

**DEPARTMENT OF DEFENSE****Defense Acquisition Regulations System****48 CFR Parts 202, 212, 215, 234, 239, and 252**

[Docket DARS–2016–0028]

RIN 0750–AJ01

**Defense Federal Acquisition Regulation Supplement: Procurement of Commercial Items (DFARS Case 2016–D006); Extension of Comment Period****AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).**ACTION:** Proposed rule; extension of comment period.**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement sections of the National Defense Authorization Acts for Fiscal Years 2013 and 2016 relating to commercial item acquisitions. The comment period on the proposed rule is extended 30 days.**DATES:** The comment period for the proposed rule published on August 11, 2016 (81 FR 53101), is extended. Comments are due by November 10, 2016.**ADDRESSES:** Submit comments identified by DFARS Case 2016–D006, using any of the following methods:  
○ *Federal eRulemaking Portal:* <http://www.regulations.gov>. Search for “DFARS Case 2016–D006.” Select “Comment Now” and follow the instructions provided to submit a comment. Please include “DFARS Case 2016–D006” on any attached documents.○ *Email:* [osd.dfars@mail.mil](mailto:osd.dfars@mail.mil). Include DFARS Case 2016–D006 in the subject line of the message.○ *Fax:* 571–372–6094.○ *Mail:* Defense Acquisition Regulations System, Attn: Mr. Mark Gomersall, OUSD(AT&L)DPAP/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060.Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check [www.regulations.gov](http://www.regulations.gov), approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).**FOR FURTHER INFORMATION CONTACT:** Mr. Mark Gomersall, telephone 571–372–6099.**SUPPLEMENTARY INFORMATION:****I. Background**On August 11, 2016, DoD published a proposed rule in the *Federal Register* at 81 FR 53101 to implement the requirements of sections 851 through 853 and 855 through 857 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2016 (Pub. L. 114–92, enacted November 25, 2015), as well as the requirements of section 831 of the NDAA for FY 2013 (Pub. L. 112–239, enacted January 2, 2013), relating to the procurement of commercial items. The proposed rule also provides guidance to contracting officers to promote consistency and uniformity in the acquisition process.

The comment period for the proposed rule is extended 30 days, from October 11, 2016, to November 10, 2016, to provide additional time for interested parties to comment on the proposed DFARS changes.

**List of Subjects in 48 CFR Parts 202, 212, 215, 234, 239, and 252**

Government procurement.

**Jennifer L. Hawes,***Editor, Defense Acquisition Regulations System.*

[FR Doc. 2016–24370 Filed 10–7–16; 8:45 am]

**BILLING CODE 5001–06–P****DEPARTMENT OF TRANSPORTATION****Pipeline and Hazardous Materials Safety Administration****49 CFR Part 110**

[Docket No. PHMSA–2015–0272 (HM–209A)]

RIN 2137–AF19

**Hazardous Materials: Revisions to Hazardous Materials Grants Requirements (RRR)****AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.**ACTION:** Notice of proposed rulemaking (NPRM).**SUMMARY:** PHMSA proposes to revise its regulations pertaining to the Hazardous Materials grants program to incorporate the Office of Management and Budget’s Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, and to implement new requirements set forth by the Fixing America’s Surface

Transportation (FAST) Act of 2015. PHMSA invites all interested persons to provide comments regarding these intended revisions.

**DATES:** Comments must be received by December 12, 2016. To the extent possible, PHMSA will consider late-filed comments as a final rule is developed.**ADDRESSES:** You may submit comments by identification of the docket number PHMSA–2015–0272 (HM–209A) using the following methods:• *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.• *Fax:* 1–202–493–2251.• *Mail:* Docket Operations, U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, Routing Symbol M–30, 1200 New Jersey Avenue SE., Washington, DC 20590.• *Hand Delivery:* To Docket Operations, Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.*Instructions:* All submissions must include the agency name and docket number for this notice at the beginning of the comment. To avoid duplication, please use only one of these four methods. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you provide. All comments received will also be posted without change to the Federal Docket Management System (FDMS), including any personal information provided.*Docket:* For access to the dockets to read background documents or comments received, go to <http://www.regulations.gov> or contact DOT’s Docket Operations Office (see mail and hand delivery addresses above).*Privacy Act:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at [www.dot.gov/privacy](http://www.dot.gov/privacy).**FOR FURTHER INFORMATION CONTACT:** Lisa O’Donnell, Outreach, Training and Grants Division, Office Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey

Avenue SE., Washington, DC 20590 or at (202) 366–1109.

**SUPPLEMENTARY INFORMATION:**

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**I. Background**

This proposed rule revises 49 CFR part 110 pertaining to the Hazardous Materials grants program to incorporate the Office of Management and Budget's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR 200), and to implement new requirements set forth by the Fixing America's Surface Transportation (FAST) Act of 2015 (Pub.L. 114–94—December 4, 2015).

PHMSA's Hazardous Materials grants program is comprised of four grants: Hazardous Materials Emergency Preparedness (HMEP) grants; Supplemental Public Sector Training (SPST) grants; Hazardous Materials Instructor Training (HMIT) grants; and the new Hazardous Materials Community Safety (HMCS) grants. Except for the HMCS grants, the HMEP, SPST, and HMIT grants are funded by registration fees collected from hazardous materials (hazmat) shippers and carriers who offer for transportation

or transport certain hazmat in intrastate, interstate, or foreign commerce in accordance with 49 CFR part 107, subpart G.

As a result of the implementation of 2 CFR part 200 and the FAST Act, the current regulations for the Hazardous Materials grants are outdated. The following describes each of the hazmat grants, new requirements for Federal awards, and the gaps in current regulations (49 CFR part 110).

*A. Hazardous Materials Emergency Preparedness Grant*

The HMEP grant was established in 1990 by the Hazardous Materials Transportation Uniform Safety Act (HMTUSA), Public Law 101–615. In 1993, PHMSA's predecessor, the Research and Special Programs Administration, began issuing grants to assist States, Territories, and Indian tribes to carry out emergency preparedness and training activities to ensure communities could effectively respond to transportation incidents involving hazmat. The HMEP grant award amount prior to 2009 was \$12.8 million; award amounts thereafter were increased to \$21.8 million.

*B. Supplemental Public Sector Training Grant*

The Hazardous Materials Transportation Act Amendments of 1993, which among other changes, established the SPST grant to increase the number of hazardous materials training instructors available to conduct hazardous materials response training for individuals with a statutory responsibility to respond to hazardous materials accidents and incidents. From 2002 through 2008, the SPST grant authorization amount was \$250,000. In fiscal year 2008, the SPST grant authorization amount was increased to \$1 million annually.

*C. Hazardous Materials Instructor Training Grant*

The Hazardous Materials Transportation Safety and Security Reauthorization Act of 2005, which among other changes, established the HMIT grant for training instructors to train hazardous materials employees. Instructors trained under this program are able to offer training to hazardous materials employees at locations in close proximity to the employees' places of employment. Since its inception in 2008, the HMIT grant program has awarded approximately \$4 million in grant funds annually to nonprofit organizations.

*D. Hazardous Materials Community Safety Grant*

On December 4, 2015, President Obama signed into law the FAST Act, which among other changes, established the HMCS grant to nonprofit organizations for: (1) Conducting national outreach and training programs to assist communities in preparing for and responding to accidents and incidents involving the transportation of hazardous materials, including Class 3 flammable liquids by rail; and (2) training State and local personnel responsible for enforcing the safe transportation of hazardous materials, including Class 3 flammable liquids. Unlike the other three grants, which are funded through a shipper and carrier hazardous materials registration fee program, the HMCS grant funding source is up to \$1 million in Congressional appropriations. PHMSA anticipates awarding two HMCS grants for the first time in fiscal year 2017.

*E. New Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*

On December 19, 2013, the Office of Management and Budget (OMB) published guidance that streamlined the Federal government's guidance on Administrative Requirements, Cost Principles, and Audit Requirements for Federal awards. This final guidance, located in 2 CFR part 200, supersedes and simplifies requirements from various OMB circulars and 49 CFR part 18. All Federal grants issued on or after December 26, 2014, were required to comply with these requirements.

*F. Gap in Regulations Pertaining to Hazardous Materials Grants*

The regulations in 49 CFR part 110 pertaining to Hazardous Materials grants have neither been updated to include reference to the HMIT, SPST, and HMCS grants to nonprofit entities, nor have they been updated to reflect the streamlined guidance for Federal awards found in 2 CFR part 200.

**II. Summary Review of Proposed Amendments**

PHMSA proposes to revise the regulations pertaining to Hazardous Materials grants in 49 CFR part 110 to bring it into alignment with the currently applicable Federal law and regulation (e.g., FAST Act and 2 CFR part 200). We propose to amend Part 110 to add language pertaining to grants made to nonprofit organizations under the HMIT, SPST, and HMCS grants. These training grants to nonprofit organizations are provided in statute but are not included in 49 CFR. We propose

to remove reference to 49 CFR part 18 and replace it with reference to 2 CFR part 200, as 49 CFR part 18 has been removed and 2 CFR part 200 provides the Uniform Administrative

Requirements for Federal grants. Further, PHMSA proposes to add a reference to pre-award expenditures, add a reference to territories, define “nonprofit organizations,” and require

that applicants and grantees submit documents electronically rather than by mail. This NPRM affects the following entities, as listed in Table 1:

TABLE 1—AFFECTED ENTITIES

Affected entities	Revisions
<ul style="list-style-type: none"> <li>• States, Territories, and Indian tribes .....</li> <li>• National nonprofit fire service organizations.</li> <li>• Nonprofit organizations that demonstrate expertise in (1) conducting a training program for hazardous materials employees; and (2) the ability to reach and involve in a training program a target population of hazardous materials employees.</li> <li>• Nonprofit organizations that demonstrate expertise in conducting national outreach and training programs to assist communities in preparing for and responding to accidents and incidents involving the transportation of hazardous materials, including Class 3 flammable liquids by rail.</li> <li>• Nonprofit organizations that demonstrate expertise in training State and local personnel responsible for enforcing the safe transportation of hazardous materials, including Class 3 flammable liquids.</li> </ul>	<ul style="list-style-type: none"> <li>• Subject to 2 CFR Part 200 and electronic filing requirements.</li> </ul>

PHMSA seeks comments from interested stakeholders on this proposed rulemaking. PHMSA proposes the following substantive revisions:

- Revise § 110.1 to comport with 2 CFR part 200 provisions regarding payments to non-Federal entities. 2 CFR 200.305 states that non-Federal entities other than states “must be paid in advance, provided it maintains or demonstrates the willingness to maintain both written procedures that minimize the time elapsing between the transfer of funds and disbursement by the non-Federal entity, and financial management systems that meet the standards for fund control and accountability as established in this Part” (*i.e.*, high-risk grantees). Additionally, while 2 CFR part 200 is silent regarding the funding techniques for states, advanced payments (as conditioned therein) to state grantees would likewise more effectively focus Federal resources on improving performance and outcomes while ensuring the financial integrity of taxpayer dollars in partnership with non-Federal stakeholders.
- Allow for grantees to incur pre-award expenditures at their own risk in § 110.50, Disbursement of Federal funds.

PHMSA proposes the following additional revisions:

- Revise § 110.1 to refer to nonprofit organizations. Currently, HMIT, SPST, and HMCS grant programs, where nonprofit organizations are eligible applicants, are not referenced in the regulations.
- Revise § 110.5 to refer to nonprofit organizations and replace reference to 49 CFR with reference to 2 CFR part 200.
- Revise § 110.10 to amend the title to read “Administering Hazardous Materials Grants” and to add

“Territories” and “nonprofit organizations.”

- Revise § 110.20 to change the preamble language to refer to 2 CFR part 200; revise the definitions for “Indian tribe” and “Associate Administrator”; add definitions for “Nonprofit organization,” “Public sector employee,” “Tribal Emergency Planning Committee,” and “Tribal Emergency Response Commission”; and delete the definition for “Indian country.”

- Amend § 110.30 to revise paragraph (a) and remove paragraphs (b) and (c) to update how applicants submit grant applications to PHMSA.

- Amend the heading of § 110.40 by adding the terminology “Hazardous Materials Emergency Preparedness Grant” and update the wording in paragraphs (a) and (b).

- Revise the requirements in §§ 110.10, 110.20, 110.30, 110.70, 110.80, 110.90, 110.100, and 110.110 by updating the sections to refer to 2 CFR part 200 and making other editorial changes.

- Revise the requirements in § 110.30 by removing reference to corresponding with PHMSA by mail.

- Revise the requirements in § 110.70 by removing reference to financial management systems and advances.

- Revise the requirements in § 110.90 by removing the examples of project manager requirements, which have a significant impact on the planning and training activities.

- Revise the requirements in § 110.120 to update how to report deviations.

- Revise the requirements in § 110.130 referring to disputes by updating the titles of the PHMSA Hazardous Materials grants staff and changing the dispute resolution officer from the Administrator to the Associate

Administrator to expedite dispute resolutions should disputes occur.

### III. Regulatory Analyses and Notices

#### A. Statutory/Legal Authority for This Rulemaking

This NPRM is published under the authority of the Federal hazardous materials transportation law, 49 U.S.C. 5101 *et seq.* Section 5103(b) authorizes the Secretary to prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce. Section 5107, as amended, establishes a competitive program for making grants to nonprofit organizations for conducting national outreach and training programs to assist communities in preparing for and responding to accidents and incidents involving the transportation of hazardous materials, including Class 3 flammable liquids by rail; and training State and local personnel responsible for enforcing the safe transportation of hazardous materials, including Class 3 flammable liquids. Section 5108 permits the Secretary to collect registration fees from people transporting certain quantities of hazardous materials and deposit those fees into an account used to fund the HMEP grants program. Section 5116, as amended, authorizes the Secretary to make grants to States and Indian tribes, by combining planning and training grants, and to create supplemental training grants to national nonprofit fire service organizations. This NPRM revises the regulations as they pertain to hazardous materials grants.

*B. Executive Order 12866, Executive Order 13563, Executive Order 13610, and DOT Regulatory Policies and Procedures*

This NPRM is considered a non-significant regulatory action under Executive Order 12866 (“Regulatory Planning and Review”) and the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034) as it does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; rather, it revises regulations to comply with current Federal statute and guidance and PHMSA policies and procedures.

Executive Order 13563 (“Improving Regulation and Regulatory Review”) supplements and reaffirms the principles, structures, and definitions governing regulatory review that were established in Executive Order 12866 of September 30, 1993. Executive Order 13563, issued January 18, 2011, notes that our nation’s current regulatory system must protect not only public health, welfare, safety, and our environment but also promote economic growth, innovation, competitiveness, and job creation. Further, this executive order urges government agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. In addition, Federal agencies are asked to periodically review existing significant regulations; retrospectively analyze rules that may be outmoded, ineffective, insufficient, or excessively burdensome; and modify, streamline, expand, or repeal regulatory requirements in accordance with what has been learned.

Executive Order 13610 (“Identifying and Reducing Regulatory Burdens”), issued May 10, 2012, urges agencies to conduct retrospective analyses of existing rules to examine whether they remain justified and whether they should be modified or streamlined in light of changed circumstances, including the rise of new technologies.

Together, these three Executive Orders require agencies to regulate in the “most cost-effective manner,” to make a “reasoned determination that the benefits of the intended regulation justify its costs,” and to develop regulations that “impose the least burden on society.”

PHMSA has evaluated the Hazardous Materials Grants regulations and has determined that they are outmoded and, in part, excessively burdensome. The current regulations are out-of-date, as they refer to obsolete regulations, and have been superseded by 2 CFR part

200. We propose updating the 49 CFR part 110 to reflect current Federal statute and guidance and PHMSA policies and procedures. PHMSA welcomes public comments on potential costs and benefits of this regulatory action.

*C. Executive Order 13132*

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (“Federalism”) and the President’s memorandum on “Preemption” published in the **Federal Register** on May 22, 2009 (74 FR 24693). This proposed rule will preempt State, local, and Indian tribe requirements but does not propose any regulation that has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The Federal hazardous materials transportation law, 49 U.S.C. 5101–5128, contains an express preemption provision (49 U.S.C. 5125 (b)) that preempts State, local, and Indian tribe requirements on the following subjects:

- (1) The designation, description, and classification of hazardous materials;
- (2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;
- (3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;
- (4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; and
- (5) The design, manufacture, fabrication, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This proposed rule pertains to entities responsible for all the covered subject areas above. If adopted as final, this rule will preempt any State, local, or Indian tribe, requirements concerning these subjects unless the non-Federal requirements are “substantively the same” as the Federal requirements. Furthermore, this proposed rule is necessary to update, clarify, and provide relief from regulatory requirements.

The Federal hazardous materials transportation law provides at § 5125(b)(2) that, if DOT issues a regulation concerning any of the

covered subjects, they must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. PHMSA has determined that the effective date of Federal preemption for these requirements will be one year from the date of publication of a final rule in the **Federal Register**.

*D. Executive Order 13175*

This NPRM has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (“Consultation and Coordination with Indian Tribal Governments”). Because this NPRM does not significantly or uniquely affect the communities of the Indian tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

*E. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. There are no known costs to small entities associated with this rule. The changes proposed herein are to clarify and simplify existing regulations and to comply with the current statute. The grant recipients affected by this rulemaking are States, Territories, Indian Tribes, and nonprofit organizations. Current grantees that meet the definition of ‘small entity’ are nonprofit organizations. All of these entities currently comply with the statutory requirements that PHMSA is proposing to incorporate in the regulations; therefore, there is no added burden. Consequently, PHMSA certifies that this rulemaking does not have a significant economic impact on a substantial number of small entities.

*F. Paperwork Reduction Act*

PHMSA currently has an approved information collection under OMB Control Number 2137–0586, entitled “Hazardous Materials Public Sector Training & Planning Grants,” with an expiration date of June 29, 2019. This NPRM may result in a minimal increase in the time spent to apply, maintain, and close out a grant application cycle; however, this minimal increase is not sufficient enough to necessitate the

revision of this information collection package, in either the annual burden or cost to OMB Control Number 2137-0586 for proposed changes under Part 110.

Under the Paperwork Reduction Act of 1995, no person is required to respond to an information collection unless it has been approved by OMB and displays a valid OMB control number. 5 CFR 1320.8(d) requires that PHMSA provide interested members of the public and affected agencies an opportunity to comment on information and recordkeeping requests.

PHMSA requests comments on any information collection and recordkeeping burdens associated with the proposed changes under this proposed rule.

Requests for a copy of this information collection should be directed to Steven Andrews or T. Glenn Foster, Office of Hazardous Materials Standards (PHH-12), Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590-0001, Telephone (202) 366-8553.

Address written comments to the Dockets Unit as identified in the **ADDRESSES** section of this rulemaking. We must receive comments regarding information collection burdens prior to the close of the comment period identified in the **DATES** section of this rulemaking. In addition, you may submit comments specifically related to the information collection burden to the PHMSA Desk Officer, Office of Management and Budget, at fax number (202) 395-6974.

#### G. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

#### H. Unfunded Mandates Reform Act of 1995

This proposed rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of \$155 million or more, adjusted for inflation, to either State, local, or tribal governments, in the aggregate, or to the private sector in any one year, and is the least burdensome alternative that achieves the objective of the rule. As such, PHMSA has concluded that the NPRM does not require an Unfunded Mandates Act analysis.

#### I. Environmental Assessment and Finding of No Significant Impact

The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321-4347), and implementing regulations by the Council on Environmental Quality (40 CFR part 1500) require Federal agencies to consider the consequences of Federal actions and prepare a detailed statement on actions that significantly affect the quality of the human environment.

This NPRM would revise the regulations pertaining to Hazardous Materials Grants to reflect current Federal statute and guidance and PHMSA policies and procedures. PHMSA believes the proposed revisions present little or no environmental impact on the quality of the human environment because rather than involving the transportation of hazardous materials, the changes update processes and procedures related to grants. Therefore, PHMSA has initially determined that the implementation of the proposed rule will not have any significant impact on the quality of the human environment.

In addition, PHMSA sought comment from the following modal partners:

- Federal Aviation Administration
- Federal Motor Carrier Safety Administration
- Federal Railroad Administration
- United States Coast Guard

PHMSA did not receive any adverse comments on the amendments proposed in this NPRM from these Federal Agencies.

PHMSA welcomes any views, data, or information related to environmental impacts that may result if the proposed requirements are adopted, as well as possible alternatives and the environmental impacts.

#### J. Privacy Act

Anyone is able to search the electronic form of 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 DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78), which may be viewed at: <https://www.gpo.gov/fdsys/pkg/FR-2000-04-11/pdf/00-8505.pdf>, or you may visit <http://www.dot.gov>.

#### K. Executive Order 13609 and International Trade Analysis

Under Executive Order 13609 ("Promoting International Regulatory

Cooperation"), agencies must consider whether the impacts associated with significant variations between domestic and international regulatory approaches are unnecessary or may impair the ability of American business to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or will be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

Similarly, the Trade Agreements Act of 1979 (Pub. L. 96-39), as amended by the Uruguay Round Agreements Act (Pub. L. 103-465), prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. For purposes of these requirements, Federal agencies may participate in the establishment of international standards, so long as the standards have a legitimate domestic objective, such as providing for safety, and do not operate to exclude imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

PHMSA participates in the establishment of international standards in order to protect the safety of the American public. We have assessed the effects of the proposed rule, and find that it will not cause unnecessary obstacles to foreign trade. Accordingly, this NPRM is consistent with Executive Order 13609 and PHMSA's obligations under the Trade Agreement Act, as amended.

#### L. National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) directs Federal agencies to use voluntary consensus standards in their regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g. specification of materials, test methods, or performance requirements) that are developed or adopted by voluntary consensus standard bodies. This proposed rulemaking is to comply with current Federal statute and guidance and PHMSA policies and procedures; it does not involve technical standards.

### M. Executive Order 13211

Executive Order 13211 (“Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use”) requires Federal agencies to prepare a Statement of Energy Effects for any “significant energy action” (66 FR 28355, May 22, 2001). Under the Executive Order, a “significant energy action” is defined as any action by an agency (normally published in the **Federal Register**) that promulgates, or is expected to lead to the promulgation of, a final rule or regulation (including a notice of inquiry, advance NPRM, and NPRM) that (1)(i) is a significant regulatory action under Executive Order 12866 or any successor order and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.

PHMSA has evaluated this action in accordance with Executive Order 13211. See the environmental assessment section for a more thorough discussion of environmental impacts and the supply, distribution, or use of energy. PHMSA has determined that this action will not have a significant adverse effect on the supply, distribution, or use of energy. Consequently, PHMSA has determined that this regulatory action is not a “significant energy action” within the meaning of Executive Order 13211.

### List of Subjects in 49 CFR Part 110

Disaster assistance, Education, Grant programs—environmental protection, Grant programs—Indians, Hazardous materials transportation, Hazardous substances, Indians, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR chapter I is proposed to be amended as follows:

### PART 110—HAZARDOUS MATERIALS PUBLIC SECTOR TRAINING AND PLANNING GRANTS

- 1. The authority citation for part 110 continues to read as follows:

**Authority:** 49 U.S.C. 5101–5128; 49 CFR 1.97.

- 2. Revise § 110.1 to read as follows:

#### § 110.1 Purpose.

This part sets forth procedures for grants to States, Territories, Indian Tribes, and nonprofit organizations to support emergency planning and training to respond to hazardous materials emergencies, particularly those involving transportation. These grants may also be used to enhance the implementation of the Emergency

Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11001).

- 3. Revise § 110.5 to read as follows:

#### § 110.5 Scope.

(a) This part applies to:  
 (1) States and Indian tribes and contains the program requirements for public sector grants to support hazardous materials emergency planning and training efforts; and  
 (2) Nonprofit organizations for grants to support training programs for public sector hazardous materials emergency responders or hazardous materials employees.

(b) The requirements contained in 2 CFR part 200 “Uniform Administrative Requirements for Grants and Cooperative Agreements,” apply to grants issued under this Part.

(c) Copies of standard forms and OMB circulars referenced in this Part are available at [https://www.whitehouse.gov/omb/grants\\_forms](https://www.whitehouse.gov/omb/grants_forms) or from the Office of Hazardous Materials Safety, Grants Chief, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, 1200 New Jersey Avenue SE., Washington DC 20590–0001.

- 4. Revise § 110.10 to read as follows:

#### § 110.10 Administering hazardous materials grants.

This part applies to States, Territories, Indian tribes and nonprofit organizations.

- 5. Revise § 110.20 to read as follows:

#### § 110.20 Definitions.

Unless defined in this part, all terms defined in 49 U.S.C. 5102 are used in their statutory meaning and all terms defined in 2 CFR part 200 with respect to administrative requirements for grants, are used as defined therein. Other terms used in this part are defined as follows:

*Allowable costs* means those costs that are: Eligible, reasonable, necessary, and allocable to the project permitted by the appropriate Federal cost principles, and approved in the grant.

*Associate Administrator* means the Associate Administrator for Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration or a person designated by the Associate Administrator.

*Budget period* means the period of time specified in the grant agreement during which the project manager may expend or obligate project funds.

*Cost review* means the review and evaluation of costs to determine reasonableness, allocability, and allowability.

*Indian tribe* means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) [43 U.S.C. 1601 *et seq.*], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians (25 U.S.C. 450b).

*Local Emergency Planning Committee (LEPC)* means a committee appointed by the State Emergency Response Commission under section 301(c) of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11001(c)) that includes at a minimum, representatives from each of the following groups or organizations: elected State and local officials; law enforcement, firefighting, civil defense, first aid, health, local environmental, hospital, and transportation personnel; broadcast and print media; community groups; and owners and operators of facilities subject to the emergency planning requirements.

*National curriculum* means the curriculum required to be developed under 49 U.S.C. 5115 and necessary to train public sector emergency response and preparedness teams, enabling them to comply with performance standards as stated in 49 U.S.C. 5115(c).

*Nonprofit organization* means a tax-exempt nonprofit organization in the U.S. as defined in 26 U.S.C. 501(c).

*Political subdivision* means a county, municipality, city, town, township, local public authority (including any public and Indian housing agency under the United States Housing Act of 1937 (42 U.S.C. 1401 *et seq.*), school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under State law), any other regional or interstate government entity, or any agency or instrumentality of a local government.

*Project* means the activities and tasks identified in the grant agreement.

*Project manager* means the nonprofit, State or Indian tribal official designated in a grant as the recipient agency’s principal program contact with the Federal Government.

*Project officer* means the Federal official designated in a grant as the program contact with the project manager. The project officer is responsible for monitoring the project.

*Project period* means the length of time specified in a grant for completion of all work associated with that project.

*Public sector employee* means an individual employed by a State,

political subdivision of a State, or Indian tribe and who during the course of employment has responsibilities related to responding to an accident or incident involving the transportation of hazardous material, including an individual employed by a State, political subdivision of a State, or Indian tribe as a firefighter or law enforcement officer and an individual who volunteers to serve as a firefighter for a State, political subdivision of a State, or Indian tribe.

*State Emergency Response Commission (SERC)* means the State Emergency Response Commission appointed by the Governor of each State and Territory under the Emergency Planning and Community Right-to-Know Act of 1986.

*Statement of Work* means that portion of a grant that describes the purpose and scope of activities and tasks to be carried out as part of the proposed project.

*Tribal Emergency Planning Committee (TEPC)* means a committee established by the TERC in each tribal region. TEPCs have the same responsibilities as LEPCs in the tribal region.

*Tribal Emergency Response Committee (TERC)* means the commission responsible for carrying out the provisions of EPCRA in the same manner as a State Emergency Response Commission (SERC) on federally recognized tribal lands.

■ 6. Revise § 110.30 to read as follows:

**§ 110.30 Hazardous materials emergency preparedness grant application.**

(a) *General.* Applications must comply with the applicable Notice of Funding Announcements which will include or reference forms approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3502). Applicants are required to electronically submit application packages to <http://www.grants.gov/>. Applications must adhere to the instructions outlined in the funding announcement and grant application kit.

(b) [Reserved]

(c) [Reserved]

■ 7. Revise § 110.40 to read as follows:

**§ 110.40 Activities eligible for hazardous materials emergency preparedness grant funding.**

Eligible applicants may receive funding for the following activities:

(a) To develop, improve, and implement emergency plans required under the Emergency Planning and Community Right-to-Know Act of 1986, as well as exercises that test the

emergency plan. To enhance emergency plans to include hazard analysis, as well as response procedures for emergencies involving transportation of hazardous materials.

(b) To determine flow patterns of hazardous materials within a State, between a State and another State or Tribal lands, and develop and maintain a system to keep such information current.

(c) To determine the need for regional hazardous materials emergency response teams.

(d) To assess local response capabilities.

(e) To conduct emergency response drills and exercises associated with emergency preparedness plans.

(f) To provide for technical staff to support the planning effort.

(g) To train public sector employees to respond to accidents and incidents involving the transportation of hazardous material.

(h) To determine the number of public sector employees employed or used by a political subdivision who need the proposed training and to select courses consistent with national consensus standards or the National Curriculum.

(i) To deliver comprehensive preparedness and response training to public sector employees, which may include design and delivery of preparedness and response training to meet specialized needs, and financial assistance for trainees and for the trainers, if appropriate, such as tuition, travel expenses to and from a training facility, and room and board while at the training facility.

(j) To deliver emergency response drills and exercises associated with training, a course of study, and tests and evaluation of emergency preparedness plans.

(k) To pay expenses associated with training by a person (including a department, agency, or instrumentality of a State or political subdivision thereof, a territory, or an Indian Tribe) and activities necessary to monitor such training including, but not limited to examinations, critiques, and instructor evaluations.

(l) To maintain staff to manage the training effort designed to result in increased benefits, proficiency, and rapid deployment of local and regional responders.

(m) For additional activities the Associate Administrator deems appropriate to implement the scope of work for the proposed plan or project and approved in the grant.

■ 8. Revise § 110.50 to read as follows:

**§ 110.50 Disbursement of Federal funds.**

(a) *Pre-award costs.* (1) Pre-award costs, as defined in 2 CFR 200.458, are those incurred prior to the effective date of the Federal award directly pursuant to the negotiation and in anticipation of the Federal award where such costs are necessary for the efficient and timely performance of the scope of work. Such costs are allowable only to the extent that they would have been allowable if incurred after the date of the Federal award and only with the written approval of the Federal awarding agency. PHMSA expects the grantee to be fully aware that pre-award costs result in borrowing against future support and that such borrowing must not impair the grantee's ability to accomplish the project objectives in the approved time frame or in any way adversely affect the conduct of the project.

(2) A grantee may, at its own risk, incur pre-award costs to cover costs up to 90 days before the beginning date of the initial budget period of a new or renewal award if such costs are necessary to conduct the project, and would be allowable under the grant if awarded.

(3) The incurrence of pre-award costs in anticipation of a competing or non-competing award imposes no obligation on PHMSA for any of the following reasons:

- (i) the absence of appropriations;
- (ii) if an award is not subsequently made; or
- (iii) if an award is made for a lesser amount than the grantee anticipated.

(b) Payment may not be made for a project plan unless approved in the grant award.

(1) Payments to recipients shall follow the Federal guidelines outlined at 2 CFR § 200.305.

(2) If a recipient agency seeks additional funds, the supplemental amendment request will be evaluated on the basis of needs, performance, and availability of funds. An existing grant is not a commitment of future Federal funding.

■ 9. Revise § 110.70 to read as follows:

**§ 110.70 Financial administration.**

(a) Recipients must expend and account for grant funds in accordance with the standards for financial and program management of Federal grants outlined at 2 CFR 200.302.

(b) To be allowable, costs must be eligible, reasonable, necessary, and allocable to the approved project in accordance with 2 CFR part 200, subpart E, Cost Principles, and included in the grant award. Recipients are responsible for obtaining audits in accordance with

2 CFR part 200, subpart F, Audit Requirements. Audits must be made by an independent auditor in accordance with generally accepted government auditing standards covering financial and compliance audits. The Associate Administrator or a designee of the Associate Administrator may audit a recipient at any time.

■ 10. Revise § 110.80 to read as follows:

**§ 110.80 Procurement.**

Recipients must use procurement procedures and practices that adhere to applicable State laws and regulations and Federal requirements as specified in the procurement standards of 2 CFR part 200, as well as the Department of Transportation exception outlined at 2 CFR 1201.317, as applicable.

■ 11. Revise § 110.90 to read as follows:

**§ 110.90 Grant monitoring, reports, and records retention.**

(a) *Grant monitoring.* Project managers are responsible for managing the day-to-day operations of grant, subgrant, and contract-supported activities. Project managers must monitor the performance of supported activities to assure compliance with applicable Federal requirements and achievement of performance goals. Monitoring must cover each program, function, activity, or task covered by the grant.

(b) *Reports.* (1) The recipient must submit financial and performance reports as required in the terms and conditions of the grant award. The final financial and performance reports are due 90 days after the expiration or termination of the grant.

(2) All required performance reports will be listed in the terms and conditions of the Notice of Grant Award.

(3) Financial reporting must be supplied using Standard Form 425 Federal Financial Report and submitted in accordance with the terms and conditions of the grant award.

(c) *Records retention.* In accordance with 2 CFR part 200, all financial and programmatic records, supporting documents, statistical records, training materials, and other documents generated under a grant must be maintained by the project manager for three years from the date the project manager submits the final financial report. The project manager must designate a repository and single-point of contact for these purposes. If any litigation, claim, negotiation, audit or another action involving the records has been started before the expiration of the 3-year period, the records must be retained until the action and resolution

of all issues that arise from it are completed, or until the end of the regular 3-year period, whichever is later.

■ 12. Revise § 110.100 to read as follows:

**§ 110.100 Enforcement.**

If a recipient fails to comply with any term of an award (whether stated in a Federal statute or regulation, an assurance, a State plan or application, a notice of award, or elsewhere) a noncompliance action may be taken as specified in 2 CFR 200.338 through 200.342. The recipient will have the opportunity to object and provide information and documentation challenging the suspension or termination action, in accordance with 2 CFR 200.341. Costs incurred by the recipient agency during a suspension or after termination of an award are not allowable unless the Associate Administrator authorizes it in writing. Grant awards may also be terminated in whole or in part with the consent of the recipient at any agreed upon effective date, or by the recipient upon written notification.

■ 13. Revise § 110.110 to read as follows:

**§ 110.110 After-grant requirements.**

The Associate Administrator will close out the award upon determination that all applicable administrative actions and all required work of the grant are complete in accordance with 2 CFR part 200. The project manager must submit all financial, performance, and other reports required as a condition of the grant, within 90 days after the expiration or termination of the grant. This time frame may be extended by the Associate Administrator for cause.

■ 14. Revise § 110.120 to read as follows:

**§ 110.120 Deviation from this part.**

Recipient agencies may request a deviation from the non-statutory provisions of this part. The Associate Administrator will respond to such requests in writing. If appropriate, the decision will be included in the grant agreement. Request for deviations from this part 110 must be submitted to: the Grants Chief at [HMEP.Grants@dot.gov](mailto:HMEP.Grants@dot.gov).

■ 15. Revise § 110.130 to read as follows:

**§ 110.130 Disputes.**

Disputes should be resolved at the lowest level possible, beginning with the Grants Specialist, the Grants Team Lead, and the Grants Chief. If an agreement cannot be reached, the Associate Administrator will serve as the dispute resolution official, whose decision will be final.

Issued in Washington, DC, on October 4, 2016, under authority delegated in 49 CFR 1.97.

**William Schoonover,**

*Acting Associate Administrator for Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration.*

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Parts 223 and 224**

[Docket No. 160719634–6838–01]

RIN 0648–XE756

**Listing Endangered or Threatened Species; 90-Day Finding on a Petition To List the Pacific Bluefin Tuna as Threatened or Endangered Under the Endangered Species Act**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** 90-day petition finding, request for information, and initiation of status review.

**SUMMARY:** We, NMFS, announce a 90-day finding on a petition to list the Pacific bluefin tuna (*Thunnus orientalis*) as a threatened or endangered species under the Endangered Species Act (ESA) and to designate critical habitat concurrently with the listing. We find that the petition presents substantial scientific information indicating the petitioned action may be warranted. We will conduct a status review of the Pacific bluefin tuna to determine whether the petitioned action is warranted. To ensure that the status review is comprehensive, we are soliciting scientific and commercial information pertaining to this species.

**DATES:** Scientific and commercial information pertinent to the petitioned action must be received by December 12, 2016.

**ADDRESSES:** You may submit comments on this document, identified by “Pacific Bluefin Tuna Petition (NOAA–NMFS–2016–0100),” by either of the following methods:

- Federal eRulemaking Portal. Go to [www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2016-0100](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2016-0100), click the “Comment Now” icon, complete the required fields, and enter or attach your comments.

- *Mail or hand-delivery:* Protected Resources Division, West Coast Region,