

and contracts for nonpersonal health-care services. The contracting officer may include the clause in bilateral purchase orders for nonpersonal health-care services awarded under the procedures in FAR part 13 and (VAAR) 48 CFR part 813.

## **PART 852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

3. The authority citation for part 852 continues to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

4. Section 852.237-7 is added to read as follows:

### **852.237-7 Indemnification and Medical Liability Insurance.**

As prescribed in 837.403, insert the following clause:

Indemnification and Medical Liability Insurance (October 1996)

(a) It is expressly agreed and understood that this is a nonpersonal services contract, as defined in Federal Acquisition Regulation (FAR) 37.101, under which the professional services rendered by the Contractor or its health-care providers are rendered in its capacity as an independent contractor. The Government may evaluate the quality of professional and administrative services provided but retains no control over professional aspects of the services rendered, including by example, the Contractor's or its health-care providers' professional medical judgment, diagnosis, or specific medical treatments. The Contractor and its health-care providers shall be liable for their liability-producing acts or omissions. The Contractor shall maintain or require all health-care providers performing under this contract to maintain, during the term of this contract, professional liability insurance issued by a responsible insurance carrier of not less than the following amount(s) per specialty per occurrence: [Contracting Officer insert the dollar value(s) of standard coverage(s) prevailing within the local community as to the specific medical specialty, or specialties, concerned, or such higher amount as the Contracting Officer deems necessary to protect the Government's interests]. However, if the Contractor is an entity or a subdivision of a State that either provides for self-insurance or limits the liability or the amount of insurance purchased by State entities, then the insurance requirement of this contract shall be fulfilled by incorporating the provisions of the applicable State law.

(b) An apparently successful offeror, upon request of the Contracting Officer, shall, prior to contract award, furnish evidence of the insurability of the offeror and/or of all health-care providers who will perform under this contract. The submission shall provide evidence of insurability concerning the medical liability insurance required by paragraph (a) of this clause or the provisions of State law as to self-insurance, or limitations on liability or insurance.

(c) The Contractor shall, prior to commencement of services under the contract, provide to the Contracting Officer Certificates of Insurance or insurance policies evidencing the required insurance coverage and an endorsement stating that any cancellation or material change adversely affecting the Government's interest shall not be effective until 30 days after the insurer or the Contractor gives written notice to the Contracting Officer. Certificates or policies shall be provided for the Contractor and/or each health-care provider who will perform under this contract.

(d) The Contractor shall notify the Contracting Officer if it, or any of the health-care providers performing under this contract, change insurance providers during the performance period of this contract. The notification shall provide evidence that the Contractor and/or health-care providers will meet all the requirements of this clause, including those concerning liability insurance and endorsements. These requirements may be met either under the new policy, or a combination of old and new policies, if applicable.

(e) The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts for health-care services under this contract. The Contractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the provisions set forth in paragraph (a) of this clause.

(End of Clause)

[FR Doc. 96-25568 Filed 10-7-96; 8:45 am]

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## **DEPARTMENT OF TRANSPORTATION**

### **Surface Transportation Board**

**49 CFR Parts 1011, 1104, 1111, 1112, 1113, 1114, 1115 and 1121**

[STB Ex Parte No. 527]

### **Expedited Procedures For Processing Rail Rate Reasonableness, Exemption And Revocation Proceedings**

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

**ACTION:** Final rules.

**SUMMARY:** Under new 49 U.S.C. 10704(d), enacted as part of section 102(a) of the ICC Termination Act of 1995 (ICCTA), the Surface Transportation Board (Board) is required to establish procedures to expedite the handling of challenges to the reasonableness of railroad rates and of railroad exemption and revocation proceedings. This publication contains our final rules.

**EFFECTIVE DATE:** November 7, 1996.

**FOR FURTHER INFORMATION CONTACT:** Thomas J. Stilling, (202) 927-7312. [TDD for the hearing impaired: (202) 927-5721.]

**SUPPLEMENTARY INFORMATION:** The Board's decision discussing the final rules is available to all persons for a charge by calling DC NEWS & DATA INC. at (202) 289-4357. A notice of proposed rulemaking was published in the Federal Register on July 26, 1996 at 61 FR 39110. The Board certifies that the rules will not have a significant economic effect on a substantial number of small entities. They should result in easier and quicker discovery and record-building.

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

List of Subjects

**49 CFR Part 1011**

Administrative practice and procedure, Authority delegations (Government agencies), Organization and functions (Government agencies).

**49 CFR Parts 1104, 1112, 1113, 1114, and 1115**

Administrative practice and procedure.

**49 CFR Part 1111**

Administrative practice and procedure, Investigations.

**49 CFR Part 1121**

Administrative practice and procedure, Rail exemption procedures, Railroads.

Decided: September 27, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams,  
Secretary.

For the reasons set forth in the preamble, title 49, chapter X, parts 1011, 1104, 1111, 1112, 1113, 1114, 1115 and 1121 of the Code of Federal Regulations are amended as follows:

### **PART 1011—COMMISSION ORGANIZATION; DELEGATIONS OF AUTHORITY**

1. The authority citation for part 1011 is revised to read as follows:

Authority: 5 U.S.C. 553; 31 U.S.C. 9701; 49 U.S.C. 701, 721, 13702.

#### **§ 1011.7 [Amended]**

2. Section 1011.7 is amended as follows:

a. In paragraph (b)(1), remove the words "The Chairman of the Commission" and add in their place the words "The Commission (Board)".

b. Paragraph (b)(2) is removed and reserved.

# **PART 1104—FILING WITH THE BOARD—COPIES—VERIFICATIONS—SERVICE—PLEADINGS, GENERALLY**

3. The authority citation for part 1104 is revised to read as follows:

4. The heading of part 1104 is revised as set forth above.

Authority: 5 U.S.C. 559; 21 U.S.C. 853a; 49 U.S.C. 721.

5. Part 1104 is amended as follows:

a. Remove the word "Commission" and add the word "Board" in the following sections: §§ 1104.3(a), 1104.3(b), 1104.4(b), 1104.5(b), 1104.6, 1104.7(b), 1104.8, 1104.10(a), 1104.10(b), 1104.12(a), 1104.12(b), 1104.13(a) and 1104.14(b).

b. Remove the word "Commission's" and add the word "Board's" in the following sections: §§ 1104.3(b), 1104.6 and 1104.11.

c. Remove the words "Interstate Commerce Commission" and add the words "Surface Transportation Board" in § 1104.1(a).

6. Section 1104.1 is amended by adding new paragraph (d) to read as follows:

## **§ 1104.1 Address and identification.**

\* \* \* \* \*

(d) All multi-volume pleadings must be sequentially numbered on the cover of each volume to indicate the volume number of the pleading and the total number of volumes filed (e.g., the first volume in a 4-volume set should be labeled "volume 1 of 4," the second volume "volume 2 of 4" and so forth).

## **§ 1104.3 [Amended]**

7. Section 1104.3 is amended by adding the following sentence to the end of paragraph (a) to read as follows:

## **§ 1104.3 Copies.**

(a) \* \* \* In addition to the paper copies required to be filed with the Board, 3 copies of:

(1) Textual submissions of 20 or more pages; and

(2) All electronic spreadsheets should be submitted on 3.5 inch, IBM compatible formatted diskettes or QIC-80 tapes. Textual materials must be in WordPerfect 5.1 format, and electronic spreadsheets must be in LOTUS 1-2-3 release 5 or earlier format. One copy of each such computer diskette or tape submitted to the Board must also be served on each party in accordance with § 1104.12 of this part.

8. In § 1104.15, paragraph (a) is revised to read as follows:

## **§ 1104.15 Certification of eligibility for Federal benefits under 21 U.S.C. 853a.**

(a) An individual who is applying in his or her name for a certificate, license

or permit to operate as a rail carrier must complete the certification set forth in paragraph (b) of this section. This certification is required if the transferee in a finance proceeding under 49 U.S.C. 11323 and 11324 is an individual. The certification also is required if an individual applies for authorization to acquire, to construct, to extend, or to operate a rail line.

\* \* \* \* \*

9. Part 1111 is revised to read as follows:

# **PART 1111—COMPLAINT AND INVESTIGATION PROCEDURES**

Sec.

1111.1 Content of formal complaints; joinder.

1111.2 Amended and supplemental complaints.

1111.3 Service.

1111.4 Answers and cross complaints.

1111.5 Motions to dismiss or to make more definite.

1111.6 Satisfaction of complaint.

1111.7 Investigations on the Board's own motion.

1111.8 Procedural schedule in stand-alone cost cases.

1111.9 Meeting to discuss procedural matters.

Authority: 5 U.S.C. 559; 49 U.S.C. 721.

## **§ 1111.1 Content of formal complaints; joinder.**

(a) *General.* A formal complaint must contain the correct, unabbreviated names and addresses of each complainant and defendant. It should set forth briefly and in plain language the facts upon which it is based. It should include specific reference to pertinent statutory provisions and Board regulations, and should advise the Board and the defendant fully in what respects these provisions or regulations have been violated. The complaint should contain a detailed statement of the relief requested. Relief in the alternative or of several different types may be demanded, but the issues raised in the formal complaint should not be broader than those to which complainant's evidence is to be directed at the hearing. In a complaint challenging the reasonableness of a rail rate, the complainant should indicate whether, in their view, the reasonableness of the rate should be examined using constrained market pricing or simplified standards to be adopted pursuant to 49 U.S.C. 10701(d)(3). The complainant should specify the basis for this assertion.

(b) *Multiple causes of action.* Two or more grounds of complaint concerning the same principle, subject, or statement of facts may be included in one

complaint, but should be stated and numbered separately.

(c) *Joinder.* Two or more complainants may join in one complaint against one or more defendants if their respective causes of action concern substantially the same alleged violations and like facts.

## **§ 1111.2 Amended and supplemental complaints.**

An amended or supplemental complaint may be tendered for filing by a complainant against a defendant or defendants named in the original complaint, stating a cause of action alleged to have accrued within the statutory period immediately preceding the date of such tender, in favor of complainant and against the defendant or defendants. The time limits for responding to an amended or supplemental complaint are computed pursuant to §§ 1111.4 and 1111.5 of this part, as if the amended or supplemental complaint was an original complaint.

## **§ 1111.3 Service.**

A complainant is responsible for serving formal complaints, amended or supplemental complaints, and cross complaints on the defendant(s). Service shall be made by sending a copy of such complaint to the chief legal officer of each defendant by either confirmed facsimile and first-class mail or express overnight courier. The cover page of each such facsimile and the front of each such first-class mail or overnight express courier envelope shall include the following legend: "Service of STB Complaint". Service of the complaint shall be deemed completed on the date on which the complaint is served by confirmed facsimile or, if service is made by express overnight courier, on the date such complaint is actually received by the defendant. When the complaint involves more than one defendant, service of the complaint shall be deemed completed on the date on which all defendants have been served. Ten copies of the complaint should be filed with the Board together with an acknowledgment of service by the persons served or proof of service in the form of a statement of the date and manner of service, of the names of the persons served, and of the addresses to which the papers were mailed or at which they were delivered, certified by the person who made service. If complainant cannot serve the complaint, an original of each complaint accompanied by a sufficient number of copies to enable the Board to serve one upon each defendant and to retain 10 copies in addition to the original should be filed with the Board.

**§ 1111.4 Answers and cross complaints.**

(a) *Generally.* An answer shall be filed within the time provided in paragraph (b) of this section. An answer should be responsive to the complaint and should fully advise the Board and the parties of the nature of the defense. In answering a complaint challenging the reasonableness of a rail rate, the defendant should indicate whether it will contend that the Board is deprived of jurisdiction to hear the complaint because the revenue-variable cost percentage generated by the traffic is less than 180 percent, or the traffic is subject to effective product or geographic competition.

(b) *Time for filing; copies; service.* An answer must be filed within 20 days after the service of the complaint or within such additional time as the Board may provide. The original and 10 copies of an answer must be filed with the Board. The defendant must serve copies of the answer upon the complainant and any other defendants.

(c) *Cross complaints.* A cross complaint alleging violations by other parties to the proceeding or seeking relief against them may be filed with the answer. An answer to a cross complaint shall be filed within 20 days after the service date of the cross complaint. The party shall serve copies of an answer to a cross complaint upon the other parties.

(d) *Failure to answer complaint.* Averments in a complaint are admitted when not denied in an answer to the complaint.

**§ 1111.5 Motions to dismiss or to make more definite.**

An answer to a complaint or cross complaint may be accompanied by a motion to dismiss the complaint or cross complaint or a motion to make the complaint or cross complaint more definite. A motion to dismiss can be filed at anytime during a proceeding. A complainant or cross complainant may, within 10 days after an answer is filed, file a motion to make the answer more definite. Any motion to make more definite must specify the defects in the particular pleading and must describe fully the additional information or details thought to be necessary.

**§ 1111.6 Satisfaction of complaint.**

If a defendant satisfies a formal complaint, either before or after answering, a statement to that effect signed by the complainant must be filed (original only need be filed), setting forth when and how the complaint has been satisfied. This action should be taken as expeditiously as possible.

**§ 1111.7 Investigations on the Board's own motion.**

(a) *Service of decision.* A decision instituting an investigation on the Board's own motion will be served by the Board upon respondents.

(b) *Default.* If within the time period stated in the decision instituting an investigation, a respondent fails to comply with any requirement specified in the decision, the respondent will be deemed in default and to have waived any further proceedings, and the investigation may be decided forthwith.

**§ 1111.8 Procedural schedule in stand-alone cost cases.**

Absent a specific order by the Board, the following general procedural schedule will apply in stand-alone cost cases:

Day 0—Complaint filed, discovery period begins.

Day 7—Conference of the parties convened pursuant or before to section 1111.9(b).

Day 20—Defendant's answer to complaint due.

Day 75—Discovery completed.

Day 120—Complainant files opening evidence on absence of intermodal and intramodal competition, variable cost, and stand-alone cost issues. Defendant files opening evidence on existence of product and geographic competition, and revenue-variable cost percentage generated by complainant's traffic.

Day 180—Complaint and defendant file reply evidence to opponent's opening evidence.

Day 210—Complaint and defendant file rebuttal evidence to opponent's reply evidence.

**§ 1111.9 Meeting to discuss procedural matters.**

(a) *Generally.* In all complaint proceedings, other than those challenging the reasonableness of a rail rate based on stand-alone cost, the parties shall meet, or discuss by telephone, discovery and procedural matters within 7 days after an answer to a complaint is filed. Within 14 days after an answer to a complaint is filed, the parties, either jointly or separately, shall file a report with the Board setting forth a proposed procedural schedule to govern future activities and deadlines in the case.

(b) *Stand-alone cost complaints.* In complaints challenging the reasonableness of a rail rate based on stand-alone cost, the parties shall meet, or discuss by telephone, discovery and procedural matters within 7 days after a complaint is filed. The parties should inform the Board as soon as possible

thereafter whether there are unresolved disputes that require Board intervention and, if so, the nature of such disputes.

**PART 1112—MODIFIED PROCEDURES**

10. The authority citation for part 1112 is revised to read as follows:

Authority: 5 U.S.C. 559; 49 U.S.C. 701.

11. Part 1112 is amended as follows:

a. Remove the word "Commission" and add the word "Board" in the following sections: §§ 1112.1, 1112.4(a) introductory text and 1112.7 section heading and text.

b. Remove the word "Commission's" and add the word "Board's" in § 1112.1

**§ 1112.4 [Amended]**

c. Section 1112.4 is amended by removing paragraph (c).

d. Section 1112.10 is revised to read as follows:

**§ 1112.10 Requests for oral hearings and cross examination.**

(a) *Requests.* Requests for oral hearings in matters originally assigned for handling under modified procedure must include the reasons why the matter cannot be properly resolved under modified procedure. Requests for cross examination of witnesses must include the name of the witness and the subject matter of the desired cross examination.

(b) *Disposition.* Unless material facts are in dispute, oral hearings will not be held. If held, oral hearings will normally be confined to material issues upon which the parties disagree. The decision setting a matter for oral hearing will define the scope of the hearing.

**PART 1113—ORAL HEARINGS**

12. The authority citation for part 1113 is revised to read as follows:

Authority: 5 U.S.C. 559; 49 U.S.C. 721.

13. Part 1113 is amended as follows:

a. Remove the word "Commission" and add the word "Board" in the following sections: §§ 1113.1(a), 1113.2(a), 1113.2(b)(1), 1113.2(d), 1113.4(a) introductory text, 1113.4(b), 1113.5, 1113.6(b), 1113.7(e), 1113.8, 1113.10, section heading and text, 1113.12(a), 1113.12(b), 1113.13, 1113.16, 1113.17 (b) and (c) and 1113.18(c).

**§ 1113.1 [Amended]**

b. In § 1113.1, paragraph (c)(3) is removed.

**§ 1113.3 [Amended]**

c. In § 1113.3, paragraph (b)(2), add a period after the word "complaint" and remove the remainder of the paragraph.

**§ 1113.11 [Amended]**

d. In § 1113.11, first sentence, remove the words “and in evidence” and add the words “in evidence and”.

**§ 1113.31 [Removed]**

e. Section 1113.31 is removed.

**PART 1114—EVIDENCE; DISCOVERY**

14. The authority citation for part 1114 is revised to read as follows:

Authority: 5 U.S.C. 559; 49 U.S.C. 721.

15. Subpart A is amended as follows:

a. Remove the word “Commission” and add the word “Board” in the following sections: §§ 1114.1, 1114.4, 1114.5 section heading and text and 1114.6.

b. Remove the word “Commission’s” and add the word “Board’s” in § 1114.4 section heading.

**§ 1114.7 [Amended]**

c. Section 1114.7 is amended by removing the words “(a) Generally.” from paragraph (a) and removing paragraph (b).

16. Subpart B is amended as follows:

a. Remove the word “Commission” and add the word “Board” in the following sections: §§ 1114.21(c)(3), 1114.21(c)(9) and the concluding text, of paragraph (c) 1114.21(d), 1114.21(e) introductory text, 1114.23(b), 1114.23(c), 1114.23(d)(1), 1114.23(d)(2), 1114.24(b)(2), 1114.24(b)(3) introductory text, 1114.24(d), 1114.24(h), 1114.26(a), 1114.27(b), 1114.31(a), 1114.31(b)(1), 1114.31(b)(2), 1114.31(c) and 1114.31(d).

b. Remove the word “Commission’s” and add the word “Board’s” in § 1114.31(b)(1).

**§ 1114.21 [Amended]**

c. In § 1114.21, paragraph (a)(1), remove the words “(except the review boards)”.

**§ 1114.26 [Amended]**

d. In § 1114.26, paragraph (a), remove the second sentence.

**§ 1114.26 [Amended]**

e. In § 1114.26, paragraph (c), remove the words “In those proceedings not requiring a petition for interrogatories, and unless under special circumstances and for good cause,” and capitalize the word “no”.

**§ 1114.27 [Amended]**

f. In § 1114.27, paragraph (a), remove the third and last sentences.

**§ 1114.27 [Amended]**

g. In § 1114.27, paragraph (c), remove the words “In those proceedings not requiring a petition for requests for

admission, and unless under special circumstances and for good cause shown,” and capitalize the word “no”.

**§ 1114.31 [Amended]**

h. In § 1114.31, paragraph (b)(1) remove the words “49 U.S.C. 10321(c)(3) and (d)(4)” and add in their place the words “49 U.S.C. 721(c) and (d)”.

17. The additions and revisions to subpart B are as follows:

a. Section 1114.21 is amended by revising paragraph (b) and adding a new paragraph (f) to read as follows:

**§ 1114.21 Applicability; general provisions.**

\* \* \* \* \*

(b) *How discovery is obtained.* All discovery procedures may be used by parties without filing a petition and obtaining prior Board approval.

\* \* \* \* \*

(f) *Service of discovery materials.*

Unless otherwise ordered by the Board, depositions, interrogatories, requests for documents, requests for admissions, and answers and responses thereto, shall be served on other counsel and parties, but shall not be filed with the Board. Any such materials, or portions thereof, should be appended to the appropriate pleading when used to support or to reply to a motion, or when used as an evidentiary submission.

b. Section 1114.22 is revised to read as follows:

**§ 1114.22 Deposition.**

(a) *Purpose.* The testimony of any person, including a party, may be taken by deposition upon oral examination.

(b) *Request.* A party requesting to take a deposition and perpetuate testimony:

(1) Should notify all parties to the proceeding and the person sought to be deposed; and

(2) Should set forth the name and address of the witness, the place where, the time when, the name and office of the officer before whom, and the cause or reason why such deposition will be taken.

c. Section 1114.30 is revised to read as follows:

**§ 1114.30 Production of documents and records and entry upon land for inspection and other purposes.**

(a) *Scope.* Any party may serve on any other party a request:

(1) To produce and permit the party making the request to inspect any designated documents (including writings, drawings, graphs, charts, photographs, phonograph records, tapes, and other data compilations from which information can be obtained, translated, if necessary, with or without

the use of detection devices into reasonably usable form), or to inspect and copy, test, or sample any tangible things which are in the possession, custody, or control of the party upon whom the request is served, but if the writings or data compilations include privileged or proprietary information or information the disclosure of which is proscribed by the Act, such writings or data compilations need not be produced under this rule but may be provided pursuant to § 1114.26(b) of this part; or

(2) To permit, subject to appropriate liability releases and safety and operating considerations, entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspecting and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon.

(b) *Procedure.* Any request filed pursuant to this rule should set forth the items to be inspected either by individual item or by category and describe each item and category with reasonable particularity. The request should specify a reasonable time, place, and manner of making the inspection and performing the related acts.

d. Section 1114.31 is amended by adding a new paragraph (b)(2)(iv) and adding a sentence to the end of paragraph (d) to read as follows:

**§ 1114.31 Failure to respond to discovery.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(iv) In lieu of any of the foregoing orders, or in addition thereto, the Board shall require the party failing to obey the order or the attorney advising that party, or both, to pay the reasonable expenses, including attorney’s fees, caused by the failure, unless the Board finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

\* \* \* \* \*

(d) \* \* \* In lieu of any such order or in addition thereto, the Board shall require the party failing to act or the attorney advising that party or both to pay the reasonable expenses, including attorney’s fees, caused by the failure, unless the Board finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

\* \* \* \* \*

**PART 1115—APPELLATE PROCEDURES**

18. The authority citation for part 1115 is revised to read as follows:

Authority: 5 U.S.C. 559, 49 U.S.C. 721.

19. Part 1115 is amended as follows:

a. Remove the word "Commission" and add the word "Board" in the following sections: §§ 1115.1(b), 1115.1(c), 1115.2(b)(2), 1115.2(g), 1115.5(a), 1115.5(b), 1115.6, 1115.7 and 1115.8.

b. In § 1115.1, paragraph (c), remove the words "Chairman of the Commission," at the end of the first sentence and add in their place the words "entire Board."

c. In § 1115.7, remove the words "Interstate Commerce Commission" and add in their place the words "Surface Transportation Board".

20. The additions and revisions to part 1115 are as follows:

a. Section 1115.1, paragraph (a) is revised to read as follows:

**§ 1115.1 Scope of rule.**

(a) These appellate procedures apply in cases where a hearing is required by law or Board action. They do not apply to informal matters such as car service, temporary authority, suspension, special permission actions, or to other matters of an interlocutory nature. Abandonments and discontinuance proceedings instituted under 49 U.S.C. 10903 are governed by separate appellate procedures exclusive to those proceedings. (See 49 CFR part 1152)

\* \* \* \* \*

b. In § 1115.2, introductory text, remove the words "or joint board" and revise paragraph (e) to read as follows:

**§ 1115.2 Initial decisions.**

\* \* \* \* \*

(e) Appeals must be filed within 20 days after the service date of the decision or within any further period (not to exceed 20 days the Board may authorize. Replies must be filed within 20 days of the date the appeal is filed.

\* \* \* \* \*

c. Section 1115.3 is revised to read as follows:

**§ 1115.3 Board actions other than initial decisions.**

(a) A discretionary appeal of an entire Board action is permitted.

(b) The petition will be granted only upon a showing of one or more of the following points:

(1) The prior action will be affected materially because of new evidence or changed circumstances.

(2) The prior action involves material error.

(c) The petition must state in detail the nature of and reasons for the relief requested. When, in a petition filed under this section, a party seeks an opportunity to introduce evidence, the

evidence must be stated briefly and must not appear to be cumulative, and an explanation must be given why it was not previously adduced.

(d) The petition and any reply must not exceed 20 pages in length. A separate preface and summary of argument, not exceeding 3 pages, may accompany petitions and replies and must accompany those that exceed 10 pages in length.

(e) Petitions must be filed within 20 days after the service of the action or within any further period (not to exceed 20 days) as the Board may authorize.

(f) The filing of a petition will not automatically stay the effect of a prior action, but the Board may stay the effect of the action on its own motion or on petition. A petition to stay may be filed in advance of the petition for reconsideration and shall be filed within 10 days of service of the action. No reply need be filed. However, if a party elects to file a reply, it must reach the Board no later than 16 days after service of the action. In all proceedings, the action, if not stayed, will become effective 30 days after it is served, unless the Board provides for the action to become effective at a different date. On the day the action is served parties may initiate judicial review.

d. Section 1115.4 is revised to read as follows:

**§ 1115.4 Petitions to reopen administratively final actions.**

A person at any time may file a petition to reopen any administratively final action of the Board pursuant to the requirements of § 1115.3 (c) and (d) of this part. A petition to reopen must state in detail the respects in which the proceeding involves material error, new evidence, or substantially changed circumstances and must include a request that the Board make such a determination.

e. A new § 1115.9 is added to read as follows:

**§ 1115.9 Interlocutory Appeals.**

(a) Rulings of Board employees, including administrative law judges, may be appealed prior to service of the initial decision only if:

(1) The ruling denies or terminates any person's participation;

(2) The ruling grants a request for the inspection of documents not ordinarily available for public inspection;

(3) The ruling overrules an objection based on privilege, the result of which ruling is to require the presentation of testimony or documents; or

(4) The ruling may result in substantial irreparable harm, substantial detriment to the public interest, or undue prejudice to a party.

(b) Any interlocutory appeal of a ruling shall be filed with the Board within three (3) business days of the ruling. Replies to any interlocutory appeal shall be filed with the Board within three (3) business days after the filing of any such appeal.

21. Part 1121 is revised to read as follows:

**PART 1121—RAIL EXEMPTION PROCEDURES**

Sec.

1121.1 Scope.

1121.2 Discovery.

1121.3 Content.

1121.4 Procedures.

Authority: 5 U.S.C. 553; 49 U.S.C. 10502 and 10704.

**§ 1121.1 Scope.**

These procedures generally govern petitions filed under 49 U.S.C. 10502 to exempt a transaction or service from 49 U.S.C. subtitle IV, or any provision of 49 U.S.C. subtitle IV, or to revoke an exemption previously granted. These procedures also apply to notices of exemption.

**§ 1121.2 Discovery.**

Discovery shall follow the procedures set forth at 49 CFR part 1114, subpart B. Discovery may begin upon the filing of the petition for exemption or petition for revocation of an exemption. In petitions to revoke an exemption, a party must indicate in the petition whether it is seeking discovery. If it is, the party must file its discovery requests at the same time it files its petition to revoke. Discovery shall be completed 30 days after the petition to revoke is filed. The party seeking discovery may supplement its petition to revoke 45 days after the petition is filed. Replies to the supplemental petition are due 15 days after the supplemental petition is filed.

**§ 1121.3 Content.**

(a) A party filing a petition for exemption shall provide its case-in-chief, along with its supporting evidence, workpapers, and related documents at the time it files its petition.

(b) A petition must comply with environmental or historic reporting and notice requirements of 49 CFR part 1105, if applicable.

(c) A party seeking revocation of an exemption or a notice of exemption shall provide all of its supporting information at the time it files its petition. Information later obtained through discovery can be submitted in a supplemental petition pursuant to 49 CFR 1121.2.

**§ 1121.4 Procedures.**

(a) Exemption proceedings are informal, and public comments are generally not sought during consideration of exemption petition proposals, except as provided in § 1121.4(c). However, the Board may consider during its deliberation any public comments filed in response to a petition for exemption.

(b) If the Board determines that the criteria in 49 U.S.C. 10502 are met for the proposed exemption, it will issue the exemption and publish a notice of exemption in the Federal Register.

(c) If the impact of the proposed exemption cannot be ascertained from the information contained in the petition or accompanying submissions, or significant adverse impacts might occur if the proposed exemption were granted, or a class exemption is sought, the Board will:

(1) Direct that additional information be filed; or

(2) Publish a notice in the Federal Register requesting public comments.

(d) Exemption petitions containing proposals that are directly related to and concurrently filed with a primary application will be considered along with that primary application.

(e) Unless otherwise specified in the decision, an exemption generally will be effective 30 days from the service date of the decision granting the exemption. Unless otherwise provided in the decision, petitions to stay must be filed within 10 days of the service date, and petitions to reopen under 49 CFR part 1115 or 49 CFR 1152.25(e) must be filed within 20 days of the service date.

(f) Petitions to revoke an exemption or the notice of exemption may be filed at any time. The person seeking revocation has the burden of showing that the revocation criteria of 49 U.S.C. 10502(d) have been met.

(g) In abandonment exemptions, petitions to revoke in part to impose public use conditions under 49 CFR 1152.28, or to invoke the Trails Act, 16 U.S.C. 1247(d), may be filed at any time prior to the consummation of the abandonment, except that public use conditions may not prohibit disposal of the properties for any more than the statutory limit of 180 days after the effective date of the decision granting the exemption.

[FR Doc. 96-25515 Filed 10-7-96; 8:45 am]

BILLING CODE 4915-00-P

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 622**

[Docket No. 960807218-6244-02; I.D. 100296E]

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Closure of the Commercial Red Snapper Component**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Closure.

**SUMMARY:** NMFS closes the commercial fishery for red snapper in the exclusive economic zone (EEZ) of the Gulf of Mexico. NMFS has projected that the annual commercial quota for red snapper will be reached on October 6, 1996. This closure is necessary to protect the red snapper resource.

**EFFECTIVE DATE:** Closure is effective 12:01 a.m., local time, October 7, 1996, through December 31, 1996.

**FOR FURTHER INFORMATION CONTACT:** Robert Sadler, 813-570-5305.

**SUPPLEMENTARY INFORMATION:** The reef fish fishery of the Gulf of Mexico is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson Fishery Conservation and Management Act. Those regulations set the commercial quota for red snapper in the Gulf of Mexico at 4.65 million lb (2.11 million kg) for the current fishing year, January 1 through December 31, 1996.

Under 50 CFR 622.43(a), NMFS is required to close the commercial fishery for a species or species group when the quota for that species or species group is reached, or is projected to be reached, by filing a notification to that effect with the Office of the Federal Register. Based on current statistics, NMFS has projected that the commercial quota of 4.65 million lb (2.11 million kg) for red snapper will be reached on October 6, 1996. Accordingly, the commercial fishery in the EEZ in the Gulf of Mexico for red snapper is closed effective 12:01 a.m., local time, October 7, 1996, through December 31, 1996, the end of the fishing year. The operator of a vessel with a valid reef fish permit having red snapper on board must land and sell

such red snapper prior to 12:01 a.m., local time, October 7, 1996.

During the closure, the bag limit applies to all harvest of red snapper from the EEZ in the Gulf of Mexico. The daily bag limit for red snapper is five per person. From 12:01 a.m., local time, October 7, 1996, through December 31, 1996, the sale or purchase of red snapper taken from the EEZ is prohibited. This prohibition does not apply to sale or purchase of red snapper that were harvested, landed ashore, and sold prior to 12:01 a.m., local time, October 7, 1996, and were held in cold storage by a dealer or processor.

**Classification**

This action is taken under 50 CFR 622.43(a) and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 2, 1996.

Bruce C. Morehead,  
*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*  
[FR Doc. 96-25789 Filed 10-3-96; 4:20 pm]  
BILLING CODE 3510-22-F

**50 CFR Part 648**

[Docket No. 951116270-5308-02; I.D. 100196A]

**Fisheries of the Northeastern United States; Summer Flounder Fishery; Commercial Quota Harvested for New Jersey**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Commercial quota harvest.

**SUMMARY:** NMFS issues this notification announcing that the summer flounder commercial quota available to the State of New Jersey has been harvested. Vessels issued a commercial Federal fisheries permit for the summer flounder fishery may not land summer flounder in New Jersey for the remainder of calendar year 1996, unless additional quota becomes available through a transfer. Regulations governing the summer flounder fishery require publication of this notification to advise the State of New Jersey that the quota has been harvested and to advise vessel and dealer permit holders that no commercial quota is available for landing summer flounder in that state.

**EFFECTIVE DATE:** October 3, 1996 through December 31, 1996.