

statement. The proposal would require an amendment to FTA's school bus operations regulations, not its interpretation of those regulations, and FTA would have to adopt such a scheme through a rulemaking.

With respect to the proposed exemptions, FTA believes that, if adopted, these proposals would constitute substantive changes to the text of FTA's school bus operations regulations. FTA already lists a series of allowable exemptions at 49 CFR 605.11. Thus, FTA believes that it cannot appropriately consider these exemptions within the rubric of this final policy statement.

Finally, FTA believes that the comments suggesting a negotiated rulemaking fall outside the scope of this policy statement. FTA will appropriately address any comments regarding a notice of proposed rulemaking in that forum.

#### IV. Final FTA Policy

##### A. Purpose of Final FTA Policy

In the final policy set forth below, FTA clarifies its guidance regarding FTA's interpretation of its school bus operations regulations under 49 CFR part 605 in light of the Court's decision in *Rochester-Genesee Regional Transportation Authority*. FTA respects the Court's decision in the Western District of New York. However, FTA finds that the Court's decision is problematic because, if applied elsewhere in the United States, it could obstruct FTA's ability to execute and implement Congress's school bus prohibition and Congress's express intent regarding that prohibition. Therefore, FTA issues this final policy statement to clarify the status of FTA's guidance regarding its interpretation of its school bus operations regulations under 49 CFR part 605, and to resolve, for jurisdictions outside of the Western District of New York, conflicting issues between FTA's school bus operations policy and the Court's decision in *Rochester-Genesee Regional Transportation Authority*.

Additionally, FTA intends to issue expeditiously a notice of proposed rulemaking to provide clearer definitions of "tripper service" and "school bus operations," as well as generally to update the existing school bus regulation.

##### B. Tripper Service

With respect to a grantee's regularly scheduled public transportation service, FTA shall interpret the definition of "tripper service" under 49 CFR 605.3(b), as it historically has interpreted that

definition, to allow a grantee to (1) utilize "various fare collections or subsidy systems," (2) modify the frequency of service, and (3) make de minimis route alterations from route paths in the immediate vicinity of schools to stops located at or in close proximity to the schools. For example, a grantee may provide more frequent service on an existing route to accommodate increased student ridership before and after school. Furthermore, a grantee may alter route paths to accommodate the needs of school students by making de minimis route alterations from route paths to drop off and pick up students at stops located on school grounds or in close proximity to the schools.

FTA believes that this policy regarding its interpretation of the definition of "tripper service" is consistent with both the statutory language and the language of 49 CFR 605.3(b). This policy permits only the type of design or modification accommodations that FTA historically has allowed and does not represent a departure from FTA's prior guidance on this matter.

##### C. "Exclusive" School Bus Operations

To effectuate the intent of Congress when it enacted its school bus operations prohibition now codified at 49 U.S.C. 5323(f), FTA shall interpret the term "exclusively" in the definition of "school bus operations" under 49 CFR 605.3(b) to encompass any service that a reasonable person would conclude was primarily designed to accommodate students and school personnel, and only incidentally to serve the nonstudent general public. Additionally, grantees may create new routes to serve school students and personnel if a reasonable person would conclude that the grantees designed the routes to serve some segment of the nonstudent general public.

FTA believes that maintaining this interpretation of "exclusively" is consistent with the legislative history on the issue and would allow FTA effectively to implement the express intent of Congress, which is to prevent unfair competition between Federally funded grantees and private school bus operators. This policy does not represent a departure from FTA's prior guidance on this matter, and is merely intended to provide FTA with additional flexibility when interpreting 49 U.S.C. 5323(f) and 49 CFR 605.3(b) and effectuating the intent of Congress.

Issued in Washington, DC on this 11th day of September 2008.

**James S. Simpson,**  
Administrator.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 080225265-81165-02]

RIN 0648-AW28

#### Fisheries of the Exclusive Economic Zone Off Alaska; Recordkeeping and Reporting

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues regulations to exempt groundfish catcher/processors and motherships equipped with an operational vessel monitoring system transmitter from check-in/check-out requirements. This action reduces paperwork requirements for certain catcher/processors and motherships and changes the definitions for "active" period for motherships and trawl, longline, and pot gear catcher/processors. This action reduces administrative costs for both the fishing industry and NMFS.

**DATES:** Effective October 16, 2008.

**ADDRESSES:** Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to NMFS Alaska Region, P. O. Box 21668, Juneau, AK 99802 or the Alaska Region NMFS website at <http://alaskafisheries.noaa.gov> and by email to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov), or fax to 202-395-7285.

**FOR FURTHER INFORMATION CONTACT:** Patsy A. Bearden, 907-586-7008.

#### SUPPLEMENTARY INFORMATION:

##### Background

NMFS manages the U.S. groundfish fisheries of the exclusive economic zone (EEZ) off Alaska under the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs). The North Pacific Fishery Management Council

prepared the FMPs pursuant to the Magnuson–Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.* (Magnuson–Stevens Act). Regulations implementing the FMPs appear at 50 CFR part 679. General regulations that pertain to U.S. fisheries appear at subpart H of 50 CFR part 600.

#### Check-in/check-out Reports

A fish processor uses a check-in/check-out report to notify NMFS that it will participate or cease participation in a groundfish fishery. The check-in/check-out report also tells NMFS where fishing will occur (if a catcher/processor) or where groundfish will be received (if a mothership). NMFS inseason managers originally used the check-in/check-out information to monitor fishing capacity and effort. The information also was used by the United States Coast Guard to monitor catcher/processor and mothership vessel location.

According to regulations at § 679.5(h), catcher/processor and mothership operators, and shoreside processor and stationary floating processor managers must submit check-in/check-out reports on behalf of the processor. This action exempts operators of catcher/processors and motherships equipped with an operational vessel monitoring system (VMS) transmitter from submitting a check-in/check-out report to NMFS. Specifically, this action revises the text at § 679.5(h) to state that a catcher/processor or mothership that is not carrying onboard an operational VMS transmitter that meets the requirements of § 679.28(f) must submit check-in/check-out reports.

This action does not change the check-in/check-out report submission requirement for shoreside processors and stationary floating processors.

#### Vessel Monitoring System (VMS)

Over the past ten years, NMFS has added the requirement for VMS use in many fishery management programs to monitor vessel location. VMS transmitters combine global positioning systems and satellite communications to automatically provide precise location reports to NMFS several times each hour. NMFS requires VMS transmissions when a vessel is operating in:

- Any reporting area off Alaska while any fishery requiring VMS for which the vessel has a species and gear endorsement on its Federal Fisheries Permit is open;
- The Aleutian Islands subarea;

- The Gulf of Alaska (GOA) and mobile bottom contact gear is onboard; and
- The Central GOA Rockfish Pilot Program.

#### Active and Inactive Status

NMFS' current recordkeeping and reporting regulations are based on the active/inactive status of fishery participants. Processors, including motherships and trawl, longline, and pot gear catcher/processors, must record the occurrence of active and inactive periods. If inactive, a processor is required to do minimum recordkeeping and is not required to submit a check-in/check-out report. If active, a processor must submit a check-in/check-out report in addition to recording and reporting detailed catch information in logbooks and electronic and non-electronic reports.

The definition for an active period for a mothership and catcher/processor currently means "when checked-in or processing." Because this action eliminates the check-in/check-out report submittal requirement for certain of the motherships and catcher/processors, these processors would not qualify as being active and therefore would not need to report catch information. Therefore, the definition for an active period must change by removing "checked-in" as a reason for being active.

For a catcher/processor using longline or pot gear, the definition for "active" status is revised at § 679.5(a)(7)(i)(D)(1) to describe that "active" status starts when all or part of the longline or pot gear is in the water. For a catcher/processor using trawl gear, the definition for "active" status is revised at § 679.5(a)(7)(i)(D)(2) to describe that "active" status starts when all or part of the trawl net is in the water. Further, for a mothership, the definition for "active" status is revised at § 679.5(a)(7)(i)(C) to describe that an "active" status is when a mothership is receiving or processing groundfish.

A proposed rule was published in the **Federal Register** on May 29, 2008 (73 FR 30876), and the public review and comment period closed on June 30, 2008. No comments were received, and no changes have been made to the proposed rule. Please refer to the proposed rule for more detailed background information.

#### Classification

The Administrator, Alaska Region, NMFS, determined that this regulatory amendment is necessary for the conservation and management of the groundfish fishery and that it is

consistent with the Magnuson–Stevens Act and other applicable laws.

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

The Chief Council for Regulation of the Department of Commerce certified to the Chief Council for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification, and no changes have been made to the proposed rule. As a result, a regulatory flexibility analysis was not required and none was prepared.

#### Collection-of-Information

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) that has been approved by OMB under Control Number 0648–0213. Public reporting burden for the check-in/check-out report is estimated to average seven minutes per response including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection-of-information. The removal of the requirement for check-in and check-out reports by catcher/processors and motherships will result in an estimated annual savings of 248 burden hours per year, \$6,200 in personnel costs, and \$3,928 in miscellaneous costs.

Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by e-mail to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov), or fax to 202–395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

#### List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: September 10, 2008.

**Samuel D. Rauch III,**  
 Deputy Assistant Administrator for  
 Regulatory Programs, National Marine  
 Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 679 is amended as follows:

**PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA**

■ 1. The authority citation for part 679 continues to read as follows:

**Authority:** 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; and Pub. L. 108–447.

■ 2. In § 679.5:

■ a. Paragraphs (h)(2) and (h)(3) are redesignated as paragraphs (h)(3) and (h)(4), respectively.

■ b. Paragraph (h)(2) heading and paragraph (h)(2)(i) are added.

■ c. Paragraph (h)(1)(iii) is redesignated as paragraph (h)(2)(ii).

■ d. Paragraphs (a)(7)(i)(C), (a)(7)(i)(D), and (h)(1) introductory text, and the heading for newly redesignated paragraph (h)(2)(ii) are revised.

The additions and revisions read as follows:

**§ 679.5 Recordkeeping and reporting (R&R).**

(a) \* \* \*

(7) \* \* \*

(i) \* \* \*

If participant is. . .	And fishing activity is. . .	An active period is. . .	An inactive period is. . .
*****			
(C) MS	Receipt, discard, or processing of groundfish	When receiving or processing groundfish.	When not active
(D) C/P	Harvest, discard, or processing groundfish	A longline or pot gear catcher/processor is active when processing groundfish or when all or part of the longline or pot gear is in the water.	When not active
		A trawl gear catcher/processor is active when processing groundfish or when all or part of the trawl net is in the water.	When not active
*****			

\* \* \* \* \*

(h) \* \* \*

(1) *Requirement.* Except as noted in paragraph (h)(2) of this section, the operator of a catcher/processor or mothership and the manager of a shoreside processor or stationary floating processor must submit to NMFS a check-in report (BEGIN message) prior to becoming active and a check-out

report (CEASE message) for every check-in report submitted. The check-in report and check-out report must be submitted by fax to 907-586-7131, or by e-mail to [erreports.alaskafisheries@noaa.gov](mailto:erreports.alaskafisheries@noaa.gov).

\* \* \* \* \*

(2) *Exceptions—(i) VMS onboard.* The operator of a catcher/processor or mothership is not required to submit to

NMFS a check-in report or check-out report if the vessel is carrying onboard a transmitting VMS that meets the requirements of § 679.28(f).

(ii) *Two adjacent reporting areas.*

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