County meets the applicable requirements of the CAA and EPA's 2014 SO_2 Nonattainment Guidance. Thus, EPA is proposing to approve Pennsylvania's attainment plan for the Beaver Area as submitted on September 29, 2017. EPA's analysis for this proposed action is discussed in Section V of this proposed rulemaking. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action. Final approval of this SIP submittal will remove EPA's duty to promulgate and implement a FIP for this Area.

VII. Incorporation by Reference

In this document, EPA is proposing to include regulatory text in a final rule that includes incorporation by reference. In accordance with requirements of 40 CFR 51.5, EPA is proposing to incorporate by reference the portions of the COAs entered between Pennsylvania and FirstEnergy and Pennsylvania and Jewel included in the PADEP submittal of September 29, 2017 that are not redacted. This includes emission limits and associated compliance parameters, recording-keeping and reporting, and contingency measures. EPA has made, and will continue to make, these materials generally available through *http://www.regulations.gov* and at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VIII. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an 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 CAA; 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, this proposed rule, concerning the SO_2 attainment plan for the Beaver nonattainment area in Pennsylvania, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Reporting and recordkeeping requirements, Sulfur oxides.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: September 24, 2018.

Cosmo Servidio,

Regional Administrator, Region III.

[FR Doc. 2018–21667 Filed 10–4–18; 8:45 am]

BILLING CODE 6560–50–P

SURFACE TRANSPORTATION BOARD

49 CFR Part 1152

[Docket No. EP 749; Docket No. EP 749 (Sub-No. 1)]

National Association of Reversionary Property Owners—Petition for Rulemaking; Limiting Extensions of Trail Use Negotiating Periods

AGENCY: Surface Transportation Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Surface Transportation Board (Board) grants in part a petition by the National Association of Reversionary Property Owners (NARPO) and opens a proceeding in Docket No. EP 749 (Sub-No. 1) to consider revising regulations related to the National Trails System Act. The Board proposes to modify its regulations to limit the number of 180-day extensions of a trail use negotiating period to a maximum of six extensions, absent extraordinary circumstances.

DATES: Comments are due by November 1, 2018; replies are due by November 21, 2018.

ADDRESSES: Comments and replies may be submitted either via the Board's e-filing format or in paper format. Any person using e-filing should attach a document and otherwise comply with the instructions found on the Board's website at ''*www.stb.gov*'' at the ''E–FILING'' link. Any person submitting a filing in paper format should send an original and 10 paper copies of the filing to: Surface Transportation Board, Attn: Docket No. EP 749 (Sub-No. 1), 395 E Street SW, Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: Sarah Fancher, (202) 245–0355. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at (800) 877–8339.

SUPPLEMENTARY INFORMATION: On June 14, 2018, NARPO filed a petition for rulemaking requesting that the Board consider issuing three rules related to 16 U.S.C. 1247(d), the codification of section 8(d) of the National Trails System Act (Trails Act), Public Law 90–543, section 8, 82 Stat. 919 (1968). Specifically, NARPO asks that the Board open a proceeding to consider rules that would: (1) Limit the number of 180-day extensions of a trail use negotiating period to six; (2) require a rail carrier or trail sponsor negotiating an interim trail use agreement to send notice of the issuance of a Certificate of Interim Trail Use (CITU) or Notice of Interim Trail

Use (NITU) [1] to landowners adjacent to the right-of-way covered by the CITU/NITU; and (3) require all entities, including government entities, filing a request for a CITU/NITU, or extension thereof, to pay a filing fee.

On July 5, 2018, the Association of American Railroads (AAR) replied in opposition to the changes proposed in NARPO's petition.[2] Thereafter, late-filed letters in support of NARPO's petition were filed by the Community Council Railroad Committee, Save Taxes & Our Property (STOP), and several individuals. Comments in opposition to the petition were late-filed by the Madison County Mass Transit District (MCMTD), the Iowa Natural Heritage Foundation (INHF), the City of Seattle, Wash. (City of Seattle), and the Rails-To-Trails Conservancy (RTC). RTC also requested a 30-day extension of time to respond to NARPO's petition. In the interest of compiling a complete record, the late-filed pleadings were accepted into the record, but RTC's extension request was denied. *Nat'l Ass'n of Reversionary Prop. Owners—Pet. for Rulemaking,* EP 749 (STB served Aug. 14, 2018).

The Board has broad discretion when determining whether to initiate a rulemaking. *See, e.g., Defenders of Wildlife* v. *Gutierrez,* 532 F.3d 913, 919 (DC Cir. 2008). After considering the petition for rulemaking and the comments received, the Board will grant NARPO's petition in part and institute a rulemaking proceeding in Docket No. EP 749 (Sub-No. 1) to propose modifications to the Board's rules related to extensions of the trail use negotiating period. The Board will deny NARPO's petition with regard to its other two proposed rules. Because the Board is proposing a rule change in a separate sub-docket, the docket in Docket No. EP 749 will be closed.

Background

The Trails Act was established in 1968 to create a nationwide system of recreational trails. In 1983, Congress added a rail section, codified at 16 U.S.C. 1247(d). This addition to the Trails Act was the ''culmination of congressional efforts to preserve shrinking rail trackage by converting unused rights-of-way to recreational trails.'' *Preseault* v. *ICC,* 494 U.S. 1, 5 (1990). Under the Trails Act, the Board must ''preserve established railroad rights-of-way for future reactivation of rail service'' by prohibiting abandonment where a trail sponsor agrees to assume full managerial, tax, and legal liability for the right-of-way for use in the interim as a trail. 16 U.S.C. 1247(d); *Nat'l Wildlife Fed'n* v. *ICC,* 850 F.2d 694, 699–702 (D.C. Cir. 1988). The statute expressly provides that ''if such interim use is subject to restoration or reconstruction for railroad purposes, such interim use shall not be treated, for [any] purposes . . . as an abandonment. . . .'' Section 1247(d). Instead, the right-of-way is ''rail-banked,'' which means that the railroad is relieved of the current obligation to provide service over the line but that the railroad (or any other approved rail service provider) may reassert control over the right-of-way to restore service on the line in the future. *See Birt* v. *STB,* 90 F.3d 580, 583 (D.C. Cir. 1996); *Iowa Power—Const. Exemption—Council Bluffs, Iowa,* 8 I.C.C.2d 858, 866–67 (1990); 49 CFR 1152.29.[3] If a line is railbanked and designated for trail use, any reversionary interests that adjoining landowners might have under state law upon abandonment are not activated. *Preseault,* 494 U.S. at 8; *Birt,* 90 F.3d at 583.

The Trails Act is invoked when a prospective trail sponsor files a request with the Board to railbank a line that a carrier has proposed to abandon. The trail sponsor's request must include a statement of willingness to assume responsibility for management, legal liability, and payment of taxes, and an acknowledgement that interim trail use is subject to restoration of rail service at any time. 49 CFR 1152.29(a). Pursuant to 49 CFR 1152.29(c)(1) and (d)(1), if the railroad indicates its willingness to negotiate a railbanking/interim trail use agreement for the line, the Board will issue a CITU (in an abandonment application proceeding) or a NITU (in an abandonment exemption proceeding) for the line. The CITU/NITU grants parties a 180-day period (which can be extended by Board order) to negotiate a railbanking agreement. 49 CFR 1152.29(c)(1), (d)(1); *Preseault,* 494 U.S. at 7 n.5; *Birt,* 90 F.3d at 583 (affirming the agency's authority to grant ''reasonable'' extensions of the Trails Act negotiating period). *See also Grantwood Vill.* v. *Missouri Pac. R.R.,* 95 F.3d 654, 659 (8th Cir. 1996) (ICC ''was free to extend [the 180-day CITU/NITU] time period for an agreement'').

If parties reach an agreement during the trail use negotiating period, the CITU/NITU automatically authorizes railbanking/interim trail use. *Preseault,* 494 U.S. at 7 n.5. Without further action from the Board,[4] the trail sponsor may assume management of the right-of-way, subject to the right of a railroad to reassert control of the property for restoration or reconstruction of rail service and the terms of the agreement. 49 CFR 1152.29(c)(2), (d)(2); *Birt,* 90 F.3d at 583. If no railbanking/interim trail use agreement is reached by the expiration of the CITU/NITU 180-day negotiation period (and any extension thereof), the CITU/NITU authorizes the railroad to ''exercise its option to fully abandon'' the line by consummating the abandonment, without further action by the agency, 49 CFR 1152.29(c)(1), (d)(1), provided that there are no unmet conditions imposed on the abandonment authority that must be satisfied prior to consummation. *See Consummation of Rail Line Abans. That Are Subject to Historic Pres. & Other Envtl. Conditions,* EP 678, slip op. at 3–4 (STB served Apr. 23, 2008).

The Board retains jurisdiction over a rail line throughout the CITU/NITU negotiating period, any period of railbanking/interim trail use, and any period during which rail service is restored. Only after a CITU/NITU is no longer in effect and the railroad has lawfully consummated its abandonment authority is the Board's jurisdiction terminated. *See* Section 1247(d); *Hayfield N. R.R.* v. *Chi. & N. W. Transp. Co.,* 467 U.S. 622, 633 (1984). At that

[1] As explained below, the issuance of a CITU/NITU by the Board provides time for the parties to negotiate an interim trail use arrangement. NARPO's proposed rules only refer to NITUs, but, presumably, NARPO intended to propose the same changes to CITU procedures as there are no substantive differences between CITUs (issued in an abandonment application proceeding) and NITUs (issued in an abandonment exemption proceeding).

[2] On July 23, 2018, NARPO filed a reply, which was accepted into the record. *Nat'l Ass'n of Reversionary Prop. Owners—Pet. for Rulemaking,* EP 749, slip op. at 1 n.1 (STB served Aug. 14, 2018).

[3] The Board, and its predecessor, the Interstate Commerce Commission (ICC), has promulgated, modified, and clarified its rules to implement the Trails Act a number of times. *See, e.g., Nat'l Trails System Act & R.R. Rights-of-Way,* EP 702 (STB served Apr. 30, 2012); *Aban. & Discontinuance of Rail Lines & Rail Transp. Under 49 U.S.C. 10903,* 1 S.T.B. 894 (1996); *Policy Statement on Rails to Trails Conversions,* EP 272 (Sub-No. 13B) (ICC served Jan. 29, 1990); *Rail Abans.—Use of Rights-of-Way as Trails—Supplemental Trails Act Procedures,* 4 I.C.C.2d 152 (1987); *Rail Abans.—Use of Rights-of-Way as Trails,* 2 I.C.C.2d 591 (1986).

[4] The trail sponsor and railroad are required to notify the Board that an agreement has been reached, 49 CFR 1152.29(h), but the Board's overall role under the Trails Act is limited. *Citizens Against Rails-to-Trails* v. *STB,* 267 F.3d 1144, 1151–52 (D.C. Cir. 2001); *Goos* v. *ICC,* 911 F.2d 1283, 1295 (8th Cir. 1990) (agency has ''little, if any, discretion to forestall a voluntary agreement to effect a conversion to trail use''). Once the railroad and trail sponsor have reached a trail use agreement, ''the Board's chief concern . . . is that the statutory railbanking conditions not be compromised and that nothing occur that would preclude a railroad's right to reassert control over the right-of-way at some future time to revive active service.'' *Sunflower Rails-Trails Conservancy, Inc.—Pet. for Declaratory Order—Sale of Railbanked Right-of-Way,* FD 36034, slip. op. at 4 (STB served Feb. 23, 2017).

point, the right-of-way may revert to reversionary landowner interests, if any, pursuant to state law. *Preseault,* 494 U.S. at 5, 8.

NARPO's Petition for Rulemaking and Comments Received

Limiting CITU/NITU Extension Requests. In its petition for rulemaking, NARPO proposes that the Board limit the number of 180-day extensions of a trail use negotiating period to six. (NARPO Pet. 2.) NARPO identifies several proceedings in which the Board extended the 180-day trail use negotiating period for what it terms excessive periods of time (*e.g.,* nearly 10 years). (*Id.* at 2–4.) NARPO argues that the Board must impose a reasonable limit on the number of extensions granted for trail use negotiations. (*Id.* at 4.) NARPO contends that its proposed rule calling for a maximum of six 180-day extensions strikes a reasonable balance between the time legitimately required for trail use negotiations, and the abuse of trail use procedures that results from repeated extensions over a lengthy period of time. (*Id.*)

A few commenters support NARPO's proposal to limit the number of extensions granted during the trail use negotiation period. (*E.g.,* Tomani Comments 1; Rood Comments 1.) Other commenters, however, oppose NARPO's proposal. Some argue that NARPO has failed to justify that its proposed rule is needed or to demonstrate how any of its members might be prejudiced by the extensions. (MCMTD Comments 2; City of Seattle Comments 2–3.) Others contend that the ability to extend the trail use negotiating period is critical as delays may be a result of factors not attributable to the trail sponsor (*e.g.,* proceedings involving an Offer of Financial Assistance, delays resulting from compliance with environmental and historic preservation conditions, and carrier negotiations with salvage operators). (RTC Comments 3; City of Seattle Comments 4.) RTC argues that the Board has held that CITU/NITU extensions should be liberally granted because of the ''strong Congressional policy favoring trails use/railbanking.'' (RTC Comments 3.) RTC also asserts that negotiating a railbanking/interim trail use agreement is a complex undertaking, requiring the potential trail sponsor to assume extensive liabilities and long-term financial responsibilities for the management of the corridor. (RTC Comments 3.) Thus, RTC argues that NARPO's proposed limit of six extensions for NITUs would undermine the implementation and effectiveness of the federal railbanking law. (*Id.*) AAR also opposes NARPO's proposal, arguing (along with RTC) that the Board may evaluate NITU extension requests on a case-by-case basis to determine if they are reasonable. (AAR Comments 4, RTC Comments 4.)

Having considered this aspect of NARPO's petition and the comments filed in this docket, the Board concludes that proposing a rule imposing limits on the availability of extensions is reasonable and warranted. The agency has granted CITU/NITU extensions liberally in the past and, at times, Trails Act negotiations have gone on for many years. The courts have noted that extensions ''ad infinitum'' could have the undesirable effect of ''allowing the railroad to stop service without either relinquishing its rights to the easement or putting the right-of-way to productive use.'' *Birt,* 90 F.3d at 589. While the Trails Act process (which depends on a railroad and a trail sponsor negotiating a voluntary agreement) clearly contemplates that sufficient time is needed to determine if a specific rail corridor can be railbanked, the process must also be concluded after a reasonable period of time and provide administrative finality.[5] By allowing a maximum of six 180-day extensions (absent extraordinary circumstances), the Board could appropriately foster the interests of administrative efficiency and clarity by limiting negotiations to a reasonable period while still ensuring that parties also have the time required to take the many steps that may be part of the process involved in negotiating an agreement.

Notice to Landowners. In its petition, NARPO also proposes that the Board require a rail carrier or trail sponsor to ''send notice'' to adjoining landowners following the issuance of a CITU/NITU. (NARPO Pet. 4.) Reasserting an argument raised in several prior proceedings before the Board and the ICC, NARPO argues that effective notice of a CITU/NITU is essential for property owners to adequately protect their interests. (NARPO Pet. 5; NARPO Reply 6–7.)

NARPO argues that it would no longer be unduly burdensome for railroads or trail sponsors to send individual notice to each adjoining landowner because, according to NARPO, practically every county in the United States now has its property records stored electronically. (NARPO Pet. 5.) NARPO concludes that a rail carrier or trail sponsor could easily search county records, or retain a title company to do so, thereby obtaining the information needed to contact adjoining landowners. (*Id.*) Given the supposed ease of identifying and providing individual notice to property owners, NARPO maintains that **Federal Register** notice and local newspaper publication are no longer sufficient. (*Id.*) Commenters that support NARPO's proposal ask the Board to implement the individual notice requirement and assert that such notice to landowners could be accomplished easily. (*E.g.,* STOP Comments 1.)

Several commenters oppose NARPO's proposal, contending that the agency has already considered and rejected similar proposals by NARPO in the past, and that locating all adjacent landowners would be time-consuming, expensive, and burdensome. (RTC Comments 4; INHF Comments 2; City of Seattle Comments 5.) They further point out that NARPO provides no support for its argument that its proposed notice requirement could be ''easily'' accomplished because many jurisdictions maintain computerized land records. (RTC Comments 4; City of Seattle Comments 5; MCMTD Comments 2.) Some commenters also claim that NARPO's proposed rule would be inconsistent with the Board's limited role in administering the Trails Act, and contrary to the purpose of the Trails Act, which is to encourage and facilitate interim trail use of railroad rights-of-way that would otherwise be abandoned. (AAR Comments 2; INHF Comments 2.) Some commenters further argue that the existing notice procedures are sufficient. (AAR Comments 3; MCMTD Comments 2; City of Seattle Comments 6.)

The Board's regulations at 49 CFR 1105.12 require, in every abandonment exemption case, that the rail carrier certify that it has published a notice in a newspaper of general circulation in each county in which the line is located. *See Nat'l Trails Sys. Act & R.R. Rights-of-Way,* EP 702, slip op. at 7 (STB served Feb. 16, 2011); *see also Citizens Ass'n of Georgetown* v. *FAA,* 896 F.3d 425, 435–36 (D.C. Cir. 2018) (holding Federal Aviation Administration satisfied notice obligation through publication in local newspapers). Such a notice of the proposed abandonment provides information about available reuse alternatives, including trail use and public use, and informs the public how it may participate in the Board proceeding. *See* 49 CFR 1105.12. Moreover, **Federal Register** notice is also provided in every abandonment proceeding. 49 CFR 1152.22(i),

[5] The Board is also aware that courts have held that the timing of a CITU/NITU notice and the length of the negotiation period can potentially have impacts on takings claims proceedings. *See Caldwell* v. *United States,* 391 F.3d 1226, 1233 (Fed. Cir. 2004); *Ladd* v. *United States,* 630 F.3d 1015, 1024–26 (Fed. Cir. 2010).

1152.50(d)(3), 1152.60(a). Courts have repeatedly held that publication in the **Federal Register** is legally sufficient notice to all interested or affected persons regardless of actual knowledge or hardship resulting from ignorance. *See Friends of Sierra R.R.* v. *ICC,* 881 F.2d 663, 667–68 (9th Cir. 1989); *Fed. Crop Ins. Corp.* v. *Merrill,* 332 U.S. 380, 384–85 (1947); *Gov't. of Guam* v. *United States,* 744 F.2d 699, 701 (9th Cir. 1984); *Bennett* v. *Dir., Office of Workers' Comp. Programs,* 717 F.2d 1167, 1169 (7th Cir.1983); *N. Ala. Express, Inc.* v. *United States,* 585 F.2d 783, 787 n. 2 (5th Cir. 1978).

The Board and the ICC previously considered similar notice proposals by NARPO. Both the Board and the ICC declined to adopt such a rule, finding that providing direct notice to adjacent landowners would be time-consuming, burdensome, and unnecessary. *Nat'l Ass'n of Reversionary Prop. Owners* v. *STB,* 158 F.3d 135 (D.C. Cir. 1998); *see Nat'l Trails System Act & R.R. Rights-of-Way,* EP 702, slip op. at 7–8 (STB served Feb. 16, 2011; *Rail Abans.—Use of Rights-of-Way as Trails—Supplemental Trails Act Procedures,* EP 274 (Sub-No. 13) (ICC served July 28, 1994). The Board finds that NARPO has not provided a sufficient basis for altering the existing notice requirements. A requirement that a rail carrier or trail sponsor identify, locate, and notify all adjacent landowners would be time-consuming and burdensome, even if electronic property records for each parcel located adjacent to the railroad right-of-way are available. Such a burdensome process could result in confusion and significant delay in the interim trail use process due to chain-of-title errors, multiple tenants-in-common, or claims by third parties against particular property owners. Further, NARPO does not support its claim that electronic property records are widely available. Therefore, the Board will not further consider this aspect of NARPO's petition.

Filing Fees for CITU/NITU Extension Requests. NARPO requests that the Board require public entities to pay filing fees for CITU/NITU extensions, as is currently required for non-public entities. (NARPO Pet. 5.) According to NARPO, non-payment of filing fees for CITU/NITU extensions requested by public entities burdens both the Board and non-public entities. (*Id.*) NARPO claims that extensive waivers of filing fees unduly burden Board staff because staff incurs the same labor cost for an extension request filed by a public entity as it would for a non-public entity. (*Id.* at 6.) NARPO also argues that non-public entities are burdened because their filing fees are higher than they would otherwise be to account for the numerous waivers granted for public entities. (*Id.*)

While some commenters support NARPO's proposal to require public entities to submit filing fees for NITU extensions (*e.g.,* Tomani Comments 1; Rood Comments 1), others oppose it. Generally, those opposing commenters contend that, pursuant to 49 CFR 1002.2(e)(1), no other filings submitted to the Board by federal, state, or local entities require fees, and that a NITU extension should be no different. (AAR Comments 4; City of Seattle Comments 7; INHF Comments 2.) The City of Seattle and MCMTD also contend that there is no evidence that the Board raises the price for fee payers due to fee exemptions granted to government entities. (City of Seattle Comments 7; MCMTD Comments 3.) RTC further argues that NARPO has failed to articulate why requiring public agencies to pay fees would in any way protect legitimate interests of adjacent landowners or reversionary interest holders. (RTC Comments 5.) AAR submits similar comments in opposition to NARPO's proposal and states that the Board need not address NARPO's request in a rulemaking as the Board can evaluate each request for a fee waiver on its own merit. (AAR Comments 4–5.) AAR also notes that the Board has concluded that third parties have no standing to challenge the grant or denial of a party's fee waiver request because it has no bearing on the merits of that party's claims and that there is no private right of action to enforce the Independent Offices Appropriations Act, 31 U.S.C. 9701, which regulates fees collected by government agencies. *See Hartwell First United Methodist Church—Adverse Aban. & Discontinuance—The Great Walton R.R., in Hart Cty., Ga.,* AB 1242 (STB served June 2, 2017) (citing *Byers* v. *Intuit, Inc.,* 564 F. Supp. 2d 385, 414–19 (E.D. Pa. 2008).

The Board finds NARPO's proposal lacks merit. The Board's rules are clear that filing fees are waived for *any* ''application or other proceeding''—including a CITU/NITU extension request—that is filed by a federal government agency, or a state or local government entity. 49 CFR 1002.2(e)(1). NARPO has failed to explain why an exception from this rule of general applicability should be made only in the CITU/NITU context. The Board evaluates each fee waiver request on its own merits and waivers do not affect the level of fees charged to other entities. *See Regulations Governing Fees for Servs. Performed in Connection with Licensing & Related Servs.,* 1 I.C.C.2d 60, 64 (1986) (''An agency may impose a reasonable charge on recipients for an amount of work from which they benefit. The fees must be for specific services to specific persons.'').[6] Therefore, the Board will not further consider this aspect of NARPO's petition.

Proposed Rules

For the reasons discussed above, and as set forth below, the Board proposes to limit the number of 180-day extensions of a trail use negotiating period to six, unless the requesting party can demonstrate that extraordinary circumstances justify the grant of a further extension. The Board seeks comments concerning whether capping extensions at a maximum of six, with a very limited opportunity for an additional extension in extraordinary circumstances, strikes an appropriate balance between reasonably limiting the negotiating period and permitting parties enough time to finalize their negotiations.

The Board proposes to make the new rules applicable to both new CITUs/NITUs and cases where the CITU/NITU negotiating period, or any extension thereof, has not yet expired when the rules become effective. For cases where a CITU/NITU has been issued or extended prior to the effective date of the rules—and the CITU/NITU negotiating period, or any extension, has not yet expired—parties (absent a showing of extraordinary circumstances) would be limited to a maximum of six 180-day extensions following the expiration of the initial 180-day negotiation period. For example, in a Trails Act case where two 180-day extensions have already been granted, parties would be limited to requesting a maximum of four more 180-day extensions, absent extraordinary circumstances. In such Trails Act proceedings (including those where extensions might have already have exceeded the maximum limit of six), the Board may more liberally provide additional extensions for extraordinary circumstances.[7] Interested

[6] Courts have recognized that there is no private right of action to enforce the Independent Offices Appropriations Act, 31 U.S.C. 9701, which regulates fees collected by government agencies. *See Hartwell,* AB 1242, slip op. at 1–2 (citing *Byers,* 564 F. Supp. 2d at 414–19). Moreover, the Board has held that third parties have no standing to oppose the grant or denial of a party's fee waiver request, as the fee waiver has no bearing on the merits of the party's underlying application. *Id.* at 2.

[7] Although the proposed rule would apply to new extension requests in proceedings where a current

Continued

persons may comment on the proposed rule by November 1, 2018; replies to comments may be filed by November 21, 2018.

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. Sections 601–604. In its notice of proposed rulemaking, the agency must either include an initial regulatory flexibility analysis, section 603(a), or certify that the proposed rule would not have a ''significant impact on a substantial number of small entities,'' section 605(b). 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.* v. *Conner,* 553 F.3d 467, 480 (7th Cir. 2009).

The Board's proposed changes to its regulations here are intended to improve and expedite its trail use procedures and do not mandate or circumscribe the conduct of small entities. Effective June 30, 2016, for the purpose of RFA analysis for rail carriers subject to our jurisdiction, the Board defines a ''small business'' as only including those rail carriers classified as Class III rail carriers 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).[8] The changes proposed here are largely procedural and would not have a significant economic impact on the Class III rail carriers to which the RFA applies, as participation in a negotiation under the Trails Act is voluntary for both the railroad and the trail sponsor. Therefore, the Board certifies under 5 U.S.C. 605(b) that these proposed rules, if promulgated, would not have a significant economic impact on a substantial number of small entities within the meaning of the RFA. The proposed rules, if promulgated, would limit the number of 180-day extensions of a trail use negotiating period to six extensions, absent extraordinary circumstances.

This decision will be served upon the Chief Counsel for Advocacy, Offices of Advocacy, U.S. Small Business Administration, Washington, DC 20416.

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. The procedural schedule is established as follows: Comments regarding the proposed rules are due by November 1, 2018; replies are due by November 21, 2018.

3. The Board terminates the proceeding in Docket No. EP 749.

4. 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.

5. This decision is effective on its service date.

List of Subjects in 49 CFR Part 1152

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

Decided: October 1, 2018.

By the Board, Board Members Begeman and Miller.

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. 1301, 1321(a), 10502, 10903–10905, and 11161.

■ 2. Amend § 1152.29 as follows:

■ a. Add the following sentences to the end of paragraph (c)(1): ''Parties may request a Board order to extend the 180-day interim trail use negotiation period. A maximum of six 180-day extensions may be granted. Requests for additional extensions beyond six are not favored and will be granted only if the requestors demonstrate that extraordinary circumstances warrant a further extension.''

■ b. Add the following sentences to the end of (d)(1): ''Parties may request a Board order to extend the 180-day interim trail use negotiation period. A maximum of six 180-day extensions may be granted. Requests for additional extensions beyond six are not favored and will be granted only if the requestors demonstrate that extraordinary circumstances warrant a further extension.''

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NITU may be expiring, there would be no retroactivity concern because parties have no vested right to a newly requested extension of the negotiating period. *See Empresa Cubana Exportadora de Alimentos y Productos Varios* v. *U.S. Dept. of Treasury,* 638 F.3d 794, 798–800 (D.C. Cir. 2011). Each extension request is considered on its own merits.

[8] Class III carriers have annual operating revenues of $20 million or less in 1991 dollars or $37,108,875 or less when adjusted for inflation using 2017 data. Class II rail carriers have annual operating revenues of less than $250 million or $463,860,933 when adjusted for inflation using 2017 data. The Board calculates the revenue deflator factor annually and publishes the railroad revenue thresholds on its website. 49 CFR 1201.1–1.