

time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: March 29, 2005.

**Wayne Nastri,**

*Regional Administrator, Region IX.*

[FR Doc. 05-8187 Filed 4-22-05; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 261

[R5-GMJA-05; SW-FRL-7903-4]

#### Hazardous Waste Management System; Identification and Listing of Hazardous Waste Proposed Exclusion

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The EPA (also, “the Agency” or “we” in this preamble) is proposing to grant a petition to exclude or “delist” wastewater treatment sludge from conversion coating on aluminum generated by the General Motors Corporation (GM) Janesville Truck Assembly Plant (JTAP) in Janesville, Wisconsin from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA). This proposed exclusion, if finalized, conditionally excludes the petitioned waste from the requirements of hazardous waste regulations under RCRA.

This petition was evaluated in a manner similar to the expedited process developed as a special project in conjunction with the Michigan Department of Environmental Quality (MDEQ) for delisting similar wastes generated by a similar manufacturing process. Based on an evaluation of waste-specific information provided by GM, we have tentatively concluded that the petitioned waste from JTAP is nonhazardous with respect to the original listing criteria and that there are no other factors which would cause the waste to be hazardous. This exclusion, if finalized, would be valid only when the sludge is disposed of in a Subtitle D landfill which is permitted, licensed, or registered by a State to manage industrial solid waste.

**DATES:** We will accept public comments on this proposed rule until June 9, 2005.

**ADDRESSES:** Please send two copies of your comments to Judy Kleiman, Waste Management Branch (DW-8J), Environmental Protection Agency, 77 W. Jackson Blvd., Chicago, Illinois

60604. We will stamp comments postmarked after the close of the comment period as “late.” These “late” comments may not be considered in formulating a final decision. Any person may request a hearing on this proposed decision by filing a request with Margaret Guerriero, Director, Waste, Pesticides and Toxics Division, Environmental Protection Agency, 77 W. Jackson Blvd., Chicago, Illinois 60604. Your request for a hearing must reach EPA by May 10, 2005. The request must contain the information prescribed in Title 40 Code of Federal Regulations (40 CFR) 260.20(d).

**FOR FURTHER INFORMATION CONTACT:** The RCRA regulatory docket for this proposed rule, number R5-GMJA-04, is located at EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604, and is available for viewing from 8 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. The public may copy material from the regulatory docket at \$0.15 per page. For further technical information concerning this document or for appointments to view the docket, contact Judy Kleiman at the address above, by calling 312-886-1482 or by e-mail at [kleiman.judy@epa.gov](mailto:kleiman.judy@epa.gov).

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

- I. Background
  - A. What is a delisting petition?
  - B. What regulations allow a waste to be delisted?
- II. GM’s Petition to Delist Waste from Janesville Truck Assembly Plant
  - A. How is the petitioned waste generated?
  - B. What is the process for delisting F019 from zinc phosphating operations at automobile and light truck assembly plants?
  - C. What information did GM submit in support of its petition?
- III. EPA’s Evaluation of This Petition
  - A. How did EPA evaluate the information submitted?
  - B. What did EPA conclude about this waste?
- IV. Proposal to Delist Waste from Janesville Truck Assembly Plant
  - A. What is EPA proposing?
  - B. What are the terms of this exclusion?
  - C. What are the maximum allowable concentrations of hazardous constituents in the waste?
- V. Statutory and Executive Order Reviews

#### I. Background

##### A. What Is a Delisting Petition?

A delisting petition is a request from a generator to exclude waste from the list of hazardous wastes under RCRA regulations. In a delisting petition, the petitioner must show that waste generated at a particular facility does not meet any of the criteria for which

EPA listed the waste as set forth in 40 CFR 261.11 and the background document for the waste. In addition, a petitioner must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (that is, ignitability, reactivity, corrosivity, and toxicity) and must present sufficient information for us to decide whether factors other than those for which the waste was listed warrant retaining it as a hazardous waste. (See 40 CFR 260.22, 42 United States Code (U.S.C.) 6921(f) and the background document for a listed waste.)

A generator remains obligated under RCRA to confirm that its waste remains nonhazardous based on the hazardous waste characteristics even if EPA has “delisted” the waste and to ensure that future generated waste meets the conditions set.

##### B. What Regulations Allow a Waste To Be Delisted?

Under 40 CFR 260.20, 260.22, and 42 U.S.C. 6921(f), a facility may petition the EPA to remove its waste from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. Specifically, 40 CFR 260.20 allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 266, 268, and 273 of 40 CFR.

#### II. GM’s Petition To Delist Waste From Janesville Truck Assembly Plant

##### A. How Is the Petitioned Waste Generated?

GM is petitioning to exclude wastewater treatment sludge resulting from a conversion coating process on truck bodies which have aluminum components. The truck bodies are immersed in a zinc phosphate bath which applies a conversion coating on the surface of the metal. The rinses and overflows from the conversion coating process comingle with wastewaters from cleaning and rinsing operations which may include alkaline cleaners, surfactants, organic detergents and rinse conditioners. After the zinc phosphating bath, the truck bodies are subjected to an electrocoating process and spray painting. Overflows and rinse water from the electrocoating process and from the paint booths combine with the wastewater from the conversion coating before entering the wastewater treatment plant. When treated, the wastewater from the conversion coating on aluminum causes all the sludge generated from these wastewaters to be a listed waste, F019.

In the wastewater treatment plant, large particles are screened out and the wastewater is sent to various thickeners

and clarifier tanks where water and solids are further separated. The pH of the wastewater may be adjusted and flocculents and coagulants may be added to facilitate the thickening process. The solids which settle in the thickeners and clarifiers are dewatered in a filter press and the resultant F019 filter cake drops into a roll off box for disposal.

The zinc phosphating process used today does not contain hexavalent chromium or cyanide for which F019 was originally listed, but trivalent chromium, nickel, and zinc may be present in the wastewater and in the sludge. Other hazardous constituents such as organic solvents, formaldehyde or additional metals could also be in the waste stream. Before a waste can be delisted, the petitioner must demonstrate that there are no hazardous constituents in the sludge from other operations in the plant at levels of concern and that there are no other factors that might cause the waste to be hazardous. GM believes that its sludge does not contain the constituents for which F019 was listed and that there are no other constituents or factors that would cause the waste to remain hazardous.

*B. What Is the Process for Delisting F019 From Zinc Phosphating Operations At Automobile and Light Truck Assembly Plants?*

The zinc phosphating process used by GM at JTAP is substantially similar to the process used at most automobile and light truck assembly plants in conversion coating steel and aluminum. A number of automobile and light truck

assembly plants have been granted hazardous waste exclusions as a result of a special expedited delisting project established in a Memorandum of Understanding (MOU) between EPA Region 5 and MDEQ (67 FR 10341, March 7, 2002 and 68 FR 44652, July 30, 2003). These facilities were able to take advantage of a common sampling approach and expedited rulemaking procedure mainly due to the similarity of the wastes and processes generating the waste. GM certified that the process generating the filter cake at JTAP is consistent with the process described in the MOU for expedited delistings.

Using available historical data and other information, the expedited process identified 70 constituents which might be of concern in the F019 waste generated at automobile and light truck assembly plants, and a Sampling and Analysis Plan was developed specifically for testing this waste. EPA agreed to allow GM to use the same Sampling and Analysis Plan and the same list of constituents of concern to demonstrate that the levels of constituents in the waste at JTAP are below the levels of concern that could pose a threat to human health or the environment when the waste is disposed in a nonhazardous landfill.

*C. What Information Did GM Submit in Support of Its Petition?*

To support its exclusion demonstration, GM collected six samples representing waste generated at JTAP over six weeks. All sampling was done in accordance with the Sampling and Analysis Plan developed for the expedited delisting project but modified

to eliminate multiple sampling events or long term storage of full roll-off boxes. A representative amount of sludge was collected each week for six weeks starting with the week of March 15, 2004 and continuing through the week of April 19, 2004. The sludge for each week was placed in a separate 55 gallon drum, and on April 27, 2004, composite and grab samples were collected from all drums. In accordance with the Sampling and Analysis Plan, each sample was analyzed for: (1) Total analyses of 69 constituents of concern;<sup>1</sup> (2) Toxicity Characteristic Leaching Procedure (TCLP), Method 1311 in *Test Methods for Evaluating Solid Waste, Physical/Chemical Methods* (SW-846) for the volatile and semivolatile constituents of concern; (3) oil and grease, SW-846 Method 9071B; (4) leachable metals using the Extraction Procedure for Oily Wastes (OWEP), SW-846 Method 1330A; (5) total constituent analysis for sulfide, SW-846 Method 9034; and (6) total constituent analysis for cyanide, SW-846 Method 9012A. In addition, the pH of each sample was measured using SW-846 Method 9045C and a determination was made that the waste was not ignitable, corrosive or reactive (see 40 CFR 261.21-261.23). The data submitted included the appropriate quality assurance/quality control information and was validated by an independent third party as required in the Sampling and Analysis Plan. The maximum values of constituents detected in any sample of the wastewater treatment sludge or in a TCLP extract of that sludge are summarized in the table below.

Constituent	Maximum concentration observed		Maximum allowable delisting level (3,000 cubic yards)		Maximum allowable groundwater concentration (mg/L)
	Total (mg/kg)	TCLP (mg/L)	Total (mg/kg)	TCLP (mg/L)	
<b>Volatile Organic Compounds</b>					
acetone .....	<10	0.33	NA	1,500	34
formaldehyde .....	2.4	0.12	540	43 <sup>2</sup>	0.950
n-butyl alcohol .....	25	0.2	NA	171	3.7
<b>Semivolatile Organic Compounds</b>					
p-cresol .....	2.6	0.28	NA	8.5	0.190
bis (2-ethylhexyl)-phthalate .....	1.7	<0.005	890,000	0.15	0.0032
2,4-dimethylphenol .....	<3.0	0.007	NA	34	0.750
naphthalene .....	<1.5	0.0046	NA	0.55	0.012

<sup>1</sup> The expedited delisting project originally called for the analysis of 70 constituents. However, the analysis of acrylamide required extreme methods to achieve a detection level at the level of concern. Despite the use of single ion monitoring, no acrylamide was detected in any sample analyzed by any of the original facilities participating in the

expedited delisting project. Consequently, the Agency decided it would not be appropriate to require analysis for acrylamide.

<sup>2</sup> The allowable TCLP concentrations from the groundwater inhalation exposure pathway have been changed to account for the cumulative groundwater inhalation exposure from all

residential inhalation exposures (shower, bathroom, and whole-house). Previous calculations of allowable levels were based on only the most conservative of these three. This change in the calculation results in a more conservative allowable limit for TCLP concentration of formaldehyde.

Constituent	Maximum concentration observed		Maximum allowable delisting level (3,000 cubic yards)		Maximum allowable groundwater concentration (mg/L)
	Total (mg/kg)	TCLP (mg/L)	Total (mg/kg)	TCLP (mg/L)	
<b>Metals</b>					
arsenic .....	<50	0.045	8,000	0.22	0.005
barium .....	210	<.35	NA	100	2
cadmium .....	1.6	<0.023	22,000	0.36	0.005
chromium .....	75	<0.12	3,200	3.7	0.100
cobalt .....	4.3	<0.029	14,000	18	0.750
lead .....	214	<0.15	500,000	5	0.015
nickel .....	1,180	7.99	NA	68	0.750
tin .....	<100	2.02	NA	540	23
zinc .....	7,320	0.36	NA	670	11
<b>Miscellaneous</b>					
cyanide .....	0.7	<0.05	NA	8.6	0.2
corrosivity (pH) .....	7.8–8.19		2.0 <pH <12.5		NA

<Not detected at the specified concentration.

NA not applicable.

mg/kg milligrams per kilogram.

mg/L milligrams per liter.

These levels represent the highest constituent concentration found in any one sample and do not necessarily represent the specific levels found in a single sample.

### III. EPA's Evaluation of This Petition

#### A. How Did EPA Evaluate the Information Submitted?

In developing this proposal, we considered the original listing criteria and evaluated additional factors required by the Hazardous and Solid Wastes Amendments of 1984 (HSWA). See section 222 of HSWA, 42 U.S.C. 6921(f), and 40 CFR 260.22 (d)(2)–(4). We evaluated the petitioned waste against the listing criteria and factors cited in 40 CFR 261.11(a)(2) and (3). These factors include: (1) Whether the waste is considered acutely toxic; (2) the toxicity of the constituents; (3) the concentration of the constituents in the waste; (4) the tendency of the hazardous constituents to migrate and to bioaccumulate; (5) persistence of these constituents in the environment once released from the waste; (6) plausible and specific types of management of the petitioned waste; (7) the quantity of waste produced; and (8) waste variability.

EPA identified plausible exposure routes (ground water, surface water, air) for hazardous constituents released from the waste in an improperly managed Subtitle D landfill. To evaluate the waste, we used the Delisting Risk Assessment Software program (DRAS), a Windows based software tool, to estimate the potential release of hazardous constituents from the waste and to predict the risk associated with those releases. For a detailed description of the DRAS program and

revisions see: 65 FR 58015, September 27, 2000; 65 FR 75637, December 4, 2000; 65 FR 75897, December 5, 2000; and 67 FR 10341, March 7, 2002.

#### B. What Did EPA Conclude About This Waste?

EPA compared the analytical results submitted by JTAP to the maximum allowable levels calculated by the DRAS for an annual volume of 3,000 cubic yards. The maximum allowable levels for constituents detected in the waste or the waste leachate are summarized in the table above. All constituents compared favorably to the allowable levels.

The table also includes the maximum allowable levels in groundwater at a potential receptor well, as evaluated by DRAS. These levels are the more conservative of either the Safe Drinking Water Act Maximum Contaminant Level (MCL) or the health-based value calculated by DRAS based on the target cancer risk level of  $10^{-6}$  or the target hazard quotient of one. For arsenic, the target cancer risk was set at  $10^{-4}$  in consideration of the MCL and the potential for natural occurrence. The maximum allowable groundwater concentration and delisting level for arsenic correspond to a drinking water concentration less than one half the current MCL of 0.010 mg/L.

EPA also used the DRAS program to estimate the aggregate cancer risk and hazard index for constituents detected in the waste. The aggregate cancer risk is the cumulative total of all individual

constituent cancer risks. The hazard index is a similar cumulative total of non-cancer effects. The target aggregate cancer risk is  $1 \times 10^{-5}$  and the target hazard index is one. The wastewater treatment sludge at JTAP met both of these criteria.

### IV. Proposal To Delist Waste From Janesville Truck Assembly

#### A. What Is EPA Proposing?

Today the EPA is proposing to conditionally exclude or delist 3,000 cubic yards annually of wastewater treatment sludge generated at JTAP from conversion coating on aluminum.

#### B. What Are the Terms of This Exclusion?

GM must dispose of the JTAP waste in a lined Subtitle D landfill which is permitted, licensed, or registered by a state to manage industrial waste. This exclusion applies only to a maximum annual volume of 3,000 cubic yards and is effective only if all conditions contained in this rule are satisfied. GM must verify on a quarterly basis that the concentrations of the constituents of concern in the JTAP sludge do not exceed the allowable levels set forth in this exclusion. The list of constituents for verification is based on the concentration and frequency of occurrence of constituents of concern in GM's JTAP sludge and in wastes generated by the majority of facilities participating in the expedited process to delist F019.

*C. What Are the Maximum Allowable Concentrations of Hazardous Constituents in the Waste?*

Concentrations of the following constituents measured in the TCLP (or OWEF, where appropriate) extract of the waste must not exceed the following levels (mg/L): antimony—0.49; arsenic—0.22; cadmium—0.36; chromium—3.7; lead—5; nickel—68; selenium—1; thallium—0.21; tin—540; zinc—670; p-cresol—8.5; and formaldehyde—43. The total concentrations in the waste of the following constituents must not exceed the following levels (mg/kg): formaldehyde—540; chromium—3,200; and mercury—7.

**V. Statutory and Executive Order Reviews**

Under Executive Order 12866, “Regulatory Planning and Review” (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is “significant” and therefore subject to OMB review and the requirements of the Executive Order. It has been determined that this rule is not a “significant regulatory action” under the terms of Executive Order 12866 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 and does not have a significant economic impact on a substantial number of small entities, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule is not subject to sections 202, 203, 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. Therefore, EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year.

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 infants and 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.

**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: April 14, 2005.

**Bruce Sypniewski,**

*Acting Director, Waste, Pesticides and Toxics Division.*

For the reasons set out in the preamble, 40 CFR part 261 is proposed to be 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, and 6938.

2. In Table 1 of Appendix IX of part 261 the following wastestream is added in alphabetical order by facility to read as follows:

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

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
* * * * *		
General Motors Corporation Janesville Truck Assembly.	Janesville, Wisconsin .....	Wastewater treatment sludge, F019, that is generated at the General Motors Corporation (GM) Janesville Truck Assembly Plant (JTAP) at a maximum annual rate of 3,000 cubic yards per year. The sludge must be disposed of in a lined landfill with leachate collection, which is licensed, permitted, or otherwise authorized to accept the delisted wastewater treatment sludge in accordance with 40 CFR part 258. The exclusion becomes effective as of (insert final publication date).

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

Facility	Address	Waste description
		<p>1. <i>Delisting Levels:</i> (A) The concentrations in a TCLP extract of the waste measured in any sample may not exceed the following levels (mg/L): antimony—0.49; arsenic—0.22; cadmium—0.36; chromium—3.7; lead—5; nickel—68; selenium—1; thallium—0.21; tin—540; zinc—670; p-cresol—8.5; and formaldehyde—43;. (B) The total concentrations measured in any sample may not exceed the following levels (mg/kg): chromium—3,200; mercury—7; and formaldehyde—540.</p> <p>2. <i>Quarterly Verification Testing:</i> To verify that the waste does not exceed the specified delisting levels, GM must collect and analyze one representative sample of JTAP's sludge on a quarterly basis.</p> <p>3. <i>Changes in Operating Conditions:</i> GM must notify the EPA in writing if the manufacturing process, the chemicals used in the manufacturing process, the treatment process, or the chemicals used in the treatment process at JTAP significantly change. GM must handle wastes generated at JTAP after the process change as hazardous until it has demonstrated that the waste continues to meet the delisting levels and that no new hazardous constituents listed in appendix VIII of part 261 have been introduced and GM has received written approval from EPA.</p> <p>4. <i>Data Submittals:</i> GM must submit the data obtained through verification testing at JTAP or as required by other conditions of this rule to EPA Region 5, Waste Management Branch (DW-8J), 77 W. Jackson Blvd., Chicago, IL 60604. The quarterly verification data and certification of proper disposal must be submitted annually upon the anniversary of the effective date of this exclusion. GM must compile, summarize, and maintain at JTAP records of operating conditions and analytical data for a minimum of five years. GM must make these records available for inspection. All data must be accompanied by a signed copy of the certification statement in 40 CFR 260.22(i)(12).</p> <p>5. <i>Reopener Language</i>—(a) If, anytime after disposal of the delisted waste, GM possesses or is otherwise made aware of any data (including but not limited to leachate data or groundwater monitoring data) relevant to the delisted waste at JTAP indicating that any constituent is at a level in the leachate higher than the specified delisting level, or is in the groundwater at a concentration higher than the maximum allowable groundwater concentration in paragraph (e), then GM must report such data in writing to the Regional Administrator within 10 days of first possessing or being made aware of that data.</p> <p>(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.</p> <p>(c) If the Regional Administrator determines that the reported information does require Agency action, the Regional Administrator will notify GM 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 GM with an opportunity to present information as to why the proposed Agency action is not necessary or to suggest an alternative action. GM shall have 30 days from the date of the Regional Administrator's notice to present the information.</p> <p>(d) If after 30 days GM presents no further 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.</p> <p>(e) Maximum Allowable Groundwater Concentrations (mg/L); antimony—0.006; arsenic—0.005; cadmium—0.005; chromium—0.1; lead—0.015; nickel—0.750; selenium—0.050; tin—23; zinc—11; p-Cresol—0.190; and formaldehyde—0.950.</p>
		* * * * *

[FR Doc. 05-8190 Filed 4-22-05; 8:45 am]

BILLING CODE 6560-50-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[Docket No. 050408096-5096-01; I.D. 033105A]

RIN 0648-AS69

#### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Gulf Reef Fish Limited Access System

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS issues this proposed rule to implement Amendment 24 to the Fishery Management Plan (FMP) for the Reef Fish Resources of the Gulf of Mexico (Amendment 24) prepared by the Gulf of Mexico Fishery Management Council (Council). This proposed rule would establish a limited access system for the commercial reef fish fishery in the Gulf of Mexico by capping participation at the current level. The intended effect of this proposed rule is to provide economic and social stability in the fishery by preventing speculative entry into the fishery.

**DATES:** Written comments on the proposed rule must be received no later than 5 p.m., eastern time, on June 9, 2005.

**ADDRESSES:** You may submit comments on the proposed rule by any of the following methods:

- E-mail: 0648-

AS69.Proposed@noaa.gov. Include in the subject line the following document identifier: 0648-AS69.

- Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- Mail: Peter Hood, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.
- Fax: 727-824-5308; Attention: Peter Hood.

Copies of Amendment 24, which includes a Regulatory Impact Review (RIR), Initial Regulatory Flexibility Analyses (IRFA), and an Environmental Assessment, may be obtained from the Gulf of Mexico Fishery Management Council, The Commons at Rivergate, 3018 U.S. Highway 301 North, Suite

1000, Tampa, FL 33619-2266; telephone: 813-228-2815; fax: 813-225-7015; e-mail: [gulfcouncil@gulfcouncil.org](mailto:gulfcouncil@gulfcouncil.org). Copies of Amendment 24 can also be downloaded from the Council's website at [www.gulfcouncil.org](http://www.gulfcouncil.org).

**FOR FURTHER INFORMATION CONTACT:**

Peter Hood, telephone: 727-551-5728, fax: 727-824-5308, e-mail: [peter.hood@noaa.gov](mailto:peter.hood@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The reef fish fishery in the exclusive economic zone (EEZ) of the Gulf of Mexico is managed under the FMP. The FMP was prepared by the 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

Prior to 1992, the commercial reef fish fishery in the EEZ of the Gulf of Mexico operated under open access. In 1992, due to concerns about increasing levels of participation in the fishery, a 3-year moratorium on the issuance of new commercial vessel permits for Gulf reef fish was implemented under Amendment 4 to the FMP (April 8, 1992; 57 FR 11914). The moratorium was designed to stabilize the level of participation in the fishery and to allow for evaluation and development of a more comprehensive controlled access system for the commercial reef fish fishery. The moratorium was subsequently extended through 1995 (Amendment 9) (August 2, 1994; 59 FR 39301); through 2000 (Amendment 11) (December 15, 1995; 60 FR 64350); and through 2005, or until replaced by a more comprehensive access/effort control program (Amendment 17) (July 3, 2000; 65 FR 41016).

The effects of the existing permit moratorium have been to prevent increases in effort, reduce the number of permittees in the reef fish fishery, and help stabilize the economic performance of current participants. Under the moratoria, the number of commercial vessel reef fish permits has declined from 1,718 in 1993 to 1,129 in 2004.

Current commercial reef fish fishery participants have demonstrated the capability of harvesting the applicable quotas well in advance of the end of the fishing season, resulting in early closures of the fishery. Allowing the fishery to revert to open access would result in an increased number of participants in the fishery, most likely negating any reductions in effort that have been achieved as a result of the current moratorium. An increase in

participants would lead to even earlier fishery closures and would have an adverse impact on the economic performance of current participants. Increased participation would also compound the complexity of any future consideration by the Council to develop a more comprehensive controlled access or effort limitation system for this fishery. For these reasons, the Council has concluded that a limited access system to continue restrictions on participation levels in the fishery is appropriate.

#### Limited Access System

Amendment 24 would establish a limited access system for the commercial fishery for Gulf reef fish by capping participation at the current level. Under the proposed limited access system, an owner of a vessel with a valid commercial vessel permit for Gulf reef fish on the date that Amendment 24 is approved (assuming approval) would be issued the applicable permits under the limited access system. Commercial vessel permits for Gulf reef fish would become limited access permits upon their renewal. Other than the changes in the terminology, i.e., "limited access" versus "moratorium," there would be no changes to the current procedures for application, qualification, issuance, renewal, or transferability of these permits.

#### Classification

At this time, NMFS has not determined that Amendment 24, which this proposed rule would implement, is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. In making that determination, NMFS will take into account the data, views, and comments received during the comment period on Amendment 24 ending June 6, 2005, and the comment period on this proposed rule ending June 9, 2005.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared an IRFA as required by section 603 of the Regulatory Flexibility Act. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained in this Classification section and in the **SUMMARY** of this proposed rule. A summary of the analysis follows.

This proposed rule would establish a limited access system for the commercial reef fish fishery in the Gulf of Mexico. The purpose of the proposed