

*Analysis of Regulatory Impacts.* This proposal is not a “significant regulatory action” within the meaning of Executive Order 12886. It is also not significant within the definition in DOT’s Regulatory Policies and Procedures, 49 FR 11034 (1979), in part because it does not involve any change in important Departmental policies. Because the economic impact should be minimal, further regulatory evaluation is not necessary. Moreover, I certify that this proposal would not have a significant economic impact on a substantial number of small entities, because the reporting requirements, themselves, are not changed and because it applies only to information on individuals that is maintained by the Federal Government.

This proposal would not significantly affect the environment, and therefore an environmental impact statement is not required under the National Environmental Policy Act of 1969. It has also been reviewed under Executive Order 12612, Federalism, and it has been determined that it does not have sufficient implications for Federalism to warrant preparation of a Federalism Assessment.

*Collection of Information.* This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*)

*Unfunded Mandates.* Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), (Pub. L. 104–4, 109 Stat. 48), requires Federal agencies to assess the effects of certain regulatory actions on

information subject to the Act to information that is relevant and necessary to carry out a lawful activity of the agency that collects or maintains the information. The exemption from (e)(1) means that we are not limited to information that is relevant and necessary. In practical terms, the subject may contest the relevancy and necessity of any information in the file; however, given the exemption from (d), above, the subject has no way to verify what is in the file, so is unable to contest its relevancy or necessity. Hence, a formal exemption from (e)(1) is not needed.

*(e)(4)(G), (H), and (I)*—To equip a subject to verify information in a file, we are required by the Privacy Act to publish in the public notice of the existence of the information procedures informing subjects how to learn from us whether we have records on them, procedures on how subjects can gain access to their files, and procedures to identify for subjects the categories of record sources in the file. The exemption from (e)(4)(G), (H), and (I) means that we need not publish these procedures for this file. Again, if we do not have to grant access, these provisions have no meaning.

*(f)*—We are also required to publish regulations governing how subjects can learn if they are included in any of our Privacy Act files, how they must prove their identities before we can grant them access, and governing access to their files, their rights to have information in the files amended and their rights to appeal our refusal to grant access and make amendments. Since there is no right to access, these derivative rights, as with the others, are moot.

State, local, and tribal governments, and the private sector. UMRA requires a written statement of economic and regulatory alternatives for proposed and final rules that contain Federal mandates. A “Federal mandate” is a new or additional enforceable duty, imposed on any State, local, or tribal government, or the private sector. If any Federal mandate causes those entities to spend, in aggregated, \$100 million or more in any one year (adjusted for inflation) the UMRA analysis is required. This proposal would not impose Federal mandates on any State, local, or tribal governments or the private sector.

#### List of Subjects in 49 CFR Part 10

Authority delegations (government agencies); Organization and functions (government agencies); Penalties; Privacy; Transportation Department.

In consideration of the foregoing, DOT proposes to amend Part 10 of Title 49, Code of Federal Regulations, as follows:

1. The authority citation for Part 10 would continue to read as follows:

**Authority:** Pub. L. 93–579; 49 U.S.C. 322.

2. The Appendix would be amended by inserting in of Part II.A. a new paragraph 8, immediately following paragraph 7, to read as follows:

#### Appendix A—Exemptions.

Part II. Specific exemptions. A. The following systems of records are exempt from subsection (c)(3) (Accounting of Certain Disclosures), (d) (Access to Records), (e)(4)(G), (H), and (I) (Agency Requirements), and (f) (Agency Rules) of 5 U.S.C. 552a, to the extent that they contain investigatory material compiled for law enforcement purposes, in accordance 5 U.S.C. 552a(k)(2):

\* \* \* \* \*

8. Suspicious Activity Reporting (SAR) database, maintained by the Office of Intelligence, Security, and Emergency Response, Office of the Secretary.

Issued in Washington, DC, on: August 31, 2011.

**Claire W. Barrett,**

*Departmental Chief Privacy Officer.*

[FR Doc. 2011–22729 Filed 9–6–11; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### 49 CFR Part 269

[Docket No. FRA–2009–0108; Notice No. 1]

RIN 2130–AC19

#### Alternate Passenger Rail Service Pilot Program

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

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

**SUMMARY:** This NPRM is in response to a statutory mandate that FRA complete a rulemaking proceeding to develop a pilot program that permits a rail carrier or rail carriers that own infrastructure over which Amtrak operates certain passenger rail service routes to petition FRA to be considered as a passenger rail service provider over such a route in lieu of Amtrak for a period not to exceed five years after the date of enactment of the Passenger Rail Investment and Improvement Act of 2008. The proposed rule would develop this pilot program in conformance with the statutory directive.

**DATES: Written Comments:** Written comments on the proposed rule must be received by November 7, 2011. Comments received after that date will be considered to the extent possible without incurring additional expense or delay. FRA anticipates being able to determine these matters without a public hearing. However, if prior to October 7, 2011, FRA receives a specific request for a public hearing accompanied by a showing that the party is unable to adequately present his or her position by written statement, a hearing will be scheduled and FRA will publish a supplemental notice in the **Federal Register** to inform interested parties of the date, time, and location of any such hearing.

**ADDRESSES: Comments:** Comments related to Docket Number FRA–2009–0108, may be submitted by any of the following methods:

- Fax: 1–202–493–2251.
- Mail: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave., SE., W12–140, Washington, DC 20590.
- Hand Delivery: Room W12–140 on the Ground level of the West Building, 1200 New Jersey Ave., SE., Washington, DC between 9 a.m. and 5 p.m. Monday through Friday, except Federal Holidays.

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

*Instructions*: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information. Please see the Privacy Act heading later in this document for more Privacy Act information.

*Docket*: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> at any time, or to room W12-140 on the Ground level of the West Building, 1200 New Jersey Ave., SE., Washington, DC between 9 a.m. and 5 p.m. Monday through Friday, except Federal Holidays.

**FOR FURTHER INFORMATION CONTACT:** Alexander Roth, Office of Railroad Policy and Development, FRA, 1200 New Jersey Ave., SE., Washington, DC 20590 (Telephone 202-493-6109), or Zeb Schorr, Attorney-Advisor, Office of Chief Counsel, FRA, 1200 New Jersey Ave., SE., Mail Stop 10, Washington, DC 20590 (Telephone 202-493-6072).

**SUPPLEMENTARY INFORMATION:**

**I. Notice of Proposed Rulemaking**

*A. Statutory Background*

The proposed rule is in response to a statutory mandate—specifically, § 214 of the Passenger Rail Investment and Improvement Act of 2008 (PRIIA), Public Law No. 110-432, Division B (Oct. 16, 2008)—that FRA complete a rulemaking proceeding to develop a pilot program that permits a rail carrier or rail carriers that own infrastructure over which Amtrak operates certain passenger rail service routes to petition FRA to be considered as a passenger rail service provider over such a route in lieu of Amtrak for a period not to exceed five years after the date of enactment of PRIIA. Section 214 further provides that those routes described in 49 U.S.C. 24102(5)(B), (C), and (D) and in 49 U.S.C. 24702 are eligible for the pilot program, and that the program not be made available to more than two routes.

Section 214 also provides for, among other things, the following: The establishment of a petition, notification, and bid process through which FRA would evaluate bids to provide passenger rail service over particular routes by interested rail carriers and Amtrak; FRA's selection of a winning bidder by, among other things, evaluating the bids against the financial

and performance metrics developed under section 207 of PRIIA; FRA's execution of a contract with the winning bidder awarding the right and obligation to provide passenger rail service over the route, along with an operating subsidy, as well as requiring compliance with the minimum standards established under section 207 of PRIIA, among other things; that Amtrak must provide access to its reservation system, stations, and facilities to a winning bidder; that employees used in the operation of a route under the pilot program would be considered an employee of that rail carrier and would be subject to the applicable Federal laws and regulations governing similar crafts or classes of employees of Amtrak; that the winning bidder must provide hiring preference to displaced qualified Amtrak employees; that the winning bidder would be subject to the grant conditions under 49 U.S.C. 24405; and that, if a winning bidder ceases to operate the service or to otherwise fulfill their obligations, the FRA Administrator, in collaboration with the Surface Transportation Board, would take any necessary action to enforce the contract and to ensure the continued provision of service.

*B. Adequate Resources Certification*

Section 214 provides that, before FRA may take any action allowed under 49 U.S.C. 24711, the Secretary of Transportation (Secretary) must certify that the FRA Administrator has sufficient resources that are adequate to undertake the pilot program. FRA understands this requirement to mean that FRA may not proceed with any action under a pilot program developed by this proposed rulemaking until the Secretary has issued such a certification.

It should also be noted that section 214 requires FRA to award to a winning bidder, among other things, an operating subsidy. 49 U.S.C. 24711(a)(5)(B). PRIIA did not authorize funds for FRA to use to pay for any such operating subsidy, or any other costs arising from the proposed pilot program; nor did Congress appropriate funds for the pilot program.

This proposed rulemaking would incorporate the adequate resources certification requirement by providing, in § 269.3(a), that the part would not be applicable to any railroad, unless and until the Secretary certifies that FRA has sufficient resources that are adequate to undertake the pilot program. Only upon such certification would the proposed pilot program become available. As described below, the time period within which petitions may be filed with FRA

would be triggered by FRA providing notice of the Secretary's certification.

*C. Timeline Established by the Proposed Rule*

The proposed rule would establish deadlines for filing petitions, filing bids, and FRA's execution of contract(s) with any winning bidders. As to the filing of petitions, § 269.7(b) of the proposed rule would require a petition to be filed with FRA no later than 45 days after FRA provides notice of the Secretary's certification that the FRA Administrator has sufficient resources that are adequate to undertake the pilot program. This deadline is necessary in order to comply with the statutory mandate. Specifically, 49 U.S.C. 24711(a)(4) requires FRA to, as relevant here, "give preference in awarding contracts to bidders seeking to operate routes that have been identified as one of the five worst performing Amtrak routes under section 24710" of title 49 of the United States Code. In order to comply with this statutory directive to "give preference" to "the five worst performing Amtrak routes," FRA must be able to evaluate all bids at the same time. Section 269.7(b)'s proposed petition deadline would enable FRA to evaluate all bids at the same time and to "give preference" where appropriate as directed by the statute.

In addition, §§ 269.3(c) and 269.7(d) of the proposal would also take into consideration the possibility that the period during which a railroad may provide passenger rail service under this proposed pilot program, which is currently set by statute to expire on October 16, 2013, is extended by statute. In that event, the proposed rule would require petitions to be filed with FRA no later than 60 days after the enactment of such statutory authority and would require such petitions to otherwise comply with the requirements of this part.

As to the filing of bids, proposed § 269.9 would require the Petitioner and Amtrak to both file bids with FRA no later than 60 days after the petition deadline established by proposed § 269.7(b). Proposed § 269.9(b) articulates the bid requirements. The 60-day time period would give a bidder sufficient time to prepare a bid that satisfies the bid requirements, while also limiting the duration of the bid process.

Lastly, as to the award and execution of contracts with winning bidders, proposed § 269.13 would require FRA to execute a contract with the winning bidder(s) no later than 90 days after the bid deadline established by proposed § 269.9. Section 214 of PRIIA requires

FRA to “execute a contract within a specified, limited time.” 49 U.S.C. 24711(a)(5). The 90-day time period is a limited period for FRA and the winning bidder(s) to execute an agreement(s) that satisfies the proposed requirements of § 269.13, including FRA’s obligation of an operating subsidy in compliance with the statutory requirements.

## II. Section-by-Section Analysis

### Section 269.1 Purpose

This section provides that the proposed rule would carry out the statutory mandate set forth in 49 U.S.C. 24711 that requires FRA to develop a pilot program that permits a rail carrier or rail carriers that own infrastructure over which Amtrak operates a passenger rail service route to petition FRA to be considered as a passenger rail service provider over that route in lieu of Amtrak.

### Section 269.3 Application

Paragraph (a) of this section provides that the proposed rule would not apply to any railroad, unless and until the Secretary certifies that FRA has sufficient resources that are adequate to undertake the pilot program. This section also states that, upon receipt, FRA will provide notice of the certification on the FRA public Web site. This proposed paragraph is based on the statutory directive in 49 U.S.C. 24711(e). In addition, as discussed in § 269.7(a) of the proposal, FRA’s notice of the Secretary’s certification will trigger the 45-day deadline by which an eligible railroad may petition FRA under the pilot program.

Paragraph (b) of this section provides that the proposed pilot program would not be made available to more than two Amtrak intercity passenger rail routes. This proposed paragraph is based on the statutory directive contained in 49 U.S.C. 24711(b).

Paragraph (c) of this section proposes that any rail carrier or rail carriers awarded a contract to provide passenger rail service under the pilot program would only be able to provide such service for a period not to exceed five years after October 16, 2008 (the date of PRIIA’s enactment), or a later date authorized by statute. This proposed paragraph is based on the statutory directive contained in 49 U.S.C. 24711(a)(1). In addition, this proposed section also takes into consideration the possibility that the 5-year limitation period established in PRIIA is extended by statute.

### Section 269.5 Definitions

This section contains the definitions that FRA proposes to employ in this

rule. This section proposes definitions the following terms: Act; Administrator; Amtrak; File and filed; Financial plan; FRA; Operating plan; Passenger rail service route; Petitioner; Railroad, and Secretary. Among other definitions, this section proposes to define “passenger rail service route” to mean those routes described in 49 U.S.C. 24102(5)(B), (C), and (D) and in 49 U.S.C. 24702. This definition is based on the statutory directive contained in 49 U.S.C. 24711(a)(1). In addition, this section proposes to define “railroad” to mean a rail carrier or rail carriers, as defined in 49 U.S.C. 10102(5). This definition is based on the statutory directive contained in 49 U.S.C. 24711(a)(1) and (c)(3).

This section also proposes to define “financial plan” to mean a plan that contains, for each Federal fiscal year fully or partially covered by the bid: An annual projection of the revenues, expenses, capital expenditure requirements, and cash flows (from operating activities, investing activities, and financing activities, showing sources and uses of funds) attributable to the route; and a statement of the assumptions underlying the financial plan’s contents. In addition, this proposed section defines “operating plan” to mean a plan that contains, for each Federal fiscal year fully or partially covered by the bid: A complete description of the service planned to be offered, including the train schedules, frequencies, equipment consists, fare structures, and such amenities as sleeping cars and food service provisions; station locations; hours of operation; provisions for accommodating the traveling public, including proposed arrangements for stations shared with other routes; expected ridership; passenger-miles; revenues by class of service between each city-pair proposed to be served; and a statement of the assumptions underlying the operating plan’s contents. The proposed rule would require bidders to include a financial plan and an operating plan—as those terms are defined here—in their bids. These proposed definitions would ensure that bids contain sufficient information to be evaluated.

### Section 269.7 Petitions

Paragraph (a) of this section proposes that a railroad that owns infrastructure over which Amtrak operates a passenger rail service route may petition FRA to be considered as a passenger rail service provider over that route in lieu of Amtrak for a period of time consistent with the time limitations described in section 269.3(c). This proposed

paragraph is based on the statutory directive contained in 49 U.S.C. 24711(a)(1). This paragraph would not require a railroad own all of the infrastructure over which Amtrak operates a passenger rail service route in order to file a petition.

Paragraph (b) of this section proposes that a petition submitted to FRA under this rule must: Be filed with FRA no later than 45 days after FRA provides notice of the Secretary’s certification pursuant to proposed § 269.3(a); describe the petition as a “Petition to Provide Passenger Rail Service under 49 CFR part 269”; and describe the route or routes over which the petitioner wants to provide passenger rail service and the Amtrak service that the petitioner wants to replace. This proposed paragraph is intended to ensure that a petition would provide clear notice to FRA.

Paragraph (c) of this section proposes that, in the event that a later statute extends the time period under which a railroad may provide passenger rail service pursuant to the pilot program, petitions would have to be filed with FRA no later than 60 days after the later of the enactment of such statutory authority or the Secretary’s issuance of the certification under § 269.3(a), and that the petition must otherwise comply with the requirements of the pilot program. This proposed paragraph takes into consideration the possibility that the 5-year limitations period established in PRIIA is extended by statute.

### Section 269.9 Bid Process

Paragraph (a) of this section proposes that FRA would notify Amtrak of any eligible petition filed with FRA no later than 30 days after FRA’s receipt of such petition. This proposed paragraph is based on the statutory directive contained in 49 U.S.C. 24711(a)(2).

Paragraph (b) of this section describes the proposed bid requirements, including a requirement that such bids must be filed with FRA no later than 60 days after the petition deadline established by proposed § 269.7. Paragraph (b) further proposes that such bids must: (1) Provide FRA with sufficient information to evaluate the level of service described in the proposal, and to evaluate the proposal’s compliance with the requirements described in proposed § 269.13(b); (2) describe how the bidder would operate the route (including an operating plan, a financial plan and, if applicable, any agreement(s) necessary for the operation of passenger service over right-of-way on the route that is not owned by the railroad), and, if the bidder intends to generate any revenues from ancillary activities (*i.e.*, activities other than

passenger transportation, accommodations, and food service) as part of its proposed operation of the route, then the bidder must fully describe such ancillary activities and identify their incremental impact in all relevant sections of the operating plan and the financial plan, and on the route's performance under the financial and performance metrics developed pursuant to section 207 of the Act, together with the assumptions underlying the estimates of such incremental impacts; (3) describe what Amtrak passenger equipment would be needed, if any; (4) describe in detail, including amounts, timing, and intended purpose, what sources of Federal and non-Federal funding the bidder would use, including but not limited to any Federal or State operating subsidy and any other Federal or State payments; (5) contain a staffing plan describing the number of employees needed to operate the service, the job assignments and requirements, and the terms of work for prospective and current employees of the bidder for the service outlined in the bid; and (6) describe how the passenger rail service would comply with the financial and performance metrics developed pursuant to section 207 of the Act (at a minimum, this description must include, for each Federal fiscal year fully or partially covered by the bid: a projection of the route's expected on-time performance and train delays according to the metrics developed pursuant to section 207 of the Act; and the net cash used in operating activities per passenger-mile attributable to the route). This proposed paragraph is based on the statutory directive contained in 49 U.S.C. 24711(a)(3) and (a)(6).

Paragraph (c) of this section proposes that FRA could request supplemental information from a petitioner and/or Amtrak where FRA determines such information is needed to evaluate a bid. In such a request, FRA would establish a deadline by which the supplemental information must be submitted to FRA. This proposed paragraph allows FRA to request additional information where the information provided in a bid prevents FRA from adequately evaluating the proposal.

#### *Section 269.11 Evaluation*

This section proposes that FRA would select a winning bidder by evaluating the bids against the financial and performance metrics developed under section 207 of PRIIA and the requirements of this proposed part, and would give preference in awarding contracts to bidders seeking to operate

routes that have been identified as one of the five worst performing Amtrak routes under 49 U.S.C. 24710. This proposed paragraph is based on the statutory directive contained in 49 U.S.C. 24711(a)(4).

#### *Section 269.13 Award*

Paragraph (a) of this section proposes that FRA would execute a contract with the winning bidder(s) consistent with the requirements of proposed § 269.13 and as FRA may otherwise require, no later than 90 days after the bid deadline established by proposed § 269.9(b). This paragraph also provides that FRA would provide timely notice of these selections to all petitioners and to Amtrak. This proposed paragraph is based on the statutory directive contained in 49 U.S.C. 24711(a)(5).

Paragraph (b) of this section proposes that, among other things, such a contract would: (1) Award to the winning bidder the right and obligation to provide passenger rail service over that route subject to such performance standards as FRA may require, consistent with the standards developed under section 207 of PRIIA; (2) award to the winning bidder an operating subsidy for the first year at a level not in excess of the level in effect during the fiscal year preceding the fiscal year in which the petition was received, adjusted for inflation, and for any subsequent years at such level, adjusted for inflation; (3) condition the operating and subsidy rights upon the winning bidder continuing to provide passenger rail service on the route that is no less frequent, nor over a shorter distance, than Amtrak provided on that route before the award; (4) condition the operating and subsidy rights upon the winning bidder's compliance with the minimum standards established under section 207 of PRIIA and such additional performance standards as FRA may establish; and (5) subject the winning bidder to the grant conditions established by 49 U.S.C. 24405. This proposed paragraph is based on the statutory directive contained in 49 U.S.C. 24711(a)(5), (c)(1), and (c)(4).

Paragraph (c) of this section proposes that the winning bidder would make their staffing plan, submitted as required by proposed § 269.9(b)(4), available to the public after the bid award. This proposed paragraph is based on the statutory directive contained in 49 U.S.C. 24711(a)(6).

#### *Section 269.15 Access to Facilities; Employees*

Paragraph (a) of this section proposes that, if an award under proposed § 269.13 is made to a rail carrier other than Amtrak, Amtrak must provide

access to its reservation system, stations, and facilities directly related to operations to the winning bidder awarded a contract, in accordance with section 217 of PRIIA, necessary to carry out the purposes of the proposed rule. This proposed paragraph is based on the statutory directive contained in 49 U.S.C. 24711(c)(2).

Paragraph (b) of this section proposes that the employees of any person used by a rail carrier in the operation of a route under the proposed rule would be considered an employee of that carrier and subject to the applicable Federal laws and regulations governing similar crafts or classes of employees of Amtrak, including provisions under § 121 of the Amtrak Reform and Accountability Act of 1997 relating to employees that provide food and beverage service. This proposed paragraph is based on the statutory directive contained in 49 U.S.C. 24711(c)(3).

Paragraph (c) of this section proposes that a winning bidder would provide hiring preference to qualified Amtrak employees displaced by the award of the bid, consistent with the staffing plan submitted by the winning bidder. This proposed paragraph is based on the statutory directive contained in 49 U.S.C. 24711(c)(4).

#### *Section 269.17 Cessation of Service*

This section proposes that, if a rail carrier awarded a route under this rule ceases to operate the service or fails to fulfill its obligations under the contract required under proposed § 269.13, the Administrator, in collaboration with the Surface Transportation Board, will take any necessary action consistent with title 49 of the United States Code to enforce the contract and ensure the continued provision of service, including the installment of an interim service provider and re-bidding the contract to operate the service. This section further proposes that the entity providing service would either be Amtrak or a rail carrier eligible for the pilot program under proposed § 269.7. This proposed paragraph is based on the statutory directive contained in 49 U.S.C. 24711(d).

### **III. Regulatory Impact and Notices**

#### *1. Executive Orders 12866 and 13563 and DOT Regulatory Policies and Procedures*

This proposed rule has been evaluated in accordance with existing policies and procedures and determined to be non-significant under Executive Order 12866, Executive Order 13563, and DOT policies and procedures. See 44 FR 11034; February 26, 1979. FRA

has prepared and placed in the docket a regulatory impact analysis (RIA) addressing the economic impact of this proposed rule. Document inspection and copying facilities are available at the DOT Central Docket Management Facility located in Room W12-140 on the Ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590. Docket material is also available for inspection electronically through the Federal eRulemaking Portal at <http://www.regulations.gov>. Photocopies may also be obtained by submitting a written request to the FRA Docket Clerk at the Office of Chief Counsel, RCC-10, Mail Stop 10, Federal Railroad Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590; please refer to Docket No. FRA-2009-0108.

As part of the regulatory impact analysis, FRA has generally assessed quantitative measurements of the cost and benefit streams expected to result from the adoption of a proposed rule. However, in this case, due to the limited number of routes that would be awarded under the pilot program (only two routes could be awarded), and the short timeframe in which this pilot program would operate (until 2013), it is not feasible to perform an analysis for an extended period.

There are no alternate service provider railroad regulatory costs because the program is voluntary with respect to such rail carriers. Regulatory costs would be triggered for Amtrak should one or more alternative service providers bid on routes. For informational purposes, FRA has included in Appendices of the RIA the estimated average costs for both a railroad and Amtrak to participate in the pilot program. FRA estimates the average cost for each individual railroad to participate in the program and to submit the required bid proposal (the majority of the cost) at about \$300,000 per route, and the average cost for Amtrak at about \$150,000 per route (regardless of how many individual railroads bid on the individual Amtrak route). Railroads that participate voluntarily would do so because they consider the benefits to exceed the costs. Thus, any participation would be cost beneficial with respect to the voluntary participant. Any potential costs to Amtrak are regulatory costs that would not be incurred in absence of this proposed rule or the costs associated with developing bids for up to two routes.

Given that this pilot program is voluntary for potential alternate service providers and is not currently funded by

Congress, FRA estimates that this proposed regulation would not result in any benefits or costs.

## 2. Regulatory Flexibility Act

To ensure potential impacts of rules on small entities are properly considered, FRA developed this proposed rule in accordance with Executive Order 13272 (“Proper Consideration of Small Entities in Agency Rulemaking”) and DOT’s procedures and policies to promote compliance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The Regulatory Flexibility Act requires an agency to review regulations to assess their impact on small entities. An agency must conduct a regulatory flexibility analysis unless it determines and certifies that a rule is not expected to have a significant impact on a substantial number of small entities.

### Purpose

As noted earlier in this NPRM, the purpose of this proposed rulemaking is to respond to a statutory mandate to develop a pilot program that permits a rail carrier or rail carriers that own infrastructure over which Amtrak operates certain passenger rail service routes to petition FRA to be considered as a passenger rail service provider over such a route in lieu of Amtrak for a period not to exceed five years after the date of enactment of PRIIA. The proposed rule would develop this pilot program in conformance with the statutory directive.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of proposed and final rules to assess their impact on small entities, unless the Secretary certifies that the rule would not have a significant economic impact on a substantial number of small entities. Pursuant to § 312 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), FRA has issued a final policy that formally establishes “small entities” as including railroads that meet the line-haulage revenue requirements of a Class III railroad. 49 CFR part 209, App. C. For other entities, the same dollar limit in revenues governs whether a railroad, contractor, or other respondent is a small entity. *Id.* Additionally, section 601(5) defines as “small entities” governments of cities, counties, towns, townships, villages, school districts, or special districts with populations less than 50,000. Such governments would not be directly impacted by this proposal.

## Rationale for Choosing Regulatory Action and Legal Authority

FRA is initiating this NPRM in response to a statutory mandate set forth in section 214 of PRIIA. Section 214 requires FRA to complete a rulemaking proceeding to develop a pilot program that permits a rail carrier or rail carriers that own infrastructure over which Amtrak operates certain passenger rail service routes to petition FRA to be considered as a passenger rail service provider over such a route in lieu of Amtrak for a period not to exceed five years after the date of enactment of PRIIA. This proposed rule develops this pilot program in conformance with the statutory directive.

## Description of Regulated Entities and Impacts

This proposed rule would be applicable to railroads that own infrastructure upon which Amtrak operates those routes described in 49 U.S.C. 24102(5)(B), (C), and (D) and in 49 U.S.C. 24702, which may include small railroads. “Small entity” is defined in 5 U.S.C. 601 as including a small business concern that is independently owned and operated, and is not dominant in its field of operation. The U.S. Small Business Administration (SBA) has authority to regulate issues related to small businesses, and stipulates in its size standards that a “small entity” in the railroad industry is a for profit “line-haul railroad” that has fewer than 1,500 employees, a “short line railroad” with fewer than 500 employees, or a “commuter rail system” with annual receipts of less than seven million dollars. *See* “Size Eligibility Provisions and Standards,” 13 CFR part 121 subpart A.

Federal agencies may adopt their own size standards for small entities in consultation with SBA and in conjunction with public comment. Pursuant to that authority FRA has published a final statement of agency policy that formally establishes “small entities” or “small businesses” as being railroads, contractors and hazardous materials shippers that meet the revenue requirements of a Class III railroad as set forth in 49 CFR 1201.1-1, which is \$20 million or less in inflation-adjusted annual revenues, and commuter railroads or small governmental jurisdictions that serve populations of 50,000 or less. *See* 68 FR 24891 (May 9, 2003) (codified at Appendix C to 49 CFR part 209). The \$20 million limit is based on the Surface Transportation Board’s revenue threshold for a Class III railroad carrier. Railroad revenue is adjusted for inflation by applying a revenue deflator

formula in accordance with 49 CFR 1201.1–1. FRA is using this definition for the proposed rule.

#### Minimum Requirements for Pilot Program Applications

Small railroads face the same requirements for entry in the pilot program as other railroads. The railroad must own infrastructure upon which Amtrak operates those routes described in 49 U.S.C. 24102(5)(B), (C), and (D) and in 49 U.S.C. 24702.

#### Disclosure of Assumptions

The purpose of this economic analysis is to provide pertinent information on the effects of the proposed regulation, part 269, “Alternate Passenger Rail Service Pilot Program.” FRA believes that the proposed regulation will not have any effect on small railroads since participation in the pilot program is voluntary, only two routes are available for award, the program expires in 2013, and it is unlikely that federal funding that is not currently available will be available for the program. FRA does not anticipate that any small railroads would be interested in taking over such an existing, eligible Amtrak route.

#### Criteria for Substantial Number

This proposed regulation is voluntary for all rail carriers, except Amtrak, which would be impacted only if another carrier petitions to participate in the pilot program. Therefore, there are no mandates placed on large or small railroads. Consequently, this proposed regulation would not affect a substantial number of small entities, and most likely will not impact any small entities.

#### Criteria for “Significant Economic Impacts”

The factual basis for the certification that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities is that the proposed pilot program is voluntary for all rail carriers except Amtrak; and no small entities are anticipated to apply. Therefore, this proposed regulation would have no economic impact on small entities.

FRA notes that this proposed regulation does not disproportionately place any small railroads that are small entities at a significant competitive disadvantage. Small railroads are not excluded from participation, so long as they are eligible. This proposed regulation and the underlying statute are aimed at railroads taking over an entire route. If Amtrak uses 30 miles of a small railroad’s infrastructure in a route that is 750 miles long, the small

railroad could not apply to take over just its own segment, but would have to apply to take over the whole route. Thus, the ability to bid on a route is not constrained by a railroad’s size.

#### Request for Comments

FRA invites comments from all interested parties on this certification. FRA also requests comments on the threshold economic analysis and its underlying assumptions. FRA particularly encourages small entities that could potentially be impacted by the proposed amendments to participate in the public comment process by submitting comments on this assessment or this rulemaking to the official U.S. Department of Transportation (DOT) docket.

#### Certification

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 605(b)), FRA certifies that this proposed rule would not have a significant impact on a substantial number of small entities. The proposed rule does not require, or otherwise impose, any requirements upon any small entities. Instead, this proposal develops a pilot program under which an eligible small entity may voluntarily elect to participate. Furthermore, the proposed rule would establish a very limited pilot program that would apply to no more than two Amtrak routes. FRA invites all interested parties to submit data and information regarding the potential economic impact that would result from adoption of the proposals in this NPRM. FRA will consider all comments received in the public comment process when making a final determination for certification of the final rule.

#### 3. Paperwork Reduction Act

According to the Paperwork Reduction Act of 1995 and OMB’s Implementing Guidance at 5 CFR 1320.3(c), “collection of information means, except as provided in section 1320.4, the obtaining, causing to be obtained, soliciting, or requiring the disclosure to an agency, third parties or the public of information by or for an agency by means of identical questions posed to, or identical reporting, recordkeeping, or disclosure requirements imposed on, ten or more persons, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit.” FRA expects that the requirements of this proposed rule will affect less than 10 railroads or “persons” as defined in 5 CFR 1320.(c)(4). Consequently, no information collection submission is necessary, and no approval is being

sought from the Office of Management and Budget (OMB) at this time.

#### 4. Environmental Impact

FRA has evaluated this NPRM in accordance with its “Procedures for Considering Environmental Impacts” (FRA’s Procedures) (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this document is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because the proposed rulemaking would not result in a change in current passenger service; instead, the program would only potentially result in a change in the operator of such service. In accordance with section 4(c) and (e) of FRA’s Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this NPRM that might trigger the need for a more detailed environmental review. As a result, FRA finds that this NPRM is not a major Federal action significantly affecting the quality of the human environment.

#### 5. Federalism Implications

Executive Order 13132, “Federalism” (64 FR 43255, Aug. 4, 1999), requires FRA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” are defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” Under Executive Order 13132, the agency may not issue a regulation with federalism implications that imposes substantial direct compliance costs and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or the agency consults with State and local government officials early in the process of developing the regulation. Where a regulation has federalism implications and preempts State law, the agency seeks to consult with State and local officials in the process of developing the regulation.

FRA has analyzed this NPRM in accordance with the principles and

criteria contained in Executive Order 13132. This NPRM complies with a statutory mandate, and FRA believes it is in compliance with Executive Order 13132.

This NPRM will not have a substantial effect on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. In addition, this NPRM will not have any federalism implications that impose substantial direct compliance costs on State and local governments.

#### 6. *Unfunded Mandates Reform Act of 1995*

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4, 2 U.S.C. 1531), each Federal agency “shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).” Section 202 of the Act (2 U.S.C. 1532) further requires that “before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement” detailing the effect on State, local, and tribal governments and the private sector. This monetary amount of \$100,000,000 has been adjusted to \$140,800,000 to account for inflation. This proposed rule would not result in the expenditure of more than \$140,800,000 by the public sector in any one year, and thus preparation of such a statement is not required.

#### 7. *Energy Impact*

Executive Order 13211 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 notices of inquiry, advance notices of proposed rulemaking, and notices of proposed

rulemaking 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. FRA has evaluated this NPRM in accordance with Executive Order 13211. FRA has determined that this NPRM will not have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this regulatory action is not a “significant energy action” within the meaning of Executive Order 13211.

#### 8. *Privacy Act Information*

Interested parties should be aware that anyone is able to search the electronic form of all written communications and comments received into any agency docket by the name of the individual submitting the document (or signing the document, 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 (65 FR 19477), or you may visit <http://www.dot.gov/privacy.html>.

#### List of Subjects in 49 CFR Part 269

Railroads; Railroad employees.

#### The Proposed Rule

For the reasons discussed in the preamble, FRA proposes to amend chapter II, subtitle B of title 49, Code of Federal Regulations, as follows:

1. Add a new part 269 to read as follows:

#### PART 269—ALTERNATE PASSENGER RAIL SERVICE PILOT PROGRAM

Sec.

- 269.1 Purpose.
- 269.3 Application.
- 269.5 Definitions.
- 269.7 Petitions.
- 269.9 Bid Process.
- 269.11 Evaluation.
- 269.13 Award.
- 269.15 Access to facilities; employees.
- 269.17 Cessation of service.

**Authority:** Sec. 214, Div. B, Pub. L. No. 110-432; 49 U.S.C. 24711; and 49 CFR 1.49.

#### § 269.1 Purpose.

The purpose of this part is to carry out the statutory mandate set forth in 49 U.S.C. 24711 requiring FRA to develop a pilot program that permits a railroad that owns infrastructure over which Amtrak operates a passenger rail service route to petition FRA to be considered

as a passenger rail service provider over that route in lieu of Amtrak.

#### § 269.3 Application.

(a) *Certification.* This part will not be applicable to any railroad, unless and until, the Secretary certifies that FRA has sufficient resources that are adequate to undertake the pilot program developed by this part. FRA will provide notice of the certification on the FRA public Web site upon receipt.

(b) *Route Limitations.* The pilot program developed by this part will not be made available to more than two Amtrak intercity passenger rail routes.

(c) *Time Limitations.* Any railroad awarded a contract to provide passenger rail service under the pilot program developed by this part shall only provide such service for a period not to exceed either five years after October 16, 2008, or a later date authorized by statute.

#### § 269.5 Definitions.

As used in this part—

*Act* means the Passenger Rail Investment and Improvement Act of 2008 (Pub. L. 110-432, Division B (Oct. 16, 2008)).

*Administrator* means the Federal Railroad Administrator, or the Federal Railroad Administrator’s delegate.

*Amtrak* means the National Railroad Passenger Corporation.

*File and Filed* mean submission of a document under this part on the date the document was postmarked, or the date the document was e-mailed to FRA.

*Financial plan* means a plan that contains, for each Federal fiscal year fully or partially covered by the bid: an annual projection of the revenues, expenses, capital expenditure requirements, and cash flows (from operating activities, investing activities, and financing activities, showing sources and uses of funds) attributable to the route; and a statement of the assumptions underlying the financial plan’s contents.

*FRA* means the Federal Railroad Administration.

*Operating plan* means a plan that contains, for each Federal fiscal year fully or partially covered by the bid: a complete description of the service planned to be offered, including the train schedules, frequencies, equipment consists, fare structures, and such amenities as sleeping cars and food service provisions; station locations; hours of operation; provisions for accommodating the traveling public, including proposed arrangements for stations shared with other routes; expected ridership; passenger-miles; revenues by class of service between

each city-pair proposed to be served; and a statement of the assumptions underlying the operating plan's contents.

*Passenger rail service route* means those routes described in 49 U.S.C. 24102(5)(B), (C), and (D) or in 49 U.S.C. 24702.

*Petitioner* means a railroad, other than Amtrak, that has submitted a petition to FRA under section 269.7 of this part.

*Railroad* means a rail carrier or rail carriers, as defined in 49 U.S.C. 10102(5).

*Secretary* means the Secretary of the U.S. Department of Transportation.

#### § 269.7 Petitions.

(a) *In General.* A railroad that owns infrastructure over which Amtrak operates a passenger rail service route may petition FRA to be considered as a passenger rail service provider over that route in lieu of Amtrak for a period of time consistent with the time limitations described in § 269.3(c).

(b) *Petition Requirements.* Each petition shall:

(1) Be filed with FRA no later than 45 days after FRA provides notice of the Secretary's certification pursuant to § 269.3(a) using the following method: e-mail to [Prria214@dot.gov](mailto:Prria214@dot.gov);

(2) Describe the petition as a "Petition to Provide Passenger Rail Service under 49 CFR part 269"; and

(3) Describe the route or routes over which the petitioner wants to provide passenger rail service and the Amtrak service that the petitioner wants to replace.

(c) *Future Petitions.* In the event that a statute extends the time period under which a railroad may provide passenger rail service pursuant to the pilot program developed by this part, petitions under this section shall be filed with FRA no later than 60 days after the later of the enactment of such statutory authority or the Secretary's issuance of the certification under § 269.3(a), and shall otherwise comply with the requirements of this part.

#### § 269.9 Bid Process.

(a) *Amtrak Notification.* FRA will notify Amtrak of any eligible petition filed with FRA no later than 30 days after FRA's receipt of such petition.

(b) *Bid Requirements.* A petitioner and Amtrak must both file a bid with FRA to provide passenger rail service over the route to which the petition relates no later than 60 days after the petition deadline established by § 269.7 using the following method: e-mail to [Prria214@dot.gov](mailto:Prria214@dot.gov). Each such bid must:

(1) Provide FRA with sufficient information to evaluate the level of

service described in the proposal, and to evaluate the proposal's compliance with the requirements described in § 269.13(b);

(2) Describe how the bidder would operate the route. This description must include, but is not limited to, an operating plan, a financial plan and, if applicable, any agreement(s) necessary for the operation of passenger service over right-of-way on the route that is not owned by the railroad. In addition, if the bidder intends to generate any revenues from ancillary activities (*i.e.*, activities other than passenger transportation, accommodations, and food service) as part of its proposed operation of the route, then the bidder must fully describe such ancillary activities and identify their incremental impact in all relevant sections of the operating plan and the financial plan, and on the route's performance under the financial and performance metrics developed pursuant to § 207 of the Act, together with the assumptions underlying the estimates of such incremental impacts;

(3) Describe what Amtrak passenger equipment would be needed, if any;

(4) Describe in detail, including amounts, timing, and intended purpose, what sources of Federal and non-Federal funding the bidder would use, including but not limited to any Federal or State operating subsidy and any other Federal or State payments;

(5) Contain a staffing plan describing the number of employees needed to operate the service, the job assignments and requirements, and the terms of work for prospective and current employees of the bidder for the service outlined in the bid; and

(6) Describe how the passenger rail service would comply with the financial and performance metrics developed pursuant to § 207 of the Act. At a minimum, this description must include, for each Federal fiscal year fully or partially covered by the bid: a projection of the route's expected on-time performance and train delays according to the metrics developed pursuant to § 207 of the Act; and the net cash used in operating activities per passenger-mile attributable to the route.

(c) *Supplemental Information.* FRA may request supplemental information from a petitioner and/or Amtrak where FRA determines such information is needed to evaluate a bid. In such a request, FRA will establish a deadline by which the supplemental information must be filed with FRA.

#### § 269.11 Evaluation.

FRA will select a winning bidder by evaluating the bids against the financial

and performance metrics developed under § 207 of the Act and the requirements of this part, and will give preference in awarding contracts to bidders seeking to operate routes that have been identified as one of the five worst performing Amtrak routes under 49 U.S.C. 24710.

#### § 269.13 Award.

(a) *Award.* FRA will execute a contract with the winning bidder(s), consistent with the requirements of this section and as FRA may otherwise require, no later than 90 days after the bid deadline established by § 269.9(b). FRA will provide timely notice of these selections to all petitioners and Amtrak.

(b) *Contract Requirements.* Among other things, the contract between FRA and a winning bidder shall:

(1) Award to the winning bidder the right and obligation to provide passenger rail service over that route subject to such performance standards as FRA may require, consistent with the standards developed under § 207 of the Act, for a duration consistent with § 269.3(c);

(2) Award to the winning bidder an operating subsidy for the first year at a level not in excess of the level in effect during the fiscal year preceding the fiscal year in which the petition was received, adjusted for inflation, and for any subsequent years at such level, adjusted for inflation;

(3) Condition the operating and subsidy rights upon the winning bidder continuing to provide passenger rail service on the route that is no less frequent, nor over a shorter distance, than Amtrak provided on that route before the award;

(4) Condition the operating and subsidy rights upon the winning bidder's compliance with the minimum standards established under § 207 of the Act and such additional performance standards as FRA may establish; and

(5) Subject the winning bidder to the grant conditions established by 49 U.S.C. 24405.

(c) *Staffing Plan Publication.* The winning bidder shall make their staffing plan required by § 269.9(b)(4) available to the public after the bid award.

#### § 269.15 Access to facilities; employees.

(a) *Access to Facilities.* If the award under § 269.13 is made to a railroad other than Amtrak, Amtrak must provide access to its reservation system, stations, and facilities directly related to operations to the winning bidder awarded a contract under this part, in accordance with § 217 of the Act, necessary to carry out the purposes of this part.

(b) *Employees.* The employees of any person used by a railroad in the operation of a route under this part shall be considered an employee of that railroad and subject to the applicable Federal laws and regulations governing similar crafts or classes of employees of Amtrak, including provisions under § 121 of the Amtrak Reform and Accountability Act of 1997 relating to employees who provide food and beverage service.

(c) *Hiring Preference.* The winning bidder shall provide hiring preference to qualified Amtrak employees displaced by the award of the bid, consistent with the staffing plan submitted by the winning bidder.

#### § 269.17 Cessation of service.

If a railroad awarded a route under this part ceases to operate the service or fails to fulfill its obligations under the contract required under § 269.13, the Administrator, in collaboration with the Surface Transportation Board, shall take any necessary action consistent with title 49 of the United States Code to enforce the contract and ensure the continued provision of service, including the installment of an interim service provider and re-bidding the contract to operate the service. The entity providing service shall either be Amtrak or a railroad eligible for this pilot program under § 269.7.

Issued in Washington DC on August 29, 2011.

**Karen J. Rae,**

*Deputy Administrator, Federal Railroad Administration.*

[FR Doc. 2011-22699 Filed 9-6-11; 8:45 am]

**BILLING CODE 4910-06-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Parts 300 and 679

[Docket No. 101027534-0559-01]

RIN 0648-BA37

#### Pacific Halibut Fisheries; Extension of Public Comment Period on Proposed Rule for a Catch Sharing Plan for Guided Sport and Commercial Fisheries in Alaska

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

**ACTION:** Proposed rule, extension of public comment period.

**SUMMARY:** NMFS is extending the date by which public comments are due concerning proposed regulations to implement a catch sharing plan for the guided sport and commercial fisheries for Pacific halibut in waters of International Pacific Halibut Commission (IPHC) Regulatory Areas 2C (Southeast Alaska) and 3A (Central Gulf of Alaska). NMFS published the proposed rule on July 22, 2011 and announced that the public comment period would end on September 6, 2011. With this notice, NMFS is extending the comment period to September 21, 2011.

**DATES:** The deadline for receipt of comments on the proposed rule published on July 22, 2011 (76 FR 44156), is extended from September 6, 2011, to September 21, 2011.

**ADDRESSES:** Send comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments identified by 0648-BA37 by any one of the following methods:

- *Electronic submissions:* Submit all electronic public comments via the Federal eRulemaking Portal Web site at <http://www.regulations.gov>.
- *Mail:* P.O. Box 21668, Juneau, AK 99802-1668.
- *Fax:* 907-586-7557.
- *Hand delivery:* 709 West 9th Street, Room 420A, Juneau, AK.

All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All personal identifying information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter N/A in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to NMFS at the above address and by e-mail to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov) or fax to 202-395-7285.

Electronic copies of the proposed rule and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis prepared for this action are available from <http://www.regulations.gov> or from the

NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>. The Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis for the charter halibut limited access program is available from the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>.

#### FOR FURTHER INFORMATION CONTACT:

Rachel Baker, 907-586-7228.

#### SUPPLEMENTARY INFORMATION:

##### Background

On July 22, 2011, NMFS published regulations at 76 FR 44156, that would implement a catch sharing plan for the guided sport and commercial fisheries for Pacific halibut in waters of IPHC Regulatory Areas 2C (Southeast Alaska) and 3A (Central Gulf of Alaska). The proposed catch sharing plan will change the annual process of allocating halibut between the guided sport and commercial fisheries in Area 2C and Area 3A, establish allocations for each sector, and specify harvest restrictions for guided sport anglers that are intended to limit harvest to the annual guided sport fishery catch limit. The proposed catch sharing plan also will authorize annual transfers of commercial halibut quota to charter halibut permit holders for harvest in the guided sport fishery.

NMFS received several requests from members of the public and representatives of recreational fishing organizations to extend the comment period on the proposed rule due to overlap with the recreational halibut fishing season and the complexity of the proposed catch sharing plan. Several commenters requested a 30-day extension and one commenter asked for an additional 60 days. We have considered these comments and conclude that a 15-day extension should allow sufficient time for the public to review and comment on the proposed rule without significantly delaying the rulemaking process.

Dated: September 1, 2011.

**John Oliver,**

*Deputy Assistant Administrator for Operations, National Marine Fisheries Service.*

[FR Doc. 2011-22862 Filed 9-1-11; 4:15 pm]

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