

suggestion itself is beyond the scope of this rulemaking.

Based on our review of the proposed amendment, we are making a minor change in wording. In the first sentence of new paragraph (b), we are changing "shall" to "will" to reflect VA's current efforts to write regulations in plain language.

**Executive Order 12866**

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Order classifies a rule as a significant regulatory action requiring review by the Office of Management and Budget if it meets any one of a number of specified conditions, including: Having an annual effect on the economy of \$100 million or more, creating a serious inconsistency or interfering with an action of another agency, materially altering the budgetary impact of entitlements or the rights of entitlement recipients, or raising novel legal or policy issues. VA has examined the economic, legal, and policy implications of this final rule and has concluded that it is a significant regulatory action under Executive Order 12866 because it materially alters the rights of entitlement recipients based upon a court decision.

**Paperwork Reduction Act**

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

**Unfunded Mandates**

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of \$100 million or more (adjusted annually for inflation) in any given year. This rule would have no such effect on State, local, and tribal governments, or on the private sector.

**Regulatory Flexibility Act**

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The reason for this certification is that these

amendments would not directly affect any small entities. Only VA beneficiaries and their survivors could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

**Catalog of Federal Domestic Assistance**

The Catalog of Federal Domestic Assistance program numbers are 64.109, Veterans Compensation for Service-Connected Disability, and 64.110, Veterans Dependency and Indemnity Compensation for Service-Connected Death.

**List of Subjects in 38 CFR Part 3**

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Radioactive materials, Veterans, Vietnam.

Approved: May 26, 2006.

**Gordon H. Mansfield,**  
*Deputy Secretary of Veterans Affairs.*

**Editorial Note:** This document was received at the Office of the Federal Register on September 1, 2006.

■ For the reasons set forth in the preamble, VA is amending 38 CFR part 3 as set forth below:

**PART 3—ADJUDICATION**

**Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation**

■ 1. The authority citation for part 3, subpart A, continues to read as follows:

**Authority:** 38 U.S.C. 501(a), unless otherwise noted.

■ 2. Section 3.310 is amended by revising the section heading; by redesignating paragraph (b) as paragraph (c); and by adding a new paragraph (b) to read as follows:

**§ 3.310 Disabilities that are proximately due to, or aggravated by, service-connected disease or injury.**

\* \* \* \* \*

(b) *Aggravation of nonservice-connected disabilities.* Any increase in severity of a nonservice-connected disease or injury that is proximately due to or the result of a service-connected disease or injury, and not due to the natural progress of the nonservice-connected disease, will be service connected. However, VA will not concede that a nonservice-connected disease or injury was aggravated by a service-connected disease or injury unless the baseline level of severity of the nonservice-connected disease or injury is established by medical

evidence created before the onset of aggravation or by the earliest medical evidence created at any time between the onset of aggravation and the receipt of medical evidence establishing the current level of severity of the nonservice-connected disease or injury. The rating activity will determine the baseline and current levels of severity under the Schedule for Rating Disabilities (38 CFR part 4) and determine the extent of aggravation by deducting the baseline level of severity, as well as any increase in severity due to the natural progress of the disease, from the current level.

(Authority: 38 U.S.C. 1110 and 1131)

\* \* \* \* \*

[FR Doc. E6–14835 Filed 9–6–06; 8:45 am]

**BILLING CODE 8320-01-P**

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Parts 1, 90 and 95**

[WT Docket 01–90; ET Docket 98–95; RM–9096; FCC 06–110]

**Amendment of the Commission's Rules Regarding Dedicated Short-Range Communications Services in the 5.850–5.925 GHz (5.9 GHz Band)**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document the Commission takes certain actions in response to four petitions for reconsideration filed by 3M Company, ARINC Incorporated, Intelligent Transportation Society of America and John Hopkins University of Applied Physics Laboratory. Each petitioner seeks reconsideration of the Commission's *Report and Order*, which adopted licensing and service rules for the Dedicated Short Range Communications (DSRC) Service in the Intelligent Transportation Systems (ITS) Radio Service, located in the 5.850–5.925 GHz band (5.9 GHz band) licensing and service rules for the Dedicated Short Range Communications (DSRC) Service in the Intelligent Transportation Systems (ITS) Radio Service located in the 5.850–5.925 GHz band (5.9 GHz band).

**DATES:** Effective November 6, 2006.

**FOR FURTHER INFORMATION CONTACT:** Technical Information: Tim Maguire, *Tim.Maguire@FCC.gov*, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau, (202) 418–0680, or TTY (202) 418–7233. Legal Information: Jeannie Benfaida,

Jeannie.Benfaida@FCC.gov, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau (202) 418-0680, or TTY (202) 418-7233.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Federal Communications Commission's *Memorandum Opinion and Order*, FCC 06-110, adopted July 20, 2006 and released on July 26, 2006. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554. The full text may also be downloaded at: <http://www.fcc.gov>. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418-7426 or TTY (202) 418-7365 or at [Brian.Millin@fcc.gov](mailto:Brian.Millin@fcc.gov).

1. In the *Memorandum Opinion and Order*, the Commission takes the following actions:

- Designates Channel 172 (frequencies 5.855-5.865 GHz) exclusively for vehicle-to-vehicle safety communications for accident avoidance and mitigation, and safety of life and property applications; and designate Channel 184 (frequencies 5.915-5.925 GHz) exclusively for high-power, longer-distance communications to be used for public safety applications involving safety of life and property, including road intersection collision mitigation.

- Requires licensees to file a notice of construction with the Commission for each site registered and to clarify that site priority attaches to prior registered sites that have been fully constructed within the requisite twelve-month construction period.

- Amends the power reduction rule to only apply to DSRC Roadside Unit antenna height only between eight and fifteen meters, thereby providing increased flexibility and reduced implementation costs.

- Declines to adopt rules that would implement a software-based prior frequency coordination protocol that directs or recommends that licensees use particular service channels, or that would establish a third party database manager to coordinate and maintain site registrations.

- Declines to amend the current emission mask applicable to DSRC Class D devices, pending further developments and recommendations

from the ASTM E17.51 DSRC Standards Writing Group.

- Declines to adopt rules governing frequency coordination between DSRC licensees and Fixed Satellite Service (FSS) licensees, pending results of studies of interference methodology and ongoing industry discussions.

- Declines to adopt a rule establishing a separate class of On-Board Units to be used exclusively by public safety eligibles, *i.e.*, "public safety OBU's."

- Declines to require dual-band DSRC devices to be uniquely identified in order to be used to provide DSRC services in the 5.9 GHz band.

## I. Procedural Matters

### A. Paperwork Reduction Act

2. The order does not contain any new or modified information collection.

### B. Report to Congress

3. The Commission will send a copy of this *Memorandum Opinion and Order* in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

### C. Supplemental Final Regulatory Flexibility Analysis

4. As required by the Regulatory Flexibility Act (RFA), a Supplemental Final Regulatory Flexibility Analysis (FRFA) was incorporated in the *DSRC Report and Order*. In view of the fact that we have adopted further rule amendments in this *Memorandum Opinion and Order*, we have included this Supplemental Final Regulatory Flexibility Certification. This Certification conforms to the RFA.

5. The RFA requires that regulatory flexibility analysis be prepared for rulemaking proceedings unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The RFA generally defines "small entity" as having the same meaning as the term "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

6. This *Memorandum Opinion and Order* amends our rules to require licensees to file a notice of construction to the Commission for each site

registered and clarify that site priority attaches to prior registered sites that have fully constructed within the twelve month construction period; amends the antenna height correction factor adopted for DSRC to increase flexibility and reduce implementation costs to public safety, and designates Channel 172 (5.855-5.865 GHz) for vehicle-to-vehicle safety communications for accident avoidance and mitigation, and Channel 184 (5.915-5.925 GHz) for high-power, longer-distance communications for public safety applications and road intersection vehicular collision mitigation. These rule changes are not expected to affect the cost of DSRC equipment or implementation. Therefore, we certify that the requirements of this *Memorandum Opinion and Order* will not have a significant economic impact on a substantial number of small entities.

7. The Commission will send a copy of the *Memorandum Opinion and Order*, including a copy of this final certification, in a report to Congress pursuant to the Congressional Review Act, *see* U.S.C. 801(a)(1)(A). In addition, the *Memorandum Opinion and Order* and this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this *Memorandum Opinion and Order* and (or summaries thereof) will also be published in the **Federal Register**.

## II. Ordering Clauses

8. Pursuant to sections 1, 4(i), 302, 303(f) and (r), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 1, 154(i), 302, 303(f) and (r), and 332, this *Memorandum Opinion and Order* is adopted.

9. It is further ordered that, the amendments of the Commission's rules as set forth in rule changes are adopted November 6, 2006.

10. It is further ordered that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Memorandum Opinion and Order*, including the Supplemental Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the U.S. Small Business Administration.

### List of Subjects in 47 CFR Parts 1, 90, and 95

Communications.

Federal Communications Commission.

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

### Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications

Commission amends 47 CFR parts 1, 90 and 95 to read as follows:

**PART 1—PRACTICE AND PROCEDURE**

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

**Authority:** 15 U.S.C. 79 *et seq.*; 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 303(r), and 309.

■ 2. Section 1.946 is amended by revising paragraph (d) to read as follows:

**§ 1.946 Construction and coverage requirements.**

\* \* \* \* \*

(d) *Licensee notification of compliance.* A licensee who commences service or operations within the construction period or meets its coverage or substantial services obligations within the coverage period must notify the Commission by filing FCC Form 601. The notification must be filed within 15 days of the expiration of the applicable construction or coverage period. Where the authorization is site-specific, if service or operations have

begun using some, but not all, of the authorized transmitters, the notification must show to which specific transmitters it applies.

\* \* \* \* \*

**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), 332(c)(7).

■ 4. Section 90.155 is amended by revising paragraph (i) to read as follows:

**§ 90.155 Time in which station must be placed in operation.**

\* \* \* \* \*

(i) DSRCS Roadside Units (RSUs) in the 5850–5925 MHz band must be placed in operation within 12 months from the date of registration (*see* § 90.375) or the authority to operate the RSUs cancels automatically (*see* § 1.955 of this chapter). Such registration date(s) do not change the overall renewal

period of the single license. Licensees must notify the Commission in accordance with § 1.946 of this chapter when registered units are placed in operation within their construction period.

■ 5. Section 90.377 is revised to read as follows:

**§ 90.377 Frequencies available; maximum EIRP and antenna height, and priority communications.**

(a) Licensees shall transmit only the power (EIRP) needed to communicate with an OBU within the communications zone and must take steps to limit the Roadside Unit (RSU) signal within the zone to the maximum extent practicable.

(b) Frequencies available for assignment to eligible applicants within the 5850–5925 MHz band for RSUs and the maximum EIRP permitted for an RSU with an antenna height not exceeding 8 meters above the roadway bed surface are specified in the table below. Where two EIRP limits are given, the higher limit is permitted only for state or local governmental entities.

Channel No.	Frequency range (MHz)	Max. EIRP <sup>1</sup> (dBm)	Channel use
170	5850–5855	.....	Reserved.
172	5855–5865	33	Service Channel. <sup>2</sup>
174	5865–5875	33	Service Channel.
175	5865–5885	23	Service Channel. <sup>3</sup>
176	5875–5885	33	Service Channel.
178	5885–5895	33/44.8	Control Channel.
180	5895–5905	23	Service Channel.
181	5895–5915	23	Service Channel. <sup>3</sup>
182	5905–5915	23	Service Channel. <sup>4</sup>
184	5915–5925	33/40	Service Channel. <sup>4</sup>

<sup>1</sup> An RSU may employ an antenna with a height exceeding 8 meters but not exceeding 15 meters provided the EIRP specified in the table above is reduced by a factor of 20 log(Ht/8) in dB where Ht is the height of the radiation center of the antenna in meters above the roadway bed surface. The EIRP is measured as the maximum EIRP toward the horizon or horizontal, whichever is greater, of the gain associated with the main or center of the transmission beam. The RSU antenna height shall not exceed 15 meters above the roadway bed surface.

<sup>2</sup> Channel 172 is designated for public safety applications involving safety of life and property.

<sup>3</sup> Channel Nos. 174/176 may be combined to create a twenty megahertz channel, designated Channel No. 175. Channels 180/182 may be combined to create a twenty-megahertz channel, designated Channel No. 181.

<sup>4</sup> Channel 184 is designated for public safety applications involving safety of life and property. Only those entities meeting the requirements of § 90.373(a) are eligible to hold an authorization to operate on this channel.

(c) Except as provided in paragraphs (d) and (e) of this section, non-reserve DSRCS channels are available on a shared basis only for use in accordance with the Commission’s rules. All licensees shall cooperate in the selection and use of channels in order to reduce interference. This includes monitoring for communications in progress and any other measures as may be necessary to minimize interference. Licensees of RSUs suffering or causing harmful interference within a communications zone are expected to cooperate and resolve this problem by mutually satisfactory arrangements. If the licensees are unable to do so, the

Commission may impose restrictions including specifying the transmitter power, antenna height and direction, additional filtering, or area or hours of operation of the stations concerned. Further the use of any channel at a given geographical location may be denied when, in the judgment of the Commission, its use at that location is not in the public interest; use of any such channel may be restricted as to specified geographical areas, maximum power, or such other operating conditions, contained in this part or in the station authorization.

(d) *Safety/public safety priority.* The following access priority governs all DSRCS operations:

(1) Communications involving the safety of life have access priority over all other DSRCS communications;

(2) Subject to a control channel priority system management strategy (*see* ASTM E2213–03 DSRC Standard at § 4.1.1.2(4)), DSRCS communications involving public safety have access priority over all other DSRCS communications not listed in paragraph (d)(1) of this section. Roadside Units (RSUs) operated by state or local governmental entities are presumptively

engaged in public safety priority communications.

(e) *Non-priority communications.* DSRCS communications not listed in paragraph (d) of this section, are non-priority communications. If a dispute arises concerning non-priority communications, the licensee of the later-registered RSU must accommodate the operation of the early registered RSU, *i.e.*, interference protection rights are date-sensitive, based on the date that the RSU is first registered (*see* § 90.375) and the later-registered RSU must modify its operations to resolve the dispute in accordance with paragraph (f) of this section.

(f) Except as otherwise provided in the ASTM–DSRC Standard (*see* § 90.379) for the purposes of paragraph (e) of this section, objectionable interference will be considered to exist when the Commission receives a complaint and the difference in signal strength between the earlier-registered RSU and the later-registered RSU (anywhere within the earlier-registered RSU’s communication zone) is 18 dB or less (co-channel). Later-registered RSUs causing objectionable interference must correct the interference immediately unless written consent is obtained from the licensee of the earlier-registered RSU.

**PART 95—PERSONAL RADIO SERVICES**

■ 6. The authority citation for part 95 continues to read as follows:

**Authority:** Sections 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

■ 7. Section 95.1511 is revised to read as follows:

**§ 95.1511 Frequencies available.**

(a) The following table indicates the channel designations of frequencies available for assignment to eligible applicants within the 5850–5925 MHz band for On-Board Units (OBUs):<sup>1</sup>

Channel No.	Channel use	Frequency range (MHz)
170	Reserved	5850–5855
172	Service Channel <sup>2</sup>	5855–5865
174	Service Channel	5865–5875
175	Service Channel <sup>3</sup>	5865–5885
176	Service Channel	5875–5885
178	Control Channel	5885–5895
180	Service Channel	5895–5905
181	Service Channel <sup>3</sup>	5895–5915
182	Service Channel	5905–5915
184	Service Channel <sup>4</sup>	5915–5925

<sup>1</sup> The maximum output power for portable DSRCS–OBUs is 1.0 mW. *See* § 95.639(i).

<sup>2</sup> Channel 172 is designated for public safety applications involving safety of life and property.

<sup>3</sup> Channel Nos. 174/176 may be combined to create a twenty megahertz channel, designated Channel No. 175. Channels 180/182 may be combined to create a twenty-megahertz channel, designated Channel No. 181.

<sup>4</sup> Channel 184 is designated for public safety applications involving safety of life and property.

(b) Except as provided in paragraph (c) of this section, non-reserve DSRCS channels are available on a shared basis only for use in accordance with the Commission’s rules. All licensees shall cooperate in the selection and use of channels in order to reduce interference. This includes monitoring for communications in progress and any other measures as may be necessary to minimize interference. Licensees suffering or causing harmful interference within a communications zone are expected to cooperate and resolve this problem by mutually satisfactory arrangements. If the licensees are unable to do so, the Commission may impose restrictions, including specifying the transmitter power, antenna height and direction, additional filtering, or area or hours of operation of the stations concerned. Further, the use of any channel at a given geographical location may be denied when, in the judgment of the Commission, its use at that location is not in the public interest; the use of any channel may be restricted as to specified geographical areas, maximum power, or such other operating conditions, contained in this part or in the station authorization.

(c) *Safety/public safety priority.* The following access priority governs all DSRCS operations:

(1) Communications involving the safety of life have access priority over all other DSRCS communications;

(2) Subject to a control channel priority system management strategy (*see* ASTM E2213–03 DSRC Standard at § 4.1.1.2(4)), DSRCS communications involving public safety have access priority over all other DSRC communications not listed in paragraph (c)(1) of this section. On-Board Units (OBUs) operated by state or local governmental entities are presumptively engaged in public safety priority communications.

(d) *Non-priority communications.* DSRCS communications not listed in paragraph (c) of this section, are non-priority communications. If a dispute arises concerning non-priority DSRCS–OBU communications with Roadside Units (RSUs), the provisions of § 90.377(e) and (f) of this chapter will apply. Disputes concerning non-priority DSRCS–OBU communications not associated with RSUs are governed by paragraph (b) of this section.

[FR Doc. E6–14795 Filed 9–6–06; 8:45 am]  
**BILLING CODE 6712-01-P**

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 90**

[WT Docket No. 02–55; ET Docket No. 00–258; ET Docket No. 95–18, RM-9498; RM–10024; FCC 06–63]

**Private Land Mobile Services; 800 MHz Public Safety Interference Proceeding**

**AGENCY:** Federal Communications Commission.

**ACTION:** Correcting amendments.

**SUMMARY:** The Federal Communications Commission published a document in the **Federal Register** on December 28, 2005, revising Commission rules. That document contained discrepancies between the text of the order and the final rules set forth at § 90.677. This document corrects the final regulations by revising 47 CFR 90.677.

**DATES:** Effective September 7, 2006.

**FOR FURTHER INFORMATION CONTACT:** Roberto Mussenden, Public Safety and Critical Infrastructure Division at (202) 418–0838.

**SUPPLEMENTARY INFORMATION:** This is a summary of a Federal Communications Commission (FCC) Order which, *inter*