

# FLETCHER & SIPPEL ALERT

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Wednesday, April 18, 2012

## STB ARBITRATION AND FRA CORRECTION

The STB has issued a supplemental notice of proposed rulemaking seeking comments on proposed changes to the Board's mediation and arbitration procedures. The proposed changes impose a new information collection requirement on rail carriers. Class I and II rail carriers would be required to opt out of the Board's arbitration program on an annual basis if they do not wish to be subject to the arbitration program while Class III rail carriers would not be subject to the arbitration program unless they opt in to the program. The Board now seeks comments regarding: (1) Whether the opt out/in program is necessary for the proper performance of the functions of the Board, including whether it has practical utility; (2) the accuracy of the Board's burden estimates; (3) ways to enhance the quality, utility, and clarity of the program; and (4) ways to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology, when appropriate. Comments are due by June 18, 2012. A copy of the supplemental notice is attached.

The FRA issued a correction to the docket number for the Locomotive Safety Standards final rule. The final rule incorrectly indicated the docket number is FRA2009-0095. The correct docket number is FRA-2009-0094. All petitions for reconsideration and all comments to the Locomotive Safety Standards final rule should be submitted to docket number FRA-

2009-0094. The deadline for petitions for reconsideration remains June 8, 2012 and the deadline for comments on such petitions remains July 23, 2012. A copy of the correction is attached.

Please contact [Jeremy M. Berman](mailto:Jeremy.M.Berman@fletcher-sippel.com) at (312) 252-1510 if you have any questions.

**832.1003–2 Contract Clause.**

The contracting officer shall insert the clause at 852.273–76, Electronic Submission of Payment Requests, in all solicitations and contracts.

**Subchapter H—Clauses and Forms**

**PART 852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

3. The authority citation for part 852 continues to read as follows:

**Authority:** 38 U.S.C. 501, 8127, 8128, and 8151–8153; 40 U.S.C. 121(c) and 48 CFR 1.301–1.304.

**Subpart 852.2—Texts of Provisions and Clauses**

4. Add 852.273–76 to subpart 852.2 to read as follows:

**852.273–76 Electronic Submission of Payment Requests.**

As prescribed in 832.1003–2, insert the following clause:

Electronic Submission of Payment Requests (XXX 2012)

(a) *Definitions.* As used in this clause—  
(1) *Contract financing payment* has the meaning given in FAR 32.001.

(2) *Designated agency office* has the meaning given in 5 CFR 1315.2(m).

(3) *Electronic form* means an automated system transmitting information electronically according to the accepted electronic data transmission methods and formats identified in paragraph (c) of this clause. Facsimile, email, and scanned documents are not acceptable electronic forms for submission of payment requests.

(4) *Invoice payment* has the meaning given in FAR 32.001.

(5) *Payment request* means any request for contract financing payment or invoice payment submitted by the contractor under this contract.

(b) *Electronic Payment Requests.* Except as provided in paragraph (e) of this clause, the contractor shall submit payment requests in electronic form. Purchases paid with a Government-wide commercial purchase card are considered to be an electronic transaction for purposes of this rule, and therefore no additional electronic invoice submission is required.

(c) *Data Transmission.* A contractor must ensure that the data transmission method and format are through one of the following:

(1) VA's Electronic Invoice Presentation and Payment System. (See Web site at <http://www.fsc.va.gov/einvoice.asp>.)

(2) Any system that conforms to the X12 electronic data interchange (EDI) formats established by the Accredited Standards Center (ASC) and chartered by the American National Standards Institute (ANSI). The X12 EDI Web site (<http://www.x12.org>) includes additional information on EDI 810 and 811 formats.

(d) *Invoice requirements.* Invoices shall comply with FAR 32.905.

(e) *Exceptions.* If, based on one of the circumstances below, the contracting officer directs that payment requests be made by mail, the contractor shall submit payment requests by mail through the United States Postal Service to the designated agency office. Submission of payment requests by mail may be required for:

(1) Awards made to foreign vendors for work performed outside the United States;

(2) Classified contracts or purchases when electronic submission and processing of payment requests could compromise the safeguarding of classified or privacy information;

(3) Contracts awarded by contracting officers in the conduct of emergency operations, such as responses to national emergencies;

(4) Solicitations or contracts in which the designated agency office is a VA entity other than the VA Financial Services Center in Austin, Texas; or

(5) Solicitations or contracts in which the VA designated agency office does not have electronic invoicing capability as described above.

(End of clause)

[FR Doc. 2012–9269 Filed 4–17–12; 8:45 am]

**BILLING CODE 8320–01–P**

**DEPARTMENT OF TRANSPORTATION**

**Surface Transportation Board**

**49 CFR Parts 1108 and 1109**

[STB Docket No. EP 699]

**Assessment of Mediation and Arbitration Procedures**

**AGENCY:** Surface Transportation Board.

**ACTION:** Supplemental Notice of Proposed Rulemaking.

**SUMMARY:** The Surface Transportation Board has proposed regulations that would require Class I and Class II rail carriers to participate in the Board's arbitration program, unless they file a prior written notice with the Board on an annual basis opting out of the program. By contrast, Class III rail carriers wishing to participate in the Board's arbitration program could file a request for arbitration with the Board under this docket at any time, or could voluntarily agree to participate in arbitration on a case-by-case basis. A shipper wishing to participate in the Board's arbitration program could so inform the Board on a case-by-case basis following the filing of a complaint. Pursuant to the Paperwork Reduction Act and Office of Management and Budget regulations, the Board now seeks comments regarding certain information pertaining to the proposed arbitration rules.

**DATES:** Comments are due by June 18, 2012.

**ADDRESSES:** Comments may be submitted either via the Board's e-filing process or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions at the E-FILING link on the Board's Web site, at <http://www.stb.dot.gov>. Any person submitting a filing in the traditional paper format should send an original and 10 copies to: Surface Transportation Board, Attn: Docket No. EP 699, 395 E Street SW., Washington, DC 20423–0001. Copies of written comments received by the Board will be posted to the Board's Web site at <http://www.stb.dot.gov> and will be available for viewing and self-copying in the Board's Public Docket Room, Suite 131, 395 E Street SW., Washington, DC. Copies of the comments will also be available by contacting the Board's Chief Records Officer by telephone at (202) 245–0236 or by mail at 395 E Street SW., Washington, DC 20423–0001.

**FOR FURTHER INFORMATION CONTACT:** Virginia Strasser at (202) 245–0275. (Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.)

**SUPPLEMENTARY INFORMATION:** By Notice of Proposed Rulemaking in *Assessment of Mediation and Arbitration Procedures*, EP 699 (STB served Mar. 28, 2012),<sup>1</sup> the Surface Transportation Board has proposed regulations that would require Class I and Class II rail carriers to participate in the Board's arbitration program, unless they file a prior written notice with the Board on an annual basis opting out of the program. Pursuant to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* (PRA), and Office of Management and Budget (OMB) regulations at 5 CFR 1320.8(d)(3), the Board now seeks comments regarding: (1) Whether the particular collection of information described below and in greater detail at 77 FR 19,591 is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility; (2) the accuracy of the Board's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or

<sup>1</sup> The Notice of Proposed Rulemaking was published in the *Federal Register* on April 2, 2012. (77 FR 19,591).

other forms of information technology, when appropriate.

The Board favors the resolution of disputes through the use of mediation and arbitration procedures, in lieu of formal Board proceedings, wherever possible. To that end, the Board has existing rules that encourage parties to agree voluntarily to mediate or arbitrate certain matters subject to its jurisdiction. The Board's mediation rules are set forth at 49 CFR 1109.1, 1109.3, 1109.4, 1111.2, 1111.9, and 1111.10. Its arbitration rules are set forth at 49 CFR 1108, 1109.1, 1109.2, 1109.3, and 1115.8. The proposed modifications to the Board's existing rules are intended to increase the use of mediation and arbitration in lieu of formal adjudication to resolve disputes before the Board.

The proposed changes to the mediation rules do not impose a new information collection on the public. Rather, the proposed changes to the existing mediation rules would establish procedures under which the Board could compel mediation in certain types of adjudications before the Board, on a case-specific basis, as well as grant mediation requests of parties to disputes.

The proposed changes to the arbitration rules, however, do impose a new information collection with regard to rail carriers. Class I and Class II carriers would be deemed to have agreed voluntarily to participate in the Board's proposed arbitration program unless they "opt out." To opt out, any such carrier would be required to file a notice with the Board, under Docket No. EP 699, notifying the Board of its opt-out decision, no later than 20 days after this proposed rule took effect. Any such carrier not submitting a notice by this deadline would be deemed to be a participant in the Board's arbitration program. Should the proposed rules take effect, a Class I or Class II carrier wishing to opt out of the Board's arbitration program would be required to file an opt-out notice with the Board no later than January 10 of each calendar year. Such carriers not opting out by this deadline would become participants in the Board's proposed arbitration program during that calendar year. Participating carriers could also opt out of the arbitration program at any time by providing 90 days' notice to the Board. Class I and Class II carriers that had opted out would be able to opt back into the proposed arbitration program at any time by filing a notice with the Board that would take effect immediately. They could also participate in arbitration on a case-by-case basis.

In contrast, Class III rail carriers would not be deemed to have agreed to participate in the proposed arbitration program unless they were to opt in by filing a written notice in Docket No. EP 699, so informing the Board. Such notice could be filed at any time and would take effect immediately. A Class III carrier would remain a participant in the proposed arbitration program thereafter unless it were to file an opt-out notice with the Board. Such notice would take effect 90 days after filing. Like Class I and Class II carriers, Class III carriers could also voluntarily agree to participate in arbitration on a case-by-case basis.

Shippers would choose to participate in arbitration of the proposed program-eligible disputes on a case-by-case basis following the filing of a complaint whose subject matter would be arbitration program-eligible under the proposed rule.

This proposed rule, which is detailed in the Board's decision and **Federal Register** notice referenced above is being submitted to OMB for review as required under the PRA, 44 U.S.C. 3507(d), and 5 CFR 1320.11.

#### List of Subjects

##### 49 CFR Part 1108

Administrative practice and procedure, Railroads.

##### 49 CFR Part 1109

Administrative practice and procedure, Maritime carriers, Motor carriers, Railroads.

Decided: April 13, 2012.

**Jeffrey Herzig,**  
Clearance Clerk.

#### Appendix A

The additional information below is included to assist those who may wish to submit comments pertinent to review under the Paperwork Reduction Act:

#### Description of Collection

*Title:* Assessment of Mediation and Arbitration Procedures.

*OMB Control Number:* 2140-XXXX.

*STB Form Number:* None.

*Type of Review:* New collection.

*Respondents:* Class I, Class II, and Class III railroads.

*Number of Respondents:* A maximum of 650.

*Estimated Time per Response:* 1.0 hour.

*Frequency:* Annually.

*Total Burden Hours* (annually including all potential respondents): 650 hours.

*Total "Non-Hour Burden" Cost:* None identified.

*Needs and Uses:* Under 49 U.S.C. 721(a), the Board has the authority to prescribe regulations to carry out its statutory authority. The proposed information collection is intended to encourage greater use of arbitration as a means to resolve certain types of disputes before the Board, by establishing an arbitration program in which Class I and Class II rail carriers would agree in advance to participate in binding arbitration of those disputes unless they file an opt-out notice with the Board on an annual basis. Class III rail carriers may inform the Board of their interest in participating in this arbitration program by filing an opt-in notice at any time. Failure to collect this information would impede the Board's ability to establish the proposed arbitration program. The Board has authority to collect information from rail carriers under 49 U.S.C. 11145(a).

*Retention Period:* Information in this report will be maintained on the Board's Web site for a minimum of one year and will be otherwise maintained by the Board for a minimum of two years.

[FR Doc. 2012-9324 Filed 4-17-12; 8:45 am]

BILLING CODE 4915-01-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Parts 223 and 224

[Docket No. 110901553-2072-01]

RIN 0648-BB41

#### Endangered and Threatened Species; Proposed Delisting of Eastern DPS of Steller Sea Lions

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

**ACTION:** Proposed rule.

**SUMMARY:** Under the authority of the Endangered Species Act of 1973, as amended (ESA), we, NMFS, issue this proposed rule to remove the eastern distinct population segment (DPS) of Steller sea lions from the List of Endangered and Threatened Wildlife. After receiving two petitions to delist this DPS, we completed a comprehensive review of the status of the eastern DPS of Steller Sea Lions. Based on the information presented in the draft Status Review, the factors for delisting in section 4 (a)(1) of the ESA, the objective recovery criteria in the 2008 Recovery Plan, and the continuing efforts to protect the species, we have

**DEPARTMENT OF TRANSPORTATION**

**Federal Railroad Administration**

**49 CFR Parts 229 and 238**

[Docket Nos. FRA–2009–0094 and FR–2009–0095, Notice No. 4]

RIN 2130–AC16

**Locomotive Safety Standards; Correction**

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

**ACTION:** Final rule; correction.

**SUMMARY:** FRA is notifying the public that the correct docket number for the Locomotive Safety Standards final rule is FRA–2009–0094. The final rule issued on April 9, 2012, incorrectly identified docket number FR–2009–0095 as the public docket for this rulemaking proceeding. FRA is requesting that all petitions for reconsideration and all comments on any petitions for reconsideration related to this proceeding be submitted to FRA–2009–0094.

**DATES:** The deadline for petitions for reconsideration of the final rule published April 9, 2012, at 77 FR 21312, remains June 8, 2012. The deadline for comments on such petitions remains July 23, 2012.

**ADDRESSES:** Petitions for reconsideration or comments on such petitions: Any petitions and any comments to petitions related to Docket No. FRA–2009–0094, may be submitted by any of the following methods: *Web Site:* Federal eRulemaking Portal, <http://www.regulations.gov>. Follow the online instructions for submitting comments.

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

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

*Instructions:* All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change to <http://www.regulation.gov> including any personal information. FRA wishes to inform all potential petitioners that

anyone is able to search the electronic form of all comments received into any agency docket by the name of the individual submitting the petition (or signing the petition, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit <http://dms.dot.gov>.

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

**FOR FURTHER INFORMATION CONTACT:** Michael Masci, Trial Attorney, Office of Chief Counsel, FRA, 1200 New Jersey Avenue SE., Washington, DC (telephone 202–493–6037).

**SUPPLEMENTARY INFORMATION:** On April 9, 2012, FRA published a final rule related to locomotive safety standards. See 77 FR 21312. The final rule established a public docket to receive petitions for reconsideration in response to FRA's final rule related to locomotive safety standards and comments on such petitions. That final rule mistakenly lists FR–2009–0095 (“incorrect docket”) as the docket number for the final rule. The correct docket number for this proceeding is FRA–2009–94 (“correct docket”). FRA requests that petitions for reconsideration related to the final rule and comments on such petitions be submitted to the correct docket.

Petitions for reconsideration and comments on such petitions submitted to the incorrect docket will be fully considered as part of the locomotive safety standards rulemaking. Because the incorrect docket is listed in the April 9, 2012, **Federal Register** document issuing the final rule, petitions for reconsideration and comments on such petitions submitted to the incorrect docket will remain valid. FRA will transfer all comments and information that are received in the incorrect docket to the correct docket. As such, interested parties that wish to read petitions for reconsideration related to the final rule and comments on such petitions should access docket FRA–2009–0094 to locate them.

Issued in Washington, DC, on April 12, 2012.

**Ron Hynes,**

*Acting Deputy Associate Administrator for Regulatory and Legislative Operations.*

[FR Doc. 2012–9353 Filed 4–17–12; 8:45 am]

**BILLING CODE 4910–06–P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

[Docket No. 111213751–2102–02]

RIN 0648–XB176

**Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels Using Trawl Gear in the Bering Sea and Aleutian Islands Management Area**

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting directed fishing for Pacific cod by catcher vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the B season allowance of the 2012 Pacific cod total allowable catch allocated to trawl catcher vessels in the BSAI.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), April 15, 2012, through 1200 hrs, A.l.t., June 10, 2012.

**FOR FURTHER INFORMATION CONTACT:** Obren Davis, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The B season allowance of the 2012 Pacific cod total allowable catch (TAC) allocated to trawl catcher vessels in the BSAI is 5,666 metric tons (mt) as established by the final 2012 and 2013 harvest specifications for groundfish in the BSAI (77 FR 10669, February 23, 2012).

In accordance with § 679.20(d)(1)(i) and (d)(1)(ii)(B), the Administrator,