

Dated: March 1, 2016.

V.B. Gifford, Jr.,

Captain, U.S. Coast Guard, Director of Inspections and Compliance.

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## SURFACE TRANSPORTATION BOARD

### 49 CFR Part 1111

[Docket No. EP 732]

#### Revised Procedural Schedule In Stand-Alone Cost Cases

**AGENCY:** Surface Transportation Board.

**ACTION:** Final rule.

**SUMMARY:** The Surface Transportation Board (Board or STB) is revising its regulations by adjusting the procedural schedule in stand-alone cost (SAC) cases to conform with the *Surface Transportation Board Reauthorization Act of 2015* (STB Reauthorization Act).

**DATES:** This rule is effective on April 8, 2016. This rule is not applicable to SAC cases filed before the STB Reauthorization Act's enactment date of December 18, 2015.

**ADDRESSES:** Information or questions regarding these final rules should reference Docket No. EP 732 and be in writing addressed to: Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, 395 E Street SW., Washington, DC 20423-0001.

**FOR FURTHER INFORMATION CONTACT:** Nathaniel Bawcombe at (202) 245-0376. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.]

**SUPPLEMENTARY INFORMATION:** Because this administrative final rule amends agency practice and procedure, this action is exempt from the usual requirement for notice and an opportunity for public comment under 5 U.S.C. 553(b)(A) of the Administrative Procedure Act (APA).

The Board is revising its regulations at 49 CFR 1111.8 so that the procedural schedule in SAC cases conforms with Section 11(b) of the STB Reauthorization Act.<sup>1</sup> The Board intends to address implementation of other parts of Section 11 separately—including initiating a proceeding to assess procedures that are available to parties in litigation before courts to

<sup>1</sup> The Board is also revising the authority listed under Part 1111 to reflect the STB Reauthorization Act's redesignation of section 721 of Title 49 of the United States Code as section 1321.

expedite litigation and the potential application of any such procedures to rate cases. The Board will also determine whether additional changes to the SAC case process are necessary in order for the Board to meet the expedited timeline for a final decision established under the STB Reauthorization Act.

#### 49 CFR 1111.8, Procedural Schedule in SAC Cases

Section (a) will be revised to adjust the schedule in SAC cases to conform to the STB Reauthorization Act. Furthermore, to reconcile the SAC case schedule with determinations made in a prior rulemaking proceeding, the Board will amend its regulations to no longer require that the parties file evidence on the existence of product and geographic competition.<sup>2</sup> Also, in line with the practice before the Board in recent SAC cases, only the complainant will file opening and rebuttal evidence, and only the defendant will file reply evidence. Both parties will continue to file final briefs.

The Board considers the day the complaint is filed to be Day 0. The deadlines for the conference of the parties (Day 7 or before) and the defendant's answer (Day 20) will remain the same as under the current rules. The deadline for discovery will move from Day 75 to Day 150. The complainant will have an additional 15 days (for a total of 60 days) from the close of discovery to submit its opening evidence.

The defendant will continue to have 60 days from the deadline for opening evidence to file its reply evidence. The complainant will have an additional 5 days (for a total of 35 days) from the deadline for reply evidence to file its rebuttal evidence.

The Board is adding two additional deadlines to § 1111.8 in accordance with the STB Reauthorization Act. The first is that final briefs will be due 30 days after the deadline for rebuttal evidence.<sup>3</sup> The second is that the Board

<sup>2</sup> In 1998, the Board instituted a rulemaking proceeding to reconsider whether product and geographic competition should be eliminated as factors in determining market dominance in rail rate cases. The Board concluded that evidence of product and geographic competition should be excluded because such evidence was not required by 49 U.S.C. 10707(a) and because of the substantial burden its inclusion imposed on the parties and the Board. *Mkt. Dominance Determinations—Prod. & Geographic Competition*, 3 S.T.B. 937 (1998). Accordingly, evidence regarding product and geographic competition has not been considered by the Board in market dominance determinations since that time.

<sup>3</sup> In order to expedite the adjudication of SAC cases, the STB Reauthorization Act provides that the Board must establish a schedule where final

will issue its decision no later than 180 days after the close of the evidentiary record.

Because these changes relate solely to the rules of agency practice, procedure, and organization, they will be issued as final rules without requesting public comment. See 5 U.S.C. 553(b)(A).

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601-612, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Because the Board has determined that notice and comment are not required under the APA for this rulemaking, the requirements of the RFA do not apply.

#### List of Subjects in 49 CFR Part 1111

Administrative practice and procedure, Investigations.

It is ordered:

1. The final rules set forth in the Appendix to this decision are adopted. Notice of the rules adopted here will be published in the **Federal Register**.

2. This decision is effective on the date of service. The rules are effective April 8, 2016.

Decided: March 7, 2016.

By the Board, Chairman Elliott, Vice Chairman Miller, and Commissioner Begeman.

**Kenyatta Clay,**

*Clearance Clerk.*

For the reasons set forth in the preamble, the Surface Transportation Board amends parts 1111 of title 49, chapter X, of the Code of Federal Regulations as follows:

#### PART 1111—COMPLAINT AND INVESTIGATION PROCEDURES

■ 1. Revise the authority citation for part 1111 to read as follows:

**Authority:** 49 U.S.C. 10704, 11701, and 1321.

■ 2. In § 1111.8, revise paragraph (a) to read as follows:

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

(a) *Procedural schedule.* Absent a specific order by the Board, the

briefs are due “not later than 60 days” after the close of the evidentiary record. The purpose of the 30-day deadline for final briefs is to ensure that the Board has a full record of the parties' submissions as soon as practicable, thus facilitating a final decision.

following general procedural schedule will apply in stand-alone cost cases:

Day 0—Complaint filed, discovery period begins.

Day 7 or before—Conference of the parties convened pursuant to § 1111.10(b).

Day 20—Defendant's answer to complaint due.

Day 150—Discovery completed.

Day 210—Complainant files opening evidence on absence of intermodal and intramodal competition, variable cost, and stand-alone cost issues.

Day 270—Defendant files reply evidence to complainant's opening evidence.

Day 305—Complainant files rebuttal evidence to defendant's reply evidence.

Day 335—Complainant and defendant file final briefs.

Day 485 or before—The Board issues its decision.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 140918791-4999-02]

RIN 0648-XE496

#### Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod in the Central Regulatory Area of the Gulf of Alaska

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

**ACTION:** Temporary rule; opening; request for comments.

**SUMMARY:** NMFS is opening directed fishing for Pacific cod by vessels using pot gear in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to fully use the A season allowance of the 2016 total allowable catch of Pacific cod apportioned to vessels using pot gear in the Central Regulatory Area of the GOA.

**DATES:** Effective 1200 hours, Alaska local time (A.l.t.), March 12, 2016, through 1200 hours, A.l.t., June 10, 2016.

Comments must be received at the following address no later than 4:30 p.m., A.l.t., March 29, 2016.

**ADDRESSES:** You may submit comments on this document, identified by FDMS Docket Number NOAA-NMFS-2014-0118, by any of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov/](http://www.regulations.gov/) #!docketDetail;D=NOAA-NMFS-2014-0118, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.

- **Mail:** Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802-1668.

**Instructions:** Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

**FOR FURTHER INFORMATION CONTACT:**

Obren Davis, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The A season allowance of the 2016 Pacific cod total allowable catch (TAC) apportioned to vessels using pot gear in the Central Regulatory Area of the GOA is 6,528 metric tons (mt), as established by the final 2015 and 2016 harvest specifications for groundfish of the GOA (80 FR 10250, February 25, 2015) and inseason adjustment (81 FR 188, January 5, 2016).

NMFS closed directed fishing for Pacific cod by vessels using pot gear in the Central Regulatory Area of the GOA under § 679.20(d)(1)(iii) on February 1, 2016 (81 FR 5628, February 3, 2016).

As of March 8, 2016, NMFS has determined that approximately 525 metric tons of Pacific cod remain in the A season directed fishing allowance for

Pacific cod apportioned to vessels using pot gear in the Central Regulatory Area of the GOA. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C), and (a)(2)(iii)(D), and to fully utilize the A season allowance of the 2016 TAC of Pacific cod in the Central Regulatory Area of the GOA, NMFS is terminating the previous closure and is reopening directed fishing for Pacific cod by vessels using pot gear in the Central Regulatory Area of the GOA. The Administrator, Alaska Region (Regional Administrator) considered the following factors in reaching this decision: (1) The current catch of Pacific cod in the Central Regulatory Area of the GOA and, (2) the harvest capacity and stated intent on future harvesting patterns of vessels in participating in this fishery.

#### Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening of directed fishing for Pacific cod in the Central Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of March 8, 2016.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Without this inseason adjustment, NMFS could not allow the fishery for Pacific cod by vessels using pot gear in the Central Regulatory Area of the GOA to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until March 29, 2016.

This action is required by § 679.25 and is exempt from review under Executive Order 12866.

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