Subpart E—Miscellaneous

§ 171.501 Information you must provide us.

(a) You must provide us with the information we request to assist in the proper administration, operation, maintenance, and rehabilitation of our facilities.

(b) We will request all information in accordance with the local administration manual.

§ 171.502 Your responsibility concerning refuse.

You must not use our property or rights of way to dispose of sewage, trash, or other refuse.

Dated: May 24, 1996.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

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BILLING CODE 4310–02–P

NATIONAL LABOR RELATIONS BOARD

29 CFR Parts 101 and 102

Procedure Governing Advisory Opinions and Rules Governing Summary Judgment Motions and Advisory Opinions

AGENCY: National Labor Relations Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: As part of its ongoing efforts to streamline its operations by eliminating unnecessary and inefficient procedures, the National Labor Relations Board (NLRB) is proposing to revise its rules to eliminate the notice-to-show-cause procedure in summary judgment cases and to remove provisions which permit parties to pending state proceedings to file petitions for an advisory opinion on whether the Board would assert jurisdiction under its commerce standards.

DATES: All comments must be received on or before August 5, 1996.

ADDRESSES: All written comments should be sent to the Office of the Executive Secretary, National Labor Relations Board, 1099 14th Street, NW., Room 11600, Washington, DC 20570. The comments should be filed in eight copies, double spaced, on 8 1/2 by 11 inch paper and shall be printed or otherwise legibly duplicated.

FOR FURTHER INFORMATION CONTACT: John J. Toner, Executive Secretary, Telephone: (202) 273–1940.

SUPPLEMENTARY INFORMATION: Over approximately the last two years, the NLRB has been conducting an intensive internal review of its procedures at all levels of the Agency. The purpose of this internal review has been to find ways to maintain and improve the Agency's case-processing efficiency in light of the Agency's diminishing resources. Many initiatives have already been implemented by the Board as part of this ongoing review, such as the recent initiative authorizing the use of settlement judges and providing judges with the discretion to dispense with briefs and to issue bench decisions, which was published as a final rule on February 23, 1996, following a one-year experimental period (61 FR 6940). Other initiatives are currently under consideration. Two such initiatives, involving the elimination of the notice-to-show-cause procedure in summary judgment cases and the removal of provisions permitting parties to pending state proceedings to file petitions for an advisory opinion on whether the Board would assert jurisdiction under its commerce standards, are set forth below.

1. Notices to show cause in summary judgment cases. Section 102.24(b) of the Board's rules currently requires the Board to issue a notice to show cause to the parties prior to granting a motion for summary judgment or dismissal. Such notices have historically served several purposes or functions, including providing notice of the motion to the opposing party, postponing any scheduled hearing date, and setting the deadline for responding (normally 14 days from the date of the notice).

All of these functions are essentially unnecessary, however. The motion itself must be served on the opposing party and the motion therefore provides its own notice to the opposing party. No further notice is necessary.

With respect to postponing the hearing date, the Regional Director has the unrestricted authority under Section 102.16 of the Board's rules to do so at any time prior to 21 days before the hearing. Thus, the General Counsel need not rely on the Board to postpone the hearing upon filing a timely motion for summary judgment, which under Section 102.24(b) of the Board's rules must normally be filed at least 28 days before the scheduled hearing. In the event the General Counsel does not determine that a motion for summary judgment is warranted until after expiration of the 28-day deadline for filing such motions with the Board and the 21-day deadline on the Regional Director's unrestricted authority to postpone the hearing, the General Counsel may in that event seek a postponement from the Division of Judges prior to filing the motion for summary judgment. See, e.g., *R. B. Contracting Co.*, 321 NLRB No. 41 (May 20, 1996).

Of course, it may still be necessary in certain circumstances for the Board to issue an order postponing the hearing in response to a respondent's motion for summary judgment or dismissal. The Board's experience with such motions, however, indicates that in the vast majority of such cases there are factual issues which make summary judgment or dismissal inappropriate. Thus, the Board in the past has only rarely issued notices to show cause postponing the hearing in response to respondent motions, and there is no reason why this experience would change under the revised rule. In any event, as under the current rule, under the revised rule the respondent may request the Regional Director, administrative law judge, and/or the Board to postpone the hearing when it files the motion for summary judgment or dismissal. The Board normally completes its initial review of the respondent's motion prior to the hearing, and in the event that its initial review indicates that summary judgment may be appropriate, and the hearing has not already been postponed, as under the current rule the Board may issue an order postponing the hearing.

With respect to setting the time for responding, there is no reason why the deadline for responding cannot be established by rule in all cases. Similar deadlines are set forth in the Board's rules for the filing of other pleadings (see, e.g., Sec. 102.20 of the Board's rules, setting 14-day deadline for filing an answer to the complaint), and no further or special notice of the deadline is required with respect to those pleadings. See, e.g., *Superior Industries*, 289 NLRB 834, 835 n. 13 (1988) (no further reminder or warning of the failure to file an answer required).

Moreover, we note that the General Counsel's practice with respect to complaints and compliance specifications has been to specifically advise the respondent in the complaint or specification itself of the time for filing an answer. See NLRB Casehandling Manual, Sec. 10267 (complaints) and 10622.1 and App. 14 (compliance specifications). We approve of this practice and anticipate that the General Counsel would also adopt this practice with respect to default and other summary judgment motions in the event the proposed revisions are adopted by the Board.[1]

[1] The General Counsel's failure to include such notice in the motion for summary judgment would

Accordingly, the Board is proposing to revise Section 102.24(b) of its rules to eliminate the notice-to-show-cause procedure in summary judgment cases, and to instead provide that the 14-day period for responding to the motion shall commence upon service of the motion. The revised rule specifically provides that the hearing is not automatically postponed upon filing of the motion for summary judgment, and that it is the responsibility of the party moving for summary judgment to postpone the hearing (if the General Counsel files the motion for summary judgment) or to file a request for a postponement with the regional director, administrative law judge, and/or the Board (if the respondent or charging party files the motion for summary judgment or dismissal). This latter provision is intended to make clear that the General Counsel should not rely on the Board to postpone the hearing or assume that the Board will issue an order postponing the hearing, which was a function of the traditional notice to show cause. Thus, when the General Counsel files the motion for summary judgment, the General Counsel should also postpone the hearing (assuming the General Counsel wishes to postpone the hearing and has the authority to do so under Section 102.16 of the Board's rules.)

2. Party petitions for an advisory opinion. Sections 102.98(a) and 102.99(a) of the Board's rules, and Section 101.39 of the Board's statements of procedures, currently authorize parties to pending state proceedings to file a petition for an advisory opinion with the Board as to whether the Board would assert jurisdiction under its current commerce standards. There is no statutory requirement that the Board entertain such advisory opinions, however, and the procedure is not widely utilized.[2] Further, the Board's jurisdictional standards are generally well developed, and are readily available in numerous published decisions and opinions. Experience with past party petitions has shown that the parties themselves, or the state agency or court, could just as easily have researched and applied the Board's current commerce standards without invoking the Board's processes.

Moreover, there are other, often more speedy, avenues available for obtaining a jurisdictional determination or opinion. For example, Section 101.41 of the Board's statements of procedure provides that persons may seek informal opinions on jurisdictional issues from the Regional offices. And the Regional Office will also make a jurisdictional determination early in its investigation of any representation petition or unfair labor practice charges filed with that office. See NLRB Casehandling Manual, Sec. 11706.

Finally, the proposed change would not affect the provisions of current Section 102.98(b) and 102.99(b) of the Board's rules and Section 101.39 of the Board's statements of procedure, which permit the state or territorial agency or court itself to file a petition for an advisory opinion on whether the Board would decline to assert jurisdiction based either on its commerce standards or because the employer is not within the jurisdiction of the Act. The provisions permitting such petitions are retained, with minor modification to Section 101.39 of the Board's statements of procedure to conform it with Board decisions indicating that the Board will not issue an opinion unless the relevant facts are undisputed or the state agency or court has already made the relevant factual findings. See *Correctional Medical Systems,* 299 NLRB 654 (1990); *University of Vermont,* 297 NLRB 291 (1989); and *St. Paul Ramsey Medical Center,* 291 NLRB 755 (1988). See also *Brooklyn Bureau of Community Service,* 320 NLRB No. 157 (April 15, 1996).

Although the Agency has decided to give notice of proposed rulemaking with respect to these rule changes, the changes involve rules of agency organization, procedure or practice and thus no notice of proposed rulemaking is required under Sec. 553 of the Administrative Procedure Act (5 U.S.C. 553). Accordingly, the Regulatory Flexibility Act (5 U.S.C. 601), does not apply to these rule changes.

List of Subjects in 29 CFR Parts 101 and 102

Administrative practice and procedure, Labor management relations.

For the reasons set forth above, the NLRB proposes to amend 29 CFR parts 101 and 102 as follows:

PART 101—STATEMENTS OF PROCEDURE

1. The authority citation for 29 CFR part 101 continues to read as follows:

Authority: Sec. 6 of the National Labor Relations Act, as amended (29 U.S.C. 151, 156), and sec. 522(a) of the Administrative Procedure Act (5 U.S.C. 552(a)). Section 101.14 also issued under sec. 2112(a)(1) of Pub. L. 100–236, 28 U.S.C. 2112(a)(1).

2. § 101.39 is revised to read as follows:

§ 101.39 Initiation of advisory opinion case.

(a) The question of whether the Board will assert jurisdiction over a labor dispute which is the subject of a proceeding in an agency or court of a State or territory is initiated by the filing of a petition with the Board. This petition may be filed only if:

(1) A proceeding is currently pending before such agency or court;

(2) The petitioner is the agency or court itself; and

(3) The relevant facts are undisputed or the agency or court has already made the relevant factual findings.

(b) The petition must be in writing and signed. It is filed with the Executive Secretary of the Board in Washington, DC. No particular form is required, but the petition must be properly captioned and must contain the allegations required by § 102.99 of the Board's Rules and Regulations. None of the information sought relates to the merits of the dispute. The petition may be withdrawn at any time before the Board issues its advisory opinion determining whether it would or would not assert jurisdiction on the basis of the facts before it.

PART 102—RULES AND REGULATIONS

1. The authority citation for 29 CFR part 102 continues to read as follows:

Authority: Section 6, National Labor Relations Act, as amended (29 U.S.C. 151, 156). Section 102.117(c) also issued under Section 552(a)(4)(A) of the Freedom of Information Act, as amended (5 U.S.C. 552(a)(4)(A)), and section 552a(j) and (k) of the Privacy Act (5 U.S.C. 552a(j) and (k). Sections 102.143 through 102.155 also issued under Section 504(c)(1) of the Equal Access to Justice Act, as amended (5 U.S.C. 504(c)(1)).

2. Section 102.24(b) is revised to read as follows:

§ 102.24 Motions; where to file; contents; service on other parties; promptness in filing and response; summary judgment procedures.

* * * * *

(b) All motions for summary judgment or dismissal shall be filed with the Board no later than 28 days prior to the scheduled hearing. Where no hearing is scheduled, or where the hearing is scheduled less than 28 days after the

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not necessarily require denial of the motion, but would be considered by the Board as a factor in ruling on any subsequent motion filed by the respondent for reconsideration of the Board's decision granting the General Counsel's motion for summary judgment.

[2] The Board typically receives about 10–15 party petitions for advisory opinion each year. Although relatively few in number, substantial staff resources are consumed in preparing and issuing the Board's opinion in each case.

date for filing an answer to the complaint or compliance specification, whichever is applicable, the motion shall be filed promptly. Any opposition to the motion shall be filed within 14 days after the service of the motion for summary judgment on the opposing party. It is not required that the opposition be supported by affidavits or other documentary evidence showing that there is a genuine issue for hearing. The Board in its discretion may deny the motion where the motion itself fails to establish the absence of a genuine issue, or where the opposing party's pleadings and/or opposition indicate on their face that a genuine issue may exist. If the opposing party files no opposition, the Board may treat the motion as conceded, and summary judgment or dismissal, if appropriate, shall be entered. The hearing shall not be automatically postponed upon filing of the motion for summary judgment. It shall be the responsibility of the party filing the motion to postpone the hearing (if the General Counsel files the motion for summary judgment, subject to the provisions of § 102.16 of the Board's rules and regulations) or to file a request for a postponement with the Regional Director, administrative law judge, and/or the Board (if the respondent or charging party files the motion).

§ 102.98 [Amended]

3. In § 102.98, paragraph (a) and the paragraph designation (b) are removed.

§ 102.99 [Amended]

4. In § 102.99, paragraph (a) is removed and paragraphs (b) and (c) are redesignated as paragraphs (a) and (b) respectively.

Dated, Washington, DC, June 28, 1996.

By direction of the Board:

John J. Toner,

Executive Secretary.

[FR Doc. 96–16986 Filed 7–3–96; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 062596B]

RIN 0648–AH68

Groundfish of the Gulf of Alaska; Pacific Ocean Perch; Amendment 38

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

ACTION: Notice of availability; request for comments.

SUMMARY: The North Pacific Fishery Management Council (Council) has submitted Amendment 38 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) for Secretarial review. Amendment 38 would provide the flexibility for the Council to recommend a total allowable catch amount for Pacific ocean perch (POP) below the level currently established in the FMP. NMFS is requesting comments from the public on the proposed amendment. Copies of the amendment may be obtained from the Council (see **ADDRESSES**).

DATES: Comments on the FMP amendment should be submitted on or before August 30, 1996.

ADDRESSES: Comments on the FMP amendment should be submitted to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; Attn: Lori Gravel, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK.

Copies of Amendment 38 and the environmental assessment and the economic analysis prepared for the amendment are available from the North Pacific Fishery Management Council, 605 W 4th Ave., Suite 306, Anchorage, AK 99501–2252; telephone: 907–271–2809.

FOR FURTHER INFORMATION CONTACT: Kaja Brix, 907–586–7228.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act) requires that each Regional Fishery Management Council submit any fishery management plan or plan amendment it prepares to the Secretary of Commerce (Secretary) for review and approval, disapproval, or partial disapproval. The Magnuson Act also requires that the Secretary, upon receiving a fishery management plan or amendment, immediately publish a notice that the fishery management plan or amendment is available for public review and comment. The Secretary will consider the public comments received during the comment period in determining whether to approve the FMP or amendment.

Decline of the POP stock since the early period of the foreign fishery (mid 1960's) prompted the Council to recommend a rebuilding plan for POP. The Pacific Ocean Perch Rebuilding Plan (Rebuilding Plan) was established in Amendment 32 to the FMP. Details of the justification for the Rebuilding Plan can be found in the Notice of Availability for Amendment 32 (59 FR 295; January 4, 1994). The POP Rebuilding Plan provides a specific rebuilding strategy for POP stocks, based on available biological and economic information. The Rebuilding Plan establishes a formula to determine annually the POP TAC, which is then apportioned among Gulf of Alaska (GOA) regulatory areas based on biomass distribution. However, the amendment does not provide for any flexibility to reduce the TAC below the amount specified by the formula.

Under the current Rebuilding Plan, the potential exists for the calculated TAC to be greater than the acceptable biological catch (ABC), which would be inconsistent with the current management practice for other groundfish stocks. The Council has also expressed concern that it does not have the flexibility to lower the POP TAC under the Rebuilding Plan to accomodate other resource conservation concerns. Therefore, the Council adopted Amendment 38 to the FMP at its December 1995 meeting. Amendment 38 would not prescribe a TAC lower than that specified by the formula; however, it would allow the Council the flexibility to recommend a TAC below the level of the specified formula in one or more GOA regulatory areas or districts. To be consistent with the Rebuilding Plan for POP, any downward adjustment of TAC would be based on biological or resource conservation concerns.

Under the Rebuilding Plan, an ABC is set for POP in the GOA and this ABC is apportioned among regulatory areas based on biomass distribution. The TAC is determined using the formula and is then apportioned to each regulatory area according to the percentage biomass distribution used for the ABC apportionment.

Under Amendment 38, once the TAC is apportioned among regulatory areas, as specified by the current FMP, the Council could recommend a further downward adjustment of the POP TAC in one or more of the GOA regulatory areas or districts. Any downward adjustments would be based on biological or resource conservation concerns about the POP resource or associated with the POP fishery that are not accounted for in the Rebuilding Plan or the annual Stock Assessment and Fishery Evaluation (SAFE) reports, or to maintain the TAC below the ABC. NMFS will consider information provided by a recognized scientific body such as the Council's Scientific and Statistical Committee, Plan Team, or by