303(e) 303(f), 303(g), 303(r) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 302, 303(e), 303(f), 303(g) and 405, the petitions for reconsideration filed by Pegasus Broadband Corporation, MDS America, Inc., EchoStar Satellite Corporation and DIRECTV, Inc., SkyBridge L.L.C., SES Americom, Inc., and Satellite Broadcasting and Communications Association *Are denied.*

29. Parts 25 and 101 of the Commission's rules are amended as specified in the rule changes, effective August 25, 2003, except § 25.146 which contains information collection requirements which have not been approved by the Office of Management and Budget (''OMB''). The Commission will publish a document in the **Federal Register** announcing the effective date. This action is taken pursuant to sections 4(i), 303(c), 303(f), 303(g) 303(r) and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(c), 303(f), 303(g), 303(r) and 309(j).

30. It is further ordered that the proceeding in ET Docket No. 98–206 is terminated.

List of Subjects

47 CFR Part 25

Communications common carriers, Communications equipment, Radio, Reporting and recordkeeping requirements, Satellites, Securities, and Telecommunications.

47 CFR Part 101

Communications equipment, Radio, and Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Final Rules

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 25 and 101 as follows:

PART 25—SATELLITE COMMUNICATIONS

■ 1. The authority citation for part 25 continues to read as follows:

Authority: 47 U.S.C. 701–744. Interprets or applies Sections 4, 301, 302, 303, 307, 309 and 332 of the Communications Act, as amended. 47 U.S.C. Sections 154, 301, 302, 303, 307, 309, and 332, unless otherwise noted.

■ 2. Section 25.139 is amended by revising paragraph (a) to read as follows:

§ 25.139 NGSO FSS coordination and information sharing between MVDDS licensees in the 12.2 GHz to 12.7 GHz band.

(a) NGSO FSS licensees shall maintain a subscriber database in a format that can be readily shared with MVDDS licensees for the purpose of determining compliance with the MVDDS transmitting antenna spacing requirement relating to qualifying existing NGSO FSS subscriber receivers set forth in § 101.129 of this chapter. This information shall not be used for purposes other than set forth in § 101.129 of this chapter. Only sufficient information to determine compliance with § 101.129 of this chapter is required.

* * * * *

[2] The RFA, *see* 5 U.S.C. 601—612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, 110 Stat. 857 (1996).

[3] 5 U.S.C. 605(b).

[4] 5 U.S.C. 601(6).

[5] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small-business concern'' in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.''

[6] 15 U.S.C. 632.

[7] *Second R&O,* 17 FCC Rcd 9614 (2002).

[8] *See* 5 U.S.C. 801(a)(1)(A).

[9] *See* 5 U.S.C. 605(b).

■ 3. Section 25.146 is amended by redesignating paragraphs (g) through (m) as paragraphs (h) through (n) and by adding a new paragraph (g) to read as follows.

§ 25.146 Licensing and operating authorization provisions for the non-geostationary satellite orbit fixed-satellite service (NGSO FSS) in the bands 10.7 GHz to 14.5 GHz.

* * * * *

(g) *Operational power flux density, space-to-Earth direction, limits.* Ninety days prior to the initiation of service to the public, the NGSO FSS system licensee shall submit a technical showing for the NGSO FSS system in the band 12.2–12.7 GHz. The technical information shall demonstrate that the NGSO FSS system is capable of meeting the limits as specified in § 25.208(o). Licensees may not provide service to the public if they fail to demonstrate compliance with the PFD limits.

* * * * *

■ 4. In § 25.208, paragraph (n), which was added at 67 FR 43037, June 26, 2002, is correctly designated as paragraph (o) and revised to read as follows:

§ 25.208 Power flux density limits.

* * * * *

(o) In the band 12.2–12.7 GHz, for NGSO FSS space stations, the specified low-angle power flux-density at the Earth's surface produced by emissions from a space station shall not be exceeded into an operational MVDDS receiver:

(1) 158 dB(W/m^2) in any 4 kHz band for angles of arrival between 0 and 2 degrees above the horizontal plane; and

(2) 158 + 3.33(δ − 2) dB(W/m^2) in any 4 kHz band for angles of arrival (δ) (in degrees) between 2 and 5 degrees above the horizontal plane.

Note to paragraph (o):

These limits relate to the power flux density, which would be obtained under assumed free-space propagation conditions.

PART 101—FIXED MICROWAVE SERVICES

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

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

■ 6. Section 101.111 is amended by revising paragraph (a)(2)(i) to read as follows:

§ 101.111 Emission limitations.

(a) * * *

(2) * * *

(i) For operating frequencies below 15 GHz, in any 4 KHz band, the center frequency of which is removed from the assigned frequency by more than 50 percent up to and including 250 percent of the authorized bandwidth: As specified by the following equation but in no event less than 50 decibels:

$A = 35 + 0.8(P - 50) + 10 \text{ Log}_{10} B.$

(Attenuation greater than 80 decibels is not required.)

where:

A = Attenuation (in decibels) below the mean output power level.

P = Percent removed from the carrier frequency.

B = Authorized bandwidth in MHz. MVDDS operations in the 12.2–12.7 GHz band shall use 24 megahertz for the value of B in the emission mask equation set forth in this section. MVDDS operations in the 12.2–12.7 GHz bands shall use 24 megahertz for the value of B in the emission mask equation set forth in this section. The emission mask limitation shall only apply at the 12.2–12.7 GHz band edges and does not restrict MVDDS channelization bandwidth within the band.

* * * * *

■ 8. Section 101.1440 is amended by revising paragraph (d)(2) and (e) to read as follows.

§ 101.1440 MVDDS protection of DBS.

* * * * *

(d) * * *

(2) No later than forty-five days after receipt of the MVDDS system information in paragraph (d)(1) of this section, the DBS licensee(s) shall provide the MVDDS licensee with a list of only those new DBS customer locations that have been installed in the 30-day period following the MVDDS notification and that the DBS licensee believes may receive harmful interference or where the prescribed EPFD limits may be exceeded. In addition, the DBS licensee(s) could indicate agreement with the MVDDS licensee's technical assessment, or identify DBS customer locations that the MVDDS licensee failed to consider or DBS customer locations where they believe the MVDDS licensee erred in its analysis and could exceed the prescribed EPFD limit.

* * * * *

(e) Beginning thirty days after the DBS licensees are notified of a potential MVDDS site in paragraph (d)(1) of this section, the DBS licensees are responsible for providing information they deem necessary for those entities who install all future DBS receive antennas on its system to take into account the presence of MVDDS operations so that these DBS receive antennas can be located in such a way as to avoid the MVDDS signal. These later installed DBS receive antennas shall have no further rights of complaint against the notified MVDDS transmitting antenna(s).

* * * * *

[FR Doc. 03–19090 Filed 7–24–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 40

[Docket OST–2003–15676]

RIN 2105–AD14

Procedures for Transportation Workplace Drug and Alcohol Testing Programs: Drug and Alcohol Management Information System Reporting

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Department of Transportation's Office of Drug and Alcohol Policy and Compliance (ODAPC) is revising the Management Information System (MIS) forms currently used within five U.S. Department of Transportation (DOT) agencies and the United States Coast Guard (USCG) for submission of annual drug and alcohol program data. The DOT agencies are: Federal Motor Carrier Safety Administration (FMCSA); Federal Aviation Administration (FAA); Federal Transit Administration (FTA); Federal Railroad Administration (FRA); and Research and Special Programs Administration (RSPA). The Department is streamlining the annual reporting of drug and alcohol program data to DOT agencies through use of a one-page MIS data collection form. The Department is standardizing across the DOT agencies the information collected and reducing the amount of data reported by transportation employers. If a DOT agency requires supplemental data, the DOT agency will address those issues separately.

DATES: Effective July 25, 2003.

FOR FURTHER INFORMATION CONTACT: Jim L. Swart, Drug and Alcohol Policy Advisor at 202–366–3784 (voice) 202–366–3897 (fax) or at: *jim.swart@ost.dot.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

Background and Purpose

Five DOT agencies and the USCG collect drug and alcohol program data from their regulated employers on an