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Jeffrey W. Runge,

Administrator.

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## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**49 CFR Parts 1039, 1101, 1105, 1150, 1185, and 1201**

[STB Ex Parte No. 652]

#### Revision of Exemption Authority Citations.

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

**ACTION:** Final rule.

**SUMMARY:** The Surface Transportation Board (Board or STB) is amending its regulations to change incorrect citations to its authority to exempt rail transportation, and to update miscellaneous references. The Board is also making changes to its authority citations.

**DATES:** These rules are effective on September 30, 2004.

**FOR FURTHER INFORMATION CONTACT:** John Sado, (202) 565-1661. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.]

**SUPPLEMENTARY INFORMATION:** The ICC Termination Act of 1995, Public Law 104-88, 109 Stat. 803 (ICCTA), recodified former 49 U.S.C. 10505 as 49 U.S.C. 10502 with minor changes. This section deals with the authority of the Board to exempt railroad transportation. A number of the Board's regulations still refer to 49 U.S.C. 10505. Accordingly, the Board will correct those citations.

Four rules refer to "former 49 U.S.C. 10505". See 49 CFR 1185.1(b), 1185.5(b), 1300.1(d), and 1313.1(b). These citations to former section 10505 are appropriate and will not be changed. However, section 1185.5(b) refers "to an exemption authorized by the STB under former 49 U.S.C. 10505.\* \* \*" The reference to the STB rather than the Interstate Commerce Commission (ICC) is incorrect; when the regulation was issued, it correctly stated "ICC" rather than "STB".<sup>1</sup> Similarly, in section 1185.5(a) there is another instance where "STB" is incorrectly used in lieu of "ICC", this time in reference to former 49 U.S.C. 11343-44.<sup>2</sup> The Board

will change both references to read "ICC".

In section 1150.1(a), there is a reference to "49 U.S.C. 11343". ICCTA recodified former section 11343 as section 11323. Accordingly, that reference will be updated to read "49 U.S.C. 11323". References to outdated telephone numbers in section 1105.12 will also be removed.

The authority citations in Part 1105 will be modified to more accurately reference the provisions that authorize agencies to comply with the Coastal Zone Management Act (16 U.S.C. 1451 *et seq.*) and the Endangered Species Act (16 U.S.C. 1531 *et seq.*). The new language will reference 16 U.S.C. 1456 and 1536, respectively, rather than 16 U.S.C. 1451 (definitions) and 1531 (definitions and policy). Also, for clarity, the parenthetical to the reference to 49 U.S.C. 701 note (1995) will be modified to read "(Savings Provisions)".

The Board is also revising certain authority citations that cite the Administrative Procedure Act (APA). APA references are being removed where "the APA does not provide an independent basis of authority."<sup>3</sup>

Finally, the Board will not presently make corrections in two sections: 49 CFR 1039.17 and 1090.2. Section 1039.17 deals with the exemption of contracts for protective services. The regulations at 49 CFR 1090.2 concern the exemption of rail and highway trailer-on-flatcar/container-on-flatcar service. The Board will not here update references in these sections because more significant changes may have to be made to them. Thus, these changes will be considered in separate proceedings.

Because these rule changes revise regulations to provide updated statutory references and make revisions that are not substantive, good cause is found to dispense with notice and comment. See 5 U.S.C. 553(b)(B). Moreover, good cause is found for making these rules effective on less than 30 days' notice under 5 U.S.C. 553(d) to change the incorrect references as soon as possible.

The Board certifies that these changes in the rules will not have a significant impact on a substantial number of small entities. This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

#### List of Subjects

49 CFR Part 1039

Agricultural commodities, Intermodal transportation, and Railroads.

49 CFR Part 1101

Administrative practice and procedure.

49 CFR Part 1105

Environmental Impact Statements, Reporting and recordkeeping requirements.

49 CFR Part 1150

Administrative practice and procedure, Railroads.

49 CFR Part 1185

Administrative practice and procedure, Antitrust, and Railroads.

49 CFR Part 1201

Railroads, Uniform System of Accounts.

Decided: September 24, 2004.

By the Board, Chairman Nober, Vice Chairman Mulvey, and Commissioner Buttrey.

Vernon A. Williams,  
Secretary.

■ For the reasons set forth in the preamble, Parts 1039, 1101, 1105, 1150, and 1185 of title 49, chapter X, of the Code of Federal Regulations are amended as follows:

#### PART 1039—EXEMPTIONS

■ 1. The authority citation for Part 1039 is revised to read as follows:

**Authority:** 49 U.S.C. 10502, 13301.

##### § 1039.10 [Amended]

■ 2. In § 1039.10, remove the reference "10505" in the text following the table, and in its place add "10502".

##### § 1039.20 [Amended]

■ 3. In § 1039.20, remove the reference "10505" and in its place add "10502".

#### PART 1101—DEFINITIONS AND CONSTRUCTION

■ 4. The authority citation for Part 1101 continues to read as follows:

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

##### § 1101.2 [Amended]

■ 5. In § 1101.2(e)(5) remove the reference "10505" and in its place add "10502".

#### PART 1105—PROCEDURES FOR IMPLEMENTATION OF ENVIRONMENTAL LAWS

■ 6. The authority citation for Part 1105 is revised 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.

<sup>1</sup> See *Revision of Regulations for Interlocking Rail Officers*, 1 S.T.B. 1087, 1099 (1996).

<sup>2</sup> *Id.*

<sup>3</sup> *Revision of Authority Citations*, 2 S.T.B. 622, 623 (1997) (footnote omitted).

**§ 1105.7 [Amended]**

- 7. In § 1105.7(e)(5)(i)(C) and (e)(5)(ii)(C) remove the reference “10505” and in its place add “10502”.

**Appendix to § 1105.12 [Amended]**

- 8. In the appendix to § 1105.12, in the second sample newspaper notice remove the reference “10505” and in its place add “10502”, and in both sample newspaper notices remove “202–927–6211.” and in its place add “[INSERT TELEPHONE NUMBER].”

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

- 9. The authority citation for Part 1150 is revised to read as follows:

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

**§ 1150.1 [Amended]**

- 10. In § 1150.1(a) remove the reference “49 U.S.C. 11343” and in its place add “49 U.S.C. 11323”, and remove the reference “10505” and in its place add “10502”.

**§ 1150.32 [Amended]**

- 11. In § 1150.32(c) remove the reference “10505(d)” and in its place add “10502(d)”.

**§ 1150.34 [Amended]**

- 12. In § 1150.34 remove the reference “10505(d)” in the concluding paragraph, and in its place add “10502(d)”.

**§ 1150.35 [Amended]**

- 13. In § 1150.35(f) remove the reference “10505(d)” and in its place add “10502(d)”.

**PART 1185—INTERLOCKING OFFICERS**

- 14. The authority citation for Part 1185 is revised to read as follows:

**Authority:** 49 U.S.C. 721, 10502, and 11328.

**§ 1185.5 [Amended]**

- 15. In § 1185.5(a) remove the first reference to “STB” and in its place add “ICC”, and in paragraph (b) remove the first reference to “STB” and in its place add “ICC”.

**PART 1201—RAILROAD COMPANIES**

- 16. The authority citation for Part 1201 is revised to read as follows:

**Authority:** 49 U.S.C. 11142 and 11164.

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**DEPARTMENT OF TRANSPORTATION****Surface Transportation Board****49 CFR Part 1114**

[STB Ex Parte No. 638]

**Procedures To Expedite Resolution of Rail Rate Challenges To Be Considered Under the Stand-Alone Cost Methodology**

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

**ACTION:** Final rule.

**SUMMARY:** The Surface Transportation Board is amending its regulations regarding discovery procedures to correct an inadvertent omission.

**DATES:** These rules are effective on September 30, 2004.

**FOR FURTHER INFORMATION CONTACT:**

Jamie Rennert, (202) 565–1566. [Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339.]

**SUPPLEMENTARY INFORMATION:** In *Procedures to Expedite Resolution of Rail Rate Challenges to Be Considered Under the Stand-Alone Cost Methodology*, STB Ex Parte No. 638 (STB served Apr. 3, 2003, and published Apr. 9, 2003 (68 FR 17312)), the Board revised the procedures at 49 CFR 1114.31 dealing with discovery disputes in rail rate challenge cases considered under the stand-alone cost methodology.

As relevant here, the Board added four numbered paragraphs (a)(1)–(4) to § 1114.31(a) to expedite the discovery process. However, in the course of formatting these amendments for publication in the **Federal Register**, the Board inadvertently omitted then-existing § 1114.31(a), which was to be retained as the introductory paragraph to new paragraphs (a)(1)–(4). As a result, § 1114.31(a) is being revised to reincorporate the omitted paragraph. To comply with **Federal Register** form, we are also changing “section 1104.13” to “49 CFR 1104.13” in paragraph (a)(1), and changing “subparagraph (a)(3)” to “paragraph (a)(3)” in paragraph (a)(4).

Because this rule change simply corrects a technical error that occurred during the prior rule change and makes other technical changes to conform with **Federal Register** form, it will be issued as a final rule without requesting public comment. See 5 U.S.C. 553(b)(A). Moreover, there is good cause to make this rule effective on less than 30 days’ notice in order to correct the regulation as soon as possible. See 5 U.S.C. 553(d).

The Board certifies that the rule will not have a significant impact on a substantial number of small entities.

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

**List of Subjects in 49 CFR Part 1114**

Administrative practice and procedure.

Decided: September 24, 2004.

By the Board, Chairman Nober, Vice Chairman Mulvey, and Commissioner Buttrey.

**Vernon A. Williams,**

*Secretary.*

- For the reasons set forth in the preamble, Part 1114 of title 49, chapter X, of the Code of Federal Regulations is amended as follows:

**PART 1114—EVIDENCE; DISCOVERY**

- 1. The authority citation for Part 1114 continues to read as follows:

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

**§ 1114.31 [Amended]**

- 2. Revise § 1114.31(a) to read as follows:

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

(a) *Failure to answer.* If a deponent fails to answer or gives an evasive answer or incomplete answer to a question propounded under § 1114.24(a), or a party fails to answer or gives evasive or incomplete answers to written interrogatories served pursuant to § 1114.26(a), the party seeking discovery may apply for an order compelling an answer by motion filed with the Board and served on all parties and deponents. Such motion to compel an answer must be filed with the Board within 10 days after the failure to obtain a responsive answer upon deposition, or within 10 days after expiration of the period allowed for submission of answers to interrogatories. On matters relating to a deposition on oral examination, the proponent of the question may complete or adjourn the examination before he applies for an order.

(1) *Reply to motion to compel generally.* Except in rate cases to be considered under the stand-alone cost methodology, the time for filing a reply to a motion to compel is governed by 49 CFR 1104.13.

(2) *Reply to motion to compel in stand-alone cost rate cases.* A reply to a motion to compel must be filed with the Board within 10 days thereafter in a rate case to be considered under the stand-alone cost methodology.