

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 48 CFR Parts 1817 and 1852

RIN 2700-AE28

#### Removal of Outdated and Duplicative Guidance (2016-N010)

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Proposed rule.

**SUMMARY:** National Aeronautics and Space Administration (NASA) is proposing to amend the NASA FAR Supplement (NFS) to remove duplicative language of the FAR and superseded NFS guidance. The revision is part of NASA's retrospective plan under Executive Order (EO) 13563 completed in August 2011.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before May 27, 2016 to be considered in formulation of the final rule.

**ADDRESSES:** Submit comments identified by NFS Case 2016-N010, using any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by entering "NFS Case 2016-N010" under the heading "Enter keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "NFS Case 2016-N010." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "NFS Case 2016-N010" on your attached document.

- *Email:* [manuel.quinones@nasa.gov](mailto:manuel.quinones@nasa.gov). Include NFS Case 2016-N010 in the subject line of the message.

- *Fax:* (202) 358-3082.

- *Mail:* National Aeronautics and Space Administration, Headquarters, Office of Procurement, Contract and Grant Policy Division, Attn: Mr. Manuel Quinones, Suite 5K32, 300 E. Street SW., Washington, DC 20546-0001.

**FOR FURTHER INFORMATION CONTACT:** Mr. Manuel Quinones, NASA, Office of Procurement, Contract and Grant Policy Division, Suite 5K32, 300 E. Street SW., Washington, DC 20546-0001.

Telephone (202) 358-2143; facsimile 202-358-3082; email: [manuel.quinones@nasa.gov](mailto:manuel.quinones@nasa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

This rule proposes to amend the NASA FAR Supplement (NFS) by removing from the Code of Federal Regulations (CFR) those portions of the

NFS containing information that consists of internal Agency administrative procedures and guidance that does not control the relationship between NASA and contractors or prospective contractors. This change is consistent with the guidance and policy in FAR Part 1 regarding what comprises the Federal Acquisition Regulations System and requires publication for public comment. NASA conducted a comprehensive review of the NFS to validate the accuracy and relevancy of its policy, guidance, and procedures. Additionally, to streamline and clarify its regulation, NASA identified a number of NFS parts and sections to be (1) deleted because of its duplication of the FAR or (2) relocated as internal Agency operating procedures to a NASA maintained Web site available on the internet at <http://www.hq.nasa.gov/office/procurement/regs/nfstoc.htm>. During a recent review of the NFS we discovered that an extraneous provision and two inapplicable clauses had been inadvertently retained in the regulation and for which their respective prescriptions had been previously deleted during one of the NASA FAR Supplement Rewrite final rules. Accordingly, this rule proposes to remove from the CFR the duplicative provision and superseded clauses, and relocate internal Agency-specific guidance and operating procedures.

The NFS document found on the NASA Procurement Library Web site will continue to contain both information requiring codification in the CFR and internal Agency guidance and procedures in a single document.

##### II. Discussion

NASA's proposed changes to the CFR are as follows:

- Remove section 1817.200, as this statement is redundant.
- Remove section 1817.204, as this section pertains to internal Agency guidance and operating procedures.
- Remove section 1852.210-70, which is duplicative of FAR requirements and for which no prescriptive language exists.
- Remove sections 1852.212-70 and 1852.212-74, which are superseded and for which no prescriptive language exists.

##### III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety

effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

##### IV. Regulatory Flexibility Act

NASA does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because this rule proposes to remove from the CFR only information that is either considered internal Agency administrative procedures or extraneous provisions/clauses that were invalidated by previous final rules. Therefore, an initial regulatory flexibility analysis has not been performed. NASA invites comments from small business concerns and other interested parties on the expected impact of this proposed rule on small entities.

NASA will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (NFS case 2016-N010) in their correspondence.

##### V. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

##### List of Subjects in 48 CFR Parts 1817 and 1852

Government procurement.

##### Manuel Quinones,

*NASA FAR Supplement Manager.*

Accordingly, 48 CFR parts 1817 and 1852 are amended as follows:

- 1. The authority citation for parts 1817 and 1852 continues to read as follows:

**Authority:** 51 U.S.C. 20113(a) and 48 CFR chapter 1.

##### PART 1817—SPECIAL CONTRACTING METHODS

###### 1817.200 and 1817.204 [Removed]

- 2. Remove sections 1817.200 and 1817.204.

## PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

### 1852.210–70, 1852.212–70, and 1852.212–74 [Removed]

- 3. Remove sections 1852.210–70, 1852.212–70, and 1852.212–74.

[FR Doc. 2016–06887 Filed 3–25–16; 8:45 am]

BILLING CODE 7510–01–P

## SURFACE TRANSPORTATION BOARD

### 49 CFR Part 1039

[Docket No. EP 704 (Sub-No. 1)]

#### Review of Commodity, Boxcar, and Trailer-on-Flatcar/Container-on-Flatcar (TOFC/COFC) Exemptions

**AGENCY:** Surface Transportation Board.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Surface Transportation Board (Board or STB) seeks public comment on its proposal to revoke the existing class exemptions for crushed or broken stone or rip rap; hydraulic cement; and coke produced from coal, primary iron or steel products, and iron or steel scrap, wastes or tailings. The Board also invites interested parties to file, during the comment period for these proposed rules, comments regarding the possible revocation of other commodity class exemptions.

**DATES:** Comments on the proposed rulemaking are due on or before May 27, 2016; replies are due June 27, 2016.

**ADDRESSES:** Any filings submitted in this proceeding must 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 found at the E-FILING link on the Board's Web site at [www.stb.dot.gov](http://www.stb.dot.gov). Any person submitting a filing in the traditional paper format should send an original and 10 copies and also an electronic version to: Surface Transportation Board, Attn: Docket No. EP 704 (Sub-No. 1), 395 E Street SW., Washington, DC 20423–0001.

**FOR FURTHER INFORMATION CONTACT:** Scott Zimmerman at (202) 245–0386. Assistance for the hearing impaired is available through the Federal Information Relay Services (FIRS) at 1–800–877–8339.

#### SUPPLEMENTARY INFORMATION:

##### Introduction

In 1976, as part of the Railroad Revitalization and Regulatory Reform Act of 1976, Public Law 94–210, 90 Stat.

31, Congress gave the Board broad authority to exempt rail carriers from regulation when such regulation was not needed to protect against abuses of market power. The Interstate Commerce Commission (ICC or Commission) first exercised its exemption authority in *Rail General Exemption Authority—Fresh Fruits & Vegetables*, 361 I.C.C. 211 (1979), categorically exempting the transportation of certain fresh fruits and vegetables from its regulations.

Congress revised the statutory exemption standard in the Staggers Rail Act of 1980, 94 Stat. 1895, to provide that the agency shall exempt a person, class of persons, or a transaction or service when it finds that the application of a provision of 49 U.S.C. subtitle IV (1) is not necessary to carry out the transportation policy of section 10101a; and (2) either (a) the transaction or service is of limited scope, or (b) the application of the statute is not necessary to protect shippers from the abuse of market power. The exemption provision, which is now codified at 49 U.S.C. 10502,<sup>1</sup> also provides that the agency may revoke an exemption (partially or completely) if the agency later determines that the application of the Interstate Commerce Act is necessary to carry out the Rail Transportation Policy at 49 U.S.C. 10101 (the RTP). See section 10502(d).

Pursuant to its exemption authority, the ICC, and later the Board, exempted from regulation the transportation by rail of numerous other individual commodities, finding that traffic for these individual commodities was sufficiently competitive and that railroads lacked the ability to subject shippers to an abuse of market power.<sup>2</sup> These commodity exemptions are codified at 49 CFR 1039.10 and 1039.11. The Commission also exempted rail (and truck) operations provided in connection with trailer-on-flatcar/container-on-flatcar (TOFC/COFC) services, at 49 CFR pt. 1090,<sup>3</sup> and the

<sup>1</sup> There have been additional changes to the exemption provision since the Staggers Act with regard to the process and timing of exemption proceedings. The substantive standard, however, has remained the same.

<sup>2</sup> See *Rail Gen. Exemption Auth.—Nonferrous Recyclables*, 3 S.T.B. 62 (1998); *Rail Gen. Exemption Auth.—Pet. of AAR to Exempt Rail Transp. of Selected Commodity Groups*, 9 I.C.C.2d 969 (1993); *Exemption from Regulation—Rail Transp. Frozen Food*, 367 I.C.C. 859 (1983); *Liquid Iron Chloride*, 367 I.C.C. 347 (1983); *Rail Gen. Exemption Auth.—Miscellaneous Agric. Commodities*, 367 I.C.C. 298 (1983).

<sup>3</sup> See *Improvement of TOFC/COFC Regulation*, 364 I.C.C. 731 (1981); *Improvement of TOFC/COFC Regulations (R.R.-Affiliated Motor Carriers & Other Motor Carriers)*, 3 I.C.C.2d 869 (1987); *Improvement of TOFC/COFC Regulations (Pickup & Delivery)*, 6 I.C.C.2d 208 (1989).

rail transportation of all commodities in single-line boxcar service, at 49 CFR 1039.14.<sup>4</sup>

#### February 2011 Hearing

The agency's exemption decisions were instrumental in the U.S. rail system's transition from a heavily regulated, financially weak component of the economy into a mature, healthy industry that operates with limited oversight. However, more than 30 years have passed since many of the commodity exemptions were adopted, and there have been many changes in the railroad industry over that period. In more recent years, the Board received informal inquiries questioning the relevance or necessity of some of the existing commodity exemptions. The Board, therefore, requested public comment and held a public hearing in February 2011 to explore the continued utility of, and the issues surrounding, the various commodity exemptions under 49 CFR 1039.10 and 1039.11, the boxcar exemption under 49 CFR 1039.14, and the TOFC/COFC exemption under 49 CFR pt. 1090. The Board encouraged interested parties to address the effectiveness of the exemptions in the marketplace, whether the rationale behind any of these exemptions should be revisited, and whether the exemptions should be subject to periodic review.

The Board received written comment from numerous parties representing a diverse group of stakeholders including railroads, shippers, and the U.S. Department of Transportation. Twenty-one individuals testified at the hearing. The Board has considered those written comments and the oral testimony in developing the proposal discussed below.

#### Proposed Rule

As discussed above, pursuant to 49 U.S.C. 10502(d), the Board may revoke an exemption, in whole or in part, when it finds that regulation is necessary to carry out the RTP. After considering the oral testimony and written comments, waybill rate data for years 1992 through 2013,<sup>5</sup> and other industry information, the Board now proposes to revoke the commodity exemptions for the following Standard Transportation Commodity Code (STCC) groups: STCC

<sup>4</sup> See *Exemption from Regulation—Boxcar Traffic*, 367 I.C.C. 425 (1983); *Exemption from Regulation—Boxcar Traffic*, 367 I.C.C. 747 (1983); *Exemption from Regulation—Boxcar Traffic*, 3 I.C.C.2d 23 (1986). See also *Brae Corp. v. United States*, 740 F.2d 1023 (D.C. Cir. 1984).

<sup>5</sup> The Board reviewed a 22-year period of confidential waybill data, beginning with information filed in 1992 and ending with data filed in 2013, the most recent on file with the Board.