

equivalent channel can be allotted to Shelley in the event other parties express an interest in the proposal. Therefore, we will not accept competing expressions of interest in the use of Channel 292C1 at Shelley.

DATES: Comments must be filed on or before November 3, 1997, and reply comments on or before November 18, 1997.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: David Tillotson, Esq., 4606 Charleston Terrace, NW., Washington, DC 20007.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97-194, adopted August 27, 1997, and released September 12, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857-3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97-25595 Filed 9-25-97; 8:45 am]

BILLING CODE 6712-01-F

DEPARTMENT OF TRANSPORTATION

49 CFR Part 1111

[STB Ex Parte No. 527 (Sub-No. 1)]

Expedited Procedures for Processing Simplified Rail Rate Reasonableness Proceedings

AGENCY: Surface Transportation Board; DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: On February 12, 1997, the Surface Transportation Board issued an Advance Notice of Proposed Rulemaking soliciting comments on how the complaint and investigation procedures at 49 CFR part 1111 should be modified to reflect the Board's adoption of *Simplified Rate Guidelines*.¹ Based on the comments received, the Board proposes to amend part 1111 to facilitate the processing of cases using *Simplified Rate Guidelines*. Comments are invited.

DATES: Comments are due November 10, 1997.

ADDRESSES: Send comments referring to STB Ex Parte No. 527 (Sub-No. 1) to: Surface Transportation Board, Office of the Secretary, Case Control Branch, 1925 K Street, N.W., Washington, DC 20423-0001.

FOR FURTHER INFORMATION CONTACT: Thomas J. Stilling, (202) 565-1567. (TDD for the hearing impaired: (202) 565-1695.)

SUPPLEMENTARY INFORMATION: The Board is charged with expediting the processing of rate complaint proceedings. Under 49 U.S.C. 10704(c), we are required to make a determination as to the reasonableness of a challenged rate within 9 months after the record closes if the determination is based on stand-alone cost (SAC) evidence, and within 6 months if it is based upon a simplified methodology adopted pursuant to 49 U.S.C. 10701(d)(3). On October 1, 1996,² we adopted rules to expedite the handling of complaints challenging the reasonableness of railroad rates using SAC,³ including the

¹ *Rate Guidelines—Non-Coal Proceedings*, Ex Parte No. 347 (Sub-No. 2) (STB served Dec. 31, 1996), *pet. for rehearing and reconsideration denied* (STB served Sept. 24, 1996), *pet. for judicial review pending sub nom., Association of Am. Railroad v. Surface Transp. Bd.*, No. 97-1020 (D.C. Cir. filed Jan. 10, 1997).

² *Expedited Procedures for Processing Rail Rate Reasonableness, Exemption and Revocation Proceedings*, STB Ex Parte No. 527, published in the **Federal Register** on October 8, 1996, (61 FR 52710), modified by decision served November 15, 1996.

³ SAC is one of four constraints on railroad pricing adopted in *Coal Rate Guidelines—Nationwide*, 1 I.C.C.2d 520 (1985). Notwithstanding its title, *Coal Rate Guidelines* procedures are not

generally applicable procedural schedule of 49 CFR 1111.8 that requires completion of the evidentiary phase of a SAC case in 7 months. We declined to adopt a procedural schedule to govern the filing of evidence in cases using the then unadopted *Simplified Rate Guidelines* procedures. Rather, we decided to consider the adoption of regulations covering such cases following completion of the *Simplified Rate Guidelines* rulemaking.

On December 31, 1996, we adopted simplified evidentiary guidelines in *Simplified Rate Guidelines* to determine the reasonableness of rail rates on captive traffic where the *Coal Rate Guidelines* could not be practicably applied. Subsequently, by Advance Notice of Proposed Rulemaking, served February 12, 1997 (62 FR 6508), we solicited comments on whether a general procedural schedule applicable to cases processed under the *Simplified Rate Guidelines* could be promulgated (and, if so, what that schedule should be), or whether we should delay the adoption of a general procedural schedule and proceed on a case-by-case basis until all concerned acquire some experience utilizing the new guidelines.⁴

Comments were filed by the Association of American Railroads (AAR), the National Industrial Transportation League (NITL), Barbara R. Kueppers, and the United Transportation Union-Illinois Legislative Board (UTU-ILB).

Positions of the Parties

AAR acknowledges that the choice of guidelines (*Coal Rate Guidelines* or *Simplified Rate Guidelines*) must be made at the outset of a case. However, AAR sees no need to adopt a set timeframe, such as the 45-day schedule suggested in *Simplified Rate Guidelines* (at 38) for deciding whether a case should proceed under the *Coal Rate Guidelines* or the simplified procedures. AAR claims that a 45-day schedule would be unfair because it would give a shipper unlimited time to prepare its initial case while giving the defendant only two weeks to analyze complainant's case and prepare opposing evidence.⁵ AAR also notes that

limited to coal cases. Rather, the guidelines are the preferred method of evaluating the reasonableness of any rate.

⁴ *Simplified Rate Guidelines* suggested that procedural schedules should initially be set on a case-by-case basis. *Id.* at 38 n.145.

⁵ Under the 45-day schedule, the defendants would have 15 days after the complaint is filed to oppose use of the simplified procedures. Complainant would have 10 days to respond to the railroad position, and the Board would have 20 days to make its determination.

the 45-day schedule appears to conflict with the requirement for a conference of the parties required by 49 CFR 1111.9.⁶ AAR prefers convening a conference of the parties shortly after a complaint is filed to allow the parties to develop a schedule, subject to Board approval, for determining whether the *Simplified Rate Guidelines* can be used. In addition, because no case has yet been processed using *Simplified Rate Guidelines*, AAR suggests that we set procedural schedules for the filing of evidence on a case-by-case basis until sufficient experience is gained and the need for a general schedule becomes apparent.

NITL argues that, with minor modifications, complaints seeking to invoke *Simplified Rate Guidelines* can be handled under the procedures established at 49 CFR part 1111.⁷ NITL supports deciding within 45 days a request for invocation of the simplified procedures. It proposes that the factors that must be included in a complaint seeking to invoke the *Simplified Rate Guidelines* be specifically listed in 49 CFR 1111.1(a) so that potential complainants are given appropriate notice of both the availability of, and requirements for, the use of the simplified procedures.⁸

⁶ Under 49 CFR 1111.9(b), in stand-alone cost complaints, the parties are to discuss procedural matters within 7 days after a complaint is filed. Under 49 CFR 1111.9(a), in all other complaint proceedings, the parties shall discuss procedural issues within 7 days after an answer is filed.

⁷ NITL suggests that a conference of the parties could be held within 7 days of the filing of the answer as specified in 49 CFR 1111.9(a).

⁸ *Simplified Rate Guidelines* (at 37-38) requires that a complaint seeking to invoke the simplified procedures should contain:

(1) A general history of the traffic at issue, including how the traffic has moved in the past, how it currently moves, and how it can and will be moved in the future. This information should address not only the physical movement of the traffic, but the type and level of rates actually used. It should include all carriers (rail and nonrail) that have participated in the transportation of this traffic or could do so.

(2) The specific commodity description(s) for the traffic at issue, the shipping characteristics and requirements of the traffic, and the type of railroad cars required or used for the traffic.

(3) All origins, destinations, and O-D [origin-destination] pairs involved in the complaint, by commodity type.

(4) The amount of traffic involved (by commodity type), including total annual carloadings, average tons per car, number of carloads per shipment, and number of carloads per week or month.

(5) Total or average revenue per carload paid to the defendant railroad(s), by commodity type.

(6) The feasibility and anticipated cost of preparing a SAC presentation in the case.

(7) An estimate of the other costs to be incurred in pursuing the rate complaint, including preparing necessary jurisdictional threshold and market dominance evidence.

Finally, NITL recommends that the Rules of Practice should include a reference to the procedures established in 49 CFR 1244.8 regarding access to the Waybill Sample data. It suggests that complainants request access to the Waybill Sample simultaneously with the filing of the complaint so that complainant can complete discovery and prepare its opening statement within 120 days of the filing of the complaint as specified at 49 CFR 1111.8.

Ms. Kueppers argues that the Board should provide for a cost-efficient means of accessing data through discovery.⁹ In particular, she proposes that discovery be completed in 6 months where rate reasonableness is the sole issue in a proceeding. When rate reasonableness is combined with other issues, she proposes that the procedural schedule be determined on a case-by-case basis, allowing for discovery related to other issues. Ms. Kueppers also argues that, because individuals in small shipping organizations have a variety of duties, it is difficult to determine a universally appropriate schedule (such as 120 days in stand-alone cases) for small shippers to prepare and present a case. She contends that small shippers should be afforded flexibility in scheduling.

The UTU-ILB offers no comments on procedural matters but states that it continues to support traditional rate comparisons as the best test of rate reasonableness for the small shipper, port, or community. It adds that it will await the issuance of a notice of proposed rulemaking before making any other recommendations.

Discussion

We appreciate the comments of the parties and have attempted to incorporate as many of their suggestions as practical in our proposal. We propose

(8) The relief sought, including all reparations as well as the level and duration of any rate prescription.

(9) The present value of the relief sought.

AAR notes that factor 7 includes costs associated with "preparing necessary jurisdictional threshold and market dominance evidence." It asserts that these costs are common to both simplified procedure and CMP cases and are therefore not relevant to determining which procedure to follow. We note that while the costs are common to both types of cases, the purpose of including them is to determine and weigh the costs of presenting a rate case under either CMP or the simplified procedures.

⁹ She requests that parties enter into a confidentiality agreement within 7 days after a complaint is filed. If they are unable to concur on an agreement, they can request that the Board impose a confidentiality agreement. Within 10 days of a confidentiality agreement being in place, the parties are to disclose the information required in Rule 26 of the Federal Rules of Civil Procedure, and the carrier shall provide to complainant its waybill tapes.

to include in our regulations the information that a complainant should supply when seeking to test the reasonableness of a rate using the *Simplified Rate Guidelines*. We also propose to establish a schedule for determining whether the *Simplified Rate Guidelines* can be used in a particular case. Additional, minor changes are being proposed. We are not proposing to adopt at this time a general procedural schedule for processing rate complaints under the *Simplified Rate Guidelines*, but rather intend to proceed on a case-by-case basis until we gain more experience using the new guidelines.

Simplified Rate Guidelines (at 37) recognized that a determination as to which guidelines should be used in a particular case must be decided at the outset of the case.¹⁰ If the simplified procedures are sought, the complainant "must present sufficient information to show that [use of the *Coal Rate Guidelines*] is not available * * * . [T]his information should be included in the initial complaint, so as not to delay the case." *Id.* *Simplified Rate Guidelines* enumerated 9 evidentiary factors (listed in note 8, *supra*), which should be included in a complaint. We propose to modify section 1111.1(a), as suggested by NITL, to specifically list the 9 evidentiary factors that a complaint seeking to use the *Simplified Rate Guidelines* should address.¹¹ This will ensure that anyone contemplating filing a complaint is fully aware of the factors that must be addressed in its initial pleading. We also propose to make certain technical changes to that section.

As noted, AAR and NITL differ on whether we should prescribe a 45-day period for deciding whether the simplified procedure should be used in deciding rate reasonableness. To comply with the Congressional directive to expedite rate cases, the determination of whether to apply the simplified procedures must be made quickly at the outset of a case. Based on the comments of the parties, however, we propose to modify slightly the 45-day schedule suggested in *Simplified Rate Guidelines*. Instead of 15 days, the railroad would have 20 days to file opposition to the

¹⁰ No special showing is needed to use *Coal Rate Guidelines* because, where available, those guidelines must be used.

¹¹ Currently, 49 CFR 1111.1(a) states in relevant part:

In a complaint challenging the reasonableness of a rail rate, the complainant should indicate whether * * * 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.

use of the simplified procedures, the same due date for filing an answer to a complaint. 49 CFR 1111.4 (a) and (b). This proposal gives a railroad more time to respond and necessitates only one filing, rather than two, in response to a complaint. The complainant would have 10 days to respond, and the Board would have 20 days in which to determine whether the *Simplified Rate Guidelines* should be used. See proposed new section 1111.9 (providing for a 50-day schedule).¹²

We believe that such an approach balances the needs of the parties. While the time frame is relatively short, we note that we are not deciding the case on the merits but simply determining whether to use the *Simplified Rate Guidelines*. This short schedule is necessary if we are to proceed with the expeditious handling of the complaint.

Both the AAR and the NITL see a scheduling conflict between holding the procedural conference (49 CFR 1111.9) and determining whether to apply the simplified procedures. AAR, while not wanting a schedule for determining whether to apply the *Simplified Rate Guidelines*, wants a conference of the parties to be held "shortly after the complaint is filed." NITL also favors a conference and supports proceeding under 49 CFR 1111.9(a), under which the parties are required to meet, or discuss by telephone, discovery and procedural matters within 7 days after an answer to a complaint is filed.¹³ To avoid convening a conference during the time that parties are preparing pleadings addressing the appropriateness of using the *Simplified Rate Guidelines*, we propose to modify 49 CFR 1111.9(a) so that the conference will be held 12 (instead of 7) days after the answer is filed (day 32) and the report to the Board will be due 19 (instead of 14) days after the answer is filed.¹⁴

The parties disagree about whether we should prescribe a general procedural schedule to govern the submission of evidence for cases processed under the *Simplified Rate Guidelines*. AAR and, to some extent, Ms. Kueppers favor a case-by-case approach. NITL supports the use of the procedural schedule applicable to

stand-alone cost cases with certain modifications.¹⁵

We agree with AAR and Ms. Kueppers that it seems best to proceed initially on a case-by-case basis. Without any experience processing cases using the *Simplified Rate Guidelines*, it is difficult to develop a generally applicable procedural schedule. Nevertheless, the goal of section 10704 is to expedite the processing of rate cases. As a general matter, we believe that the evidentiary phase of a non-coal case should take less than the 7-month time frame for large coal cases. Therefore, we will generally require that discovery be expedited.

Finally, NITL requests that the Rules of Practice cross reference the regulation at 49 CFR 1244.8 concerning access to the Waybill Sample.¹⁶ We believe, however, that such redundancy is unnecessary.¹⁷

The Board certifies that the rules, if adopted, would not have a significant economic effect on a substantial number of small entities. The proposed rules should result in the quicker processing of rail complaints using the simplified procedures. The Board, however, seeks comments on whether there would be effects on small entities that should be considered.

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

List of Subjects in 49 CFR Part 1111

Administrative practice and procedure, Investigations.

Decided: September 18, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,
Secretary.

For the reasons set forth in the preamble, title 49 chapter X, part 1111 of the Code of Federal Regulations is proposed to be amended as follows:

¹⁵ See 49 CFR 1111.8.

¹⁶ Ms. Kueppers requests that the carrier provide its waybill tapes to the complainant. Our rules at section 1244.8, however, provide for a party to request from the Board the Waybill Sample, which is a statistically valid sample. We believe that this process is a more efficient method of obtaining information. We also believe, at least for the present, that Ms. Kueppers' request for discovery and confidentiality rules is unnecessary and can be handled on a case-by-case basis.

¹⁷ In *Simplified Rate Guidelines* (at 41) we denied access to the Waybill Sample prior to the filing of the complaint. However, parties can request access to such data simultaneously with the filing of a complaint. The Board will act promptly on these requests.

PART 1111—COMPLAINT AND INVESTIGATION PROCEDURES

1. The authority citation for part 1111 is revised to read as follows:

Authority: 5 U.S.C. 559; 49 U.S.C. 721, 10704, and 11701.

2. Section 1111.1 is proposed to be amended by revising the last two sentences of paragraph (a) and adding paragraphs (a)(1) through (a)(9) to read as follows:

§ 1111.1 Content of formal complaints; joinder.

(a) * * * In a complaint challenging the reasonableness of a rail rate, the complainant should indicate whether, in its view, the reasonableness of the rate be examined using constrained market pricing or simplified standards adopted pursuant to 49 U.S.C. 10701(d)(3). If the complainant seeks to use the simplified standards, it should support this request by submitting, at a minimum, the following information:

(1) A general history of the traffic at issue, including how the traffic has moved in the past, how it currently moves, and how it can and will be moved in the future. This information should address not only the physical movement of the traffic, but the type and level of rates actually used. It should include all carriers (rail and nonrail) that have participated in the transportation of this traffic or could do so.

(2) The specific commodity description(s) for the traffic at issue, the shipping characteristics and requirements of the traffic, and the type of railroad cars required or used for the traffic.

(3) All origins, destinations, and origin-destination (O-D) pairs involved in the complaint, by commodity type.

(4) The amount of traffic involved (by commodity type), including total annual carloadings, average tons per car, number of carloads per shipment, and number of carloads per week or month.

(5) Total or average revenue per carload paid to the defendant railroad(s), by commodity type.

(6) The feasibility and anticipated cost of preparing a SAC presentation in the case.

(7) An estimate of the other costs to be incurred in pursuing the rate complaint, including preparing necessary jurisdictional threshold and market dominance evidence.

(8) The relief sought, including all reparations as well as the level and duration of any rate prescription.

(9) The present value of the relief sought.

* * * * *

¹² We propose to renumber current section 1111.9 as section 1111.10.

¹³ 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.

¹⁴ Because we propose to redesignate § 1111.9 as § 1111.10, these modifications are in proposed section 1111.10(a).

§ 1111.8 [Amended]

3. In § 1111.8 remove the phrase "section 1111.9(b)" and add "§ 1111.10(b)" in its place.

4. Redesignate § 1111.9 as § 1111.10 and add new § 1111.9 to read as follows:

§ 1111.9 Procedural schedule to determine whether to use simplified procedures.

Absent a specific order by the Board, the following procedural schedule will apply in determining whether to grant a request under § 1111.1(a) to use the simplified procedures (the remainder of the procedural schedule will be determined on a case-by-case basis):

Day 0 Complaint filed, discovery period begins.

Day 20 Defendant's answer to complaint and opposition to use of simplified procedures due.

Day 30 Complainant's response to use of simplified procedures due.

Day 50 Board's determination of whether simplified procedures should be used.

5. In newly designated § 1111.10 paragraph (a) is revised to read as follows:

§ 1111.10 Meetings 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 12 days after an answer to a complaint is filed. Within 19 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.

* * * * *

[FR Doc. 97-25642 Filed 9-25-97; 8:45 am]

BILLING CODE 4915-00-P

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

[I.D. 091997B]

RIN 0648-AJ17

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 15

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

ACTION: Notice of availability of an amendment to a fishery management plan; request for comments.

SUMMARY: NMFS announces that the Gulf of Mexico Fishery Management Council (Council) has submitted Amendment 15 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP) for review, approval, and implementation by NMFS. Written comments are requested from the public.

DATES: Written comments must be received on or before November 25, 1997.

ADDRESSES: Comments must be mailed to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Requests for copies of Amendment 15, which includes an environmental assessment, a regulatory impact review, and an initial regulatory flexibility analysis, and for copies of a minority report submitted by two members of the Council, should be sent to the Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619-2266, Phone: 813-228-2815; Fax: 813-225-7015.

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

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires each regional fishery management council to submit any fishery management plan or amendment to the Secretary of Commerce for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires

that NMFS, upon receiving an amendment, immediately publish a document in the **Federal Register** stating that the amendment is available for public review and comment.

Amendment 15 would: Replace the current system of commercial red snapper permit endorsements and trip limits with a system of two classes of transferrable commercial red snapper licenses and associated trip limits; starting in 1998, split the red snapper commercial fishing season into two time periods, the first commencing February 1 with two-thirds of the annual quota available and the second commencing on September 1 with the remainder of the annual quota available; open the red snapper commercial fishery at noon on the first of each month and close it at noon on the 15th of each month during the commercial season; prohibit the possession of reef fish in excess of the bag limit on a vessel that has on board, or is tending, a trap other than a fish, stone crab, or spiny lobster trap; increase the minimum size limit for vermilion snapper; close the commercial fishery for greater amberjack each year during the period March through May; remove sea bass, grunts, and porgies from management under the FMP; and remove certain species from the aggregate bag limit for reef fish.

A proposed rule to implement Amendment 15 has been received from the Council. In accordance with the Magnuson-Stevens Act, NMFS is evaluating the proposed rule and may publish it in the **Federal Register** for public review and comment.

Comments received by November 25, 1997, whether specifically directed to the amendment or the proposed rule, will be considered in the approval/disapproval decision on Amendment 15. Comments received after that date will not be considered in the approval/disapproval decision. All comments received on Amendment 15 or on the proposed rule during their respective comment periods will be addressed in the final rule.

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

Dated: September 22, 1997.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. 97-25556 Filed 9-23-97; 1:25 pm]

BILLING CODE 3510-22-F