

Boulevard, Chicago, Illinois 60604, (312) 886-6524, rau.matthew@epa.gov.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: May 14, 2010.

Walter W. Kovalick,

Acting Regional Administrator, Region 5.

PART 52—[AMENDED]

■ Accordingly, the amendment to 40 CFR 52.2570 published in the **Federal Register** on April 8, 2010 (75 FR 17865) on pages 17867-17868 is withdrawn as of June 2, 2010.

[FR Doc. 2010-13175 Filed 6-1-10; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Parts 1002, 1011, 1152, and 1180

[STB Ex Parte No. 685]

Removal of Delegations of Authority to Secretary

AGENCY: Surface Transportation Board, DOT.

ACTION: Correcting amendments.

SUMMARY: The Surface Transportation Board (Board or STB) published final rules in this proceeding on October 15, 2009, in the **Federal Register**. The rule amended STB regulations by eliminating the Secretary of the Board and reassigning the delegations of authority from the Secretary to other Offices of the Board. As published, the final regulations contained errors where information was inadvertently added, deleted, or duplicated. This document sets forth corrections to the final regulations to eliminate confusion in interpretation of the regulations.

DATES: Effective on June 2, 2010.

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 regulations at 49 CFR 1002.1, 1011.7, 1152.21, 1152.27, and 1180.4, include erroneous sections that should be replaced with the amendments set forth in this document. The Surface Transportation Board (Board or STB)

published final rules in this proceeding on October 15, 2009, in the **Federal Register**, at 74 FR 52900.

List of Subjects

49 CFR Part 1002

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

49 CFR Part 1011

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

49 CFR Part 1152

Administrative practice and procedure, Railroads, Reporting and recordkeeping requirements, and Uniform system of accounts.

49 CFR Part 1180

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

Dated: May 26, 2010.

Andrea Pope-Matheson,
Clearance Clerk.

■ Accordingly, 49 CFR parts 1002, 1011, 1152, and 1180 are corrected by making the following correcting amendments:

PART 1002—FEES

■ 1. 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.

■ 2. Revise § 1002.1(f)(1) to read as follows:

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

* * * * *

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

(1) A fee of \$70.00 per hour for professional staff time will be charged when it is required to fulfill a request for computer data.

* * * * *

PART 1011—BOARD ORGANIZATION; DELEGATIONS OF AUTHORITY

■ 3. 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.

■ 4. Revise § 1011.7 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) Issue, on written request, informal opinions and interpretations on carrier tariff provisions, which are not binding on the Board.

(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.

(4) Resolve any disputes that may arise concerning the applicability of motor common carrier rates under 49 U.S.C. 13710(a)(2).

(5) Issue orders by the Director in an emergency under 49 U.S.C. 11123 and 11124 if no Board Member is reasonably available.

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

■ 5. 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.

■ 6. Revise § 1152.21 to read as follows:

§ 1152.21 Form of notice.

The Notice of Intent to abandon or to discontinue service shall be in the following form:

STB No. AB _____ (Sub-No. _____)

Notice of Intent To Abandon or To Discontinue Service

(Name of Applicant) gives notice that on or about (insert date application will be filed with the Board) it intends to file with the Surface Transportation Board, Washington, DC 20423, an application for permission for the abandonment of (the discontinuance of service on), a line of railroad known as _____ extending from railroad milepost near (station name) to (the end of line or rail milepost) near (station name), which traverses through United States Postal Service ZIP Codes (ZIP Codes), a distance of _____ miles, in [County(ies), State(s)]. The line includes the stations of (list all stations on the line in order of milepost number, indicating milepost location). The reason(s) for the proposed abandonment (or discontinuance) is (are) _____ (explain briefly and clearly why the proposed action is being undertaken by the applicant). Based on information in our possession, the line (does) (does not) contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it. This line of railroad has appeared on the system diagram map or included in the narrative in category 1 since (insert date).

The interest of railroad employees will be protected by (specify the appropriate conditions). The application will include the applicant's entire case for abandonment (or discontinuance) (case in chief). Any interested person, after the application is filed on (insert date), may file with the Surface Transportation Board written comments concerning the proposed abandonment (or discontinuance) or protests to it. These filings are due 45 days from the date of filing of the application. All interested persons should be aware that following any abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 U.S.C. 10905 (§ 1152.28 of the Board's rules) and any request for a trail use condition under 16 U.S.C. 1247(d) (§ 1152.29 of the Board's rules) must also be filed within 45 days from the date of filing of the application. Persons who may oppose the abandonment or discontinuance but who do not wish to participate fully in the process by appearing at any oral hearings or by submitting verified statements of witnesses, containing detailed evidence, should file comments. Persons interested only in seeking public use or trail use conditions should also file comments. Persons opposing the proposed abandonment or discontinuance that do wish to participate actively and fully in the process should file a protest. Protests must contain that party's entire case in opposition (case in chief) including the following:

(1) Protestant's name, address and business.

(2) A statement describing protestant's interest in the proceeding including:

(i) A description of protestant's use of the line;

(ii) If protestant does not use the line, information concerning the group or public interest it represents; and

(iii) If protestant's interest is limited to the retention of service over a portion of the line, a description of the portion of the line subject to protestant's interest (with milepost designations if available) and evidence showing that the applicant can operate the portion of the line profitably, including an appropriate return on its investment for those operations.

(3) Specific reasons why protestant opposes the application including information regarding protestant's reliance on the involved service [this information must be supported by affidavits of persons with personal knowledge of the fact(s)].

(4) Any rebuttal of material submitted by applicant.

In addition, a commenting party or protestant may provide a statement of position and evidence regarding:

(i) Intent to offer financial assistance pursuant to 49 U.S.C. 10904;

(ii) Environmental impact;

(iii) Impact on rural and community development;

(iv) Recommended provisions for protection of the interests of employees;

(v) Suitability of the properties for other public purposes pursuant to 49 U.S.C. 10905; and

(vi) Prospective use of the right-of-way for interim trail use and rail banking under 16 U.S.C. 1247(d) and § 1152.29.

A protest may demonstrate that: (1) the protestant filed a feeder line application under 49 U.S.C. 10907; (2) the feeder line application involves any portion of the rail line involved in the abandonment or discontinuance application; (3) the feeder line application was filed prior to the date the abandonment or discontinuance application was filed; and (4) the feeder line application is pending before the Board.

Written comments and protests will be considered by the Board in determining what disposition to make of the application. The commenting party or protestant may participate in the proceeding as its interests may appear.

If an oral hearing is desired, the requester must make a request for an oral hearing and provide reasons why an oral hearing is necessary. Oral hearing requests must be filed with the Board no later than 10 days after the application is filed.

Those parties filing protests to the proposed abandonment (or discontinuance) should be prepared to participate actively either in an oral hearing or through the submission of their entire opposition case in the form of verified statements and arguments at the time they file a protest. Parties seeking information concerning the filing of protests should refer to § 1152.25.

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).

The line sought to be abandoned (or discontinued) will be available for subsidy or sale for continued rail use, if the Board decides to permit the abandonment (or discontinuance), in accordance with applicable laws and regulations (49 U.S.C. 10904 and 49 CFR 1152.27). No subsidy arrangement approved under 49 U.S.C. 10904 shall remain in effect for more than 1 year unless otherwise mutually agreed by the parties (49 U.S.C. 10904(f)(4)(B)). Applicant will promptly provide upon request to each interested party an estimate of the subsidy and minimum purchase price required to keep the line in operation. The carrier's representative to whom inquiries may be made concerning sale or subsidy terms is (insert name and business address). Persons seeking further information concerning abandonment procedures may contact the Surface Transportation Board or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis.

A copy of the application will be available for public inspection on or after (insert date abandonment application is to be filed with Board) at each agency station or terminal on the line proposed to be abandoned or discontinued [if there is no agency station on the line, the application shall be deposited at any agency station through which business for the line is received or forwarded (insert name, address, location, and business hours)]. The carrier shall furnish a copy of the application to any interested person proposing to file a protest or comment, upon request.

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by the Section of Environmental Analysis will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact the Section of Environmental Analysis. EAs in these abandonment proceedings normally will be made available within 33 days of the filing of the application. The deadline for submission of comments on the EA will generally be within 30 days of its service. The comments received will be addressed in the Board's decision. A supplemental EA or EIS may be issued where appropriate.

■ 7. Amend § 1152.27 by adding paragraphs (c)(2)(ii)(A), (B), (C), and (D) to read as follows:

§ 1152.27 Financial assistance procedures.

* * * * *

(c) * * *

(2) * * *

(ii) * * *

(A) An offer may be filed and served at any time after the filing of the notice of exemption. Once a notice of exemption is published in the **Federal Register**, however, the Board must be notified that an offer has previously been submitted.

(B) An offer, or notification of a previously filed offer, must be filed and served no later than 30 days after the **Federal Register** publication described in paragraph (b)(2)(ii) of this section. This filing and service is subject to the requirements of 49 CFR 1152.25(d)(1), (d)(2), and (d)(4).

(C) If, after a *bona fide* request, applicant has failed to provide a potential offeror promptly with the information required under paragraph (a) of this section and if that information is not contained in the notice of exemption, the Board will entertain petitions to toll the 30-day period for submitting offers of financial assistance under paragraph (c)(2) of this section. Petitions must be filed with the Board within 25 days after publication in the **Federal Register** (as described in paragraph (b)(2)(ii) of this section). Petitions should include copies of the prior written request for information or an accurate outline of the specific information that was orally requested. Replies to these petitions must be filed within 30 days after publication. These petitions and replies must be filed on or before their actual due date under 49 CFR 1152.25(d)(4). The Board will issue a decision on petitions to toll the offer period within 35 days after publication.

(D) Upon receipt of a formal expression of intent to file an offer under paragraph (c)(2)(i) of this section, the rail carrier applicant may advise the Board and the potential offeror that additional time is needed to develop the information required under paragraph (a) of this section. Applicant shall expressly indicate the amount of time it considers necessary (not to exceed 60 days) to develop and submit the required information to the potential offeror. For the duration of the time period so indicated by the applicant, the 30-day period for submitting offers of financial assistance under paragraph (c)(2) of this section shall be tolled without formal Board action.

* * * * *

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

■ 8. 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.

■ 9. Revise § 1180.4(g)(2)(i) and (g)(2)(ii) to read as follows:

§ 1180.4 Procedures.

* * * * *
(g) * * *
* * * * *

(2)(i) To qualify for an exemption under § 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 § 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 § 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.
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) Describe the temporary trackage rights.
- (5) State the date the temporary trackage rights agreement is proposed to be consummated.
- (6) State the date the authorization will expire (not to exceed 1 year from the date the trackage rights will become effective).

[FR Doc. 2010–13130 Filed 6–1–10; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No. 070910507–0037–02]

RIN 0648–AV94

Endangered and Threatened Wildlife and Plants: Final Rulemaking To Establish Take Prohibitions for the Threatened Southern Distinct Population Segment of North American Green Sturgeon

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

ACTION: Final rule and notice of availability of a final environmental assessment.

SUMMARY: This final ESA section 4(d) rule represents the regulations that we, the National Marine Fisheries Service (NMFS), believe necessary and advisable to conserve the threatened Southern Distinct Population Segment of North American green sturgeon (*Acipenser medirostris*; hereafter Southern DPS). We apply the prohibitions listed under ESA section 9 for the Southern DPS, and we highlight specific categories of activities that are likely to result in take of Southern DPS fish. We do not find it necessary and advisable to apply the take prohibitions to certain categories of activities that contribute to conserving the Southern

DPS. We also provide a variety of methods by which take of the Southern DPS may be authorized. This document also announces the availability of a final draft environmental assessment (EA) that analyzes the environmental impacts of promulgating the 4(d) regulations for the Southern DPS.

DATES: The effective date of this final rule is July 2, 2010.

ADDRESSES: Reference materials regarding this final rule can be obtained via the Internet at <http://www.swr.nmfs.noaa.gov> or by submitting a request to the Assistant Regional Administrator, Protected Resources Division, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: Melissa Neuman, NMFS, Southwest Region (562) 980–4115, or Lisa Manning, NMFS, Office of Protected Resources (301) 713–1401.

SUPPLEMENTARY INFORMATION:

Background

We determined that the Southern DPS is at risk of extinction in the foreseeable future throughout all or a significant portion of its range and listed the species as threatened under the ESA on April 7, 2006 (71 FR 17757). At that time we summarized the process for considering the application of ESA section 9 prohibitions to the threatened Southern DPS. In the case of threatened species, ESA section 4(d) states that the Secretary shall decide whether, and to what extent, to extend the ESA section 9(a) prohibitions, including those regarding take of the species, and authorizes us to issue regulations we consider necessary and advisable for the conservation of the species. Such regulations may include any or all of the prohibitions that automatically apply to endangered species. Those prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take the listed species. The term “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct. (16 U.S.C. 1532(19)). The term “harm” is defined as any act which actually kills or injures fish or wildlife. Such an act may include significant habitat modification or degradation which actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns, including breeding, spawning, rearing, migrating, feeding, or sheltering. (50 CFR 222.102).

Whether take prohibitions or other protective regulations are necessary or advisable is in large part dependent on