

should have read July 15, 2009 instead of July 13, 2009.

**DATES:** Effective May 19, 2009.

**FOR FURTHER INFORMATION CONTACT:** Roland Helvajian, Office of Managing Director at (202) 418-0444.

**SUPPLEMENTARY INFORMATION:** This is a correction in the effective date of the Order FCC 09-21 that was published in the **Federal Register** on May 12, 2009 (74 FR 22104). Accordingly, this document corrects the effective date as indicated below.

In rule FR Doc. E9-10987 published on May 12, 2009, 74 FR 22104 make the following correction. On page 22104, in the second column, correct the **DATES** section to read:

**DATES:** Effective July 15, 2009, which pursuant to section 9(b)(3) of the Communications Act, is 90 days from date of notification to Congress.

**Marlene H. Dortch,**

*Secretary, Federal Communications Commission.*

[FR Doc. E9-11582 Filed 5-18-09; 8:45 am]

**BILLING CODE 6712-01-P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 80

[WT Docket No. 04-344; FCC 08-208]

#### Maritime Communications

**AGENCY:** Final rule; announcement of effective date.

**SUMMARY:** The Federal Communications Commission (Commission) announces that a certain rule adopted in its Automatic Identification Systems (AIS) proceeding in WT Docket No. 04-344 published in the **Federal Register** of January 29, 2009, to the extent it contained an information collection requirement that required approval by the Office of Management and Budget (OMB) was approved, April 8, 2009.

**DATES:** The amendment adding § 80.231, published January 29, 2009 (74 FR 5117) is effective May 19, 2009.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Tobias, Federal Communications Commission, Wireless Telecommunications Bureau, 445 12th St., SW., Washington, DC 20554 at (202) 418-0620.

#### SUPPLEMENTARY INFORMATION:

1. On January 29, 2009 at 74 FR 5117, the Commission published in the **Federal Register**, the summary of a Second Report and Order (2nd R&O) in WT Docket No. 04-344; FCC 08-208. In that 2nd R&O, the Commission stated that, upon OMB approval, it would

publish in the **Federal Register** a document announcing the effective date of 47 CFR 80.231.

2. On April 8, 2009, OMB approved the public information collection associated with this rule change under OMB Control No. 3060-1124.

**Marlene H. Dortch,**

*Secretary, Federal Communications Commission.*

[FR Doc. E9-11647 Filed 5-18-09; 8:45 am]

**BILLING CODE 6712-01-P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 90

[DA 09-621; WT Docket No. 04-344; FCC 08-208]

#### Maritime Communications

**AGENCY:** Final rule; correction.

**SUMMARY:** The Federal Communications Commission published in the **Federal Register** of January 29, 2009, a document in the Automatic Identification Systems (AIS) proceeding, WT Docket No. 04-344, which included a Final Rules Appendix that reflected the amendments adopted of certain rules. This document corrects the amendment of one of those sections as set forth below.

**DATES:** May 19, 2009.

#### FOR FURTHER INFORMATION CONTACT:

Jeffrey Tobias, Federal Communications Commission, Wireless Telecommunications Bureau, 445 12th St. SW., Washington, DC 20554 at (202) 418-0620.

**SUPPLEMENTARY INFORMATION:** The Federal Communications Commission published a document in the **Federal Register** of January 29, 2009 (74 FR 5117) regarding the adoption of changes to rules relating to AIS, an advanced marine vessel tracking and navigation technology that can significantly enhance our Nation's homeland security as well as maritime safety. The document amended a number of FCC rules governing the public safety pool. This document, released on March 18, 2009; DA 09-621, corrects a certain rule in the document published in the **Federal Register** of January 29, 2009 (74 FR 5117). This document does not change any of the other rule amendments set forth in the document published in the **Federal Register** of January 29, 2009 (74 FR 5117).

## List of Subjects in 47 CFR 90

Communications equipment, radio.

**Marlene H. Dortch,**

*Secretary, Federal Communications Commission.*

### Rules Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission corrects 47 CFR part 90 as follows:

■ 1. The authority citation for part 90 continues to read as follows:

### PART 90—PRIVATE LAND MOBILE RADIO SERVICES

**Authority:** Secs. 4(i), 11, 303(g), 303(r) and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(r), and 332(c)(7).

■ 2. In § 90.20, revise the Table C heading in paragraph (g)(3)(iv) to read as follows:

#### § 90.20 Public Safety Pool.

\* \* \* \* \*

(g) \* \* \*

(3) \* \* \*

(iv) \* \* \*

Table C—Required Separation in Kilometers (Miles) of Base Station From Public Coast Stations

\* \* \* \* \*

[FR Doc. E9-11640 Filed 5-18-09; 8:45 am]

**BILLING CODE 6712-01-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### 49 CFR Parts 209 and 211

[Docket No. FRA-2009-0006; Notice No. 1]

RIN 2130-AC02

### Miscellaneous Revisions to the Procedures for Handling Petitions for Emergency Waiver of Safety Regulations and the Procedures for Disqualifying Individuals From Performing Safety-Sensitive Functions

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

**ACTION:** Direct final rule.

**SUMMARY:** This direct final rule makes miscellaneous revisions to the procedures for obtaining waivers from a safety rule, regulation, or standard during an emergency situation or an emergency event, and the procedures for disqualifying individuals from performing safety-sensitive functions. FRA's purpose in revising these

procedures is to make them consistent with sections 305 and 308 of the Rail Safety Improvement Act of 2008 (the "Act"), Public Law 110-432, Division A, which was signed into law on October 16, 2008. Interested parties may submit written adverse comments or may request an oral hearing on these miscellaneous revisions during the thirty (30) day period following publication of this rule. FRA anticipates no adverse comments.

**DATES: Effective Date:** Unless FRA receives a written adverse comment or a request for an oral hearing on this direct final rule within the specified comment period, the effective date will be July 20, 2009.

**Written Comments:** Comments or a request for an oral hearing must be received by June 18, 2009.

**ADDRESSES:** Comments, identified by Docket Number FRA-2009-0006, may be submitted by any of the following methods:

- **Fax:** 1-202-493-2251.
- **Mail:** DOT Docket Management Facility; W12-140, West Building, 1200 New Jersey Ave., SE., Washington, DC 20590.
- **Hand Delivery:** W12-140 on the ground level of the West Building, 1200 New Jersey Ave., SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

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

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

**FOR FURTHER INFORMATION CONTACT:** Grady C. Cothen, Jr., Deputy Associate Administrator for Safety Standards and Program Development, FRA, 1200 New Jersey Ave., SE., RRS-2, Mail Stop 25, Washington, DC 20590 (Telephone 202-493-6302), or Zeb Schorr, Trial Attorney, Office of Chief Counsel, FRA, 1200 New Jersey Ave., SE., Mail Stop

10, Washington, DC 20590 (Telephone 202-493-6072).

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

##### *Individual Disqualification Procedures*

Section 305 of the Rail Safety Improvement Act of 2008 expanded the scope of 49 U.S.C. 20111(c), which concerns disqualifying individuals from performing safety-sensitive functions. Specifically, section 305 provides, in part, that an individual who has violated the Transportation of Hazardous Materials laws (49 U.S.C. Chapt. 51) or a regulation or order prescribed under those laws may be prohibited from performing safety-sensitive functions in the railroad industry for a specified period of time or until specified conditions are met, if it is shown that the violation makes the individual unfit for safety-sensitive functions. Based on section 305 of the Act, FRA is revising its existing procedures that govern the process that the agency uses to disqualify individuals from performing safety-sensitive functions. These procedures are intended to assure the prompt and efficient conduct of disqualification proceedings, while affording administrative due process to those against whom such proceedings are initiated.

##### *Emergency Waiver Procedures*

Section 308 of the Act includes specific procedures for obtaining waivers from a safety rule, regulation, or standard during an emergency situation or an emergency event. Based on the modifications contained in the Act, FRA is revising the existing emergency waiver procedures that it adopted in 2007 to expeditiously handle waiver requests that are directly related to an emergency situation or an emergency event. These revisions will make the existing procedures consistent with the Act and will permit FRA to provide railroads necessary operational relief during emergencies while at the same time maintaining public safety.

Due to the catastrophic and devastating damage inflicted on the southern portion of the United States in the aftermath of Hurricane Katrina, FRA published a notice in the **Federal Register** establishing a temporary means for handling petitions for waiver from the Federal rail safety regulations that were directly related to the effects of the hurricane or were necessary to effectively address the relief efforts being undertaken in the area. See 70 FR 53413 (September 8, 2005). FRA recognized that these types of petitions

had to be afforded special consideration and had to be handled expeditiously in order to ensure that the emergency operational needs of the railroads were addressed while at the same time ensuring the safety of the public, including railroad employees. Such emergency waivers would help ensure that routine safety regulations would not stand in the way of the railroads' efforts to cope with the emergency and to provide timely relief and recovery efforts. FRA subsequently issued an interim final rule, and then a final rule, codifying those interim procedures. See 72 FR 17438 (April 7, 2007). FRA is issuing this direct final rule revising these existing procedures so that they are consistent with the Act.

##### **Section-by-Section Analysis**

##### *Disqualification Procedures—49 CFR Part 209*

**Section 209.301(a).** This paragraph discusses the scope of the rules of practice for disqualification proceedings of railroad employees and agents from safety-sensitive functions in the rail industry. A technical amendment is made to this paragraph so that it refers to the Federal railroad safety laws at 49 U.S.C. 20111(c) rather than the laws' previous incorporation at title 45 of the United States Code.

**Section 209.303(a).** This paragraph makes clear that railroad employees who are assigned to perform service subject to the Hours of Service Act during a duty tour are subject to the disqualification procedures. A technical amendment is made so that this paragraph refers to 49 U.S.C. Chapt. 211 rather than the old hours of service statutory citation at title 45 of the United States Code.

**Section 209.303(b).** This paragraph identifies the railroad employees or agents that are subject to the disqualification procedures. These include railroad employees or agents who: (1) inspect, install, repair, or maintain track and roadbed; (2) inspect, repair or maintain, locomotives, passenger cars, and freight cars; (3) conduct training and testing of employees when the training or testing is required by the FRA's safety regulations; and (4) perform service subject to the Transportation of Hazardous Materials laws (49 U.S.C. Chapt. 51), or any regulation prescribed thereunder. This paragraph is amended to identify railroad employees and agents who perform service subject to 49 U.S.C. Chapt. 51, and any regulation or order prescribed thereunder, in order to remain consistent with the Act.

*Section 209.303(c).* This paragraph identifies the following railroad managers, supervisors, or agents as subject to the disqualification procedures. These include railroad managers, supervisors, or agents who: (1) Perform the safety-sensitive functions listed in paragraphs (a) and (b) of this section; (2) supervise and otherwise direct the performance of the safety-sensitive functions listed in paragraphs (a) and (b) of this section; or (3) are in a position to direct the commission of violations of any of the requirements of parts 213 through 241 of this title, or of any of the requirements of the Transportation of Hazardous Materials Laws (49 U.S.C. Chapt. 51), or any regulation or order prescribed thereunder. A technical amendment is made to this paragraph so that it refers to parts 213 through 241 of title 49 of the Code of Federal Regulations. The existing provision only refers to parts 213 through 236. Because parts 238 through 241 have been added to the Code of Federal Regulations since the last amendment of this provision, it is necessary to make this technical amendment for accuracy and clarity. As indicated above, this paragraph is also amended to identify railroad managers, supervisors, and agents who perform, supervise, or direct service in violation of 49 U.S.C. Chapt. 51, and any regulation or order prescribed thereunder, in order to remain consistent with the Act.

*Section 209.327(c).* Technical amendments are made so that this paragraph cross-references paragraphs (a) and (b). The existing provision contains an inaccurate cross-reference to paragraphs (c) and (d) of this section. This amendment is necessary for accuracy and clarity.

*Section 209.329(a).* This paragraph provides that the proof of a respondent's willful violation of one of the requirements of parts 213 through 241 (excluding parts 225, 228, and 233) of this title, or one of the requirements of 49 U.S.C. Chapt. 51, or any regulation or order prescribed thereunder, establishes a rebuttable presumption that the respondent is unfit to perform the safety-sensitive functions described in § 209.303. A technical amendment is made to this paragraph so that it refers to parts 213 through 241 of title 49 of the Code of Federal Regulations. The existing provision only refers to parts 213 through 236. Because parts 238 through 241 have been added to the Code of Federal Regulations since the last amendment of this provision, it is necessary to make this technical amendment for accuracy and clarity. This paragraph is also amended to

include a reference to violations of 49 U.S.C. Chapt. 51, and any regulation or order prescribed thereunder, in order to remain consistent with the Act.

*Section 209.329(b).* Minor technical amendments are made to this paragraph to correct spelling and punctuation errors in the existing provision.

*Processing of Emergency Waivers—  
§ 211.45*

*Section 211.45(a).* This paragraph makes clear that the emergency waiver procedures are intended to go into effect when there is an occurrence of, or imminent threat of, an emergency event or an emergency situation. The types of emergency events and emergency situations intended to be covered by this direct final rule could be local, regional, or national in scope and could include natural or manmade disasters, such as hurricanes, floods, earthquakes, mudslides, forest fires, snowstorms, terrorist acts, biological outbreaks, releases of dangerous radiological, chemical, explosive, or biological material, or war-related activities that pose a risk of death, serious illness, severe injury, or substantial property damage. In order to remain consistent with the Act, technical amendments are made so that this paragraph identifies relevant emergency situations. This direct final rule also amends the definition of the terms "emergency event" and "emergency situation" to make them consistent with the terms as used in the Act.

*Section 211.45(b).* This paragraph contains information regarding FRA's establishment of an annual Emergency Relief Docket (ERD). Establishing a new ERD each year allows FRA to receive petitions for emergency waivers as soon as the occurrence of, or imminent threat of, an emergency event is determined to have occurred. A yearly ERD is also a convenient way to organize the emergency waiver petitions and related documents. For reference purposes, any petition can be located by the year in which the emergency event or emergency situation occurred. The Federal eRulemaking Portal ("FeP") internet site, <http://www.regulations.gov>, that is identified in this final rule allows any interested party to request notification and to subsequently, without fee, be automatically notified via e-mail when documents are added to the designated ERD. This paragraph also makes clear that FRA will publish by January 31st of each year, a **Federal Register** notice identifying the ERD for that year. This will inform interested parties where to find petitions for emergency waiver during an emergency and will allow

such parties to request e-mail notification. Placing a notice in the previous year's ERD will allow the parties interested in the prior year to automatically receive the new docket number. The only changes made by this direct final rule to the existing paragraph are technical amendments so that this paragraph refers to the Federal eRulemaking Portal and <http://www.regulations.gov> which replaced the DOT Docket Management System.

*Section 211.45(c).* This paragraph identifies the FRA Administrator (the "Administrator") as the individual responsible for determining when the emergency waiver procedures will be utilized. The Administrator is the appropriate person to determine whether a situation or set of circumstances constitutes an emergency for purposes of FRA's use of the emergency waiver procedures. The Administrator has a unique familiarity with the rail-industry through oversight of the following: Managing comprehensive safety programs and regulatory initiatives; enforcement of FRA safety regulations; development and implementation of national freight and passenger rail policy; and oversight of diverse research and development activities in support of improved railroad safety. During significant emergencies the Administrator has extensive interaction with the Department of Homeland Security, Director of National Intelligence, the Federal Bureau of Investigation, the Surface Transportation Board and other Federal agencies responsible for addressing public safety, health, security and welfare. In addition, the Administrator maintains contemporaneous communication with relevant rail transportation entities, including passenger and freight railroads. This experience and interaction provides a basis from which the Administrator can assess whether a situation or set of circumstances rises to the level of an emergency event that would necessitate activation of the emergency waiver procedures.

The Administrator's statement declaring that the emergency procedures are in effect will be placed in the appropriate ERD as soon as practicable. The FeP Internet site that is identified in the rule text allows any subscribing interested party to request notification, without fee, via e-mail when documents are added to the appropriate ERD. In determining whether an emergency exists the Administrator may consider states of emergency issued by a local, State, or Federal official, and determinations by the Federal government that a credible threat of a

terrorist attack exists. The Administrator will consider whether such emergencies significantly affect railroad operations, and whether it would be beneficial to activate the emergency waiver procedures. Minor technical amendments are being made to the existing provision in this final rule in order to make the provision consistent with the Act by using the term "emergency situation," and by correcting the cross-reference to paragraph (b) of this section.

*Section 211.45(d).* This paragraph identifies the methods by which interested parties may be notified of FRA's determination to utilize the emergency waiver procedures. If conditions permit, FRA will issue the Administrator's determination on FRA's Web site to quickly notify the public. FRA will also place the Administrator's determination in the ERD as soon as practicable. This direct final rule makes technical amendments to the existing provision by slightly modifying the notification process consistent with the requirements of the Act. The Act does not require publication of the determination in the **Federal Register** and FRA believes that notification to interested parties will occur in a more expeditious manner if such notification is accomplished through the FRA Web site and the ERD. A minor change is also made in this paragraph by correcting the cross-reference to paragraph (c) of this section.

*Section 211.45(e).* This paragraph identifies the required content of a petition for emergency waiver. To be considered under the emergency waiver procedures, FRA must first determine that the petition is directly related to the occurrence of, or imminent threat of, an emergency event or an emergency situation. FRA will base its determination on the information provided in the petition. Thus, the petition should contain information that sufficiently demonstrates the relationship between the emergency event or emergency situation and the waiver relief being sought. This direct final rule does not modify the existing provision and is included in this document for the convenience of interested parties.

*Section 211.45(f).* This paragraph instructs the public on how to submit a petition under the emergency waiver procedures. FRA is permitting submission by e-mail, facsimile, or mail. Permitting a variety of methods for submitting petitions for emergency waiver is intended to enhance the convenience and effectiveness of the process during the occurrence of, or imminent threat of, an emergency event

or emergency situation. The direct final rule includes a minor technical amendment to the existing provision by updating the submission information to include FRA's current address which changed subsequent to the issuance of the original rule.

*Section 211.45(g).* This paragraph contains information regarding FRA's handling of waiver petitions under the emergency waiver procedures. After FRA declares that the emergency procedures are in effect, it will accept petitions for emergency waivers. Petitions that are determined to be directly related to an emergency will be placed in the ERD for that year. The FeP numbers each document that is added to a docket. Thus, each petition submitted to the ERD will have a unique document number. For reference purposes, this document number should be identified on all communications related to that particular waiver petition. The only change being made by this direct final rule to the existing provision is a technical amendment so that this paragraph refers to the Federal eRulemaking Portal which replaced the DOT Docket Management System.

*Section 211.45(h).* This paragraph explains the comment process. During emergency situations and emergency events the public interest requires an expedited review process to ensure public safety. The Administrator may waive compliance with any part of a regulation prescribed or order issued without prior notice and comment. However, comments may be submitted pursuant to the direction in this paragraph, and FRA will consider such comments to the extent practicable. This direct final rule amends the existing provision by specifically stating that FRA's Administrator is able to issue waivers in an emergency situation without prior notice and comment. The Act provides FRA with this authority. Thus, although interested parties are free to submit comments and request hearings, FRA is not required to address them or conduct such hearings prior to deciding a petition. The only other changes being made by this direct final rule to the existing provision are minor technical amendments. These include a reference to the Federal eRulemaking Portal and <http://www.regulations.gov> which replaced the DOT Docket Management System and a correction to the submission information to include FRA's current address which changed subsequent to the issuance of the original rule.

*Section 211.45(i).* This paragraph describes how FRA will handle requests for hearing. As noted, the Administrator may waive compliance with any part of

a regulation prescribed or order issued without prior notice and comment. Pursuant to the direction in this paragraph, a hearing may be requested. FRA may arrange a telephone conference between interested parties, a public hearing pursuant to this part, or may determine that a public hearing is unnecessary. This direct final rule amends the existing provision by specifically stating that FRA's Administrator is able to issue waivers in an emergency situation without prior notice and comment. The Act provides FRA with this authority. Thus, although interested parties are free to submit comments and request hearings, FRA is not required to address them or conduct such hearings prior to deciding a request for relief related to an emergency situation or event.

*Section 211.45(j).* This paragraph identifies the process by which FRA will make decisions on emergency waivers including: FRA's consideration of the petition; FRA's notification of the decision; the limits of any relief granted under the procedures, and FRA's right to reopen a docket and reconsider a decision.

The ability to grant or deny a petition without delay is essential to ensuring public safety during an emergency. In addition, the opportunity to reconsider a petition after the initial decision is made will ensure a robust deliberation. FRA's understanding of an emergency may change as the emergency event develops. Accordingly, the public will benefit from FRA's ability to reconsider decisions, and make appropriate adjustments based on further information. During an emergency it is a priority to address petitions for emergency waiver and to make decisions without delay.

Posting the decision letters in the appropriate ERD will provide notice to interested parties. The FeP Internet site that is identified in the rule text allows any interested party to receive, without fee, automatic notification via e-mail of ERD documents, including the Administrator's determination that emergency waiver procedures are in effect.

This paragraph also makes clear that any relief granted under these procedures may be issued for a period of not more than 60 days. If relief is needed for a period of time beyond 60 days, such relief may only be renewed upon application to the Administrator, after notice and an opportunity for a hearing on the waiver. FRA will consult and coordinate with other Federal agencies, as appropriate, for matters that may impact such agencies.

As discussed above, this direct final rule amends the existing provisions contained in this paragraph to make them consistent with the requirements and limitations contained in the Act. The final rule makes clear that FRA's Administrator is able to grant and issue decisions on waivers in an emergency situation without prior notice and comment. This final rule also adopts the specific time limits related to emergency waivers contained in the Act by changing the nine month limitation on the effectiveness of such waivers to the statutorily imposed 60-day limit. This paragraph is also amended to note that FRA will consult and coordinate with other Federal agencies on any matters that may impact such agencies. This broad language is intended to incorporate the existing narrow language noting that FRA will consult with the Department of Homeland Security on matters that significantly impact the mission of that agency.

#### Notice and Comment Procedures

FRA has determined that these miscellaneous revisions are non-controversial, affect FRA internal procedures, and/or involve non-substantive clarifications to existing rules. While FRA does not anticipate any adverse comment, interested parties may submit written comments or request an oral hearing on these amendments during the thirty (30) day period immediately following publication of this direct final rule.

#### Regulatory Impact

##### *Executive Order 12866 and DOT regulatory policies and procedures*

This direct final rule has been evaluated in accordance with Executive Order 12866 and DOT policies and procedures. The modifications contained in this direct final rule are considered non-significant because they are intended to merely revise internal FRA procedures for handling waivers directly related to an emergency, and for individual disqualification from performing safety-sensitive functions, and to make these procedures consistent with §§ 305 and 308 of the Rail Safety Improvement Act of 2008. FRA does not expect a change in the number of emergency waivers or the level of effort associated with the developing or processing of these as a result of the amendments to the procedures for handling waivers. In addition, FRA does not expect the impact of the amendments to the procedures for disqualification to result in more than a very minimal increase in the number of disqualification cases, if any. In the

nearly twenty years that existing disqualification procedures have been in effect, only sixteen disqualification cases have been initiated. Overall, the economic impact of the amendments to the procedures contained in this direct final rule may potentially increase compliance costs nominally. The benefits resulting from the prompt and efficient conduct of proceedings, while affording administrative due process, are expected to fully justify any additional burden.

#### *Regulatory Flexibility Act*

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of proposed and final rules to assess their impact on small entities, unless the Secretary certifies that the rule will not have a significant economic impact on a substantial number of small entities. Pursuant to Section 312 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), FRA has issued a final policy that formally establishes "small entities" as including railroads that meet the line-haulage revenue requirements of a Class III railroad. 49 CFR part 209, app. C. For other entities, the same dollar limit in revenues governs whether a railroad, contractor, or other respondent is a small entity. *Id.*

FRA certifies that this direct final rule will have no significant economic impact on a substantial number of small entities. FRA does not expect a change in the number of emergency waivers filed by small entities or the level of effort associated with the developing or processing of these as a result of the amendments to the procedures for handling waivers. There are approximately 520 railroads that are considered small entities. In the nearly twenty years that existing disqualification procedures have been in effect, only three disqualification cases have been initiated involving small railroads. Since this universe of railroads would be the same universe impacted by this rulemaking, and the number of overall disqualification cases is not expected to increase significantly, FRA does not expect the impact of the amendments to the procedures for disqualification involving small entities to impact a significant number of small railroads. Although there is a potential, FRA has concluded that there are no substantial economic impacts on small entities. To the extent that this rule has any impact on small entities, the impact will not be significant.

#### *Paperwork Reduction Act*

There is no additional burden associated with the expanded scope of

disqualification proceedings under the revised requirements of Part 209 of this rule. Any burden associated with the current requirements of Part 209 is already covered under OMB No. 2130-0529, which currently expires February 28, 2010. The burden for waiver petitions is included separately under the OMB currently approved collection of information associated with each agency rulemaking. Any burden associated with the requirements for emergency waiver petitions in this final rule will be included separately in each collection of information associated with that particular agency rulemaking, either at the time agency re-approval is sought from OMB or at the time an agency rulemaking is newly published or revised and the agency seeks OMB approval for the corresponding collection of information.

#### *Environmental Impact*

FRA has evaluated this direct final rule in accordance with its "Procedures for Considering Environmental Impacts" ("FRA's Procedures") (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this document is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA's Procedures. 64 FR 28545, 28547, May 26, 1999. In accordance with section 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this direct final rule that might trigger the need for a more detailed environmental review. As a result, FRA finds that this direct final rule is not a major Federal action significantly affecting the quality of the human environment.

#### *Federalism Implications*

FRA believes it is in compliance with Executive Order 13132. This rulemaking action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132. This rulemaking will not have a substantial direct effect on States, on the relationship between the National Government and the States, or on the distribution of power and the responsibilities among the various levels of government, as specified in Executive Order 13132. Accordingly, FRA has determined that this rulemaking will not have sufficient

federalism implications to warrant consultation with State and local officials or the preparation of a federalism assessment. Accordingly, a federalism assessment has not been prepared.

*Unfunded Mandates Reform Act of 1995*

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4, 2 U.S.C. 1531), each Federal agency "shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law)." Section 202 of the Act (2 U.S.C. 1532) further requires that "before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$128,100,000 or more in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement" detailing the effect on State, local, and tribal governments and the private sector. Because this direct final rule will not change any regulatory requirements, this document will not result in the expenditure, in the aggregate, of \$128,100,000 or more in any one year, and thus preparation of such a statement is not required.

*Energy Impact*

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any "significant energy action." 66 FR 28355 (May 22, 2001). Under the Executive Order, a "significant energy action" is defined as any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking that: (1)(i) Is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this direct final rule in accordance with Executive Order 13211. Because the miscellaneous revisions will not change any regulatory

requirements, FRA has determined that this direct final rule will not have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this regulatory action is not a "significant energy action" within the meaning of Executive Order 13211.

*Privacy Act Information*

Interested parties should be aware 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 comment (or signing the comment, 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://www.regulations.gov>.

**List of Subjects**

*49 CFR Part 209*

Administrative practice and procedure, Hazardous materials transportation, Penalties, Railroad safety, Reporting and recordkeeping requirements.

*49 CFR part 211*

Administrative practice and procedure, Railroad safety.

**Adoption of the Amendment**

■ In consideration of the foregoing, FRA amends part 209 and part 211 of chapter II, subtitle B of title 49, Code of Federal Regulations, as follows:

**PART 209—[AMENDED]**

■ 1. The authority citation for part 209 continues to read as follows:

**Authority:** 49 U.S.C. 5123, 5124, 20103, 20107, 20111, 20112, 20112, 20114, 28 U.S.C. 2461, note; and 49 CFR 1.49.

■ 2. Section 209.301 is amended by revising paragraph (a) to read as follows:

**§ 209.301 Purpose and scope.**

(a) This subpart prescribes the rules of practice for administrative proceedings relating to the determination of an individual's fitness for performing safety-sensitive functions under the Federal railroad safety laws at 49 U.S.C. 20111(c).

\* \* \* \* \*

■ 3. Section 209.303 is revised to read as follows:

**§ 209.303 Coverage.**

This subpart applies to the following individuals:

(a) Railroad employees who are assigned to perform service subject to

the Hours of Service Act (49 U.S.C. Chapt. 211) during a duty tour, whether or not the person has performed or is currently performing such service, and any person who performs such service.

(b) Railroad employees or agents who:

(1) Inspect, install, repair, or maintain track and roadbed;

(2) Inspect, repair or maintain, locomotives, passenger cars, and freight cars;

(3) Conduct training and testing of employees when the training or testing is required by the FRA's safety regulations; or

(4) Perform service subject to the Transportation of Hazardous Materials laws (49 U.S.C. Chapt. 51), or any regulation or order prescribed thereunder;

(c) Railroad managers, supervisors, or agents when they:

(1) Perform the safety-sensitive functions listed in paragraphs (a) and (b) of this section;

(2) Supervise and otherwise direct the performance of the safety-sensitive functions listed in paragraphs (a) and (b) of this section; or

(3) Are in a position to direct the commission of violations of any of the requirements of parts 213 through 241 of this title, or any of the requirements of 49 U.S.C. Chapt. 51, or any regulation or order prescribed thereunder.

■ 4. Section 209.327 is amended by revising paragraph (c) to read as follows:

**§ 209.327 Appeal.**

\* \* \* \* \*

(c) The Administrator may extend the period for filing an appeal or a response for good cause shown, provided the written request for extension is served before the expiration of the applicable period provided in paragraph (a) or (b) of this section.

\* \* \* \* \*

■ 5. Section 209.329 is revised to read as follows:

**§ 209.329 Assessment considerations.**

(a) Proof of a respondent's willful violation of one of the requirements of parts 213 through 241 (excluding parts 225, 228, and 233) of this title, or of one of the requirements of 49 U.S.C. Chapt. 51, or any regulation or order prescribed thereunder, establishes a rebuttable presumption that the respondent is unfit to perform the safety-sensitive functions described in § 209.303. Where such presumption arises, the respondent has the burden of establishing that, taking account of the factors in paragraph (b) of this section, he or she is fit to perform the foregoing safety-sensitive functions for the period and under the other

conditions, if any, proposed in the notice of proposed disqualification.

(b) In determining respondent's lack of fitness to perform safety-sensitive functions and the duration and other conditions, if any, of appropriate disqualification orders under §§ 209.309, 209.323, and 209.327, the factors to be considered, to the extent each is pertinent to the respondent's case, include but are not limited to the following:

(1) The nature and circumstances of the violation, including whether the violation was intentional, technical, or inadvertent, was committed willfully, or was frequently repeated;

(2) The adverse impact or the potentially adverse impact of the violation on the health and safety of persons and the safety of property;

(3) The employing railroad's operating rules, safety rules, and repair and maintenance standards;

(4) Repair and maintenance standards adopted by the railroad industry;

(5) The consistency of the conditions of the proposed disqualification with disqualification orders issued against other employees of the employing railroad for the same or similar violations;

(6) Whether the respondent was on notice of any safety regulations that were violated or whether the respondent had been warned about the conduct in question;

(7) The respondent's past record of committing violations of safety regulations, including previous FRA warnings issued, disqualifications imposed, civil penalties assessed, railroad disciplinary actions, and criminal convictions therefor;

(8) The civil penalty scheduled for the violation of the safety regulation in question;

(9) Mitigating circumstances surrounding the violation, such as the existence of an emergency situation endangering persons or property and the need for the respondent to take immediate action; and

(10) Such other factors as may be warranted in the public interest.

## PART 211—[AMENDED]

■ 6. The authority citation for part 211 continues to read as follows:

**Authority:** 49 U.S.C. 20103, 20107, 20114, 20306, 20502–20504, and 49 CFR 1.49.

■ 7. Section 211.45 is revised to read as follows:

\* \* \* \* \*

### § 211.45 Petitions for emergency waiver of safety rules.

(a) *General.* This section applies only to petitions for waiver of a safety rule, regulation, or standard that FRA determines are directly related to the occurrence of, or imminent threat of, an emergency event or an emergency situation. For purposes of this section, the terms “emergency event” and “emergency situation” mean a natural or manmade disaster, such as a hurricane, flood, earthquake, mudslide, forest fire, snowstorm, terrorist act, biological outbreak, release of a dangerous radiological, chemical, explosive, or biological material, or a war-related activity, that poses a risk of death, serious illness, severe injury, or substantial property damage. The disaster may be local, regional, or national in scope.

(b) *Emergency Relief Docket.* Each calendar year FRA creates an Emergency Relief Docket (ERD) in the publicly accessible Federal eRulemaking Portal (FeP). The FeP can be accessed 24 hours a day, seven days a week, via the Internet at the docket's Web site at <http://www.regulations.gov>. All documents in the FeP are available for inspection and copying on the Web site or are available for examination at the DOT Docket Management Facility, West Building Ground Floor, Room W12–140, 1200 New Jersey Ave., SE., Washington, DC 20590 during regular business hours (9 a.m.–5 p.m.). By January 31st of each year, FRA publishes a notice in the **Federal Register** identifying by docket number the ERD for that year. A notice will also be placed in the previous year's ERD identifying the new docket number.

(c) *Determining the existence of an emergency event or an emergency situation.* If the Administrator determines that an emergency event or an emergency situation identified in paragraph (a) of this section has occurred, or that an imminent threat of it occurring exists, and determines that public safety or recovery efforts require that the provisions of this section be implemented, the Administrator will activate the Emergency Relief Docket identified in paragraph (b) of this section. In determining whether an emergency exists, the Administrator may consider declarations of emergency made by local, State, or Federal officials, and determinations by the Federal government that a credible threat of a terrorist attack exists.

(d) *Notification.* When possible, FRA will post the FRA Administrator's determination described in paragraph (c) of this section on its Web site at <http://www.fra.dot.gov>. FRA will also

place the FRA Administrator's determination in the ERD as soon as practicable.

(e) *Content of petitions for emergency waivers.* Petitions submitted to FRA pursuant to this section should specifically address how the petition is related to the emergency, and to the extent practicable, contain the information required under § 211.9(a) and (b). The petition should at a minimum describe the following: how the petitioner or public is affected by the emergency (including the impact on railroad operations); what FRA regulations are implicated by the emergency (e.g., movement of defective equipment); how waiver of the implicated regulations would benefit petitioner during the emergency; and how long the petitioner expects to be affected by the emergency.

(f) *Filing requirements.* Petitions filed under this section, shall be submitted using any of the following methods:

(1) E-mail to FRA at:

*RRS.Correspondence@fra.dot.gov*;

(2) Facsimile to FRA at: 202–493–6309; or

(3) Mail to FRA at: FRA Docket Clerk, Office of Chief Counsel, RCC–10, Mail Stop 10, 1200 New Jersey Ave. SE., Washington, DC 20590, facsimile no. 202–493–6068.

(g) *FRA Handling and Initial Review.* Upon receipt and initial review of a petition for waiver, to verify that it meets the criteria for use of these emergency procedures, FRA will add the petition to the ERD. The FeP numbers each document that is added to a docket. (For example, the first document submitted to the docket in 2009 will be identified as FRA–2009–XXX–1.) Thus, each petition submitted to the ERD will have a unique document number which should be identified on all communications related to petitions contained in this docket. If FRA determines that the petition does not meet the criteria for use of these emergency procedures, FRA will notify the petitioner and will process the petition under normal waiver procedures of this subpart.

(h) *Comments.* Although the Administrator may waive compliance with any part of a regulation prescribed or order issued without prior notice and comment, comments may be submitted. Comments should be submitted as soon as possible, after a petition is available on the FeP. Any comment received will be considered to the extent practicable. All comments should identify the appropriate ERD and should identify the specific document number of the petition designated by the FeP in the ERD. Interested parties commenting on

a petition under this section should also include in their comments to the ERD telephone numbers at which their representatives may be reached. Interested parties may submit their comments using any of the following methods:

(1) E-mail to FRA at:

*RRS.Correspondence@fra.dot.gov*.

(2) Facsimile to FRA at: 202-493-6309.

(3) Mail to the Docket Clerk, DOT Docket Management Facility, West Building Ground Floor, Room W12-140, 1200 New Jersey Ave., SE., Washington, DC 20590 or electronically via the internet at <http://www.regulations.gov>. Any comments or information sent directly to FRA will be immediately provided to the DOT FeP for inclusion in the ERD.

(i) *Request for hearing.* Although the Administrator may waive compliance with any part of a regulation prescribed or order issued without prior notice and comment, parties desiring a public hearing on any petition being processed under this section must notify FRA through the comment process identified in paragraph (h) of this section within 72 hours from the close of business on the day that the petition is entered into and available on the FeP. In response to a request for a public hearing, FRA may:

(1) Arrange a telephone conference between all interested parties to provide an opportunity for oral comment;

(2) Arrange a public hearing pursuant to the provisions contained in 49 CFR part 211; or

(3) Determine that a public hearing is unnecessary, inconsistent with safety, or not in the public interest.

(j) *Decisions.* FRA may grant a petition for waiver without prior notice and comment if the Administrator determines that it is in the public interest to grant the waiver; the waiver is not inconsistent with railroad safety; and the waiver is necessary to address an actual or impending emergency situation or emergency event. The Administrator will state in the decision issued under this section the reasons for granting the waiver.

(1) FRA reserves the right to reopen any docket and reconsider any decision made pursuant to these emergency procedures based upon its own initiative or based upon information or comments otherwise received.

(2) FRA decision letters, either granting or denying a petition, will be posted in the appropriate ERD and will reference the document number of the petition to which it relates.

(3) A waiver under this section may be issued for a period of not more than 60 days and may be renewed upon

application to the Administrator only after notice and an opportunity for a hearing on the waiver. The Administrator will immediately revoke the waiver if continuation of the waiver would not be consistent with the goals and objectives of this part.

(4) In granting a waiver under this section, the Administrator will consult and coordinate with other Federal agencies, as appropriate, for matters that may significantly impact such agencies.

Issued in Washington, DC, on May 13, 2009.

**Joseph Szabo,**

*Administrator, Federal Railroad Administration.*

[FR Doc. E9-11598 Filed 5-18-09; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 92

[FWS-R7-MB-2008-0126; 91200-1231-9BPP-L2]

RIN 1018-AW29

#### Migratory Bird Subsistence Harvest in Alaska; Harvest Regulations for Migratory Birds in Alaska During the 2009 Season

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service or we) establishes migratory bird subsistence harvest regulations in Alaska for the 2009 season. These regulations will enable the continuation of customary and traditional subsistence uses of migratory birds in Alaska and prescribe regional information on when and where the harvesting of birds may occur. These regulations were developed under a co-management process involving the Service, the Alaska Department of Fish and Game, and Alaska Native representatives. The rulemaking is necessary because the regulations governing the subsistence harvest of migratory birds in Alaska are subject to annual review. This rulemaking establishes region-specific regulations that go into effect on the date of publication in the **Federal Register** and expire on August 31, 2009.

**DATES:** The amendments to subpart D of 50 CFR part 92 are effective May 19, 2009, through August 31, 2009.

**FOR FURTHER INFORMATION CONTACT:** Fred Armstrong, (907) 786-3887, or

Donna Dewhurst, (907) 786-3499, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Mail Stop 201, Anchorage, AK 99503.

#### SUPPLEMENTARY INFORMATION:

#### Why Is This Current Rulemaking Necessary?

This current rulemaking is necessary because, by law, the migratory bird harvest season is closed unless opened by the Secretary of the Interior, and the regulations governing subsistence harvest of migratory birds in Alaska are subject to public review and annual approval. The Alaska Migratory Bird Co-management Council (Co-management Council) held a meeting in April 2008 to develop recommendations for changes effective for the 2009 harvest season. These recommendations were presented to the Service Regulations Committee (SRC) on July 30 and 31, 2008, and were subsequently proposed in a December 18, 2008, **Federal Register** (73 FR 76994).

This rule finalizes regulations for the taking of migratory birds for subsistence uses in Alaska during the spring and summer of 2009. This rule lists migratory bird season openings and closures by region.

#### How Do I Find the History of These Regulations?

Background information, including past events leading to this action, accomplishments since the Migratory Bird Treaties with Canada and Mexico were amended, and a history addressing conservation issues can be found in the following **Federal Register** documents:

Date	Federal Register Citation
August 16, 2002	67 FR 53511
July 21, 2003	68 FR 43010
April 2, 2004	69 FR 17318
April 8, 2005	70 FR 18244
February 28, 2006	71 FR 10404
April 11, 2007	72 FR 18318
March 14, 2008	73 FR 13788

These documents, which are all final rules setting forth the annual harvest regulations, are available at <http://alaska.fws.gov/ambcc/regulations.htm>.

#### Who Is Eligible To Hunt Under These Regulations?

Eligibility to harvest under the regulations established in 2003 was limited to permanent residents, regardless of race, in villages located