

low toxicity, is that there is no significant risk to human health or the environment from managing saccharin and its salts in nonhazardous waste landfills (the plausible management scenario). As noted previously in section V.B.2., the facilities that generate these small quantities of waste are distributed across the nation, which makes it unlikely that any one segment of the population would be impacted disproportionately from management of this nonhazardous waste. However, the Agency continues to be interested in any potential environmental justice concerns as a result of this proposed rule and welcomes comments on issues related to such concerns.

#### List of Subjects

##### 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

##### 40 CFR Part 268

Environmental protection, Hazardous waste, Reporting and recordkeeping requirements.

##### 40 CFR Part 302

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: April 15, 2010.

**Lisa P. Jackson,**  
Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

#### PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

**Authority:** 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y) and 6938.

##### § 261.33 [Amended]

2. Section 261.33 is amended by removing the entries for the U202 hazardous waste in the table under paragraph (f).

##### Appendix VIII [Amended]

3. Appendix VIII to part 261 is amended by removing the entries for “Saccharin” and “Saccharin salts” from the table “Hazardous Constituents.”

#### PART 268—LAND DISPOSAL RESTRICTIONS

4. The authority citation for part 268 continues to read as follows:

**Authority:** 42 U.S.C. 6905, 6912(a), 6921, and 6924.

##### § 268.40 [Amended]

5. Section 268.40 is amended by removing the entry for waste code U202 from the table “Treatment Standards for Hazardous Wastes.”

##### Appendix VII [Amended]

6. Appendix VII to part 268 is amended by removing the entry for waste code U202 from Table 1, “Effective Dates of Surface Disposed Wastes (Non-Soil and Debris) Regulated in the LDRs—Comprehensive List.”

#### PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

7. The authority citation for part 302 continues to read as follows:

**Authority:** 42 U.S.C. 9602, 9603, and 9604; 33 U.S.C. 1321 and 1361.

##### § 302.4 [Amended]

8. In § 302.4, the table is amended by removing the entry for “Saccharin, & salts.”

[FR Doc. 2010-9167 Filed 4-21-10; 8:45 am]

**BILLING CODE 6560-50-P**

#### FEDERAL COMMUNICATIONS COMMISSION

##### 47 CFR Part 97

[WP Docket No. 10-72; FCC 10-45]

#### Amendment of the Commission's Rules Regarding Amateur Radio Service Communications During Government Disaster Drills

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** In this document, the Commission adopted a document seeking comment on its proposal to amend the Commission's amateur radio service rules with respect to amateur radio operations during government-sponsored emergency preparedness and disaster readiness drills and tests. Specifically, the Commission proposes to amend the rules to provide that, under certain limited conditions, amateur radio operators may transmit messages during emergency and disaster preparedness drills, regardless of whether the operators are employees of entities participating in the drill.

**DATES:** Comments are due on or before May 24, 2010 and reply comments are due on or before June 7, 2010.

**ADDRESSES:** You may submit comments, identified by WP Docket No. 10-72 by any of the following methods:

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

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

- *Mail:* Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- *People With Disabilities:* Contact the Commission to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone: 202-418-0530 or TTY: 202-418-0432. For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Cohen, Senior Legal Counsel, Public Safety and Homeland Security Bureau, at (202) 418-0799, or by e-mail at [Jeff.Cohen@fcc.gov](mailto:Jeff.Cohen@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Federal Communication Commission's *Notice of Proposed Rulemaking (NPRM)* in WP Docket No. 10-72, FCC 10-45, adopted on March 18, 2010, and released on March 24, 2010. This document is available to the public at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/FCC-10-45A1.doc](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-10-45A1.doc).

#### Synopsis of the NPRM

1. In this *NPRM*, the Commission proposes to amend its amateur radio service rules with respect to amateur radio operations during government-sponsored emergency preparedness and disaster readiness drills and tests. Although public safety land mobile radio systems are the primary means of radio-based communications for emergency responders, experience has shown that amateur radio has played an important role in preparation for, during, and in the aftermath of, natural and man-made emergencies and disasters. Current rules provide for amateur radio use during emergencies. At the same time, the rules prohibit

communications in which the station licensee or control operator has a pecuniary interest, including communications on behalf of an employer. While there are some exceptions to this prohibition, there is none that would permit amateur station control operators who are employees of public safety agencies and other entities, such as hospitals, to participate in drills and tests in preparation for such emergency situations and transmit messages on behalf of their employers during such drills and tests. Accordingly, the Commission proposes to amend the rules to provide that, under certain limited conditions, amateur radio operators may transmit messages during emergency and disaster preparedness drills, regardless of whether the operators are employees of entities participating in the drill.

### I. Background

2. One of the fundamental principles underlying the amateur radio service is the “[r]ecognition and enhancement of the value of the amateur service to the public as a voluntary noncommercial communication service, particularly with respect to providing emergency communications.” 47 CFR 97.1(a). Further, the rules state that “[n]o provision of these rules prevents the use by an amateur station of any means of radio communication at its disposal to provide essential communication needs in connection with the immediate safety of human life and immediate protection of property when normal communication systems are not available.” 47 CFR 97.403. Indeed, amateur radio operators provide essential communications links and facilitate relief actions in disaster situations. While land mobile radio services are the primary means of conducting emergency communications, amateur radio plays a unique and critical role when these primary facilities are damaged, overloaded, or destroyed. For example, during Hurricane Katrina, amateur radio operators volunteered to support many agencies, such as the Federal Emergency Management Agency, the National Weather Service, and the American Red Cross. Amateur radio stations provided urgently needed wireless communications in many locations where there was no other means of communicating and also provided other technical aid to the communities affected by Hurricane Katrina.

3. Since amateur radio is often an essential element of emergency preparedness and response, many state and local governments and public safety agencies incorporate amateur radio

operators and the communication capabilities of the amateur service into their emergency planning. In this regard, some entities, such as hospitals, emergency operations centers, and police, fire, and emergency medical service stations, have emphasized the participation of their employees who are amateur station operators in emergency and disaster drills and tests. For example, a representative of the New Orleans Urban Area Security Initiative recently emphasized the importance of conducting emergency drills and the need for amateur participation.

4. The Commission’s rules expressly permit operation of amateur stations for public service communications during emergencies, and on a voluntary basis during drills and exercises in preparation for such emergencies. Given, however, that the Amateur Radio Service is primarily designated for “amateurs, that is, duly authorized persons interested in radio technique solely with a personal aim and without pecuniary interest,” *see* 47 CFR 97.3(a)(4), the rules expressly prohibit amateur stations from transmitting communications “in which the station licensee or control operator has a pecuniary interest, including communications on behalf of an employer.” *See* 47 CFR 97.113(a)(3). Accordingly, public safety entities seeking to have employees operate amateur stations during government-sponsored emergency preparedness and disaster drills presently must request a waiver.

### II. Discussion

5. The Commission seeks comment on whether to amend the rules to permit amateur radio operators to participate in government-sponsored emergency and disaster preparedness drills and tests, regardless of whether the operators are employees of the entities participating in the drill or test. The rules already recognize the importance of amateur radio in emergencies, and permit participation in such drills and tests by volunteers (*i.e.*, non-employees of participating entities). As noted above, experience has shown that amateur operations can and have played an essential role in protecting the safety of life and property during emergency situations and disasters. And as evidenced by recent waiver requests, state and local government public safety agencies and other entities often conduct disaster and emergency preparedness drills to be best-prepared for such eventualities. The proposed rule would obviate the need for a waiver in such instances by allowing employees of public safety agencies and

other entities to operate amateur stations for testing and drilling of emergency communications preparedness. The Commission thus tentatively concludes that employee status should not preclude or prevent participation in government-sponsored emergency and disaster tests and drills. Further, the Commission tentatively concludes that extending authority to operate amateur stations during such drills will enhance emergency preparedness and thus serve the public interest.

6. In reaching these tentative conclusions, the Commission does not disturb the core principle of the amateur radio service as a voluntary, non-commercial communication service carried out by duly authorized persons interested in radio technique with a personal aim and without pecuniary interest. Rather, the Commission believes that the public interest will be served by a narrow exception to the prohibition on transmitting amateur communications in which the station control operator has a pecuniary interest or employment relationship, and that such an exception is consistent with the intent of the amateur radio service rules. Accordingly, the Commission proposes that amateur operations in connection with emergency drills be limited to the duration and scope of the drill, test or exercise being conducted, and operational testing immediately prior to the drill, test or exercise.

7. Furthermore, the Commission proposes that the emergency tests and drills must be sponsored by Federal, State, or local governments or agencies, in order to limit the narrow exception to ensure that drills further public safety. The Commission notes, however, that there may be circumstances where conducting emergency drills for disaster planning purposes, even if not government-sponsored, would serve the public interest. Accordingly, the Commission seeks comment on whether it should permit employee operation of amateur stations during non-government-sponsored emergency drills, if the purpose of the drill is to assess communications capabilities, including amateur radio, in order to improve emergency preparedness and response.

8. A large number of agencies and organizations at the state and local levels coordinate with their local volunteer amateur radio operators to conduct drills and exercises in concert with other modes of communication. This joint activity is essential to allow for a practiced response on the part of the first responder community. Because some of those drills and exercises

include transmission of amateur communications by employees of participating entities, the Commission believes the proposed rule changes would be in the public interest, consistent with ongoing national emergency preparedness and response priorities. The Commission therefore seeks comment on the tentative conclusions contained herein.

### III. Procedural Matters

#### A. Ex Parte Presentations

9. This matter shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other requirements pertaining to oral and written presentations are set forth in section 1.1206(b) of the Commission’s rules, 47 CFR 1.1206(b).

#### B. Comment Filing Procedures

10. Pursuant to sections 1.415 and 1.419 of the Commission’s rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. All filings related to this Notice of Proposed Rulemaking should refer to WP Docket No. 10–72. Comments may be filed using: (1) the Commission’s Electronic Comment Filing System (ECFS), (2) the Federal Government’s eRulemaking Portal, or (3) by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

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

12. For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing

instructions, filers should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and include the following words in the body of the message, “get form.” A sample form and directions will be sent in response.

13. *Paper Filers*: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

14. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.

15. Effective December 28, 2009, all hand-delivered or messenger-delivered paper filings for the Commission’s Secretary must be delivered to FCC Headquarters at 445 12th St., SW., Room TW–A325, Washington, DC 20554. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

**Please Note:** The Commission’s former filing location at 236 Massachusetts Avenue, NE, is permanently closed.

16. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

17. U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington DC 20554.

#### C. Accessible Formats

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

### IV. Initial Regulatory Flexibility Analysis

19. The Regulatory Flexibility Act (RFA) requires an initial regulatory flexibility analysis to be prepared for notice and comment rulemaking proceedings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.” The RFA generally defines the term “small entity” as having the same

meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. A “small business concern” is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

20. Because “small entities,” as defined in the RFA, are not persons eligible for licensing in the amateur service, this proposed rule does not apply to “small entities.” Rather, it applies exclusively to individuals who are the control operators of amateur radio stations. Therefore, we certify that the proposals in this *Notice of Proposed Rulemaking*, if adopted, will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the *Notice of Proposed Rulemaking*, including a copy of this Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the SBA. This initial certification will also be published in the **Federal Register**.

### V. Ordering Clauses

21. Accordingly, *it is ordered*, pursuant to sections 4(i), 303(r), and 403 of the Communications Act of 1934, 47 U.S.C. 154(i), 303(r), and 403, that this *Notice of Proposed Rulemaking* is hereby adopted.

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

Federal Communications Commission.

**Marlene H. Dortch**,  
Secretary.

### Proposed Rule

For the reasons set forth in the preamble, FCC proposes to amend 47 CFR part 97 as follows:

### PART 97—AMATEUR RADIO SERVICE

1. The authority citation for part 97 continues to read as follows:

**Authority:** 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609, unless otherwise noted.

2. In § 97.113, revise paragraph (a)(3) to read as follows:

#### § 97.113 Prohibited transmissions.

(a) \* \* \*

(3) Communications in which the station licensee or control operator has a pecuniary interest, including communications on behalf of an employer, with the following exceptions:

(i) A control station operator may participate on behalf of an employer in a government-sponsored emergency preparedness or disaster readiness test or drill, limited to the duration and scope of such test or drill, and operational testing immediately prior to such test or drill.

(ii) An amateur operator may notify other amateur operators of the availability for sale or trade of apparatus normally used in an amateur station, provided that such activity is not conducted on a regular basis.

\* \* \* \* \*

[FR Doc. 2010-9092 Filed 4-21-10; 8:45 am]

BILLING CODE 6712-01-P

## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Parts 202, 203, 212, and 252

RIN 0750-AG63

#### Defense Federal Acquisition Regulation Supplement; Organizational Conflicts of Interest in Major Defense Acquisition Programs (DFARS Case 2009-D015)

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 207 of the Weapons System Acquisition Reform Act of 2009.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before June 21, 2010, to be considered in the formation of the final rule.

**ADDRESSES:** You may submit comments, identified by DFARS Case 2009-D015, using any of the following methods:

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

*E-mail:* [dfars@osd.mil](mailto:dfars@osd.mil). Include DFARS Case 2009-D015 in the subject line of the message.

*Fax:* 703-602-0350.

*Mail:* Defense Acquisition Regulations System, Attn: Ms. Amy Williams, OUSD (AT&L) DPAP (DARS), 3060 Defense

Pentagon, Room 3B855, Washington, DC 20301-3060.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy Williams, 703-602-0328.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

DoD is proposing to amend the DFARS to implement section 207 of the Weapons System Acquisition Reform Act of 2009 (WSARA) (Pub. L. 111-23). Section 207 requires DoD to revise the DFARS to provide uniform guidance and tighten existing requirements for organizational conflicts of interest (OCIs) by contractors in major defense acquisition programs. The law sets out situations that must be addressed and allows DoD to establish such limited exceptions as are necessary to ensure that DoD has continued access to advice on systems architecture and systems engineering matters from highly qualified contractors, while ensuring that such advice comes from sources that are objective and unbiased.

In developing regulatory language, DoD is directed to consider the recommendation presented by the Panel on Contracting Integrity. DoD has reviewed the provisional recommendations of the Panel in the formation of this proposed rule and will consider the final recommendations of the Panel in the formation of the final rule. DoD must also consider any findings and recommendations of the Administrator of the Office of Federal Procurement Policy (OFPP) and the Director of the Office of Government Ethics (OGE) pursuant to section 841(b) of the Duncan Hunter National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2009 (Pub. L. 110-417). Section 841(b) of the NDAA for FY 2009 required review by OFPP, in consultation with OGE, of FAR coverage of OCIs. Neither OFPP nor OGE has issued recommendations to date pursuant to section 841, but are working with the FAR Acquisition Law Team, which includes representatives from DoD and the civilian agencies, to draft a proposed rule under FAR Case 2007-018. As part of this process, OFPP, OGE, and the Team are reviewing comments received in response to an Advance Notice of Proposed Rulemaking, published in the **Federal Register** at 73 FR 15962 on March 26, 2008.

A public meeting was held on December 8, 2009 (*see* 74 FR 57666) to provide opportunity for dialogue on the possible impact on DoD contracting of

the section 207 requirements relating to OCIs. In the formation of this proposed rule, DoD considered the comments provided at the public meeting, as well as other unsolicited comments received from the public. Various presenters at the public meeting (1) Expressed a desire for policy and regulation to emphasize the importance of using mitigation strategies to address OCIs, (2) sought a more consistent approach within the Government to resolve OCIs, and (3) voiced a strong interest in ensuring any rule is published for comment prior to taking effect.

To implement section 207 and its call for the tightening of existing OCI requirements effectively, DoD felt it was necessary to review the FAR's coverage on OCIs in subpart 9.5 carefully. FAR subpart 9.5 is intended to provide the foundational principles and processes for identifying and addressing OCIs. At the same time, FAR subpart 9.5 is essentially unchanged from the days when the coverage was located in an appendix to the Defense Acquisition Regulation (DAR). The existing FAR coverage relies primarily upon examples to describe OCI; some in the contracting community incorrectly thought the examples in FAR 9.505 contained the universe of conflicts. Further, the existing FAR coverage does not provide any standard provisions or clauses addressing OCIs, and the requirements of FAR subpart 9.5 were often overlooked by the contracting community.

DoD has concluded from its review that—

- The many decisions issued in the past 15 years by the Government Accountability Office (GAO) and the Court of Federal Claims (CoFC) on OCIs should be reflected in any updated coverage;
- The coverage of OCIs should be better organized and relocated to a new subpart 203.12 to be addressed along with improper business practices and personal conflicts of interest;
  - Standard provisions and clauses will be beneficial, as long as there is opportunity for contracting officers to tailor the provisions and clauses for particular circumstances, as appropriate; and
  - Expanding coverage to address unique issues associated with task and delivery order (indefinite-delivery/indefinite-quantity) contracts is also useful.

DoD proposes to use DFARS subpart 203.12 in lieu of the present FAR subpart 9.5. However, when the FAR is revised, pursuant to the section 841(b) review, to incorporate broader OCI changes, DoD will follow the FAR and