

State citation	Title/subject	State effective date	EPA approval date	Additional explanation/ § 52.2063 citation
*	*	*	*	*

\* \* \* \* \*

■ 3. Section 52.2023 is amended by adding reserved paragraph (l) and adding paragraph (m) to read as follows:

**§ 52.2023 Approval status.**

\* \* \* \* \*

(m) EPA conditionally approves Pennsylvania's 25 Pa Code sections 129.98 and 129.99 submitted on May 16, 2016 to address the reasonably available control technology (RACT) requirements under CAA sections 182(b)(2)(C), 182(f), and 184 under the 1997 and 2008 8-hour ozone NAAQS. Pursuant to CAA section 110(k)(4), this conditional approval is based upon a September 26, 2017 letter from Pennsylvania to submit to EPA, no later than 12 months from EPA's final conditional approval, additional SIP revisions to address the deficiencies identified. The SIP revisions, to be submitted by Pennsylvania, include:

(1) All facility-wide or system-wide averaging plans approved by PADEP under 25 Pa Code 129.98 including but not limited to any terms and conditions that ensure the enforceability of the averaging plan as a practical matter, and

(2) All source-specific RACT determinations approved by PADEP under 25 Pa Code 129.99, including any alternative compliance schedules approved under §§ 129.97(k) and 129.99(i); the source-specific RACT determinations submitted to EPA for approval into the SIP shall include any terms and conditions that ensure the enforceability of the source-specific RACT emission limitation as a practical matter.

[FR Doc. 2019-09478 Filed 5-8-19; 8:45 am]

BILLING CODE 6560-50-P

## FEDERAL ACQUISITION REGULATION

### 48 CFR Ch. 1

#### Types of Contracts

##### CFR Correction

■ In Title 48 of the Code of Federal Regulations, Chapter 1 (Parts 1 to 51), revised as of October 1, 2018, on page 389, in § 16.505, paragraph (a)(7)(iv) is reinstated to read as follows:

**§ 16.505 Ordering.**

\* \* \* \* \*

(a) \* \* \*

(7) \* \* \*

(iv) Delivery or performance schedule.

\* \* \* \* \*

[FR Doc. 2019-09628 Filed 5-8-19; 8:45 am]

BILLING CODE 1301-00-D

## SURFACE TRANSPORTATION BOARD

### 49 CFR Parts 1002 and 1312

[Docket No. EP 743]

#### Water Carrier Tariff Filing Procedures

**AGENCY:** Surface Transportation Board.

**ACTION:** Final rule.

**SUMMARY:** The Surface Transportation Board (STB or Board) adopts a new procedure for water carriers operating in the noncontiguous domestic trade to electronically publish, file, and keep tariffs available for public inspection.

**DATES:** This rule is effective on June 8, 2019.

**ADDRESSES:** Requests for information or questions regarding this final rule should reference Docket No. EP 743 and be submitted via the Board's e-filing format or in writing addressed to: Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, 395 E Street SW, Washington, DC 20423-0001. Any person using e-filing should attach a document and otherwise comply with the instructions found on the Board's website at [www.stb.gov](http://www.stb.gov) at the E-Filing link.

**FOR FURTHER INFORMATION CONTACT:**

Michael Higgins at 202-245-0284. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877-8339.

**SUPPLEMENTARY INFORMATION:** In April 2017, the Board established its Regulatory Reform Task Force (RRTF) to comply with the spirit of Executive Order 13777. The primary objective of the RRTF is to identify Board rules and practices that are burdensome, unnecessary, or outdated and to recommend how they should be addressed. *See Regulatory Reform Task Force*, EP 738 (STB served June 20, 2017). The RRTF identified the current water carrier tariff regulations at 49 CFR part 1312 as imposing unnecessary costs on the carriers as well as the Board. *See RRTF 90-Day Status Report* (issued May 25, 2017); RRTF Status Report (issued

Nov. 21, 2017).<sup>1</sup> Water carriers operating in the noncontiguous domestic trade<sup>2</sup> are required to publish, file, and keep available for public inspection tariffs setting forth their rates, charges, rules, and classifications. 49 U.S.C. 13702(a)-(b).<sup>3</sup> The Board's current regulations for filing water carrier tariffs contemplate the filings of tariffs with the Board in paper format. However, the Board has granted Special Tariff Authority—relief from the current regulations on a case-by-case basis—to allow water carriers to file their tariffs in alternative electronic formats, typically email.<sup>4</sup> For many carriers, these email submissions are a daily occurrence.

The Board issued a notice of proposed rulemaking that proposed to update the regulations to allow water carriers<sup>5</sup> to electronically publish, file, and keep tariffs available for public inspection. *Water Carrier Tariff Filing Procedures (NPRM)*, EP 743 (STB served Dec. 21, 2018) (83 FR 66229).<sup>6</sup> The Board received comments on the *NPRM* from Tropical Shipping and Construction Co., Ltd. (Tropical), The Pasha Group (Pasha), and TOTE, LLC (TOTE). After considering the comments, the Board is adopting the rule proposed in the *NPRM*, without substantive change, as a final rule. The text of the final rule is below.

**Proposed Rule.** The *NPRM* proposed to revise 49 CFR part 1312 to include regulations which would allow water carriers to publish, file, and keep their tariffs electronically, but would also continue to allow water carriers the option of filing their tariffs in paper format. Specifically, under the proposal, a water carrier would be permitted to comply with the filing requirement in

<sup>1</sup> These status reports can be accessed on the Board's website.

<sup>2</sup> Noncontiguous domestic trade means "transportation subject to jurisdiction under chapter 135 involving traffic originating in or destined to Alaska, Hawaii, or a territory or possession of the United States." 49 U.S.C. 13102(17).

<sup>3</sup> Section 13702(a)(1) includes an exception from the tariff filing requirement for bulk cargo, forest products, recycled metal scrap, waste paper, and paper waste.

<sup>4</sup> Under 49 CFR 1312.2(e), a water carrier may apply for Special Tariff Authority.

<sup>5</sup> Many water carriers use third-party service providers to manage and maintain their tariffs on the internet.

<sup>6</sup> The *NPRM* provides additional information on the background of water carrier tariff requirements.

49 U.S.C. 13702 by: (1) Maintaining a publicly available version of its current and historical tariffs on the internet, and (2) electronically filing (e-filing) with the Board an annual certification made by a duly authorized corporate officer of the carrier that (a) contains an active link<sup>7</sup> to the internet location and access information for its tariffs and (b) affirms the water carrier's continuing compliance with the relevant sections of Part 1312. The proposed regulation, at 49 CFR 1312.4(b), listed the requirements for the annual certification and provided sample language to be used in the certification.

As explained in the *NPRM* and proposed at 49 CFR 1312.4(b)(3), advance notification to the Board would be required if a water carrier anticipates an outage of its electronic tariff system. *NPRM*, EP 743, slip op. at 5. In circumstances beyond the carrier's control (such as a software malfunction), the carrier would be required to notify the Board promptly via email at [tariffs@stb.gov](mailto:tariffs@stb.gov). *Id.* In the event of any tariff system outage, carriers would be required to make alternative arrangements with the Board to ensure that the agency and public have access to the tariffs in effect during the outage, and the Board would provide that information on its website so that the public would be made aware of the particular outage as soon as reasonably possible. *Id.*

The proposed electronic archiving requirement under 49 CFR 1312.4(b)(4) would require a water carrier to maintain historical versions of its tariffs, including all rates and applicable rules, for a period of not less than five years, beginning when a carrier first electronically files its tariffs. *Id.* at 11. Tariffs kept on the internet would also need to comply with the proposed addition to 49 CFR 1312.3, requiring that water carriers provide the date on which tariffs or changes to tariffs first appear on the internet and the date on which they are expected to become effective. *Id.* at 5. The rule would not prescribe the specific information technology resources (programming, applications or software, etc.) that water carriers must use to house this information, but any electronic system selected by a carrier would need to comply with regulatory requirements and allow access by the Board and any

member of the public who requests it, free of charge. *Id.*

The *NPRM* explained that to utilize e-filing, a filer would first pay the required fee<sup>8</sup> via electronic payment through *Pay.gov*.<sup>9</sup> *NPRM*, EP 743, slip op. at 4. Once the payment has been submitted, a confirmation email from *Pay.gov* would be sent containing a unique transaction number. The filer would then go to the Board's e-filing website and, through a registered account, submit the transaction number received from *Pay.gov* and attach the annual certification. Once the certification is received and verified, the Director of the Office of Public Assistance, Governmental Affairs, and Compliance (OPAGAC) or a designee would acknowledge receipt of the annual certification in writing. *Id.*

Under the proposed regulations, the Board would create a web page that provides links to the location of a water carrier's current tariff, the most recent annual certification, and prior certifications. *NPRM*, EP 743, slip op. at 4. It is expected that this web page could be accessed by the Board and public and that the internet links to water carrier tariffs would be available 24 hours a day, seven days a week, year-round. *Id.* at 4–5. Access to water carrier tariffs filed in paper format would continue to be available to the public via requests to OPAGAC.

By adding an e-filing option to the regulations, the proposed rule would eliminate the option to obtain tariff filing relief under the existing Special Tariff Authority application process, and would revoke all prior grants of Special Tariff Authority. *NPRM*, EP 743, slip op. at 4 (citing 49 CFR 1312.2(e)). The proposed changes would require water carriers to either file their tariffs in paper format or electronically as outlined here.

*Comments.* As noted above, the Board received comments on the *NPRM* from Tropical, Pasha, and TOTE. The comments uniformly supported the proposal to allow water carriers to publish, file, and keep their tariffs electronically. Tropical and Pasha both state that the proposal would reduce the regulatory burden on water carriers, allowing them to function in a more efficient and less costly manner.

<sup>8</sup> The Board proposed an expansion of fee item 78 at 49 CFR 1002.2(f), to reflect the filing fee associated with the annual certification. The final rule adopted here also adds a heading to paragraph (b) of § 1002.2.

<sup>9</sup> Recently, the Board updated its regulations to add an electronic payment option at 49 CFR 1002.2(a). See *Payment, Filing, & Service Procedures*, EP 747 (STB served Mar. 22, 2019) (84 FR 12940). As of May 10, 2019, the Board will accept electronic payment of fees through *Pay.gov*.

(Tropical Comments 2; Pasha Comments 2.) TOTE supports the comments submitted by Tropical and Pasha, and states that its subsidiaries would realize substantial savings from the proposed rule, and that the public interest will be protected through the Board's ongoing regulatory oversight of water carriers. (TOTE Comments 2.)

*Final Rule.* After considering the comments, the Board is adopting the rule proposed in the *NPRM*, without substantive change, as a final rule. The only modification from the proposed electronic filing procedure is changing the due date for the annual certification from the first business day of February to the first business day of October in order to allow water carriers to more quickly utilize this option. Water carriers may continue to file under their existing Special Tariff Authority until the first due date of the annual certification, which will be October 1, 2019, at which time grants of Special Tariff Authority will be automatically revoked.<sup>10</sup> It is anticipated that the final rule will significantly reduce the burdens associated with the current tariff filing requirements. The new e-filing tariff procedures will also allow the public to easily access current and historical tariffs without requesting them from the Board, resulting in time and cost savings for both the Board and the public. The text of the final rule is below.

*Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, generally requires a description and analysis of new rules that would have a significant economic impact on a substantial number of small entities. In drafting a rule, an agency is required to: (1) Assess the effect that its regulation will have on small entities; (2) analyze effective alternatives that may minimize a regulation's impact; and (3) make the analysis available for public comment. Sections 601–604. In its final rule, the agency must either include a final regulatory flexibility analysis, section 604(a), or certify that the final rule would not have a “significant impact on a substantial number of small entities,” section 605(b). The impact must be a direct impact on small entities “whose conduct is circumscribed or mandated” by the proposed rule. *White Eagle Coop. v. Conner*, 553 F.3d 467, 480 (7th Cir. 2009).

In the *NPRM*, the Board certified under 5 U.S.C. 605(b) that the proposed rule would not have a significant

<sup>10</sup> Water carriers that have filed tariff updates within the past year will be served a copy of this decision.

<sup>7</sup> To comply with the proposed rule, if the internet address for a water carrier's tariff system changes during the 12-month period following the filing of its annual certification, the water carrier would need to adhere to the proposed outage requirements at 49 CFR 1312.4(b)(3) and provide the Board an updated certification with an active link as soon as possible.

economic impact on a substantial number of small entities within the meaning of the RFA.<sup>11</sup> The Board explained that the proposed rule would not place any additional burden on small entities because the proposed rule would provide new procedures for water carriers operating in noncontiguous domestic trade to electronically publish, file, and keep tariffs available for public inspection. The new regulations would be an option to eliminate the burdens associated with the current tariff filing requirements. No parties submitted comments on this issue. A copy of the *NPRM* was served on the U.S. Small Business Administration.

The final rule adopts the procedures proposed in the *NPRM*, with the revision of the due date for the annual certification. Therefore, the Board certifies under 5 U.S.C. 605(b) that the final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the RFA. A copy of this decision will be served upon the Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration, Washington, DC 20416.

*Paperwork Reduction Act.* In this proceeding, the Board is modifying an existing collection of information that is currently approved by the Office of Management and Budget (OMB) under OMB Control No. 2140-0026. In the *NPRM*, the Board sought comments pursuant to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501-3521, and

OMB regulations at 5 CFR 1320.11 regarding: (1) Whether the collection of information associated with the proposed changes to the OFA regulations is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility; (2) the accuracy of the Board's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, when appropriate. No comments were received pertaining to the collection of this information under the PRA.

This modification to an existing collection will be submitted to OMB for review as required under the PRA, 44 U.S.C. 3507(d), and 5 CFR 1320.11.

*It is ordered:*

1. The Board adopts the final rule as set forth in this decision. Notice of the adopted rule will be published in the **Federal Register**.

2. A copy of this decision will be served upon the Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration.

3. This decision is effective June 8, 2019.

#### List of Subjects

##### 49 CFR Part 1002

Administrative practice and procedure, Common carriers, Freedom of information.

##### 49 CFR Part 1312

Freight forwarders, Maritime carriers, Motor carriers, Pipelines, Railroads, Reporting and recordkeeping requirements.

Decided: May 6, 2019.

By the Board, Board Members Begeman, Fuchs, and Oberman.

**Jeffrey Herzig,**

*Clearance Clerk.*

For the reasons set forth in the preamble, the Surface Transportation Board amends parts 1002 and 1312 of title 49, chapter X, of the Code of Federal Regulations as follows:

#### PART 1002—FEES

■ 1. The authority citation for part 1002 is revised to read as follows:

**Authority:** 5 U.S.C. 552(a)(4)(A), (a)(6)(B), and 553; 31 U.S.C. 9701; and 49 U.S.C. 1321. Section 1002.1(f)(11) is also issued under 5 U.S.C. 5514 and 31 U.S.C. 3717.

■ 2. Amend § 1002.2 as follows:

■ a. In paragraph (b), add a paragraph heading; and

■ b. Revise paragraph (f)(78).

The addition and revision read as follows:

##### § 1002.2 Filing fees.

\* \* \* \* \*

(b) *Nonpayment of fees.* \* \* \*

(f) \* \* \*

Type of proceeding	Fee
Part VI: Informal Proceedings: .....	.....
(78) (i) The filing of tariffs, including supplements, or contract summaries .....	\$1 per page. (\$29 min charge.)
(ii) The filing of water carrier electronic annual certifications .....	\$29.

\* \* \* \* \*

#### PART 1312—REGULATIONS FOR THE PUBLICATION, FILING, AND KEEPING OF TARIFFS FOR THE TRANSPORTATION OF PROPERTY BY OR WITH A WATER CARRIER IN NONCONTIGUOUS DOMESTIC TRADE

■ 3. The authority citation for part 1312 is revised to read as follows:

**Authority:** 49 U.S.C. 1321(a), 13702(a), 13702(b), and 13702(d).

■ 4. The heading of part 1312 is revised to read as set forth above.

■ 5. Amend § 1312.1(c) by revising the definition of "Publication" to read as follows:

##### § 1312.1 Scope; definitions.

\* \* \* \* \*

(c) \* \* \*

*Publication* means a bound tariff, a tariff supplement, a looseleaf tariff page, or an electronically published tariff.

\* \* \* \* \*

■ 6. Amend § 1312.2 by revising paragraph (b), removing paragraph (e), and redesignating paragraph (f) as paragraph (e) to read as follows:

<sup>11</sup> The Small Business Administration's Office of Size Standards has established a size standard for water transportation, pursuant to which deep sea

freight transportation is considered small if its number of employees is 500 or less, and coastal and Great Lakes freight transportation is considered

small if its number of employees is 750 or less. 13 CFR 121.201 (industry subsector 483).

**§ 1312.2 Requirement to publish and file a tariff.**

\* \* \* \* \*

(b) *Adherence to tariff.* The carrier may not charge or receive a different compensation for the transportation or service than the rate specified in the tariff, whether by returning a part of that rate to a person, giving a person a privilege, allowing the use of a facility that affects the value of that transportation or service, or another device.

\* \* \* \* \*

■ 7. Amend § 1312.3 by revising paragraph (a) to read as follows:

**§ 1312.3 Tariff contents and standards; Essential criteria.**

(a) *Contents.* Tariffs filed with the Board, including tariffs published, filed, and kept electronically in accordance with § 1312.4(b), must: Be filed in English; include an accurate description of the services offered to the public; provide the specific applicable rates explicitly stated in U.S. dollars and cents (or the basis for calculating the specific applicable rates) and service terms; and be arranged in a way that allows for the determination of the exact rate(s) and service terms applicable to any given shipment (or to any given group of shipments). Tariffs that are electronically kept on the internet must also provide the date on which a new tariff or any change in any tariff matter first appears on the internet and the date on which it becomes effective.

\* \* \* \* \*

■ 8. Revise § 1312.4 to read as follows:

**§ 1312.4 Filing of tariffs.**

(a) *Paper filing requirements.* (1) Two copies of each tariff publication shall be filed with the Board. Packages containing tariff filings should be prominently marked "TARIFF FILING" and addressed to: Office of Public Assistance, Governmental Affairs and Compliance, Surface Transportation Board, Washington, DC 20423-0001. Tariffs shall be printed on paper not larger than 8½ x 11 inches.

(2) A paper tariff filing must be accompanied by an authorized document of transmittal identifying each publication filed, and by the appropriate filing fee (see 49 CFR part 1002). Acknowledgement of Board receipt of a paper tariff filing can be obtained by enclosing a duplicate transmittal letter and a postage-paid, self-addressed return envelope. Each transmittal letter shall clearly indicate in the upper left-hand corner thereof:

(i) The assigned alpha code of the issuing carrier or agent;

(ii) The number of pages transmitted;

(iii) The filing fee enclosed (pursuant to 49 CFR 1002.2(a)); and

(iv) The transmittal number if the filer utilizes transmittal numbers.

(b) *Electronic filing requirements.* As an alternative to the paper tariff filing procedures set forth in paragraph (a) of this section, a water carrier may file its tariffs electronically in accordance with the procedures and requirements of this section. Tariffs published, filed, and kept electronically in accordance with the requirements of this section shall be deemed to be on file with the Board for purposes of 49 U.S.C. 13702(b).

(1) *Annual certification.* A water carrier that seeks to file its tariff electronically must electronically file an annual certification with the Board, made by the water carrier's duly authorized corporate officer. The annual certification must be submitted to the Board on the first business day in October each year. The Director of the Office of Public Assistance, Governmental Affairs, and Compliance or a designee will acknowledge receipt of each carrier's certification in writing. The annual certification shall include the following:

(i) Certification that it is a water carrier operating in the noncontiguous domestic trade subject to the Board's jurisdiction;

(ii) Certification that it is in compliance with the regulations of this section for purposes of publishing, filing, and keeping its tariff electronically;

(iii) Certification that it is in compliance with all other regulations in this part, except those specifically applicable to tariffs maintained in paper format;

(iv) An active link to the internet address of tariffs;

(v) The assigned alpha code of the issuing carrier or agent; and

(vi) Confirmation of electronic payment of the filing fee (pursuant to 49 CFR 1002.2(a)).

(2) *Sample text for the annual certification.*

[Name of Director, Office of Public Assistance, Governmental Affairs, and Compliance], Office of Public Assistance, Governmental Affairs and Compliance, Surface Transportation Board, Washington, DC.

Dear Director: I, [name of signor], certify that I am [title of office] of [name of water carrier], a water carrier operating in the noncontiguous domestic trade subject to the jurisdiction of the Surface Transportation Board, that [name of water carrier] is in compliance with the regulations at part 1312 for purposes of

publishing, filing, and keeping its tariff electronically, and that it is in compliance with all other regulations at part 1312, except those specifically applicable to tariffs maintained in paper format.

The internet address where [name of water carrier]'s tariffs can be located is:

This internet address is current as of [date].

I further declare (certify, verify or state) under penalty of perjury ["under the laws of the United States of America" if executed outside of the United States of America] that the foregoing is true and correct. Executed on [date].

Sincerely,

[signature of a duly authorized corporate officer of water carrier]

(3) *Tariff access requirement.* (i) A water carrier must provide the Board with at least two business days advance notice of any planned outage when its tariff will not be available on the internet, and prompt notice on any occasion when the tariff becomes unavailable due to circumstances beyond the carrier's control. Notice shall be submitted by email to [tariffs@stb.gov](mailto:tariffs@stb.gov). In the event of any outage, carriers are required to make alternative arrangements with the agency to ensure that the Board receives the tariffs in effect during the outage.

(ii) A water carrier may establish reasonable registration requirements for purposes of public access to its current tariff and historical tariff information, such as requiring a user to provide his or her name and email address; however, such requirements may not limit tariff access to any particular group or class of users (such as shippers or potential shippers) or impose unreasonable burdens on the user, such as access fees or a showing of need.

(4) *Historical tariff information and archiving.* Tariffs kept on the internet by a water carrier must allow the Board and the public to retrieve historical versions, including all rates and applicable rules, for a period of not less than five years, beginning on the date when a carrier first electronically files its tariffs under these regulations.

■ 9. Amend § 1312.6 by adding paragraph (e) to read as follows:

**§ 1312.6 Advance notice required.**

\* \* \* \* \*

(e) *Notice for purposes of electronically filed tariffs.* A water carrier that keeps its tariffs on the internet must comply with the notice requirements set forth in paragraph (b) of this section, provided however, that the relevant notice periods set forth in paragraphs (b)(1) and (2) of this section

shall run from the date on which the tariff matter first appears in the water carrier's tariff on the internet.

■ 10. Amend § 1312.12 by adding paragraph (c) to read as follows:

**§ 1312.12 Posting requirements.**

\* \* \* \* \*

(c) *Exemption for electronically filed tariffs.* A water carrier that publishes, files, and keeps its tariffs electronically in accordance with § 1312.4(b) is exempt from the posting requirements of this section.

■ 11. Amend § 1312.13 by adding paragraph (g) to read as follows:

**§ 1312.13 Furnishing copies of tariff publications.**

\* \* \* \* \*

(g) *Exemption for electronically filed tariffs.* A water carrier that publishes, files, and keeps its tariffs electronically in accordance with § 1312.4(b) is exempt from this section.

■ 12. Amend § 1312.15 by adding a sentence at the end of paragraph (a) and a sentence at the end of paragraph (b) to read as follows:

**§ 1312.15 Change of carrier or agent.**

(a) \* \* \* A water carrier that publishes, files, and keeps its tariffs electronically in accordance with § 1312.4(b) shall promptly submit any such change by email to [tariffs@stb.gov](mailto:tariffs@stb.gov), but in no case later than 20 days after the effective date.

(b) \* \* \* A water carrier that publishes, files, and keeps its tariffs electronically in accordance with § 1312.4(b) shall promptly submit any such change of agent by email to [tariffs@stb.gov](mailto:tariffs@stb.gov), but in no case later than 200 days after the effective date.

[FR Doc. 2019-09564 Filed 5-8-19; 8:45 am]

BILLING CODE 4915-01-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 635

[Docket No. 180117042-8884-02]

RIN 0648-XH007

#### Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

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

**ACTION:** Temporary rule; inseason Angling category retention limit adjustment.

**SUMMARY:** NMFS has determined that the Atlantic bluefin tuna (BFT) daily retention limit that applies to vessels permitted in the Highly Migratory Species (HMS) Angling category and the HMS Charter/Headboat category (when fishing recreationally for BFT) should be adjusted for the remainder of 2019, based on consideration of the regulatory determination criteria regarding inseason adjustments. NMFS is adjusting the Angling category BFT daily retention limit from the default of one school, large school, or small medium BFT to two school BFT and one large school/small medium BFT per vessel per day/trip for private vessels with HMS Angling category permits; to three school BFT and one large school/small medium BFT per vessel per day/trip for *charter boat* vessels with HMS Charter/Headboat permits when fishing recreationally; and to six school BFT and two large school/small medium BFT per vessel per day/trip for *headboat* vessels with HMS Charter/Headboat permits when fishing recreationally. These retention limits are effective in all areas, except for the Gulf of Mexico, where NMFS prohibits targeted fishing for BFT.

**DATES:** Effective May 11, 2019, through December 31, 2019.

**FOR FURTHER INFORMATION CONTACT:** Sarah McLaughlin, 978-281-9260 or Larry Redd, 301-427-8503.

**SUPPLEMENTARY INFORMATION:** Regulations implemented under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) among the various domestic fishing categories, per the allocations established in Amendment 7 to the 2006 Consolidated Highly Migratory Species Fishery Management Plan (2006 Consolidated HMS FMP) (Amendment 7) (79 FR 71510, December 2, 2014), and in accordance with implementing regulations. NMFS is required under ATCA and the Magnuson-Stevens Act to provide U.S. fishing vessels with a

reasonable opportunity to harvest the ICCAT-recommended quota.

As a method for limiting fishing mortality on juvenile BFT, ICCAT recommends a tolerance limit on the annual harvest of BFT measuring less than 115 centimeters (cm) (45.3 inches) (straight fork length) to no more than 10 percent by weight of a Contracting Party's total BFT quota. Any overharvest of such tolerance limit from one year must be subtracted from the tolerance limit applicable in the next year or the year after that. NMFS implements this provision by limiting the harvest of school BFT (measuring 27 to less than 47 inches curved fork length) as appropriate to not exceed the 10-percent limit (127.3 mt) annually.

In 2018, NMFS implemented a final rule that established the U.S. BFT quota and subquotas consistent with ICCAT Recommendation 17-06 (83 FR 53191, October 11, 2018). The currently codified baseline U.S. quota is 1,247.86 metric tons (mt) (not including the 25 mt ICCAT allocated to the United States to account for bycatch of BFT in pelagic longline fisheries in the Northeast Distant Gear Restricted Area). See § 635.27(a). The currently codified Angling category quota is 232.4 mt (127.3 mt for school BFT, 99.8 mt for large school/small medium BFT, and 5.3 mt for large medium/giant BFT).

The Angling category season opened January 1, 2019, and continues through December 31, 2019. The size classes of BFT are summarized in Table 1. Please note that large school and small medium BFT traditionally have been managed as one size class, as described below, *i.e.*, a limit of one large school/small medium BFT (measuring 47 to less than 73 inches). Currently, the default Angling category daily retention limit of one school, large school, or small medium BFT applies (§ 635.23(b)(2)). This retention limit applies to HMS Angling and to HMS Charter/Headboat category permitted vessels (when fishing recreationally for BFT).

As defined at § 600.10, "charter boat" means a vessel less than 100 gross tons (90.8 mt) that meets the requirements of the U.S. Coast Guard to carry six or fewer passengers for hire (*i.e.*, uninspected) and "headboat" means a vessel that holds a valid Certificate of Inspection issued by the U.S. Coast Guard to carry passengers for hire (*i.e.*, greater than six).