

§ 52.50 Identification of plan.

(e) * * *

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EPA-APPROVED ALABAMA NON-REGULATORY PROVISIONS

Name of non-regulatory SIP provision	Applicable geographic or non-attainment area	State submittal date/effective date	EPA approval date	Explanation
2006 24-hour PM _{2.5} Maintenance Plan for the Birmingham Area.	Birmingham PM _{2.5} Nonattainment Area.	6/17/10	1/25/13 [Insert citation of publication].	

PART 81—[AMENDED]

■ 3. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

■ 4. In § 81.301, the table entitled “Alabama—PM_{2.5} (24-hour NAAQS)” is amended under “Birmingham, AL” by revising the entries for “Jefferson County”, “Shelby County”, and

“Walker County (part)” to read as follows:

§ 81.301 Alabama.

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ALABAMA—PM_{2.5} (24-HOUR NAAQS)

Designation area	Designation for the 1997 NAAQS ^a		Designation for the 2006 NAAQS ^a	
	Date ¹	Type	Date ²	Type
Birmingham, AL:				
Jefferson County		Unclassifiable/Attainment	This action is effective 1/25/13	Attainment.
Shelby County		Unclassifiable/Attainment	This action is effective 1/25/13	Attainment.
Walker County (part). The area described by U.S. Census 2000 block group identifiers 01–127–0214–5, 01–127–0215–4, and 01–127–0216–2.		Unclassifiable/Attainment	This action is effective 1/25/13	Attainment.

^a Includes Indian Country located in each county or area, except as otherwise specified.

¹ This date is 90 days after January 5, 2005, unless otherwise noted.

² This date is 30 days after November 13, 2009, unless otherwise noted.

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[FR Doc. 2013–01209 Filed 1–24–13; 8:45 am]

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DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

47 CFR Part 301

[Docket No. 120620177–2445–02]

RIN 0660–AA26

Relocation of and Spectrum Sharing by Federal Government Stations—Technical Panel and Dispute Resolution Boards

AGENCY: National Telecommunications and Information Administration, Commerce.

ACTION: Final rule.

SUMMARY: The National Telecommunications and Information Administration (NTIA) adopts

regulations governing the Technical Panel and dispute resolution process established by Congress to facilitate the relocation of, and spectrum sharing with, U.S. Government stations in spectrum bands reallocated from Federal use to non-Federal use or to shared use. This action is necessary to ensure the timely relocation of Federal entities’ spectrum-related operations and, where applicable, the timely implementation of arrangements for the sharing of radio frequencies. Specifically, this action implements certain additions and modifications to the NTIA Organization Act as amended by the Middle Class Tax Relief and Job Creation Act of 2012 (the Tax Relief Act). As required by the Tax Relief Act, this rule has been reviewed and approved by the Director of the Office of Management and Budget (OMB).

DATES: These regulations become effective February 25, 2013.

ADDRESSES: A complete set of public comments filed in response to the Notice of Proposed Rulemaking is

available for public inspection at the Office of the Chief Counsel, National Telecommunications and Information Administration, Room 4713, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC.¹ The public comments can also be viewed electronically at <http://www.ntia.doc.gov/federal-register-notice/2012/comments-technical-panel-and-dispute-resolution-board-nprm>.

FOR FURTHER INFORMATION CONTACT: Milton Brown, NTIA, (202) 482–1816.

SUPPLEMENTARY INFORMATION:

Authority: National Telecommunications and Information Administration Organization Act, 47 U.S.C. 901 *et seq.*, as amended by the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112–96, Title VI, Subtitle G, 126 Stat. 245 (Feb. 22, 2012) (47 U.S.C. 923(g)–(i), 928).

¹ See Relocation of and Spectrum Sharing by Federal Government Stations—Technical Panel and Dispute Resolution Board, Notice of Proposed Rulemaking, Docket No. 110627357–2209–03, 77 FR 41956 (July 17, 2012) (NPRM).

I. Background

The Tax Relief Act amended the NTIA Organization Act to expand the types of costs for which Federal agencies can be reimbursed from the Spectrum Relocation Fund (Fund), which the Commercial Spectrum Enhancement Act (CSEA) originally established in 2004.² The changes made by the Tax Relief Act permit Federal agencies to receive funds for costs associated with, among other activities, the planning for Federal Communications Commission (FCC or Commission) spectrum auctions and relocations, spectrum sharing, the use of alternative technologies, the replacement of existing equipment with state-of-the-art systems, and the research, engineering studies and economic analyses conducted in connection with spectrum sharing arrangements, including coordination with auction winners.³ Other improvements in the statute facilitate better transparency, coordination, and predictability for bidders in FCC spectrum auctions and the ultimate winners of those auctions through, for example, a new requirement that NTIA publish the agencies' transition plans on NTIA's Web site at least 120 days before the commencement of the corresponding FCC auction, with the exception of classified and other sensitive information.⁴

In addition, the Tax Relief Act: (1) Specified the content of transition plans, following a "common format," for Federal agencies; (2) established a mechanism to review the sufficiency of such plans by an expert Technical Panel; and (3) created a dispute resolution process through which disagreement that may arise over the execution, timing, or cost of transition plans can be resolved by dispute resolution boards.⁵

On July 17, 2012, NTIA published an *NPRM* in the **Federal Register**, proposing regulations to govern the operation of the Technical Panel and the workings of any dispute resolution

boards that would adjudicate disputes, should any arise, between non-Federal users and Federal entities during the transition period. NTIA sought comment from the public on the proposed regulations and several issues related to implementation, and received six public comments.⁶

II. Discussion

A. Overview

NTIA adopts these regulations pursuant to paragraphs (h)(3)(D) and (i)(8) of section 113 of the NTIA Organization Act.⁷ Specifically, NTIA codifies part 301 of its regulations in Title 47 of the Code of Federal Regulations. Subpart A sets forth the overall purpose for the new regulations, includes the proposed cross-reference for informational purposes, and defines certain terminology used throughout the regulations. None of the public comments addressed the proposed rule in Subpart A, which is adopted as proposed, except for non-substantive or minor changes consistent with the statutory language.

Subpart B contains regulations governing the operations of the Technical Panel established by the Tax Relief Act. Subpart C of the final regulations provides a basic framework under which fair and rapid resolution of any disputes over the execution, timing, or cost of transition plans may take place.

B. Technical Panel

Sections 301.100 through 301.130 of the final regulations cover matters related to the membership, organization, and basic operations of the Technical Panel. Most of the commenters addressed the proposals related to the qualifications of the members of the Technical Panel and potential measures to prevent delays in the commencement of FCC spectrum auctions. In response to the comments, NTIA clarifies the text of the rule to ensure that the three appointing agencies have the flexibility, consistent with the statute, to appoint members with appropriate and relevant expertise and qualifications. NTIA rejects the recommendations by some commenters to curtail the statutory deadlines for the submission or resubmission of the Federal entities' transition plans. These issues are discussed in more detail below.

Membership Qualifications. Pursuant to the statute, the Technical Panel shall be composed of three members, to be appointed as follows: (1) One member to be appointed by the Director of OMB; (2) one member to be appointed by the Assistant Secretary of Commerce for Communications and Information (Assistant Secretary); and (3) one member to be appointed by the Chairman of the FCC.⁸ Each member "shall be a radio engineer or a technical expert," the term of each member shall be 18 months, and no individual may serve more than one consecutive term.⁹ The statute also provides that the "members of the Technical Panel shall not receive any compensation for service on the Technical Panel."¹⁰ However, if any member is also an "employee of the agency of the official that appointed such member to the Technical Panel, compensation in the member's capacity as such an employee shall not be considered compensation under [this provision]."¹¹

NTIA also proposed that the Assistant Secretary, in consultation with OMB and the Commission, would have the discretion to require additional qualifications for one or more members of the Technical Panel to ensure their timely appointment, committed service, and efficient dispatch of business.¹² For example, depending on the nature of the Federal systems likely to be the subject of agency transition plans, NTIA proposed that the Assistant Secretary could require that the members have appropriate and up-to-date security clearances to enable access to any classified or other sensitive information. Commenters addressing the potential security clearance requirement generally supported it.¹³

NTIA proposed that the Assistant Secretary could require that one or more Technical Panel members be Federal employees as defined in 5 U.S.C. 2105(a). Several commenters argued that the regulations should not restrict membership of the Technical Panel to only Federal employees.¹⁴ Some parties asserted that imposing such a restriction would be inconsistent with the statute

² See Middle Class Tax Relief and Jobs Creation Act of 2012, Public Law 112-96, sections 6701-6703, 126 Stat. 245 (Feb. 22, 2012) (amending, among other provisions, sections 113(g)-(i) and 118 of the NTIA Organization Act, codified at 47 U.S.C. 923 and 928). Through the CSEA, enacted in December 2004, Congress amended the NTIA Organization Act to provide, among other things, for the costs associated with relocation of Federal entities' spectrum-dependent operations to be reimbursed from the proceeds of spectrum auctions.

³ See 47 U.S.C. 923(g)(3) (relocation or sharing costs defined).

⁴ 47 U.S.C. 923(h)(5)-(7).

⁵ 47 U.S.C. 923(h)(2), (h)(3), (i). NTIA is implementing separately other provisions regarding the consideration and protection of classified and other sensitive information contained in agency transition plans. See 47 U.S.C. 923(h)(7) and 929.

⁶ See Comments of AT&T Services, Inc. (AT&T); Comments of CTIA—The Wireless Association (CTIA); Comments of Ericsson, Inc. (Ericsson); Comments of Squire Sanders (US) LLP (Squire Sanders); Comments of The Telecommunications Industry Association (TIA); Comments of T-Mobile USA, Inc. (T-Mobile).

⁷ 47 U.S.C. 923(h)(3)(D), (i)(8).

⁸ See 47 U.S.C. 923(h)(3)(B)(i).

⁹ 47 U.S.C. 923(h)(3)(B)(ii), (iv).

¹⁰ 47 U.S.C. 923(h)(3)(B)(vi).

¹¹ *Id.*

¹² See *NPRM* at 41958-59, 41963.

¹³ See TIA Comments at 5 ("Additional minimal requirements not contained in the law, such as having a security clearance, seems a highly advantageous characteristic."); T-Mobile Comments at 7 ("[T]he proposed rules appropriately allow NTIA to require members of the Technical Panel to have appropriate and current security clearances.")

¹⁴ See AT&T Comments at 6; CTIA Comments at 5; Ericsson Comments at 3; TIA Comments at 5; T-Mobile Comments at 6-8.

and that the purposes of the statute would be better served by not preemptively excluding all available expertise outside the U.S. Government.¹⁵ AT&T and TIA argue, for example, that by excluding those outside of government, the appointing agencies would have fewer qualified candidates with relevant experience to consider.¹⁶ T-Mobile states that “[r]epresentatives from the private sector in general, and from potential bidders in particular, will be in the best position to determine if the information in the transition plans is sufficient for prospective spectrum holders.”¹⁷ Two parties suggest that the regulations should specify that at least one member of each Technical Panel be from the commercial sector and have experience with commercial networks.¹⁸ T-Mobile notes that experts in the private sector “regularly obtain security clearances to, for example, work as government contractors.”¹⁹

NTIA disagrees with the commenting parties’ characterizations regarding the proposed additional qualifications beyond the “radio engineer or technical expert” and security clearance requirement. It appears that the commenters misinterpreted or misunderstood the language and purpose of the proposed rule, which was prefaced with the following language: “The Assistant Secretary, in consultation with [the Director of] OMB and the Chairman of the Commission, may impose additional qualifications for one or more members of the Technical

Panel as are necessary pursuant to section 113(g)(6) of the NTIA Organization Act.”²⁰ The cross-referenced provision states that “NTIA shall take such actions as necessary to ensure the timely relocation of Federal entities’ spectrum-related operations from [eligible] frequencies * * * to frequencies or facilities of comparable capability and to ensure the timely implementation of arrangements for the sharing of [eligible] frequencies.”²¹ As noted above, the purpose of these additional qualifications for the panel members is to “ensure their timely appointment, committed service, and efficient dispatch of business.”²² Thus, the proposed rule is consistent with the statutory scheme.

Although NTIA disagrees with the parties’ statutory arguments, NTIA did not intend to preemptively exclude all qualified and available experts outside the U.S. Government to serve on the Technical Panel. Therefore, NTIA clarifies the text of the rule to ensure that the three appointing agencies have the flexibility, consistent with the statute, to appoint members with appropriate and relevant expertise and qualifications. Such expertise may relate to commercial systems and networks, but it may also include experience in national security, law enforcement, or public safety matters or Federal systems. To the extent that a panel member is from the private sector, the final rule provides that such member would have to be a “Special Government Employee” as defined in 18 U.S.C. 202(a), which, according to the Office of Government Ethics, is a category of Federal employees created by Congress as a way to apply certain conflict of interest requirements to certain experts, consultants, and other advisers who serve the government on a temporary basis.²³

As required by the statute, the respective agency heads of NTIA, the FCC, and OMB appointed the initial three members of the Technical Panel.²⁴

²⁰ See *NPRM* at 41963 (emphasis added).

²¹ 47 U.S.C. 923(g)(6). NTIA also notes that section 6003(b)(2) of the Tax Relief Act provides the Assistant Secretary explicit authority to “promulgate such regulations as are necessary to implement and enforce any provision of this title that is expressly required to be carried out by the Assistant Secretary.” Public Law 112–96, Title VI, section 6003(b)(2) (47 U.S.C. 1403(b)(2)).

²² *NPRM* at 41958.

²³ See <http://www.oge.gov/Topics/Selected-Employee-Categories/Special-Government-Employees/>.

²⁴ See 47 U.S.C. 923(h)(3)(B)(i). Although NTIA proposed in the *NPRM* that the appointing agencies could consider additional qualifications for one or more members of the Technical Panel, the Assistant Secretary did not suggest any for the initial slate of members. However, he recommended that, in light

For members appointed in the future to fill expired or vacant seats on the panel, NTIA plans to exercise its discretion under section 301.100(b)(2) of the rule to consider whether to add requirements based on the characteristics of the Federal and non-Federal systems that are likely to be the subject of agency transition plans for the forthcoming term.

NTIA also modified the regulations to reflect that the Assistant Secretary’s appointment will be accompanied by the Secretary of Commerce’s approval. This change is consistent with the Appointments Clause of the United States Constitution.²⁵

Review of Transition Plans. The primary role of the Technical Panel is to review each Federal entity’s transition plan and report on its sufficiency. The panel has 30 days to conduct its review and issue a report to NTIA and the submitting agency after that agency submits its plan. As NTIA observed in the *NPRM*, a potential procedural dilemma would be presented if the Technical Panel concludes that an initial plan is not sufficient.²⁶ The *NPRM* suggested a number of options that NTIA and the FCC could consider under these circumstances, including the possible delay of the auction start date until the agency can submit, and the Technical Panel can review, a revised transition plan.²⁷

Several commenters observed that the statutory time frames provide a relatively short period for the panel to conduct its assessment of transition plans.²⁸ Most of the commenters urged that NTIA, to the extent possible, ensure that consideration of transition plans not delay scheduled FCC auctions, especially when a statutory deadline applies to particular auctions. The parties suggested alternative options such as requiring: (1) Direct communications or meetings between the Technical Panel and an agency during the 90-day resubmission period; (2) notification to the FCC if no resolution is possible during the resubmission period; or (3) submission

of the short timeframe under which the initial panel members had to be in place along with the exemption to the no-compensation provision contained in 47 U.S.C. 923(h)(3)(B)(vi), each agency head appoint a current Federal employee that is employed by the agency. See Letters from the Hon. Lawrence E. Strickling, Assistant Secretary for Communications and Information to the Hon. Jeffrey Zients, Acting OMB Director and the Hon. Julius Genachowski, FCC Chairman (Aug. 6, 2012).

²⁵ U.S. CONST. art. II, sec. 2, cl. 2.

²⁶ See *NPRM* at 41959.

²⁷ *Id.*

²⁸ See AT&T Comments at 5; CTIA Comments at 6–7; Ericsson Comments at 4; TIA Comments at 7; T-Mobile Comments at 3–5.

¹⁵ See CTIA Comments at 5 (stating there is no requirement in the Tax Relief Act that members of the Technical Panel be Federal employees and such an outcome would result in the Panel not having any expertise outside of the Federal entities’ perspective); AT&T Comments at 6 (“The statute requires only that a member be ‘a radio engineer or a technical expert,’ not that she be a [F]ederal employee”); Ericsson Comments at 3 (arguing the statute does not empower NTIA to add new qualification requirements, but it does allow each appointing official to determine whether to appoint a Federal employee, a state employee, or an expert from the private sector). Ericsson notes that a prior draft of the bill would have required that the appointee not be “employed by, or a paid consultant to, any Federal or State governmental agency” and argues that by omitting that limitation in the final version Congress removed a strict limitation on eligibility and instead gave the appointing officials the flexibility to appoint the most qualified persons, regardless of their employers. See *id.* at 3 n.8 (citing H.R. 3019, 111th Cong., 1st Sess., Sec. 2(b) (June 24, 2009)).

¹⁶ See AT&T Comments at 6; TIA Comments at 4–5 (“NTIA should encourage participation from representatives with both the necessary expertise to perform their duties, but also who can remain impartial when resolving disputes between Federal and non-Federal parties.”).

¹⁷ T-Mobile Comments at 6–7.

¹⁸ See CTIA Comments at 5; T-Mobile Comments at 6.

¹⁹ T-Mobile Comments at 7.

or resubmission of agency transition plans earlier than the statute's deadlines.²⁹

NTIA rejects the commenters' recommendations for shortening the statutory deadlines for the submission of Federal entities' transition plans. While NTIA may employ under certain circumstances and at its discretion other suggestions to improve interactions between the Technical Panel and the agencies, no modification to the proposed rule is necessary to implement the statute's provisions on the preparation of transition plans. In order to ensure timely and focused review of transition plans by the Technical Panel, the regulations proposed in the *NPRM* and adopted herein confine the scope and content of the panel's initial and, if necessary, subsequent reports to those assessments and findings specifically required under the statute. In addition, in the event the Technical Panel's initial report concludes that the Federal entity's transition plan is insufficient, the report shall also include a description of the specific information or modifications that are necessary for the Federal entity to include in a revised transition plan. To avoid a continuous loop of back and forth between the agencies and the Technical Panel, the proposed and final regulations provide that the panel's supplemental report shall be limited to the issues identified in its initial report.

As noted in the *NPRM*, NTIA will also provide guidance to the Federal entities in the revised Annex O of the NTIA Manual and other assistance to help ensure that each initial transition plan contains the information required by the statute.³⁰ While it is not necessary to

²⁹ See AT&T Comments at 5 ("NTIA should either require that agencies submit their initial transition plans earlier than 240 days prior to the auction, or that they submit a revised transition plan no later than 60 days after the Technical Panel finds its initial plan insufficient."); CTIA Comments at 6 (suggesting NTIA require agencies to submit transition plans no later than 270 days, instead of 240 days, before commencement of any auction); Ericsson Comments at 4 (arguing that NTIA should require an agency to re-file plan with an urgency so as not to delay the auction); T-Mobile Comments at 5–6.

³⁰ Two commenters urge NTIA to require a greater level of detail be included in agency transition plans. See CTIA Comments at 7 ("Technical information such as transmitter power, receiver performance, antennas used, beamwidth of antenna and other technical parameters will allow the wireless industry to determine the effect that Federal operations may have on commercial operations and will help for determination of potential interim sharing between services."); T-Mobile Comments at 8–9 (stating that rules should specify that transition plans include the realistic costs of achieving comparable capability and an agency's assessment of how it would achieve comparable capability). Not only are these suggestions beyond the scope of what the statute

impose shorter deadlines on the agencies, Annex O may, for example, request that Federal entities preparing transition plans submit draft or informal versions of their plans to NTIA and the Technical Panel as early as possible to allow for a more adequate, speedy, and informal review of such plans, and to allow the Technical Panel to assess potential issues in transition plans as early as possible. NTIA, in consultation with OMB, the FCC and the Federal agencies, may implement other mechanisms to ensure the timely review of each plan. Moreover, as noted in some comments, Congress provided incentives to ensure that Federal entities promptly develop such plans, because OMB is not authorized to make any transfers from the Fund unless the eligible Federal entity's transition plan is found to be sufficient and published on NTIA's Web site.³¹

C. Dispute Resolution Boards

Subpart C of the regulations govern the workings of any dispute resolution boards upon which parties would call to facilitate the resolution of disputes, should any arise, between non-Federal users and Federal entities during the transition period regarding the "execution, timing, or cost" of the Federal entity's transition plan. These regulations cover matters related to the workings of a board, including the content of any request to establish a board, the associated procedures for convening it, and the dispute resolution process itself.

In light of the tight statutory deadline for resolving any disputes, as well as NTIA's general obligation to ensure timely implementation of transition plans, NTIA proposed a streamlined, practical approach to process legitimate dispute resolution requests, to set up dispute resolution boards, and to facilitate the resolution of any dispute as quickly as possible. Four commenters specifically opposed the proposal in the *NPRM* to require that a dispute resolution board issue only nonbinding recommendations.³² Another commenter offered observations and suggestions based on its experience managing the alternative dispute resolution process as a part of the reconfiguration of the 800 MHz band by

requires in transition plans, these issues are beyond the scope of this rulemaking proceeding, which only addresses regulations to govern the operation of the Technical Panel and the workings of any dispute resolution boards.

³¹ See AT&T Comments at 5; TIA Comments at 7; see also 47 U.S.C. 928(d)(2)(A).

³² See AT&T Comments at 6; CTIA Comments at 8; Ericsson Comments at 2; T-Mobile Comments at 10–11.

the FCC.³³ As discussed below, NTIA modifies its proposal to acknowledge that dispute resolution boards will issue binding decisions with respect to the execution, timing, and cost of transition plans submitted by Federal entities.

Dispute Resolution Board Decisions. The *NPRM* noted that the scope of a dispute resolution request and, consequently, a board's decision, is limited by the statute to matters "regarding the execution, timing, or cost of the transition plan submitted by the Federal entity."³⁴ Because the statute does not confer independent authority on a dispute resolution board to bind the parties, NTIA proposed that a board's decision take the form of specific written recommendations to NTIA, OMB, the Commission, or the parties, as applicable, to take the suitable steps or remedial actions related to the execution, timing, or cost of the Federal entity's transition plan.³⁵ The *NPRM*, however, noted that the statute provides that decisions of a dispute resolution board may be appealed to the United States Court of Appeals for the District of Columbia Circuit.³⁶

AT&T, CTIA, Ericsson, and T-Mobile argue that the proposed rule limiting a dispute resolution board's authority to issuing non-binding recommendations is contrary to the plain language and purpose of the statute.³⁷ They point out that the statutory language provides that a dispute resolution board would be established to "resolve the dispute" and that a board must "rule" on any such dispute within 30 days.³⁸ These parties assert that because "a decision of the dispute resolution board may be appealed to the United States Court of

³³ See Squire Sanders Comments at 1–3.

³⁴ *NPRM* at 41961 (quoting NTIA Organization Act, section 113(i)(1), 47 U.S.C. 923(i)(1)).

³⁵ *Id.* at 41961, 41966 (proposed sec. 301.220(e)(4)–(5)).

³⁶ *Id.* at 41961 (citing NTIA Organization Act, section 113(i)(7), 47 U.S.C. 923(i)(7)).

³⁷ See AT&T Comments at 6 (arguing a mere non-binding recommendation does not meet Congress' express directives that the dispute resolution board "rule on the dispute within 30 days" and that this ruling be appealable in Federal court); CTIA Comments at 8 (noting treatment of a board's decisions as non-binding appears inconsistent with the intent of the statute, as the U.S. Court of Appeals typically does not review non-binding recommendations); Ericsson Comments at 2 (finding the proposal to make decisions of Dispute Resolution Boards non-binding is inconsistent with the plain language of the statute); T-Mobile Comments at 10–11 (arguing the *NPRM*'s assertion that Congress did not provide the Dispute Resolution Board with "independent authority * * * to bind the parties" to the dispute is incorrect).

³⁸ See, e.g., AT&T Comments at 6; Ericsson Comments at 2; T-Mobile Comments at 10 (quoting NTIA Organization Act section 113(i)(1), (i)(4), 47 U.S.C. 923(i)(1), (i)(4)).

Appeals for the District of Columbia Circuit,” no further process at NTIA, OMB, or the FCC is required prior to a party’s exercise of that appeal right and non-final recommendations would not be ripe for judicial review.³⁹

After further consideration, NTIA agrees with commenters that the statute requires a board to make decisions which can be appealed to the United States Court of Appeals for the District of Columbia Circuit.⁴⁰ Accordingly, NTIA now interprets the statute as authorizing a dispute resolution board to make binding decisions with respect to disputes regarding the execution, timing, or cost of the transition plan submitted by the Federal entity. Such decisions could thus be appealed to the court.

NTIA recognizes that a binding decision may have a detrimental impact on the Federal entity’s operations or services that have national security, law enforcement or public safety functions. Accordingly, NTIA will permit the board, as necessary, to request additional written submissions from an agency regarding the impact of a binding decision on the agency’s operations or services that have national security, law enforcement, or public safety functions. The dispute resolution board will also ensure that any decision it reaches does not have a detrimental impact on the Federal entity’s operations or services that have national security, law enforcement, or public safety functions.⁴¹

NTIA, however, continues to interpret the Tax Relief Act so as not to authorize a board to exercise remedial authority

statutorily granted to other Federal agencies. For example, NTIA does not interpret the Tax Relief Act as allowing boards to exercise NTIA’s authority to “assign frequencies to radio stations or classes of radio stations belonging to and operated by the United States.”⁴² The statute also does not authorize a board to assess damages against the U.S. Government or non-Federal users arising out of the execution, timing, or cost of a Federal entity’s transition plan.

As noted in the *NPRM*, the Federal agencies that comprise a board’s membership (*i.e.*, the FCC, NTIA or OMB) do, however, possess statutory authority to take actions in support of a board’s decision.⁴³ Therefore, as NTIA proposed, a board may make recommendations as to remedies or other corrective actions to the appropriate Federal agency that has the statutory authority to take such actions based on the board’s findings. The Final Rule reflects these changes.

As noted in the *NPRM*, the statute’s 30-day deadline for responding to formal dispute resolution requests will likely impact a board’s ability to convene, meet with the parties, and adequately address complex cases. At the same time, however, the statute encourages cooperation to assure timely transitions between Federal and non-Federal use of the spectrum. Given the incentives created by the statute, NTIA expects only a minimal number, if any, of serious conflicts to arise. If such differences do surface, however, NTIA also expects the parties to make good faith efforts to solve these problems on an informal basis before submitting a request to establish a dispute resolution

board. Therefore, as proposed, the final rule provides that any formal dispute resolution request must include a summary of the parties’ prior efforts and attempts to resolve the dispute through negotiation, mediation, or non-binding arbitration.

NTIA also proposed that parties requesting dispute resolution provide sufficient information, including a concise and specific statement of the factual allegations sufficient to support the relief or action requested by the party. In its comments, Squire Sanders suggests that requiring early briefing of arguments may not generate productive written materials because the parties will not have clearly defined the issues in dispute “at the start of the mediation process,” or will focus on collateral matters not central to the issue to be resolved.⁴⁴ Furthermore, Squire Sanders notes that where recourse to independent alternative dispute resolution mechanisms is voluntary and at the parties’ own expense, most parties will not likely embrace them.⁴⁵ NTIA expects that any informal negotiation, mediation, or non-binding arbitration efforts between the parties will help clearly define and narrow the issues that are necessary to bring into the formal dispute resolution process. In addition, in light of the limited scope of disputes and the short time to resolve them, the written material addressing such issues must concern deviations from the federal entity’s transition plan or factors hindering or affecting the plan’s execution, timing, or cost. The Final Rule reflects these expectations and pleading requirements.

III. Procedural Matters

Executive Order 12866

This rule has been determined to be not significant under section 3(f) of Executive Order 12866. Pursuant to the Tax Relief Act, this rule has been approved by the Director of the Office of Management and Budget.

Executive Order 12372

No intergovernmental consultation with State and local officials is required because this rule is not subject to the provisions of Executive Order 12372, Intergovernmental Consultation.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform, as amended by Executive Order 13175. NTIA has determined that the rule meets the applicable standards provided in section 3 of the Executive

³⁹ See, e.g., Ericsson Comments at 2 (citing *CTIA—The Wireless Ass’n v. FCC*, 530 F.3d 984 (DC Cir. 2008)); T-Mobile Comments at 10 (quoting NTIA Organization Act section 113(i)(7), 47 U.S.C. 923(i)(7)).

⁴⁰ As pointed out by two commenting parties, the right of appeal to the DC Circuit does not necessarily mean that the court will address the merits of a board’s decision if, for example, the case fails to meet finality, exhaustion, ripeness and other requirements under the Administrative Procedure Act (APA). See Ericsson Comments at 2; T-Mobile Comments at 10–12 (and cases cited therein); see also Circuit Rules of the United States Court of Appeals for the District of Columbia Circuit, Title IV, “Review or Enforcement of an Order of an Administrative Agency, Board, Commission, or Officer” (Dec. 2011).

⁴¹ See 47 U.S.C. 923(h)(2)(H). Under this provision, each transition plan must identify any factors that could “hinder fulfillment of the transition plan by the Federal entity,” including the extent to which any classified information will affect “the implementation of the relocation or sharing arrangement.” 47 U.S.C. 923(h)(7)(A)(ii). Thus, another factor that could be included in a plan would be any impact on national security, law enforcement, or public safety functions that will affect the implementation of the relocation or sharing arrangement. A board must consider this factor and any additional information that it would request from the agency.

⁴² 47 U.S.C. 902(b)(2)(A).

⁴³ For example, OMB is authorized to transfer funds to Federal entities from the Fund subject to conditions outlined in the statute. See, e.g., 47 U.S.C. 928 (authorizing OMB Director, in consultation with the NTIA and subject to four specific conditions, to make additional payments to eligible Federal entities that are implementing a transition plan in order to encourage such entities to complete the implementation more quickly). NTIA has the authority to “assign frequencies to radio stations or classes of radio stations belonging to and operated by the United States, including the authority to amend, modify, or revoke such assignments.” 47 U.S.C. 902(b)(2)(A); see also 47 U.S.C. 923(g)(6) (authorizing NTIA to terminate or limit a Federal entity’s authorization upon the completion of the entity’s relocation, the implementation of its sharing arrangement or its unreasonable failure to comply with the timeline for relocation or sharing). Likewise, the FCC can make decisions regarding a licensee’s operating rights and determine whether it is in compliance with FCC rules or its license conditions. See 47 U.S.C. 312; see also 47 U.S.C. 309(j)(16)(C) (authorizing the FCC to grant commercial licenses in eligible frequencies prior to relocation of Federal operations and the termination of a federal entity’s authorization subject to a license condition requiring that the licensee cannot cause harmful interference to Federal operations).

⁴⁴ Squire Sanders Comments at 2.

⁴⁵ *Id.* at 3.

Order, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13132

This rule does not contain policies having federalism implications requiring preparations of a Federalism Summary Impact Statement.

Executive Order 12630

This rule does not contain policies that have takings implications.

Regulatory Flexibility Act

The Chief Council for Regulation of the Department of Commerce certified to the Chief Council for Advocacy of the Small Business Administration that proposed regulations, if adopted, would not have a significant economic impact on a substantial number of small entities. NTIA received no comments on this certification, which remains unchanged.

Paperwork Reduction Act

The Paperwork Reduction Act (PRA) does not apply to these regulations because NTIA is not seeking information from 10 or more members of the Public (44 U.S.C. 3502(3)), and because administrative proceedings such as those conducted by the Technical Panel and dispute resolution boards are exempt from the PRA. See 44 U.S.C. 3518(c)(1).

Congressional Review Act

This rule has not been determined to be major under the Congressional Review Act, 5 U.S.C. 801 *et seq.*

Unfunded Mandates

This rule contains no Federal mandates (under the regulatory provision of Title II of the Unfunded Mandates Reform Act of 1995) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act of 1995.

National Environmental Policy Act

Because this rule is not a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), an Environmental Impact Statement is not required.

Government Paperwork Elimination Act

NTIA is committed to compliance with the Government Paperwork Elimination Act, which requires Government agencies to provide the public the option of submitting

information or transacting business electronically to the maximum extent possible.

Lists of Subjects in 47 CFR Part 301

Administrative practice and procedure, Communications Common Carriers, Communications equipment, Defense communications, Government employees, Satellites, Radio, Telecommunications.

Lawrence E. Strickling,

Assistant Secretary for Communications and Information Administration.

■ For the reasons set forth in the preamble, NTIA amends 47 CFR chapter III by adding part 301 to read as follows:

PART 301—RELOCATION OF AND SPECTRUM SHARING BY FEDERAL GOVERNMENT STATIONS

Subpart A—General Information

Sec.

301.1 Purpose.

301.10 Cross-reference.

301.20 Definitions.

Subpart B—Technical Panel

301.100 Membership.

301.110 Organization and operations.

301.120 Reports on Agency Transition Plans.

301.130 Technical assistance To Dispute Resolution Panels.

Subpart C—Dispute Resolution Boards

301.200 Requests to resolve disputes.

301.210 Establishment and operation of Dispute Resolution Board.

301.220 Dispute resolution.

Authority: National Telecommunications and Information Administration Organization Act, 47 U.S.C. 901 *et seq.*, as amended by the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112–96, Title VI, Subtitle G, 126 Stat. 245 (Feb. 22, 2012) (47 U.S.C. 923(g)–(i) and 928).

Subpart A—General Information

§ 301.1 Purpose.

Sections 113(g)–(i) and 118 of the National Telecommunications and Information Administration Organization Act (hereinafter “NTIA Organization Act”), as amended (47 U.S.C. 923(g)–(i) and 928), govern the procedures and requirements related to the relocation of and sharing by Eligible Federal Entities’ spectrum-related operations in certain spectrum bands reallocated from Federal to non-Federal use or to shared use. Pursuant to these statutory provisions, Eligible Federal Entities authorized to use Eligible Frequencies are entitled to payment from the Spectrum Relocation Fund for their documented relocation or sharing costs incurred as a result of planning for an auction of such frequencies or the

reallocation of such frequencies from Federal use to exclusive non-Federal use or to shared use. The purpose of this part is to implement the particular provisions that mandate the adoption of such regulations, after public notice and comment, and that primarily affect non-Federal spectrum users, including the regulations herein governing Technical Panels and Dispute Resolution Boards.

§ 301.10 Cross-reference.

The Manual of Regulations and Procedures for Federal Radio Frequency Management (hereinafter referred to as the “NTIA Manual”) issued by the Assistant Secretary of Commerce for Communications and Information, is incorporated by reference in § 300.1 of this chapter and available online at <http://www.ntia.doc.gov/osmhome/redbook/redbook.html>. Annex O of the NTIA Manual, as revised, contains information, policies and procedures applicable to Federal agencies that implement the statutory provisions referenced in § 301.1 of this subpart with regard to such agencies that operate authorized U.S. Government stations in Eligible Frequencies and that incur relocation costs or sharing costs because of planning for an auction or the reallocation of such frequencies from Federal use to exclusive non-Federal use or to shared use. The NTIA Manual applies only to Federal agencies and does not impact the rights or obligations of the public. Accordingly, this cross reference is for information purposes only.

§ 301.20 Definitions.

Assistant Secretary means the Assistant Secretary of Commerce for Communications and Information.

Auction means the competitive bidding process through which licenses are assigned by the Commission under section 309(j) of the Communications Act of 1934 (47 U.S.C. 309(j)).

Commission means the Federal Communications Commission.

Dispute Resolution Board means any board established pursuant to section 113(i) of the NTIA Organization Act (47 U.S.C. 923(i)) and subpart C of this part.

Eligible Federal Entity means any Federal Entity that:

- (1) Operates a U.S. Government station authorized to use a band of eligible frequencies; and
- (2) That incurs relocation costs or sharing costs because of planning for an auction of spectrum frequencies or the reallocation of spectrum frequencies from Federal use to exclusive non-Federal use or to shared use.

Eligible frequencies means any band of frequencies reallocated from Federal

use to non-Federal use or to shared use after January 1, 2003, that is assigned by auction.

Federal Entity means any department, agency, or other instrumentality of the U.S. Government that utilizes a Government station assignment obtained under section 305 of the 1934 Act (47 U.S.C. 305).

Non-Federal user means a Commission licensee authorized to use Eligible Frequencies or a winning bidder in a Commission auction for Eligible Frequencies that has fulfilled the Commission's requirements for filing a long-form license application and remitting its final bid payment.

NTIA means the National Telecommunications and Information Administration.

NTIA Manual means the Manual of Regulations and Procedures for Federal Radio Frequency Management issued by the Assistant Secretary of Commerce for Communications and Information and incorporated by reference in § 300.1 of this chapter (47 CFR 300.1).

OMB means the Office of Management and Budget.

Technical Panel means the panel established by section 113(h)(3)(A) of the NTIA Organization Act (47 U.S.C. 923(h)(3)(A)) and governed by subpart B of this part.

Transition Plan means the plan submitted by a Federal Entity pursuant to section 113(h)(1) of the NTIA Organization Act (47 U.S.C. 923(h)(1)).

Subpart B—Technical Panel

§ 301.100 Membership.

(a) *Technical Panel membership.* The Technical Panel established by section 113(h)(3)(A) of the NTIA Organization Act (47 U.S.C. 923(h)(3)(A)) shall be composed of three (3) members, to be appointed as follows:

(1) One member to be appointed by the Director of OMB;

(2) One member to be appointed by the Assistant Secretary, with the approval of the Secretary of Commerce; and

(3) One member to be appointed by the Chairman of the Commission.

(b) *Qualifications.* (1) Each member of the Technical Panel shall be a radio engineer or a technical expert.

(2) The Assistant Secretary, in consultation with the Director of OMB and the Chairman of the Commission, may impose or suggest additional qualifications for one or more members of the Technical Panel as are necessary pursuant to section 113(g)(6) of the NTIA Organization Act (47 U.S.C. 923(g)(6)), including, but not limited to, the following:

(i) The member must have the appropriate and current security clearances to enable access to any classified or other sensitive information that may be associated with or relevant to agency Transition Plans;

(ii) The member should be a Federal employee as defined in 5 U.S.C. 2105(a) or a Special Government Employee as defined in 18 U.S.C. 202(a); and

(iii) The member should have the necessary expertise to perform his or her duties.

(c) *Term.* The term of a member of the Technical Panel shall be eighteen (18) months, and no individual may serve more than one (1) consecutive term.

(d) *Vacancies.* (1) Any member of the Technical Panel appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed only for the remainder of that term.

(2) A member of the Technical Panel may serve after the expiration of that member's term until a successor has taken office.

(3) A vacancy shall be filled in the manner in which the original appointment was made pursuant to paragraph (a) of this section.

(e) *Compensation.* (1) No member of the Technical Panel shall receive compensation for service on the Technical Panel.

(2) If any member of the Technical Panel is an employee of the agency of the official that appointed such member to the Technical Panel pursuant to paragraph (a) of this section, compensation in the member's capacity as a Federal employee shall not be considered compensation under paragraph (e)(1) of this section.

§ 301.110 Organization and operations.

(a) *Chair.* (1) The member of the Technical Panel appointed by the Assistant Secretary pursuant to § 301.100(a) of this subpart shall be the Chair of the Technical Panel.

(2) The Chair of the Technical Panel may designate a Vice-Chair who may act as Chair in the absence of the Chair.

(b) *Procedures of and actions by the Technical Panel.* (1) The Technical Panel may meet either in person or by some mutually agreeable electronic means to take action on the reports required by § 301.120 of this subpart or in providing technical assistance to a Dispute Resolution Board pursuant to § 301.130 of this subpart.

(2) Meetings of the Technical Panel may be convened as necessary for the efficient and timely dispatch of business by either NTIA or the Chair of the Technical Panel to consider reports and

any action thereon and to provide technical assistance to a Dispute Resolution Board pursuant to § 301.130 of this subpart.

(3) The Technical Panel shall endeavour to reach its decisions unanimously. Absent unanimous consent of all three members of the Technical Panel, a concurring vote of a majority of the total panel membership constitutes an action of the Technical Panel.

(4) A majority of the Technical Panel members constitutes a quorum for any purpose.

(5) The Chair of the Technical Panel, in consultation with the other members, may adopt additional policies and procedures to facilitate the efficient and timely dispatch of panel business.

(6) The Technical Panel may consult Federal entity subject matter experts as necessary regarding Federal mission risks and other relevant issues while assessing the reasonableness of costs and timelines in the Federal entity's Transition Plans so long as such consultations are disclosed in the Technical Panel's report.

(c) *Administrative support.* NTIA shall provide the Technical Panel with the administrative support services necessary to carry out its duties under this part.

§ 301.120 Reports on agency Transition Plans.

(a) *Deadline for initial report.* Not later than thirty (30) days after the receipt of a Federal Entity's Transition Plan submitted in accordance with applicable procedures set forth in Annex O of the NTIA Manual, the Technical Panel shall submit to NTIA and to such Federal Entity the Technical Panel's report on the sufficiency of the Transition Plan.

(b) *Scope and content of initial report.* The Technical Panel's report shall include:

(1) A finding as to whether the Federal Entity's Transition Plan includes the information required by the applicable provisions set forth in Annex O of the NTIA Manual;

(2) An assessment of the reasonableness of the proposed timelines contained in the Federal Entity's Transition Plan;

(3) An assessment of the reasonableness of the estimated relocation or sharing costs itemized in the Federal Entity's Transition Plan, including the costs identified by such plan for any proposed expansion of the capabilities of the Federal Entity's system; and

(4) A conclusion, based on the finding and assessments pursuant to paragraphs

(b)(1) through (3) of this section, as to the sufficiency of the Transition Plan.

(c) *Insufficient Transition Plan.* In the event the Technical Panel's initial report concludes that the Federal Entity's Transition Plan is insufficient pursuant to paragraph (b) of this section, the report shall also include a description of the specific information or modifications that are necessary for the Federal entity to include in a revised Transition Plan.

(d) *Revised plan.* If the Technical Panel finds the plan insufficient, the applying Federal Entity has up to 90 days to submit to NTIA and the Technical Panel a revised plan.

(e) *Report on revised agency Transition Plans.* (1) Deadline for Supplemental Report. Not later than thirty (30) days after the receipt of a Federal Entity's revised Transition Plan submitted after an initial or revised plan was found by the Technical Panel to be insufficient pursuant to paragraph (c) of this section, the Technical Panel shall submit to NTIA and to such Federal Entity the Technical Panel's supplemental report on the sufficiency of the revised Transition Plan.

(2) Scope and content of supplemental report. The Technical Panel's supplemental report on the revised Transition Plan shall include:

(i) A finding as to whether the Federal Entity's revised Transition Plan includes the necessary information or modifications identified in the Technical Panel's initial report pursuant to paragraph (b)(1) of this section;

(ii) A reassessment, if required, of the reasonableness of the proposed timelines contained in the Federal Entity's revised Transition Plan;

(iii) A reassessment, if required, of the reasonableness of the estimated relocation or sharing costs itemized in the Federal Entity's revised Transition Plan; and

(iv) A conclusion, based on the finding and reassessments pursuant to paragraphs (e)(2)(i) through (iii) of this section, as to the sufficiency of the revised Transition Plan.

§ 301.130 Technical assistance to Dispute Resolution Boards.

Upon request of a Dispute Resolution Board convened pursuant to subpart C of this part, the Technical Panel shall provide the board with such technical assistance as requested.

Subpart C—Dispute Resolution Boards.

§ 301.200 Requests to resolve disputes.

(a) *Non-Federal User requests—(1) In general.* A Non-Federal User may

submit a written request to NTIA in accordance with this section to establish a Dispute Resolution Board (hereinafter "board") to resolve an actual, unresolved dispute that has arisen between the Non-Federal User and a Federal Entity regarding the execution, timing, or cost of the Transition Plan submitted by the Federal Entity pursuant to section 113(h)(1) of the NTIA Organization Act (47 U.S.C. 923(h)(1)).

(2) *Negotiation, mediation and arbitration.* Any dispute arising out of the execution, timing, or cost of the Transition Plan submitted by a Federal Entity must be raised, in the first instance, with the officer or employee of the Federal Entity identified in the Transition Plan as being responsible for the relocation or sharing efforts of the entity and who is authorized to meet and negotiate with Non-Federal Users regarding the transition. To the extent that the parties cannot resolve such dispute on an informal basis or through good faith negotiation, they are strongly encouraged to use expedited alternative dispute resolution procedures, such as mediation or non-binding arbitration, before submitting a written request in accordance with this section to establish a board.

(3) *Eligibility to request the establishment of a board.* To submit a request to establish a board, a Non-Federal User must satisfy the definition of such term in § 301.20 of this part and the dispute must pertain to the execution, timing, or cost of the Transition Plan associated with the license or licenses subject to the winning bid or bids.

(4) *Contents of request.* In order to be considered by a board under this subpart, a request must include:

(i) Specific allegations of fact regarding the Federal Entity's deviation from the Transition Plan sufficient to support the requested resolution of the dispute. Such allegations of fact, except for those of which official notice may be taken by the board, shall be supported by affidavits of a person or persons having personal knowledge thereof;

(ii) A summary of the parties' prior efforts and attempts to resolve the dispute, including negotiation, mediation, or non-binding arbitration efforts pursuant to paragraph (a)(2) of this section;

(iii) A detailed description of each of the claims upon which a resolution is sought by and available to the Non-Federal User;

(iv) A detailed description of the requested resolution of the dispute;

(v) The requestor's contact information and a certificate of service

showing to whom and when an identical copy of the request was provided to the Federal Entity; and

(vi) A meeting proposal setting forth the proposed date, time, and place (including suggested alternatives) for a meeting with the Federal Entity and the board, the date for which shall be no later than fifteen (15) days from the date the request is sent to NTIA.

(vii) A self-certification that the Non-Federal User is a licensee authorized to use Eligible Frequencies or winning bidder in an FCC auction for the Eligible Frequencies.

(5) *Federal Entity response.* A Federal Entity has the right to submit a response to the board prior to the date of the scheduled meeting. If so directed by the Chair of the board, the Federal Entity shall submit a written response to the Non-Federal User's request.

(b) *Federal Entity requests—(1) In general.* An Eligible Federal Entity may submit a written request in accordance with this section to establish a Dispute Resolution Board to resolve an actual dispute that has arisen between the Federal Entity and a Non-Federal User regarding the execution, timing, or cost of the Transition Plan submitted by the Federal Entity pursuant to section 113(h)(1) of the NTIA Organization Act (47 U.S.C. 923(h)(1)).

(2) *Eligibility to request the establishment of a board.* To submit a request to establish a board, a Federal Entity, as such term is defined in § 301.20 of this part, must have submitted a Transition Plan pursuant to section 113(h)(1) of the NTIA Organization Act (47 U.S.C. 923(h)(1)) and the dispute must pertain to the execution, timing, or cost of such plan in connection with that Non-Federal User's license or licenses to use the Eligible Frequencies.

(3) *Contents of request.* In order to be considered by a board under this subpart, a request must include:

(i) Specific allegations of fact regarding the factors hindering or affecting the plan's execution, timing, or cost sufficient to support the requested resolution of the dispute. Such allegations of fact, except for those for which official notice may be taken by the board, shall be supported by affidavits of a person or persons having personal knowledge thereof;

(ii) A summary of the parties' prior efforts and attempts to resolve the dispute;

(iii) A detailed description of each of the claims upon which a resolution is sought by and available to the Federal Entity;

(iv) A detailed description of the requested resolution of the dispute;

(v) The requestor's contact information and a certificate of service showing to whom and when an identical copy of the request was provided to the Non-Federal User; and

(vi) A meeting proposal setting forth the proposed date, time, and place (including suggested alternatives) for a meeting with the Non-Federal User and the board, the date for which shall be no later than fifteen (15) days from the date the request is sent to NTIA.

(4) *Non-Federal User response.* A Non-Federal User has the right to submit a response to the board prior to the date of the scheduled meeting. If so directed by the Chair of the board, the Non-Federal User shall submit a written response to the Federal Entity's request.

§ 301.210 Establishment and operation of a Dispute Resolution Board.

(a) *In general.* If NTIA receives a written request under § 301.200, it shall establish a Dispute Resolution Board in accordance with this section.

(b) *Board membership.* A board established under this section shall be composed of three (3) members, to be appointed as follows:

(1) A representative of OMB, to be appointed by the Director of OMB;

(2) A representative of NTIA, to be appointed by the Assistant Secretary; and

(3) A representative of the Commission, to be appointed by the Chairman of the Commission.

(c) *Qualifications.* The Assistant Secretary, in consultation with the Director of OMB and the Chairman of the Commission, may impose qualifications for one or more members of a board established under this section as are necessary pursuant to section 113(g)(6) of the NTIA Organization Act (47 U.S.C. 923(g)(6)), including, but not limited to, the following:

(1) The member has the appropriate and current security clearances to enable access to any classified or other sensitive information that may be associated with or relevant to the Transition Plan subject to dispute;

(2) The member must be an employee of the appointing agency;

(3) The member must be from a predetermined slate of not less than three (3) qualified candidates from NTIA, OMB, and the Commission and able to serve on a board immediately upon the notification of the establishment of a board under this section until it rules on the dispute that it was established to resolve; and

(4) The member may not simultaneously be a member of the Technical Panel governed by subpart B of this part or a former member of the

Technical Panel that reviewed the Transition Plan subject to dispute.

(d) *Chair.* (1) The representative of OMB shall be the Chair of any board established under paragraph (a) of this section.

(2) The Chair may designate a Vice-Chair who may act as Chair in the absence of the Chair.

(e) *Term.* The term of a member of a board shall be until such board is terminated pursuant to paragraph (j) of this section or until a successor or replacement member is appointed under paragraph (b) of this section.

(f) *Vacancies.* Any vacancy on a board shall be filled in the manner in which the original appointment was made under paragraph (b) of this section.

(g) *Compensation.* (1) No member of a board shall receive any compensation for service on such board.

(2) Compensation in the member's capacity as an employee of the agency of the official that appointed such member to a board pursuant to paragraph (b) of this section shall not be considered compensation under paragraph (g)(1) of this section.

(h) *Procedures of and actions by a board.* (1) Except with respect to meetings with the parties pursuant to § 301.220(a), a board shall meet at the call of the Chair either in person or by some mutually agreeable electronic means to deliberate or rule on the dispute that it was established to resolve under paragraph (a) of this section or to receive technical assistance from the Technical Panel pursuant to § 301.130 of this part.

(2) A board shall endeavour to rule on the dispute that it was established to resolve under paragraph (a) of this section unanimously. Absent unanimous consent of all three members of a board, a concurring vote of a majority of the total board membership constitutes an action of such board.

(3) A majority of board members constitutes a quorum for any purpose.

(4) The Chair of a board, in consultation with the other members, may adopt additional policies and procedures to facilitate the efficient and timely resolution of the dispute that it was established to resolve under paragraph (a) of this section.

(i) *Administrative support.* NTIA shall provide any board established pursuant to paragraph (a) of this section with the administrative support services necessary to carry out its duties under this subpart.

(j) *Termination of a board.* (1) A board established pursuant to paragraph (a) of this section shall terminate after it rules on the dispute that it was established to resolve and the time for appeal of its

decision under section 113(i)(7) of the NTIA Organization Act (47 U.S.C. 923(i)(7)) has expired, unless such an appeal has been taken.

(2) If such an appeal has been taken, the board shall continue to exist until the appeal process has been exhausted and the board has completed any action required by a court hearing the appeal.

§ 301.220 Dispute Resolution.

(a) *Meeting with parties.* In consideration of the proposal set forth in a request pursuant to either § 301.200(a)(4)(vi) or (b)(3)(vi) of or at another mutually convenient date, time, and place (including via teleconference or other electronics means), the Chair of the board established under this subpart shall call a meeting of the board to be held simultaneously with representatives of the parties to the dispute to discuss the dispute.

(b) *Additional written submissions.* The parties to the dispute shall provide the board with any additional written materials and documents as it may request. In cases where the dispute or an element thereof relates to the impact on the Federal Entity's national security, law enforcement, or public safety operations or functions, the board may request, and the Federal entity shall provide, additional written submissions concerning such impact.

(c) *Assistance from Technical Panel.* A board established under this subpart may request technical assistance, as necessary, from the Technical Panel governed by subpart B of this part.

(d) *Deadline for decision.* The board shall rule on the dispute not later than thirty (30) days from the date the request was received by the NTIA, unless the parties and the board all agree in writing, and subject to the approval of the Assistant Secretary, to extend this period for a specified number of days.

(e) *Board decision.* The decision of a board established under this subpart shall:

(1) Be in writing;

(2) Be limited to determinations related to the execution, timing, or cost of the Transition Plan submitted by the Federal entity;

(3) Be based only on the record before it, including the request; meeting(s) with the parties all at the same time; any additional written submissions requested by the board and served on the other party, including submissions from the Federal entity concerning the potential impact on its national security, law enforcement, or public safety operations or functions; input from the Technical Panel, and other matters and

material for which it may take official notice;

(4) Ensure that the decision does not have a detrimental impact on the Federal entity's operations or services that have national security, law

enforcement, or public safety functions; and

(5) Be final upon issuance.

(f) *Recommendations*. A decision of the board may include recommendations for remedial or other

corrective actions to the appropriate Federal agency with the legal authority to take such actions based on the board's findings.

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