

(although we continue to experience delays in receiving U.S. Postal Service mail). Parties are strongly encouraged to file comments electronically using the Commission's ECFS.

The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. Parties should also send a copy of their filings to Randy Clarke, Pricing Policy Division, Wireline Competition Bureau, Federal Communications Commission, Room 5-A266, 445 12th Street, SW., Washington, DC 20554, or by e-mail to [Randy.Clarke@fcc.gov](mailto:Randy.Clarke@fcc.gov). Parties shall also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, (202) 488-5300, or via e-mail to [fcc@bcpiweb.com](mailto:fcc@bcpiweb.com).

Documents in CC Docket No. 01-92 will be available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th St. SW., Room CY-A257, Washington, DC 20554. The documents may also be purchased from BCPI, telephone (202) 488-5300, facsimile (202) 488-5563, TTY (202) 488-5562, e-mail [fcc@bcpiweb.com](mailto:fcc@bcpiweb.com).

To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

This matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. 47 CFR 1.1200 *et seq.* Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects

discussed. More than a one- or two-sentence description of the views and arguments presented generally is required. 47 CFR 1.1206(b)(2). Other requirements pertaining to oral and written presentations are set forth in § 1.1206(b) of the Commission's rules. 47 CFR 1.1206(b).

**Authority:** 47 U.S.C. 152, 153, 154, 155.

Federal Communications Commission.

**Thomas J. Navin,**

*Chief, Wireline Competition Bureau.*

[FR Doc. E6-19657 Filed 11-21-06; 8:45 am]

**BILLING CODE 6712-01-P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 1 and 17

[WT Docket No. 03-187; FCC 06-164]

#### Effect of Communications Towers on Migratory Birds

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document seeks comment on whether the Commission should adopt measures to reduce migratory bird collisions with communications towers. The document is intended to develop the record in the Commission's August 2003 Migratory Bird Notice of Inquiry. Depending on the comments it receives in response to the document, the Commission may adopt substantive or procedural changes to its rules.

**DATES:** Comments are due on or before January 22, 2007, reply comments are due on or before February 20, 2007.

**ADDRESSES:** You may submit comments, identified by WT Docket No. 03-187, FCC 06-164, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Federal Communications Commission's Web Site:* <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.

- *E-mail:* [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

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

- *Hand Delivery/Courier:* 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002.

- *Accessible Formats:* Contact the FCC to request reasonable accommodations (accessible format

documents, sign language interpreters, CART, etc.) for filing comments either by e-mail: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone: 202-418-0530 or TTY: 202-418-0432.

**Instructions:** All submissions received must include the agency name and docket number for this rulemaking, WT Docket No. 03-187. All comments received will be posted without change to <http://www.fcc.gov/cgb/ecfs/>, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Participation" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

**Docket:** For access to the docket to read background documents or comments received, go to <http://www.fcc.gov/cgb/ecfs/>.

#### FOR FURTHER INFORMATION CONTACT:

Louis Peraert, Spectrum and Competition Policy Division, Wireless Telecommunications Bureau, Federal Communications Commission, (202) 418-1879.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rulemaking in WT Docket No. 03-187, FCC 06-164, adopted November 3, 2006, and released November 7, 2006. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone (800) 378-3160 or (202) 863-2893, facsimile (202) 863-2898, or via e-mail at <http://www.bcpiweb.com>. It is also available on the Commission's Web site at <http://www.fcc.gov>.

#### Synopsis

1. *Introduction.* We seek comment on the extent of any effect of communications towers on migratory birds and whether any such effect warrants regulations specifically designed to protect migratory birds. First, we request comment on the legal framework governing the Commission's obligations in this area, and in particular the threshold necessary to demonstrate an environmental problem that would authorize or require that the Commission take action. We then examine particular steps the Commission might take if there is probative evidence of a sufficient

environmental effect to warrant Commission action. With regard to any newly constructed or modified communications tower that must be registered and meet lighting specifications under part 17 of the commission's rules, we tentatively conclude that medium intensity white strobe lights for nighttime conspicuity is to be considered the preferred system over red obstruction lighting systems to the maximum extent possible without compromising aircraft navigation safety. We seek comment on this tentative conclusion and on issues related to its implementation. We also seek comment on whether, based on the scientific or technical evidence before us concerning the impact that communications towers may have on migratory birds, we should adopt any additional requirements based on other characteristics of communications facilities, including the use of guy wires, tower height, the location of the tower, and the possibility of collocation. Finally, we request comment on whether to add an additional criterion for requiring an environmental assessment (EA) to section 1.1307(a) of the commission's rules.

2. *Legal Framework.* The National Environmental Policy Act (NEPA) requires Federal agencies to analyze the impact of their proposed major Federal actions on the quality of the human environment. 42 U.S.C. 4332(2)(C). The Council on Environmental Quality (CEQ)'s regulations define the "human environment" to include the natural and physical environment and the relationship of people with that environment. 47 CFR 1508.14. The Endangered Species Act (ESA) requires Federal agencies to "insure that any action authorized, funded, or carried out by such agency \* \* \* is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species \* \* \* determined \* \* \* to be critical. \* \* \*" 16 U.S.C. 1536(a)(2). Some, but not all, species of migratory birds are protected under the ESA. In adopting its environmental rules, the Commission in accordance with its public interest responsibilities under the Communications Act, previously has determined that construction of communications towers requires compliance with environmental responsibilities under NEPA and the ESA. Moreover, although under our present rules we do not routinely require environmental processing with respect to migratory birds, the Commission has considered the impact

of individual proposed actions on migratory birds as part of its overall responsibility under NEPA. In order to fulfill its obligations under NEPA and the ESA, the Commission has promulgated rules to address such issues. We tentatively conclude that the obligation under NEPA to identify and take into account the environmental effects of actions that we undertake or authorize may provide a basis for the Commission to make the requisite public interest determination under the Communications Act to support the promulgation of regulations specifically for the protection of migratory birds, provided that there is probative evidence that communications towers are adversely affecting migratory birds.

3. We also seek comment on what constitutes a significant effect on the human environment under NEPA in the context of effects on migratory birds. For example, does the death of some number of individual birds, without more, constitute a significant environmental impact? Must the overall population of birds as a whole or of particular species be negatively impacted before any obligation under NEPA is triggered? And if so, what size of population, either in migratory birds as a whole or in a particular species, is sufficient to trigger any legal obligation by the Commission? Can the Commission rely upon anecdotal evidence of bird kills at individual towers or must it have broader studies before taking action specifically for the protection of migratory birds? Must the Commission consider whether collisions with communications towers interrupt avian movement, and thereby result in declines in species beyond the direct losses due to collisions? Also, what is the relevance, if any, of other causes of avian mortality, such as buildings, transmission lines, and vehicles? How do the answers to these questions affect the Commission's authority, or obligation, to take action in this matter?

4. Apart from any possible obligation under NEPA and ESA, the Migratory Bird Treaty Act (MBTA) provides that it is unlawful to "pursue, hunt, take, capture, kill, attempt to take, capture or kill \* \* \* any migratory bird" unless permitted by the United States Fish and Wildlife Service (FWS). 16 U.S.C. 703, 704(a). Courts have rendered differing decisions regarding the scope of the MBTA's applicability to Federal agencies. The Commission, however, has indicated that "it is not clear" whether the MBTA applies to the Commission's actions. Petition by Forest Conservation Council, American Bird Conservancy and Friends of the Earth

for National Environmental Policy Act Compliance, *Memorandum Opinion and Order*, 21 FCC Rcd 4462, 4469 n.42 (2006); County of Leelanau, Michigan, *Memorandum Opinion and Order*, 9 FCC Rcd 6901, 6903 para. 8 (1994). Nonetheless, some commenters argue that under the MBTA, a party may be liable for any unintentional, incidental death of a migratory bird, such as through a collision with a communications tower. Others contend that the MBTA has a narrower purpose to prohibit only intentional kills of migratory birds, such as by hunting or through a program to control migratory bird population. We seek comment on the nature and scope of the Commission's responsibilities, if any, under this statute. We also seek comment on whether the MBTA gives the Commission (or any agency other than the Department of the Interior) any authority to promulgate regulations to enforce its terms. If the Commission has statutory authority to issue regulations to enforce the MBTA, how could the Commission draft such regulations in a manner that does not impede our responsibility under the Communications Act to ensure the construction of communications towers that are necessary to meet the communications service needs of our nation? We seek comment on these questions.

5. *Possible Need for Commission Action.* In the *Notice of Inquiry (NOI)* in this proceeding, the Commission sought comments supported by evidence concerning whether communications towers have any significant impact on migratory birds. In the Matter of Effects of Communications Towers on Migratory Birds, *Notice of Inquiry*, WT Docket No. 03-187, 18 FCC Rcd 16938 (2003). In response, the Commission received a myriad of comments reflecting widely divergent views as to the degree to which communications towers cause migratory bird mortality. FWS estimates that the number of migratory birds killed by communications towers could range from 4 to 50 million per year. In light of these widely divergent views, we seek further comment supported by evidence regarding the number of migratory birds killed annually by communications towers. Where possible, commenters are encouraged to support their estimates with scientifically reviewed studies.

6. Understanding the scope of any problem involving communications towers and migratory birds is essential to devising meaningful solutions consistent with our responsibilities under the Communications Act and

other Federal statutes. In particular, we seek comment on whether the evidence concerning the impact of communications towers on migratory bird mortality is sufficient to justify and/or authorize Commission action under the legal standards discussed in response to the questions posed above. Assuming sufficient evidence is developed regarding this issue, we may have a basis to take some of the suggested actions discussed below.

7. *Possible Commission Actions.*

*Lighting requirements.* We tentatively conclude that for any newly constructed or modified communications tower that must meet lighting specifications under part 17 of the Commission's rules, medium intensity white strobe lights for nighttime conspicuity is to be considered the preferred system over red obstruction lighting systems to the maximum extent possible without compromising aircraft navigation safety. We request comment on this tentative conclusion, and on specific ways in which the Commission could implement this conclusion in our policies and rules. We also invite comments on the possible use and benefits of other lighting systems, such as red strobe or red blinking incandescent lights, and on other related issues.

8. Several commenting parties have submitted studies indicating that certain lighting requirements may reduce the likelihood of bird collisions with tower structures. In their joint comments filed in response to the *NOI*, the American Bird Conservancy, Forest Conservation Council, and Friends of the Earth argue that "the best science available indicates that particularly in poor visibility weather conditions at night, lights on towers (especially solid state red lights) disrupt a neo-tropical migratory bird's celestial navigation system and perhaps its magnetic navigation system." FWS similarly asserts that lighting appears to be a "key attractant for night migrating songbirds, especially on nights with poor visibility," although it adds that further research is needed on the extent to which lighting contributes to migratory bird collisions with communications towers. Subsequently, interim reports of studies being conducted at public safety towers in Michigan were entered into the record. Those interim reports indicate that comparable numbers of bird carcasses were found when only red strobe or only white strobe lights were used, irrespective of the towers' heights and the presence of guy wires. The interim reports also indicate more bird carcasses were found at towers using red steady lights with red strobe lights than at

towers using only red strobe, white strobe, or red blinking incandescent lights.

9. Section 303(q) of the Communications Act of 1934, as amended, vests in the Commission the authority to require painting and/or lighting of antenna structures which may constitute a hazard to air navigation. 47 U.S.C. 303(q). Part 17 of the Commission's rules sets forth procedures for implementing this authority. 47 CFR Part 17. Specifically, if a proposed construction or modification of a communications tower would be more than 60.96 meters (200 feet) in height above ground level (AGL), or meet certain other conditions detailed in section 17.7 of our rules (such as proximity to an airport), our rules (as well as the Federal Aviation Administration's (FAA) rules) require the entity proposing such construction or modification to notify the FAA. 47 CFR 17.7; 14 CFR 77.13. If the FAA determines, in accordance with its applicable Advisory Circular(s), that the construction or alteration is one for which lighting or marking is necessary for aircraft navigation safety, the FAA sends an acknowledgement to the antenna structure owner that contains a statement to that effect and information on how the structure should be marked and lighted. 14 CFR 77.19. This acknowledgment is the FAA's determination of "no hazard," meaning that the FAA has determined that the structure will pose no hazard to aircraft so long as it is marked and/or lighted in accordance with the FAA's specifications. The antenna structure owner must register the structure with the Commission prior to construction by submitting FCC Form 854 together with the FAA's "no hazard" determination. 47 CFR 17.4(b). Unless the Commission specifies otherwise, the FAA's specifications for marking and/or lighting on the antenna structure are then made part of the owner's FCC antenna structure registration, and the owner is required to maintain the marking and/or lighting in accordance with those specifications. 47 CFR 17.23. The FAA's current standards pertaining to tower lighting specifications to promote aviation safety are set forth in Advisory Circular 70/7460-1K ("Obstruction Marking and Lighting"). The FAA's recommendations can vary depending on characteristics of the tower, terrain, and location, and may permit antenna structure owners to choose among different types of lighting systems, including red steady (red solid state), red strobe interspersed with red steady, or white lights.

10. In April 2004, in response to a request by the American Bird Conservancy to minimize mortality to migratory birds, the FAA issued an internal memorandum providing guidance on the FAA's issuance of lighting recommendations set forth in Advisory Circular 70/7460-1K. Specifically, as interim guidance, the FAA's Program Director for Air Traffic Airspace Management directs Regional Air Traffic Division Managers that use of medium intensity white strobe lights for nighttime conspicuity is to be considered the preferred system over red obstruction lighting systems when feasible and to the maximum extent possible in cases in which aviation safety would not be compromised. The memorandum references the *NOI* and notes that the Commission may later provide some guidance on what, if any, then existing standards regarding the effects of communications towers on migratory birds were in need of review and study. The memorandum also states that, from a safety perspective, the standards and guidance set forth in the existing Advisory Circular 70/7460-1 continue to be necessary to appropriately light obstacles and to avoid creating hazardous conditions for pilots. Finally, in accordance with that Advisory Circular, the memorandum points out that the use of white lights for nighttime conspicuity within three nautical miles of an airport or in populated urban areas is discouraged as a lighting recommendation. In their joint comments on a 2004 report prepared by the Commission's environmental consultant, Avatar Environmental, LLC (Avatar Report), the American Bird Conservancy, Forest Conservation Council, Humane Society, and Defenders of Wildlife urge the Commission to adopt the FAA's preference for white strobe lighting as set forth in the April 2004 memorandum.

11. We tentatively conclude that under the Commission's part 17 rules, consistent with the FAA's memorandum, the use of medium intensity white strobe lights for nighttime conspicuity is to be considered the preferred lighting system over red obstruction lighting systems to the maximum extent possible without compromising aircraft navigation safety. We base this tentative conclusion on the FAA's recommendation of such lighting where it will not compromise aircraft navigation safety, the evidence suggesting that white strobe lights may create less of a hazard to migratory birds, and the absence of record evidence that use of white strobe

lighting would have an adverse impact on communications facilities deployment. We seek comment on this tentative conclusion, including whether its implementation would result in reducing the incidence of migratory bird mortality associated with communications towers as well as any burdens such a requirement would impose on tower owners, or on the public, and whether alternatives may be available or preferable. We also seek comment on our statutory authority to implement this tentative conclusion.

12. In the event we adopt our tentative conclusion, we seek comment specifically on how best to implement this policy. For instance, should we revise section 17.23 of the Commission's rules (see 47 CFR 17.23) to establish that, unless otherwise specified by the Commission, each new or altered registered antenna structure must use medium intensity white strobe lights for nighttime conspicuity if the FAA determines that the use of such lights would not impair the safety of air navigation and recommends their use? We note that section 17.23 of our rules currently references two FAA Advisory Circulars (AC 70/7460-1J, as revised in 1996, and AC 150/5345-43E, as revised in 1995). Given that one of these Advisory Circulars (AC 70/7460-1J) subsequently has been updated with a newer version (AC 70/7460-1K), we seek comment on how we should revise section 17.23. We further invite comment on whether any rule revisions we may adopt should be written in such a manner as to accommodate later changes in the FAA Advisory Circulars without a future change in our rules. We also ask for comment on whether, to the extent we determine to adopt additional lighting guidance in our rules, revisions to other provisions of part 17 or elsewhere in our rules are necessary. We encourage commenters to suggest specific language and discuss its benefits and drawbacks.

13. In addition, we invite commenters to consider the possible use and benefits of lighting systems other than red steady and medium intensity white strobe. We note that the FAA Advisory Circular pertaining to tower lighting does not currently permit the use of red strobe or red blinking incandescent lights without the use of red steady lights. FAA AC 70/7460-1K at 13-14. The American Bird Conservancy, however, has recently argued that recent and past research, including the preliminary results from the Michigan study, suggests that "the critical element in lighting towers and other structures is to use strobe lighting for night time conspicuity exclusively, and not to use red steady burning

lights." Thus, noting that the FAA does not recommend the use of white strobe lights under some circumstances, the American Bird Conservancy now asserts that either white or red strobe lighting is desirable. We seek comment on the significance of the existing research, and whether, given the FAA's existing Advisory Circular, we should modify our proposed rule to account for the possible use of red strobe lights or red blinking lights without red steady lights. If the final results of the Michigan study are consistent with the preliminary results and are borne out by a final report, would the results provide sufficient scientific basis on which to conclude that use of red strobe or red blinking lights might reduce bird mortality levels to the same or similar degree as white strobe lights? We also seek comment on whether there are other studies that have been designed to assess the different effects on avian mortality of these different lighting systems and whether there is a need for any further studies. If other studies exist, what are their results? Do they support the adoption of our tentative conclusion regarding the use of white strobe lights? Or, would the studies support giving tower registrants the option of using red strobe or red blinking incandescent lights as an alternative to white strobe lights, to the extent consistent with aircraft navigation safety and endorsed by the FAA?

14. We also seek comment regarding the economic, environmental, and any other costs of a requirement to use white strobe lights when compared with other lighting alternatives. In particular, what would be the specific economic impact on licensees and tower owners and constructors, including small businesses, of adopting such a requirement? What are the comparative costs and longevity of white strobe lighting systems versus the other lighting systems identified in this section? What other factors are relevant to assess the impact that requiring medium intensity white strobe lighting would have on licensees and towers owners and constructors? To the extent white strobe lighting would increase the cost of constructing or maintaining towers, we further seek comment on the effect this would have on communications service deployment, homeland security, and public safety.

15. We also note that section 1.1307(a)(8) provides that construction of antenna towers and/or supporting structures that are to be equipped with high intensity white lights, which are to be located in residential neighborhoods, is an action that may significantly affect

the environment and thus requires the preparation of an EA by the applicant. 47 CFR 1.1307(a)(8). Further, the April 2004 FAA memorandum notes that in accordance with the Advisory Circular, the use of white lights for nighttime conspicuity within three nautical miles of an airport or in populated urban areas is discouraged as a lighting recommendation. We invite comment supported by evidence on whether medium intensity white strobe lighting would impose an environmental impact on neighboring residents or have other adverse consequences, and if so, how we should weigh these competing public interest considerations in determining whether to adopt any guidance relating to tower lighting.

16. Finally, we seek comment on what, if any, action we should take regarding the lighting of existing towers. We invite comment on both the benefits and costs of any such action. We note that this may also require modifying licenses pursuant to section 316 of the Communications Act (47 U.S.C. 316), as well as the approval of the FAA and the re-issuance of any no-hazard determinations. Considering the costs and benefits and the need for the FAA to approve changes, if we were to take any action regarding existing towers, how should such a requirement be implemented? Should we require medium intensity white strobe lights when the red obstruction lights burn out and need to be replaced? Would such an approach be consistent with the FAA's applicable Advisory Circular? Should we seek a transition of all existing towers to medium intensity white strobe lights, to the extent permitted by the FAA, within a specific time frame, such as five years from the date of adoption of the tentative conclusion as a rule? We seek comment on these questions, as well as upon other alternatives to our proposed rule.

17. *Use of Guy Wires.* We next seek comment on whether we should adopt any requirements governing the use of guy wires because of the potential impact posed to migratory birds. In its September 2004 report, Avatar concluded that, based on the studies it analyzed, it appears that "[t]owers with guy wires are at higher risk [to birds] than self-supporting towers." Avatar also stated, however, that at the time of its report there were "[n]o specific studies comparing avian collisions between guyed and self-supporting structures." In their joint comments, American Bird Conservancy, Forest Conservation Council, the Humane Society, and Friends of the Earth assert that birds are killed not only by colliding with towers but also by flying

into guy wires that support the towers. The interim reports on the Michigan towers, presented subsequent to the Avatar report, suggest that towers with guy wires had more avian mortality than towers of similar height with no guy wires.

18. In light of this record, we request comment on several questions relevant to whether these concerns are significant enough to justify the Commission's adoption of rules relating to the use of guy wires. In addressing these questions, commenters should also comment on whether, to the extent we adopt our tentative conclusion regarding tower lighting, there might still be a need to adopt requirements regarding the use of guy wires.

19. First, we seek comment on whether the scientific record supports limiting the use of guy wires. Are there additional scientific studies that illuminate the relationship between avian mortality and the use of guy wires? If so, how conclusive are those studies, and what do they show? To the extent it can be shown that guy wires do increase the number of migratory bird collisions with communications towers, is the increase in the number of collisions also related to the type of lighting used, such that the number of collisions would be mitigated if we were to adopt our tentative conclusion that medium intensity white strobe lights for nighttime conspicuity is to be considered the preferred lighting system over red obstruction lighting systems?

20. We also request information on engineering and economic factors relevant to the use of guy wires. Is there a height threshold above which guy wires are generally necessary, and if so, what is that height? Does the calculus vary depending on soil conditions or other factors? To what extent are towers utilizing guy wires necessary to the provision of various licensed services, and what economic factors may affect the decision whether to use guy wires?

21. We also request comment on any additional consequences that may result from regulation relating to guy wires. For instance, if we were to limit the use of guy wires, what would be the impact on tower construction and the deployment of communications services generally? Would tower constructors need to erect towers of the same height but with a larger physical footprint, a greater number of shorter towers to provide equivalent service, or some combination thereof? To what extent would either non-guyed tower designs or greater proliferation of towers result in creating additional adverse impact on environmental matters that do not pertain to migratory birds, such as

historic properties, wetlands, or endangered species?

22. We ask commenters to address how we might balance these various scientific, engineering, economic, and other factors, in determining what, if any, standards should govern the use of guy wires. We encourage commenters to suggest specific tests for when the use of guy wires may be suspect, and to justify those tests based on objective evidence. Commenters should also address how any standards should be implemented. For example, if we adopt standards regarding the use of guy wires, should we mandate that all towers, or all towers meeting certain criteria, meet those standards without exception? Alternatively, should we permit towers with guy wires upon filing of an EA and issuance of a Finding of No Significant Impact, or upon certification that no reasonable alternative (e.g., use of non-guyed towers or collocation) was available? We seek comment regarding both the benefits and the costs of these and alternative regimes.

23. We specifically seek comment on whether to adopt requirements relating to marking of guy wires. Avatar reported that one of the "most effective ways to reduce avian mortality is to mark [wires] to make them more visible," and that the effectiveness of methods that mark overhead electric power lines and target certain species of birds is well documented. Therefore, Avatar concluded that wire marking "may increase guy wire visibility thereby reducing the collision risk for some birds," and discussed several currently available devices such as bird flight diverters. Avatar also explained, however, that "from an engineering perspective," wire marking is not "always a good solution" because devices "that physically enlarge the wire commonly act as wind-catching objects and may increase the risk of wire breaks due to line tension, vibration, and stress loads."

24. We seek comment on the effectiveness of wire markings in mitigating migratory bird collisions with communications towers. In particular, we invite information about past or ongoing scientific studies into the effectiveness of wire markings on communications towers. To the extent studies have been conducted on other types of structures, how relevant are they to communications towers? Commenters who advocate a marking requirement should address which types of marking devices are most effective, and how they should be used. We also invite comment regarding the engineering feasibility and financial cost

of marking requirements, for both existing and new towers. If the Commission were to adopt a wire marking requirement, how could we do so in a manner that imposes minimal burdens on license applicants and communications tower owners and constructors?

25. *Tower Height.* We seek comment on whether to adopt any requirements relating to the height of communications towers in order to minimize the impact of such towers on migratory birds. Avatar found that "all other things being equal, taller towers with lights tend to represent more of a hazard to birds than shorter, unlit, towers." FWS's voluntary guidelines recommend that communications towers be shorter than 200 feet if possible to avoid, in most instances, the requirement that the towers have aviation safety lights. Conservation groups argue that the Commission should restrict the heights of communications towers because doing so would minimize the presence of two features that are most harmful to birds, lights and guy wires.

26. We request comment regarding the relevant costs and benefits of adopting any requirements relating to tower height. For example, would limitations on tower height hinder the deployment of certain types of services, including public safety communications? Would such requirements adversely affect the availability of service in certain geographic locations, such as rural areas? Would requirements governing tower height lead to a greater number of towers, and if so, to what extent would this impact historic properties, wetlands, endangered species, or other environmental values? We welcome specific information regarding any such disadvantages of rules relating to tower height, as well as the benefits. We also ask commenters to address whether, to the extent we adopt our tentative conclusion regarding tower lighting, there would be a need to adopt any requirements relating to tower height.

27. We also seek comment on how any requirements relating to tower height should be implemented. In particular, we ask commenters that advocate height regulations to consider what tower height should trigger any rules. Should we regulate towers over 200 feet in order to minimize the use of lights? Is there some other threshold above which towers are more likely to have a significant effect on migratory birds? Finally, we seek comment on what procedural requirements we should apply to towers that exceed any specified height threshold, such as a certification of need or requirement to file an EA.

28. *Tower Location.* We seek comment on whether towers located in certain areas might cause a sufficient environmental impact on migratory birds such that, when considered with other relevant factors, some Commission action might be justified. In the *NOI*, the Commission requested scientific research and other data “concerning the impact on migratory birds of communications towers located in or near specific habitats, such as wetlands.” The *NOI* asked whether “towers on ridges, mountains, or other high ground have a differential impact on migratory bird populations.” The *NOI* also sought comment on the impact on migratory birds of towers located in areas with a high incidence of fog, low clouds, or similar obscuration, or in proximity to coastlines and major bird corridors. In response to the *NOI*, some commenters presented arguments and rationales why communications towers should not be sited in certain locations such as migratory bird habitats or in migration corridors on ridgelines. Although Avatar noted some degree of confidence within the scientific community that the “greatest bird mortality tends to occur on nights with low visibility conditions, especially fog, low cloud ceiling, or other overcast conditions,” it reached no similar findings with regard to the effect that locating towers on ridges, or in wetlands, might have on avian mortality. In addition, Land Protection Partners discussed a “multi-modal research study in New Hampshire” that it claimed “revealed the effect of topography of the Appalachian Mountains on migratory birds, including neo-tropical migrants.” We seek information on whether there are additional scientific studies that have examined the effect that locating communications towers in different areas, with different weather conditions, might have on avian mortality and, if so, what if any requirements we should adopt on the basis of such studies.

29. *Collocation.* We request comment on whether the Commission should adopt additional requirements to promote collocation. We note that FWS, American Bird Conservancy, and several other commenters argue that the Commission should strongly encourage license applicants to collocate their antennas on existing structures to the extent possible. We seek comment and information relevant to whether we should adopt policies that would promote more extensive use of collocation. If we do adopt regulations to promote collocation, we seek comment on what form those

regulations should take. Possibilities could include, for example, a requirement to certify that collocation opportunities are unavailable and/or describe collocation alternatives that the licensee explored. We ask commenters to discuss the benefits and costs of these and alternative forms of regulation, including burdens on small businesses and possible impacts on the delivery of public safety and homeland security services. We also ask commenters to assess the need for such regulation to the extent we adopt our tentative conclusion that the use of medium intensity white strobe lights for nighttime conspicuity is to be considered the preferred lighting system over red obstruction lighting systems.

30. *Section 1.1307.* We seek comment as to whether to amend section 1.1307(a) of the commission’s rules to routinely require environmental processing with respect to migratory birds. Section 1.1307(a) currently identifies eight different criteria that, if present, establish that a proposed facilities construction “may significantly affect the environment” and therefore requires preparation of an EA. 47 CFR 1.1307(a)(1) through (8). The American Bird Conservancy, Forest Conservation Council, Friends of the Earth, and the Humane Society argue that, considering the evidence of mass bird mortalities at communications towers, the Commission should also expressly require an EA for proposed facilities that would have potential effects on migratory birds. We note that the Commission’s rules already provide for consideration of factors not identified in section 1.1307(a), including those that pertain to a facility’s effect on migratory birds, to the extent the Commission independently determines that there may be a significant environmental effect in a particular case. 47 CFR 1.1307(c), (d).

31. We seek comment regarding the appropriate methodology for making such a determination, as well as the level of probative evidence necessary to support such a determination. We note, for example, that Avatar found in its 2004 report that there were no studies to date that “demonstrate[d] an unambiguous relationship between avian collisions with communication towers and population decline of migratory bird species.” Is the current state of scientific evidence insufficient to require routine assessment of such an effect? Or, to the contrary, is the evidence of specific incidents of bird collisions with towers, such as extrapolations that estimate the total number of these collisions, sufficient to support a required assessment for some

or all towers? Are there other factors the Commission should consider in determining the proper treatment of the effect on migratory birds under the Commission’s environmental rules?

32. We also seek comment, if we adopt an EA requirement for effects on migratory birds, on the types of towers to which such a requirement should apply. One possible approach might be to require an EA addressing this factor for all new tower construction. We seek comment as to whether the scientific evidence would support a general requirement of this sort, as well as the burdens it would impose on applicants. We also ask commenters to consider whether such a broadly applicable procedural requirement would reduce the incentive for companies to choose sites and designs that may be less likely to affect migratory birds. Another possibility could be to require an EA if a proposed construction “might affect migratory birds.” Commenters discussing this approach should address how such a broadly worded requirement might be administered, and how it could be enforced.

33. An alternative to these general approaches may be to require an EA only for proposed towers that exhibit certain characteristics that render them more likely to harm migratory birds. For example, as suggested in the discussion above, we might require an EA only for towers that use certain lighting systems, or that require guy wires, or that exceed a specified height. We seek comment as to whether the evidence supports such criteria, and if so where the thresholds should be set. Are there any additional factors that should be considered in triggering an EA requirement, such as the area of the country in which the tower would be located, the local topography, or prevailing weather conditions? We encourage commenters to set forth specific proposals and to address all relevant considerations, including the scientific support for particular criteria; the effect of any such EA requirement on the deployment of wireless services, on homeland security, and on public safety; and the Commission’s ability to administer any particular proposal if adopted. Commenters should also address both the effectiveness and the burdens of various approaches, including the impacts on small businesses.

34. *Other Possible Actions.* Finally, we seek comment on whether there are other possible substantive or procedural measures the Commission could take to minimize migratory bird collisions that are not discussed above. For any such possible measure, we request any available information and scientific

research to support the effectiveness of such a measure at minimizing migratory bird collisions. We also request comment on the best way to implement such a measure so as to eliminate the imposition of any unnecessary costs on affected entities, including small businesses.

### Procedural Matters

#### *Ex Parte—Permit But Disclose Proceeding*

35. This is a permit-but-disclose notice and comment rulemaking proceeding. *See Generally*, 47 CFR 1.1202, 1.1203, 1.1206. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed pursuant to the Commission's Rules.

#### *Initial Regulatory Flexibility Act Analysis*

36. As required by the Regulatory Flexibility Act (*see* 5 U.S.C. 603), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules proposed in this document. The IRFA is set forth in section III below. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments filed in response to the NPRM as set forth below in subsection D, and have a separate and distinct heading designating them as responses to the IRFA.

#### *Initial Paperwork Reduction Act of 1995 Analysis*

37. This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified “information collection burden for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198. *See* 44 U.S.C. 3506(c)(4).

#### *Comment Period and Procedures*

38. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of*

*Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

39. Electronic Filers. Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the Web site for submitting comments.

40. ECFS filers. If multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and include the following words in the body of the message, “get form.” A sample form and directions will be sent in response.

41. Paper Filers. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

42. The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington DC 20554.

43. Availability of documents. The public may view the documents filed in this proceeding during regular business hours in the FCC Reference Information Center, Federal Communications

Commission, 445 12th Street, SW., Room CY–A257, Washington, DC 20554, and on the Commission's Internet Home Page: <http://www.fcc.gov>. Copies of comments and reply comments are also available through the Commission's duplicating contractor: Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160, or via e-mail at the following e-mail address: <http://www.bcpiweb.com>.

44. People with Disabilities. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

### Initial Regulatory Flexibility Analysis

#### *Need for, and Objectives of, the Proposed Rules*

45. The National Environmental Policy Act of 1969 (NEPA) requires Federal agencies to establish procedures that will enable them to analyze any potential environmental impact of actions that they undertake or authorize. *See* 5 U.S.C. 601(6). The Endangered Species Act (ESA) prohibits the taking of any endangered or threatened species by any person unless authorized by the U.S. Fish & Wildlife Service (FWS). 16 U.S.C. 1538(a)(1)(B). The Commission has implemented regulations to comply with NEPA and ESA in part 1, subpart I of its rules. 47 CFR 1.1301 *et seq.* In response to the Commission's August 2003 Notice of Inquiry in this proceeding (In the Matter of Effects of Communications Towers on Migratory Birds, *Notice of Inquiry*, WT Docket No. 03–187, 18 FCC Rcd 16938 (2003)), FWS and several other parties filed comments in which they argued that the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 701) would prohibit the unintentional and incidental take of even one migratory bird that died by colliding with a communications tower. These commenters also asserted that there have been several reports of mass migratory bird mortalities at communications towers. FWS estimates that the number of migratory birds killed each year due to collisions with communications towers could range from 4 to 50 million.

46. In the NPRM, we seek comment on whether to amend the Commission's rules to reduce the impact of communications towers on migratory birds in accordance with these Federal statutes and in light of the concerns expressed in the *NOI* record. We

tentatively conclude that any newly constructed or modified communications tower, which under part 17 of the Commission's rules must be registered with the Commission and comply with lighting specifications, should be required to use medium intensity white strobe lights rather than red obstruction lighting for nighttime conspicuity so long as the Federal Aviation Administration (FAA) determines that the use of such lights on that particular communications tower does not impair aviation safety. We also seek comment on whether we should adopt regulations with regard to: (1) The use of guy wires; (2) height of communications towers; (3) the location of towers; and (4) collocation of antennas on existing structures. Finally, we seek comment on whether we should amend commission rule 1.1307 (47 CFR 1.307) to include potential impact on migratory birds as a criterion that requires the filing of an Environmental Assessment (EA).

#### *Legal Basis*

47. We tentatively conclude that we have authority under sections 1, 4(i), 303(q) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 301, 303(q), 303(r), and under the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, to adopt the proposals set forth in the NPRM.

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

48. 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. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." 5 U.S.C. 601(6). In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. 5 U.S.C. 601(3). 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). Small Business Act, 5 U.S.C. 632 (1996). A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." 5 U.S.C. 601(4).

49. Nationwide, there are a total of approximately 22.4 million small businesses, according to SBA data. See

SBA, Programs and Services, SBA Pamphlet No. CO-0028, at page 40 (July 2002). A "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." 5 U.S.C. 601(4). Nationwide, as of 2002, there were approximately 1.6 million small organizations. Independent Sector, *The New Nonprofit Almanac & Desk Reference* (2002). The term "small governmental jurisdiction" is defined generally as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand." 5 U.S.C. 601(5). Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States. U.S. Census Bureau, *Statistical Abstract of the United States: 2006*, section 8, page 272, table 415. We estimate that, of this total, 84,377 entities were "small governmental jurisdictions." Thus, we estimate that most governmental jurisdictions are small. The changes and additions to the commission's rules adopted in the NPRM are of general applicability to all FCC licensed entities of any size that use a communications tower. Accordingly, this NPRM provides a general analysis of the impact of the proposals on small businesses rather than a service by service analysis.

#### *Description of Projected Reporting, Recordkeeping and Other Compliance Requirements*

50. The NPRM solicits comment on one tentative conclusion and on five other potential areas of modification to the Commission's regulations regarding the siting and construction of communications towers so as to reduce the incidence of migratory bird collisions. The NPRM seeks comment on its tentative conclusion that, under the commission's part 17 rules, the use of medium intensity white strobe lights for nighttime conspicuity is to be considered the preferred lighting system over red obstruction lighting systems to the maximum extent possible without compromising aircraft navigation safety. The NPRM also requests comment on whether we should impose regulations relating to the use of guy wires on communications towers, the height of communications towers, the location of communications towers, and collocation of new antennas on existing structures. Finally, the NPRM seeks comment as to whether the Commission should amend section 1.1307(a) of our rules to expand the circumstances under which an EA is required. Depending on the rules that are adopted, it is possible that compliance may involve new

recordkeeping or reporting requirements.

#### *Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered*

51. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. 5 U.S.C. 603(c).

52. The NPRM seeks comment on its tentative conclusion that, under the Commission's part 17 rules, the use of medium intensity white strobe lights for nighttime conspicuity is to be considered the preferred lighting system over red obstruction lighting systems to the maximum extent possible without compromising aircraft navigation safety. We seek comment on the effect that such a requirement, or alternative rules, might have on small entities. The NPRM also requests comment on whether it should impose regulations relating to the use of guy wires on communications towers, the height of communications towers, the location of communications towers, or collocation of new antennas on existing structures. For each of these areas, we seek comment about the burdens that regulation would impose on small entities and how the Commission could impose such regulations while minimizing the burdens on small entities. Are there any alternatives the Commission could implement that could achieve the Commission's goals while at the same time minimizing the burdens on small entities? We will continue to examine alternatives in the future with the objectives of eliminating unnecessary regulations and minimizing any significant economic impact on small entities.

#### *Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules*

53. None.

#### **Ordering Clauses**

54. Accordingly, it is ordered that, pursuant to sections 1, 4(i), 303(q), 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i),



303(q), 303(r), and the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, this Notice of Proposed Rulemaking is hereby adopted.

55. It is further ordered that pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before January 22, 2007 and reply comments on or before February 20, 2007.

56. It is further ordered that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. E6-19742 Filed 11-21-06; 8:45 am]

**BILLING CODE 6712-01-P**

## **AGENCY FOR INTERNATIONAL DEVELOPMENT**

### **48 CFR Part 719**

**RIN 0412-AA58**

#### **Mentor-Protégé Program**

**AGENCY:** U.S. Agency for International Development (USAID).

**ACTION:** Proposed rulemaking.

**SUMMARY:** The United States Agency for International Development (USAID) is proposing to amend its acquisition regulations to formally encourage USAID prime contractors to assist small disadvantaged firms certified by the Small Business Administration under Section 8(a) of the Small Business Act, other small disadvantaged business, Historically Black Colleges and Universities and other minority institutions of higher learning, and women-owned small business in enhancing their capabilities to perform contracts and subcontracts for USAID and other Federal agencies. The program seeks to provide a Mentor-Protégé Program that assists qualified small business to receive developmental assistance from USAID prime contractors in order to increase the base of small business eligible to perform USAID contracts and subcontracts. The program also seeks to foster long-term business relationships between USAID prime contractors and small business entities and minority institutions of

higher learning and to increase the overall number of small business entities and minority institutions that receive USAID grants, cooperative agreements, contracts, and subcontract awards.

**DATES:** Written comments on the proposed rulemaking must be received on or before December 8, 2006.

**ADDRESSES:** Submit comments, identified by the title of the proposed action, Regulatory Information Number (RIN), your name, title, organization, postal address, telephone number, and e-mail address in the text of the message. Accepted methods of submission include the following: Federal eRulemaking portal: <http://www.regulations.gov>. Follow the instructions for submitting comments; facsimile: 202-216-3056; mail: addressed to, Rockefeller P. Herisse, Ph.D. U.S. Agency for International Development, Attn. Mentor-Protégé Rulemaking, Office of Small and Disadvantaged Business Utilization, 1300 Pennsylvania Avenue, NW, Washington, DC 20523-7800, and E-mail: [rherisse@usaid.gov](mailto:rherisse@usaid.gov). All comments will be made available for public review without change, including any personal information provided, from three (3) days after receipt to finalization of action <http://www.usaid.gov/policy/regulations/index.html>.

With respect to proposed reporting requirements and the Paperwork Reduction Act, comments should be addressed to Office of Information and Regulatory Affairs, NEOB—Rm. 10202, 725 17th Street, NW., Washington DC 20503 Rm. 10202, or to Beverly Johnson, Office of Administrative Services, Information and Records Division, 1300 Pennsylvania Ave, NW., Washington, DC 20523 (202)-712-1365 or by e-mail to [bjohnson@usaid.gov](mailto:bjohnson@usaid.gov).

**FOR FURTHER INFORMATION CONTACT:**

Tracy A. Scrivner, Mentor-Protégé Rulemaking, Office of Small and Disadvantaged Business Utilization, U.S. Agency for International Development, 1300 Pennsylvania Avenue, NW., Washington, DC 20523, (202) 712-4983 or by e-mail to [tscrivner@usaid.gov](mailto:tscrivner@usaid.gov).

**SUPPLEMENTARY INFORMATION:**

I. Background

II. Section By Section Analysis

III. Procedural Requirements

- A. Review Under Executive Order 12866
- B. Review Under Executive Order 12988
- C. Review Under the Regulatory Flexibility Act.
- D. Review Under the Paperwork Reduction Act
- E. Review Under Executive Order 12612
- F. Review Under the Unfunded Mandates Reform Act of 1995

## **I. Background**

On December 8, 1995, the Office of Small and Disadvantaged Business Utilization (OSDBU) commissioned a thorough assessment of existing Mentor-Protégé programs and the feasibility of such a program for USAID. The assessment concluded that opportunities exist in such programs to actually encourage meaningful and successful business development between Mentors and Protégés. Mentor-Protégé arrangements represent opportunities for creating access for small and disadvantaged business to USAID contracts and awards. Both OSDBU and the Office of Acquisition and Assistance (OAA) believe that Mentor-Protégé programs will afford small and disadvantaged business opportunities to develop their capacity and competencies. Review and analysis of existing Mentor-Protégé programs in the private and public sector conclude that they are effective against the problems related to small business and minority sub-contracting.

This program is similar to those established by other federal agencies such as the Department of State, Department of Energy and the Environmental Protection Agency. An assessment of the best practices in Mentor-Protégé programs identified certain clear benefits for all parties involved. A successful Program can enable USAID to receive a lower price offer from less expensive Mentor-Protégé teams. USAID acknowledges that a structured Mentor-Protégé Program provides an opportunity for dual benefits where small and disadvantaged business are developed to become prime contractors and technically capable sub-contractors. More importantly, the Program provides a degree of confidence to Program Officers that the Mentor firm stands behind the work of the Protégé firm. Therefore, risks associated with the performance of the small and disadvantaged business are mitigated.

## **II. Section-by-Section Analysis**

This rulemaking proposes to add a new Subpart 273 and amend Part 719 of the AIDAR to provide a Mentor-Protégé Program that assists qualified small business to receive developmental assistance from USAID prime contractors in order to increase the base of small business eligible to perform on USAID grants, contracts and subcontracts.

Proposed sections 719.273-2 and 719.273-4 define which types of entities are eligible to participate as Protégé in the Program. Those entities would