

(13) Actions described in paragraphs (c)(26), (c)(27), and (c)(28) that do not meet the constraints in paragraph (e) of this section.

(e) Actions described in (c)(26), (c)(27), and (c)(28) may not be processed as CEs under paragraph (c) of this section if they involve:

(1) An acquisition of more than a minor amount of right-of-way or that would result in any commercial or residential displacements;

(2) An action that needs a bridge permit from the U.S. Coast Guard, or an action that does not meet the terms and conditions of a USACE nationwide or general permit under section 404 of the Clean Water Act and/or section 10 of the Rivers and Harbors Act of 1899;

(3) A finding of "adverse effect" to historic properties under the NHPA, use of a resource protected under 23 U.S.C. 138 or 49 U.S.C. 303 (section 4(f)) except for actions resulting in *de minimis* impacts, or likely to adversely affect threatened or endangered species or critical habitat under the Endangered Species Act;

(4) Construction of temporary access, or the closure of an existing road, bridge, or ramps, that would result in major traffic disruptions or substantial environmental impacts;

(5) Changes in access control; or

(6) A floodplain encroachment other than functionally dependent uses (*e.g.*, bridges, wetlands) or actions that facilitate open space use (*e.g.*, recreational trails, bicycle and pedestrian paths); or construction activities in, across or adjacent to a river component designated or proposed for inclusion in the National System of Wild and Scenic Rivers.

\* \* \* \* \*

(g) Notwithstanding paragraph (d) of this section, FHWA may enter into programmatic agreements with a State to allow a State DOT to make a NEPA CE certification or determination and approval on FHWA's behalf. Such agreements must be subject to the following conditions:

(1) The agreement must set forth the State DOT's responsibilities for making CE determinations, documenting the determinations, and achieving acceptable quality control and quality assurance;

(2) The agreement may not have a term of more than five years, but may be renewed;

(3) The agreement must provide for FHWA's monitoring of the State DOT's compliance with the terms of the agreement and for the State DOT's execution of any needed corrective action. The FHWA must take into

account the State DOT's performance when considering renewal of the programmatic CE agreement;

(4) The agreement must include stipulations for amendment, termination, and public availability of the agreement once it has been executed; and

(5) Legal sufficiency and FHWA Headquarters review is required prior to FHWA's approval of the agreement.

■ 3. Amend § 771.118 by adding new paragraphs (c)(14) thru (c)(16), (d)(7), and (d)(8) to read as follows:

**§ 771.118 FTA categorical exclusions.**

\* \* \* \* \*

(c) \* \* \*

(14) Bridge removal and bridge removal related activities, such as in-channel work, disposal of materials and debris in accordance with applicable regulations, and transportation facility realignment.

(15) Preventative maintenance, including safety treatments, to culverts and channels within and adjacent to transportation right-of-way to prevent damage to the transportation facility and adjoining property, plus any necessary channel work, such as restoring, replacing, reconstructing, and rehabilitating culverts and drainage pipes; and, expanding existing culverts.

(16) Localized geotechnical and other investigations to provide information for preliminary design and for environmental analyses and permitting purposes, such as drilling test bores for soil sampling; archeological investigations for archeology resources assessment or similar survey; and wetland surveys.

(d) \* \* \*

(7) Minor transportation facility realignment for rail safety reasons, such as improving vertical and horizontal alignment of railroad crossings, and improving sight distance at railroad crossings.

(8) Modernization or minor expansions of transit structures and facilities outside existing right-of-way, such as bridges, stations or rail yards.

\* \* \* \* \*

**Title 49—Transportation**

**PART 622—ENVIRONMENTAL IMPACT AND RELATED PROCEDURES**

**Subpart A—Environmental Procedures**

■ 4. The authority citation for subpart A of part 622 is revised to read as follows:

**Authority:** 42 U.S.C. 4321 *et seq.*; 49 U.S.C. 303 and 5323; 23 U.S.C. 139 and 326; Pub. L. 109–59, 119 Stat. 1144, sections 6002 and 6010; 40 CFR parts 1500–1508; 49 CFR 1.81; and Pub. L. 112–141, 126 Stat. 405, sections 1315, 1316, 1317, and 1318.

Issued on: September 12, 2013.

**Victor M. Mendez,**

*Administrator, Federal Highway Administration.*

**Peter Rogoff,**

*Administrator, Federal Transit Administration.*

[FR Doc. 2013–22675 Filed 9–18–13; 8:45 am]

**BILLING CODE 4910–22–P**

**NATIONAL TRANSPORTATION SAFETY BOARD**

**49 CFR Part 821**

[Docket No. NTSB–GC–2011–0001]

**Rules of Practice in Air Safety Proceedings**

**AGENCY:** National Transportation Safety Board (NTSB or Board).

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The NTSB proposes amending one of its rules of practice that is applicable to cases proceeding on an emergency timeline. This proposed amendment will require the Federal Aviation Administration (FAA) to provide releasable portions of its enforcement investigative report (EIR) to each respondent in emergency cases.

**DATES:** Comments must be submitted by October 21, 2013.

**ADDRESSES:** A copy of this NPRM, published in the **Federal Register** (FR), is available for inspection and copying in the NTSB's public reading room, located at 490 L'Enfant Plaza SW., Washington, DC 20594–2003. Alternatively, a copy is available on the government-wide Web site on regulations at <http://www.regulations.gov> (Docket ID Number NTSB–GC–2011–0001).

**FOR FURTHER INFORMATION CONTACT:** David Tochen, General Counsel, (202) 314–6080.

**SUPPLEMENTARY INFORMATION:** Elsewhere in today's **Federal Register**, the NTSB published a Final Rule, finalizing changes to various sections of 49 CFR part 821, as a result of the Pilot's Bill of Rights. In the final rule, the NTSB, among other things, updated language in § 821.19(d), which requires disclosure of the FAA's EIR in non-emergency cases. Because the Pilot's Bill of Rights was immediately effective upon enactment on August 3, 2012, the NTSB published an interim final rule to implement the new legislation's requirements, 77 FR 63242 (Oct. 16, 2012).

In this NPRM, the NTSB proposes incorporating a similar requirement at

paragraph (d) of § 821.55, regarding the release of the EIR in emergency cases proceeding under subpart I of the NTSB's rules of practice. In view of the exigencies presented to certificate holders against whom the Administrator issues emergency orders and the expedited timeframes the Board must observe in adjudicating aviation safety emergency cases, § 821.55(d) will permit relief if the FAA does not provide a copy of the EIR to the respondent in an emergency proceeding by the time the certificate order, as opposed to the complaint, is served on the respondent. This language is set forth in the proposed regulatory text of this rule.

Although in the Pilot's Bill of Rights, Congress required the NTSB to apply the Federal Rules of Civil Procedure and Federal Rules of Evidence to cases within the NTSB's jurisdiction "to the extent practicable," it did not specifically address in the legislation whether the EIR requirement applies to NTSB emergency cases. The NTSB believes such application is appropriate. First, the structurally similar NTSB rules for both emergency and non-emergency proceedings will ensure consistency, which is beneficial for parties and the NTSB's administrative law judges. Parties will benefit from having clear expectations concerning the availability of information at the beginning of each case. In addition, the FAA's compliance with the requirement to provide the EIR at the commencement of each case will not be changed if a respondent waives the applicability of the emergency rules of subpart I.

Applying this disclosure requirement to § 821.55(d) will also require an amendment to § 821.55(c), which currently prohibits motions to dismiss the complaint or motions for a more definite statement of the complaint's allegations. Instead, § 821.55(c) provides "the substance [of such motions] may be stated in the respondent's answer." This preclusion of motions in the early stages of a case is the result of the time constraints applicable to emergency cases. However, given our proposal to apply the EIR disclosure requirement to emergency cases in § 821.55(d), we also propose amending § 821.55(c) as set forth in the regulatory text of this rule.

The NTSB specifically invites comments concerning § 821.55(c) and (d). The interim final rule, although it included within § 821.19(d) the availability of dismissal on motion in the event the FAA did not timely release the EIR, did not address whether the requirement applied to emergency cases. As a result, the NTSB believes it necessary to allow for comments on the

inclusion of this requirement in § 821.55. The NTSB will accept comments for 30 days from the date of publication of this NPRM.

#### Regulatory Analysis

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of the potential costs and benefits under section 6(a)(3) of that Order. As such, the Office of Management and Budget has not reviewed this rule under Executive Order 12866. Likewise, this rule does not require an analysis under the Unfunded Mandates Reform Act, 2 U.S.C. 1501–1571, or the National Environmental Policy Act, 42 U.S.C. 4321–4347.

In addition, the NTSB has considered whether this rule would have a significant economic impact on a substantial number of small entities, under the Regulatory Flexibility Act (5 U.S.C. 601–612). The NTSB certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. Moreover, in accordance with 5 U.S.C. 605(b), the NTSB will submit this certification to the Chief Counsel for Advocacy at the Small Business Administration.

The NTSB does not anticipate this rule will have a substantial, direct effect on state or local governments or will preempt state law; as such, this rule does not have implications for federalism under Executive Order 13132, Federalism. This rule also complies with all applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. In addition, the NTSB has evaluated this rule under: Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights; Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks; Executive Order 13175, Consultation and Coordination with Indian Tribal Governments; Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use; and the National Technology Transfer and Advancement Act, 15 U.S.C. 272 note. The NTSB has concluded that this rule does not contravene any of the requirements set forth in these Executive Orders or statutes, nor does this rule prompt further consideration with regard to such requirements.

#### List of Subjects for 49 CFR Part 821

Administrative practice and procedure, Airmen, Aviation safety.

For the reasons discussed in the preamble, the NTSB proposes to amend 49 CFR part 821 as follows:

#### PART 821—RULES OF PRACTICE IN AIR SAFETY PROCEEDINGS

■ 1. The authority citation for 49 CFR part 821 continues to read as follows:

**Authority:** 49 U.S.C. 1101–1155, 44701–44723, 46301, Pub. L. 112–153, unless otherwise noted.

■ 2. In § 821.55, revise paragraphs (c) and (d) to read as follows:

#### § 821.55 Complaint, answer to complaint, motions and discovery.

\* \* \* \* \*

(c) *Motion to dismiss and motion for more definite statement.* In proceedings governed by this subpart, except as provided in paragraph (d) of this section, no motion to dismiss the complaint or for a more definite statement of the complaint's allegations shall be made, but the substance thereof may be stated in the respondent's answer. The law judge may permit or require a more definite statement or other amendment to any pleading at the hearing, upon good cause shown and upon just and reasonable terms.

(d) *Failure to provide copy of releasable portion of Enforcement Investigative Report (EIR).* (1) In proceedings governed by this subpart, where the Administrator fails to provide the releasable portion of the EIR to the respondent by the time it serves an emergency or other immediately effective order on the respondent, the respondent may move to dismiss the complaint or for other relief and, unless the Administrator establishes good cause for that failure, the law judge shall order such relief as he or she deems appropriate, after considering the parties' arguments.

(2) The releasable portion of the EIR shall include all information in the EIR, except for the following:

- (i) Information that is privileged;
- (ii) Information that constitutes work product or reflects internal deliberative process;
- (iii) Information that would disclose the identity of a confidential source;
- (iv) Information of which applicable law prohibits disclosure;
- (v) Information about which the law judge grants leave to withhold as not relevant to the subject matter of the proceeding or otherwise, for good cause shown; or

(vi) Sensitive security information, as defined at 49 U.S.C. 40119 and 49 CFR 15.5.

(3) Nothing in this section shall be interpreted as preventing the Administrator from releasing to the respondent information in addition to that which is contained in the releasable portion of the EIR. Likewise, nothing in this section shall be interpreted as preventing the Administrator from releasing to the respondent a copy of the EIR prior to the issuance of the Administrator's complaint.

**Deborah A.P. Hersman,**  
*Acting Chairman.*

[FR Doc. 2013-22633 Filed 9-18-13; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[Docket Nos. FWS-R6-ES-2011-0111;  
FWS-R6-ES-2012-0108; 4500030114]

RIN 1018-AZ20; RIN 1018-AX71

#### Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Gunnison Sage-Grouse and Proposed Designation of Critical Habitat for Gunnison Sage-Grouse

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; reopening of comment period; announcement of public hearings; notice of availability of supplementary documents.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment periods on our January 11, 2013, proposed rules to list the Gunnison sage-grouse (*Centrocercus minimus*) as endangered and to designate critical habitat for the species under the Endangered Species Act of 1973, as amended (Act). For the proposed designation of critical habitat for the Gunnison sage-grouse, we also announce the availability of a draft economic analysis (DEA), a draft environmental assessment (EA), and an amended required determinations section. In addition, we announce two public informational sessions and public hearings for both the proposed listing and proposed critical habitat, and we provide information on several conservation efforts that may be considered in our final determinations. We are reopening the comment periods to allow all interested parties an

additional opportunity to comment on the proposed listing and the proposed designation of critical habitat, and to comment on the proposed critical habitat's associated DEA, draft EA, and amended required determinations section. Comments previously submitted need not be resubmitted, as they will be fully considered in preparation of the final rules.

**DATES:** *Comment submission:* We will consider comments received or postmarked on or before October 19, 2013. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59 p.m. Eastern Time on the closing date.

*Public informational sessions and public hearings:* We will hold two public informational sessions followed by public hearings on the following dates:

- October 7, 2013, from 4:00–9:00 p.m., including an information session from 4:00–5:00 p.m., a break, and a public hearing from 6:00–9:00 p.m.; and
- October 8, 2013, from 4:00–9:00 p.m., including an information session from 4:00–5:00 p.m., a break, and a public hearing from 6:00–9:00 p.m..

See the **ADDRESSES** section, below, for information on where these public informational sessions and public hearings will be held.

**ADDRESSES:**

*Document availability:* You may obtain copies of the January 11, 2013, proposed rules on the Internet at <http://www.regulations.gov> at Docket No. FWS-R6-ES-2012-0108 for the proposed listing and at Docket No. FWS-R6-ES-2011-0111 for the proposed designation of critical habitat. You may obtain a copy of the draft economic analysis and the draft environmental assessment at Docket No. FWS-R6-ES-2011-0111. Alternately, you may obtain a copy of either proposed rule, the draft economic analysis, or the draft environmental assessment by mail from the Western Colorado Field Office (see **FOR FURTHER INFORMATION CONTACT**).

*Comment submission:* You may submit written comments by one of the following methods:

- (1) *Electronically:* Go to the Federal eRulemaking Portal: <http://www.regulations.gov>. Submit comments on the listing proposal to Docket No. FWS-R6-ES-2012-0108, and submit comments on the critical habitat proposal and associated draft economic analysis and draft environmental assessment to Docket No. FWS-R6-ES-2011-0111.

(2) *By hard copy:* Submit comments on the listing proposal by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS-R6-ES-2012-0108; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042-PDM; Arlington, VA 22203. Submit comments on the critical habitat proposal, draft economic analysis, and draft environmental assessment by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS-R6-ES-2011-0111; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042-PDM; Arlington, VA 22203.

We request that you send comments only by the methods described above. 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 Public Comments section below for more information).

*Public informational sessions and public hearings:* The October 7, 2013, public informational session and public hearing will be held at Western State Colorado University, University Center, 600 N. Adams Street in Gunnison, Colorado.

The October 8, 2013, public informational session and public hearing will be held at Monticello High School Auditorium, 164 South 200 West in Monticello, Utah.

People needing reasonable accommodations in order to attend and participate in the public hearing should contact Patty Gelatt, Western Colorado Supervisor, Western Colorado Field Office, as soon as possible (see **FOR FURTHER INFORMATION CONTACT**).

**FOR FURTHER INFORMATION CONTACT:** Patty Gelatt, Western Colorado Supervisor, U.S. Fish and Wildlife Service, Western Colorado Field Office, 764 Horizon Drive, Building B, Grand Junction, CO 81506-3946; by telephone (970-243-2778); or by facsimile (970-245-6933). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339.

**SUPPLEMENTARY INFORMATION:**

**Public Comments**

We will accept written comments and information during this comment period on: (1) Our proposed listing determination for the Gunnison sage-grouse that published in the **Federal Register** on January 11, 2013 (78 FR 2486); (2) our proposed designation of critical habitat for the Gunnison sage-grouse that published in the **Federal Register** on January 11, 2013 (78 FR