

and there are no known significant alternative approaches to the rule that would meet the requirements.

## VII. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

### List of Subjects in 48 CFR Part 215

Government procurement.

Amy G. Williams,

*Deputy, Defense Acquisition Regulations System.*

Therefore, 48 CFR part 215 is amended as follows:

### PART 215—CONTRACTING BY NEGOTIATION

■ 1. The authority citation for part 215 continues to read as follows:

**Authority:** 41 U.S.C. 1303 and 48 CFR chapter 1.

■ 2. Add sections 215.407 and 215.407–1 to subpart 215.4 to read as follows:

#### 215.407 Special cost or pricing areas.

#### 215.407–1 Defective certified cost or pricing data.

(c)(i) When a contractor voluntarily discloses defective pricing after contract award, the contracting officer shall discuss the disclosure with the Defense Contract Audit Agency (DCAA). This discussion will assist in the contracting officer determining the involvement of DCAA, which could be a limited-scope audit (*e.g.*, limited to the affected cost elements of the defective pricing disclosure), a full-scope audit, or technical assistance as appropriate for the circumstances (*e.g.*, nature or dollar amount of the defective pricing disclosure). At a minimum, the contracting officer shall discuss with DCAA the following:

(A) Completeness of the contractor's voluntary disclosure on the affected contract.

(B) Accuracy of the contractor's cost impact calculation for the affected contract.

(C) Potential impact on existing contracts, task or deliver orders, or other proposals the contractor has submitted to the Government.

(ii) Voluntary disclosure of defective pricing is not a voluntary refund as

defined in 242.7100 and does not waive the Government entitlement to the recovery of any overpayment plus interest on the overpayments in accordance with FAR 15.407–1(b)(7).

(iii) Voluntary disclosure of defective pricing does not waive the Government's rights to pursue defective pricing claims on the affected contract or any other Government contract.

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## SURFACE TRANSPORTATION BOARD

### 49 CFR Part 1040

[Docket No. EP 726]

### On-Time Performance Under Section 213 of The Passenger Rail Investment and Improvement Act of 2008

**AGENCY:** Surface Transportation Board.

**ACTION:** Final rule.

**SUMMARY:** The Surface Transportation Board (Board) is removing its final rule concerning on-time performance of intercity passenger rail service because it was invalidated upon judicial review. **DATE:** This final rule is effective May 4, 2018.

**FOR FURTHER INFORMATION CONTACT:** Scott M. Zimmerman: (202) 245–0386. Federal Information Relay Service (FIRS) for the hearing impaired: (800) 877–8339.

**SUPPLEMENTARY INFORMATION:** On May 15, 2015, the Board instituted a rulemaking proceeding in this docket to define “on-time performance” for intercity passenger trains for purposes of Section 213 of the Passenger Rail Investment and Improvement Act of 2008 (PRIIA), 49 U.S.C. 24308(f). *See* 80 FR 28928. The Board adopted its final rule in 49 CFR part 1040 on July 28, 2016, and the rule took effect on August 27, 2016. *See* 81 FR 51343.

Petitions for judicial review of the final rule were filed in the U.S. Courts of Appeals for the Eighth Circuit and the District of Columbia Circuit, and were ultimately consolidated in the Eighth Circuit. The Court of Appeals found that the Board lacked authority to promulgate a final rule defining on-time performance under PRIIA and vacated the Board's rule. *See Union Pac. R.R. v. Surface Transp. Bd.*, 863 F.3d 816 (8th

Cir. 2017). The National Railroad Passenger Corporation (Amtrak) and certain passenger organizations filed petitions for certiorari with the U.S. Supreme Court, which declined to review the Eighth Circuit's ruling.

The Board's rule is therefore invalid and 49 CFR part 1040 will be removed. Because this action is based on a final court determination that the rule being eliminated is invalid, the Board finds good cause to dispense with notice and comment under the Administrative Procedure Act (APA). *See* 5 U.S.C. 553(b)(B).

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601–612, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Because the Board has determined that notice and comment are not required under the APA for this rulemaking, the requirements of the RFA do not apply.

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3521.

### List of Subjects in 49 CFR Part 1040

Mass transportation, Railroads.

*It is ordered:*

1. Part 1040 is removed and notice will be published in the **Federal Register**.

2. This decision is effective on May 4, 2018.

Decided: April 30, 2018.

By the Board, Board Members Begeman and Miller.

**Jeffrey Herzig,**  
*Clearance Clerk.*

### PART 1040 [REMOVED AND RESERVED]

■ For the reasons set forth in the preamble, and under the authority of 49 U.S.C. 1321(a), the Surface Transportation Board removes and reserves 49 CFR part 1040.

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