

# Rules and Regulations

Federal Register

Vol. 76, No. 173

Wednesday, September 7, 2011

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 843

RIN 3206-AM29

#### Technical Amendments to Federal Employees' Retirement System; Present Value Conversion Factors for Spouses of Deceased Separated Employees; Corrections

**AGENCY:** Office of Personnel Management.

**ACTION:** Correcting amendments.

**SUMMARY:** The Office of Personnel Management published a final rule in the *Federal Register* on August 23, 2011, (76 FR 52539) revising the factor at 5 CFR 843.309(b)(2) used to convert a lump sum basic employee death benefit under 5 U.S.C. 8442(b) to 36 installment payments. That change inadvertently stated that the revised factor would apply to deaths occurring on or after October 1, 2004. The revised factor, however, applies to deaths occurring on or after October 1, 2011. Therefore, this document corrects the final regulation by revising this date. Additionally, this document corrects a misspelling in the heading to Appendix A to subpart C of part 843 that was included with the rule.

**DATES:** Effective on September 7, 2011.

**FOR FURTHER INFORMATION CONTACT:** Roxann Johnson, (202) 606-0299.

**SUPPLEMENTARY INFORMATION:** The Office of Personnel Management published a final rule in the *Federal Register* on August 23, 2011, (76 FR 52539) that changed the factor at 5 CFR 843.309(b)(2) used to convert a lump sum basic employee death benefit under 5 U.S.C. 8442(b) to 36 installment payments. The rule inadvertently stated that the revised factor at 5 CFR 843.309(b)(2) applies to deaths occurring on or after October 1, 2004.

Section 843.309(b)(2) is being corrected to state that the revised factor applies when an employee's death occurs on or after October 1, 2011. Additionally, the misspelling of the word, "deceased" is being corrected in the heading to Appendix A to subpart C of part 843.

#### List of Subjects in 5 CFR Part 843

Air traffic controllers, Disability benefits, Firefighters, Government employees, Law enforcement officers, Pensions, Retirement.

Accordingly, 5 CFR part 843 is corrected by making the following correcting amendments:

#### PART 843—FEDERAL EMPLOYEE RETIREMENT SYSTEM—DEATH BENEFITS AND EMPLOYEE REFUNDS

- 1. The authority citation for part 843 continues to read as follows:

**Authority:** 5 U.S.C. 8461; §§ 843.205, 843.208, and § 843.209 also issued under 5 U.S.C. 8424; 843.309 also issued under 5 U.S.C. 8442; 843.406 also issued under 5 U.S.C. 8441.

#### Subpart C—Current and Former Spouse Benefits

- 2. Amend § 843.309 by revising paragraph (b)(2) to read as follows:

##### § 843.309 Basic employee death benefit.

\* \* \* \* \*

(b) \* \* \*

(2) For deaths occurring on or after October 1, 2011, 36 equal monthly installments of 3.01643 percent of the amount of the basic employee death benefit.

\* \* \* \* \*

- 3. Revise the Heading of Appendix A to subpart C of part 843 to read as follows:

#### Appendix A to Subpart C of Part 843—Present Value Conversion Factors for Earlier Commencing Date of Annuities of Current and Former Spouses of Deceased Separated Employees

\* \* \* \* \*

U.S. Office of Personnel Management.

**John Panagakos,**

*Manager, Retirement Policy.*

[FR Doc. 2011-22873 Filed 9-6-11; 8:45 am]

**BILLING CODE 6325-38-P**

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 9 CFR Part 88

[Docket No. APHIS-2006-0168]

RIN 0579-AC49

#### Commercial Transportation of Equines to Slaughter

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are amending the regulations regarding the commercial transportation of equines to slaughter to add a definition of *equine for slaughter* and make other changes that will extend the protections afforded by the regulations to equines bound for slaughter but delivered first to an assembly point, feedlot, or stockyard. This action will further ensure the humane treatment of such equines by helping to ensure that the unique and special needs of equines in commercial transportation to slaughter are met.

**DATES:** *Effective Date:* October 7, 2011.

**FOR FURTHER INFORMATION CONTACT:** Dr. P. Gary Egrie, Farm Animal Welfare Coordinator, VS, APHIS, 4700 River Road Unit 46, Riverdale, MD 20737; (301) 734-0695.

#### SUPPLEMENTARY INFORMATION:

##### Background

The regulations in 9 CFR part 88 (referred to below as the regulations) contain minimum standards to ensure the humane movement of equines for slaughter via commercial transportation. The regulations cover, among other things, the food, water, and rest provided to such equines prior to their transportation to slaughter, standards for conveyances used to transport equines to slaughter, and certain paperwork required to accompany equines during such transportation. The regulations also require the owner/shipper of the equines to take certain actions to ensure the safety and humane treatment of equines during loading and transportation for slaughter, including seeking immediate assistance from an equine veterinarian for any equine in obvious physical distress. In addition, the regulations prohibit the commercial transportation to slaughtering facilities

of equines considered to be unfit for travel, the use of electric prods on equines in commercial transportation to slaughter, and, after December 7, 2006, the use of double-deck trailers for commercial transportation of equines to slaughtering facilities. The regulations were issued pursuant to the provisions of the Federal Agriculture Improvement and Reform Act of 1996 (the Act), in which Congress, recognizing that equines being transported to slaughter have unique and special needs, authorized the Secretary of Agriculture to issue guidelines for the regulation of the commercial transportation of equines for slaughter by persons regularly engaged in that activity in the United States (see 7 U.S.C. 1901 note).

On November 7, 2007, we published in the **Federal Register** (72 FR 62798–62802, Docket No. APHIS–2006–0168) a proposed rule<sup>1</sup> to amend the regulations by adding a definition of *equine for slaughter* and make other changes that would extend the protections afforded by the regulations to slaughter equines delivered first to an assembly point, feedlot, or stockyard. We proposed this action to further ensure the humane treatment of such equines by helping to ensure that the unique and special needs of equines in commercial transportation to slaughter are met.

We solicited comments concerning our proposal for 60 days ending January 7, 2008. We received 93 comments by that date. They were from private citizens, a State animal industry board, livestock industry associations, horse rescue organizations, animal welfare groups, and a foreign government. Thirty-five commenters supported the rule as proposed. Four commenters opposed the rule but did not address its specific provisions. The remaining commenters raised several issues relating to the proposed rule. These issues are discussed below.

Several commenters opposed the rule because of the potential for negative economic impacts on those engaged in horse transport but did not discuss specific issues. One of these commenters expressed concern that these potential negative economic impacts could result in horse abandonment.

We have prepared an analysis of the potential economic effects of the rule, as required by the Regulatory Flexibility Act. Based on that analysis, a summary

of which is set forth below,<sup>2</sup> we do not expect that this rule will have a significant economic impact on small entities. Similar concerns about horse abandonment were expressed when the regulations were first adopted in 2001, but horse abandonment did not increase significantly then, and therefore we do not anticipate that horse abandonment will increase as a result of this final rule.

Seven commenters asked how the regulations would be enforced and expressed concern that enforcement will not be sufficiently aggressive.

Enforcement is and will continue to be a cooperative effort between the Animal and Plant Health Inspection Service (APHIS) and State officials. APHIS will take strong measures to ensure that the requirements of the regulations are met and violations prosecuted.

Two commenters asked why, if the number of entities transporting equines to slaughter is under 100, APHIS did not work with them to gain voluntary compliance.

APHIS has worked, and continues to work, with owner/shippers to gain compliance with the regulations. However, as a result of the closure of slaughter facilities that handle equines in the United States, there is an increased need to transport the equines to intermediate points before transporting them to slaughter facilities. Therefore the risk for those equines being treated inhumanely has increased as well. For reasons that are elaborated in the final regulatory flexibility analysis, we believe that most transporters to and from intermediate points are already in compliance with most or all of the rule's requirements on a voluntary basis. However, we also need regulatory options to address the owner/shippers who have chosen not to transport them humanely.

One commenter requested that the terms “assembly point,” “feedlot,” and “stockyard” be defined in the regulations to improve clarity.

We agree with the commenter and will add definitions for these terms to the regulations. Those terms are set forth in the regulatory text at the end of this document and are intended to be consistent with common industry and dictionary definitions of those terms as well as with the definitions established by the Grain Inspection, Packers, and Stockyards Administration in 9 CFR part 201.

One commenter stated that the definition of “shipper” is too narrow and will exempt commercial shipments of equines to slaughter when those shipments are incidental to the primary activity of production agriculture.

APHIS disagrees that the definition is too narrow. The definition specifies that for purposes of these regulations, “production agriculture” means food or fiber production. Therefore, any entity that moves more than 20 equines to slaughter annually is subject to the regulations, regardless of that entity's primary line of business. We did not propose to amend the definition of “owner/shipper” already established in the regulations and are making no changes in response to this comment.

Several commenters asked for changes to the definition for *equine for slaughter*. Some of these commenters stated that the term should exclude equines moving from premises of origin to a market or assembly point. Others asked that the definition be expanded to include equines moving to auctions specifically.

These suggested modifications are not consistent with the definition in the Act. We are making no changes in response to these comments.

One commenter stated that because there are no equine slaughter facilities in the United States at this time, the rule will not accomplish anything.

The commenter is correct that there are currently no equine slaughter facilities in the United States, but equines are still being sent to slaughter in Mexico and Canada. These animals need protection on their way to the border. Furthermore, while some States have banned horse slaughter, not all have done so, and the possibility exists that slaughter facilities that handle equines may open in the future.

Three commenters stated a certificate of veterinary inspection and a negative equine infectious anemia (EIA) test chart may not be reliable evidence that an equine is not for slaughter.

We agree with the commenters, but note that there are other ways to tell if an equine is for slaughter; for example, horses come away from sales designated as slaughter animals on the bill of sale. We have never used the presence or absence of certificates of veterinary inspection or EIA test charts as the sole means of identifying slaughter equines.

One commenter stated that the same penalties that apply to owner/shippers who falsify documents such as certificates of veterinary inspection and EIA test charts should also apply to veterinarians who provide falsified documents.

<sup>1</sup> To view the proposed rule, economic analysis, and the comments we received, go to <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2006-0168>.

<sup>2</sup> The complete economic analysis is available on the regulations.gov Web site. See footnote 1 for directions on accessing the Web site.

APHIS notes that the same penalties already do apply to both owner/shippers and veterinarians who provide falsified documents.

One commenter stated that the regulations should be extended to prohibit the transport of heavily pregnant mares, and that owner/shippers should be automatically considered in violation of the regulations if a mare gives birth in transit.

APHIS notes that the regulations already provide these protections to heavily pregnant mares. The owner/shipper certificate must include a statement of fitness to travel at the time of loading, which will indicate that the equine is able to bear weight on all four limbs, is able to walk unassisted, is not blind in both eyes, is older than 6 months of age, and is not likely to give birth during the trip. These certificates are subject to review by a United States Department of Agriculture (USDA) representative and the USDA representative may direct the owner/shipper to take appropriate actions to alleviate the suffering of any equine.

One commenter stated that if an equine arrives at a slaughter facility or United States border crossing with an injury that should have prevented the equine from being transported, the owner/shipper should be found in violation of the regulations and subject to civil penalties.

APHIS notes that this is already the case. As we described above in reference to heavily pregnant mares, the owner/shipper certificate must include a statement of fitness to travel, and these certificates are subject to review by USDA representatives, who may direct the owner/shipper to take appropriate action to alleviate the suffering of any equine.

One commenter asked how APHIS defines inhumane treatment, and whether it was different for equines than for other livestock. Another commenter asked for elaboration as to why double-deck trailers specifically are considered a source of injury or discomfort to equines.

For purposes of this regulation, APHIS considers inhumane treatment to mean actions that result in the infliction of pain, discomfort, or distress on equines for slaughter. There is a sizeable body of evidence, including studies in peer-reviewed journals, showing that significantly more equines are injured during transport in double-deck trailers than in single-deck trailers.<sup>3</sup> Double-

deck trailers do not provide adequate headroom for adult equines, which may acquire cuts and abrasions on the tops of their heads. Because equines cannot stand in a normal position with their heads raised, they cannot maintain balance as easily and may suffer injuries from falling. In addition, ramps used to load animals onto double-deck trailers are at a relatively steep angle. While other species of animal, such as sheep, can maneuver the ramps without incident, equines frequently sustain injuries from being forced up and down the steep inclines. Because of their long legs and relatively high center of gravity, equines injure their withers and heads when they jump for the small opening at the top of a ramp leading out of a double-deck trailer.

One commenter asked if APHIS had considered issuing more specific guidelines for trailer design specifications rather than banning double-deck trailers outright.

As we explained above, there is a significant body of evidence indicating that many more equines are injured during transport in double-deck trailers than in single-deck trailers. The overpasses on most U.S. interstate highways are between 14- to 16-feet high. A tall equine can be 8 feet tall to the top of its head when standing on all four legs and close to 12 feet tall when rearing. Therefore, we believe that no conveyance is capable, under normal circumstances, of traversing most U.S. highways while carrying equines standing in a normal postural position on two or more stacked levels. Moreover, even if a route was chosen that did not involve passage under overpasses, a conveyance tall enough to transport equines standing in a normal postural position on two or more stacked levels would be extremely top-heavy and prone to tipping. For these reasons we do not believe that equines can be safely and humanely transported on a conveyance that has an animal cargo space divided into two or more stacked levels.

One commenter stated that the proposed ban on electric prods is inappropriate without solid scientific evidence to support it.

We did not propose to ban the use of electric prods on equines for slaughter. The regulations already provide that electric prods may not be used on equines for slaughter except when human safety is threatened.

A number of commenters requested changes outside the scope of the current rulemaking. These changes included

adding certification requirements for owner/shippers, adding inspection requirements, and increasing recordkeeping requirements. These changes, if undertaken, would have to be part of a separate rulemaking and made available for public comment before being adopted.

Many commenters suggested banning the use of double-deck trailers for transport of all equines, restricting shipments of equines to Mexico and Canada, establishing a complete ban on the use of electric prods, and outlawing slaughter of equines in the United States. These suggested actions are outside APHIS' statutory authority.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

#### Executive Orders 12866 and 13563 and Regulatory Flexibility Act

This final rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

We have prepared an economic analysis for this rule. The economic analysis provides a cost-benefit analysis, as required by Executive Orders 12866 and 13563, which direct agencies to assess the costs and benefits of available regulatory alternatives and to select regulatory approaches that maximize benefits, reduce costs, harmonize rules across agencies, and promote flexibility. The economic analysis also analyzes the potential economic effects of this action on small entities, as required by the Regulatory Flexibility Act. The analysis is summarized below. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** or on the *Regulations.gov* Web site (see footnote 1 above for instructions for accessing *Regulations.gov*).

This final rule amends the regulations regarding the commercial transportation of equines to slaughter by making equines delivered to intermediate points en route to slaughter subject to the same regulations as those moved directly to slaughtering establishments. The purpose of the rule is to ensure the humane treatment of equines bound for slaughter that are moved first to an assembly point, feedlot, or stockyard.

The regulations require that the equines have access to food, water and the opportunity to rest for at least 6 hours prior to transit and following 28 consecutive hours or more of transit; adequate space during transit to prevent injury or discomfort; segregation of

<sup>3</sup> See, e.g., C.L. Stull, "Responses of Horses to Trailer Design, Duration, and Floor Area During Commercial Transportation to Slaughter," *J. Anim.*

*Sci.* 77:2925-2933; Temple Grandin, *Livestock Handling and Transport* (CABI, 2007), 257.

stallions or other aggressive equines; use of electric prods only in life-threatening situations; and certification of each equine's fitness to travel, including notation of any special handling needs.

Since 2007, no commercial equine slaughter facilities have operated in the United States. However, the amended regulations will apply to entities that transport equines within the United States for slaughter in Canada or Mexico. Shippers who transport equines from farms or feedlots to intermediate points en route to slaughter are likely to be largely in regulatory compliance voluntarily. They have an incentive to provide the animals with food, water, and care as required by the regulations because healthy equines have increased slaughter value.

The rule will ban the use of double-deck trailers, as is currently the case when equines are transported directly to slaughter. Double-deck trailers have a greater carrying capacity (45 equines) than single-deck trailers (38 equines). Fewer equines per conveyance will mean increased transportation costs on a per animal basis. Commercial transporters typically charge a flat rate per shipment, and should be little affected by the ban on double-deck trailers. However, businesses that rely on their own or hired double-deck trailers to transport equines will be negatively affected by the reduced number of animals that can be transported per trip. Notwithstanding the prevalence of small entities among businesses that may be affected, the effects of the rule are expected to be relatively minor.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

#### Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

#### Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

#### Executive Order 13175

In accordance with Executive Order 13175, APHIS has consulted with Tribal Government officials. A tribal summary impact statement has been prepared that includes a summary of Tribal officials' concerns and of how APHIS has attempted to address them. The tribal summary impact statement may be viewed on the Regulations.gov Web site (see <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2006-0168>). In addition, copies may be obtained by calling or writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

#### Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579-0332.

#### E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851-2908.

#### List of Subjects in 9 CFR Part 88

Animal welfare, Horses, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 9 CFR part 88 as follows:

#### PART 88—COMMERCIAL TRANSPORTATION OF EQUINES FOR SLAUGHTER

■ 1. The authority citation for part 88 continues to read as follows:

**Authority:** 7 U.S.C. 1901, 7 CFR 2.22, 2.80, 371.4.

■ 2. Section 88.1 is amended by adding, in alphabetical order, new definitions for “assembly point”, “equine for slaughter”, “feedlot”, and “stockyard” to read as follows:

##### § 88.1 Definitions.

\* \* \* \* \*

*Assembly point.* Any facility, including auction markets, ranches,

feedlots, and stockyards, in which equines are gathered in commerce.

\* \* \* \* \*

*Equine for slaughter.* Any member of the Equidae family being transferred to a slaughter facility, including an assembly point, feedlot, or stockyard.

\* \* \* \* \*

*Feedlot.* Any facility which consolidates livestock for preconditioning, feeding, fattening, or holding before being sent to slaughter.

\* \* \* \* \*

*Stockyard.* Any place, establishment, or facility commonly known as stockyards, conducted, operated, or managed for profit or nonprofit as a public market for livestock producers, feeders, market agencies, and buyers, consisting of pens, or other enclosures, and their appurtenances, in which live cattle, sheep, swine, horses, mules, or goats are received, held, or kept for sale or shipment in commerce.

\* \* \* \* \*

#### § 88.2 [Amended]

■ 3. In § 88.2, paragraph (b) is amended by removing the words “equines to a slaughtering facility” and adding the words “equines for slaughter” in their place.

#### § 88.3 [Amended]

■ 4. Section 88.3 is amended as follows:

■ a. In paragraph (a) introductory text, by removing the words “equines to slaughtering facilities” and adding the words “equines for slaughter” in their place.

■ b. In paragraph (b), by removing the words “Equines in commercial transportation to slaughtering facilities” and adding the words “Equines for slaughter” in their place.

#### § 88.4 [Amended]

■ 5. Section 88.4 is amended as follows:

■ a. In paragraph (a) introductory text, by removing the words “equines to a slaughtering facility” and adding the words “equines for slaughter” in their place.

■ b. In paragraph (a)(3) introductory text, by removing the words “transit to the slaughtering facility” and adding the words “transit to slaughter” in their place.

■ c. In paragraph (b) introductory text, by removing the words “transit to the slaughtering facility” and adding the words “commercial transportation of equines for slaughter” in their place.

■ d. In paragraph (b)(4), by removing the words “equine to the slaughtering facility” and adding the words “equines for slaughter” in their place.

■ e. In paragraph (c), by removing the words “equines in commercial

transportation to a slaughtering facility” both times they occur and adding the words “equines for slaughter” in their place.

■ f. In paragraphs (d) and (e), by removing the words “equines to a slaughtering facility” both times they occur and adding the words “equines for slaughter” in their place.

■ g. By adding an OMB citation at the end of the section to read “(Approved by the Office of Management and Budget under control numbers 0579–0160 and 0579–0332)”.

Done in Washington, DC, this 30th day of August 2011.

**Edward Avalos,**

*Under Secretary for Marketing and Regulatory Programs.*

[FR Doc. 2011–22762 Filed 9–6–11; 8:45 am]

**BILLING CODE 3410–34–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 17

[Docket No. FAA–2010–0840; Amdt. No. 17–1]

**RIN 2120–AJ82**

#### Procedures for Protests and Contracts Dispute

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action updates, simplifies, and streamlines the current regulations governing the procedures for bid protests brought against the FAA and contract disputes brought against or by the FAA. It also adds a voluntary dispute avoidance and early resolution process. This action ensures the regulations reflect the changes that have evolved since they were first implemented in 1999. The intended effect of this action is to further improve the protest and dispute process.

**DATES:** Effective October 7, 2011.

**ADDRESSES:** For information on where to obtain copies of rulemaking documents and other information related to this final rule, see the How To Obtain Additional Information section of this document.

#### FOR FURTHER INFORMATION CONTACT:

Marie A. Collins, Senior Attorney and Dispute Resolution Officer, FAA Office of Dispute Resolution for Acquisition, AGC–70, Room 8332, Federal Aviation Administration, 400 7th Street, SW., Washington, DC 20590, telephone (202) 366–6400.

#### SUPPLEMENTARY INFORMATION:

##### Authority for This Rulemaking and Background

In 1995 Congress, through the Department of Transportation Appropriations Act,<sup>1</sup> directed the FAA “to develop and implement, not later than April 1, 1996, an acquisition management system that addressed the unique needs of the agency and, at a minimum, provided for more timely and cost effective acquisitions of equipment and materials.” The Act instructed the FAA to design the system, notwithstanding provisions of Federal acquisition law, and to not use certain provisions of Federal acquisition law. In response, the FAA developed the Acquisition Management System (AMS) for the management of FAA procurement. The AMS included a system of policy guidance that maximized the use of agency discretion in the interest of best business practices. As a part of the AMS, the FAA created the Office of Dispute Resolution for Acquisition (ODRA) to facilitate the Administrator’s review of procurement protests and contract disputes. In a 1996 notice<sup>2</sup> published in the **Federal Register**, the FAA announced the creation of the ODRA and stated the agency would promulgate rules of procedure governing the dispute resolution process.

In August 1998, the FAA issued a Notice of Proposed Rulemaking (NPRM)<sup>3</sup> that proposed regulations under 14 CFR part 17 for the conduct of protests and contract disputes under the FAA AMS. The comment period for the NPRM closed on October 26, 1998. On June 18, 1999,<sup>4</sup> the FAA published the final rule entitled, Procedures for Protests and Contract Disputes; Amendment of Equal Access to Justice Act Regulations, which codified (effective June 28, 1999) the procedures governing the dispute resolution process. On August 31, 1999, the FAA published a document<sup>5</sup> that made certain corrections to the June 1999 final rule.

In addition to the rules of procedures, ODRA operates pursuant to delegations of authority from the Administrator. In a memorandum signed by the Administrator on July 29, 1998 (1998 Delegation),<sup>6</sup> the Administrator

generally authorized the ODRA through its Director to provide dispute resolution services including administrative adjudication of all bid protests and contract disputes under the AMS. The 1998 Delegation further provided that all final decisions must be executed by the Administrator. The 1998 Delegation was expanded by a Delegation dated March 27, 2000 (2000 Delegation), which provided additional authority to the ODRA Director “to execute and issue, on behalf of the Administrator, Orders and Final Decisions for the Administrator in all matters within the ODRA’s jurisdiction valued at not more than \$1 Million.”<sup>7</sup> The 2000 Delegation was superseded by a Delegation of Authority from the Administrator, dated March 10, 2004 (2004 Delegation), which increased the dollar limit of the final decisional authority of the ODRA Director from \$1 Million to \$5 Million.<sup>8</sup> The 2004 Delegation was superseded by another Delegation of Authority dated March 31, 2010 (2010 Delegation), which increased the dollar limit of the final decisional authority of the ODRA Director from \$5 Million to \$10 Million.<sup>9</sup>

Congress provided further confirmation about the FAA’s dispute resolution authority in the Vision 100-Century of Aviation Reauthorization Act of 2003 (2003 Reauthorization Act), *see* Public Law 108–176, § 224(b), 117 Stat. 2490, 2528 (codified as amended at 49 U.S.C. 40110(d)(4)), which confirmed the ODRA’s exclusive jurisdiction. Specifically, the 2003 Reauthorization Act expressly provided at Subsection (b)(2)(4) under the title “Adjudication of Certain Bid Protests and Contract Disputes,” that “[a] bid protest or contract dispute that is not addressed or resolved through alternative dispute resolution shall be adjudicated by the Administrator, through Dispute Resolution Officers or Special Masters of the Federal Aviation Administration Office of Dispute Resolution for Acquisition, acting pursuant to Sections 46102, 46104, 46105, 46106 and 46107 and shall be subject to judicial review under Section 46110 and Section 504 of Title 5.”

The ODRA dispute resolution procedures encourage the parties to

**Federal Register** (see 63 FR 49151; September 14, 1998).

<sup>7</sup> 65 FR 19958–01; April 13, 2000.

<sup>8</sup> 69 FR 17469–02; April 2, 2004.

<sup>9</sup> The 2010 Delegation was issued by the Administrator in a memorandum dated March 31, 2010. Although the FAA has not yet published the text of the memorandum in the **Federal Register**, the public can view the memorandum itself at [http://www.faa.gov/about/office\\_org/headquarters\\_offices/agc/pol\\_adjudication/agc70/odra\\_process/](http://www.faa.gov/about/office_org/headquarters_offices/agc/pol_adjudication/agc70/odra_process/).

<sup>1</sup> Public Law 104–50, 109 Stat. 436 (November 15, 1995).

<sup>2</sup> 61 FR 24348; May 14, 1996.

<sup>3</sup> 63 FR 45372; August 25, 1998.

<sup>4</sup> 64 FR 32926; June 18, 1999.

<sup>5</sup> 64 FR 47361; August 31, 1999.

<sup>6</sup> The FAA published the text of the delegations set forth in the July 29, 1998 memorandum in the