

F. Unfunded Mandates Reform Act of 1995

This proposed rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of \$141.3 million or more, in the aggregate, to any of the following: State, local, or Native American tribal governments, or the private sector.

G. Paperwork Reduction Act

Under 49 U.S.C. 5108(i), the information management requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) do not apply to this proposed rule.

H. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document may be used to cross-reference this action with the Unified Agenda.

I. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321–4347), requires Federal agencies to consider the consequences of major federal actions and prepare a detailed statement on actions significantly affecting the quality of the human environment. There are no significant environmental impacts associated with this proposed rule. PHMSA is proposing in this rule changes to the requirements in the Hazardous Materials Regulations on the registration and fee assessment program for persons who transport or offer for transportation certain categories and quantities of hazardous materials. The proposed increase in registration fees will provide additional funding for the HMEP program to help mitigate the safety and environmental consequences of hazardous materials transportation accidents.

J. Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comments (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit <http://www.regulations.gov>.

List of Subjects in 49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation, Penalties, Reporting and recordkeeping requirements.

In consideration of the foregoing, we propose to amend 49 CFR Part 107 as follows:

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

1. The authority citation for part 107 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; Pub. L. 101–410 section 4 (28 U.S.C. 2461 note); Pub. L. 104–121 sections 212–213; Pub. L. 104–134 section 31001; 49 CFR 1.45, 1.53.

2. Revise § 107.612 to read as follows:

§ 107.612 Amount of fee.

(a) For the registration year 2010–2011 and subsequent years, each person offering for transportation or transporting in commerce a material listed in § 107.601(a) must pay an annual registration fee, as follows:

(1) *Small business.* Each person that qualifies as a small business, under criteria specified in 13 CFR part 121 applicable to the North American Industry Classification System (NAICS) code that describes that person's primary commercial activity, must pay an annual registration fee of \$250 and the processing fee required by paragraph (a)(4) of this section.

(2) *Not-for-profit organization.* Each not-for-profit organization must pay an annual registration fee of \$250 and the processing fee required by paragraph (a)(4) of this section. A not-for-profit organization is an organization exempt from taxation under 26 U.S.C. 501(a).

(3) *Other than a small business or not-for-profit organization.* Each person that does not meet the criteria specified in paragraph (a)(1) or (a)(2) of this section must pay an annual registration fee of \$2,975 and the processing fee required by paragraph (a)(4) of this section.

(4) *Processing fee.* The processing fee is \$25 for each registration statement filed. A single statement may be filed for one, two, or three registration years as provided in § 107.616(c).

(b) For registration years 2009–2010 and prior years, each person offering for transportation or transporting in commerce a material listed in § 107.601(a) must pay the annual registration fee, including the processing fee, in effect for the specific registration year.

Issued in Washington, DC, on January 28, 2010, under authority delegated in 49 CFR part 106.

Magdy El-Sibaie,

Acting Associate Administrator for Hazardous Materials Safety.

[FR Doc. 2010–2174 Filed 2–1–10; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION**Surface Transportation Board****49 CFR Part 1244**

[STB Ex Parte No. 385 (Sub-No. 7)]

Waybill Data Reporting for Toxic Inhalation Hazards

AGENCY: Surface Transportation Board.
ACTION: Notice of proposed rulemaking.

SUMMARY: The Board proposes to amend its rules with respect to Waybill Sample information railroads are required to submit to the Board. Currently, railroads that are required to file Waybill Sample information report a random sample of as little as 1% of carloads on a waybill. The proposed amendment, set forth below, would expand the carload Waybill Sample information submitted to include all traffic movements designated as a TIH (Toxic Inhalation Hazard). The revised reporting would commence with the January 2011 Waybill Sample collection.

DATES: Comments on this proposal are due by March 4, 2010. Replies are due by April 5, 2010.

ADDRESSES: Comments may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions at the E-FILING link on the Board's Web site, at <http://www.stb.dot.gov>. Any person submitting a filing in the traditional paper format should send an original and 10 copies to: Surface Transportation Board, Attn: STB Ex Parte No. 385 (Sub-No. 7), 395 E Street, SW., Washington, DC 20423–0001.

Copies of written comments received by the Board will be posted to the Board's Web site at <http://www.stb.dot.gov> and will be available for viewing and self-copying in the Board's Public Docket Room, Suite 131, 395 E Street, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Paul Aguiar, (202) 245–0323. [Assistance for the hearing impaired is available through Federal Information Relay Service (FIRS) at 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: A carload waybill is a document describing the

characteristics of an individual rail shipment, and includes the following information: the originating and terminating freight stations, the railroads participating in the movement, the points of all railroad interchanges, the number of cars, the car initial and number, the movement weight in hundredweight, the commodity, and the freight revenue. Under 49 CFR 1244.2, a railroad is required to file Waybill Sample information for all line-haul revenue waybills terminating on its lines if: (a) It terminated at least 4,500 revenue carloads in any of the 3 preceding years; or (b) it terminated at least 5% of the revenue carloads terminating in any state in any of the 3 preceding years. The Board recognizes that some of the submitted information is commercially sensitive, and thus the Board's regulations place limitations on releasing Waybill Sample data. *See* 49 CFR 1244.9.

The Waybill Sample is the Board's primary source of information about freight rail shipments terminating in the United States. The expanded information gathered from this proposed rule would permit the Board to assess more accurately TIH traffic within the United States, and specifically would be beneficial in Three-Benchmark rail rate cases involving TIH traffic. In those cases, the parties would have more data to draw upon when forming their comparison groups; therefore, the parties could construct comparison groups that would be more comparable to the issue traffic.¹ The additional information would also assist the Board in quantifying the magnitude of TIH traffic, and would help the Board more accurately measure the associated costs of handling such traffic.

Pursuant to 5 U.S.C. 605(b), the Board certifies that the regulations proposed herein would not have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612. Most railroads that are required to report Waybill Sample information are not small entities. As explained above, these reporting requirements would apply only to railroads that terminate a large number of carloads. *See* 49 CFR 1244.2. Because small entities (small railroads) typically do not terminate the number of carloads necessary to trigger the reporting

requirement, any resulting impact would not affect a substantial number of that group. Moreover, any resulting impact on small entities that report TIH movements would not be significant. The Board's regulations allow for either computerized or manual reporting. 49 CFR 1244.4(a). In the most recent submission of Waybill Sample information—representing 2008—all railroads that reported TIH traffic did so using a computerized system, and it is likely that such computerized systems are easily adaptable to expanding the traffic to be reported under the proposed rule. 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.

Pursuant to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501–3549, and Office of Management and Budget (OMB) regulations at 5 CFR 1320.8(d)(3), the Board seeks comments regarding: (1) Whether this collection of information, as modified in the proposed rule and further described in the Appendix, is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility; (2) the accuracy of the Board's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, when appropriate. Information pertinent to these issues is included in the Appendix. This proposed rule has been submitted to OMB for review as required under 44 U.S.C. 3507(d) and 5 CFR 1320.11.

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

Decided: January 27, 2010.

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

Kulunie L. Cannon,
Clearance Clerk.

List of Subjects in 49 CFR Part 1244

Freight, Railroads, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Surface Transportation Board proposes to amend part 1244 of title 49, chapter X, of the Code of Federal Regulations as follows:

PART 1244—WAYBILL ANALYSIS OF TRANSPORTATION OF PROPERTY—RAILROADS

1. The authority citation for Part 1244 continues to read as follows:

Authority: 49 U.S.C. 721, 10707, 11144, 11145.

2. In § 1244.4, add paragraphs (b)(5) and (c)(3) to read as follows:

§ 1244.4 Sampling of waybills.

* * * * *

(b) * * *

(5) Subject railroads shall submit all waybill information for movements of Toxic Inhalation Hazards (TIH). For purposes of this section, TIH shall be defined in accordance with 49 CFR 171.8, 173.115, and 173.132 to include materials that, when inhaled, are known or presumed on the basis of testing to be so toxic to humans as to pose a hazard to health in the event of a release during transportation. These materials include, but are not limited to, hazardous materials listed at 49 CFR 172.101 as either Division 2.3 materials, or Division 6.1 materials that can be characterized as an inhalant under § 173.132.

(c) * * *

(3) Subject railroads shall submit all waybill information for movements of Toxic Inhalation Hazards (TIH). For purposes of this section, TIH shall be defined in accordance with 49 CFR 171.8, 173.115, and 173.132 to include materials that, when inhaled, are known or presumed on the basis of testing to be so toxic to humans as to pose a hazard to health in the event of a release during transportation. These materials include, but are not limited to, hazardous materials listed at 49 CFR 172.101 as either Division 2.3 materials, or Division 6.1 materials that can be characterized as an inhalant under § 173.132.

* * * * *

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix

The additional information below is included to assist those who may wish to submit comments pertinent to review under the Paperwork Reduction Act:

Description of Collection

Title: Waybill Sample.

OMB Control Number: 2140–0015.

STB Form Number: None.

Type of Review: Modification of approved collection.

Respondents: Any railroad that did one of the following: (a) Terminated at least 4,500 revenue carloads in any of the 3 preceding years; or (b) terminated at least 5% of the

¹ *See US Magnesium, L.L.C. v. Union Pacific Railroad Company*, STB Docket No. 42114, at 5–12 (STB served Jan. 28, 2010); *Simplified Standards for Rail Rate Cases*, STB Docket No. 646 (Sub-No. 1), at 82–84 (STB served Sept. 5, 2007), *aff'd sub nom. CSX Transp., Inc. v. STB*, 568 F.3d 236 (D.C. Cir. 2009), and *vacated in part on reh'g, CSX Transp., Inc. v. STB*, 584 F.3d 1076 (D.C. Cir. 2009).

revenue carloads terminating in any state in any of the 3 preceding years.

Number of Respondents: 50.

Estimated Time per Response: 75 minutes.

Frequency: 7 respondents report monthly; 43 report quarterly.

Total Burden Hours (annually including all respondents): 320 hours.

Total "Non-hour Burden" Cost: No "non-hour cost" burdens associated with this collection have been identified.

Needs and Uses: The Surface Transportation Board is, by statute, responsible for the economic regulation of common carrier rail transportation in the United States and it is authorized to collect information about rail costs and revenues under 49 U.S.C. 11144 and 11145. Under 49 CFR 1244, a railroad is required to file Waybill Sample information for all line-haul revenue waybills terminating on its lines if it did one of the following: (a) Terminated at least 4,500 revenue carloads in any of the 3 preceding years; or (b) terminated at least 5% of the revenue carloads terminating in any state in any of the 3 preceding years. The information in the Waybill Sample is used by the Board, other Federal and state agencies, and industry stakeholders to monitor traffic flows and rate trends in the industry, and to develop evidence in Board proceedings.

The expanded information gathered from this proposed rule would permit the Board to assess more accurately TIH traffic within the United States, and specifically would be beneficial in Three-Benchmark rail rate cases involving TIH traffic. In those cases, the parties would have more data to draw upon when forming their comparison groups; therefore, the parties could construct comparison groups that would be more comparable to the issue traffic. The additional information would also assist the Board in quantifying the magnitude of TIH traffic, and would help the Board more accurately measure the associated costs of handling such traffic.

Retention Period: Information in this report will be maintained on the Board's Web site for a minimum of 1 year and will be otherwise maintained permanently.

[FR Doc. 2010-2150 Filed 2-1-10; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS-R4-ES-2008-0071; 92220-1113-0000-C6]

RIN 1018-AW07

Endangered and Threatened Wildlife and Plants; Proposed Reclassification of the Okaloosa Darter From Endangered to Threatened and Proposed Special Rule

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to reclassify the Okaloosa darter (*Etheostoma okaloosae*) from endangered to threatened under the authority of the Endangered Species Act of 1973, as amended (Act). The endangered designation no longer correctly reflects the current status of this fish due to a substantial improvement in the species' status. This proposed action is based on a thorough review of the best available scientific and commercial data, which indicates a substantial reduction in threats to the species, significant habitat restoration in most of the species' range, and a stable or increasing trend of darters in all darter stream systems. We also propose a special rule under section 4(d) of the Act. This special rule would allow Eglin Air Force Base to continue activities, with a reduced regulatory burden, and would provide a net benefit to the Okaloosa darter. We are seeking information, data and comments from the public on this proposal.

DATES: To ensure that we are able to consider your comments on this proposed rule, they must be received on or before April 5, 2010. We must receive requests for public hearings, in writing, at the address shown in the **FOR FURTHER INFORMATION CONTACT** section by March 19, 2010.

ADDRESSES: You may submit comments by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments to Docket No. FWS-R4-ES-2008-0071.

- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS-R4-ES-2008-0071; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Don Imm, Deputy Field Supervisor, U.S. Fish and Wildlife Service, Panama City Field Office, 1601 Balboa Ave., Panama City, FL 32405; telephone (850) 769-0552. Individuals who are hearing-impaired or speech-impaired may call the Federal Information Relay Service at (800) 877-8339 for TTY assistance 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

Public Comment Procedures

To ensure that any final action resulting from this proposed rule will be

as accurate and as effective as possible, we request that you send relevant information for our consideration. The comments that will be most useful and likely to influence our decisions are those that are supported by data or peer-reviewed studies and those that include citations to, and analyses of, applicable laws and regulations. Please make your comments as specific as possible and explain the basis for them. In addition, please include sufficient information with your comments to allow us to authenticate any scientific or commercial data you reference or provide. In particular, we seek comments concerning the following:

(1) Biological, trade, or other relevant data concerning any threat (or lack thereof) to the Okaloosa darter, including whether or not climate change is a threat to the Okaloosa darter;

(2) The location of any additional populations of the Okaloosa darter;

(3) Additional information concerning the range, distribution, and population size and population trends of the Okaloosa darter;

(4) Current or planned activities within the geographic range of the Okaloosa darter that may impact or benefit the species including the proposed toll bypass road; and

(5) Activities relevant to Okaloosa darter and its habitat that are proposed for inclusion in the special rule under section 4(d) of the Act (16 U.S.C. 1531 *et seq.*).

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that a determination as to whether any species is a threatened or endangered species must be made "solely on the basis of the best scientific and commercial data available."

Prior to issuing a final rule on this proposed action, we will take into consideration all comments and any additional information we receive. Such information may lead to a final rule that differs from this proposal. All comments and recommendations, including names and addresses, will become part of the administrative record.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. If you submit a comment via <http://www.regulations.gov>, your entire comment—including any personal identifying information—will be posted on the Web site. Please note that comments posted to this Web site are