

1. Page 82177. Correct footnote 17 to read as follows:

<sup>17</sup> Balkin, T., Thorne, D., Sing, H., Thomas, M., Redmond, D., Wesensten, N., Williams, J., Hall, S. & Belenky, G., "Effects of Sleep Schedules on Commercial Vehicle Driver Performance," 2000. FMCSA-2004-19608-2007.

2. Page 82178. Correct footnote 31 to read as follows:

<sup>31</sup> Fu, J.S., Calcagno, J.A., Davis, W.T., Boulet, J.A.M. & Wasserman, J.F., "Improving Heavy-Duty Diesel Truck Ergonomics to Reduce Fatigue and Improve Driver Health and Performance," FMCSA, December 2010.

3. Page 82179. Correct the third sentence in the last paragraph of the third column to read: "An answer would turn on knowing the total number of crashes in each hour and the percentage of driving that takes place in each hour."

4. Page 82182, correct footnote 39 to read as follows:

<sup>39</sup> Van Dongen, H.P.A. & Belenky, G., "Investigation into Motor Carrier Practices to Achieve Optimal Commercial Motor Vehicle Driver Performance: Phase I," December 2010. FMCSA-2004-19608-4120.

5. Page 82182. Correct footnote 45 to read as follows:

<sup>45</sup> Van Dongen, H.P.A., Jackson, M. & Belenky, G., "Duration of Restart Period Needed to Recycle with Optimal Performance: Phase II," FMCSA, December 2010. FMCSA-2004-19608-4440.

6. Page 82183. Correct the sentence that begins on the fourth line from the bottom of the second column to read, "Because one of the team members drives while the other takes his or her break, the result of the rule is that the non-working driver has to take both periods in the sleeper berth because it is not possible to log the shorter time as off duty while he or she is 'in or upon any commercial motor vehicle.'"

7. Page 82187. Correct the sentence that begins on the ninth line of the second column to read, "To analyze the safety impacts of these changes, the Agency has developed a series of functions that relate fatigue-coded crashes to hours of daily driving and hours of weekly work."

8. Page 82188. Remove the comma after "benefits" and before "These" in the thirteenth line of the first full paragraph in the third column and add in its place a period.

9. Page 82189. Remove the period in "Section V." in line five of the paragraph that begins after Table 8 in the second column.

10. Page 82192. Remove "numbers" and add in its place "number" in the eighth line of the third column.

11. Page 82193. Revise the heading of Table 13 to read: "Table 13—First-Year

Costs to Affected Firms per Power Unit for Option 3."

12. Page 82193. Revise the last sentence of footnote 63 to read, "When the Agency has looked at the impact on private carriers in relation to their revenue in the past, the percentage impact of costs to private carriers as a share of revenue has generally been an order of magnitude smaller than the impacts on for-hire trucking firms."

13. Page 82195. Remove the abbreviation "EA" in the third line from the bottom of the third column and add in its place "Environmental Assessment."

14. Page 82197. Correct:

a. § 395.1 by revising paragraph (b)(1).

b. § 395.1(d)(2) by removing the period after "§§ 395.8" in the second sentence and adding in its place a comma.

c. § 395.1(g) by revising paragraphs (g)(1)(i)(A)(4), (g)(1)(i)(B), and (g)(1)(i)(C).

**§ 395.1 Scope of rules in this part.**

\* \* \* \* \*

(b) *Driving conditions—*

(1) *Adverse driving conditions.* Except as provided in paragraph (h)(2) of this section, a driver who encounters adverse driving conditions, as defined in § 395.2, and cannot, because of those conditions, safely complete the run within the maximum driving time permitted by §§ 395.3(a) or 395.5(a) may drive and be permitted or required to drive a commercial motor vehicle for not more than 2 additional hours to complete that run or to reach a place offering safety for the occupants of the commercial motor vehicle and security for the commercial motor vehicle and its cargo. However, that driver may not drive or be permitted to drive—

(i) For more than 12 hours in the aggregate following 10 consecutive hours off duty for drivers of property-carrying commercial motor vehicles;

(ii) After the end of the 14th or 16th hour since coming on duty following 10 consecutive hours off duty for drivers of property-carrying commercial motor vehicles, pursuant to § 395.3(a)(2);

(iii) For more than 12 hours in the aggregate following 8 consecutive hours off duty for drivers of passenger-carrying commercial motor vehicles; or

(iv) After he/she has been on duty 15 hours following 8 consecutive hours off duty for drivers of passenger-carrying commercial motor vehicles.

\* \* \* \* \*

(g) \* \* \*

(1) \* \* \*

(i) \* \* \*

(A) \* \* \*

(4) The equivalent of at least 10 consecutive hours off duty if the driver

does not comply with paragraph (g)(1)(i)(A)(1), (2), or (3) of this section;

(B) May not drive more than 10/11 hours following one of the 10-hour off-duty periods specified in paragraph (g)(1)(i)(A)(1) through (4) of this section; however, driving is permitted only if 7 hours or less have passed since the driver's last off-duty or sleeper-berth period of at least 30 minutes; and

(C) May not be on duty for more than the 13-hour period in § 395.3(a)(4) or drive beyond the 14- or 16-hour driving window in § 395.3(a)(2) after coming on duty following one of the 10-hour off-duty periods specified in paragraph (g)(1)(i)(A)(1) through (4) of this section; and

\* \* \* \* \*

Issued on: February 9, 2011.

Anne S. Ferro,

Administrator.

[FR Doc. 2011-3267 Filed 2-15-11; 8:45 am]

BILLING CODE 4910-EX-P

**DEPARTMENT OF TRANSPORTATION**

**Surface Transportation Board**

**49 CFR Part 1152**

[Docket No. EP 702]

**National Trails System Act and Railroad Rights-of-Way**

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Surface Transportation Board (STB or Board) has instituted a proceeding to clarify, update, and seek public comments on proposed changes to its existing regulations and procedures regarding the use of railroad rights-of-way for railbanking and interim trail use under the National Trails System Act (Trails Act).

**DATES:** Comments are due by April 12, 2011; replies are due by May 12, 2011.

**ADDRESSES:** Comments on this proposal 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: Docket No. EP 702, 395 E Street, SW., Washington, DC 20423-0001.

Copies of written comments will be available for viewing and self-copying at the Board's Public Docket Room, Room

131, and will be posted to the Board's Web site.

**FOR FURTHER INFORMATION CONTACT:**

Valerie Quinn, (202) 245-0382. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at (800) 877-8339.

**SUPPLEMENTARY INFORMATION:** The Board is instituting a proceeding to clarify, update, and seek public comments on proposed changes to its existing regulations and procedures regarding the use of railroad rights-of-way for railbanking and interim trail use under Section 8(d) of the National Trails System Act (Trails Act), 16 U.S.C. 1247(d).

Specifically, the Board proposes to add a new rule to 49 CFR 1152.29, the Board's regulations regarding the Trails Act, that would require the railroad and the trail sponsor jointly to notify the Board when a trail use agreement has been reached, and to notify the Board of the exact location of the right-of-way subject to the interim trail use agreement, by including a map and milepost marker information. The Board's current rules provide no formal means of determining whether an actual interim trail use agreement is reached after the Board issues a Certificate of Interim Trail Use (CITU) or Notice of Interim Trail Use (NITU), and, if so, whether the agreement applies to the entire right-of-way at issue. Therefore, it would be useful to the Board and to the public to require parties to notify the Board when an interim trail use agreement has been reached.

The proposed rules would also require parties to ask the Board to vacate the CITU/NITU when an interim trail use agreement covers only a portion of the right-of-way and request a replacement CITU/NITU to cover the portion of the right-of-way subject to the trail use agreement. Currently, the Board's regulations make CITU/NITUs self-executing, and the rules contemplate that petitions to vacate or modify the CITU/NITU will be filed if rail service is to be reactivated, interim trail use ceases in whole or in part, or there is a change in trail sponsors. When an interim trail use agreement covers only a portion of the right-of-way that was proposed to be abandoned, the Board's regulations are unclear whether the CITU/NITU that was issued for the right-of-way could nonetheless continue in effect indefinitely, precluding the abandonment of the remainder of the right-of-way for which the CITU/NITU was issued. Thus, this proposed rule would clarify that if an interim trail use agreement applies to less of the right-of-

way than is covered by the CITU/NITU, the parties must petition the Board to modify or vacate the CITU/NITU.

The proposed rules would clarify that a substitute trail sponsor must acknowledge that interim trail use is subject to restoration and reactivation at any time. The Board's rules at 49 CFR 1152.29(f)(1) currently require that, when a trail sponsor intends to terminate trail use and another person intends to become the trail sponsor, the substitute trail sponsor must acknowledge its willingness to assume financial responsibility for the right-of-way; but the rules are silent with regard to any acknowledgment that continued interim trail use remains subject to possible rail service restoration. Accordingly, the Board clarifies that the substitute trail sponsor (like § 1152.29(a)(3) requires of the original trail sponsor) must affirmatively acknowledge that the continued interim trail use is subject to possible future restoration of the right-of-way and reactivation of rail service.

The Board is also proposing minor modifications to its regulations under 49 CFR 1152.29. This includes the following: clarification that, under § 1152.29(e), parties do not need to file a request to extend the time for filing a notice of abandonment consummation when legal or regulatory conditions (including a CITU/NITU) remain in effect that bar consummation of abandonment until these conditions have been removed; modification of the language in §§ 1152.29(a)(2), (a)(3), (c)(2), and (d)(2), to more closely resemble the language of the Trails Act; modifications of the language of the Statement of Willingness to Assume Financial Responsibility in § 1152.29(a)(3) to more accurately describe the responsibilities of an interim trail sponsor; removal of the reference to "NERSA abandonment proceedings" in 49 CFR 1152.29(c), because NERSA is no longer in effect; modification of the language in 49 CFR 1152.29(c)(1) and (d)(1), to clarify that the Board will issue a CITU/NITU for the portion of the right-of-way on which both parties are willing to negotiate interim trail use, rather than the portion "to be covered by the agreement," as the portion that the agreement may ultimately cover is unknown at that time; and modification of the language in 49 CFR 1152.29(c)(2) to clarify that a trail sponsor may choose to terminate interim trail use over a portion of the right-of-way covered by the trail use agreement, while continuing interim trail use over the remaining portion of the right-of-way covered by the trail use agreement.

In addition, in light of concerns regarding the ability of some states to assume liability and legal and financial responsibility for a right-of-way during the interim trail use period, the Board seeks comments on how to resolve state sovereign immunity issues. Also, the Board seeks comments on whether there are additional means of indirect notification of CITU/NITUs to reversionary landowners that can be used to augment the existing newspaper publication method.

Additional information is contained in the Board's decision served on February 16, 2011. To obtain a copy of this decision, visit the Board's Web site at <http://www.stb.dot.gov>. Copies of the decision may also be purchased by contacting the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245-0236.

The Board certifies under 49 U.S.C. 605(b) that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. The proposed notice requirement would require trail sponsors and railroads to file a notice with the Board when they have reached an interim trail use agreement. Some trail sponsors may qualify as a small entity, in that they may be a "small organization" within the meaning of 5 U.S.C. 601(4) or a "small governmental jurisdiction" within the meaning of 5 U.S.C. 601(5). Some railroads may qualify as a "small business" within the meaning of 5 U.S.C. 601(3). However, the proposed notice that would be required here should involve little time and expense to draft and file, and thus should have little economic impact on a small-entity filer. The requirement is limited to only those small entities or small businesses who might be parties to interim trail use agreements. It therefore will not impact a substantial number of small entities.

Pursuant to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501-3519, and Office of Management and Budget (OMB) regulations at 5 CFR 1320.8(d)(3), the Board also seeks comments regarding: (1) Whether the particular collection of information described below 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. These proposed rules are being submitted to OMB for review as required under the PRA, 44 U.S.C. 3507(d) and 5 CFR 1320.11. Comments on the four questions prescribed above should be submitted to the Board, in accordance with the comment period described below.

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 1152

Administrative practice and procedure, Railroads, Reporting and recordkeeping requirements, Uniform System of Accounts.

Decided: February 10, 2011.

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

Jeffrey Herzig, Clearance Clerk.

For the reasons set forth in the preamble, the Surface Transportation Board proposes to amend part 1152 of title 49, chapter X, of the Code of Federal Regulations as follows:

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

1. 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.

2. Amend § 1152.29 by revising paragraphs (a)(2), (a)(3), (c) heading, (c)(1), (c)(2) introductory text, (c)(2)(iii), (d)(1), (d)(2) introductory text, and (d)(2)(iii) and by adding paragraphs (f)(1)(iii) and (h) to read as follows:

§ 1152.29 Prospective use of rights-of-way for interim trail use and rail banking.

(a) \* \* \*

(2) A statement indicating the trail sponsor's willingness to assume full responsibility for:

- (i) Managing the right-of-way;
(ii) Any legal liability arising out of the transfer or use of the right-of-way (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability); and
(iii) The payment of any and all taxes that may be levied or assessed against the right-of-way; and

(3) An acknowledgment that interim trail use is subject to the sponsor's continuing to meet its responsibilities described in paragraph (a)(2) of this section, and subject to possible future reconstruction and reactivation of the right-of-way for rail service. The statement must be in the following form:

Statement of Willingness To Assume Financial Responsibility

In order to establish interim trail use and rail banking under 16 U.S.C. 1247(d) and 49 CFR 1152.29 with respect to the right-of-way owned by (Railroad) and operated by (Railroad), (Interim Trail Sponsor) is willing to assume full responsibility for: (1) Managing the right-of-way, (2) any legal liability arising out of the transfer or use of the right-of-way (unless the sponsor is immune from liability, in which case it need only indemnify the railroad against any potential liability), and (3) the payment of any and all taxes that may be levied or assessed against the right of way. The property, known as (Name of Branch Line), extends from railroad milepost near (Station Name), to railroad milepost near (Station name), a distance of miles in [County(ies), (State(s))]. The right-of-way is part of a line of railroad proposed for abandonment in Docket No. STB AB (Sub-No. ).

A map of the property depicting the right-of-way is attached. (Interim Trail Sponsor) acknowledges that use of the right-of-way is subject to the user's continuing to meet its responsibilities described above and subject to possible future reconstruction and reactivation of the right-of-way for rail service. A copy of this statement is being served on the railroad(s) on the same date it is being served on the Board.

\* \* \* \* \*

(c) Regular abandonment proceedings. (1) If continued rail service does not occur pursuant to 49 U.S.C. 10904 and Sec. 1152.27, and a railroad agrees to negotiate an interim trail use/rail banking agreement, then the Board will issue a CITU to the railroad and to the interim trail sponsor for that portion of the right-of-way as to which both parties are willing to negotiate. The CITU will: Permit the railroad to discontinue service, cancel any applicable tariffs, and salvage track and material consistent with interim trail use and rail banking, as long as it is consistent with any other Board order, 30 days after the date it is issued; and permit the railroad to fully abandon the

line if no trail use agreement is reached 180 days after it is issued, subject to appropriate conditions, including labor protection and environmental matters.

(2) The CITU will indicate that any interim trail use is subject to future restoration of rail service and to the sponsor's continuing to meet its responsibilities described in paragraph (a)(2) of this section. The CITU will also provide that, if an interim trail use agreement is reached (and thus interim trail use established), the parties shall file the notice described in paragraph (h) of this section. Additionally, the CITU will provide that if the sponsor intends to terminate interim trail use on all or any portion of the right-of-way covered by the interim trail use agreement, it must send the Board a copy of the CITU and request that it be vacated on a specified date. If a party requests that the CITU be vacated for only a portion of the right-of-way, the Board will issue an appropriate replacement CITU covering the remaining portion of the right-of-way subject to the interim trail use agreement. The Board will reopen the abandonment proceeding, vacate the CITU, and issue a decision permitting immediate abandonment for the involved portion of the right-of-way. Copies of the decision will be sent to:

\* \* \* \* \*

(iii) The current trail sponsor.

\* \* \* \* \*

(d) \* \* \*

(1) If continued rail service does not occur under 49 U.S.C. 10904 and Sec. 1152.27 and a railroad agrees to negotiate an interim trail use/rail banking agreement, then the Board will issue a Notice of Interim Trail Use or Abandonment (NITU) to the railroad and to the interim trail sponsor for the portion of the right-of-way as to which both parties are willing to negotiate. The NITU will: permit the railroad to discontinue service, cancel any applicable tariffs, and salvage track and materials, consistent with interim trail use and rail banking, as long as it is consistent with any other Board order, 30 days after the date it is issued; and permit the railroad to fully abandon the line if no agreement is reached 180 days after it is issued, subject to appropriate conditions, including labor protection and environmental matters.

(2) The NITU will indicate that interim trail use is subject to future restoration of rail service and to the sponsor's continuing to meet its responsibilities described in paragraph (a)(2) of this section. The NITU will also provide that, if an interim trail use agreement is reached (and thus interim

trail use established), the parties shall file the notice described in paragraph (h) of this section. Additionally, the NITU will provide that if the sponsor intends to terminate interim trail use on all or any portion of the right-of-way covered by the interim trail use agreement, it must send the Board a copy of the NITU and request that it be vacated on a specific date. If a party requests that the NITU be vacated for only a portion of the right-of-way, the Board will issue an appropriate replacement NITU covering the remaining portion of the right-of-way subject to the interim trail use agreement. The Board will reopen the exemption proceeding, vacate the NITU, and issue a decision reinstating the exemption for that portion of the right-of-way. Copies of the decision will be sent to:

\* \* \* \* \*

(iii) The current trail sponsor.

\* \* \* \* \*

(f)(1) \* \* \*

(iii) An acknowledgement that interim trail use is subject to possible future reconstruction and reactivation of the right-of-way for rail service.

\* \* \* \* \*

(h) When the parties negotiating for railbanking/interim trail use reach an agreement, the trail sponsor and railroad shall jointly notify the Board within 10 days that the agreement has been reached. The notice shall include a map depicting, and an accurate description of, the involved right-of-way or portion

thereof (including mileposts) that is subject to the parties' interim trail use agreement and a certification that the interim trail use agreement includes provisions requiring the sponsor to fulfill the responsibilities described in paragraph (a)(2) of this section. Additionally, if the interim trail use agreement establishes interim trail use over less of the right-of-way than is covered by the CITU or NITU, the notice shall also include a request that the Board vacate the CITU or NITU and issue a replacement CITU/NITU for only the portion of the right-of-way covered by the interim trail use agreement. The Board will reopen the abandonment proceeding, vacate the CITU or NITU, issue an appropriate replacement CITU or NITU for only the portion of the right-of-way covered by the interim trail use agreement, and issue a decision permitting immediate abandonment of the portion of the right-of-way not subject to the interim trail use agreement. Copies of the decision will be sent to:

- (1) The rail carrier that sought abandonment authorization;
- (2) The owner of the right-of-way; and
- (3) The current trail sponsor.

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

#### Appendix

##### Notifications of Trail Use Agreement and Sponsor Substitution

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:* New submissions under the Board's Trails Act regulations.

*OMB Control Number:* 2140-XXXX.

*STB Form Number:* None.

*Type of Review:* New collection.

*Respondents:* Parties to an interim trail use agreement; substitute trail sponsors.

*Number of Respondents:* 40 (potentially).

*Estimated Time per Response:* 1 hour or less.

*Frequency:* On occasion.

*Total Burden Hours* (annually including all potential respondents): 40 hours.

*Total "Non-hour Burden" Cost:* None identified.

*Needs and Uses:* The new rule proposes to require parties to notify the Board when a trail use agreement has been reached, and to notify the Board of the exact location of the right-of-way subject to the agreement, including a map and milepost marker information. This submission will ensure that the agency and the public have accurate information on the status of property after interim trail use conditions have been issued. As is already required for an original trail sponsor, the proposed rule would also clarify that a substitute trail sponsor must acknowledge that interim trail use is subject to restoration and reactivation at any time.

*Retention Period:* These records are retained indefinitely.

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**BILLING CODE 4915-01-P**