

A. Background

48. We begin by reviewing the terms of the statutory provisions most relevant to this proceeding—section 706 of the 1996 Telecommunications Act and sections 253 and 332(c)(7) of the Communications Act. We also address a number of additional statutory provisions in this section.

49. Section 706(a) provides that the Commission is to encourage the deployment of advanced telecommunications capability to all Americans (including, in particular, elementary and secondary schools and classrooms) on a reasonable and timely basis. In granting the Commission authority to fulfill this mandate, Congress specifically directed the Commission to use various regulatory methods, including those that remove barriers to infrastructure investment. In the *2010 Sixth Broadband Deployment Report*, the Commission concluded that broadband was not being deployed to all Americans in a reasonable and timely manner. When the Commission makes such a negative determination, section 706(b) requires that the agency take immediate action to accelerate broadband deployment of by removing barriers to infrastructure investment and promoting competition.

50. Section 253(a) bars state or local statutes, regulations, or other legal requirements that prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service. Section 253(b) contains a safe harbor preserving competitively neutral state requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers. Section 253(c) also preserves the authority of a State or local government to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis. Section 253(d) expressly requires the Commission to preempt state or local government action in certain situations.

51. Section 332(c)(7) of the Act applies to rights of way issues concerning wireless services. It preserves state and local authority over decisions regarding the placement, construction, and modification of personal wireless service facilities subject to certain limitations. However, under section 332(c)(7), the regulation of the placement, construction, and modification of personal wireless

service facilities by any State or local government must not prohibit or have the effect of prohibiting the provision of personal wireless services. The statute also requires the State or local government to act on any request to place, construct, or modify personal wireless service facilities within a reasonable period of time.

B. Authority for Educational Activities and Voluntary Programs

52. We believe the Commission has ample authority to engage in educational efforts to foster broadband deployment by encouraging improvements in policies regarding public rights of way and wireless facilities siting. We also think the Commission has ample authority to participate in or facilitate voluntary endeavors to achieve this goal. Section 706(a) specifically charges the Commission with encouraging the deployment of broadband through the use of methods that remove barriers to infrastructure investment. Section 1 of the Act also states that the Commission was created to ensure rapid, efficient communication services. In addition, section 4(i) gives the Commission broad authority to take whatever actions are necessary to the execution of its functions as long as they are not otherwise inconsistent with the Act. Education and involvement in voluntary programs would advance the goals of section 706 and section 1 and come within the broad flexibility accorded the Commission under section 4(i). We believe that such activities also further the goals of sections 253 and 332 by reducing the likelihood of state or local actions that have the effect of prohibiting the provision of a telecommunications service or personal wireless service in violation of those sections. We seek comment on these issues.

C. Authority for Rulemaking

53. We also believe that the Commission has authority to engage in rulemaking to improve rights of way and wireless facilities siting governance. Section 201(b) states that the Commission may prescribe rules and regulations necessary to carry out the provisions of the Act. Section 303(r) contains a similar grant of rulemaking authority, and section 4(i) authorizes the Commission to make rules and regulations, and issue orders necessary in the execution of its functions. Thus, we believe the Commission has broad general rulemaking authority that would allow it to issue rules interpreting sections 253 and 332. We seek comment on this view. Could the Commission, for

example, adopt rules further defining when a state or local legal requirement constitutes an effective barrier to the provision of a telecommunications service under section 253(a) or defining what constitutes fair and reasonable compensation under section 253(c)? We also seek comment on our authority to adopt rules concerning matters in this proceeding pursuant to section 706.

D. Adjudication of Rights of Way Cases Under Section 253

54. We also invite comment on whether the Commission has authority to adjudicate rights of way disputes under section 253. The Commission has not taken action to resolve this issue and courts have taken differing approaches. Moreover, to the extent that the statutory language is ambiguous, the Commission is not bound by those courts' statutory interpretations.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 390 and 391

[Docket No. FMCSA-2008-0363]

RIN 2126-AA97

National Registry of Certified Medical Examiners

ACTION: Notice of availability of draft guidance; request for comments.

SUMMARY: FMCSA announces the availability for public review and comment draft guidance for the core curriculum specifications that could be used by training providers in implementing the National Registry of Certified Medical Examiners (National Registry) proposed rule. The National Registry is required by section 4116 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). On December 1, 2008, the Agency published a Notice of Proposed Rulemaking to implement the National Registry and the proposal included minimum training requirements for medical examiners. The draft guidance announced by this notice would provide core curriculum specifications as additional information for training organizations that may need such assistance in developing training

courses and materials consistent with the proposed minimum training requirements.

DATES: Comments and related material must be submitted on or before June 16, 2011.

ADDRESSES: You may submit comments identified by docket number FMCSA–2008–0363 using any one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>.
- *Fax:* 202–493–2251.
- *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.
- *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Dr. Mary Gunnels at 202–366–4001 or via e-mail at fmcamedical@dot.gov.

SUPPLEMENTARY INFORMATION: Public Participation and Request for Comments: We encourage you to submit comments and related material on the draft guidance for the core curriculum specifications. All comments received will be posted, without change, to <http://www.regulations.gov> and will include any personal information you have provided.

Submitting comments: If you submit a comment, please include the docket number for this notice (FMCSA–2008–0363) and provide a reason for each suggestion or recommendation. You may submit your comments and material online by fax, mail, or hand delivery but please use only one of these means. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, click on the “submit a comment” box, which will then become highlighted in blue. In the “Document Type” drop down menu select “Notices” and insert “FMCSA–2008–0363” in the “Keyword” box. Click “Search” then click on the balloon shape in the “Actions” column. If you

submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

Viewing the comments: To view the comments, go to <http://www.regulations.gov>, click on the “read comments” box, which will then become highlighted in blue. In the “Keyword” box insert “FMCSA–2008–0363” and click “Search.” Click the “Open Docket Folder” in the “Actions” column. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone is able to search the electronic form for all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the U.S. Department of Transportation’s (DOT) Privacy Act system of records notice for DOT Federal Docket Management System (FDMS) in the **Federal Register** published on January 17, 2008 (73 FR 3316) at <http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf>.

Background

On December 1, 2008, FMCSA published a Notice of Proposed Rulemaking (NPRM) for the establishment of a National Registry of Certified Medical Examiners (National Registry), 73 FR 73129. The National Registry and requirements for medical examiner training are required by section 4116 of SAFETEA–LU, as codified in 49 U.S.C. 31136(a)(3), and 49 U.S.C. 31149(c) and (d).

One of the components proposed in the NPRM was a provision that medical examiners would be required to successfully complete certain training and testing prior to being listed on the National Registry. The training would be based on “core curriculum specifications” developed by FMCSA. In the NPRM, FMCSA stated that the core curriculum specifications would be based on the current physical qualifications regulations and advisory criteria for conducting commercial

motor vehicle (CMV) driver medical examinations and that they would be periodically reviewed and updated by FMCSA. The Agency also said it would provide to private-sector training organizations guidance about the core curriculum specifications for use in delivering effective training to medical examiners about FMCSA’s physical qualification standards. See 73 FR 73132–33. However, the Agency did not include for public comment the guidance about the core curriculum specifications that would be made available to assist training providers in developing courses and training materials.

Several comments submitted in response to the NPRM expressed concern that the Agency did not provide more information about the core curriculum in the proposed rule for public review and comment and questioned how guidance for training providers would be established and implemented. FMCSA acknowledges the commenters’ concerns about the need for providing the public with an opportunity to review any draft guidance that would be provided for training providers about the core curriculum specifications. Therefore, FMCSA has completed draft guidance for the medical examiner training core curriculum specifications and posted the guidance on the National Registry Web site (<http://nrcme.fmcsa.dot.gov>) and in the public docket for the National Registry rulemaking and this notice (FMCSA–2008–0363).

FMCSA requests public comment on the draft guidance for the medical examiner proposed core curriculum specifications. Because the guidance is intended to be used as information to assist training providers in developing effective, up-to-date courses for medical examiners, it would be subject to periodic review and change based on any future amendments or revisions to the physical qualifications standards under 49 CFR part 391 issued by FMCSA, and changes in medical procedures and treatments incorporated into the Agency’s advisory criteria. For that reason, the Agency does not intend to incorporate the core curriculum specifications into the regulatory text of the NRCME final rule that is expected to be issued later in 2011.

The Agency will consider including in the notice-and-comment rulemaking procedures that would be used to propose amendments or revisions to the actual physical qualifications standards any changes to the guidance for the core curriculum specifications. The Agency requests public comment on its preliminary decision.

Please follow the above instructions for submitting comments to the docket (FMCSA–2008–0363) commenting on the medical examiner draft training specifications. While FMCSA will consider all comments, FMCSA specifically requests that commenters focus on improving the clarity, and accuracy of the draft guidance to the proposed core curriculum specifications.

In addition to the draft guidance for the core curriculum specifications, FMCSA has posted a sample training module on the National Registry Web site (<http://nrcme.fmcsa.dot.gov>) to assist training providers in developing a curriculum that meets the training specifications.

Dated: May 11, 2011.

Anne S. Ferro,
Administrator.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 17 and 424

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 226 and 424

[Docket No. FWS–R9–ES–2010–0073;
Docket No. 110131071–1153–01; MO–
92210–0–0009–B4]

RIN 1018–AX44; RIN 0648–BA77

Endangered and Threatened Wildlife and Plants; Revised Implementing Regulations for Requirements To Publish Textual Descriptions of Boundaries of Critical Habitat

AGENCY: United States Fish and Wildlife Service (FWS), Interior; National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: We (FWS and NMFS; also collectively referred to as the Services) propose to revise regulations related to publishing textual descriptions of proposed and final critical habitat boundaries in the **Federal Register** for codification in the Code of Federal Regulations. In the interest of making the process of designating critical habitat more user-friendly for affected parties, the public as a whole, and the Services, as well as more efficient and

cost effective, we are proposing to maintain the publication of maps of proposed and final critical habitat designations, but make optional the inclusion of any textual description of the boundaries of the designation in the **Federal Register** for codification in the Code of Federal Regulations. The boundaries of critical habitat as mapped or otherwise described in the Regulation Promulgation section of a rulemaking that is published in the **Federal Register** will be the official delineation of the designation, and we will continue to provide the public with additional tools, such as interactive maps and additional descriptions, on the Services' Internet sites, Regulations.gov, and at local field offices that will represent the Service's interpretation of which areas are covered by the designation. We are undertaking this effort as part of the agencies' response to Executive Order 13563 (Jan. 18, 2011) directing agencies to review their existing regulations and, inter alia, to modify or streamline them in accordance with what has been learned.

DATES: We will accept comments from all interested parties until July 18, 2011. Please note that if you are using the Federal eRulemaking Portal (see **ADDRESSES** section below), the deadline for submitting an electronic comment is 11:59 p.m. Eastern Standard Time on this date.

ADDRESSES: You may submit comments by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. In the box that reads "Enter Keyword or ID," enter the Docket number for this proposed rule, which is FWS–R9–ES–2010–0073. Check the box that reads "Open for Comment/Submission," and then click the Search button. You should then see an icon that reads "Submit a Comment." Please ensure that you have found the correct rulemaking before submitting your comment.

- *U.S. mail or hand delivery:* Public Comments Processing, Attn: [Docket No. FWS–R9–ES–2010–0073]; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the Request for Information section below for more information).

FOR FURTHER INFORMATION CONTACT: Nicole Alt, U.S. Fish and Wildlife Service, Division of Conservation and Classification, 4401 N. Fairfax Drive, Suite 420; Arlington, VA 22203,

telephone 703/358–2171; facsimile 703/358–1735 or Marta Nammack, National Marine Fisheries Service, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910, telephone 301–713–1401; facsimile 301–713–0376. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Request for Information

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we request comments or suggestions from governmental agencies, Native American tribes, the scientific community, industry, or any other interested parties. We seek information on the following:

1. What is the best way for us to share information about critical habitat designation boundaries with the public?

2. Could we improve the usefulness of the maps in the **Federal Register** and Code of Federal Regulations (CFR)? If so how?

3. Does publication of the textual descriptions of boundaries of critical habitat in the **Federal Register** and CFR provide any practical value?

4. What is the usefulness of the critical-habitat-boundary descriptions in latitude–longitude, Public Land Survey descriptions, or Universal Transverse Mercator (UTM) coordinates?

5. Besides the Internet, what other methods should we use to convey information regarding critical habitat boundaries?

6. Will the changes proposed make our critical habitat designations easier to understand? Are there other changes that are needed?

You may submit your information concerning this proposal by one of the methods listed in the **ADDRESSES** section. If you submit information via <http://www.regulations.gov>, your entire submission—including any personal identifying information—will be posted on the Web site. If you submit a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this personal identifying information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy comments on <http://www.regulations.gov>.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on <http://www.regulations.gov> or by appointment during normal business