

the Executive Order has the potential to influence the regulation. The direct final rule amendments are not subject to Executive Order 13045 because they are not "economically significant" and are based on technology performance and not on health or safety risks.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

The direct final rule amendments are not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because they are not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995, Public Law 104-113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The VCS are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices) that are developed or adopted by VCS bodies. The NTTAA directs EPA to provide Congress, through the OMB, explanations when the Agency decides not to use available and applicable VCS.

The direct final rule amendments do not involve technical standards. Therefore, EPA did not consider the use of any VCS.

J. Congressional Review Act

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. The EPA will submit a report containing the direct final rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the direct final rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. The direct final rule amendments are not a "major rule" as defined by 5 U.S.C. 804(2). The direct final rule

amendments are effective on December 2, 2005.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: September 27, 2005.

Stephen L. Johnson,
Administrator.

■ For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

Subpart RRR—[Amended]

■ 2. Section 63.1503 is amended by revising the definition of "Clean charge" to read as follows:

§ 63.1503 Definitions.

* * * * *

Clean charge means furnace charge materials, including molten aluminum; T-bar; sow; ingot; billet; pig; alloying elements; aluminum scrap known by the owner or operator to be entirely free of paints, coatings, and lubricants; uncoated/unpainted aluminum chips that have been thermally dried or treated by a centrifugal cleaner; aluminum scrap dried at 343 °C (650 °F) or higher; aluminum scrap delacquered/decoated at 482 °C (900 °F) or higher, and runaround scrap.

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■ 3. Section 63.1505 is being amended by revising the first sentence of paragraph (e) introductory text to read as follows:

§ 63.1505 Emission standards for affected sources and emission units.

* * * * *

(e) *Scrap dryer/delacquering kiln/decoating kiln: alternative limits.* The owner or operator of a scrap dryer/delacquering kiln/decoating kiln may choose to comply with the emission limits in this paragraph (e) as an alternative to the limits in paragraph (d) of this section if the scrap dryer/delacquering kiln/decoating kiln is equipped with an afterburner having a design residence time of at least 1 second and the afterburner is operated at a temperature of at least 760 °C (1400 °F) at all times. * * *

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 050613158-5237-02; I.D. 090105A]

RIN 0648-AT48

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Extension of Emergency Fishery Closure Due to the Presence of the Toxin That Causes Paralytic Shellfish Poisoning

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

ACTION: Temporary rule; emergency action; extension of effective period.

SUMMARY: The regulations contained in the temporary rule, emergency action, published on September 9, 2005, at the request of the U.S. Food and Drug Administration (FDA), continue through December 31, 2005. In that action NMFS reopened a portion of Federal waters of the Gulf of Maine, Georges Bank, and southern New England that it had previously closed from June 14, 2005, through September 30, 2005, to the harvest for human consumption of certain bivalve molluscan shellfish due to the presence in those waters of the toxin that causes Paralytic Shellfish Poisoning (PSP). The FDA has determined that there is insufficient analytical data to support the scheduled reopening of the entire area to all bivalve molluscan shellfish fishing on October 1, 2005.

DATES: The temporary emergency action published September 9, 2005 (70 FR 53580), is effective from September 9, 2005, through December 31, 2005.

ADDRESSES: Copies of the small entity compliance guide prepared for the September 9, 2005, emergency action are available from Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930. The small entity compliance guide/permit holder letter is also accessible via the Internet at <http://www.nero.noaa.gov>. Copies of the September 9, 2005, emergency action are available from Patricia A. Kurkul, at the mailing address specified above.

FOR FURTHER INFORMATION CONTACT: E. Martin Jaffe, Fishery Policy Analyst, (978) 281-9272.

SUPPLEMENTARY INFORMATION:

Background

Toxic algal blooms are responsible for the marine toxin that causes PSP in persons consuming affected shellfish. People have become seriously ill and some have died from consuming affected shellfish under similar circumstances.

On June 10, 2005, the FDA requested that NMFS issue an emergency rule to close an area of Federal waters to the harvesting of bivalve molluscan shellfish intended for human consumption because of toxic algal blooms off the coasts of New Hampshire and Massachusetts. This closure prohibited harvests of shellfish such as Atlantic surfclams and ocean quahogs, as well as scallop viscera. The emergency rule for the action, published in the **Federal Register** on June 16, 2005 (70 FR 35047), stated it would be in effect from June 14 through September 30, 2005, unless extended. The emergency rule was modified on July 7, 2005 (70 FR 39192) to allow for the collection of biological samples by commercial fishing vessels issued a Letter of Authorization signed by the Regional Administrator.

The action temporarily closed all Federal waters of the Exclusive Economic Zone of the northeastern United States to any bivalve molluscan shellfish harvesting, except for Atlantic sea scallops shucked at sea for their adductor muscles, in the area bound by the following coordinates in the order stated: (1) 43°00' N. lat., 71°00' W. long.; (2) 43°00' N. lat., 69° 00' W. long.; (3) 40°00' N. lat., 69°00' W. long.; (4) 40°00' N. lat., 71°00' W. long., and then ending at the first point. The scallop adductor muscle, or "meat," is unaffected by the toxin. Further details of the original closure may be found in the June 16, 2005, and the July 7, 2005, **Federal Register** rules, and are not repeated here.

As a result of tests conducted by the FDA in cooperation with NMFS and the fishing industry, it was determined that toxin levels in a portion of the closure area (described below) were well below those known to cause human illness. With the exception of whole and roe-on scallops, the FDA determined that harvesting of bivalve molluscan shellfish for human consumption from the area described was once again safe.

At the FDA's request, on September 9, 2005, NMFS reopened those waters south of 41°39' N. lat., west of 69°00' W. long., north of 40°00' N. lat., and east of 71°00' W. long. (70 FR 53580). Because scallop viscera and roe are capable of retaining PSP toxins longer than other species of molluscan shellfish, scallop

harvesting was only permitted in the reopened area for the purpose of shucking of the adductor muscle.

In the absence of further notice from the FDA, the entire temporary closure would have expired on October 1, 2005. At this time, however, the FDA has insufficient analytical data to support the scheduled reopening of the entire area to all bivalve molluscan shellfish on October 1, 2005, and has requested that NMFS continue the regulations through December 31, 2005.

Classification

This action is issued pursuant to section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1855(c).

The original emergency closure was in response to a public health emergency. Pursuant to section 305(c)(3)(C) of the Act, the closure to the harvest of shellfish, as modified on September 9, 2005, may remain in effect until the circumstances that created the emergency no longer exist, provided that the public has an opportunity to comment after the regulation is published, and, in the case of a public health emergency, the Secretary of Health and Human Services concurs with the Commerce Secretary's action. The public had opportunities to comment on the published regulations and one comment was received. The commenter expressed her reluctance to agree with reopening a portion of the closure without seeing the results of the FDA's tests. While NMFS is the agency with authority to promulgate the emergency regulations, it modified the regulations on September 9, 2005, at the behest of the FDA after the FDA had determined that the results of its tests warranted such action. Accordingly, the Secretary of Health and Human Services and the Secretary of Commerce concur that the emergency regulations, as modified, should continue through December 31, 2005. Subsequently, if warranted, the regulations may be terminated at an earlier date, pursuant to section 305(c)(3)(D), by publication in the **Federal Register** of a notice of termination.

The September 9, 2005, rule was determined to be not significant under Executive Order 12866.

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

Dated: September 27, 2005.

James W. Balsiger,

Acting Deputy Administrator for Regulatory Programs, National Marine Fisheries Service.
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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 041126332-5039-02; I.D. 092805A]

Fisheries of the Economic Exclusive Zone Off Alaska; Pacific Ocean Perch in the Western Aleutian District of the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; modification of a closure.

SUMMARY: NMFS is opening directed fishing for Pacific ocean perch in the Western Aleutian District of the Bering Sea and Aleutian Islands Management Area (BSAI). This action is necessary to allow the Pacific ocean perch fishery in the Western Aleutian District of the BSAI to resume.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 28, 2005, through 2400 hrs, A.l.t., December 31, 2005.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907-586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

NMFS closed directed fishing for Pacific ocean perch in the Western Aleutian District of the BSAI under § 679.20(d)(1)(i) on July 18, 2005 (70 FR 42280, July 22, 2005).

NMFS has determined that as of September 26, 2005, approximately 1,422 metric tons of Pacific ocean perch remain in the 2005 Pacific ocean perch total allowable catch (TAC) in the Western Aleutian District of the BSAI. Therefore, in accordance with §§ 679.25(a)(2)(i)(C) and (a)(2)(iii)(D), and to allow the Pacific ocean perch fishery to resume, NMFS is terminating the previous closure and is reopening directed fishing for Pacific ocean perch in the Western Aleutian District of the BSAI.