• Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on tribes, impact any existing sources of air pollution on tribal lands, nor impair the maintenance of ozone national ambient air quality standards in tribal lands.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: December 13, 2016.

Robert Kaplan,

Acting Regional Administrator, Region 5.

[FR Doc. 2016–31635 Filed 1–3–17; 8:45 am]

BILLING CODE 6560–50–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: Notice of proposed rulemaking; policy statement.

SUMMARY: Through this Notice of Proposed Rulemaking, the Surface Transportation Board (Board or STB) proposes amendments to its regulations governing the publication, availability, and retention for public inspection of rail carrier rate and service terms for agricultural products and fertilizer. The Board also clarifies its policies on standing and aggregation of claims as they relate to rate complaint procedures.

DATES: Comments are due February 21, 2017; replies are due by March 20, 2017.

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.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 528 (Sub-No. 1), 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: 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.* at 5.

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 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

[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.), *vacated in part on reh'g,* 584 F.3d 1076 (D.C. Cir. 2009).

testimony also touched on various other issues related to the rail transportation of grain. In order to address the comments pertaining to 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 Nos. EP 665 (Sub-No. 1) and EP 665 (Sub-No. 2). Additionally, based on the comments and testimony received regarding other issues related to the rail transportation of grain,[2] the Board today proposes amendments to its regulations on publication of rates for agricultural products and fertilizer in a new proceeding, Docket No. EP 528 (Sub-No. 1), and sets forth policy statements regarding aggregation of claims and standing. The Board's proposals and clarifications with respect to these issues are discussed below. Finally, the Board is terminating the proceeding in Docket No. EP 665 (Sub-No. 1).

Notice of Proposed 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 § 11101(d), in *Disclosure, Publication, & Notice of Change of Rates & Other Service Terms for Rail Common Carriage,* 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 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 also 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 announcing the June 2015 hearing in Docket No. EP 665 (Sub-No. 1), the Board invited parties to discuss whether there are any ways in which the Board could create greater transparency for grain shippers regarding how railroads set rates. Specifically, the Board invited parties to address the disclosure requirements for agricultural rates under 49 CFR 1300.5 and whether this requirement should be modified to allow for increased transparency.

Shippers generally had differing opinions as to the availability of agricultural tariff rates and their transparency. On the one hand, ARC asserts that there is a ''[n]eed for increased access to railroad public documents such as tariffs which serve to provide education (to agricultural producers, small and large elevators, and merchandisers)'' and for ''access to more complete summaries of transportation contracts, and operational data.'' (ARC Opening, V.S. Whiteside 8.) In its testimony, ARC raised concerns that certain public rates were no longer available for review online and stated that, although it was recently able to view a Class I railroad's rates online, it no longer is able to do so, even after registering through the railroad's Web site. (Hr'g Tr. 353:1–17, June 10, 2015.) NGFA, on the other hand, testified that Class I railroads make their tariffs available online and searchable and, although some Class I railroad tariffs may be more ''user-friendly'' than others, the Class I's tariffs are publicly available. (Hr'g Tr. 181:2–9, June 10, 2015.)

The Class I railroads that addressed this issue generally state that their common carrier agricultural rates are available online to varying degrees. At the June 2015 hearing, CSXT testified that its ''tariff [rates] are readily available on the internet'' and that, in the company's experience, the tariff [rates] are used by companies of varying sizes for many different reasons. (Hr'g Tr. 280:7–19, June 10, 2015.) BNSF stated that its ''tariff rates are available to all of our shippers that ship on us.'' (Hr'g Tr. 251:3–12, June 10, 2015.)

Based on the comments and testimony received, the Board proposes amendments to 49 CFR 1300.5 to update the publication requirements for the transportation of agricultural products and fertilizer in a new proceeding, Docket No. EP 528 (Sub-No. 1). These publication requirements, adopted in 1996, should be revised to reflect the fact that Class I railroads often use company Web sites and/or applications to disseminate information to customers and the general public. The 1996 decision adopting the current rules discussed publication methods that likely were more prevalent at the time (*i.e.,* subscription services and maintenance of paper documents at physical railroad offices). Given the changes in the commonly used methods to disseminate information and the fact that some railroads already have agricultural rate and service information on their Web sites, the Board believes it is appropriate to update our regulations to reflect these modern practices. All rail carriers would continue to be required to make the required information available to the public at their offices as well.

The Board's proposed amendments to 49 CFR 1300.5 are set forth below. Under our proposed change to § 1300.5(c), Class I rail carriers would be required to make publicly available online the information that is currently required under § 1300.5(a), which includes currently effective rates, schedules of rates, charges, and other service terms, and any scheduled changes to such rates, charges, and service terms for agricultural products and fertilizer.[4]

The proposal would also continue to require that this information be made available to ''any person'' that seeks such information, as currently required by § 1300.5(c), 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.[5] In addition, the Board

[2] For a list of the numerous parties that have participated in the Docket No. EP 665 (Sub-No. 1) proceeding at various stages, as set forth below. To the extent this decision refers to parties by abbreviations, those abbreviations are listed below.

[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 regulation. *See* 49 CFR 1039.10.

[4] We do not propose to require Class II and III carriers to comply with the online publication requirement, as this may be a significant burden to Class II and III carriers that do not have Web sites.

[5] The Board does not propose restricting railroads from using a registration feature to view tariff information online. However, under the proposed rules, the Board would expect that such registration be structured in a manner that allows any person

proposes amendments to 49 CFR 1300.5 that would direct parties that are having difficulty accessing the tariff rates for agricultural commodities and fertilizer to contact the Board's Office of Public Assistance, Government Affairs, and Compliance.

The Board invites public comment on these proposed changes and whether additional changes are needed to promote greater rate transparency consistent with § 11101(d).

Clarification of Aggregation of Claims and Standing Issues

In response to its December 2013 request for comments in Docket No. EP 665 (Sub-No. 1), the Board received comments related to whether grain producers as indirect purchasers of rail transportation have the legal right to file rate complaints under 49 U.S.C. 11701(b). The Board also received comments on the ability of groups of producers or elevators to bring claims, or the ability of State Attorneys General to act on behalf of agricultural producers in a state. In its May 8, 2015 hearing notice, the Board invited parties to discuss whether the Board should allow multiple agricultural producers and other agricultural shippers to aggregate their distinct rate claims against the same carrier into a single proceeding.

Shippers and government entities agree that Board clarification on the legal standing of grain producers (or other indirect purchasers of rail transportation) to file rate complaints and aggregate their claims would be beneficial. ARC requested that the Board confirm that grain producers have the legal right to file rate complaints, and that such complaints are not subject to dismissal due to the absence of direct damage to the complainant. (ARC Opening, V.S. Whiteside 28.) According to ARC, such confirmation would reassure many grain producers who may be unsure of whether they would have standing to file a rate case. (*Id.*) Similarly, NGFA argued that aggregation of claims would allow parties that do not ''directly pay the rate but feel the brunt of the rate to bring claims.'' (Hr'g Tr. 171:6–14, June 10, 2015.) NGFA stated that without further clarification from the Board, standing would be a deterrent to agricultural producers filing a rate case.[6] (Hr'g Tr. 171–72, June 10, 2015.)

Additionally, USDA suggests that the Board amend its rate challenge procedures to allow ''groups of agricultural producers, groups of elevators, or State Attorneys General to act on behalf of agricultural producers in that State.'' (USDA Opening 10.) To the same end, the Montana Department of Agriculture testified that parties must be allowed to aggregate their claims in order to capitalize on economies of scale. (Hr'g Tr. 71:7–9, June 10, 2015.) The Montana Department of Agriculture testified that allowing real parties of interest that are similarly situated to bring an aggregated claim would not only increase efficiency for the Board and protect rail carriers from piecemeal litigation, but also allow State Attorneys General to bring claims on behalf of shippers and producers without ''fear [of] retaliation'' or ''regard to shareholder profits'' and with the resources and the transportation expertise needed to effectively pursue a just remedy.[7] (Hr'g Tr. 71:11–22, June 10, 2015.)

Rail carriers generally do not oppose shippers' request for clarification on aggregation of claims and standing, although some railroads state that Board precedent is clear on these issues and does not require further explanation. For instance, NSR comments that 49 U.S.C. 11701(b) is clear that third parties may bring rate cases even if they did not pay directly for the transportation in question, but states that it nonetheless does not oppose the Board ''reaffirming the principle that on a case-by-case basis a party can bring a rate challenge . . . [if] it can demonstrate a sufficient nexus to the rate at issue . . . .'' [8] (NSR Reply 7.) Similarly, UP states that the Board ''could clarify that a party need not sustain damages to file a rate complaint, so long as the party would otherwise have standing.'' (UP Reply 38; *see also* AAR Reply 24–25.)

BNSF, however, opposes shippers' requests for clarification on standing. BNSF argues that only parties directly responsible for freight charges may seek damages in rate cases and that, for parties seeking non-damage forms of relief, whether they have standing is a ''highly fact-specific'' determination for which there is no basis in the record. (BNSF Reply 2–3.)

The Board will address standing and aggregation of claims, as the questions raised by some of the comments suggest that clarification would be beneficial. Under 49 U.S.C. 11701(b), a person, including a governmental authority, may file a complaint with the Board about a violation of part A, subtitle IV of title 49 by a rail carrier providing transportation or service subject to the Board's jurisdiction. Under § 11701(b), the Board may not dismiss such a complaint because of the ''absence of direct damage to the complainant.'' Thus, the statute permits parties to bring a rate complaint, even if they have not been directly harmed or did not directly pay for the transportation for which relief is sought. Accordingly, grain producers (and other indirectly harmed complainants) that file rate complaints cannot be disqualified due to the absence of direct damage.

At the same time, complainants that allege indirect harm in rate complaints must still have standing in order to proceed with a complaint, which is determined by the Board on a case-by-case basis. In making such determinations, the Board is ''not bound by the strict requirements of standing that otherwise govern judicial proceedings,'' but it may still look to the courts' test to determine whether a party has standing to bring an action. *See Riffin—Acquis. & Operation Exemption—in York Cty., Pa.,* FD 34501, et al., slip op. at 5 (STB served Feb. 23, 2005) (citing *N.C. R.R.—Pet. to Set Trackage Comp. & Other Terms & Conditions—Norfolk S. Ry.,* FD 33134, slip op. at 2 n.9 (STB served May 29, 1997); *Mo. Pac. R.R.—Aban.—in Douglas Champaign & Vermillion Ctys., Ill.,* AB 3 (Sub-No. 103), slip op. at 3 n.4 (ICC served Nov. 3, 1994)). When a complainant files a rate complaint, the Board may consider, for instance, whether the complainant has suffered an injury in fact, whether the injury is fairly traceable to the defendant's challenged conduct, and whether the injury is one likely to be redressed through a favorable decision. *See Riffin,* FD 34501, et al., slip op. at 5 (citing *Lujan* v. *Defs. of Wildlife,* 504 U.S. 555, 560–61 (1991)). Indirect damage, therefore, is not a bar to grain producers or other indirect purchasers of rail transportation bringing a complaint, but such complainants must still establish

to view the tariffs for agricultural commodities and fertilizer.

[6] NGFA and other parties also raise issues related to ''whether parties who indirectly suffer from rate increases can receive reparations.'' (Hr'g Tr. 172:8–21, June 10, 2015.) UP, for its part, requested that, if the Board clarifies that indirect purchasers of rail transportation can file rate complaints, the Board also clarify that parties that did not pay the rate may not recover reparations. (UP Reply 38.) The Board is not addressing the issue of reparations in this decision.

[7] The Montana Department of Agriculture also testified that a rule mandating arbitration for certain cases could require aggregated claims with a value of less than $500,000 brought by fewer than 15 farmers to be subject to mandatory arbitration, though we do not address arbitration in this decision. (Hr'g Tr. 73:15–19, June 10, 2015.)

[8] NSR also asserted that the Board should not extend standing to ''parties with insignificant connections to the transportation'' or ''permit other attempts to combine unrelated transportation into a single rate challenge.'' (NSR Reply 7, Aug. 25, 2014.)

that they have standing to proceed with a complaint.

Given that agricultural producers have previously been found to have standing to challenge the rail transportation rate for their grain, the Board expects that other producers would be able to establish standing as well. *See McCarty Farms, Inc.* v. *Burlington N., Inc.,* 91 F.R.D. 486 (D. Mont. 1981). Grain producers should be able to establish standing because, as various commenters acknowledge, the price the producers are paid by elevators for their grain is generally affected at least to some extent by the transportation rate the railroad charged to the grain elevators.[9]

For parties who have standing, the Board sees no reason not to permit the aggregation of claims where appropriate. Indeed, the Board has previously conducted proceedings involving class action claims, *see McCarty Farms,* and acknowledged its ability to do so, *see NSL, Inc.* v. *Whitlock,* NOM 41997 et al., slip op. at 5 (STB served Apr. 5, 2000). Therefore, in response to comments received in this proceeding, the Board confirms that parties may seek to aggregate their rate claims. In determining whether to permit the aggregation of claims, the Board will consider, on a case-by-case basis, 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.

Terminating Docket No. EP 665 (Sub-No. 1)

As explained earlier, the Board sought input from interested parties regarding effective rate relief ideas for grain shippers in Docket No. EP 665 (Sub-No. 1). With respect to comments that addressed the Board's existing or proposed rate methodologies, the Board recently issued an Advance Notice of Proposed Rulemaking to explore a new rate reasonableness methodology. *Expanding Access to Rate Relief,* EP 665 (Sub-No. 2) (STB served Aug. 31, 2016). In addition, the present decision addresses agricultural rate publication, standing, and aggregation of claims, which were also raised in Docket No. EP 665 (Sub-No. 1). While these two decisions do not purport to address every suggestion offered in Docket No. EP 665 (Sub-No. 1), the Board considered all of the comments that were received in determining how to proceed at this time. Therefore, the Board will terminate Docket No. EP 665 (Sub-No. 1) in the interest of administrative finality.

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 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. §§ 601–604. In its Notice of Proposed Rulemaking, the agency must either include an initial regulatory flexibility analysis, § 603(a), or certify that the proposed rule would not have a ''significant impact on a substantial number of small entities.'' § 605(b). The impact must be a direct impact on small entities ''whose conduct is circumscribed or mandated'' by the proposed rule. *White Eagle Coop.* v. *Conner,* 553 F.3d 467, 480 (7th Cir. 2009).

The Board's proposed regulations in Docket No. EP 528 (Sub-No. 1) would clarify and update existing procedures related to the publication of rates for agricultural products and fertilizers and, therefore, do not mandate or circumscribe additional conduct for small entities. To the extent that the Board's proposal imposes a new requirement in the form of requiring rate information to be published online, that requirement is limited to Class I rail carriers.[10] Therefore, the Board certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities as defined by 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.

List of Subjects in 49 CFR Part 1300

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

It is ordered:

1. The Board proposes to amend its rules as set forth in this decision. Notice of the proposed rules will be published in the **Federal Register**.

2. Comments regarding the proposed rules are due by February 21, 2017. Replies are due by March 20, 2017.

3. 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.

4. The Board issues the policy statement set forth above.

5. The proceeding in Docket No. EP 665 (Sub-No. 1) is terminated.

6. This decision is effective on the day of service.

By the Board, Chairman Elliott, Vice Chairman Miller and Commissioner Begeman. Vice Chairman Miller commented with a separate expression.

Raina S. Contee,

Clearance Clerk.

Vice Chairman Miller, Commenting

In *Petition of Norfolk Southern Railway and CSX Transportation, Inc. to Institute a Rulemaking Proceeding to Exempt Railroads from Filing Agricultural Transportation Contract Summaries,* EP 725 (STB served Aug. 11, 2014), I committed to work with agency staff to explore whether the format of the summaries could be made more useful and ensure whether the carriers were properly complying with the filing requirements. I have since discussed with staff the idea of compiling the summary requirements into one source that would allow stakeholders to view the contract summary information collectively. However, because the carriers each report information differently, and because some of the

[9] *See* NGFA Opening 7–8 (''[T]he rail transportation rates and terms are established between the elevator/aggregator and the railroad, with the cost of rail transportation typically being borne ultimately by the producer/farmer in the price paid by the elevator for the crop. . . . As rail rates are increased, the price that a captive elevator will pay for the farmer's crop usually decreases by a commensurate amount.''); ARC Opening 9 (''[I]f rail rates on merchandise shipments rise, the cost may be borne by millions of customers paying a few cents more at Walmart and similar stores. For grain, the rail rate buck tends to stop with farmers.''); NSR Reply 6–7 (''NS understands that for some agricultural commodities, grain elevators or other parties actually contract for the transportation, even though farmers may be price takers and thus receive higher or lower prices for their crop based on the cost of transportation.''); USDA Opening 4 (''It is well established that transportation costs can have a direct impact on agricultural producers' profits . . . . Agricultural producers in remote areas have few transportation alternatives, and the price they receive for their products is net of transportation . . . .''); BNSF Reply, V.S. Wilson 8 (acknowledging that rail rates are one factor influencing prices that grain producers receive for their grain).

[10] Effective June 30, 2016, for the purpose of RFA analysis, 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 $36,633,120 or less when adjusted for inflation using 2015 data. Class II rail carriers have annual operating revenues of less than $250 million but in excess of $20 million in 1991 dollars, or $457,913,998 and $36,633,120 respectively, when adjusted for inflation using 2015 data. The Board calculates the revenue deflator factor annually and publishes the railroad revenue thresholds on its Web site. 49 CFR 1201.1–1.

individual fields in one summary can contain pages of information, creating a single source has proven difficult. As for compliance, the staff of the Board's Office of Governmental Affairs, Public Assistance, and Compliance (OPAGAC) has been monitoring the summaries to ensure that they are being properly filed. I will continue to hold briefings with the OPAGAC staff to be made aware of any issues with the summaries that arise.

Additionally, in the course of developing this NPRM, I considered a number of ideas on how to modify the contract summary requirements so that they would provide more value, as well as address issues that are not currently covered by the existing regulations. However, the record here does not contain sufficient information that would help us to even begin making changes. Without such information, I am hesitant to tinker with the existing regulations. Accordingly, I ultimately decided that it would not be advisable to urge the Board to propose changes to the current requirements at this time.

Participants in Docket No. EP 665 (Sub-No. 1)

The Board received comments and testimony from the following parties in Docket No. EP 665 (Sub-No. 1).

Opening comments were received from:

- Alliance for Rail Competition (ARC) (joined by Montana Wheat and Barley Committee, National Farmers Union, Colorado Wheat Administrative Committee, Idaho Barley Commission, Idaho Grain Producers Association, Idaho Wheat Commission, Montana Farmers Union, North Dakota Corn Growers Association, North Dakota Farmers Union, South Dakota Corn Growers Association, South Dakota Farmers Union, Minnesota Corn Growers Association, 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, USA Dry Pea and Lentil Council, and National Corn Growers Association)
- Association of American Railroads (AAR)
- BNSF Railway Company (BNSF)
- CSX Transportation, Inc. (CSXT)
- National Grain and Feed Association (NGFA)
- Norfolk Southern Railway Company (NSR)
- Union Pacific Railroad Company (UP)
- U.S. Department of Agriculture (USDA)

Reply comments were received from:

- AAR
- Agribusiness Association of Iowa, Agribusiness Council of Indiana, Agricultural Retailers Association, American Bakers Association, American Farm Bureau Federation, American Feed Industry Association, American Soybean Association, California Grain and Feed Association, Corn Refiners Association, Institute of Shortening and Edible Oils, Kansas Cooperative Council, Kansas Grain and Feed Association, Grain and Feed Association of Illinois, Michigan Agribusiness Association, Michigan Bean Shippers Association, Minnesota Grain And Feed Association, Missouri Agribusiness Association, Montana Grain Elevators Association, National Council of Farmer Cooperatives, National Farmers Union, National Oilseed Processors Association, Nebraska Grain and Feed Association, North American Millers' Association, North Dakota Grain Dealers Association, Northeast Agribusiness and Feed Alliance, Ohio Agribusiness Association, Oklahoma Grain and Feed Association, Pacific Northwest Grain and Feed Association, Pet Food Institute, South Dakota Grain and Feed Association, Texas Grain and Feed Association, USA Rice Federation, and Wisconsin Agribusiness Association (collectively, AAI)
- ARC (joined by the same parties that joined its opening comment as well as the Nebraska Corn Growers Association)
- BNSF
- CSXT
- Kansas City Southern Railway Company
- NGFA
- NSR
- Jay L. Schollmeyer for and on behalf of SMART–TD General Committee of Adjustment (SMART–TD)
- Texas Trading and Transportation Services, LLC, dba TTMS Group, together with Montana Grain Growers Association (TTMS Group)
- UP
- USDA

Testimony at the June 10, 2015 hearing was received from:

- AAR
- ARC
- BNSF
- Canadian National Railway Company
- Canadian Pacific Railway Company
- CSXT
- Michigan Agri-Business Association [11]
- Montana Department of Agriculture
- NGFA
- NSR
- SMART–TD
- Transportation Research Board of the National Academy of Sciences
- TTMS Group
- UP
- USDA

Supplemental comments were received from:

- AAR
- ARC (joined by the same parties that joined its opening comment)
- NSR

[11] Written testimony only.

List of Subjects in 49 CFR Part 1300

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

For the reasons set forth in the preamble, the Surface Transportation Board proposes to amend title 49, chapter X, of the Code of Federal Regulations by revising part 1300 to read as follows:

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

■ 1. Revise the authority citation for part 1300 to read as follows:

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

§ 1300.5 [Amended]

■ 2. Amend § 1300.5 by adding two sentences at the end of paragraph (c) 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 available to any person online. Persons having difficulty accessing this information should either send a written inquiry addressed to the Director, Office of Public Assistance, Government Affairs, and Compliance or should telephone the Board's Office of Public Assistance, Government Affairs, and Compliance.

* * * * *

[FR Doc. 2016–31906 Filed 1–3–17; 8:45 am]

BILLING CODE 4915–01–P