

10. The Commission believes that entities owned and controlled by Indian tribes and Alaska Regional or Village Corporations should be eligible to bid in LMDS auctions as small businesses or as businesses with average annual gross revenues not exceeding \$75 million, notwithstanding their affiliation with other entities owned by tribes or Alaska Native Corporations whose gross revenues cause the combined average gross revenues of the entity and its affiliates to exceed the general limits for eligibility for bidding as such a business. An exemption from the affiliation rules will ensure that these entities will have a meaningful opportunity to participate in spectrum-based services from which they would otherwise be precluded. As is true of other services where the Commission has adopted this exception, LMDS is expected to be a highly capital intensive wireless service. Furthermore, the Commission does not believe that this exemption for the specified entities will entitle them to an unfair advantage over entities that are otherwise eligible for small business status. The Commission will therefore amend the LMDS affiliation rules so as not to preclude the eligibility of entities owned and controlled by Indian tribes and Alaska Native Corporations for classification as small businesses, or as businesses with average annual gross revenues not exceeding \$75 million.

Procedural Matters and Ordering Clauses

11. Accordingly, *It Is ordered* that the Chief, Federal Communications Commission Office of Engineering and Technology, *Shall Select* a panel of experts to review the specific technologies set forth in the Pioneer's Preference request that was filed by the Suite 12 Group on September 23, 1991, as amended on November 19, 1991, and that was accepted and placed on Public Notice on December 16, 1991.

12. *It is further ordered* that part 101 of the Commission's Rules is amended as set forth in Appendix A, attached to the *Order*.

13. *It is further ordered* that the rule changes made by the *Order* are *adopted and effective* June 23, 1997. This action is taken pursuant to Section 4(i), 303(r) and 309(j) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. §§ 154(i), 303(r) and 309(j).

List of Subjects in 47 CFR Part 101

Communications common carriers, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,
Acting Secretary.

Rule Changes

Part 101 of Chapter 1 of title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation continues to read as follows:

Authority: 47 U.S.C. 154, 303, 309(j), unless otherwise noted.

2. Section 101.1112 is amended by adding subsection (d)(11):

§ 101.1112 Definitions.

* * * * *

(d) * * *

(11) *Exclusion from affiliation coverage.* For purposes of paragraphs (b) and (d) of this section, Indian tribes or Alaska Regional or Village Corporations organized pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*), or entities owned and controlled by such tribes or corporations, are not considered affiliates of an applicant (or licensee) that is owned and controlled by such tribes, corporations or entities, and that otherwise complies with the requirements of paragraphs (b), except that gross revenues derived from gaming activities conducted by affiliated entities pursuant to the Indian Gaming Regulatory Act (25 U.S.C. 2701 *et seq.*) will be counted in determining such applicant's (or licensee's) compliance with the financial requirements of paragraph (b) of this section, unless such applicant establishes that it will not receive a substantial unfair competitive advantage because significant legal constraints restrict the applicant's ability to access such gross revenues.

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Parts 1002 and 1180

[STB Ex Parte No. 556]

Railroad Consolidation Procedures—Modification of Fee Policy

AGENCY: Surface Transportation Board (Board), DoD.

ACTION: Final rules.

SUMMARY: In this proceeding the Board adopts as final rules with one minor change in the interim rules relating to the Board's fee policy for proceedings

involving major railroad consolidations, which were published in the **Federal Register** at 62 FR 9714 on March 4, 1997.

EFFECTIVE DATE: These final rules are effective May 15, 1997.

FOR FURTHER INFORMATION CONTACT:

Kathleen M. King, (202) 565-1639 or David T. Groves, (202) 565-1551. (TDD for the hearing impaired: (202) 565-1695.)

SUPPLEMENTARY INFORMATION: On March 4, 1997, at 62 FR 9714, the Board published interim rules that modified the Board's user fee policy for proceedings involving major railroad consolidations under 49 CFR part 1180 and the Board's corresponding fee regulations at 49 CFR part 1002.

The interim rules modified the Board's fee policy to require that the primary applicant in a major railroad consolidation proceeding pay a separate filing fee for each and every directly related proceeding that is filed with the primary application. The Board's fee policy was further revised to provide that for filing fee purposes an inconsistent responsive application would be classified as a major, significant, or minor transaction under the Board's regulations in 49 CFR 1180.2 (a)–(c), and that the fee for an inconsistent application would be based on the classification of the transaction in the Board's fee schedule at 49 CFR 1002.2(f) (38)–(41). In addition, the Board's fee policy at 49 CFR 1180.4(d)(4)(ii) was modified to provide that the fee for any other type of responsive application would be the fee for that particular type of filing as set forth in the Board's fee schedule.

The interim rules also contained technical amendments to conform part 1180 to the ICC Termination Act of 1995, Pub. L. 104-88 (Dec. 29, 1995).

No comments were filed in this proceeding. Therefore, we are adopting the interim rules as final rules with only one minor change. We are modifying the interim rule for 49 CFR 1180.3(h) relating to responsive applications to provide a more accurate cross-reference to the proper fees for various responsive applications. To provide the appropriate cross-reference, we are deleting the last sentence of § 1180.3(h) and replacing it with the following two sentences:

For fees covering inconsistent applications or responsive applications not otherwise covered in the Board's fee schedule see, 49 CFR 1002.2(f) (38)–(41) and 1180.4(d)(4)(ii). The fees for all other responsive applications are set forth in 49 CFR 1002.2(f).

We conclude that the fee and other changes adopted here will not have a significant economic impact on a

substantial number of small entities. Our regulations provide for waiver of filing fees for those entities that can make the required showing of financial hardship.

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

Notice of the final rules adopted here will be transmitted to Congress pursuant to Pub. L. 104-121 (Mar. 29, 1996).

List of Subjects

49 CFR Part 1002

Administrative practice and procedure, Common carriers, Freedom of information, User fees.

49 CFR Part 1180

Administrative practice and procedure, Bankruptcy, Railroads, Reporting and recordkeeping requirements.

Decided: April 24, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,
Secretary.

Accordingly, the interim rules amending 49 CFR Parts 1002 and 1180, which were published at 62 FR 9714 on March 4, 1997, are adopted as final rules with the following changes:

PART 1180—RAILROAD ACQUISITION, CONTROL, MERGER, CONSOLIDATION PROJECT, TRACKAGE RIGHTS, AND LEASE PROCEDURES

1. The authority citation for part 1180 continues to read as follows:

Authority: 5 U.S.C. 553 and 559; 11 U.S.C. 1172; 49 U.S.C. 721, 10502, 11323-11325.

2. Section 1180.3 is amended by revising paragraph (h) to read as follows:

§ 1180.3 Definitions.

* * * * *

(h) Responsive applications.

Applications filed in response to a primary application are those seeking affirmative relief either as a condition to or in lieu of the approval of the primary application. Responsive applications include inconsistent applications, inclusion applications, and any other affirmative relief that requires an application, petition, notice, or any other filing to be submitted to the Board (such as trackage rights, purchases, constructions, operation, pooling, terminal operations, abandonments, and other types of proceedings not otherwise covered). For fees covering inconsistent applications or responsive applications

not otherwise covered in the Board's fee schedule, see 49 CFR 1002.2(f) (38)-(41) and 1180.4(d)(4)(ii). The fees for all other responsive applications are set forth in 49 CFR 1002.2(f).

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 970512113-7113-01; I.D. 042297D]

RIN 0648-AJ56

Fisheries Off West Coast States and in the Western Pacific; Western Pacific Crustacean Fisheries; 1997 Harvest Guideline

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

ACTION: Harvest guideline for crustaceans for 1997.

SUMMARY: NMFS announces a 1997 harvest guideline of 327,000 lobsters for the Northwestern Hawaiian Islands (NWHI) crustacean fishery. The guideline was calculated according to the formula in Amendment 9 to the Fishery Management Plan for the Crustacean Fisheries of the Western Pacific Region (FMP), and includes spiny and slipper lobster combined. This harvest guideline is for the 1997 fishing year, which begins July 1, 1997; however, the harvest guideline system will be adjusted before the beginning of the season to account for lobster mortality from discards of lobster by permit holders. The intent of this action is to prevent overfishing and achieve the objectives of the FMP.

DATES: Effective July 1, 1997.

ADDRESSES: Copies of background material for determining the harvest guideline may be obtained from Dr. William T. Hogarth, Acting Regional Administrator, Southwest Region, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802.

FOR FURTHER INFORMATION CONTACT: Mr. Alvin Katekaru, NMFS, (808) 973-2985 or Mr. Svein Fougner, NMFS, (562) 980-4034.

SUPPLEMENTARY INFORMATION: The annual harvest guideline for the crustacean fishery is to be announced in the **Federal Register** by

March 31 of each year. The harvest guideline is determined by the Southwest Regional Administrator, NMFS, based on previous years' fishery data, sampling during research cruises, and other available data. A population model that is used in the process for determining the harvest guideline is described in Amendment 9 to the FMP, which provides that an annual harvest guideline will be derived by multiplying a constant harvest rate associated with a specific level of risk of overfishing times the exploitable population estimated by the NMFS. Under Amendment 9, there is no limit on retention of spiny or slipper lobsters based on size or reproductive condition. The harvest guideline is a specified numerical harvest objective and is expected to represent total mortality from the fishery. When the harvest guideline is estimated to be reached, the Regional Administrator will close the fishery.

The 1996 fishing season was the first season managed under the provisions of Amendment 9. Data on discarded lobsters reported by permit holders indicated that high-grading (retention of only the more valuable components of the catch) was about 2,300 lobsters. However, an analysis of data obtained by sampling the landings and comparing size composition of the landings with expected size composition based on research and experimental fishing results provided evidence that a higher level of high-grading occurred. Mortality of discarded lobster is believed to be high in the NWHI; therefore, high-grading would result in mortality in excess of the harvest guideline and thus compromise a major objective of Amendment 9.

Because there were differences between the estimate of high-grading by NMFS and the reported discarding by the permit holders in 1996, the Council convened a panel of technical experts to conduct a thorough review of the 1996 fishery and the underlying population model and harvest guideline system. That panel concluded that, while the approach used by NMFS to estimate high-grading was technically sound, there were significant questions about the underlying assumptions and data used in making the estimate. The review panel found that the analytical procedure likely resulted in an overestimate of discarding in 1996. The review panel agreed, however, that discarding needs to be accounted for in the management program.

The Council met in April and, after considering the inputs from the experts panel and its Advisory Panel, Plan Team, and Scientific and Statistical