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SURFACE TRANSPORTATION BOARD

DECISION

STB Ex Parte No. 685

REMOVAL OF DELEGATIONS OF AUTHORITY TO SECRETARY

Decided: October 5, 2009

AGENCY: Surface Transportation Board.

ACTION: Final Rules.

SUMMARY: The Surface Transportation Board (Board or STB) amends its regulations by eliminating the Secretary of the Board, reassigning the delegations of authority from the Secretary to other Offices of the Board, and making additional updates to eliminate incorrect or obsolete references. Because these administrative final rules amend internal agency practice and procedure, this action is exempt from the usual requirement for notice and an opportunity for public comment under 5 U.S.C. 553(b)(A) of the Administrative Procedure Act.

DATES: These rules are effective on November 16, 2009.

ADDRESSES: Information or questions regarding this final rule should reference STB Ex Parte No. 685 and be in writing addressed to: Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, 395 E Street, SW, Washington, DC 20423-0001.

FOR FURTHER INFORMATION CONTACT: Cynthia T. Brown at (202) 245-0350.  
[Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.]

SUPPLEMENTARY INFORMATION: The Board is revising its regulations to eliminate the Secretary of the Board, to reassign the delegations of authority from the Secretary to other Board Offices, and to make additional updates to eliminate incorrect or obsolete references. The regulations at 49 CFR part 1011, which provide the delegations of authority by the Board, and all other rules affected by the removal of delegations of authority from the Secretary will be revised to reflect the change in delegations and other updates. The Secretary is being eliminated to increase efficiency within the Board. The duties of the Secretary will be transferred to other Offices within the Board. These rules set out the new delegations and procedures for processing cases, appeals, and inquiries from the public.

*49 CFR 1001.1, Records available from the Board and  
49 CFR 1001.2, Certified copies of records*

In sections 1001.1(a) and 1001.2, which concern availability of Board records and certification of record copies, the Board removes the references to the Secretary. In section 1001.1(a), the Board changes the reference from Secretary to Records Officer, the new custodian of records for the Board. In section 1001.2, the Board changes the reference from the Secretary to the Records Officer, to reflect the Records Officer's new responsibility for certifying copies of records.

*49 CFR 1002.1, Fees for records search, review, copying,  
certification, and related services*

*Sections 1002.1(a), (g)(14)(vi), and (i).* The Board changes the references from the Secretary in sections 1002.1(a) and (i), which concern fees for records certification, records copying, and transcript purchases, to the Records Officer. Sections 1002.1(g)(14)(vi) and (i) will be updated to add the 4-digit code provided by the United States Postal Service to the postal ZIP code for the Board's office.

*Section 1002.1(e).* This section concerns fees for courier services. The position of Information Officer no longer exists, so the reference will be changed to the Records Officer. Fees for courier service can be obtained from the Records Officer or the Board's Web site.

*Sections 1002.1(f), (f)(1), and (g)(8).* These sections, which concern fees for search and copying services requiring computer processing and for records not considered public under the Freedom of Information Act, will be revised to remove the outdated term "ADP" and replace it with the term "computer."

*49 CFR 1002.2, Filing fees*

*Section 1002.2(a)(3).* This section, which identifies a Board designee to receive payment of filing fees, will be revised to remove the reference to the Secretary. Routine business practices require only that the fees be payable to the Surface Transportation Board. We will not require additional specificity.

*Section 1002.2(e)(2)(i) and (e)(2)(iii).* These sections concern requests for waiver or reduction of fees prescribed in section 1002.2(f) and notification of the Board's action on such requests. The reference to the Secretary in section 1002.2(e)(2)(i) will be changed to "Chief, Section of Administration, Office of Proceedings, Surface Transportation Board" and in section 1002.2(e)(2)(iii) to "Chief, Section of Administration, Office of Proceedings, Surface Transportation Board."

*49 CFR 1003.1, General information*

In section 1003.1, which provides instruction for obtaining prescribed forms except insurance forms, the Board removes the reference to the Office of the Secretary and inserts a reference to the Office of Public Assistance, Governmental Affairs, and Compliance.

*49 CFR 1007.3, Requests by an individual for information or access and  
49 CFR 1007.6, Disclosure to third parties*

These sections, which concern requests by individuals for information and disclosure to third parties by the Board, will be updated to reflect the Board's current United States Postal Service mailing address.

*49 CFR 1011.3, The Chairman, Vice Chairman, and Board Member*

Section 1011.3(c)(1) refers to the Secretary as one of the designees for recording legally required votes and official acts of the Board. This reference will be changed to Clearance Clerk.

*49 CFR 1011.6, Delegations of authority by the Chairman*

*Sections 49 CFR 1011.6(c)(3), (d), and (g).* These sections identify delegations of authority to the Secretary. Under section 1011.6 (c)(3), the Secretary has authority to dispose of routine procedural matters under modified procedure not assigned to an administrative law judge or Board Member and, unless otherwise ordered by the Chairman or by a majority of the Board in individual proceedings, authority to decide whether complaint proceedings shall be assigned for oral hearing or handled under modified procedure. Section 1011.6(d) provides for the authority of the Secretary to dismiss a complaint or application at the request of the complainant or applicant. In section 1011.6(g), the Secretary has authority to sign and transmit to the Small Business Administration certifications of no significant economic impact on a substantial number of small entities for proposed rules that might be adopted by the Board and findings regarding waiver of initial regulatory flexibility analysis or delay of initial or final regulatory flexibility analyses, under the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. We are removing all references to the Secretary in these sections and delegating the authorities stated in these sections to the Director of the Office of Proceedings.

*49 CFR 1011.7, Delegations of authority by the Board to specific offices of the Board*

*Sections 49 CFR 1011.7(a), (b), and (c).* These sections identify delegations of authority to specific offices of the Board. Because there is no longer an Office of the Secretary, the heading in the regulations for the Secretary (section 1011.7(a)) will be deleted and replaced with Office of Proceedings. All other references to the Secretary in section 1011.7(a) will be changed to the Director of the Office of Proceedings. The section will read: "(a) Office of Proceedings. (1) The Director of the Office of Proceedings is delegated the following authority: . . . ." Sections 1011.7(a)(1) and (a)(2) will be renumbered to sections 1011.7(a)(1)(i) and (a)(1)(ii), respectively. In section 1011.7(a), the cross-reference to paragraph (c)(2) will be updated to (b)(2) (to reflect the change that will be adopted below) and the 4-digit code provided by the United States Postal Service will be added to the postal ZIP code for the Board's office.

There is no longer an Office of Compliance and Enforcement so the references to that Office also will be deleted and replaced with the Office of Public Assistance, Governmental Affairs, and Compliance in sections 1011.7(a) and (c). Accordingly, the reference to the Chief, Section of Tariffs, Office of Compliance and Enforcement in section 1011.7(c) will be deleted.

The reference to the Office of Proceedings in the heading to section 1011.7(b) will be deleted. Section 1011.7(b) will be renumbered as section 1011.7(2) and will read: “(2) In addition to the authority delegated . . . .” The remainder of section 1011.7(b) will be renumbered appropriately and the cross-reference to 49 CFR 1011.6(h) will be updated to reflect 49 CFR 1011.6(c)(3), (d), (g), and (h), to include the new delegations of authority announced in this decision. In section 1011.7(b)(16), the Board changes the reference from “The Burlington Northern and Santa Fe” to “BNSF.” Section 1011.7(c) will be renumbered as section 1011.7(b).<sup>1</sup>

*49 CFR 1012.1, General provisions, 49 CFR 1012.3, Public notice, and 49 CFR 1016.311,  
Payment of award*

*Section 49 CFR 1012.1.* Section 1012.1(c) refers to written requests for copies of the votes or statements of position of Board Members eligible to participate in action taken by notation voting. The reference to the Secretary of the Board will be deleted and replaced with Records Officer.

*Section 49 CFR 1012.3.* This section refers to public notice of the scheduling of a Board meeting. The reference to the Secretary in section 1012.3(a) will be changed to Clearance Clerk.

*Section 49 CFR 1016.311.* This section refers to an applicant’s submission of an award granted against the Board. The reference to the Secretary in this section will be changed to “Chief, Section of Financial Services.”

*49 CFR Parts 1100-1269*

Our decision requires minor changes to 49 CFR parts 1100-1269, which contain provisions for conducting proceedings and procedures for how the public shall communicate with the Board when submitting documents and requesting reports.<sup>2</sup> In most instances, we remove references to the Office of the Secretary or Secretary and insert references to the Office of Proceedings, its Director, or its Chief of the Section of Administration.<sup>3</sup> These additions to the delegations of authority to the Director of the Office of Proceedings will appear at 49 CFR 1011.6 and 1011.7.

In the sections revised to insert references to the Chief of the Section of Administration we update references to the Secretary to reflect our decision that the Chief of the Section of

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<sup>1</sup> Unless otherwise noted, the references in this decision to 49 CFR part 1011 will be to the sections of that part as numbered prior to the changes we are adopting in this decision.

<sup>2</sup> The affected sections shall include 49 CFR parts 1100, 1102, 1103, 1104, 1105, 1109, 1110, 1113, 1114, 1116, 1118, 1132, 1139, 1150, 1152, 1177, 1180, 1240, 1241, 1242, 1243, 1245, 1246, 1248, 1253, and 1260-1269.

<sup>3</sup> Sections revised to insert references to the Office of Proceedings or its Director shall include 49 CFR 1109.1, 1110.7, 1113.2, 1113.17, 1114.24, 1114.31, and 1180.4.

Administration will be the contact for all Board filings.<sup>4</sup> Unless otherwise noted in the regulations, proceeding and recordation related correspondence to the Board should be addressed to the Chief of the Section of Administration.

In some instances, the change in these sections will be to delete references to the Secretary and insert a reference to the Office of Public Assistance, Governmental Affairs, and Compliance, or to its Director.<sup>5</sup> These updated references reflect our decision that public inquiries concerning the regulations, offers of financial assistance, public use or trails, and the availability of published notices, and requests for non-attorneys to practice before the Board should be directed to the Office of Public Assistance, Governmental Affairs, and Compliance. In parts 1240-1269, the references to the Secretary concerning availability of report forms will be deleted and replaced with the Office of Economics, Environmental Analysis, and Administration.

We also make the following technical changes. In section 1150.10(b), the cross-reference 49 CFR 1002.2(f)(33) is noted as reserved; we will revise the cross-reference to 49 CFR 1002.2(f). In section 49 CFR 1152.25(e) the Board updates the cross-reference from 49 CFR 1011.8(c)(4) and (5) to 49 CFR 1011.7(a)(2)(iv) and (v) to reflect the changes made in this decision. In section 49 CFR 1152.27(e)(1) and (e)(2) the out-of-date reference to Sec. 1011.8 (concerning delegation of authority) will be updated to Sec. 1011.7(a). In section 1180.4, the reference to James H. Bayne will be deleted. In 49 CFR parts 1100-1269, we also update the Board's address and add the 4-digit code provided by the United States Postal Service to the postal ZIP code for the Board's office, as necessary.<sup>6</sup>

Because these changes relate solely to the rules of agency practice, procedure, and organization, they will be issued as final rules without requesting public comment. See 5 U.S.C. 553(b)(A).

The Board certifies that these rule changes will not have a significant economic effect on a substantial number of small entities. The changes being made pertain to agency management, personnel, and procedure, and should have no impact on small entities.

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

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<sup>4</sup> Sections revised to insert references to the Chief of the Section of Administration shall include 49 CFR 1102.1, 1102.2, 1103.4, 1104.1, 1105.12, 1109.1, 1110.2-.3, 1110.9, 1113.2, 1116.1, 1118.3, 1132.1, 1139.7, 1139.25, 1150.10, 1152.21-.22, 1152.24-.25, 1152.27, 1152.29, 1177.2-.4, 1180.4, and 1253.20.

<sup>5</sup> The affected sections shall include 49 CFR 1100.4, 1103.3, 1105.12, and 1110.3.

<sup>6</sup> The affected sections shall include 49 CFR 1102.1, 1104.1, 1105.12, 1110.2, 1110.9, 1116.1, 1118.3, 1139.7, 1139.25, 1152.21-.22, 1152.24-.25, 1152.27, 1177.2, 1180.4, and 49 CFR parts 1260-1269.

List of Subjects

49 CFR Part 1001

Administrative practice and procedure, Confidential business information, and Freedom of information.

49 CFR Parts 1002 and 1003

Administrative practice and procedure, Common carriers, and Freedom of information.

49 CFR Part 1007

Privacy.

49 CFR Part 1011

Administrative practice and procedure, Authority delegations (Government agencies), and Organization and functions (Government agencies).

49 CFR Part 1012

Sunshine Act.

49 CFR Part 1016

Claims, Equal access to justice, and Lawyers.

49 CFR Parts 1100, 1102, 1103, and 1104

Administrative practice and procedure.

49 CFR Part 1105

Environmental impact statements, Reporting and recordkeeping requirements.

49 CFR Part 1109

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

49 CFR Parts 1110, 1113, 1114, 1116, 1118, and 1132

Administrative practice and procedure.

49 CFR Part 1139

Administrative practice and procedure, Buses, Freight, Motor carriers, and Reporting and recordkeeping requirements.

49 CFR Part 1150

Administrative practice and procedure, and Railroads.

49 CFR Part 1152

Administrative practice and procedure, Railroads, Reporting and recordkeeping requirements, and Uniform System of Accounts.

49 CFR Part 1177

Administrative practice and procedure, Archives and records, Maritime carriers, and Railroads.

49 CFR Part 1180

Administrative practice and procedure, Railroads, and Reporting and recordkeeping requirements.

49 CFR Parts 1240, 1241, and 1243

Railroads and Recordkeeping requirements.

49 CFR Part 1242

Railroads, Taxes.

49 CFR Part 1245

Railroad employees, Reporting and recordkeeping requirements and Wages.

49 CFR Part 1246

Railroad employees, Reporting and recordkeeping requirements.

49 CFR Part 1248

Freight, Railroads, Reporting and recordkeeping requirements, and Statistics.

49 CFR Part 1253

Freight forwarders, Maritime carriers, Motor carriers, Pipelines, Railroads, and Reporting and recordkeeping requirements.

49 CFR Part 1260-1269

Valuation.

It is ordered:

1. The final rules set forth in the Appendix to this decision are adopted. Notice of the rules adopted here will be published in the Federal Register.

2. This decision is effective on November 16, 2009.

Decided: October 5, 2009.

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

## Appendix

### Code of Federal Regulations

For the reasons set forth in the preamble, the Surface Transportation Board amends parts 1001 through 1003, 1007, 1011, 1012, 1016, 1100, 1102 through 1105, 1109, 1110, 1113, 1114, 1116, 1118, 1132, 1139, 1150, 1152, 1177, 1180, 1240 through 1243, 1245, 1246, 1248, 1253, and 1260-1269 of title 49, chapter X, of the Code of Federal Regulations as follows:

#### **PART 1001 – INSPECTION OF RECORDS**

1. The authority citation for part 1001 continues to read as follows:

Authority: 5 U.S.C. 552, 49 U.S.C. 702, and 49 U.S.C. 721.

2. Amend § 1001.1 by revising paragraph (a) introductory text to read as follows:

##### **§ 1001.1 Records available from the Board.**

(a) The following specific files and records in the custody of the Records Officer of the Surface Transportation Board are available to the public and may be inspected at the Board's office upon reasonable request during business hours (between 8:30 a.m. and 5 p.m., Monday through Friday):

\* \* \* \* \*

3. Revise § 1001.2 to read as follows:

##### **§ 1001.2 Certified copies of records.**

Copies of and extracts from public records will be certified by the Records Officer. Persons requesting the Board to prepare such copies should clearly state the material to be copied, and whether it shall be certified. Charges will be made for certification and for the preparation of copies as provided in part 1002 of this chapter.

#### **PART 1002 – FEES**

4. The authority citation for part 1002 continues to read as follows:

Authority: 5 U.S.C. 552(a)(4)(A) and 553; 31 U.S.C. 9701; and 49 U.S.C. 721. Section 1002.1(g)(11) also issued under 5 U.S.C. 5514 and 31 U.S.C. 3717.

5. Amend § 1002.1 by revising paragraphs (a), (e), (f) introductory text, (f)(1), (g)(8), (g)(14)(vi), and (i) to read as follows:

**§ 1002.1 Fees for records search, review, copying, certification, and related services.**

\* \* \* \* \*

(a) Certificate of the Records Officer, \$17.00.

\* \* \* \* \*

(e) Fees for courier services to transport agency records to provide on-site access to agency records stored off-site will be set at the rates set forth in the Board’s agreement with its courier service provider. Rate information is available on the Board’s Web site (<http://www.stb.dot.gov>) or can be obtained from the Board’s Records Officer, Room 1200, Surface Transportation Board, Washington, DC 20423-0001.

(f) The fee for search and copying services requiring computer processing are as follows:

(1) A fee of \$66.00 per hour for professional staff time will be charged when it is required to fulfill a request for computer data.

\* \* \* \* \*

(g) \* \* \*

(8) The fees for computer data are set forth in paragraph (f) of this section.

\* \* \* \* \*

(14) \* \* \*

(vi) The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is “primarily in the commercial interest of the requester.” This fee waiver and reduction provision will be implemented in accordance with guidelines issued by the U.S. Department of Justice on April 2, 1987 and entitled “New FOIA Fee Waiver Policy Guidance.” A copy of these guidelines may be inspected or obtained from the Surface Transportation Board's Freedom of Information Office, Washington, DC 20423-0001.

\* \* \* \* \*

(i) Transcript of testimony and of oral argument, or extracts therefrom, may be purchased by the public from the Board's official reporter. For information regarding the official reporter, contact the Records Officer, Surface Transportation Board, Washington, DC 20423-0001.

6. Amend § 1002.2 by revising paragraphs (a)(3) and (e)(2)(i) and (iii) to read as follows:

**§ 1002.2 Filing fees.**

(a) \* \* \*

(3) Fees will be payable to the Surface Transportation Board, by check payable in United States currency drawn upon funds deposited in a United States or foreign bank or other financial institution, money order payable in United States currency, or by credit card.

\* \* \* \* \*

(e) \* \* \*

(2) \* \* \*

(i) *When to request.* At the time that a filing is submitted to the Board the applicant may request a waiver or reduction of the fee prescribed in this part. Such request should be addressed to the Chief, Section of Administration, Office of Proceedings, Surface Transportation Board.

\* \* \* \* \*

(iii) *Board action.* The Chief, Section of Administration, Office of Proceedings, Surface Transportation Board will notify the applicant of the decision to grant or deny the request for waiver or reduction.

\* \* \* \* \*

**PART 1003 – FORMS**

7. The authority citation for part 1003 continues to read as follows:

Authority: 49 U.S.C. 721, 13301(f).

8. Amend § 1003.1 by revising paragraph (c) to read as follows:

**§ 1003.1 General information.**

\* \* \* \* \*

(c) Copies of all prescribed forms except insurance forms are available upon request from the Office of Public Assistance, Governmental Affairs, and Compliance, Surface Transportation Board, Washington, DC 20423.

**PART 1007 – RECORDS CONTAINING INFORMATION ABOUT INDIVIDUALS**

9. The authority citation for part 1007 continues to read as follows:

Authority: 5 U.S.C. 552, 49 U.S.C. 721.

10. Amend § 1007.3 by revising paragraph (a) to read as follows:

**§ 1007.3 Requests by an individual for information or access.**

(a) Any individual may request information on whether a system of records maintained by the Board contains any information pertaining to him or her, or may request access to his or her record or to any information pertaining to him or her which is contained in a system of records. All requests shall be directed to the Privacy Officer, Surface Transportation Board, 395 E Street, SW, Washington, DC 20423-0001.

\* \* \* \* \*

11. Amend § 1007.6 by revising paragraph (c) to read as follows:

**§ 1007.6 Disclosure to third parties.**

\* \* \* \* \*

(c) The accounting described in paragraph (b) of this section will be made available to the individual named in the record upon his written request, directed to the Privacy Officer, Surface Transportation Board, 395 E Street, SW, Washington, DC 20423-0001, except that the accounting will not be revealed with respect to disclosures made under paragraph (a)(7) of this Sec. 1107.6 pertaining to law enforcement activity, and will not be maintained as to disclosures involving systems of records exempted under Sec. 1007.12.

\* \* \* \* \*

**PART 1011 – BOARD ORGANIZATION; DELEGATIONS OF AUTHORITY**

12. The authority citation for part 1011 continues to read as follows:

Authority: 5 U.S.C. 553; 31 U.S.C. 9701; 49 U.S.C. 701, 721, 11123, 11124, 11144, 14122, and 15722.

13. Amend § 1011.3 by revising paragraph (c)(1) to read as follows:

**§ 1011.3 The Chairman, Vice Chairman, and Board Member.**

\* \* \* \* \*

(c)(1) The Chairman presides at all sessions of the Board and sees that every vote and official act of the Board required by law to be recorded is accurately and promptly recorded by the Clearance Clerk or the person designated by the Board for that purpose.

\* \* \* \* \*

14. Amend § 1011.6 by revising paragraphs (c)(3), (d), and (g) introductory text to read as follows:

**§ 1011.6 Delegations of authority by the Chairman.**

\* \* \* \* \*

(c) \* \* \*

(3) Unless otherwise ordered by the Board in individual proceedings, authority to dispose of routine procedural matters in proceedings assigned for handling under modified procedure, other than those assigned to an administrative law judge or a Board Member, is assigned to the Director of the Office of Proceedings. The Director of the Office of Proceedings shall also have authority, unless otherwise ordered by the Chairman or by a majority of the Board in individual proceedings, to decide whether complaint proceedings shall be handled under the modified procedure or be assigned for oral hearings. In carrying out these duties, the Director of the Office of Proceedings shall consult, as necessary, with the General Counsel and the Director of any Board office to which an individual proceeding has been assigned.

(d) Except as provided at 49 CFR 1113.3(b)(1), authority to dismiss a complaint on complainant's request, or an application on applicant's request, is delegated to the Director of the Office of Proceedings.

\* \* \* \* \*

(g) The Director of the Office of Proceedings is delegated authority, under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, to:

\* \* \* \* \*

15. Amend § 1011.7 by revising paragraphs (a), (b) introductory text, (b)(1), and (b)(3) to read as follows:

**§ 1011.7 Delegations of authority by the Board to specific offices of the Board.**

(a) *Office of Proceedings.*

(1) The Director of the Office of Proceedings is delegated the following authority:

(i) Whether (in consultation with involved Offices) to waive filing fees set forth at 49 CFR 1002.2(f).

(ii) To issue, on written request, informal opinions and interpretations (exclusive of informal opinions and interpretations on carrier tariff provisions), which are not binding on the Board. In issuing informal opinions or interpretations, the Director of the Office of Proceedings shall consult with the Directors of the appropriate Board offices. Such requests must be directed to the Director of the Office of Proceedings, Surface Transportation Board, Washington, DC 20423-0001. Authority to issue informal opinions and interpretations on carrier tariff provisions is delegated at paragraph (b)(2) of this section to the Office of Public Assistance, Governmental Affairs, and Compliance.

(2) In addition to the authority delegated at 49 CFR 1011.6(c)(3), (d),(g), and (h), the Director of the Office of Proceedings shall have authority initially to determine the following:

(i) Whether to designate abandonment proceedings for oral hearings on request.

(ii) Whether offers of financial assistance satisfy the statutory standards of 49 U.S.C. 10904(d) for purposes of negotiations or, in exemption proceedings, for purposes of partial revocation and negotiations.

(iii) Whether:

(A) To impose, modify, or remove environmental or historic preservation conditions; and

(B) In abandonment proceedings, to impose public use conditions under 49 U.S.C. 10905 and the implementing regulations at 49 CFR 1152.28.

(iv) In abandonment proceedings, when a request for interim trail use/rail banking is filed under 49 CFR 1152.29, to determine whether the National Trails System Act, 16 U.S.C. 1247(d), is applicable and, where appropriate, to issue Certificates of Interim Trail Use or Abandonment (in application proceedings) or Notices of Interim Trail Use or Abandonment (in exemption proceedings).

(v) In any abandonment proceeding where interim trail use/rail banking is an issue, to make such findings and issue decisions as may be necessary for the orderly administration of the National Trails System Act, 16 U.S.C. 1247(d).

(vi) Whether to institute requested declaratory order proceedings under 5 U.S.C. 554(e).

(vii) To issue decisions, after 60 days' notice by any person discontinuing a subsidy established under 49 U.S.C. 10904 and at the railroad's request:

(A) In application proceedings, immediately issuing decisions authorizing abandonment or discontinuance; and

(B) In exemption proceedings, immediately vacating the decision that postponed the effective date of the exemption.

(viii) In proceedings under the Feeder Railroad Development Program under 49 U.S.C. 10907 and the implementing regulations at 49 CFR part 1151:

(A) Whether to accept or reject primary applications under 49 CFR 1151.2(b); competing applications under section 1151.2(c); and incomplete applications under 49 CFR 1151.2(d).

(B) Whether to grant waivers from specific provisions of 49 CFR part 1151.

(ix) In exemption proceedings subject to environmental or historic preservation reporting requirements, to issue a decision, under 49 CFR 1105.10(g), making a finding of no significant impact where no environmental or historic preservation issues have been raised by any party or identified by the Board's Section of Environmental Analysis.

(x) Whether to issue notices of exemption under 49 U.S.C. 10502:

(A) For acquisition, lease, and operation transactions under 49 U.S.C. 10901 and 10902 and the implementing regulations at 49 CFR part 1150, subparts D and E;

(B) For connecting track constructions under 49 U.S.C. 10901 and the implementing regulations at 49 CFR 1150.36;

(C) For rail transactions under 49 U.S.C. 11323 and the implementing regulations at 49 CFR 1180.2(d); and

(D) For abandonments and discontinuances under 49 U.S.C. 10903 and the implementing regulations at 49 CFR 1152.50.

(xi) When an application or a petition for exemption for abandonment is filed, the Director will issue a notice of that filing pursuant to 49 CFR 1152.24(e)(2) and 49 CFR 1152.60, respectively.

(xii) Whether to issue a notice of exemption under 49 U.S.C. 13541 for a transaction under 49 U.S.C. 14303 within a motor passenger carrier corporate family that does not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with motor passenger carriers outside the corporate family.

(xiii) Whether to issue rail modified certificates of public convenience and necessity under 49 CFR part 1150, subpart C.

(xiv) Whether to waive the regulations at 49 CFR part 1152, subpart C, on appropriate petition.

(xv) To reject applications, petitions for exemption, and verified notices (filed in class exemption proceedings) for noncompliance with the environmental rules at 49 CFR part 1105.

(xvi) To reject applications by BNSF Railway Company to abandon rail lines in North Dakota exceeding the 350-mile cap of section 402 of Public Law 97-102, 95 Stat. 1465 (1981), as amended by The Department of Transportation and Related Agencies Appropriations Act, 1992, Public Law 102-143, section 343 (Oct. 28, 1991).

(b) *Office of Public Assistance, Governmental Affairs, and Compliance.* The Office of Public Assistance, Governmental Affairs, and Compliance is delegated the authority to:

(1) Reject tariffs and railroad transportation contract summaries filed with the Board that violate applicable statutes, rules, or regulations. Any rejection of a tariff or contract summary may be by letter signed by or for the Director, Office of Public Assistance, Governmental Affairs, and Compliance.

(2) \* \* \*

(3) Grant or withhold special tariff authority granting relief from the provisions of 49 CFR part 1312. Any grant or withholding of such relief may be by letter signed by or for the Director, Office of Public Assistance, Governmental Affairs, and Compliance.

\* \* \* \* \*

**PART 1012 – MEETINGS OF THE BOARD**

16. The authority citation for part 1012 continues to read as follows:

Authority: 5 U.S.C. 552b(g), 49 U.S.C. 701, 721.

17. Amend § 1012.1 by revising paragraph (c) to read as follows:

**§ 1012.1 General provisions.**

\* \* \* \* \*

(c) These regulations are not intended to govern situations in which members of the Board consider individually and vote by notation upon matters which are circulated to them in writing. Copies of the votes or statements of position of all Board Members eligible to participate in action taken by notation voting will be made available, as soon as possible after the date upon which the action taken is made public or any decision or order adopted is served, in a public reading room or other easily accessible place within the Board, or upon written request to the Records Officer.

18. Amend § 1012.3 by revising paragraph (a) to read as follows:

**§ 1012.3 Public notice.**

(a) Unless a majority of the Board determines that such information is exempt from disclosure under the Act, public notice of the scheduling of a meeting will be given by filing a copy of the notice with the Clearance Clerk of the Board for posting and for service on all parties of record in any proceeding which is the subject of the meeting or any other person who has requested notice with respect to meetings of the Board, and by submitting a copy of the notice for publication in the FEDERAL REGISTER.

\* \* \* \* \*

**PART 1016 – SPECIAL PROCEDURES GOVERNING THE RECOVERY OF EXPENSES BY PARTIES TO BOARD ADJUDICATORY PROCEEDINGS**

Subpart C—Procedures for Considering Applications

19. The authority citation for part 1016 continues to read as follows:

Authority: 5 U.S.C. 504(c)(1), 49 U.S.C. 721.

20. Revise § 1016.311 to read as follows:

**§ 1016.311 General provisions.**

An applicant seeking payment of an award shall submit to the appropriate official of the paying agency a copy of the Board’s final decision granting the award, accompanied by a statement that the applicant will not seek review of the decision in the United States courts. Where the award is granted against the Surface Transportation Board the applicant shall make its submission to the Chief, Section of Financial Services, Surface Transportation Board, Washington, DC 20423-0001. The Board will pay the amount awarded to the applicant within 60 days of the applicant's submission unless the judicial review of the award or of the underlying decision of the adversary adjudication has been sought by the applicant or any other party to the proceeding.

**PART 1100 – GENERAL PROVISIONS**

21. The authority citation for part 1100 continues to read as follows:

Authority: 49 U.S.C. 721.

22. Revise § 1100.4 to read as follows:

**§ 1100.4 Information and inquires.**

Persons with questions concerning these rules should either send a written inquiry addressed to the Director, Office of Public Assistance, Governmental Affairs, and Compliance, Surface Transportation Board or should telephone the Office of Public Assistance, Governmental Affairs, and Compliance.

**PART 1102 – COMMUNICATIONS**

23. The authority citation for part 1102 continues to read as follows:

Authority: 49 U.S.C. 721.

24. Amend § 1102.1 to read as follows:

**§ 1102.1 How Addressed.**

All communications should be addressed to the Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, Washington, DC 20423-0001 unless otherwise specifically directed by another Board regulation. All communications should designate the docket number and title, if any. The person communicating shall state his address, and the party he represents.

25. Amend § 1102.2 by revising paragraph (e) to read as follows:

**§ 1102.2 Ex parte communications prohibited; penalties provided.**

\* \* \* \* \*

(e) *Procedure required of Board members and employees upon receipt of ex parte communications concerning the merits of a proceeding.* Any person who receives an *ex parte* communication concerning the merits of a proceeding must promptly transmit either the written communication, or a written summary of the oral communication with an outline of the surrounding circumstances to the Chief, Section of Administration, Office of Proceedings, Surface Transportation Board. The Section Chief shall place all of the material in the correspondence section of the public docket of the proceeding. A recipient of such *ex parte* communication, who has doubt as to the nature of the communication, may request a ruling on the question from the Board's Designated Agency Ethics Official. The Designated Agency Ethics Official shall promptly reply to such requests. The Chief, Section of Administration, Office of Proceedings, shall promptly notify the Chairman of the Board of such *ex parte* communications sent to the Section Chief. The Designated Agency Ethics Official shall promptly notify the Chairman of all requests for rulings sent to the Designated Agency Ethics Official. The Chairman may require that any communication be placed in the correspondence section of the docket when fairness requires that it be made public, even if it is not a prohibited communication. The Chairman may direct the taking of such other action as may be appropriate under the circumstances.

\* \* \* \* \*

**PART 1103 – PRACTITIONERS**

26. The authority citation for part 1103 continues to read as follows:

Authority: 21 U.S.C. 862; 49 U.S.C. 703(e), 721.

27. Amend § 1103.3 by revising paragraphs (c)(1) and (j) to read as follows:

**§ 1103.3 Persons not attorneys-at-law—qualifications and requirements for practice before the Board.**

\* \* \* \* \*

(c)(1) *Application for admission.* An application filed pursuant to this rule under oath for admission to practice shall be submitted between January and May 1 of the year in which the examination is to be taken. The application is to be completed in full on the form provided by the Board, and shall be addressed to the Director, Office of Public Assistance, Governmental Affairs, and Compliance, Surface Transportation Board, Washington, DC 20423-0001, to the attention of the room number indicated on the form.

\* \* \* \* \*

(j) *Examination results.* Results will be released within 90 days after the examination. Individual results will be forwarded to the applicants at least 1 week before being publicly released. To protect the privacy of those taking the examination, individual grades will not be released over the telephone to anyone. Requests for grades may, however, be submitted in writing to the Office of Public Assistance, Governmental Affairs, and Compliance to the attention of the address stated in the application form.

\* \* \* \* \*

28. Amend § 1103.4 by revising paragraph (d) to read as follows:

**§ 1103.4 Initial appearances.**

\* \* \* \* \*

(d) Filing a letter with the Chief, Section of Administration, Office of Proceedings, Surface Transportation Board stating that practitioner is authorized to represent a party. The party represented, their address, and the docket number of the proceeding must also be identified at the time of the initial appearance.

**PART 1104 – FILING WITH THE BOARD-COPIES-VERIFICATION-SERVICE-  
PLEADINGS, GENERALLY**

29. The authority citation for part 1104 continues to read as follows:

Authority: 5 U.S.C. 553 and 559; 18 U.S.C. 1621; 21 U.S.C. 862; and 49 U.S.C. 721.

30. Amend § 1104.1 by revising paragraph (a) to read as follows:

**§ 1104.1 Address, identification, and electronic filing option.**

(a) Except as provided in § 1115.7, pleadings should be addressed to the “Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, Washington, DC 20423-0001,” and should designate the docket number and title of the proceeding, if known.

\* \* \* \* \*

**PART 1105 – PROCEDURES FOR IMPLEMENTATION OF ENVIRONMENTAL  
LAWS**

31. The authority citation for part 1105 continues to read as follows:

Authority: 16 U.S.C. 470f, 1456, and 1536; 42 U.S.C. 4332 and 6362(b); and 49 U.S.C. 701 note (1995) (Savings Provisions), 721(a), 10502, and 10903–10905.

32. Amend § 1105.12 by revising Appendix to § 1105.12--Sample Newspaper Notices to read as follows:

**§ 1105.12 Sample newspaper notices for abandonment exemption cases.**

\* \* \* \* \*

APPENDIX TO § 1105.12--SAMPLE NEWSPAPER NOTICES

SAMPLE LOCAL NEWSPAPER NOTICE FOR OUT-OF-SERVICE ABANDONMENT EXEMPTIONS  
NOTICE OF INTENT TO ABANDON OR TO DISCONTINUE RAIL SERVICE

(Name of railroad) gives notice that on or about (insert date notice of exemption will be filed with the Surface Transportation Board), it intends to file with the Surface Transportation Board, Washington, DC 20423, a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments permitting the (abandonment of or discontinuance of service on) a ----- mile line of railroad between railroad milepost -----, near (station name), which traverses through United States Postal Service ZIP Codes (ZIP Codes) and railroad milepost -----, near (station name) which traverses through United States Postal Service ZIP Codes (ZIP Codes) in ----- County(ies), (State). The proceeding will be docketed as No. AB ----- (Sub-No. ----- X).

The Board's Section of Environmental Analysis (SEA) will generally prepare an Environmental Assessment (EA), which will normally be available 25 days after the filing of the notice of exemption. Comments on environmental and energy matters should be filed no later than 15 days after the EA becomes available to the public and will be addressed in a Board decision. Interested persons may obtain a copy of the EA or make inquiries regarding environmental matters by writing to the Section of Environmental Analysis (SEA), Surface Transportation Board, Washington, DC 20423 or by calling that office at [INSERT TELEPHONE NUMBER].

Appropriate offers of financial assistance to continue rail service can be filed with the Board. Requests for environmental conditions, public use conditions, or rail banking/trails use also can be filed with the Board. An original and 10 copies of any pleading that raises matters other than environmental issues (such as trails use, public use, and offers of financial assistance) must be filed directly with the Board's Section of Administration, Office of Proceedings, 395 E Street, SW, Washington, DC 20423-0001 [See 49 CFR 1104.1(a) and 1104.3(a)], and one copy must be served on applicants' representative [See 49 CFR 1104.12(a)]. Questions regarding offers of financial assistance, public use or trails use may be directed to the Board's Office of Public Assistance, Governmental Affairs, and Compliance at [INSERT TELEPHONE NUMBER]. Copies of any comments or requests for conditions should be served on the applicant's representative: (name, address and phone number).

SAMPLE LOCAL NEWSPAPER NOTICE FOR PETITIONS FOR ABANDONMENT EXEMPTIONS  
NOTICE OF INTENT TO ABANDON OR TO DISCONTINUE RAIL SERVICE

(Name of railroad) gives notice that on or about (insert date petition for abandonment exemption will be filed with the Surface Transportation Board) it intends to file with the Surface Transportation Board, Washington, DC 20423, a petition for exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903, et seq., permitting the (abandonment of or discontinuance of service on) a ----- mile line of railroad between railroad milepost -----, near (station name) which traverses through United States Postal Service ZIP Codes (ZIP Codes), and railroad milepost -----, near (station name) which traverses through United States Postal Service ZIP Codes (ZIP Codes) in ----- County(ies), (State). The proceeding has been docketed as No. AB ----- (Sub-No. ----- X).

The Board's Section of Environmental Analysis (SEA) will generally prepare an Environmental Assessment (EA), which will normally be available 60 days after the filing of the petition for abandonment exemption. Comments on environmental and energy matters should be filed no later than 30 days after the EA becomes available to the public and will be addressed in a Board decision. Interested persons may obtain a copy of the EA or make inquiries regarding environmental matters by writing to SEA, Surface Transportation Board, Washington, DC 20423 or by calling SEA at [INSERT TELEPHONE NUMBER].

Appropriate offers of financial assistance to continue rail service can be filed with the Board. Requests for environmental conditions, public use conditions, or rail banking/trails use also can be filed with the Board. An original and 10 copies of any pleading that raises matters other than environmental issues (such as trails use, public use, and offers of financial assistance)

must be filed directly with the Board's Section of Administration, Office of Proceedings, 395 E Street, SW, Washington, DC 20423-0001 [See 49 CFR 1104.1(a) and 1104.3(a)], and one copy must be served on applicants' representative [See 49 CFR 1104.12(a)]. Questions regarding offers of financial assistance, public use or trails use may be directed to the Board's Office of Public Assistance, Governmental Affairs, and Compliance at [INSERT TELEPHONE NUMBER]. Copies of any comments or requests for conditions should be served on the applicant's representative (name and address).

**PART 1109 – USE OF ALTERNATIVE DISPUTE RESOLUTION IN BOARD PROCEEDINGS AND THOSE IN WHICH THE BOARD IS A PARTY**

33. The authority citation for part 1109 continues to read as follows:

Authority: 5 U.S.C. 571 *et seq.*

34. Revise § 1109.1 to read as follows:

**§ 1109.1 Invoking ADR in Board proceedings.**

Any proceeding may be held in abeyance for 90 days while administrative dispute resolution (ADR) procedures (such as arbitration and mediation) are pursued. (Additional 90 day periods can be requested.) The period while any proceeding is held in abeyance to facilitate ADR will not be counted towards the statutory deadlines. All parties are required to indicate their written consent for ADR treatment. Requests that a proceeding be held in abeyance while ADR procedures are pursued should be submitted to the Chief, Section of Administration, Office of Proceedings. The Director of the Office of Proceedings shall promptly issue an order in response to such requests. Unless arbitration or some other binding process involving a neutral has been undertaken, any party believing that ADR procedures are not yielding the intended results shall inform the Chief, Section of Administration, Office of Proceedings and all parties in writing, and normal agency procedures will be reactivated by the Director of the Office of Proceedings by notice served on all the parties.

**PART 1110 – PROCEDURES GOVERNING INFORMAL RULEMAKING PROCEEDINGS**

35. The authority citation for part 1110 continues to read as follows:

Authority: 49 U.S.C. 721.

36. Amend § 1110.2 by revising paragraph (c)(1) to read as follows:

**§ 1110.2 Opening of proceeding.**

\* \* \* \* \*

(c) \* \* \*

(1) Be submitted, along with 15 copies if possible, to the Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, Washington, DC 20423-0001;

\* \* \* \* \*

37. Amend § 1110.3 by revising paragraph (d) to read as follows:

**§ 1110.3 Publication of notices.**

\* \* \* \* \*

(d) In addition to being published in the FEDERAL REGISTER, notices of proposed rulemaking and subsequent notices and decisions in rulemaking proceedings, will be served on the parties by the Office of Proceedings and made available to the public through the Office of Public Assistance, Governmental Affairs, and Compliance. To the extent possible, the date of service will be the same as the date of publication in the FEDERAL REGISTER. When the service and publication dates are not the same, the date of publication in the FEDERAL REGISTER is controlling for the purpose of determining time periods set by these procedures or by notices issued in individual proceedings.

38. Revise § 1110.7 to read as follows:

**§ 1110.7 Availability of dockets.**

Dockets of pending rulemaking proceedings are maintained in the Office of Proceedings. These dockets are available for inspection by any person, and copies may be obtained upon payment of the prescribed fee.

39. Revise § 1110.9 to read as follows:

**§ 1110.9 Petition for waiver.**

Any person may petition the Board for a permanent or temporary waiver of any rule. Petitions should be filed with the Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, Washington, DC 20423-0001, and should identify the rule involved.

**PART 1113 – ORAL HEARING**

40. The authority citation for part 1113 continues to read as follows:

Authority: 5 U.S.C. 559; 49 U.S.C. 721.

41. Amend § 1113.1 by revising paragraph (a) to read as follows:

**§ 1113.1 Scheduling hearings; continued hearings.**

(a) *Assignment; service and posting of notice.* In those proceedings in which an oral hearing is to be held, the Board will assign a time and place for hearing. Notice of hearings will be posted on the Board’s Web site, will be served upon the parties and such other persons as may be entitled to receive notice under the Act, and will be available for inspection at the Board’s office.

\* \* \* \* \*

42. Amend § 1113.2 by revising paragraphs (a) and (d) to read as follows:

**§ 1113.2 Subpoenas.**

(a) *Issuance.* A subpoena may be issued upon the direction of the Board on its own motion or upon request. A subpoena may be issued by the Board or by the officer presiding at a hearing and must be signed by the Director of the Office of Proceedings or a member of the Board.

\* \* \* \* \*

(d) *Return.* If service of subpoena is made by a United States marshal or his deputy, service should be evidenced by his return on the subpoena. If made by any other person, such person shall make an affidavit stating the date, time and manner of service; and return such affidavit on, or with, the original subpoena in accordance with the form thereon. In case of failure to make service the reasons for the failure should be stated on the original subpoena. The written acceptance of service of a subpoena by the person subpoenaed will be sufficient without other evidence of return. The original subpoena bearing or accompanied by the required return, affidavit, statement, or acceptance of service, should be returned forthwith to the Chief, Section of Administration, Office of Proceedings, unless otherwise directed.

\* \* \* \* \*

43. Amend § 1113.17 by revising paragraph (c) to read as follows:

**§ 1113.17 Transcript of record.**

\* \* \* \* \*

(c) *Objections to corrections.* Parties disagreeing with corrections suggested pursuant to paragraph (b) of this section should file written objections in the same manner as suggested corrections are to be filed. Objections to suggested corrections should be filed not later than 15 days after the filing with the Board of suggested corrections. If no objections are timely filed, the Office of Proceedings shall make the suggested corrections to the transcript. If objections are

timely filed, the officer who presided at the hearing shall determine the merits of the suggested correction and enter an appropriate decision in the proceeding.

\* \* \* \* \*

**PART 1114 – EVIDENCE; DISCOVERY**

44. The authority citation for part 1114 continues to read as follows:

Authority: 5 U.S.C. 559; 49 U.S.C. 721.

45. Amend § 1114.24 by revising paragraph (h) to read as follows:

**§ 1114.24 Depositions; procedures.**

\* \* \* \* \*

(h) *Return.* The officer shall securely seal the deposition in an envelope endorsed with sufficient information to identify the proceeding and marked “Deposition of (here insert name of witness)” and shall either personally deliver or promptly send the original and one copy of all exhibits by registered mail to the Office of Proceedings. A deposition to be offered in evidence must reach the Board not later than 5 days before the date it is to be so offered.

\* \* \* \* \*

46. Amend § 1114.31 by revising paragraph (a)(4) to read as follows:

**§ 1114.31 Failure to respond to discovery.**

(a) \* \* \*

(4) *Ruling on motion to compel in stand-alone cost and simplified standards rate cases.* Within 5 business days after a conference with the parties convened pursuant to paragraph (a)(3) of this section, the Director of the Office of Proceedings will issue a summary ruling on the motion to compel discovery. If no conference is convened, the Director of the Office of Proceedings will issue this summary ruling within 10 days after the filing of the reply to the motion to compel. Appeals of a Director's ruling will proceed under 49 CFR 1115.9, and the Board will attempt to rule on such appeals within 20 days after the filing of the reply to the appeal.

\* \* \* \* \*

**PART 1116 – ORAL ARGUMENT BEFORE THE BOARD**

47. The authority citation for part 1116 continues to read as follows:

Authority: 49 U.S.C. 721.

48. Amend § 1116.1 by revising paragraph (a) to read as follows:

**§ 1116.1 Requests.**

(a) *Addressee.* Requests for oral argument should be addressed to the Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, Washington, DC 20423-0001.

\* \* \* \* \*

**PART 1118 – PROCEDURES IN INFORMAL PROCEEDINGS BEFORE EMPLOYEE BOARDS**

49. The authority citation for part 1118 continues to read as follows:

Authority: 49 U.S.C. 721.

50. Amend § 1118.3 by revising paragraph (d) to read as follows:

**§ 1118.3 Appeals.**

\* \* \* \* \*

(d) *Where filed.* Appeals and replies to appeals of decisions issued by employee boards must be filed with the Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, 395 E St., SW, Washington, DC 20423-0001.

\* \* \* \* \*

**PART 1132 – PROTESTS REQUESTING SUSPENSION AND INVESTIGATION OF COLLECTIVE RATEMAKING ACTIONS**

51. The authority citation for part 1132 continues to read as follows:

Authority: 49 U.S.C. 721, 13301(f), and 13703.

52. Amend § 1132.1 by revising paragraph (d) to read as follows:

**§ 1132.1 Appeals.**

\* \* \* \* \*

(d) *Copies; service.* In connection with proceedings involving proposals subject to the special procedures in Ex Parte No. MC-82, New Procedures in Motor Carrier Rev. Proc. 339 I.C.C. 324, and set forth at 49 CFR part 1139, an original and 10 copies of every protest or reply

filed under this section should be furnished for the use of the Board. Except as provided for proposals subject to the special procedures in Ex Parte No. MC-82, the original and 10 copies of each protest, or of each reply filed under this section, must be filed with the Board, and one copy simultaneously must be served upon the publishing carrier or collective ratemaking organization, and upon other persons known by protestant to be interested. These pleadings should be directed to the attention of the Chief, Section of Administration, Office of Proceedings, Surface Transportation Board.

\* \* \* \* \*

## **PART 1139 – PROCEDURES IN MOTOR CARRIER REVENUE PROCEEDINGS**

53. The authority citation for part 1132 continues to read as follows:

Authority: 49 U.S.C. 721, 13703.

54. Revise § 1139.7 to read as follows:

### **§ 1139.7 Service.**

The detailed information called for herein shall be in writing and shall be verified by a person or persons having knowledge thereof. The original and 10 copies of each verified statement for the use of the Board shall be filed with the Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, Washington, DC 20423-0001. A copy of each statement shall be mailed by first-class mail to each party of record in the last formal proceeding concerning a general rate increase in the affected area or territory. However, one copy of each statement shall be sent by express mail to any person undertaking to bear the cost. Written request for this expedited service must be made no less than 5 days before the statement is due to be filed with the Board. Otherwise, the service requirements of 49 CFR 1104.12 should be observed. Information with respect to carrier affiliates may be served on the parties in summary form, if so desired. A copy of each statement shall be furnished to any interested person on request.

55. Revise § 1139.25 to read as follows:

### **§ 1139.25 Service.**

The detailed information called for herein shall be in writing and shall be verified by a person or persons having knowledge thereof. The original and 16 copies of each verified statement for the use of the Board shall be filed with the Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, Washington, DC 20423-0001. One copy of each statement shall be sent first-class mail to each of the regional offices of the Board in the area affected by the proposed increase, where it will be open to public inspection. A copy of each statement shall be mailed by first-class mail to each party of record in the last formal proceeding concerning a general increase in bus passenger fares in the affected area or territory. Otherwise, the service requirements of § 1130.1 shall be observed.

**PART 1150 – CERTIFICATE TO CONSTRUCT, ACQUIRE, OR OPERATE RAILROAD LINES**

56. The authority citation for part 1150 continues to read as follows:

Authority: 49 U.S.C. 721(a), 10502, 10901, and 10902.

57. Amend § 1150.10 by revising paragraph (b) to read as follows:

**§ 1150.10 Procedures.**

\* \* \* \* \*

(b) *Filing procedures.* The original and 10 copies of the application and all documents shall be filed with the Chief, Section of Administration, Office of Proceedings. A filing fee in the amount set forth in 49 CFR 1002.2(f) is required to file an application. Copies of documents shall be furnished promptly to interested parties upon request. The application shall include a stamped self-addressed envelope to be used to notify applicant of the docket number. Additionally, if possible, telephonic communication of the docket number shall be made.

\* \* \* \* \*

**PART 1152 – ABANDONMENT AND DISCONTINUANCE OF RAIL LINES AND RAIL TRANSPORTATION UNDER 49 U.S.C. 10903**

58. The authority citation for part 1152 continues to read as follows:

Authority: 11 U.S.C. 1170; 16 U.S.C. 1247(d) and 1248; 45 U.S.C. 744; and 49 U.S.C. 701 note (1995) (section 204 of the ICC Termination Act of 1995), 721(a), 10502, 10903–10905, and 11161.

59. Amend § 1152.21 by revising the third paragraph of section (4)(vi) of the notice of intent to read as follows:

**§ 1152.21 Form of notice.**

\* \* \* \* \*

(4) \* \* \*

(vi) \* \* \*

\* \* \* \* \*

Written comments and protests, including all requests for public use and trail use conditions, should indicate the proceeding designation STB No. AB ----- (Sub-No. -----)

and must be filed with the Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, Washington, DC 20423-0001, no later than (insert the date 45 days after the date applicant intends to file its application). Interested persons may file a written comment or protest with the Board to become a party to this abandonment (or discontinuance) proceeding. A copy of each written comment or protest shall be served upon the representative of the applicant (insert name, address, and phone number). The original and 10 copies of all comments or protests shall be filed with the Board with a certificate of service. Except as otherwise set forth in part 1152, each document filed with the Board must be served on all parties to the abandonment proceeding. 49 CFR 1104.12(a).

60. Amend § 1152.22 by revising the third paragraph of section (iv) of the notice of application in paragraph (i) to read as follows:

**§ 1152.22 Contents of application.**

\* \* \* \* \*

(i) \* \* \*

(iv) \* \* \*

\* \* \* \* \*

Written comments and protests, including all requests for public use and trail use conditions, must indicate the proceeding designation STB No. AB----- (Sub-No. ----) and should be filed with the Chief, Section of Administration, Office of Proceedings, Surface Transportation Board (Board), Washington, DC 20423-0001, no later than (insert the date 45 days after the date applicant intends to file its application). Interested persons may file a written comment or protest with the Board to become a party to this abandonment (or discontinuance) proceeding. A copy of each written comment or protest shall be served upon the representative of the applicant (insert name, address, and phone number). The original and 10 copies of all comments or protests shall be filed with the Board with a certificate of service. Except as otherwise set forth in part 1152, every document filed with the Board must be served on all parties to the abandonment proceeding. 49 CFR 1104.12(a).

\* \* \* \* \*

61. Amend § 1152.24 by revising paragraph (a) to read as follows:

**§ 1152.24 Filing and service of application.**

(a) An original and 10 copies of applications, typewritten or printed on paper approximately 8½ inches by 11 inches with 1½ inch left margin, shall be filed with the Chief, Section of Administration, Office of Proceedings, Washington, DC 20423-0001. The original shall bear the date and signature and shall be complete in itself; the signature may be stamped or typed and the notarial seal may be omitted on the copies. A check, money order or payment by credit card payable to the Surface Transportation Board must also be submitted to cover the applicable filing fee. If the applicant carrier is in bankruptcy, the application shall also be filed on the bankruptcy court.

\* \* \* \* \*

62. Amend § 1152.25 by revising paragraphs (c)(1) and (e)(1)(iii) to read as follows:

**§ 1152.25 Participation in abandonment or discontinuance proceedings.**

\* \* \* \* \*

(c) *Filing and service of written comments, protests, along with evidence and argument, and replies.* (1) Written comments and protests, as well as public use and trail use requests, shall be filed with the Board (the Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, Washington, DC 20423-0001) within 45 days of the filing with the Board of an abandonment or discontinuance application.

\* \* \* \* \*

(e) \* \* \*

(1) \* \* \*

(iii) The applicability and administration of the Trails Act [16 U.S.C. 1247(d)] in abandonment proceedings under 49 U.S.C. 10903 (and abandonment exemption proceedings), issued pursuant to delegations of authority at 49 CFR 1011.7(a)(2)(iv) and (v), will be acted on by the entire Board as set forth at 49 CFR 1011.2(a)(7). An original and 10 copies of all appeals, and replies to appeals, under this section must be filed with the Board.

\* \* \* \* \*

63. Amend § 1152.27 by revising paragraphs (c)(1)(i) introductory text, (c)(2)(ii), and (e) to read as follows:

**§ 1152.27 Financial assistance procedures.**

\* \* \* \* \*

(c) *Submission of financial assistance offer--(1) Abandonment and discontinuance applications and petitions for exemption--(i) Service and filing.* An offeror must serve its offer of assistance on the carrier owning and operating the line and all parties to the abandonment or discontinuance application or exemption proceeding. The offer must be filed concurrently with the Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, Washington, DC 20423-0001.

\* \* \* \* \*

(2) \* \* \*

(ii) *Service and filing.* An offeror must serve its offer of assistance on the carrier that instituted the exempt filing as well as all other parties to the proceeding. The offer must be filed concurrently with the Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, Washington, DC 20423-0001.

\* \* \* \* \*

(e) *Review of offers--(1) Abandonment and discontinuance applications.* The Board will review each offer submitted to determine if a financially responsible person has offered assistance. If that criterion is met, the Board will issue a decision postponing the effective date of the authorization for abandonment or discontinuance. This decision will be issued within 15 days of the service of the decision granting the application (or within 5 days after the offer is filed if the time for filing has been tolled under paragraph (c)(1)(i)(C) of this section, or within 5 days after expiration of the 120 day (4 month) period described in 49 U.S.C. 10904, if that occurs first). Under the delegation of authority at § 1011.7(a), the Director of the Office of Proceedings will make the initial determination whether offers of financial assistance satisfy the standards of 49 U.S.C. 10904(d) for purposes of instituting negotiations. Appeals of initial decisions determining whether offers of financial assistance satisfy the standards of 49 U.S.C. 10904(d) for purposes of instituting negotiations will be acted upon by the entire Board pursuant to 49 CFR 1011.2(a)(7).

(2) *Exemption proceedings.* The Board will review each offer submitted to determine if a financially responsible person has offered assistance. If that criterion is met, the Board will postpone the effective date either of the decision granting a petition for individual exemption or the notice of exemption under the class exemption and partially revoke the exemption or (in the case of a class exemption) the notice of exemption to the extent it applies to 49 U.S.C. 10904. The decision to postpone and partially revoke will be issued within 15 days of the service date of a decision granting a petition for exemption, or within 35 days of the FEDERAL REGISTER publication described in paragraph (b)(2)(ii) of this section (or within 5 days after the offer is filed if the time for filing has been tolled under paragraph (c)(1)(i)(C) or (c)(2)(ii) (C) or (D) of this section). Under the delegation of authority at Sec. 1011.7(a), the Director of the Office of Proceedings will make the initial determination whether offers of financial assistance satisfy the standards of 49 U.S.C. 10904(d) for purposes of partial revocation and institution of negotiations. Appeals of initial decisions determining whether offers of financial assistance

satisfy the standards of 49 U.S.C. 10904(d) for purposes of partial revocation and institution of negotiations will be acted upon by the entire Board pursuant to 49 CFR 1011.2(a)(7).

\* \* \* \* \*

64. Amend § 1152.29 by revising paragraph (e)(2) to read as follows:

**§ 1152.29 Prospective use of rights-of-way for interim trail use and rail banking.**

\* \* \* \* \*

(e) \* \* \*

(2) A railroad that receives authority from the Board to abandon a line (in a regulated abandonment proceeding under 49 U.S.C. 10903, or by individual or class exemption issued under 49 U.S.C. 10502) shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line (e.g., discontinued operations, salvaged the track, canceled tariffs, and intends that the property be removed from the interstate rail network). The notice shall provide the name of the STB proceeding and its docket number, a brief description of the line, and a statement that the railroad has consummated, or fully exercised, the abandonment authority on a certain date. The notice shall be filed within 1 year of the service date of the decision permitting the abandonment (assuming that the railroad intends to consummate the abandonment). Notices will be deemed conclusive on the point of consummation if there are no legal or regulatory barriers to consummation (such as outstanding conditions, including Trails Act conditions). If, after 1 year from the date of service of a decision permitting abandonment, consummation has not been effected by the railroad's filing of a notice of consummation, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. In that event, a new proceeding would have to be instituted if the railroad wants to abandon the line. Copies of the railroad's notice of consummation shall be filed with the Chief, Section of Administration, Office of Proceedings. In addition, the notice of consummation shall be sent to the State Public Service Commission (or equivalent agency) of every state through which the line passes. If, however, any legal or regulatory barrier to consummation exists at the end of the 1-year time period, the notice of consummation must be filed not later than 60 days after satisfaction, expiration or removal of the legal or regulatory barrier. For good cause shown, a railroad may file a request for an extension of time to file a notice so long as it does so sufficiently in advance of the expiration of the deadline for notifying the Board of consummation to allow for timely processing.

\* \* \* \* \*

**PART 1177 – RECORDATION OF DOCUMENTS**

65. The authority citation for part 1177 continues to read as follows:

Authority: 49 U.S.C. 721, 11301.

66. Revise § 1177.2 to read as follows:

**§ 1177.2 To whom documents should be submitted for recordation.**

Documents to be recorded shall be submitted in person, via the Board’s website, or by mail addressed to the Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, Washington, DC 20423-0001. All documents submitted by mail should clearly state “Documents for Recordation” on the envelope.

67. Amend § 1177.3 by revising paragraph (d) introductory text to read as follows:

**§ 1177.3 Requirements for submission.**

\* \* \* \* \*

(d) Be accompanied by a letter of transmittal requesting the recording of the document. For a sample of a letter, see § 1177.4. Documents submitted concurrently under the same recordation number may be included in a single transmittal letter. Otherwise, each document must have its own letter of transmittal. The letter should be addressed to the Chief, Section of Administration, Office of Proceedings and include the following information:

\* \* \* \* \*

68. Amend § 1177.4 by revising the first two sentences of paragraph (b) to read as follows:

**§ 1177.4 Sample forms.**

\* \* \* \* \*

(b) *Sample Letter of Transmittal.*

[Chief, Section of Administration, Office of Proceedings’ Name] Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, Washington, D.C.

Dear Section Chief: I have enclosed an original and one copy/counterpart of the document(s) described below, to be recorded pursuant to Section 11301 of Title 49 of the U.S. Code.

\* \* \* \* \*

**PART 1180 – RAILROAD ACQUISITION, CONTROL, MERGER, CONSOLIDATION PROJECT, TRACKAGE RIGHTS, AND LEASE PROCEDURES**

69. The authority citation for part 1180 continues to read as follows:

Authority: 5 U.S.C. 553 and 559; 11 U.S.C. 1172; 49 U.S.C. 721, 10502, 11323–11325.

70. Amend § 1180.4 by revising paragraphs (c)(2)(ii), (c)(6)(iii), (g)(1) introductory text, and (g)(2)(i) to read as follows:

**§ 1180.4 Procedures.**

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(ii) The application shall be filed with Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, Washington, DC 20423-0001.

\* \* \* \* \*

(6) \* \* \*

(iii) The Board’s Office of Proceedings will provide informal opinions and interpretations, which are not binding on the Board, regarding the format of or information to be included in the application.

\* \* \* \* \*

(g) *Notice of exemption.* (1) To qualify for an exemption under Sec. 1180.2(d), a railroad must file a verified notice of the transaction with the Board at least 30 days before the transaction is consummated indicating the proposed consummation date. Before a notice is filed, the railroad shall obtain a docket number from the Board's Section of Administration, Office of Proceedings.

\* \* \* \* \*

(2)(i) To qualify for an exemption under Sec. 1180.2(d)(7) (acquisition or renewal of trackage rights agreements), in addition to the notice, the railroad must file a caption summary suitable for publication in the FEDERAL REGISTER. The caption summary must be in the following form:

Surface Transportation Board

Notice of Exemption

Finance Docket No.

(1)--Trackage Rights--(2)

(2) (3) to grant (4) trackage rights to (1) between (5). The trackage rights will be effective on (6).

This notice is filed under Sec. 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated:

By the Board.

[Insert name]

Director, Office of Proceedings.

The following key identifies the information symbolized in the summary.

(1) Name of the tenant railroad.

(2) Name of the landlord railroad.

(3) If an agreement has been entered use “has agreed”, but if an agreement has been reached but not entered use “will agree.”

(4) Indicate whether “overhead” or “local” trackage rights are involved.

(5) Describe the trackage rights.

(6) State the date the trackage rights agreement is proposed to be consummated.

(ii) To qualify for an exemption under Sec. 1180.2(d)(8) (acquisition of temporary trackage rights), in addition to the notice, the railroad must file a caption summary suitable for publication in the FEDERAL REGISTER. The caption summary must be in the following form:

Surface Transportation Board

Notice of Exemption

STB Finance Docket No.

(1)--Temporary Trackage Rights--(2)

(2) (3) to grant overhead temporary trackage rights to (1) between (4). The temporary trackage rights will be effective on (5). The authorization will expire on (6).

This notice is filed under § 1180.2(d)(8). Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated:

By the Board.

[Insert name]

Director, Office of Proceedings.

### **PARTS 1240-1259 – REPORTS**

71. Revise the note to parts 1240-1259 to read as follows:

Note: The report forms prescribed by parts 1241-1259 are available upon request from the Office of Economics, Environmental Analysis, and Administration, Surface Transportation Board, Washington, DC 20423-0001.

### **PART 1241 – ANNUAL, SPECIAL, OR PERIODIC REPORTS—CARRIERS SUBJECT TO PART I OF THE INTERSTATE COMMERCE ACT**

72. The authority citation for part 1241 continues to read as follows:

Authority: 49 U.S.C. 11145.

73. Revise the note to part 1241 to read as follows:

Note: The report forms prescribed by part 1241 are available upon request from the Office of Economics, Environmental Analysis, and Administration, Surface Transportation Board, Washington, DC 20423-0001.

### **PART 1242 – SEPARATION OF COMMON OPERATING EXPENSES BETWEEN FREIGHT SERVICE AND PASSENGER SERVICE FOR RAILROADS**

74. The authority citation for part 1242 continues to read as follows:

Authority: 49 U.S.C. 721, 11142.

75. Revise the note to part 1242 to read as follows:

Note: The report forms prescribed by part 1242 are available upon request from the Office of Economics, Environmental Analysis, and Administration, Surface Transportation Board, Washington, DC 20423-0001.

**PART 1243 – QUARTERLY OPERATING REPORTS—RAILROADS**

76. The authority citation for part 1243 continues to read as follows:

Authority: 49 U.S.C. 721, 11145.

77. Revise the note to part 1243 to read as follows:

Note: The report forms prescribed by part 1243 are available upon request from the Office of Economics, Environmental Analysis, and Administration, Surface Transportation Board, Washington, DC 20423-0001.

**PART 1245 – CLASSIFICATION OF RAILROAD EMPLOYEES; REPORTS OF SERVICE AND COMPENSATION**

78. The authority citation for part 1245 continues to read as follows:

Authority: 49 U.S.C. 721, 11145.

79. Revise the note to part 1245 to read as follows:

Note: The report forms prescribed by part 1245 are available upon request from the Office of Economics, Environmental Analysis, and Administration, Surface Transportation Board, Washington, DC 20423-0001.

**PART 1246 – NUMBER OF RAILROAD EMPLOYEES**

80. The authority citation for part 1246 continues to read as follows:

Authority: 49 U.S.C. 721, 11145.

81. Amend § 1246.1 by revising the note to read as follows:

**§ 1246.1 Monthly report of number of railroad employees.**

\* \* \* \* \*

Note: The report forms prescribed by parts 1245 and 1246 are available upon request from the Office of Economics, Environmental Analysis, and Administration, Surface Transportation Board, Washington, DC 20423-0001.

**PART 1248 – FREIGHT COMMODITY STATISTICS**

82. The authority citation for part 1248 continues to read as follows:

Authority: 49 U.S.C. 721, 11144 and 11145.

83. Revise the note to part 1248 to read as follows:

Note: The report forms prescribed by part 1248 are available upon request from the Economics, Environmental Analysis, and Administration, Surface Transportation Board, Washington, DC 20423-0001.

**PART 1253 – RATE-MAKING ORGANIZATION; RECORDS AND REPORTS**

84. The authority citation for part 1253 continues to read as follows:

Authority: 49 U.S.C. 721, 10706, 13703, 11144, and 11145.

85. Revise the note to part 1253 to read as follows:

Note: The report forms prescribed by part 1253 are available upon request from the Office of Economics, Environmental Analysis, and Administration, Surface Transportation Board, Washington, DC 20423-0001.

86. Amend § 1253.20 by revising paragraph (c) to read as follows:

**§ 1253.20 Other records.**

\* \* \* \* \*

(c) All rate bureaus are required to:

(1) Advise the Board of any change in legal address by notifying the Chief, Section of Administration, Office of Proceedings; and

(2) Submit information to the Board when requested.

**PARTS 1260-1269 – VALUATION**

87. Revise the note to parts 1260-1269 to read as follows:

Note: The report forms prescribed by parts 1260-1269 are available upon request from the Office of Economics, Environmental Analysis, and Administration, Surface Transportation Board, Washington, DC 20423-0001.