

(F) The residence is located in an insular area outside the continental United States or in another location where alternative housing resources are not available and the types of financial or direct temporary housing assistance described in paragraphs (b)(1), (2), and (3) of this section are unavailable, infeasible, or not cost-effective.

(ii) Permanent and semi-permanent housing construction, in general, must be consistent with current minimal local building codes and standards where they exist, or minimal acceptable construction industry standards in the area, including reasonable hazard mitigation measures, and Federal environmental laws and regulations. Dwellings will be of average quality, size and capacity, taking into consideration the needs of the occupant.

(iii) If the applicant disputes a determination made by FEMA regarding eligibility for construction assistance, the applicant may appeal that determination pursuant to the procedures in § 206.115. In addition to the requirements in § 206.115, the applicant must provide proof that the property is either located in an insular area outside the continental United States, or in a location where alternative housing resources are not available. The applicant must also provide proof that the types of financial or direct temporary housing assistance described in paragraph (b)(1) of this section are unavailable, infeasible, or not cost effective. If the applicant disputes the amount of construction assistance awarded, the applicant must also provide justification for the amount sought.

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

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**DEPARTMENT OF TRANSPORTATION**

**Surface Transportation Board**

**49 CFR Part 1141**

[Docket No. EP 715]

**Rate Regulation Reforms**

**AGENCY:** Surface Transportation Board, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Surface Transportation Board (Board) proposes to change some of its existing regulations and procedures concerning rate complaint proceedings. The Board previously

created two simplified procedures to reduce the time, complexity, and expense of rate cases. The Board now proposes to modify its rules to remove the limitation on relief for one simplified approach, and to double the relief available under the other simplified approach. The Board also proposes technical changes to the full and simplified rate procedures, and to raise the interest rate that railroads must pay on reparations if they are found to have charged unreasonable rates. The overarching goal is to ensure that the Board's simplified and expedited processes for resolving rate disputes are more accessible.

**DATES:** Comments addressing the proposals discussed herein are due by October 23, 2012. Replies are due by December 7, 2012. Rebuttal submissions are due by January 7, 2013.

**ADDRESSES:** Comments on this proposal may be submitted either via the Board's e-filing format 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 715, 395 E Street SW., Washington, DC 20423-0001.

Copies of written comments will be available for viewing and self-copying at the Board's Public Docket Room, Room 131, and will be posted to the Board's Web site.

**FOR FURTHER INFORMATION CONTACT:** The Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245-0238. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at (800) 877-8339.

**SUPPLEMENTARY INFORMATION:** The Board proposes to modify some of its existing regulations and procedures regarding rate complaint proceedings. The Board's proposal is in four parts. Part I proposes refinements to the Simplified Stand-Alone Cost test by removing the limit on relief and increasing the precision of the calculation of Road Property Investment. Part II proposes to raise the limit on relief for a case brought under the Three-Benchmark test from \$1 million to \$2 million. Part III proposes to limit the use of cross-over traffic in a Full Stand-Alone Cost rate complaint proceeding and to modify the revenue allocation methodology. Part IV proposes to change the interest rate carriers must pay shippers when the rate charged has been found unlawfully

high, from the current T-bill rate to the U.S. Prime Rate, as published in *The Wall Street Journal*.

Additional information is contained in the Board's decision served on July 25, 2012. To obtain a copy of this decision, visit the Board's Web site at <http://www.stb.dot.gov>. Copies of the decision may also be purchased by contacting the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245-0238.

The Regulatory Flexibility Act of 1980, 5 U.S.C. §§ 601-612, generally requires a description and analysis of new rules that would have a significant economic impact on a substantial number of small entities. In drafting a rule, an agency is required to: (1) Assess the effect that its regulation will have on small entities; (2) analyze effective alternatives that may minimize a regulation's impact; and (3) make the analysis available for public comment. 5 U.S.C. §§ 601-604. In its notice of proposed rulemaking, the agency must either include an initial regulatory flexibility analysis, 5 U.S.C. § 603(a), or certify that the proposed rule would not have a "significant economic impact on a substantial number of small entities," 5 U.S.C. § 605(b). The impact must be a direct impact on small entities "whose conduct is circumscribed or mandated" by the proposed rule. *White Eagle Coop. Ass'n v. Conner*, 553 F.3d 467, 480 (7th Cir. 2009). An agency has no obligation to conduct a small entity impact analysis of effects on entities that it does not regulate. *United Dist. Cos. v. FERC*, 88 F.3d 1105, 1170 (D.C. Cir. 1996).

This proposal would not have a significant economic impact upon a substantial number of small entities, within the meaning of the Regulatory Flexibility Act. The proposal imposes no additional record keeping by small railroads or any reporting of additional information. Nor do these proposed rules circumscribe or mandate any conduct by small railroads that is not already required by statute: the establishment of reasonable transportation rates. Small railroads have always been subject to rate reasonableness complaints and their associated litigation costs. Small railroads have been subject to the simplified rate procedures since 1996, when those procedures were first created. Finally, as the Board has previously concluded, the majority of railroads involved in these rate proceedings are not small entities within the meaning of the Regulatory Flexibility Act. *See Simplified Standards*, slip op. at 33-34. In the 32 years since the passage of the Staggers

Act—when Congress limited the Board's rate reasonableness jurisdiction where a carrier has market dominance over the transportation at issue—virtually all rate challenges have involved large Class I carriers. Therefore, the Board certifies under 5 U.S.C. 605(b) that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

#### List of Subjects in 49 CFR Part 1141

Administrative practice and procedure.

Decided: July 25, 2012.

By the Board, Chairman Elliott, Vice Chairman Mulvey, and Commissioner Begeman.

**Raina S. White,**  
Clearance Clerk.

For the reasons set forth in the preamble, the Surface Transportation Board proposes to amend part 1141 of title 49, chapter X, of the Code of Federal Regulations as follows:

1. Revise part 1141 to read as follows:

#### PART 1141—PROCEDURES TO CALCULATE INTEREST RATES

**Authority:** 49 U.S.C. 721.

##### § 1141.1 Procedures to calculate interest rates.

(a) For purposes of complying with a Board decision in an investigation or complaint proceeding, interest rates to be computed shall be the most recent U.S. Prime Rate as Published by The Wall Street Journal. The rate levels will be determined as follows:

(1) For investigation proceedings, the interest rate shall be the U.S. Prime Rate as published by The Wall Street Journal in effect on the date the statement is filed accounting for all amounts received under the new rates.

(2) For complaint proceedings, the interest rate shall be the U.S. Prime Rate as published by The Wall Street Journal in effect on the day when the unlawful charge is paid. The interest rate in complaint proceedings shall be updated whenever The Wall Street Journal publishes a change to its reported U.S. Prime Rate. Updating will continue until the required reparation payments are made.

(b) For investigation proceedings, the reparations period shall begin on the date the investigation is started. For complaint proceedings, the reparations

period shall begin on the date the unlawful charge is paid.

(c) For both investigation and complaint proceedings, the annual percentage rate shall be the same as the annual nominal (or stated) rate. Thus, the nominal rate must be factored exponentially to the power representing the portion of the year covered by the interest rate. A simple multiplication of the nominal rate by the portion of the year covered by the interest rate would not be appropriate because it would result in an effective rate in excess of the nominal rate. Under this “exponential” approach, the total cumulative reparations payment (including interest) is calculated by multiplying the interest factor for each period by the principal amount for that period plus any accumulated interest from previous periods. The “interest factor” for each period is 1.0 plus the interest rate for that period to the power representing the portion of the year covered by the interest rate.

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#### DEPARTMENT OF COMMERCE

##### National Oceanic and Atmospheric Administration

##### 50 CFR Part 600

[Docket No. 120409402–2402–01]

RIN 0648–BB06

##### Second Fishing Capacity Reduction Program for the Longline Catcher Processor Subsector of the Bering Sea and Aleutian Islands Non-Pollock Groundfish Fishery

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes regulations to implement a second fishing capacity reduction program (also commonly known as “buyback”) and an industry fee system to repay a \$2.7 million loan for a single latent permit within the Longline Catcher Processor Subsector of the Bering Sea and Aleutian Islands (BSAI) non-pollock groundfish fishery (Reduction Fishery). The purpose of this action is to permanently reduce the greatest amount of fishing capacity at the least cost. This should result in increased harvesting productivity for the permit holders remaining in the fishery. The loan for this program will

be added to the previous program loan of \$35,700,000 authorized by the FY 2005 Appropriations Act (the Appropriations Act). For purposes of this regulation, the terms license and permit are used interchangeably.

**DATES:** Comments must be submitted in writing on or before August 29, 2012.

**ADDRESSES:** You may submit comments, identified by [NOAA–NMFS–2012–0050] by any of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>; to submit comments via the e-Rulemaking Portal, first click the “submit a comment” icon, then enter [NOAA–NMFS–2012–0050] in the keyword search. Locate the document you wish to comment on from the resulting list and click on the “submit a comment” icon on the right of that line.

- **Mail:** Submit written comments to Paul Marx, Chief, Financial Services Division, NMFS, Attn: BSAI Non-Pollock Groundfish Buyback Rulemaking, 1315 East-West Highway, Silver Spring, MD 20910.

- **Fax:** 301–713–1306; Submit comment Attn: Paul Marx.

**Instructions:** Comments must be submitted by one of the above methods to ensure that they are duly received and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, will not be considered. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel; WordPerfect, or Adobe PDF file formats only.

Copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for this action may be obtained from the mailing address above or by calling Michael A. Sturtevant (see **FOR FURTHER INFORMATION CONTACT**).

Send comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule to Michael A. Sturtevant at the address