

Issued on December 18, 1996.

Ricardo Martinez,

*Administrator.*

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## Federal Transit Administration

### 49 CFR Parts 653 and 654

#### Prevention of Prohibited Drug Use in Transit Operations; Prevention of Alcohol Misuse in Transit Operations

**AGENCY:** Federal Transit Administration, DOT.

**ACTION:** Notice of random drug and alcohol testing rate.

**SUMMARY:** This notice announces the random testing rate for employers subject to the Federal Transit Administration's (FTA) drug and alcohol rules.

**EFFECTIVE DATE:** January 1, 1997.

**FOR FURTHER INFORMATION:** Contact Judy Meade, Director of the Office of Safety and Security (202) 366-2896 (telephone) and (202) 366-7951 (fax). Electronic access to this and other documents concerning FTA's drug and alcohol testing rules may be obtained through FTA's Transit Safety and Security Bulletin Board at 1-800-231-2061 or through the FTA World Wide Web home page at <http://www.fta.bts.gov>; both services are available seven days a week.

**SUPPLEMENTARY INFORMATION:** The Federal Transit Administration (FTA) required large transit employers to begin drug and alcohol testing "safety-sensitive" employees on January 1, 1995, and to report, annually by March 15 of each year beginning in 1996, the number of "safety-sensitive" employees who had a verified positive for the use of prohibited drugs, and the number of safety-sensitive employees who tested positive for the misuse of alcohol. Large employers are required to annually submit other data, not relevant here, in the same report; these data are available from the FTA as discussed below. Small employers started testing their "safety-sensitive" employees on January 1, 1996 and will begin to report the same information as the large employees beginning on March 15, 1997.

The rules established a random testing rate for prohibited drugs and the misuse of alcohol; specifically, the rules require that employers conduct random drug tests at a rate equivalent to at least 50 percent of its total number of safety-sensitive employees for prohibited drug use and at least 25 percent for the misuse of alcohol. The rules provide

that the drug random testing rate will be lowered to 25 percent if the "positive rate" for the entire transit industry is less than one percent for two consecutive years. Once lowered, it may be raised to 50 percent if the positive rate equals or exceeds one percent for any one year. ("Positive rate" means the number of positive results for random drug tests conducted under part 653 plus the number of refusals of random tests required by part 653, divided by the total number of random drug tests conducted under part 653 plus the number of refusals of random tests required by part 653.)

Likewise, the alcohol rule provides that the random rate will be lowered to 10 percent if the "violation rate" for the entire transit industry is less than .5 percent for two consecutive years. It will remain at 25 percent if the "violation rate" is equal to or greater than .5 percent but less than one percent, and it will be raised to 50 percent if the "violation rate" is one percent or greater for any one year. ("Violation rate" means the number of covered employees found during random tests given under part 654 to have an alcohol concentration of .04 or greater, plus the number of employees who refuse a random test required by part 654, divided by the total reported number of employees in the industry given random alcohol tests under part 654 plus the total reported number of employees in the industry who refuse a random test required by part 654.)

FTA has received and analyzed the 1995 data from large transit employers. The "positive rate" for random drug tests was 1.7 percent and the "violation rate" for random alcohol tests was 0.24 percent; therefore, for 1997, transit employers will continue to be required to conduct random drug tests at a rate equivalent to at least 50 percent of the total number of its "safety-sensitive" employees for prohibited drugs and at least 25 percent for the misuse of alcohol.

FTA will be publishing in December a detailed report on the 1995 data collected from large employers. This report may be obtained from the Office of Safety and Security, Federal Transit Administration, 400 Seventh Street, SW, Room 9301, Washington, DC 20590, (202) 366-2896.

Issued: December 20, 1996.

Gordon J. Linton,

*Administrator.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 960918264-6350-02; I.D. 091296A]

RIN 0648-A161

#### Fisheries of the Exclusive Economic Zone Off Alaska; Individual Fishing Quota Program; Sweep-up Adjustments

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues a final rule to implement Amendment 43 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI), Amendment 43 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA), and a regulatory amendment to the halibut individual fishing quota (IFQ) regulations. This action is necessary to increase the consolidation ("sweep-up") levels for small quota share (QS) blocks for Pacific halibut and sablefish managed under the IFQ program. This action is intended to maintain consistency with the objectives of the IFQ program (i.e., prevent excessive consolidation of QS, maintain diversity of the fishing fleet, and allow new entrants into the fishery), while increasing the program's flexibility by allowing a moderately greater amount of QS to be "swept-up" into larger amounts that can be fished more economically.

**EFFECTIVE DATE:** December 20, 1996.

**ADDRESSES:** Copies of the final rule and the environmental assessment/regulatory impact review (EA/RIR) for this action may be obtained from: Fisheries Management Division, Alaska Region, NMFS, 709 West 9th Street, Room 453, Juneau, AK 99801, or P.O. Box 21668, Juneau, AK 99802.

**FOR FURTHER INFORMATION CONTACT:** John Lepore, 907-586-7228.

#### SUPPLEMENTARY INFORMATION:

##### Background Information

The U.S. groundfish fisheries of the GOA and the BSAI in the exclusive economic zone are managed by NMFS pursuant to the FMPs for groundfish in the respective management areas. The FMPs were prepared by the North Pacific Fishery Management Council (Council) pursuant to the Magnuson-Stevens

Fishery Conservation and Management Act (Magnuson-Stevens Act) at 16 U.S.C. 1801 *et seq.* and are implemented by regulations for the U.S. fisheries at 50 CFR part 679. The Northern Pacific Halibut Act of 1982 (Halibut Act) at 16 U.S.C. 773 *et seq.* authorizes the Council to develop and NMFS to implement regulations to allocate halibut fishing privileges among U.S. fishermen.

Under these authorities, the Council developed the IFQ program, a limited access management system for the fixed gear Pacific halibut and sablefish fisheries. NMFS approved the IFQ program in November 1993 and fully implemented the program beginning in March 1995. The Magnuson-Stevens Act and the Halibut Act authorize the Council to recommend to NMFS changes to the IFQ program as necessary to conserve and manage the fixed gear Pacific halibut and sablefish fisheries.

#### Rationale for Amendments 43/43

Before NMFS implemented the IFQ program, the Council recommended that all QS that resulted at initial issuance in less than 20,000 lb (9 metric tons (mt)) of IFQ be "blocked," that is, issued as an inseparable unit. Further information on Amendments 31/35 (Block Amendments) can be found in the preambles to the proposed rule (59 FR 33272, June 28, 1994), and the final rule (59 FR 51135, October 7, 1994). The final rule implementing these amendments was effective prior to the beginning of the first IFQ season in 1995.

The Block Amendments created a variety of block sizes that were available for transfer. One of the primary purposes of the Block Amendments was to create small blocks of QS that could be purchased at a relatively low cost by crew members and new entrants to the IFQ fisheries. As the experience of these fishermen increased and the size of their fishing operations grew, larger amounts of QS were needed to accommodate this growth. One method included in the Block Amendments to accommodate this growth was the "sweep-up" provision, which allows very small blocks of QS to be permanently consolidated. The maximum sweep-up level was set at 1,000 lb (0.45 mt) for Pacific halibut and 3,000 lb (1.4 mt) for sablefish, based on the 1994 total allowable catch (TAC).

After the completion of the first IFQ season, the IFQ longline industry reported that the established sweep-up levels were lower than the harvest amount of a worthwhile fishing trip. Therefore, the IFQ longline industry requested a moderate increase in the sweep-up levels to allow greater

amounts of QS to be swept up into larger amounts that can be fished more economically. The Council determined that a moderate increase in the sweep-up levels would likely enhance the opportunity of crew members and small-boat fishermen who seek to increase their QS holdings. The Council also determined that allowing persons to consolidate permanently slightly larger blocks of QS would not circumvent the primary goals of the Block Amendments (i.e., preventing excessive consolidation and maintaining the diversity of the IFQ longline fleet). A proposed rule to implement these changes to the IFQ program was published on September 27, 1996, at 61 FR 50797.

#### Management Action Pursuant to Amendments 43/43

Amendments 43/43 increase the sweep-up levels for small QS blocks for Pacific halibut and sablefish from the current 1,000 lb (0.45 mt) maximum for Pacific halibut and 3,000 lb (1.4 mt) maximum for sablefish to a 3,000 lb (1.4 mt) maximum and a 5,000 lb (2.3 mt) maximum, respectively. Two other changes are also made to accompany these increases. First, the base year TAC for determining the pounds of IFQ used to determine the first sweep-up levels is now the 1996 TAC, rather than the 1994 TAC. Second, the maximum number of QS units that may be consolidated into a single block in each regulatory area is now fixed and codified. This will eliminate any confusion as to the appropriate sweep-up level in pounds.

#### Response to Comments

NMFS received a comment from the U.S. Coast Guard stating that its enforcement and safety concerns were addressed by this action. Also, NMFS received a request from the U.S. Department of the Interior (DOI), Office of Environmental Policy and Compliance, that the comment period for the proposed rule be extended until mid-December, 1996, in order to lengthen DOI's review opportunity. NMFS denies the request for an extended comment period. Any extension of the comment period would jeopardize compliance with the FMP review and approval schedule specified in section 304 of the Magnuson-Stevens Act. Furthermore, any extension to the comment period would delay the effective date of this rule, thereby decreasing the time period available for fishermen to consolidate blocked QS prior to the 1997 fishing season.

#### Classification

The Administrator, Alaska Region, NMFS, determined that Amendments 43 to the Fishery Management Plan for the Groundfish of the Gulf of Alaska and Amendment 43 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area are necessary for the conservation and management of groundfish in waters off Alaska and halibut in waters in and off Alaska and that they are consistent with the Magnuson-Stevens Act and other applicable laws.

The Assistant Administrator for Fisheries, NOAA, finds that this final rule relieves a restriction, because this action is designed to allow fishermen to increase the efficiency of their operations through relaxed regulatory restrictions on sweep-up levels. Increasing the sweep-up levels as soon as possible will allow these fishermen to take advantage of the provision before the 1997 season. Therefore, a delayed effectiveness date is not required under 5 U.S.C. 553(d)(1).

An EA/RIR was prepared for this rule that describes the management background, the purpose and need for action, the management action alternatives, and the socio-economic impacts of the alternatives. The EA/RIR estimates the total number of small entities affected by this action, and analyzes the economic impact on those small entities. Based on the economic analysis in the EA/RIR, the Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. Copies of the EA/RIR can be obtained from NMFS (see ADDRESSES).

This final rule will not change the collection of information approved by the Office of Management and Budget, OMB Control Number 0648-0272, for the Pacific halibut and sablefish IFQ program.

This final rule has been determined to be not significant for purposes of E.O. 12866.

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

Fisheries, Reporting and recordkeeping requirements.

Dated: December 19, 1996.

Nancy Foster,

*Deputy Assistant Administrator for Fisheries, 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 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*

2. In § 679.41, paragraph (e)(2) is revised and paragraph (e)(3) is added to read as follows:

**§ 679.41 Transfer of QS and IFQ.**

\* \* \* \* \*

(e) \* \* \*

(2) QS blocks for the same IFQ regulatory area and vessel category that represent less than 5,000 lb (2.3 mt) of sablefish IFQ, based on the 1996 TAC share for fixed gear sablefish in a specific IFQ regulatory area and the QS pool for that IFQ regulatory area on January 31, 1996, may be consolidated into larger QS blocks provided that the

consolidated blocks do not represent greater than 5,000 lbs (2.3 mt) of sablefish IFQ based on the preceding criteria. A consolidated block cannot be divided and is considered a single block for purposes of use and transferability. The maximum number of QS units that may be consolidated into a single QS block in each IFQ regulatory area is as follows:

(i) Southeast Outside district: 33,270 QS.

(ii) West Yakutat district: 43,390 QS.

(iii) Central Gulf area: 46,055 QS.

(iv) Western Gulf area: 48,410 QS.

(v) Aleutian Islands subarea: 99,210 QS.

(vi) Bering Sea subarea: 91,275 QS.

(3) QS blocks for the same IFQ regulatory area and vessel category that represent less than 3,000 lbs (1.4 mt) of halibut IFQ, based on the 1996 catch limit for halibut in a specific IFQ regulatory area and the QS pool for that IFQ regulatory area on January 31, 1996,

may be consolidated into larger QS blocks provided that the consolidated blocks do not represent greater than 3,000 lbs (1.4 mt) of halibut IFQ based on the preceding criteria. A consolidated block cannot be divided and is considered a single block for purposes of use and transferability. The maximum number of QS units that may be consolidated into a single block in each IFQ regulatory area is as follows:

(i) Area 2C: 19,992 QS.

(ii) Area 3A: 27,912 QS.

(iii) Area 3B: 44,193 QS.

(iv) Subarea 4A: 22,947 QS.

(v) Subarea 4B: 15,087 QS.

(vi) Subarea 4C: 30,930 QS.

(vii) Subarea 4D: 26,082 QS.

(viii) Subarea 4E: 0 QS.

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