Internet at *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/*.

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue, SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class E airspace at Red Reflet Ranch Airport, Ten Sleep, WY. Controlled airspace is necessary to accommodate aircraft using the new RNAV (GPS) SIAP at Red Reflet Ranch Airport, Ten Sleep, WY. This action would enhance the safety and management of aircraft operations at Red Reflet Ranch Airport, Ten Sleep, WY.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9S, signed October 3, 2008, and effective October 31, 2008, which is incorporated by reference in 14 CFR 71.1. The Class F airspace designation listed in this document will be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation; (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103.

Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes additional controlled airspace at Red Reflet Ranch Airport, Ten Sleep, WY.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the FAA Order 7400.9S, Airspace Designations and Reporting Points, signed October 3, 2008, and effective October 31, 2008 is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM WY, E5 Ten Sleep, WY [New]

Ten Sleep, Red Reflet Ranch Airport, WY
(Lat. 43°58′04″ N., long. 107°22′46″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6 mile radius of the Red Reflet Ranch Airport, and within 4 miles each side of the Red Reflet Ranch Airport 293° bearing extending from the 6.6-mile radius to 12 miles northwest of the Red Reflet Ranch Airport.

* * * * *

Issued in Seattle, Washington, on January 14, 2009.

H. Steve Karnes,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. E9–3076 Filed 2–12–09; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–138326–07]

RIN 1545–BH22

Tax Avoidance Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations under section 6231 of the Internal Revenue Code that allow the IRS to convert partnership items to nonpartnership items when the application of the unified partnership audit and litigation procedures of sections 6221 through 6234 (TEFRA partnership procedures) with respect to certain tax avoidance transactions interferes with the effective and efficient enforcement of the internal revenue laws. The regulations affect taxpayers who have engaged in a listed transaction through an entity subject to the TEFRA partnership procedures. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by May 14, 2009. Outlines of topics to be discussed at the public hearing scheduled for June 4, 2009, at 10 a.m. must be received by May 15, 2009.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–138326–07), room 5205, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–138326–07), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–138326–07). The public hearing will be held in the Auditorium, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations,

Robert T. Wearing at (202) 622–4570; concerning submissions of comments, the hearing, or to be placed on the building access list to attend the hearing, *Richard.A.Hurst@irscounsel.treas.gov* of the Publications and Regulations Branch at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Procedure and Administration Regulations (26 CFR Part 301) under section 6231(c) of the Internal Revenue Code. Section 402 of the Tax Equity and Fiscal Responsibility Act of 1982, Public Law 97–248 (96 Stat. 324) added sections 6221 through 6231 to the Internal Revenue Code to provide unified audit and litigation procedures for determining the tax treatment of partnership items at the partnership level rather than at the partner level. Sections 6233 and 6234 were subsequently added by section 714(p)(1) of the Tax Reform Act of 1984, Public Law 98–369 (98 Stat. 494) and section 1231(a) of the Taxpayer Relief Act of 1997, Public Law 105–34 (11 Stat. 788), respectively.

Ordinarily, under the TEFRA partnership procedures, the IRS must adjust a partner's treatment of partnership items only through partnership-level proceedings. There are several exceptions that allow adjustments to be made through partner-level proceedings. The small partnership exception set forth in section 6231(a)(1)(B) provides that partnerships having ten or fewer partners, each of whom is an individual, a C corporation, or an estate, are not subject to the TEFRA partnership procedures. Section 6231(b) provides that items cease to be partnership items subject to the TEFRA partnership procedures in several different situations. Section 6231(c) allows the Treasury Department and the IRS to determine and provide by regulations that treating items as partnership items in areas that present special enforcement considerations will interfere with the effective and efficient enforcement of the internal revenue laws and that, consequently, the items shall be treated as nonpartnership items. Section 6231(c) also allows the Treasury Department and the IRS to prescribe by regulations rules necessary to achieve the purposes of the TEFRA partnership procedures with respect to special enforcement areas. Section 6231(c) lists several specific special enforcement areas, including criminal investigations and indirect methods of proof of income, and provides that the Treasury Department and the IRS may determine others. The Treasury Department and the IRS previously have determined and provided by regulations that bankruptcy, receivership, and prompt assessment requests interfere with the effective and efficient enforcement of the internal revenue laws and designated them as special enforcement areas. See §§ 301.6231(c)–7 and –8 of the Procedure and Administration Regulations.

Explanation of Provisions

One of the principal purposes behind the enactment of the TEFRA partnership procedures was to provide for the more efficient use of the IRS's resources by reducing multiple proceedings with respect to partnership items. The abusive tax shelters of the 1970s often used a single partnership to generate tax benefits for dozens, if not hundreds, of investors. Before the enactment of the TEFRA partnership procedures, the partnership items of each investor were subject to separate partner-level proceedings. The TEFRA partnership procedures effectively brought the partnership item components of these proceedings together in a single proceeding. Unlike the tax shelters of the 1970s, however, the recent generation of tax avoidance transactions often uses combinations of trusts, S corporations, limited liability companies, partnerships, and other entities, many times arranged in tiers, for the tax benefit of a single investor or a small group of investors. The application of the TEFRA partnership procedures to these tax avoidance transactions often results in multiple proceedings that complicate the ultimate determination of the investors' tax liabilities and consume significant administrative resources.

For example, in a typical transaction described in Notice 2000–44 (2000–2 CB 255) (September 5, 2000), see § 601.601(d)(2)(ii)(*b*), in which the ultimate noneconomic loss or deduction is taken at the partner level by a single individual, the IRS first needs to initiate timely partnership-level proceedings to determine, among other things, whether the partnership is a sham and the amount and character of contributions and partnership liabilities. Following the partnership-level proceedings, the IRS often still must issue an affected items notice of deficiency to disallow the noneconomic loss or deduction at the partner level. Conducting both entity-level and partner-level proceedings in these cases to determine the tax liabilities of only a single individual or small group of related persons places an unnecessary burden on taxpayers, the IRS, and the federal courts.

Other tax avoidance transactions use multiple tiers of partnerships making coordinated partnership elections for the benefit of a single individual. Two or more separate partnership proceedings, as well as a partner-level proceeding, may need to take place before an assessment can be made against the individual. Again, conducting entity-level proceedings in these and similar cases in which a single individual or small group of related persons control multiple entities and receive all the tax benefits is inefficient and imposes a significant administrative burden.

The need to conduct partnership-level proceedings to determine the tax liabilities of a single individual or small group of related persons also generates complex and burdensome procedural issues that do not contribute to the determination of the individuals' tax liabilities. For example, the application of the TEFRA partnership procedures may raise complicated issues concerning the segregation and aggregation of partnership items, affected items, and nonpartnership items. Often, the TEFRA partnership procedures make the identification and examination of the transactions more complicated and difficult. As a result, the Treasury Department and the IRS have determined that special enforcement considerations, within the meaning of section 6231(c)(1)(E), are present in the case of transactions that the Treasury Department and the IRS have publicly identified as tax avoidance transactions. Specifically, the Treasury Department and the IRS have determined that treating items related to listed transactions within the meaning of § 1.6011–4(b)(2) of the Income Tax Regulations as partnership items interferes with the effective and efficient enforcement of the internal revenue laws.

The proposed regulations are limited to tax avoidance transactions that are publicly identified by the Treasury Department and the IRS as listed transactions under § 1.6011–4(b)(2) of the Income Tax Regulations. Under the proposed regulations, the transaction must be a listed transaction on the date the IRS sends written notification to the partner that the partner's partnership items will be treated as nonpartnership items. Accordingly, the fact that a transaction becomes a listed transaction after the date on which the taxpayer engages in the transaction does not preclude the conversion of items under

the proposed regulations. This limitation promotes taxpayer awareness of the transactions that can subject their partnership items to removal from the TEFRA partnership procedures. The Treasury Department and the IRS also have determined that the limitation will provide for the more efficient use of the IRS's resources.

Under the proposed regulations, the IRS will make determinations regarding whether to convert partnership items to nonpartnership items on a partnership-by-partnership and partner-by-partner basis. Thus, if a taxpayer is a partner in two partnerships with partnership items related to listed transactions and a third partnership that has no partnership items related to listed transactions, the IRS could convert the taxpayer's partnership items in either or both of the first two partnerships but could not convert the taxpayer's partnership items in the third partnership. Similarly, if a taxpayer engages in a listed transaction through a tier of TEFRA entities, the IRS could convert the taxpayer's partnership items in any or all of the tier entities with partnership items related to the listed transaction.

Although, consistent with section 6231(c)(2), the Secretary has determined that treating items related to listed transactions as partnership items will interfere with the effective and efficient enforcement of the internal revenue laws and has so provided in the proposed regulations, the proposed regulations further provide that the partnership items related to listed transactions remain subject to the TEFRA partnership procedures unless and until the IRS sends written notification to the partner that the items will be treated as nonpartnership items. In this regard, the proposed regulations are consistent with the rules that are already in place with respect to sending notices under section 301.6231(c)–5 of the Procedure and Administration Regulations relating to partners under criminal investigation. See *Phillips* v. *Commissioner,* 272 F.3d 1172, 1176 (9th Cir. 2001). Specifically, the IRS will send written notification under the circumstances described in the proposed regulations using procedures similar to the procedures used under § 301.6231(c)–5 of the Procedure and Administration Regulations, and will make conforming changes to the Internal Revenue Manual and Delegation Order 4–19, as necessary.

If the IRS concludes that a particular partner's partnership items should be treated as nonpartnership items under the circumstances described in the proposed regulations, the IRS will send written notification to the partner identifying each partnership for which the partner's partnership items will be treated as nonpartnership items. In the case of an indirect partner (as defined in section 6231(a)(10)) having an interest in a partnership through one or more pass-thru partners (as defined in section 6231(a)(9)), the IRS may send a written notification to the indirect partner identifying only the lower-tier partnership and not the pass-thru partners. In those circumstances, the partnership items attributable to the lower-tier partnership that flow through to the indirect partners will convert to nonpartnership items of the notified partner, even though the pass-thru partners were not identified in the written notification. Any partnership items originating with the pass-thru partners, that is, partnership items that are not attributable to the lower-tier partnership, will not convert to nonpartnership items unless the IRS identifies the pass-thru partner in the written notification (in which case all the partnership items directly attributable to the pass-thru partner also will convert to nonpartnership items of the notified partner).

As of the date that the IRS sends written notification of the conversion to the partner, all of the partner's partnership items attributable to the identified partnership will be treated as nonpartnership items for all of the identified partnership's taxable years that (1) ended on or before the date written notification is sent by the IRS to the partner and (2) for which the partner has items attributable to that partnership that are related to the listed transaction. The deficiency procedures in subchapter B of chapter 63 will apply, pursuant to section 6230(a)(2)(A)(ii), as of the date of the notice.

The proposed regulations incorporate existing rules under § 301.6231(c)–3 of the Procedure and Administration Regulations, which provide that the partnership items of a partnership may not be converted if a notice of final partnership administrative adjustment (FPAA) with respect to those partnership items has been mailed to the tax matters partner of the partnership and either (1) the period for bringing an action with respect to the FPAA has expired and no judicial action has been brought or (2) the decision of the court in an action brought with respect to the FPAA has become final. This rule allows the IRS to send notification converting partnership items to nonpartnership items after the commencement of a judicial proceeding related to the converted partnership items. The Treasury Department and the IRS recognize, however, that it is not in the best interest of taxpayers, the Treasury Department, the IRS, or the courts to unnecessarily delay conversion of partnership items to nonpartnership items. Consistent with its existing practices under section 6231(c), the IRS intends to make a decision regarding whether to convert partnership items to nonpartnership items before the commencement of any judicial proceeding, although on isolated and unusual occasions changed circumstances may require the IRS to revisit that decision after the commencement of a judicial proceeding. In addition, judicial doctrines such as collateral estoppel and res judicata may preclude litigating issues in a partner-level proceeding that were previously litigated in a partnership-level proceeding prior to conversion of partnership items to nonpartnership items. Finally, the partnership items of any partners to whom the IRS does not send written notification will not convert to nonpartnership items.

Proposed Effective Date

The regulations, when finalized, are proposed to apply to any taxable period ending on or after the date of publication of these rules as proposed regulations in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The Treasury Department and the IRS request comments on the clarity of the proposed rules and how they can be made easier to understand. The Treasury Department and the IRS also

request comments that identify additional transactions or activities that present appropriate grounds for converting partnership items to nonpartnership items. All comments will be made available for public inspection and copying.

A public hearing has been scheduled for June 4, 2009, beginning at 10 a.m. in the Auditorium of the Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by May 15, 2009. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Robert T. Wearing of the Office of the Associate Chief Counsel (Procedure and Administration).

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR Part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 is amended by adding the entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 301.6231(c)–9 is also issued under 26 U.S.C. 6230(k) and 6231(c)(1) and (c)(3). * * *

Par. 2. Section 301.6231(c)–3 is amended by revising paragraphs (a) introductory text and (b) to read as follows:

§ 301.6231(c)–3 Limitation on applicability of §§ 301.6231(c)–4 through 301.6231(c)–9.

(a) *In general.* A provision of §§ 301.6231(c)–4 through 301.6231(c)–9 shall not apply with respect to partnership items arising in a partnership taxable year if, as of the date on which those items would otherwise begin to be treated as nonpartnership items under that provision.

* * * * *

(b) *Effective/applicability date.* The rules of this section, when adopted as final regulations in the **Federal Register**, will apply to partner taxable years ending on or after the date of publication of these proposed regulations in the **Federal Register**.

* * * * *

Par. 3. Section 301.6231(c)–9 is added to read as follows:

§ 301.6231(c)–9 Tax avoidance transactions.

(a) *In general.* The treatment of items that relate to a listed transaction, as defined in § 1.6011–4, as partnership items will interfere with the effective and efficient enforcement of the internal revenue laws. Accordingly, if a partner has partnership items that relate to a listed transaction and are attributable to a partnership that is identified in a written notification described in this paragraph, the partner's partnership items that are attributable to the identified partnership shall be treated as nonpartnership items as of the date on which the written notification is sent by the Internal Revenue Service to the partner. The determination whether to treat the partnership items of a partner as nonpartnership items shall be made by the Internal Revenue Service on a partnership-by-partnership and partner-by-partner basis. The partnership items of a partner shall not be treated as nonpartnership items under this section unless and until the Internal Revenue Service sends the partner written notification that the partner's partnership items attributable to the identified partnership will be treated as nonpartnership items. The written notification shall identify each partnership in which the partner holds an interest, directly or indirectly, with respect to which all the partner's partnership items will be treated as nonpartnership items. All partnership items of a partner that are attributable to a partnership that is identified in a written notification shall be treated as nonpartnership items for all taxable years of the identified partnership ending on or before the date the Internal Revenue Service sends written notification to the partner in which the partner has partnership items attributable to the identified partnership that relate to the listed transaction. Partnership items of a partner that are attributable to a partnership that is not identified in a written notification sent by the Internal Revenue Service to that partner shall not be treated as nonpartnership items of the notified partner, except that if the notified partner holds an interest in the identified partnership through one or more pass-thru partners (as defined in section 6231(a)(9)), the partnership items attributable to the identified partnership that flow through the pass-thru partners to the indirect partners (as defined in section 6231(a)(10)), will be treated as nonpartnership items of the notified partner even if the written notification does not identify the pass-thru partners.

(b) *Examples.* The provisions of this section may be illustrated by the following examples:

Example 1. PS1 and PS2 are unrelated partnerships subject to the provisions of subchapter C, chapter 63 of the Internal Revenue Code. A is one of the partners of PS1 and one of the partners of PS2. PS1 and PS2 have partnership items that relate to a listed transaction, as defined in § 1.6011–4(b)(2). The IRS sends written notification to A that his partnership items in PS1 will be treated as nonpartnership items, but the IRS does not send written notification to A that his partnership items in PS2 will be treated as nonpartnership items. As a result, A's partnership items in PS1 are treated as nonpartnership items as of the date that the IRS sent written notification of the conversion to A, and A's partnership items in PS2 remain as partnership items.

Example 2. PS3 and PS4 are partnerships subject to the provisions of subchapter C, chapter 63 of the Internal Revenue Code. B is one of the partners of PS3 and PS3 is one of the partners of PS4. B is an indirect partner in PS4 within the meaning of section 6231(a)(10). Both PS3 and PS4 have partnership items related to a listed transaction, as defined in § 1.6011–4(b)(2). The IRS sends written notification to B that his partnership items in PS4 will be treated as nonpartnership items. As a result, all of B's partnership items flowing from PS4 are treated as nonpartnership items of B as of the date that the IRS sent written notification of the conversion to B. However, since the IRS did not send written notification to B that his partnership items in PS3 will be treated as nonpartnership items, B's partnership items in PS3 that are not attributable to PS4 will remain partnership items.

(c) *Effective/applicability date.* The rules of this section, when adopted as final regulations in the **Federal Register**, will apply to partner taxable years

ending on or after the date of publication of these proposed regulations in the **Federal Register**.

Dated: February 9, 2009.

Linda M. Kroening,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E9–3069 Filed 2–12–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 070718366–7372–01]

RIN 0648–AV32

Fisheries of the Exclusive Economic Zone Off Alaska; Maximum Retainable Amounts for Non–American Fisheries Act Trawl Catcher/Processors

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to amend regulations to change the time at which the amount of retained groundfish must be calculated to comply with the maximum retainable amounts (MRAs) of selected groundfish species caught by trawl catcher/processors (C/Ps) that are not eligible under the American Fisheries Act (AFA) to participate in directed fishing for pollock. This proposed action would apply to MRAs for yellowfin sole, rock sole, flathead sole, ''other flatfish,'' arrowtooth flounder, Pacific cod, and Atka mackerel in the Bering Sea and Aleutian Islands management area (BSAI) and for Pacific ocean perch in the Aleutian Islands (AI). The proposed action is necessary to provide the non–AFA trawl C/Ps the opportunity to reduce discards and increase retention of these groundfish species. The proposed rule is intended to promote the goals and objectives of the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP).

DATES: Written comments must be received by March 16, 2009.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by ''RIN 0648–AV32'', by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal website at *http://www.regulations.gov*.
- Mail: P. O. Box 21668, Juneau, AK 99802.
- Fax: (907) 586–7557.
- Hand delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK.

All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter ''N/A'' in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

Copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for this action may be obtained from the mailing address above or from the NMFS Alaska Region website at *http://www.fakr.noaa.gov*.

Written comments regarding the burden-hour estimates or other aspects of the collection–of–information requirements contained in this proposed rule may be submitted to NMFS at **ADDRESSES** above and by e–mail to *David__Rostker@omb.eop.gov*, or fax to 202– 395(7285.

FOR FURTHER INFORMATION CONTACT: Jeff Hartman, 907–586–7442, or *jeff.hartman@noaa.gov*.

SUPPLEMENTARY INFORMATION: NMFS manages the U.S. groundfish fisheries in the BSAI under the FMP. The North Pacific Fishery Management Council (Council) prepared the FMP pursuant to the Magnuson–Stevens Fishery Conservation and Management Act (Magnuson–Stevens Act), 16 U.S.C. 1801 *et seq.* Regulations implementing the FMP appear at 50 CFR part 679. General regulations that pertain to U.S. fisheries appear at subpart H of 50 CFR part 600.

MRAs assist in limiting harvest of a species within its annual total allowable catch (TAC). Once the TAC for a species is reached, retention of that species becomes prohibited and all catch of that species must be discarded. Therefore, NMFS closes a species to directed fishing before the entire TAC is taken to leave sufficient amounts of the TAC available for incidental catch. A species–specific MRA is used to manage the amount of a species left for incidental catch.

The MRA is the maximum weight of a species closed to directed fishing that may be retained onboard a vessel. MRAs are calculated as a percentage of the weight of catch of each species open to directed fishing that is retained onboard the vessel (the basis species). If the MRA for a species is 35 percent, then the percent of retained incidental species must be no more than 35 percent of the weight of basis species. For example, the MRA for rock sole caught in a directed fishery for yellowfin sole is 35 percent. If yellowfin sole is open to directed fishing (a basis species) and rock sole is closed to directed fishing, a vessel operator may retain rock sole in amounts up to 35 percent of the round weight equivalent of yellowfin sole that is onboard the vessel at any point in time during a fishing trip. All catch of rock sole in excess of the MRA must be discarded. To calculate retained amounts for rock sole and yellowfin sole, the vessel operator would estimate the processed weight of rock sole and yellowfin sole for a trip, convert those processed amounts to round weight equivalent of retained catch, and compare that estimate of retained catch with the 35 percent MRA for rock sole.

MRAs are applied to all groundfish species in the BSAI to reduce fishing effort on specific species when catch is approaching an annual TAC. MRAs are the primary tool used by NMFS to reduce or slow the catch of species when directed fishing for that species is closed. Directed fishing is defined in 50 CFR part 679 as ''any fishing activity that results in the retention of an amount of a species or species group onboard a vessel that is greater than the MRA for that species or species group.(Table 11 to 50 CFR part 679 provides the list of incidental catch and basis species and the MRA of each incidental catch species as a percentage of each basis species.

Current regulations at § 679.20(e) require, with one exception, that the MRAs apply at any time during a fishing trip. This MRA accounting period is known as ''instantaneous,'' because the MRA may not be exceeded at any point in time during the fishing trip. The exception to this requirement, implemented in 2004 to reduce regulatory discards of pollock, allows the MRA for pollock retained by non–AFA vessels to apply at the end of each offload rather than at any time during