*fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

**Synopsis**

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received final OMB approval on June 8, 2017, for the information collection requirements contained in the modifications to the Commission's rules in 47 CFR part 90.

Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number. The OMB Control Number is 3060–1231.

The foregoing notice is required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, and 44 U.S.C. 3507.

The total annual reporting burdens and costs for the respondents are as follows:

*OMB Control Number:* 3060–1231.

*OMB Approval Date:* June 8, 2017.

*OMB Expiration Date:* June 30, 2020.

*Title:* Section 90.20 (xiv), Public Safety Pool.

*Form Number:* N/A.

*Respondents:* Business or other for-profit entities, and state, local, or tribal government.

*Number of Respondents and Responses:* 1,526 respondents; 1,526 responses.

*Estimated Time per Response:* 1 hour.

*Frequency of Response:* One-time; on occasion reporting requirement and third party disclosure requirement.

*Obligation to Respond:* Required to obtain or retain benefits. Statutory authority for these collections are contained in sections 1, 2, 4(i), 4(j), 301, 303, 316, and 337 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(j), 301, 303, 316, and 337.

*Total Annual Burden:* 1,526 hours.

*Total Annual Cost:* None.

*Nature and Extent of Confidentiality:* There is no need for confidentiality with this collection of information.

*Privacy Act:* No impact(s).

*Needs and Uses:* On August, 23, 2016, the Federal Communications Commission released a Report and Order, FCC 16–113, PS Docket No. 15–199 (see attached) that modified part 90 of the Rules Private Land Mobile Radio Services. The amended rule revises the part 90 eligibility rules to permit railroad police officers to access the interoperability. Specifically, the Commission modified § 90.20(a)(2)(xiv) to provide that:

1. Railroad police officers are a class of users eligible to operate on the nationwide interoperability and mutual aid channels listed in § 90.20(i) provided their employer holds a Private Land Mobile Radio (PLMR) license of any radio category, including Industrial/Business (I/B). Eligible users include full and part time railroad police officers, Amtrak employees who qualify as railroad police officers under this subsection, Alaska Railroad employees who qualify as railroad police officers under this subsection, freight railroad employees who qualify as railroad police officers under this subsection, and passenger transit lines police officers who qualify as railroad police officers under this subsection. Railroads and railroad police departments may obtain licenses for the nationwide interoperability and mutual aid channels on behalf of railroad police officers in their employ. Employers of railroad police officers must obtain concurrence from the relevant state interoperability coordinator or regional planning committee before applying for a license to the Federal Communications Commission or operating on the interoperability and mutual aid channels.

• Railroad police officer means a peace officer who is commissioned in his or her state of legal residence or state of primary employment and employed, full or part time, by a railroad to enforce state laws for the protection of railroad property, personnel, passengers, and/or cargo.

• Commissioned means that a state official has certified or otherwise designated a railroad employee as qualified under the licensing requirements of that state to act as a railroad police officer in that state.

• Property means rights-of-way, easements, appurtenant property, equipment, cargo, facilities, and buildings and other structures owned, leased, operated, maintained, or transported by a railroad.

• Railroad means each class of freight railroad (*i.e.,* Class I, II, III); Amtrak, Alaska Railroad, commuter railroads and passenger transit lines.

• The word state, as used herein, encompasses states, territories and the District of Columbia.

2. Eligibility for licensing on the 700 MHz narrowband interoperability channels is restricted to entities that have as their sole or principal purpose the provision of public safety services.

To effectively implement the provisions of the new Rule, no other modifications to existing FCC rules are required. The changes are intended to simplify the licensing process for railroad police officers and ensure interoperable communications. The modified rules provide a benefit to public safety licensees by ensuring that only railroad police officers with appropriate governmental authorization can operate on the interoperability and mutual aid channels during emergencies. This will provide the additional benefit of promoting interoperability with railroad police officers by eliminating eligibility as a gating factor when licensing spectrum. The *Report and Order* reduces the burden on railroad police by allowing them to meet eligibility standard by requiring employers of railroad police officers to obtain concurrence from the relevant state interoperability coordinator or regional planning committee before applying for a license to the Federal Communications Commission or operating on the interoperability and mutual aid channels. Compliance with this requirement is already a requisite for public safety eligibility to use the interoperability and mutual aid channels, consequently any new burden imposed by this requirement would be minimal.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary, Office of the Secretary.*

[FR Doc. 2017–14163 Filed 7–5–17; 8:45 am]

**BILLING CODE 6712–01–P**

## SURFACE TRANSPORTATION BOARD

## 49 CFR Part 1300

**[Docket No. EP 528 (Sub-No. 1); Docket No. EP 665 (Sub-No. 1)]**

## Publication Requirements for Agricultural Products; Rail Transportation of Grain, Rate Regulation Review

**AGENCY:** Surface Transportation Board.

**ACTION:** Final rule.

**SUMMARY:** The Surface Transportation Board (Board) is adopting final rules amending its regulations on the publication of rate and service terms for agricultural products and fertilizer. The Board also denies a petition for reconsideration of the Board's policy statement regarding aggregation of claims and standing issues as they relate to rate complaint procedures.

**DATES:** This rule is effective July 30, 2017.

**ADDRESSES:** Information or questions regarding these final rules should reference Docket No. EP 528 (Sub-No. 1) 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:** Sarah Fancher at (202) 245–0355. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:** In November 2006, the Board held a hearing in *Rail Transportation of Grain,* Docket No. EP 665, as a forum for interested persons to provide views and information about grain transportation markets. The hearing was prompted by concerns regarding rates and service issues related to the movement of grain raised by Members of Congress, grain producers, and other stakeholders. In January 2008, the Board closed that proceeding, reasoning that guidelines for simplified rate procedures had recently been adopted [1] and that those procedures would provide grain shippers with a new avenue for rate relief. *Rail Transp. of Grain,* EP 665, slip op. at 5 (STB served Jan. 14, 2008). The Board noted, however, that it would continue to monitor the relationship between carriers and grain interests, and that, if future regulatory action were warranted, it would open a new proceeding. *Id.*

In *Rate Regulation Reforms,* EP 715 (STB served July 25, 2012), the Board proposed several changes to its rate reasonableness rules. However, based on the comments received in that docket from grain shipper interests, which in part stated that the proposed changes did not provide meaningful relief to grain shippers, the Board commenced a separate proceeding in *Rail Transportation of Grain, Rate Regulation Review,* Docket No. EP 665 (Sub-No. 1) in December 2013 to deal specifically with the concerns of grain shippers. The Board invited public comment on how to ensure that the Board's existing rate complaint procedures are accessible to grain shippers and provide effective protection against unreasonable freight rail transportation rates. The Board also sought input from interested parties on grain shippers' ability to effectively seek relief for unreasonable rates, including proposals for modifying existing procedures, or for new alternative rate relief methodologies, should they be necessary. The Board received comments and replies from numerous parties.

On May 8, 2015, the Board announced that it would hold a public hearing and invited parties to discuss rate reasonableness accessibility for grain shippers, as well as other issues, including: Whether the Board should allow multiple agricultural farmers and other agricultural shippers to aggregate their distinct rate claims against the same carrier into a single proceeding, and whether the disclosure requirement for agricultural tariff rates should be modified to allow for increased transparency. The public hearing was held on June 10, 2015, and the Board received post-hearing supplemental comments from interested parties through June 24, 2015.

Although much of the commentary and testimony received pertained to existing or proposed rate relief methodologies for agricultural commodity shippers, the comments and testimony also touched on various other issues related to grain. To address the commentary on rate relief methodologies, the Board issued an Advance Notice of Proposed Rulemaking, which proposed to develop a new rate reasonableness methodology for use in very small disputes, in a decision served on August 31, 2016, in Docket No. EP 665 (Sub-No. 1) and *Expanding Access to Rate Relief,* Docket No. EP 665 (Sub-No. 2). In response to comments on other grain-related matters, the Board issued a Notice of Proposed Rulemaking (NPRM), which proposed amendments to its regulations addressing publication of rates for agricultural products and fertilizer, and a policy statement, which addressed standing and aggregation of claims for rate complaint procedures, in a decision served on December 29, 2016 in Docket Nos. EP 528 (Sub-No. 1) and EP 665 (Sub-No. 1). The proposed rules were published in the **Federal Register,** 82 FR 805 (Jan. 4, 2017), and parties submitted comments in response to the NPRM.[2]

On January 24, 2017, the Board received a petition for reconsideration of its policy statement regarding aggregation of claims and standing from Larry R. Miller, Jr., for and on behalf of SMART/TD General Committee of Adjustment GO–386 (SMART–TD).

After consideration of the parties' comments, the Board is adopting final rules amending its regulations governing the publication of rate and service terms for agricultural products and fertilizer to require Class I railroads to publish such rates and service terms on their Web sites. This change modernizes the Board's regulations to reflect the fact that Class I railroads today are more likely to disseminate information to customers and the general public using company Web sites. For the reasons discussed below, the Board also denies SMART–TD's petition for reconsideration of the policy statement on standing and aggregation of claims for rate complaints.

## Final Rules Regarding Agricultural Rate Publication

In the ICC Termination Act of 1995, Public Law 104–88, 109 Stat. 803, Congress eliminated the tariff requirements that were formerly applicable to rail carriers and imposed instead certain obligations to disclose common carriage rates and service terms. One of these requirements, applicable only to the transportation of agricultural products, is that rail carriers must publish, make available, and retain for public inspection, their common carrier rates, schedules of rates, and other service terms, and any proposed and actual changes to such rates and service terms. 49 U.S.C. 11101(d). The statute states that the term ''agricultural products'' includes grain, as defined in 7 U.S.C. 75 and all products thereof, and fertilizer. *Id.*

The Board adopted regulations to implement the requirements of section 11101(d), in *Disclosure, Publication, & Notice of Change of Rates & Other Service Terms for Rail Common Carriage* (*Disclosure*), 1 S.T.B. 153 (1996). Those regulations are codified at 49 CFR 1300.5. Under those regulations, the information required to be published ''must include an accurate description of the services offered to the public; must provide the specific

[1] *Simplified Standards for Rail Rate Cases,* EP 646 (Sub-No. 1) (STB served Sept. 5, 2007), *aff'd sub nom. CSX Transp., Inc.* v. *STB,* 568 F.3d 236 (D.C. Cir. 2009), *vacated in part on reh'g,* 584 F.3d 1076 (D.C. Cir. 2009).

[2] The Board received comments from the following: Alliance for Rail Competition (joined by National Farmers Union, Idaho Barley Commission, Idaho Wheat Commission, Montana Farmers Union, North Dakota Farmers Union, South Dakota Farmers Union, Minnesota Farmers Union, Wisconsin Farmers Union, Nebraska Wheat Board, Oklahoma Wheat Commission, Oregon Wheat Commission, South Dakota Wheat Commission, Texas Wheat Producers Board, Washington Grain Commission, Wyoming Wheat Marketing Commission, North Dakota Grain Dealers Association, Idaho Grain Producers Association, USA Dry Pea and Lentil Council, US Dry Bean Council, and US Glass Producers Transportation Council) (collectively, ARC); Montana Department of Agriculture; National Grain and Feed Association (NGFA); The Fertilizer Institute (TFI); Union Pacific Railroad Company (UP); and U.S. Department of Agriculture (USDA). The Board also received a letter from BNSF Railway Company (BNSF) and a reply from ARC.

applicable rates (or the basis for calculating the specific applicable rates), charges, and service terms; and must be arranged in a way that allows for the determination of the exact rate, charges, and service terms applicable to any given shipment (or to any given group of shipments).'' 49 CFR 1300.5(b). Rail carriers must make the information available, without charge, during normal business hours, at offices where they normally keep rate information, 49 CFR 1300.5(c), and to all persons who have subscribed to a publication service operated either by the rail carrier itself or by an agent acting at the rail carrier's direction, 49 CFR 1300.5(d).[3]

In the NPRM, the Board proposed amendments to 49 CFR 1300.5 to update the publication requirements for the transportation of agricultural products and fertilizer. The Board proposed to revise these publication requirements, which were adopted in 1996, to reflect the fact that Class I railroads often use company Web sites or other applications to disseminate information to customers and the general public, as opposed to publication methods that likely were more prevalent at the time of promulgation (*e.g.,* subscription services and maintenance of paper documents at railroad offices). As a result, the Board proposed to require Class I rail carriers to publish the information required under section 1300.5(a) on their Web sites.[4] All rail carriers would also continue to be required to make agricultural rate and service information available at their public offices. *See* 49 CFR 1300.5(c).

In addition, the proposed amendments requiring Web site publication for Class I railroads would require that agricultural rate and service information be made available to ''any person,'' as currently required by section 1300.5, so that the rate information published online would be readily available to anyone, regardless of whether a person is a current or potential customer or receiver of a railroad. Finally, the proposed rules informed parties having difficulty accessing the agricultural rates and service terms to contact the Board's Office of Public Assistance, Governmental Affairs, and Compliance (OPAGAC).

[3] The Board noted when adopting these regulations that the publication requirements were applicable only to non-exempted agricultural products and fertilizer. *Disclosure,* 1 S.T.B. at 160. Many agricultural commodities and products have been exempted as a class from the Board's regulations. *See* 49 CFR 1039.10.

[4] The NPRM did not propose to require Class II and Class III carriers to comply with the online publication requirement.

Commenters generally support the proposed amendments to 49 CFR 1300.5,[5] subject to certain requests for modifications and clarifications. Below the Board addresses parties' comments on (1) registration requirements and related issues, (2) the definition of ''anyone'' and ''any person,'' (3) machine-readable formats, and (4) Class II and III rail carriers' publication requirements. In response to parties' comments, the Board modifies the rules proposed in the NPRM. The text of the final rules is below.

*Registration Requirements and Related Issues.* Shippers seek clarification on the extent to which railroads may use registration features as a prerequisite to viewing agricultural rate and service information online. TFI asks the Board to find that it is not appropriate for railroads to impose ''cumbersome and time-consuming registration requirements'' to access public tariffs. (TFI Comment 4.) ARC states that railroads should not be allowed to impose burdensome registration requirements that ask for detailed information, such as a ''showing of 'need' or 'relevance,' '' and that access to agricultural rate and service information should be ''simple and expeditious.'' (ARC Comment 9; ARC Reply 4 (comparing the proposed rules to the requirement in 49 CFR 1300.2(b) that information ''must be provided immediately'').) ARC further comments that, if permitted to use registration requirements, railroads could discourage or deny certain persons from access to online tariffs. (ARC Comment 9; ARC Reply 4.)

Similarly, NGFA requests that the Board address ''existing barriers and shortcomings that exist on some Class I railroads' Web sites that substantively impede access to tariff rate information and service terms.'' (NGFA Comment 4.) NGFA states that it does not object to railroads using registration features, but that the final rules should require these registration features to provide for ''immediate and unrestricted access to any person—not just current or potential customers—of all tariff rates, pricing information and all applicable service terms and conditions for agricultural commodities and fertilizer.'' (*Id.* at 5–6.) NGFA also states that it supports the Board's proposal to direct parties having difficulty accessing this information to contact OPAGAC, but that if the final rules require railroads ''to remove existing barriers and hurdles to accessing such information,'' there should be fewer such requests. (*Id.* at 6.)

The Board understands shippers' concerns regarding the potential use of registration requirements to restrict online access to agricultural rate and service information. In the NPRM, the Board sought to update 49 CFR 1300.5 to make such information more readily accessible by adopting modern practices of disseminating information. But, as shippers note in their comments, the use of registration features could be used to deny or discourage certain persons from accessing agricultural rate and service information. (*See, e.g.,* ARC Comment, V.S. Whiteside 12 (discussing railroads' existing registration requirements).) The Board finds that denial (or unreasonable delay) of access through such use of registration requirements would undermine the statutory authority for, and regulatory purpose of, 49 CFR 1300.5—which is to make agricultural rate and service information available for public inspection. *See* 49 U.S.C. 11101(d).

Accordingly, the Board will modify the final rules to include language allowing railroads to use registration requirements that are not unduly burdensome and that provide timely and unrestricted access to agricultural rate and service information to any person. *See* text of rules below (stating ''Class I rail carriers may require persons accessing such information to register, but such registration requirements may not be overly burdensome, must provide timely access to the information, and cannot prevent specific types of persons from obtaining the information.''). Under this standard, the Board would not prohibit railroads from using registration features, but would require that registration requirements be structured in a manner that allows anyone who requests it to view the agricultural rate and service information.[6] For example, registration features that require a showing of ''need'' or ''relevance,'' or proof that a person or entity is a

[5] *See* ARC Reply 2 (''All commenters support the Board's proposed amendments, though some suggest improvements.''); Montana Department of Agriculture Comment 1 (''[T]he Department supports the proposal by the Board to make rate information available online.''); NGFA Comment 1 (''NGFA commends and strongly supports the Board's proposal to update its 20-year-old rules to require that all Class I railroads make publicly available online their common carrier tariff rates, charges and other service terms, as well as subsequent changes to such rates, charges and terms, for agricultural products and fertilizer.''); TFI Comment 2 (''TFI supports updating the [Board] regulations to reflect . . . modern practices.''); UP Comment 1 (''In general, UP supports the proposals and statements in the Notice.''); USDA Comment 2 (''USDA appreciates and supports the Board's action to update its regulatory language regarding the publication of rate and service terms for agricultural products and fertilizer. . . .'').

[6] This standard is consistent with rules proposed in the NPRM. *See* NPRM at 5 n.6.

customer or potential customer, as a prerequisite to accessing agricultural rate and service information would be prohibited. However, registration requirements that require a person to provide basic information, such as his or her name and email address, without requiring a certain type of email address, would be permissible.

The Board will also adopt as part of the final rules a provision suggesting that persons having difficulty accessing such information contact OPAGAC.[7] The Board encourages parties to contact OPAGAC if they encounter registration requirements that are unduly burdensome or fail to provide timely access to agricultural rate and service information. The Board believes such an approach will help ensure that such information is made readily available to the public.

In addition, commenters seek clarification as to where and how agricultural rate and service information must be posted. ARC asks the Board to revise the final rules to indicate that online access must be made available at no charge and to clarify that online tariff information, once obtained, may be freely shared. (ARC Comment 6, 9; *see also* ARC Comment, V.S. Whiteside 15.) ARC further states that online access under section 1300.5(c) should mean that online notice of ''scheduled changes in rates, charges and service terms'' must be provided, as currently required by section 1300.5(a). (ARC Reply 2–3.)

Other commenters also ask the Board to prohibit railroads from placing ''public tariffs in non-public areas of a railroad's Web site,'' (TFI Comment 4), or require Class I railroads to clearly indicate on their Web site homepages whether and where interested persons can access public tariff, rate, and service information online, (NGFA Comment 5–6). Similarly, USDA states that it should be clear ''where and how shippers and the public [can] access'' agricultural rate information on a railroad's Web site. (USDA Comment 3.) TFI also asks the Board to clarify what constitutes making this ''information available to any person online.'' (TFI Comment 2.)

The Board confirms that online access to agricultural rate and service information must be available at no charge and that, once obtained, this information may be freely shared. Accordingly, the Board will modify the final rules to state that agricultural rate and service information must be made available online ''without charge.'' *See* text of rules below. Additionally, the Board confirms that online access under the revised section 1300.5(c) means that Class I carriers must provide online notice of ''scheduled changes in rates, charges and service terms.'' To be clear, the Board intends for the term ''information'' in revised section 1300.5(c) to refer to all of the information currently required in § 1300.5(a) and (b). Indeed, none of the changes proposed in the NPRM were intended to change the type of information that carriers must make available, only to require that it be provided online in addition to the current requirements. However, to further clarify this, the Board has added a reference to § 1300.5(a) and (b) in the revised version of § 1300.5(c).

Concerning where agricultural rate and service information is posted on railroads' Web sites, the final rules have been modified to require that this information be made ''readily'' available online. The Board believes this language sufficiently ensures that persons can access agricultural rate and service information in a reasonable manner, without the Board prescribing how and where railroads, each of which has a distinct Web site, must place such information. Accordingly, to maintain flexibility for implementation by Class I railroads, the Board declines to include in the final rules other specific requirements suggested by commenters.

Finally, with respect to what constitutes ''mak[ing] th[is] information available to any person online,'' railroads may post agricultural rate and service information on their Web sites in PDF or spreadsheet format, or in any other format that is readily accessible. As discussed in more detail below, the Board will not specify in the final rules a method or format for posting this information, as rail carriers may have different preferences depending on their Web sites.

*Definitions of ''Anyone'' and ''Any Person.''* UP asks that the Board clarify whether the definition of ''anyone,'' as used in the text of the NPRM, includes brokers, trade associations, law firms, or other carriers. UP also asks whether the definition of ''any person,'' as used in section 1300.5, is limited to current or potential rail customers or rail receivers and, if not, whether the information that is required to be made public in section 1300.5 must be made available to anyone. (UP Comment 2.) On reply, ARC asks the Board to find that ''any person,'' as used in the regulations, should include all persons, regardless of whether they are customers or potential customers. (ARC Reply 3.)

The Board's use of the term ''anyone'' in the NPRM, includes, but is not limited to, brokers, trade associations, law firms, and other carriers. The definition of ''any person'' in § 1300.5 (which is not changed in these final rules) likewise is *not* limited to current or potential rail customers or rail receivers.[8] Rather, the information subject to § 1300.5 must be made available to anyone—meaning that any person, company, association, governmental entity, or other entity must be able to access the tariff and rate information for agricultural commodities and fertilizer.

*Machine-Readable Format.* USDA states that the requirement under § 1300.5 to make agricultural rate and service information available for public inspection means that the records must (1) be available to the public and (2) provided in a useable form for examination and inspection. (USDA Comment 2.) According to USDA, some Class I carriers offer ''pricing portals'' on their Web sites, which provide ''a handy way to search and find rates given the shipment's criteria, such as product, origin, and destination.'' (*Id.* at 3.) However, other ''railroads . . . provide [this] information, such as schedules of rates, in PDF-form, which is less accessible to shippers and the public, and is difficult to use.'' (*Id.* at 2–3.) As a result, USDA recommends that the Board equire railroads to retain tariff rate records where appropriate in a machine-readable format. (*Id.*)

The Board commends railroads for providing ''pricing portals'' on their Web sites, which offer enhanced functionality that enables users to search and find rates based on various shipment criteria.[9] At this time, however, the Board declines to require Class I railroads to provide information subject to § 1300.5 in a ''machine-readable'' or sortable/searchable format. The proposed and final rules seek to update the requirements of § 1300.5 to modern practices of posting information online. Without additional information on the various formats a machine-readable or sortable/searchable requirement could take, the burden associated with such a requirement is unclear. The Board therefore declines to adopt such a requirement in the final rules. However, the Board nonetheless encourages Class I railroads to provide,

[7] Although the NPRM proposed to say that persons having difficulty accessing agricultural rate and service information ''should'' contact OPAGAC, the final rules provide that such persons ''may'' contact OPAGAC for assistance.

[8] The Board uses the terms ''anyone'' and ''any person'' interchangeably in this decision and the NPRM.

[9] *See* BNSF Letter, March 20, 2017 (describing BNSF's pricing portal and its efforts to streamline its Web site's registration features).

or to continue to provide, pricing portals.

*Class II and III Rail Carriers' Publication Requirements.* TFI, NGFA, and ARC ask the Board to require Class II and III rail carriers that already publish tariffs online to abide by the same online publication requirements as Class I railroads. (ARC Comment 8; NGFA Comment 6; TFI Comment 4; ARC Reply 3. *See also* ARC Comment, V.S. Whiteside 19.) ARC states that it is not aware of any hardships that such a requirement would impose on these Class II and III rail carriers, and TFI notes that the ''shortline carriers with which TFI members regularly interact already meet such standards.'' (TFI Comment 4; ARC Reply 3.)

Although the Board encourages Class II and III rail carriers to provide agricultural rate and service information online as they are able, the Board declines to make this a requirement at this time. Class II and III rail carriers are diverse and have fewer resources than Class I railroads. The record in Docket No. EP 528 (Sub-No. 1) does not establish whether such a requirement would be unduly burdensome. Moreover, such a requirement could present enforcement issues because it would be unevenly applicable, given that some Class II and III carriers publish tariffs online today while others do not.

**Policy Statement on Aggregation of Claims and Standing Issues**

In the December 2016 decision, the Board issued a policy statement, addressing standing and aggregation of claims, in response to questions and comments previously raised by stakeholders in Docket No. EP 665 (Sub-No. 1). The Board's policy statement provided:

- Under section 11701(b), grain producers (and other indirectly harmed complainants) that file rate complaints cannot be disqualified due to the absence of direct damage;
- Indirectly harmed complainants must nevertheless have standing to proceed with a complaint;
- Although not bound by the requirements of judicial standing, the Board may look to those requirements to guide (though not necessarily govern) its standing determinations;
- Grain producers should be able to establish standing before the Board on a case-by-case basis, given that the price producers receive from elevators for their grain is generally affected at least to some extent by the transportation rate the railroad charges to the grain elevators; and
- Parties may seek to aggregate their rate claims, and the Board will make such determinations on whether such claims are properly aggregated on a case-by-case basis, considering factors such as whether the claims or defenses involve common questions of law or fact, whether administrative efficiencies could be achieved through aggregation, and the number of claims being aggregated.

NPRM at 5–8.

In response, parties comment that the Board should provide further clarification on certain issues related to standing and aggregation of claims in rate cases and, in its petition for reconsideration, SMART–TD asks the Board to reopen, reconsider, and vacate the policy statement. Below the Board addresses parties' comments and SMART–TD's petition for reconsideration.

*Parties' Comments.* ARC asks the Board to clarify the issue of representational or parens patriae standing. ARC also raises issues related to reparations [10] and the need for a reasonableness test that constrains excessive rates on captive shippers.[11] UP seeks clarification regarding how the policy statement will affect rate relief in Three-Benchmark cases, which is capped at $4 million (indexed annually for inflation), for complainants that did not suffer direct damage. UP also seeks clarification on whether third-party discovery will be readily available in rate cases where the complainant does not have possession, custody, or control of information relevant to the proceeding. (UP Comment 2–4.) On reply, ARC argues that these issues should be decided on a case-by- case basis, as these questions are difficult to answer in the abstract and doing so would fail to serve the public interest. (ARC Reply 2, 4–7.)

Concerning ARC's comments related to reparations, the Board's policy statement did not address the issue of reparations, including which parties are eligible to receive them, and the Board declines to do so here. *See* NPRM at 6 n.7. (ARC Comment 13.) Moreover, ARC's request for a new rate reasonableness test is beyond the scope of the policy statement. Finally, ARC's and UP's other comments raise considerations that are more appropriately addressed on a case-by-case basis, rather than a policy statement.

*Petition for Reconsideration.* In its request to vacate the policy statement, SMART–TD argues that the Board materially erred in adopting a test for determining whether a party has standing to file a rate complaint.[12] SMART–TD claims that the policy statement failed to ''adequately set forth the various positions of the rail carriers on the standing issue'' and argues that the Board's ''legal reasoning for issuance of its standing policy statement is invalid.'' (SMART–TD Pet. 6, 10.) ARC states similar concerns, noting that the Board's policy statement cites the three-part test for standing in federal court, which is more restrictive than the standing requirement applicable to proceedings before the Board. (ARC Comment 11–13.)

SMART–TD's petition for reconsideration and related comments raise concerns that involve case-specific considerations (some of which implicate proceedings other than the particular type of rate complaints that were the subject of the Board's policy statement). Accordingly, the Board will not further address these issues at this time, or reopen or vacate the policy statement in response to SMART–TD's petition.

**Paperwork Reduction Act**

Pursuant to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501–3521, the Board will seek approval from the Office of Management and Budget (OMB) for this collection in a separate notice. Any comments received by the Board from that notice will be forwarded to OMB for its review and will be posted under Docket No. EP 528 (Sub-No. 1).

**Regulatory Flexibility Act**

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, generally requires a description and analysis of new rules that would have a significant

[10] ARC claims that the Association of American Railroads (AAR) previously stated in Docket No. EP 665 (Sub-No. 1) in 2014 that ''reparations are available only to the person responsible for the freight charges, suggesting that only a shipper or consignee would have standing to seek reparations'' and therefore ''the Board lacks authority to prescribe a rate on the basis of a complaint by a party other than a shipper.'' (ARC Comment 13–14.) ARC states that under the AAR's interpretation, non-shippers would be permitted to file rate complaints, but could not be awarded any relief. ARC claims that this was not the intent of Congress in 49 U.S.C. 11701(b). (*Id.* at 14.)

[11] ARC states that greater clarity on standing is ''necessary but not sufficient'' and states that it needs ''one or more tests of reasonableness that constrain excessive rates on captive agricultural products and fertilizer shipments, even where the rates apply to groups of shippers, or to States or regions.'' (ARC Comment 10; *see id.* at 3–4; ARC Reply 5.)

[12] Contrary to SMART–TD's statement that the ''policy statement is not restricted to grain rate matters, but applies generally to complaint proceedings,'' (SMART–TD Pet. 3), the Board's policy statement applies only to rate complaints brought under 49 U.S.C. 11701(b). *See, e.g.,* NPRM at 1 (stating that ''[t]he Board also clarifies its policies on standing and aggregation of claims as they relate to rate complaint procedures'').

economic impact on a substantial number of small entities. In drafting a rule, an agency is required to: (1) Assess the effect that its regulation will have on small entities; (2) analyze effective alternatives that may minimize a regulation's impact; and (3) make the analysis available for public comment. Sections 601–604. Under section 605(b), an agency is not required to perform an initial or final regulatory flexibility analysis if it certifies that the proposed or final rules will not have a ''significant impact on a substantial number of small entities.''

Because the goal of the RFA is to reduce the cost to small entities of complying with federal regulations, the RFA requires an agency to perform a regulatory flexibility analysis of small entity impacts only when a rule directly regulates those entities. In other words, the impact must be a direct impact on small entities ''whose conduct is circumscribed or mandated'' by the proposed rule. *White Eagle Coop. Ass'n* v. *Conner,* 553 F.3d 467, 478, 480 (7th Cir. 2009). An agency has no obligation to conduct a small entity impact analysis of effects on entities that it does not regulate. *United Distrib. Cos.* v. *FERC,* 88 F.3d 1105, 1170 (D.C. Cir. 1996).

In the NPRM, the Board certified under 5 U.S.C. 605(b) that the proposed rules would not have a significant economic impact on a substantial number of small entities within the meaning of the RFA.[13] The Board explained that the proposed rule would not place any additional burden on small entities because the proposed rule of requiring rate information to be published online would be limited to Class I rail carriers. No parties submitted comments on this issue. A copy of the NPRM was served on the U.S. Small Business Administration (SBA).

The final rules adopted here revise the rules proposed in the NPRM. However, the same basis for the Board's certification of the proposed rules applies to the final rules adopted here. The final rules would not create a significant impact on a substantial number of small entities, as the regulations would only specify procedures related to Class I railroads and do not mandate or circumscribe the conduct of small entities. Therefore, the Board certifies under 5 U.S.C. 605(b) that the final rules will not have a significant economic impact on a substantial number of small entities within the meaning of the RFA. A copy of this decision will be served upon the Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration, Washington, DC 20416.

*It is ordered:*

1. The final rules set forth below are adopted and will be effective July 30, 2017.

2. SMART–TD's petition for reconsideration of the policy statement is denied.

3. A copy of this decision will be served upon the Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration.

4. This decision is effective on July 30, 2017.

**List of Subjects in 49 CFR Part 1300**

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

Decided: June 28, 2017.

By the Board, Board Members Begeman, Elliott, and Miller. Board Member Miller dissented in part with a separate expression.

**Rena Laws-Byrum,**

*Clearance Clerk.*

*Board Member Miller,* dissenting in part:

I dissent from the Board's decision not to require that the agricultural tariff data be provided in a machine-readable format.

The Board decided to initiate this rulemaking because of its concern that the existing regulations make the agricultural tariffs less accessible than they should be. Yet the Board undercuts the value of this update to the regulations by allowing railroads to continue to provide the information in a less accessible format. As the USDA points out, having this information in a machine-readable format is important. The information contained in the tariffs can be vast and making it machine-readable would allow users to search, sort, and filter the data based on their individual needs. The federal government itself has recognized the value of providing data in machine-readable formats.[1] I disagree with the majority's decision not to make this a requirement here.

First, the majority states that ''[t]he proposed . . . rules seek to update the requirements of § 1300.5 to modern practices of posting information online.'' The majority's implication appears to be that requiring information in a machine-readable format would be outside the scope of the *NPRM.* Although the Board did not expressly propose requiring railroads to provide tariff information in a machine-readable format in the *NPRM,* that would not have prevented the Board from adopting this requirement as part of the final rules, as the requirement would have been a logical outgrowth of the *NPRM.*[2]

The second reason given by the majority for not requiring that carriers provide information in machine-readable format is that the burden of such a requirement is ''unclear.'' With today's technology, it is hard to imagine that it would be burdensome for major U.S. corporations to put information in a machine-readable format.

For these reasons, I respectfully dissent from the majority on this issue.

For the reasons set forth in the preamble, the Surface Transportation Board amends its title 49, chapter X, subchapter D, of the Code of Federal Regulations as follows:

[13] Effective June 30, 2016, for the purpose of RFA analysis for rail carriers subject to Board jurisdiction, the Board defines a ''small business'' as a rail carrier classified as a Class III rail carrier under 49 CFR 1201.1–1. *See Small Entity Size Standards Under the Regulatory Flexibility Act,* EP 719 (STB served June 30, 2016) (with Board Member Begeman dissenting). Class III carriers have annual operating revenues of $20 million or less in 1991 dollars, or $35,809,698 or less when adjusted for inflation using 2016 data. Class II rail carriers have annual operating revenues of less than $250 million in 1991 dollars or less than $447,621,226 when adjusted for inflation using 2016 data. The Board calculates the revenue deflator factor annually and publishes the railroad revenue thresholds on its Web site. 49 CFR 1201.1–1.

[1] *See* Exec. Order No. 13,642, *Making Open and Machine Readable the New Default for Government Information,* 78 FR 28111 (May 9, 2013) (''To promote continued job growth, Government efficiency, and the social good that can be gained from opening Government data to the public, the default state of new and modernized Government information resources shall be open and machine readable.''); Office of Management and Budget (OMB) Circular No. A–130, *Managing Federal Information as a Strategic Resource,* at 14, revised July 28, 2016 (agencies must ''[p]ublish[ ] public information online in a manner that promotes analysis and reuse for the widest possible range of purposes, meaning that the information is publicly accessible, machine-readable, appropriately described, complete, and timely.'').

[2] In *CSX Transp., Inc.* v. *Surf. Transp. Bd.,* 584 F.3d 1076, 1079 (D.C. Cir. 2009), the court held that a final rule qualifies as a logical outgrowth if interested parties ''should have anticipated'' that the change was possible, and that the final rule was not ''surprisingly distant'' from the proposal rule. The Board stated that it was initiating the *NPRM* (at 4–5) because it believed that ''it is appropriate to update our regulations to reflect these modern practices.'' Providing information in a machine-readable format is clearly a ''modern practice'' in line with the Board's goal of updating its regulations in this area, and thus should have been anticipated. Machine-readability is also so closely tied to issues that were expressly proposed in the NPRM that it could not be claimed that such a requirement would have been surprisingly distant from the proposed rule.

## PART 1300—DISCLOSURE, PUBLICATION, AND NOTICE OF CHANGE OF RATES AND OTHER SERVICE TERMS FOR RAIL COMMON CARRIAGE

■ 1. The authority citation for part 1300 is revised to read as follows:

**Authority:** 49 U.S.C. 1321 and 11101(f).

■ 2. In § 1300.5, amend paragraph (c) by adding three sentences at the end of the paragraph to read as follows:

**§ 1300.5 Additional publication requirement for agricultural products and fertilizer.**

* * * * *

(c) * * * If a rail carrier is a Class I rail carrier, it must also make the information readily available online to any person without charge. Class I rail carriers may require persons accessing such information to register, but such registration requirements may not be overly burdensome, must provide timely access to the information, and cannot prevent specific types of persons from obtaining the information. Persons having difficulty accessing the information required by paragraphs (a) and (b) of this section may either send a written inquiry addressed to the Director, Office of Public Assistance, Governmental Affairs, and Compliance or telephone the Board's Office of Public Assistance, Governmental Affairs, and Compliance.

* * * * *

[FR Doc. 2017–14180 Filed 7–5–17; 8:45 am]

BILLING CODE 4915–01–P