the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this action effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

Brucellosis is a contagious, costly disease of ruminant and other animals that can also affect humans. It is mainly a threat to cattle, bison, and swine. The disease causes decreased milk production, weight loss in animals, loss of young, infertility, and lameness. There is no known effective treatment. Depopulation of infected and exposed animals is the only effective means of disease containment and eradication.

The State of Montana has met all the requirements for obtaining Class Free status as outlined in the definition of ''Class Free State or area'' in § 78.1 of the regulations. This interim rule upgrades the brucellosis status of Montana from Class A to Class Free. Cattle and bison that are to be moved interstate from Class A States, except those moving directly to slaughter or to quarantined feedlots, must be tested before they are eligible for movement. Attaining Class Free status allows producers in Montana to forgo the cost of this testing.

Brucellosis testing, including veterinary fees and handling expenses, costs between $7.50 and $15 per test. The expenses eliminated as a result of this reclassification in status will not be significant for cattle owners in Montana. In 2007, there were 11,526 cattle and calf operations in Montana, with total sales of 1.84 million head of cattle.[1] The average per-head value in Montana was $1,050 in 2007.[2] Thus, the cost of testing would represent between 0.7 and 1.4 percent of the average value of the animal sold.

In 2001, 818,146 cattle moved interstate from Montana, excluding cattle moved directly to slaughter.[3] Assuming the current proportion of cattle moved interstate from Montana is similar to that in 2001, the overall annual cost for Montana cattle operations for brucellosis testing required under Class A classification is estimated to range between $6 million and $12 million.[4] These costs will not be borne with promulgation of this rule.

The Small Business Administration has established guidelines for determining whether an enterprise is considered small under the Regulatory Flexibility Act. An enterprise producing cattle and calves (North American Industry Classification System [NAICS] code 112111) is considered small if it has annual receipts of $750,000 or less. There were 11,526 farms with sales of cattle and calves in Montana in 2007. Over 98 percent of these farms had annual receipts not exceeding $750,000.[5]

We expect that the majority of cattle and calves operations that will be affected by the interim rule are small entities. The interim rule will benefit producers that sell cattle and calves out of State for breeding and feeding purposes. However, the savings from the forgone testing will be very small, estimated to be between 0.7 percent and 1.4 percent of the value of the animals sold.

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

Executive Order 12372

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

Executive Order 12988

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

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

■ Accordingly, we are amending 9 CFR part 78 as follows:

PART 78—BRUCELLOSIS

■ 1. The authority citation for part 78 continues to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

§ 78.41 [Amended]

■ 2. Section 78.41 is amended as follows:

■ a. In paragraph (a), by adding the word ''Montana,'' after the word ''Missouri,''.

■ b. In paragraph (b), by removing the word ''Montana'' and adding the word ''None'' in its place.

Done in Washington, DC, this 6th day of July 2009.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E9–16336 Filed 7–9–09; 8:45 am]

BILLING CODE 3410–34–P

FEDERAL ELECTION COMMISSION

11 CFR Part 111

[Notice 2009–12]

Procedural Rules for Audit Hearings

AGENCY: Federal Election Commission.

ACTION: Rule of Agency Procedure.

SUMMARY: The Federal Election Commission (''Commission'') is

[1] USDA/National Agricultural Statistics Service (NASS), Cattle, released January 30, 2009.

[2] USDA/NASS, Meat Animal Production, Disposition, and Income: 2007 Summary, April 2008.

[3] Dennis A Shields and Kenneth H Mathews, Interstate Livestock Movements, USDA/Economic Research Service (ERS), LDP–M–108–01, June 2003 (*http://www.ers.usda.gov/publications/ldp/jun03/ldpm10801/ldpm10801.pdf*), and *http://www.ers.usda.gov/Data/InterstateLivestockMovements/StateShipments.xls.*

[4] We base this estimate on Montana's 2007 cattle inventory. The total cattle inventories in 2001 and 2007 were 2,550,000 and 2,589,679, respectively. The calculated values were obtained as follows: (1) $6.2 million (= 818,146/2,550,000*2,589,679*$7.5=$6,231,575) and (2) $12.5 million (=818,146/2,550,000*2,589,679*$15=$12,463,150). Cattle numbers are from USDA/NASS, Cattle, released on February 1, 2002 (*http://usda.mannlib.cornell.edu/usda/nass/Catt/2000s/2002/Catt-02-01-2002.pdf*) and USDA/NASS, 2007 Census of Agriculture.

[5] Based upon 2007 Census of Agriculture—State Data and the ''Small Business Size Standards by NAICS Industry,'' Code of Federal Regulations, Title 13, Chapter I.

instituting a program that provides committees that are audited pursuant to the Federal Election Campaign Act of 1971, as amended (''FECA'') with the opportunity to have a hearing before the Commission prior to the Commission's adoption of a Final Audit Report. Similar to the Commission's current program for hearings at the probable cause stage of the enforcement process, audit hearings will provide audited committees with the opportunity to present oral arguments to the Commission directly and give the Commission an opportunity to ask relevant questions prior to adopting a Final Audit Report. Further information about the procedures for the audit program is provided in the supplementary information that follows.

DATES: Effective July 27, 2009.

FOR FURTHER INFORMATION CONTACT: Joseph F. Stoltz, Assistant Staff Director, Audit Division, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Commission is instituting a program to afford committees that are the subject of a Commission audit the opportunity to participate in hearings (generally through counsel) and present oral arguments directly to the Commissioners prior to any Commission adoption of an audit report that includes findings that assert a potential violation of law.

I. Background

On June 11, 2003, the Commission held a hearing concerning its enforcement procedures. The Commission received comments from the public, many of which argued for increased transparency in Commission procedures and expanded opportunities to contest allegations. Comments and statements for the record are available at: *http://www.fec.gov/agenda/agendas2003/notice2003–09/comments.shtml.* In response to issues raised at the hearing, the Commission issued new rules of agency procedure. *See* Statement of Policy Regarding Deposition Transcripts in Nonpublic Investigations, 68 FR 50688 (Aug. 22, 2003); Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings, 70 FR 3 (Jan. 3, 2005).

On December 8, 2006, the Commission published a proposal for a pilot program for probable cause hearings, and sought comments from the public. *See* Proposed Policy Statement Establishing Pilot Program for Probable Cause Hearings, 71 FR 71088 (Dec. 8, 2006). The comment period on the proposed policy statement closed on January 5, 2007. The Commission received four comments, all of which endorsed the proposed pilot program for probable cause hearings. These comments are available at: *http://www.fec.gov/law/policy.shtml#proposed* under the heading ''Pilot Program for Probable Cause Hearings.''

On February 8, 2007, the Commission decided by a vote of 6–0 to institute the pilot program. The program went into effect on February 16, 2007. The pilot program was designed to remain in effect for at least eight months, after which time a vote would be scheduled on whether the program should continue. The Commission found that the pilot program had been successful and the Commission announced that the program would become permanent. *See* Procedural Rules for Probable Cause Hearings, 72 FR 64919 (Nov. 19, 2007).

On December 8, 2008, the Commission issued a notice of public hearing and request for public comment on its compliance and enforcement processes. Agency Procedures (Notice of Public Hearing and Request for Public Comments), 73 FR 74495 (Dec. 8, 2008). On January 14–15, 2009, the Commission received comment and testimony regarding procedures and processes that it uses to resolve cases. At that time, many commenters praised the probable cause hearing program and some requested that a similar procedure be adopted with respect to other Commission processes, including audits. The comments received by the Commission, as well as the transcript of the hearing are available at: *http://www.fec.gov/law/policy/enforcement/publichearing011409.shtml.*

One of the questions specifically set forth in the Notice of public hearing and request for public comments was whether respondents should be given the opportunity to appear before the Commission at times such as when the Commission is considering audit reports that state violations of law. *See* 73 FR 74495, 97. Several commenters supported providing an opportunity for committees being audited to be heard directly by the Commission before the Commission issues a Final Audit Report. Based upon its experience with the probable cause hearing program, and public comments regarding hearings during the audit process, the Commission is instituting a new rule of agency procedure to expand the Commission's hearing procedures to include audits in which one or more findings assert a potential violation of law.

II. Procedures for Audit Hearings

A. Opportunity To Request a Hearing

The Commission is issuing a new rule of agency procedure allowing a committee that is being audited by the Commission's Audit Division to request a hearing prior to the Commission's adoption of a Final Audit Report when the Audit Division staff's draft Final Audit Report concludes that the committee violated FECA or Commission regulations. Currently, once the Audit Division completes its field work, it conducts an exit conference at which it presents its preliminary findings to the audited committee. Based upon the field work and the committee's response at the exit conference, the Audit Division prepares an interim or preliminary audit report that, in certain situations, the Commission considers in executive session prior to the report being sent to the committee being audited.[1] The committee then has the opportunity to respond in writing. The Audit Division then prepares a draft Final Audit Report for Commission consideration. If one or more Commissioners object to such report, the matter is discussed and decided in an open meeting of the Commission.

While all written submissions provided during the audit process are considered by the Commission under current practice, the Commission wishes to provide those being audited with an opportunity to address the Commission directly and in person, before the Commission considers adopting any Audit Division findings that a violation of the Act or Commission regulations occurred. Upon preparing its draft Final Audit Report, which takes into consideration the committee's exit conference discussion and response to the interim or preliminary audit report, the Audit Division will provide the audited committee with a copy of its draft Final Audit Report. In audits where the Audit Division recommends the Commission adopt findings that a violation of the Act or Commission regulations occurred, it shall attach a cover letter informing the committee of the opportunity to provide a written response and request an oral hearing before the Commission. Moreover, if the Office of General Counsel has provided any legal advice on the draft Final Audit Report, the Audit Division shall provide a copy of the Office of General Counsel's legal

[1] Pursuant to the Commission's regulations, the Audit Division prepares ''interim'' audit reports in Title 2 matters and ''preliminary'' audit reports in Title 26 matters.

memorandum to the committee. Within 15 days after receiving the draft Final Audit Report and any corresponding legal memoranda, the audited committee may respond in writing, and include a written request for a hearing. Any request for a hearing must be in writing and filed with the committee's response. Requestors who are unable to appear physically at a hearing may participate remotely, subject to the Commission's technical capabilities. Requestors wishing to participate remotely are advised to notify the Commission Secretary when they submit their written request for a hearing.

Hearings are voluntary, and the Commission will draw no adverse inference based on the committee's request for, or waiver of, such a hearing. Each request for a hearing must state with specificity why the hearing is being requested and what issues the committee expects to address. Absent good cause, to be determined at the sole discretion of the Commission, late requests will not be accepted. Committees are responsible for ensuring that their requests are timely received. The Commissioners shall be notified of any such request within 5 days of receipt of the response. The Commission will grant a request for an oral hearing if any two Commissioners agree that a hearing would help resolve significant or novel legal enforcement issues or significant questions about the application of the law to the facts. The Commission will inform the committee whether the Commission is granting the committee's request within 30 days of receipt of the request.

B. Hearing Procedures

The purpose of an oral hearing is to provide an audited committee with an opportunity to present their arguments in person to the Commissioners when the Audit Division staff's draft alleges that the committee violated FECA or Commission regulations, but *before* the Commission adopts the Final Audit Report. Consistent with current Commission regulations, a committee may be represented by counsel, at the committee's own expense, or may appear *pro se* at the oral hearing. *See* 11 CFR 111.23. Committees (or their counsel) will have the opportunity to present their arguments. Commissioners will have the opportunity to pose questions to the audited committee, or their counsel, if represented.

At the hearing, committees are expected to raise only issues that were identified in their hearing request. Similarly, absent extenuating circumstances, committees may not introduce any new documents at the hearing that were not previously provided to the Audit Division. Committees may discuss any issues presented in the Audit Division staff's draft Final Audit Report, and the request for a hearing should include specific citations to any authorities (including prior Commission actions) on which the committee is relying or intends to cite at the hearing. If audited committees discover new information after submission of their response to the draft Final Audit Report or need to raise new arguments for similarly extenuating circumstances, they should notify the Commission as soon as possible prior to the hearing. Commissioners may ask questions on any matter related to the audit and committees are free to raise any germane new issues in response.

Committees should notify the Secretary of the Commission at least one week prior to the scheduled date of the hearing if they intend to use charts, handouts, or audio-visual aids during their presentation to the Commission, to allow the Commission time to coordinate the handling of these arrangements with the court reporter and the Commission Secretary.

When non-final audit matters include information entitled to exemption under the Sunshine Act, a hearing will occur in an executive session of the Commission, and only the committee and their counsel may attend. Attendance by any other parties must be approved by the Commission in advance.

The Commission will determine the format and time allotted for each hearing at its discretion. Among the factors that the Commission may consider are agency time constraints, the complexity of the issues raised, and the extent of the Commission's interest. The Commission will determine the amount of time allocated for each portion of the hearing; the time limit may vary from hearing to hearing. The Commission anticipates that most hearings will begin with a brief opening statement by the committee or its counsel. Thereafter, Commissioners will have the opportunity to pose questions to the audited committee, and Commissioners may ask questions designed to elicit clarification from the Office of General Counsel or Office of the Staff Director. The General Counsel and the Staff Director will have the opportunity to pose questions to the audited committee, or their counsel, if represented. Hearings will normally conclude with closing remarks from the committee or its counsel.

Third-party witnesses may not be called to testify at an oral hearing. However, the Commission may request that the committee submit supplementary information or briefing after the hearing. The Commission discourages voluminous submissions. Supplementary information may be submitted only upon Commission request and no more than ten days after such a request from the Commission, unless the Commission's request for information imposes a different, Commission-approved deadline. Materials requested by the Commission and materials considered by the Commission in making its determination may be made part of the public record. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 FR 70426 (Dec. 18, 2003).

When the hearing is held in an executive session, the Commission will have transcripts made of the hearings. The transcript will become part of the record of the audit and may be relied upon for Commission determinations. Committees may be bound by any representations made by the committee or its counsel at the hearing. The Commission will make the transcripts available to the committee for inspection as soon as practicable after the hearing, and committees may purchase copies of the transcript. Transcripts may be made public after the matter is closed in accordance with Commission policies on disclosure. Additionally, the Committee's response to the draft Final Audit Report will be placed on the public record as part of the file of the Final Audit Report.

C. Scheduling of Hearings

The Commission will seek to hold the hearing in a timely manner after receiving a committee's request for a hearing. The Commission will attempt to schedule the hearing at a mutually accepted date and time. If a committee is unable to accommodate the Commission's schedule, however, the Commission may decline to hold a hearing. The Commission reserves the right to reschedule any hearing. Where necessary, the Commission reserves the right to request from a committee an agreement tolling any upcoming deadline, including any statutory deadline or other deadline found in 11 CFR part 111.

D. Pilot Program

The Commission shall evaluate this new program, and consider whether it should, by an affirmative four votes of the Commission, be discontinued or modified. After one calendar year, the program shall continue as a pilot program until such time that the

Commission either terminates it by an affirmative four votes or makes it permanent by an affirmative four votes.

E. Conclusion

This notice establishes rules of agency practice or procedure. This notice does not constitute an agency regulation requiring notice of proposed rulemaking, opportunities for public comment, prior publication, and delay effective under 5 U.S.C. 553 of the Administrative Procedures Act (''APA''). The provisions of the Regulatory Flexibility Act, 5 U.S.C. 605(b), which apply when notice and comment are required by the APA or another statute, are not applicable.

Dated: July 7, 2009.

On behalf of the Commission.

Steven T. Walther,

Chairman, Federal Election Commission.

[FR Doc. E9–16422 Filed 7–9–09; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0002; Airspace Docket No. 09–AWP–1]

Establishment of Class E Airspace; Kona, HI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action will establish Class E airspace at Kailua-Kona, HI. Additional controlled airspace is necessary to accommodate aircraft utilizing the Kona International Airport at Keahole, Kona, HI, when the Air Traffic Control Tower is non-operational. The FAA is taking this action to enhance the safety and management of aircraft operations at Kona International Airport at Keahole, Kona, HI.

DATES: *Effective Date:* 0901 UTC, October 22, 2009. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

History

On March 12, 2009, the FAA published in the **Federal Register** a notice of proposed rulemaking to establish additional controlled airspace at Kona, HI (74 FR 10691). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9S signed October 3, 2008, and effective October 31, 2008, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing the Class E airspace at Kailua-Kona, HI. Additional controlled airspace designated as surface areas is necessary to accommodate aircraft operations at Kona International Airport at Keahole, Kona, HI, during specific dates and times established in advance by a Notice to Airmen, when the Air Traffic Control Tower is non-operational.

The FAA has determined this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 discusses the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes additional controlled airspace at Kona International Airport at Keahole, Kona, HI.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E. O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9S, Airspace Designations and Reporting Points, signed October 3, 2008, and effective October 31, 2008 is amended as follows:

Paragraph 6002 Class E airspace Designated as Surface Areas.

* * * * *

AWP HI E2 Kailua-Kona, HI [New]

Kona International Airport at Keahole, HI
(Lat. 19°44′20″ N., long. 156°02′44″ W.)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4.3-mile radius of Kona International Airport at Keahole. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory, Pacific Chart Supplement.

* * * * *

Issued in Seattle, Washington, on June 30, 2009.

H. Steve Karnes,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. E9–16275 Filed 7–9–09; 8:45 am]

BILLING CODE 4910–13–P