EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
*	* * *	*	*	*
10–2.040	Maximum Allowable Emission of Particulate Matter from Fuel Burning Equipment Used for Indirect Heating.	9/4/84	1/24/85, 50 FR 3337	Rescinded.
*	* * *	*	*	*
10–3.060	Maximum Allowable Emission of Particulate Matter from Fuel Burning Equipment Used for Indirect Heating.	11/30/02	3/18/03, 68 FR 12831 ...	Rescinded.
*	* * *	*	*	*
10–4.040	Maximum Allowable Emission of Particulate Matter from Fuel Burning Equipment Used for Indirect Heating.	11/30/02	3/18/03, 68 FR 12831 ...	Rescinded.
*	* * *	*	*	*
10–5.030	Maximum Allowable Emission of Particulate Matter from Fuel Burning Equipment Used for Indirect Heating.	9/4/84	1/24/85, 50 FR 3337	Rescinded.
*	* * *	*	*	*
10–6.405	Restriction of Particulate Matter Emissions From Fuel Burning Equipment Used for Indirect Heating.	10/30/11	9/13/12 [*insert* **Federal Register** *page number where the document begins*].	Replaces 10–2.040, 10–3.060, 10–4.040, and 10–5.030
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[FR Doc. 2012–22471 Filed 9–12–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[EPA–R01–RCRA–2012–0447; FRL–9727–2]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is granting the petition submitted by International Business Machines Corporation (IBM) to exclude or ''delist'' a certain wastewater treatment sludge generated by its facility in Essex Junction, Vermont from the lists of hazardous wastes. This final rule responds to a petition submitted by IBM to delist F006 waste. The F006 waste is sludge generated from IBM's Industrial Waste Treatment Plant (IWTP).

After careful analysis and use of the Delisting Risk Assessment Software (DRAS), EPA has concluded the petitioned waste is not hazardous waste. The F006 exclusion is a conditional exclusion for 3,150 cubic yards per year of the F006 wastewater treatment sludge.

Accordingly, this final rule excludes the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

DATES: *Effective Date:* This final rule is effective on September 13, 2012.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R01–RCRA–2012–0447. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g. CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the EPA Region 1 Library, 5 Post Office Square, 1st floor, Boston, MA 02109–3912; by appointment only; tel: (617) 918–1990. The public may copy material from any regulatory docket at no cost for the first 100 pages and at a cost of $0.15 per page for additional copies.

FOR FURTHER INFORMATION CONTACT: Sharon Leitch, RCRA Waste Management and UST Section, Office of Site Remediation and Restoration, (Mail Code: OSRR07–01), EPA Region 1, 5 Post Office Square, Suite 100, Boston, MA 02109–3912; telephone number: (617) 918–1647; fax number (617) 918–0647; email address: *leitch.sharon@epa.gov*.

SUPPLEMENTARY INFORMATION: The information in this section is organized as follows:

I. Overview Information

A. What action is EPA finalizing?

After evaluating the petition for IBM, EPA proposed, on July 16, 2012 (77 FR 41720), to exclude the waste from the lists of hazardous waste under § 261.31. EPA is finalizing the decision to grant IBM's delisting petition to have its F006 wastewater treatment sludge excluded, or delisted, from the definition of a hazardous waste, once it is disposed in a Subtitle D landfill.

B. Why is EPA approving this action?

IBM's petition requests a delisting from the F006 waste listing under 40 CFR 260.20 and 260.22. IBM does not believe that the petitioned waste meets the criteria for which EPA listed it. IBM also believes no additional constituents or factors could cause the waste to be hazardous. EPA's review of this petition included consideration of the original listing criteria, and the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). See Section 3001(f) of RCRA, 42 U.S.C. 6921(f), and 40 CFR 260.22 (d)(1)–(4) (hereinafter all sectional references are to 40 CFR unless otherwise indicated). In making the final delisting determination, EPA evaluated the petitioned waste against the listing criteria and factors cited in § 261.11(a)(2) and (a)(3). Based on this review, EPA agrees with the petitioner that the waste is nonhazardous with respect to the original listing criteria. (If EPA had found, based on this review, that the waste remained hazardous based on the factors for which the waste was originally listed, EPA would have proposed to deny the petition). EPA evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the wastes to be hazardous. EPA considered whether the waste is acutely toxic, the concentrations of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and waste variability. EPA believes that the petitioned waste does not meet the listing criteria and thus should not be a listed waste. EPA's final decision to delist the waste from IBM's facility is based on the information submitted in support of this rule, including a description of the waste and analytical data from the Essex Junction, Vermont facility.

C. What are the limits of this exclusion?

This exclusion applies to the waste described in IBM's petition only if the requirements described in 40 CFR part 261, Appendix IX, Table 1 and the conditions contained herein are satisfied.

D. How will IBM manage the waste, when delisted?

The delisted F006 wastewater treatment sludge will be disposed of in a Subtitle D landfill which is permitted, licensed or otherwise authorized by a state to manage industrial waste.

E. When is the final delisting exclusion effective?

This rule is effective September 13, 2012. The Hazardous and Solid Waste Amendments of 1984 amended Section 3010 of RCRA, 42 U.S.C. 6930(b)(1), allow rules to become effective in less than six months after the rule is published when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous waste. This reduction in existing requirements also provides a basis for making this rule effective immediately, upon publication, under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

F. How does this final rule affect states?

EPA is issuing this exclusion under the federal RCRA delisting program. Thus, upon the exclusion being finalized, the wastes covered will be removed from Subtitle C control under the federal RCRA program. This will mean, first, that the wastes will be delisted in any State or territory where the EPA is directly administering the RCRA program (e.g., Iowa, Indian Country). However, whether the wastes will be delisted in States which have been authorized to administer the RCRA program will vary depending upon the authorization status of the States and the particular requirements regarding delisted wastes in the various States.

While Vermont has been authorized to generally administer the federal RCRA program, it has not sought or obtained authorization to delist federal listed wastes. See 58 FR 26243 (May 3, 1993). Instead, the Vermont Hazardous Waste Regulation section 7–217(c) specifies that ''the Administrator of EPA shall retain the authority to exclude such wastes.'' By letter dated April 12, 2012, the Vermont Department of Environmental Conservation has confirmed that Vermont interprets this regulation to mean that upon the EPA making a delisting determination (regarding a federally regulated waste), the delisting determination takes effect within that State. Thus, this delisting determination will apply within Vermont with no further action required by the State.

Like Vermont, some other generally authorized States have not received authorization for delisting. Thus, the EPA makes delisting determinations for such States. However, RCRA allows states to impose their own regulatory requirements that are more stringent than EPA's, under § 3009 of RCRA. These more stringent requirements may include a provision that prohibits a federally issued exclusion from taking effect in the state, or that requires a State concurrence before the federal exclusion takes effect, or that allows the State to add conditions to any federal exclusion. We urge the petitioner to contact the state regulatory authority in each State to or through which it may wish to ship its wastes to establish the status of its wastes under the state's laws.

EPA has also authorized some states to administer a delisting program in place of the federal program, that is, to make state delisting decisions. In such states, the state delisting requirements operate in lieu of the federal delisting requirements. Therefore, this exclusion does not apply in those authorized states unless the state makes the rule part of its authorized program. If IBM transports the federally excluded waste to or manages the waste in any state with delisting authorization, IBM must obtain a delisting authorization from that state before it can manage the waste as non-hazardous in that state.

II. Background

A. What is a delisting petition?

A delisting petition is a request from a generator to EPA or to an authorized state to exclude or delist, from the RCRA list of hazardous wastes, waste the generator believes should not be considered hazardous under RCRA.

B. What regulations allow facilities to delist a waste?

Under §§ 260.20 and 260.22, facilities may petition EPA to remove their wastes from hazardous waste regulation by excluding them from the lists of hazardous wastes contained in §§ 261.31 and 261.32. Specifically, § 260.20 allows any person to petition the Administrator to modify or revoke

any provision of 40 CFR parts 260 through 265 and 268. Section 260.22 provides generators the opportunity to petition the Administrator to exclude a waste from a particular generating facility from the hazardous waste lists.

C. What information must the generator supply?

Petitioners must provide sufficient information to EPA to allow EPA to determine that the waste to be excluded does not meet any of the criteria under which the waste was listed as a hazardous waste. In addition, the Administrator must determine, where he/she has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste and that such factors do not warrant retaining the waste as a hazardous waste.

III. EPA's Evaluation of the Waste Information and Data

A. What waste did IBM petition EPA to delist?

IBM petitioned EPA on July 11, 2008, to exclude from the lists of hazardous waste contained in §§ 261.31 and 261.32, F006 wastewater treatment sludge, generated from its facility in Essex Junction, Vermont.

B. How much waste did IBM propose to delist?

IBM requested that EPA grant an exclusion for 3,150 cubic yards per year of F006 wastewater treatment sludge.

C. How did IBM sample and analyze the waste data in this petition?

To support its petition, IBM submitted: (1) Facility information on production processes and waste generation processes; (2) Historical sampling data of the IWTP sludge; (3) Analytical results from four samples for total concentrations for volatiles (SW–846 Method 8260B), semi volatiles (SW–846 Method 8270C) and metals (SW–846 Method 6010B except for mercury—SW–846 Method 7471A and selenium—SW–846 Method 7010), for compounds of concern (COCs); and (4) Analytical results from four samples for Toxicity Characteristic Leaching Procedure (TCLP) extract values for volatiles (SW–846 Method 8260B), semi volatiles (SW–846 Method 8270C) and metals (SW–846 Method 6010B except for mercury—SW–846 Method 7470 and selenium—SM 3113B) for COCs.

IV. Public Comments Received on the Proposed Exclusion

A. Who submitted comments on the proposed rule?

EPA received one email comment from a consultant regarding the petition.

B. What was the comment and what was EPA's response?

Comment: Based on the condition that the resultant sludge is a combination of three (3) independent waste streams (i.e. it appears each waste stream is being diluted by two(2) other waste streams) it would be prudent to require IBM to submit to EPA, or the landfill, monthly waste rates from each of the three (3) independent waste streams to ensure the contribution ratios are not dramatically changing.

The removal of one waste process could potentially increase the hazardous components by 50% from the other 2 waste streams. If volume of sludge waste is a component in EPA's calculations related to overall impact, then the increase, or reduction of a waste stream could impact the results.

Response: EPA believes that the requirements found in Conditions 4, 5 and 6 of the final exclusion adequately address any changes in operations or processes at the facility that could have an impact on the composition of the delisted sludge.

V. Statutory and Executive Order Reviews

Under Executive Order 12866, ''Regulatory Planning and Review'' (*58 FR 51735,* October 4, 1993), this rule is not of general applicability and therefore is not a regulatory action subject to review by the Office of Management and Budget (OMB). This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) because it applies to a particular facility only. Because this rule is of particular applicability relating to a particular facility, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to Sections 202, 204, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Because this rule will affect only a particular facility, it will not significantly or uniquely affect small governments, as specified in Section 203 of UMRA. Because this rule will affect only a particular facility, this final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, ''Federalism,'' (*64 FR 43255,* August 10, 1999). Thus, Executive Order 13132 does not apply to this rule. Similarly, because this rule will affect only a particular facility, this final rule does not have tribal implications, as specified in Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments'' (*65 FR 67249,* November 9, 2000). Thus, Executive Order 13175 does not apply to this rule. This rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (*62 FR 19885,* April 23, 1997), because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The basis for this belief is that the Agency used the DRAS program, which considers health and safety risks to children, to calculate the maximum allowable concentrations for this rule. This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (*66 FR 28355,* May 22, 2001), because it is not a significant regulatory action under Executive Order 12866. This rule does not involve technical standards; thus, the requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by Section 3 of Executive Order 12988, ''Civil Justice Reform,'' (*61 FR 4729,* February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report which includes a copy of the rule to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from Section 801 the following types of rules (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency

parties (5 U.S.C. 804(3)). EPA is not required to submit a rule report regarding today's action under Section 801 because this is a rule of particular applicability. Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. The Agency's risk assessment did not identify risks from management of this material in a Subtitle D landfill. Therefore, EPA believes that any populations in proximity of the landfills used by this facility should not be adversely affected by common waste management practices for this delisted waste.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: August 22, 2012.

H. Curtis Spalding,

Regional Administrator, EPA Region 1.

For the reasons set out in the preamble, 40 CFR part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

■ 1. The authority citation for Part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y) and 6938.

■ 2. In Table 1 of Appendix IX to Part 261 add the following waste stream in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Waste Excluded Under §§ 260.20 and 260.22

TABLE 1—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
*	*	* * * * * *
IBM Corporation	Essex Junction, VT	Wastewater Treatment Sludge (Hazardous Waste No. F006) generated at a maximum annual rate of 3,150 cubic yards per calendar year and disposed of in a Subtitle D Landfill which is licensed, permitted, or otherwise authorized by a state to accept the delisted wastewater treatment sludge. IBM must implement a testing program that meets the following conditions for the exclusion to be valid: 1. Delisting Levels: (A) All leachable concentrations for the following constituents must not exceed the following levels (mg/L for TCLP): Arsenic—5.0; Barium—100.0; Cadmium—1.0; Chromium—5.0; Lead—5.0; Mercury—0.2; and, Nickel—32.4. 2. *Waste Handling and Holding:* (A) IBM must manage as hazardous all WWTP sludge generated until it has completed initial verification testing described in paragraph (3)(A) and valid analyses show that paragraph (1) is satisfied and written approval is received by EPA. (B) Levels of constituents measured in the samples of the WWTP sludge that do not exceed the levels set forth in paragraph (1) for two consecutive quarterly sampling events are non-hazardous. After approval is received from EPA, IBM can manage and dispose of the non-hazardous WWTP sludge according to all applicable solid waste regulations. (C) Not withstanding having received the initial approval from EPA, if constituent levels in a later sample exceed any of the Delisting Levels set in paragraph (1), from that point forward, IBM must treat all the waste covered by this exclusion as hazardous until it is demonstrated that the waste again meets the levels in paragraph (1). IBM must manage and dispose of the waste generated under Subtitle C of RCRA from the time that it becomes aware of any exceedance. 3. *Verification Testing Requirements:* IBM must perform sample collection and analyses in accordance with the approved Quality Assurance Project Plan dated January 27, 2011. All samples shall be representative composite samples according to appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW–846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B,1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. Methods must meet Performance Based Measurement System Criteria in which the Data Quality Objectives are to demonstrate that samples of the IBM sludge are representative for all constituents listed in paragraph (1). To verify that the waste does not exceed the specified delisting concentrations, for one year after the final exclusion is granted, IBM must perform quarterly analytical testing by sampling and analyzing the WWTP sludge as follows: (A) Quarterly Testing: (i) Collect two representative composite samples of the WWTP sludge at quarterly intervals after EPA grants the final exclusion. The first composite samples must be taken within 30 days after EPA grants the final approval. The second set of samples must be taken at least 30 days after the first set. (ii) Analyze the samples for all constituents listed in paragraph (1). Any waste regarding which a composite sample is taken that exceeds the delisting levels listed in paragraph (1) for the sludge must be disposed as hazardous waste in accordance with the applicable hazardous waste requirements from the time that IBM becomes aware of any exceedance.

TABLE 1—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(iii) Within thirty (30) days after taking each quarterly sample, IBM will report its analytical test data to EPA. If levels of constituents measured in the samples of the sludge do not exceed the levels set forth in paragraph (1) of this exclusion for two consecutive quarters, and EPA concurs with those findings, IBM can manage and dispose the non-hazardous sludge according to all applicable solid waste regulations. (B) Annual Testing: (i) If IBM completes the quarterly testing specified in paragraph (3) above and no sample contains a constituent at a level which exceeds the limits set forth in paragraph (1), IBM may begin annual testing as follows: IBM must test two representative composite samples of the wastewater treatment sludge (following the same protocols as specified for quarterly sampling, above) for all constituents listed in paragraph (1) at least once per calendar year. (ii) The samples for the annual testing taken for the second and subsequent annual testing events shall be taken within the same calendar month as the first annual sample taken. (iii) IBM shall submit an annual testing report to EPA with its annual test results, within thirty (30) days after taking each annual sample. The annual testing report also shall include the total amount of waste in cubic yards disposed during the calendar year. 4. *Changes in Operating Conditions:* If IBM significantly changes the manufacturing or treatment process described in the petition, or the chemicals used in the manufacturing or treatment process, it must notify the EPA in writing and may no longer handle the wastes generated from the new process as non-hazardous unless and until the wastes are shown to meet the delisting levels set in paragraph (1), IBM demonstrates that no new hazardous constituents listed in appendix VIII of part 261 have been introduced, and IBM has received written approval from EPA to manage the wastes from the new process under this exclusion. While the EPA may provide written approval of certain changes, if there are changes that the EPA determines are highly significant, the EPA may instead require IBM to file a new delisting petition. 5. *Data Submittals and Recordkeeping:* IBM must submit the information described below. If IBM fails to submit the required data within the specified time or maintain the required records on-site for the specified time, EPA, at its discretion, will consider this sufficient basis to reopen the exclusion as described in paragraph (6). IBM must: (A) Submit the data obtained through paragraph (3) to the Chief, RCRA Waste Management & UST Section, U.S. EPA Region 1, (OSRR07–1), 5 Post Office Square, Suite 100, Boston, MA 02109–3912, within the time specified. All supporting data can be submitted on CD–ROM or some comparable electronic media; (B) Compile, summarize, and maintain on site for a minimum of five years and make available for inspection records of operating conditions, including monthly and annual volumes of WWTP sludge generated, analytical data, including quality control information, and copies of the notification(s) required in paragraph (7); (C) Submit with all data a signed copy of the certification statement in 40 CFR 260.22(i)(12). 6. *Reopener Language*—(A) If, anytime after disposal of the delisted waste, IBM possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or groundwater monitoring data) or any other relevant data to the delisted waste indicating that any constituent is at a concentration in the leachate higher than the specified delisting concentration, then IBM must report such data, in writing, to the Regional Administrator and to the Vermont Agency of Natural Resources Secretary within 10 days of first possessing or being made aware of that data. (B) Based on the information described in paragraph (A) and any other information received from any source, the Regional Administrator will make a preliminary determination as to whether the reported information requires Agency action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (C) If the Regional Administrator determines that the reported information does require Agency action, the Regional Administrator will notify IBM in writing of the actions the Regional Administrator believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing IBM with an opportunity to present information as to why the proposed Agency action is not necessary or to suggest an alternative action. IBM shall have 30 days from the date of the Regional Administrator's notice to present the information. (D) If after 30 days IBM presents no further information or after a review of any submitted information, the Regional Administrator will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment. Any required action described in the Regional Administrator's determination shall become effective immediately, unless the Regional Administrator provides otherwise. 7. *Notification Requirements:* IBM must do the following before transporting the delisted waste: (A) Provide a one-time written notification to any state Regulatory Agency to which or through which it will transport the delisted waste described above for disposal, 60 days before beginning such activities; (B) Update the one-time written notification if it ships the delisted waste to a different disposal facility. Failure to provide this notification will result in a violation of the delisting petition and a possible revocation of the decision.

* * * * * * *

[FR Doc. 2012–22571 Filed 9–12–12; 8:45 am]
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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 100812345–2142–03]

RIN 0648–XC229

Snapper-Grouper Fishery of the South Atlantic; Reopening of the 2012 Commercial Sector for Yellowtail Snapper in the South Atlantic

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

ACTION: Temporary rule; reopening.

SUMMARY: NMFS reopens the 2012 commercial sector for yellowtail snapper in the South Atlantic exclusive economic zone (EEZ). NMFS previously determined the commercial ACL for yellowtail snapper would be reached by September 11, 2012, and closed the commercial sector for yellowtail snapper in the South Atlantic EEZ at 12:01 a.m. on September 11, 2012. Updated landings estimates indicate the ACL will not be reached by that date. Therefore, NMFS is reopening the commercial sector for yellowtail snapper. The purpose of this action is to allow the commercial sector to maximize harvest benefits and at the same time protect the yellowtail snapper resource.

DATES: The reopening is effective 12:02 a.m., local time, September 11, 2012, through December 31, 2012, the end of the fishing season, unless the ACL is reached before that date, at which time the Assistant Administrator may file a notification to that effect with the Office of the Federal Register.

FOR FURTHER INFORMATION CONTACT: Catherine Hayslip, telephone: 727–824–5305, or email: *Catherine.Hayslip@noaa.gov*.

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic includes yellowtail snapper and is managed under the Fishery Management Plan (FMP) for the Snapper-Grouper Fishery of the South Atlantic Region. The FMP was prepared by the South Atlantic Fishery Management Council (Council) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Background

The 2007 reauthorization of the Magnuson-Stevens Act implemented new requirements that established ACLs and AMs to end overfishing and prevent overfishing from occurring. AMs are management controls to prevent ACLs from being exceeded, and to correct or mitigate overages of the ACL if they occur.

The Comprehensive ACL Amendment to the Snapper-Grouper FMP, the Golden Crab Fishery of the South Atlantic Region FMP, the Dolphin and Wahoo Fishery off the Atlantic States FMP, and the Pelagic Sargassum Habitat of the South Atlantic Region FMP published March 16, 2010 (77 FR 15916). In part, the final rule for the Comprehensive ACL Amendment specified ACLs and AMs for species in the Snapper-Grouper FMP that are not undergoing overfishing, including yellowtail snapper. Implementation of ACLs and AMs for yellowtail snapper is intended to prevent overfishing from occurring in the future, while maintaining catch levels consistent with achieving optimum yield for the resource.

The AM at § 622.49(b)(14)(i) requires NMFS to close the commercial sector for yellowtail snapper for the remainder of the fishing year when the ACL is reached, or is projected to be reached, by filing a notification to that effect with the Office of the Federal Register. NMFS projected the commercial ACL for yellowtail snapper of 1,142,589 lb (518,270 kg), round weight, would be reached on or before September 11, 2012, and closed the commercial sector for yellowtail snapper on that date (77 FR 53776, September 4, 2012). However, based on updated landings estimates, NMFS has determined that only 75 percent of the available commercial ACL will be landed by September 11, 2012. Therefore, NMFS will reopen the commercial sector to allow the remainder of the ACL to be harvested.

Under the reopening procedures located at § 622.43(c), when a sector has been closed based on a projection of when the ACL specified in § 622.49 has been reached and subsequent data indicate that the ACL was not reached, the Assistant Administrator may file a notification to that effect with the Office of the Federal Register. Such notification may reopen the sector to provide an opportunity for the ACL to be harvested. Accordingly, NMFS is reopening the commercial sector for yellowtail snapper in the South Atlantic EEZ from 12:02 a.m., local time, September 11, 2012, through December 31, 2012, the end of the fishing year, unless the ACL is reached before that date. If the ACL is reached before that date, the Assistant Administrator may file a notification to that effect with the Office of the Federal Register.

Classification

The Regional Administrator, Southeast Region, NMFS, has determined this temporary rule is necessary for the conservation and management of South Atlantic yellowtail snapper and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is taken under § 622.43(c) and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and comment.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive the requirements to provide prior notice and the opportunity for public comment on this temporary rule. Such procedures are unnecessary and contrary to the public interest because the commercial ACL for yellowtail snapper established in the Comprehensive ACL Amendment and located at § 622.49(b)(14)(i)(A) and the reopening procedures located at § 622.43(c) have already been subject to notice and comment and all that remains is to notify the public that additional harvest is available under the established ACL and, therefore, the commercial sector for yellowtail snapper will reopen.

Additionally, there is a need to immediately notify the public of the reopening of the commercial sector for yellowtail snapper because the closure is set for September 11, 2012, and this reopening will allow fishers to continue their fishing practices with minimal disruption to business practices. Therefore, this temporary rule is intended to minimize economic harm to fishermen while still protecting the yellowtail snapper resource.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

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

Dated: September 10, 2012.

Lindsay Fullenkamp,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2012–22586 Filed 9–10–12; 4:15 pm]
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