

The OMB has exempted this action from review under Executive Order 12866.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: December 1, 1994.

Nora L. McGee,
Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(198)(i)(B) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *
(198) * * *
(i) * * *

(B) Placer County Air Pollution Control District

(1) Rule 230, adopted on June 28, 1994.

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40 CFR Part 52

[CA21–6–6643; FRL–5117–2]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing the approval of revisions to the California State Implementation Plan (SIP) proposed in the *Federal Register* on July 5, 1994. The revisions concern rules from the Ventura County Air Pollution Control District (VCAPCD). This approval action will incorporate these rules into the

federally approved SIP. The intended effect of approving these rules is to regulate emissions of oxides of nitrogen (NO_x) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The rules concern the control of NO_x emissions from electric utilities and stack monitoring requirements for making compliance determinations. Thus, EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

EFFECTIVE DATE: This final rule is effective on January 13, 1995.

ADDRESSES: Copies of the rule revisions and EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket 6102, 401 "M" Street, SW., Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

Ventura County Air Pollution Control District, Rule Development Section, 702 County Square Drive, Ventura, CA 93003.

FOR FURTHER INFORMATION CONTACT:

Wendy Colombo, Rulemaking Section, Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1202.

SUPPLEMENTARY INFORMATION:

Background

On July 5, 1994 in 59 FR 34399, EPA proposed to approve the following rules into the California SIP: VCAPCD's Rule 59, Electrical Power Generating Equipment—Oxides of Nitrogen Emissions, and Rule 103, Stack Monitoring. Rule 59 and Rule 103 were adopted by VCAPCD on September 15, 1992 and June 4, 1991, respectively. The California Air Resources Board (CARB) submitted these revisions to EPA on November 18, 1993 and October 25, 1991. These rules were adopted as part of Ventura County's efforts to achieve the National Ambient Air Quality Standards (NAAQS) for ozone and in

response to section 182(f) NO_x RACT requirements of the Clean Air Act (CAA). A detailed discussion of the background for each of the above rules and nonattainment areas is provided in the NPRM cited above.

EPA has evaluated both of the above rules for consistency with the requirements of the CAA and EPA regulations and EPA interpretation of these requirements as expressed in the various EPA policy guidance documents referenced in the NPRM cited above. EPA has found that the rules meet the applicable EPA requirements. A detailed discussion of the rule provisions and evaluations has been provided in the NPRM and in the technical support document (TSD), dated June 1994, which is available at EPA's Region IX office.

Response to Public Comments

A 30-day public comment period was provided in 59 FR 34399. EPA received no comments.

EPA Action

EPA is finalizing this action to approve the above rules for inclusion into the California SIP. EPA is approving the submittal under section 110(k)(3) as meeting the requirements of section 110(a) and part D of the CAA. This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of NO_x in accordance with the requirements of the CAA.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the *Federal Register* on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The OMB has exempted this action from review under Executive Order 12866.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference,

Intergovernmental relations, Nitrogen Dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds. Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: November 28, 1994.

John Wise,

Acting Regional Administrator

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c) (186)(i)(D)(2) and (194)(i)(A)(2) to read as follows:

§ 52.220 Identification of plan.

- (c) * * *
- (186) * * *
- (i) * * *
- (D) * * *
- (2) Rule 103, adopted on June 4, 1991.
- (194) * * *
- (i) * * *
- (A) * * *
- (2) Rule 59, adopted on September 15, 1992.

[FR Doc. 94-30742 Filed 12-13-94; 8:45 am]
BILLING CODE 6560-50-P

40 CFR Parts 123, 124, 131, 142, 144, 145, 233, and 501

[FRL-5119-9]

RIN 2020-AA20

Indian Tribes; Eligibility for Program Authorization

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action amends regulations addressing the role of Indian tribes so as to make it easier for tribes to obtain EPA approval to assume the role Congress envisioned for them under certain environmental statutes. Three EPA regulatory statutes address the tribal role specifically by authorizing EPA to treat tribes in a manner similar to that in which it treats states: The Clean Water Act (CWA), the Safe

Drinking Water Act (SDWA), and the Clean Air Act (CAA). All three statutes specify that, in order to receive such treatment, a tribe must be federally recognized and possess a governing body carrying out substantial duties and powers. In addition, each requires that a tribe possess civil regulatory jurisdiction to carry out the functions it seeks to exercise. Finally, all three require that a tribe be reasonably expected to be capable of carrying out those functions.

The Agency initially chose to implement provisions of the Clean Water and Safe Drinking Water Acts regarding Indian tribes by establishing a formal prequalification process under which tribes can seek eligibility under these statutes. This prequalification process has in the past been referred to as approval for "treatment as a state" ("TAS"). Tribes that obtain such approval then become eligible to apply for certain grants and program approvals available to states.

The Agency's "TAS" prequalification process has proven to be burdensome, time-consuming and offensive to tribes. Accordingly, EPA has adopted a new policy to improve and simplify the process and this regulation implements the new policy. To the extent possible, the Agency plans to use the same process in future regulations regarding determinations of tribal eligibility.

As of the effective date of this regulation, it is the intent of EPA to follow the new process in making determinations on tribal eligibility for program authorization. With respect to pending "TAS" applications for program authorization, the Agency will utilize the information contained in such applications to determine tribes' eligibility and tribes will be requested to supplement such applications only to the extent necessary to determine program eligibility.

EFFECTIVE DATE: December 14, 1994.

FOR FURTHER INFORMATION CONTACT: C. Marshall Cain, Office of Federal Activities (2251), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 260-8792.

SUPPLEMENTARY INFORMATION:

Background

In order to simplify and streamline the process of assessing tribal eligibility for program authorization while still ensuring full compliance with all applicable statutes, on March 23, 1994, EPA published in the *Federal Register* (59 FR 13819) a notice of proposed rulemaking to amend regulations governing the process whereby Indian tribes become eligible to assume a role

in implementing the environmental statutes on tribal land comparable to the role states play on state land.

EPA recognizes that tribes are sovereign nations with a unique legal status and a relationship to the federal government that is significantly different than that of states. EPA believes that Congress did not intend to alter this when it authorized treatment of tribes "as States;" rather, the purpose was to reflect an intent that, insofar as possible, tribes should assume a role in implementing the environmental statutes on tribal land comparable to the role states play on state land.

The proposals set forth in the proposed rule involved the following:

1. Elimination of "TAS" review as a separate step in the process. No statute compels the use of a formal "TAS" or other prequalification process separate from approval of the underlying request for program approval. The only requirements imposed by statute are that, to be eligible for program authorization, a tribe must be federally recognized, have a governing body carrying out substantial duties and powers, and have adequate jurisdiction and capability to carry out the proposed activities. Thus, EPA may authorize a tribal program without formally designating the tribe as "eligible for TAS," so long as the Agency establishes that the tribe meets the applicable statutory requirements. In other words, the Agency can ensure compliance with statutory mandates without requiring tribes to undergo a discrete, formal process of seeking "TAS" approval.

Accordingly, EPA is amending its regulations to eliminate "TAS" review as a separate step in the processing of a tribal application for program approval. Under the new, simplified process, the Agency will ensure compliance with statutory requirements as an integral part of the process of reviewing program approval applications. To the extent that this rule or preamble conflicts with the language of previous rules and preambles, the language herein shall be controlling.

2. Discontinuance of use of the term "treatment as a state." To the extent possible, the rule amends existing regulations so as to discontinue use of the term "treatment as a state"; however, since the phrase is included in several statutes, its continued use may sometimes be necessary.

3. Simplified determination as to "recognition" and "government." A tribe typically establishes recognition by showing its inclusion on the list of federally recognized Tribes published by the Secretary of the Interior in the *Federal Register*. A tribe establishes that

it meets the governmental duties and powers requirement with a narrative statement describing the form of the tribal government and the types of functions it performs, and identifying the sources of the tribe's governmental authority.

As a general rule, the "recognition" and "governmental" requirements are essentially the same under the Clean Water, Safe Drinking Water and Clean Air Acts. The new process will reflect this by establishing identical requirements for making this showing under each statute. Moreover, the fact that a tribe has met the recognition or governmental functions requirement under either of the Water Acts or the Clean Air Act will establish that it meets those requirements under both statutes. To facilitate review of tribal applications, EPA will request that tribal applications inform EPA whether a tribe has been approved for "TAS" (under the old process) or deemed eligible to receive authorization (under the revised process) for any other program.

A tribe that has not done so may establish that it has been federally recognized by simply stating in its program authorization application that it appears on the list of federally recognized tribes that the Secretary of the Interior publishes periodically in the *Federal Register*. If the tribe notifies EPA that it has been recognized but does not appear on this list because the list has not been updated, EPA will seek to verify the fact of recognition with the Department of the Interior.

A tribe that has not yet made its initial "governmental" showing can do so by certifying that it has a government carrying out substantial functions. A tribe will be able to make the required certification if it is currently performing governmental functions to promote the public health, safety, and welfare of its population. Examples of such functions include, but are not limited to, levying taxes, acquiring land by exercise of the power of eminent domain, and exercising police power. Such examples should be included in a narrative statement supporting the certification, (1) describing the form of tribal government and the types of essential governmental functions currently performed, and (2) identifying the legal authorities for performing those functions (e.g., tribal constitutions or codes). It should be relatively easy for tribes to meet this requirement without submitting copies of specific documents unless requested to do so by the Agency.

4. Simplified jurisdictional analysis. A tribe may have jurisdiction over, and capability to carry out, certain activities

(e.g., protection of the quality of a particular lake for the Clean Lakes program under the Clean Water Act), but not others (e.g., waste management on a portion of the reservation far removed from any lakes). For this reason, EPA believes that the Agency must make a specific determination that a tribe has adequate jurisdictional authority and administrative and programmatic capability before it approves each tribal program. This will ensure that tribes meet the statutory requirements Congress has established as prerequisites to tribal eligibility for each particular program.

The portion of the jurisdictional determination under which governments comment on tribal jurisdiction will be substantially altered under this Rule. These changes are outlined below.

For approvals of all Drinking Water regulatory programs and most Clean Water programs under existing regulations, EPA will not authorize a state to operate a program without determining that the state has adequate authority to carry out those actions required to run the program. See e.g. 40 CFR 142.10 (PWS), 145.24 (UIC). This applies also to a tribe seeking program approval, and ensures that a close analysis of the legal basis of a tribe's jurisdiction will occur before program authorization.

Accordingly, a separate "TAS" jurisdictional review is not needed to verify that a tribe meets the statutory jurisdictional requirement and, therefore, will be eliminated for all programs under the Safe Drinking Water Act, and for the Clean Water Act's 404 and NPDES programs. This change will have the effect only of eliminating duplicative requirements. In no case can a tribe receive program approval until the Agency has received full and adequate input concerning the scope and extent of the tribe's jurisdiction. Moreover, EPA will expect each tribe seeking program approval to provide a precise description of the physical extent and boundaries of the area for which it seeks regulatory authority. This description should ordinarily include a map and should identify the sources or systems to be regulated by the tribe.

However, for the Water Quality Standards program, there is no review of tribal civil regulatory authority as part of the standards approval process under section 303(c) of the Clean Water Act. Accordingly, for that program, a comment process will be retained. However, the Agency wishes to clarify the operation of that process by reiterating that comments must be offered in a timely manner, and, further,

by specifying that where no timely comments are offered, the Agency will conclude that there is no objection to the tribal applicant's jurisdictional assertion. Moreover, to raise a competing or conflicting claim a comment must clearly explain the substance, basis, and extent of its objections. Finally, when questions are raised concerning a tribe's jurisdiction, EPA may, in its discretion, seek additional information from the tribe or the commenting party, and may consult as it sees fit with other federal agencies prior to making a determination as to tribal jurisdictional authority, but is not required to do so. Henceforth, EPA will no longer be required, by regulation, to consult with the Department of the Interior.

Finally, the Agency notes that certain disputes concerning tribal jurisdiction may be relevant to a tribe's authority to conduct activities and obtain program approval under several environmental statutes. For example, if a tribe and a state or another tribe disagree as to the boundary of a particular tribe's reservation, each time the tribe seeks to assert authority over the disputed area, the dispute will recur. The Agency recognizes that its determinations regarding tribal jurisdiction apply only to activities within the scope of EPA programs. However, it also believes that, once it makes a jurisdictional determination in response to a tribal application regarding any EPA program, it will ordinarily make the same determination for other programs unless a subsequent application raises different legal issues. Thus, for example, once the Agency has arrived at a position concerning a boundary dispute, it will not alter that position in the absence of significant new factual or legal information. By contrast, however, a determination that a tribe has inherent jurisdiction to regulate activities in one medium might not conclusively establish its jurisdiction over activities in another medium. See generally Discussion of inherent tribal authority in Water Quality Standards Regulation, 56 FR 64877-64879.

Under the new approval process, as under the old, the Agency will continue to retain authority to limit its approval of a tribal application to those land areas where the tribe has demonstrated jurisdiction. This would allow EPA to approve the portion of a tribal application covering certain areas, while withholding approval of the portion of an application addressing those land areas where tribal authority has not been satisfactorily established. See, e.g. 53 FR 37395, 37402 (September 26, 1988) (SDWA); 54 FR 14353, 14355

(April 11, 1989) (Clean Water Act Grants); 54 FR 39097, 39102 (September 12, 1989) (Clean Water Act Water Quality Standards); 58 FR 8171, 8176 (February 11, 1993) (Clean Water Act section 404); 58 FR 67966, 67972 (Clean Water Act NPDES) (December 22, 1993).

5. More flexible requirements to establish capability. EPA must continue to make a separate determination of tribal capability for each program for which it approves a tribe. However, the Safe Drinking Water Act, Water Quality Standards, Section 404, and NPDES regulations will be amended to conform to the CWA grant regulations, which do not specifically prescribe the material a tribe must submit to establish capability. Ordinarily, the inquiry EPA will make into the capability of any applicant, tribal or state, for a grant or program approval will be sufficient to enable the Agency to determine whether a tribe meets the statutory capability requirement. See, e.g., 40 CFR part 31 (grant regulations applicable to states and tribes); 40 CFR 142.3 (Public Water System primary enforcement responsibility requirements at parts 141, 142 apply to tribes); § 145.1(h) (Underground Injection Control requirements of parts 124, 144, 145, and 146 that apply to states generally apply to tribes).

Nevertheless, EPA may request that the tribe provide a narrative statement or other documents showing that the tribe is capable of administering the program for which it is seeking approval. In evaluating tribal capability, EPA will consider:

- (1) The tribe's previous management experience;
- (2) Existing environmental or public health programs administered by the tribe;
- (3) The mechanisms in place for carrying out the executive, legislative and judicial functions of the tribal government;
- (4) The relationship between regulated entities and the administrative agency of the tribal government which will be the regulator; and
- (5) The technical and administrative capabilities of the staff to administer and manage the program.

EPA recognizes that certain tribes may not have substantial experience administering environmental programs; a lack of such experience will not preclude a tribe from demonstrating capability, so long as it shows that it has the necessary management and technical and related skills or submits a plan describing how it will acquire those skills.

The notice of proposed rulemaking invited public comments on the

proposed amendments, which would be considered before adoption of a final rule. The public comment period closed on May 23, 1994.

Analysis of Comments

A total of seven commenters responded to the solicitation of comments during the public comment period. Of these, four expressed support for the proposed changes in varying degrees, one of whom expressed strong support and others supported the changes generally but disagreed with certain aspects or had specific recommendations for other changes. One commenter did not express support or opposition but urged EPA to continue to stress that tribes should enact water quality programs similar to current state water quality programs. Another commenter, while not explicitly supporting the proposed amendments, urged that they be extended to include two other programs under the Safe Drinking Water Act. A final commenter opposed one aspect of the simplification process as it related to state review of tribal applications. These comments, suggested changes, and the EPA responses thereto, are set forth below.

Comment: Consistent with the EPA Indian Policy and sound administrative practice, EPA should recognize tribal authority over all environmental matters within reservation boundaries, without requiring tribes to demonstrate their inherent authority.

Response: EPA recognizes the importance of comprehensive management of reservation environments. However, EPA does not have the legal authority to expand the scope of tribal jurisdiction. Consequently, EPA must continue to analyze each tribal claim of jurisdiction in light of appropriate statutory and common law principles to ensure that the tribe in fact has adequate authority to carry out the functions it proposes to undertake.

Comment: EPA is to be commended for eliminating the state opportunity to comment on tribal jurisdictional assertions for all SDWA programs and for the Clean Water Act Section 404 and NPDES programs. However, since tribes cannot comment on state jurisdictional assertions in any programs, in fairness EPA should also eliminate state opportunity to comment on tribal jurisdictional assertions regarding Water Quality Standards.

Response: EPA continues to believe that it has the legal authority to approve a tribal Water Quality Standards program only upon a determination that the tribe has adequate authority to operate that program, and that state

comments may be useful to the Agency in making that determination.

Comment: EPA could further simplify the TAS process by providing that, when EPA reviews a new TAS application for a tribe that has already obtained TAS approval for one program, EPA will rely on the jurisdictional assertions in the prior approval to establish jurisdiction for a subsequent program. Where the earlier jurisdictional assertions do not establish jurisdiction adequately for the subsequent application, EPA would notify the tribe of any deficiencies and the tribe could then supplement or amend the original jurisdictional statement.

Response: EPA agrees with the commenter that this would simplify the process. However, EPA believes that it should look in the first instance to each tribal applicant's views as to its own jurisdiction. Thus a tribe that believes it is appropriate to provide more information regarding jurisdiction on a subsequent application than it provided on a previous one should be able to do so directly, without waiting for EPA to determine, after it begins processing an application, that more information is needed. EPA believes that under the current proposal, a tribe that wishes to use the process described by the commenter could do so by expressly incorporating the earlier jurisdictional assertion into a subsequent application.

In addition, the jurisdictional approach the Agency has determined the Clean Air Act allows it to follow differs substantially from the approach it follows under the Water Acts. For this reason, EPA does not believe it would be appropriate to establish a process under which a tribe would assume that, unless advised to the contrary, a jurisdictional assertion that was adequate under the Clean Air Act would also be adequate under one of the Water Acts.

Comment: States should be able to comment on the jurisdictional assertions contained in tribal grant applications. Also, states should not be totally bypassed in decisions to approve tribal regulatory programs.

Response: As stated in the *Federal Register* notice amending the EPA financial assistance regulations for tribes, EPA has extensive experience awarding grants to tribes, and has concluded that it is fully capable of evaluating grant applications to ensure adequate tribal jurisdiction without seeking comments from states. EPA agrees that it should obtain information from states concerning tribal applications for program approval, and

the proposed regulatory changes would ensure that this occurs.

Comment: One commenter, while supporting the intent of the proposed revisions, urged that (1) EPA regulations relating to Section 401 Certification (40 CFR part 121) be amended to expressly include Indian tribes so as to facilitate tribal involvement in the section 401 process, to resolve disagreements between tribes and states and to resolve disputes between tribes as well; (2) an apparent inconsistency in the definition of "State" in § 122.2 (which references Indian tribes that have obtained approval of their NPDES program but not their WQS program) be changed so that water quality standards set by approved tribes will be protected in NPDES permits under §§ 122.44, 124.53 and similar provisions; and (3) the regulations for the dispute resolution mechanism, 40 CFR 131.7, be revised to expressly authorize the use of this process for resolving disputes between two or more tribes that have differing standards for common bodies of water.

Response: (1) EPA believes it is unnecessary to amend the 401 regulations in Part 121 through the present TAS revisions rule in order to clarify that tribes have the authority to provide 401 certifications once they have approved water quality standards (WQS). It is EPA's position that tribes clearly have 401 authority once they receive approval of their WQS as specified in 40 CFR 131.4(c).

(2) EPA also does not believe that changes are necessary to the definition of "State" in § 122.2. The intent of EPA's regulations was to require the permitting authority (whether EPA or an authorized NPDES State) to issue permits which comply with all applicable water quality standards (including WQS approved by EPA for an Indian tribe). EPA interprets its regulations to require that all NPDES permits comply with applicable and EPA approved tribal WQS regardless of whether the tribe has been authorized as a permitting authority for the NPDES program. EPA's new regulatory provision in 40 CFR 124.51(c) supports the tribes' 401 certification authority and reads as follows: "As stated in 40 CFR 131.4, an Indian Tribe that is qualified for Treatment as a State for purposes of the WQS program is likewise qualified for treatment as a State for purposes of State certification of WQS pursuant to section 401(a)(1) of the Act [Clean Water Act] and Subpart D of this part." The preamble of the final NPDES rule at 58 FR 67967 (December 10, 1993) discusses this new provision in more depth.

In addition, the recent EPA guidance concerning EPA's implementation of the NPDES and sludge management programs with respect to Federal Indian Reservations (FIRs) specifies that "In situations where a State is the upstream NPDES permitting authority and downstream FIR Tribal WQS have been approved by EPA, the State will provide notice of the preparation of a draft permit to the affected Tribe pursuant to CWA sections 401 and 402. Under CWA sections 402(b)(3) and 40 CFR 124.12(a), the upstream NPDES state must provide an opportunity for public hearing on the issuance of the draft permit where there is significant public interest in so doing. Under CWA section 402(b)(5), the affected Tribe may submit written recommendations to the permitting State and EPA, and the failure to accept the recommendations and the reasons for doing so. EPA can object to the upstream State permit where EPA believes that the reasons for rejecting the recommendations are inadequate." Therefore, this guidance reflects EPA's general view that applicable tribal WQS are to be reflected in all water quality-based NPDES permit limits. When the Part 122-124 regulations refer to WQS of a "State," this also refers to Indian tribes with EPA approved WQS.

(3) EPA previously responded to comments regarding the scope of the dispute resolution mechanism on the rule allowing tribes to establish WQS (56 FR 64876, December 12, 1991). At that time, OW commented that the rule was written in this manner because Section 518 of the Clean Water Act specified that a dispute resolution mechanism be developed to resolve disputes arising between a tribe and a state. OW further commented that EPA believes the requirements that the State standards provide for protection of downstream standards in § 131.10(b) of the WQS Regulation, supported by a 25 year history of informal negotiation of issues between states, provides sufficient basis for resolving disputes between two states or two tribes. 56 FR 64888-64889. Further comments on this issue are beyond the scope of this rule and, therefore, EPA declines to revisit it at this time.

Comment: Although the proposed regulation would simplify the TAS process for a number of programs, it would not apply expressly to wellhead protection programs or sole source aquifer demonstration programs under the Safe Drinking Water Act. The Agency should consider seriously the inclusion of these important programs under the new regulation as well.

Response: EPA does not believe that it would be appropriate to expand the

scope of the regulation at this stage of its development. However, as pointed out previously in the Summary of this regulation, to the extent possible, the Agency plans to use the new process in future regulations regarding determinations of tribal eligibility.

Conclusion

Accordingly, based on the comments received and the analysis of those comments as set forth above, EPA believes that the proposed regulatory amendments as published in the **Federal Register** on March 23, 1994 (59 FR 13819) should be adopted as a final rule as discussed above and set forth below.

Executive Order 12866

Under Executive Order 12866, [58 FR 51735 (October 4, 1993)] the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

Regulatory Flexibility Act

Pursuant to section 605(b) of the RFA, 5 U.S.C. 605(b), EPA certifies that this rule will not have a significant economic impact on a substantial number of small entities because it merely revises existing procedural requirements for Indian tribes by making them simpler and less burdensome; Indian tribes are not considered small entities under this rulemaking for RFA purposes.

Paperwork Reduction Act

The proposed regulations contain no new or additional information collection activities and, therefore, no information collection request will be submitted to the Office of Management and Budget for review in compliance with the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

List of Subjects**40 CFR Part 123**

Administrative practice and procedure, Confidential business information, Environmental protection, Hazardous substances, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control, Water supply.

40 CFR Part 124

Administrative practice and procedure, Air pollution control, Environmental protection, Hazardous substances, Indian lands, Reporting and recordkeeping requirements, Sewage disposal, Waste treatment and disposal, Water pollution control, Water supply.

40 CFR Part 131

Environmental protection, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 142

Environmental protection, Administrative practice and procedure, Chemicals, Indians—lands, Radiation protection, Reporting and recordkeeping requirements, Water supply.

40 CFR Part 144

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Indians—lands, Reporting and recordkeeping requirements, Surety bonds, Water supply.

40 CFR Part 145

Environmental protection, Indians—lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water supply.

40 CFR Part 233

Environmental protection, Administrative practice and procedure, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 501

Administrative practice and procedure, Intergovernmental relations,

Penalties, Reporting and recordkeeping requirements, Sewage disposal.

Dated: November 18, 1994.

Fred Hansen,
Acting Administrator

For the reasons set forth in the preamble, 40 CFR parts 123, 124, 131, 142, 144, 145, 233, and 501 are amended as follows:

PART 123—STATE PROGRAM REQUIREMENTS

1. The authority citation for part 123 continues to read as follows:

Authority: Clean Water Act, 33 U.S.C. 1251 et seq.

§ 123.1 [Amended]

2. Section 123.1(h) is amended by removing the phrase "treated as a State."

§ 123.21 [Amended]

3. In § 123.21 paragraph (a)(1) is amended by revising the phrase "eligible for treatment as a state in accordance with § 123.33(e)" to read "in accordance with § 123.33(b)".

4. In § 123.21 paragraph (b)(2) is amended by removing the phrase "for treatment as a State" both times they appear and by revising the text "§ 123.33(e)" to read "§ 123.33(b)".

§ 123.22 [Amended]

5. In § 123.22 paragraph (g) is amended by removing the phrase "for treatment as a State" and by revising the text "§ 123.33(e)" to read "§ 123.33(b)".

§ 123.31 [Amended]

6. The heading of § 123.31 is amended by revising the phrase "for treatment of Indian Tribes as States" to read "for eligibility of Indian Tribes."

7. In § 123.31 paragraph (a) is amended by removing the phrase "a State for purposes of making the Tribe."

8. In § 123.31 paragraph (a)(4) is amended by removing all language following "in a manner consistent with the terms and purposes of the Act and applicable regulations, of an effective NPDES permit program."

§ 123.32 [Amended]

9. The heading of § 123.32 is amended by removing "for treatment as a State."

10. In § 123.32 the introductory text is amended by removing the phrase "for treatment as a State."

11. In § 123.32 paragraph (b) introductory text is amended by revising the words "This statement shall" to read "This statement should."

12. In § 123.32 paragraph (c) is amended by revising the phrase "a copy of all documents" to read "copies of

those documents" and by revising the phrase "support the Tribe's assertion" to read "the Tribe believes are relevant to its assertion."

13. In § 123.32 paragraph (d) introductory text is amended by revising the phrase "The statement shall include" to read "The statement should include."

14. In § 123.32 paragraph (d)(1) is amended by revising the words "including, but not limited to," to read "which may include."

15. In § 123.32 paragraph (e) is amended by revising the phrase "a Tribal request for treatment as a State" to read "a Tribe's eligibility."

16. In § 123.32 paragraph (f) is revised to read as follows:

§ 123.32 Request by an Indian Tribe for a determination of eligibility.

(f) If the Administrator or his or her delegatee has previously determined that a Tribe has met the prerequisites that make it eligible to assume a role similar to that of a state as provided by statute under the Safe Drinking Water Act, the Clean Water Act, or the Clean Air Act, then that Tribe need provide only that information unique to the NPDES program which is requested by the Regional Administrator.

§ 123.33 [Amended]

17. The heading of § 123.33 is amended by removing the phrase "for treatment as a State."

18. In § 123.33 paragraph (a) is amended by removing the phrase "for treatment as a State."

19. In § 123.33 paragraphs (b), (c), (d), and (e) are removed and paragraph (f) is redesignated as paragraph (b).

PART 124—PROCEDURES FOR DECISIONMAKING

1. The authority citation for part 124 continues to read as follows:

Authority: Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq.; Safe Drinking Water Act, 42 U.S.C. 300(f) et seq.; Clean Water Act, 33 U.S.C. 1251 et seq.; Clean Air Act, 42 U.S.C. 7401 et seq.

§ 124.2 [Amended]

2. In § 124.2 the definition of "State" is amended by revising the phrase "an Indian Tribe treated as a State" to read "an Indian Tribe that meets the statutory criteria which authorize EPA to treat the Tribe in a manner similar to that in which it treats a State".

§ 124.51 [Amended]

3. In § 124.51 paragraph (c) is amended by revising the phrase "is qualified for treatment as a State" to

read "meets the statutory criteria which authorize EPA to treat the Tribe in a manner similar to that in which it treats a State" and by revising the phrase "likewise qualified for treatment as a State" to read "likewise qualified for such treatment."

PART 131—WATER QUALITY STANDARDS

1. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

§ 131.3 [Amended]

2. In § 131.3 paragraph (j) is amended by revising the phrase "qualify for treatment as States for purposes of water quality standards" to read "to be eligible for purposes of a water quality standards program".

§ 131.4 [Amended]

3. In § 131.4 paragraph (c) is amended by revising the phrase "qualifies for treatment as a State" in both places that it appears to read "is eligible to the same extent as a State".

§ 131.7 [Amended]

4. In § 131.7 paragraph (b)(2) is amended by revising the phrase "qualifies to be treated as a State" to read "is eligible to the same extent as a State".

§ 131.8 [Amended]

5. The heading of § 131.8 is amended by revising the phrase "to be treated as States for purposes of water quality standards" to read "to administer a water quality standards program".

6. In § 131.8 paragraph (a) introductory text is amended by revising the phrase "treat an Indian Tribe as a State for purposes of the water quality standards program" to read "accept and approve a tribal application for purposes of administering a water quality standards program".

7. In § 131.8 paragraph (b) introductory text is amended by revising the phrase "for treatment as states for purposes of water quality standards" to read "for administration of a water quality standards program".

8. In § 131.8 paragraph (b)(2) introductory text is amended by revising the word "shall" to read "should".

9. In § 131.8 paragraph (b)(3) introductory text is amended by revising the word "shall" to read "should".

10. In § 131.8 paragraph (b)(3)(ii) is amended by removing the semi-colon and adding to the end of the paragraph the phrase "and which may include a copy of documents such as Tribal constitutions, by-laws, charters, executive orders, codes, ordinances,

and/or resolutions which support the Tribe's assertion of authority; and".

11. Section 131.8(b)(3)(iii) is removed.

12. In § 131.8 paragraph (b)(3)(iv) is redesignated as (b)(3)(iii).

13. In § 131.8 paragraph (b)(4) introductory text is amended by revising the word "shall" to read "should".

14. In § 131.8 paragraph (b)(4)(i) is amended by revising the phrase "including, but not limited to" to read "which may include".

15. In § 131.8 paragraph (b)(5) is amended by revising the phrase "request for treatment as a State," to read "application".

16. In § 131.8 paragraph (b)(6) is amended by revising the phrase "qualified for treatment as a State" to read "qualified for eligibility or treatment as a state" and by removing the second occurrence of the phrase "treatment as a State".

17. In § 131.8 paragraphs (c) introductory text, (c)(1) and (c)(2) introductory text are amended by removing the words "for treatment as a State".

18. In § 131.8 paragraph (c)(4) is amended by revising the phrase "after consultation with the Secretary of the Interior, or his designee" to read "after due consideration".

19. In § 131.8 paragraph (c)(5) is amended by revising the words "has qualified to be treated as a State for purposes of water quality standards and that the Tribe may initiate the formulation and adoption of water quality standards approvable under this part" to read "is authorized to administer the Water Quality Standards program".

PART 142—NATIONAL PRIMARY DRINKING WATER REGULATIONS IMPLEMENTATION

1. The authority citation for part 142 continues to read as follows:

Authority: 42 U.S.C. 300g, 300g-1, 300g-2, 300g-3, 300g-4, 300g-5, 300g-6, 300j-4, and 300j-9.

§ 142.2 [Amended]

2. In § 142.2 the definition of "State" is amended by revising the phrase "or an Indian Tribe treated as a State," to read "or an eligible Indian tribe".

§ 142.3 [Amended]

3. In § 142.3 paragraph (c) is amended by revising the phrase "be designated by the Administrator for treatment as a State" to read "meet the statutory criteria at 42 U.S.C. 300j-11(b)(1)".

Subpart H—Indian Tribes

4. The heading for subpart H of part 142 is revised to read as set forth above.

§ 142.72 Requirements for Tribal eligibility.

5. The heading of § 142.72 is revised to read as set forth above.

6-7 Section 142.72 is amended by revising the introductory text and paragraph (d) to read as follows.

§ 142.72 Requirements for Tribal eligibility

The Administrator is authorized to treat an Indian Tribe as eligible to apply for primary enforcement responsibility for the Public Water System Program if it meets the following criteria:

* * * * *

(d) The Indian Tribe is reasonably expected to be capable, in the Administrator's judgment, of administering (in a manner consistent with the terms and purposes of the Act and all applicable regulations) an effective Public Water System program

* * * * *

§ 142.76 [Amended]

8. The heading of § 142.76 is amended by revising the phrase "of treatment as a State" to read "of eligibility".

9. Section 142.76 is amended by revising in the introductory text the phrase "qualifies for treatment as a State pursuant to" to read "meets the criteria of,"

10. In § 142.76 paragraph (b) introductory text is amended by revising the word "shall" to read "should".

11. In § 142.76 paragraph (c) is amended by revising the word "all" to read "those" and by revising the phrase "support the Tribe's asserted jurisdiction" to read "the Tribe believes are relevant to its assertions regarding jurisdiction".

12. In § 142.76 paragraph (d) introductory text is amended by revising the word "shall" to read "should".

13. In § 142.76 paragraph (d)(1) is amended by revising the words "including, but not limited to" to read "which may include".

14. In § 142.76 paragraph (e) is amended by revising the phrase "a Tribal request for treatment as a State to read "a Tribe's eligibility".

15. In § 142.76 paragraph (f) is revised to read as follows:

§ 142.76 Request by an Indian tribe for a determination of eligibility.

* * * * *

(f) If the Administrator has previously determined that a Tribe has met the prerequisites that make it eligible to assume a role similar to that of a state as provided by statute under the Safe Drinking Water Act, the Clean Water Act, or the Clean Air Act, then that Tribe need provide only that information unique to the Public Water System program (paragraph (c), (d)(5) and (6) of this section).

§ 142.78 [Amended]

16. The heading of § 142.78 is amended by removing the phrase "for treatment as a State".

17. In § 142.78 paragraph (a) is amended by removing the words "for treatment as a State submitted pursuant to § 142.76"

18. In § 142.78 paragraphs (b), (c) and (d) are removed and paragraph (e) is redesignated as (b) and amended by revising the language "If the Administrator determines that a Tribe meets the requirements of § 142.72, the Indian Tribe is then eligible to apply for" to read "A tribe that meets the requirements of § 142.72 is eligible to apply for"

PART 144—UNDERGROUND INJECTION CONTROL PROGRAM

1. The authority citation for part 144 continues to read as follows:

Authority: Safe Drinking Water Act, 42 U.S.C. 300f *et seq.*; Resource Conservation and Recovery Act, 42 U.S.C. 6902 *et seq.*

2. Section 144.3 is amended by adding the definition of "eligible Indian tribe" in alphabetical order to read as follows:

§ 144.3 Definitions.

* * * * *

Eligible Indian Tribe is a Tribe that meets the statutory requirements established at 42 U.S.C. 300j-11(b)(1).

* * * * *

PART 145—STATE UIC PROGRAM REQUIREMENTS

1. The authority citation for part 145 continues to read as follows:

Authority: 42 U.S.C. 300f *et seq.*

§ 145.1 [Amended]

2. In § 145.1 paragraph (h) is amended by adding the word "eligible" between "to" and "Indian Tribes" in the first sentence; and by removing the second sentence.

Subpart E—Indian Tribes

3. The heading of subpart E of part 145 is revised to read as set forth above.

§ 145.2 Requirements for Tribal eligibility.

4. The heading of § 145.2 is revised to read as set forth above.

5-6. Section 145.2 is amended by revising the introductory text and paragraph (d) to read as follows:

§ 145.2 Requirements for Tribal eligibility.

The Administrator is authorized to treat an Indian Tribe as eligible to apply for primary enforcement responsibility for the Underground Injection Control

Program if it meets the following criteria:

* * * * *

(d) The Indian Tribe is reasonably expected to be capable, in the Administrator's judgment, of administering (in a manner consistent with the terms and purposes of the Act and all applicable regulations) an effective Underground Injection Control Program.

* * * * *

§ 145.56 [Amended]

7. The heading of § 145.56 is amended by revising the phrase "of treatment as a State" to read "of eligibility"

8. In § 145.56 the introductory text is amended by revising the phrase "qualifies for treatment as a State pursuant to" to read "meets the criteria of."

9. In § 145.56 paragraph (b) introductory text is amended by revising the word "shall" to read "should"

10. In § 145.56 paragraph (c) is amended by revising the word "all" to read "those," and by revising the phrase "support the Tribe's asserted jurisdiction" to read "the Tribe believes are relevant to its assertions regarding jurisdiction"

11. In § 145.56 paragraph (d) introductory text is amended by revising the word "shall" to read "should"

12. In § 145.56 paragraph (d)(1) is amended by revising the words "including, but not limited to" to read "which may include."

13. In § 145.56 paragraph (e) is amended by revising the phrase "a Tribal request for treatment as a State" to read "a Tribe's eligibility"

14. In § 145.56 paragraph (f) is revised to read as follows:

§ 145.56 Request by an Indian Tribe for a determination of eligibility.

* * * * *

(f) If the Administrator has previously determined that a Tribe has met the prerequisites that make it eligible to assume a role similar to that of a State as provided by statute under the Safe Drinking Water Act, the Clean Water Act, or the Clean Air Act, then that Tribe need provide only that information unique to the Underground Injection Control program (§ 145.76(c) and (d)(6)).

§ 145.58 [Amended]

15. The heading of § 145.58 is amended by removing the phrase "for treatment as a State"

16. In § 145.58 paragraph (a) is amended by removing the phrase "for treatment as a State submitted pursuant to § 145.56"

17. In § 145.58 paragraphs (b), (c), and (d) are removed and paragraph (e) is redesignated as paragraph (b) and amended by revising the language "If the Administrator determines that a Tribe meets the requirements of § 145.52, the Indian Tribe is then eligible to apply for" to read "A tribe that meets the requirements of § 145.52 is eligible to apply for"

PART 233—404 STATE PROGRAM REGULATIONS

1. The authority citation for part 233 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

Subpart G—Eligible Indian Tribes

2. The heading of subpart G of part 233 is revised to read as set forth above.

§ 233.60 Requirements for eligibility.

3. The heading of § 233.60 is revised to read as set forth above.

4. Section 233.60 introductory text is amended by removing the words "a State for purposes of making the Tribe"

§ 233.61 Determination of Tribal eligibility.

5. The heading of § 233.61 is revised to read as set forth above.

6. In § 233.61 the introductory text is amended by revising the phrase "that it qualifies for treatment as a State pursuant to Section 518 of the Act" to read "that it meets the statutory criteria which authorize EPA to treat the Tribe in a manner similar to that in which it treats a State"; by revising the word "shall" in the last sentence to read "should."

7. In § 233.61 paragraph (b) introductory text is amended by revising the word "shall" to read "should"

8. In § 233.61 paragraph (c)(2) is amended by adding at the end of the paragraph before the semicolon "which may include a copy of documents such as Tribal constitutions, by-laws, charters, executive orders, codes, ordinances, and/or resolutions which support the Tribe's assertion of authority"

9. Section 233.61 (c)(3) is removed.

10. In § 233.61 paragraph (d) introductory text is amended by revising the word "shall" to read "may"

11. In § 233.61 paragraph (d)(1) is amended by revising the words "including, but not limited to" to read "which may include"

12. In § 233.61 paragraph (e) is amended by revising the words "request for treatment as a State" to read "application"

13. In § 233.61 paragraph (f) is amended by adding the words "for eligibility or" between "has met the

requirements" and "for 'treatment as a State.'"

§ 233.62 [Amended]

14. The heading of § 233.62 is amended by removing the phrase "for treatment as a State".

15. In § 233.62 paragraph (a) is amended by removing the phrase "for treatment as a State".

16. In § 233.62 paragraphs (b), (c), (d), and (e) are removed.

17. In § 233.62 paragraph (f) is redesignated as paragraph (b).

PART 501—STATE SLUDGE MANAGEMENT PROGRAM REGULATIONS

1. The authority citation for part 501 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

§ 501.11 [Amended]

2. In § 501.11 (a)(1) remove the phrase "eligible for treatment as a state" and revise the text "§ 501.24(e)" to read "§ 501.24(b)".

3. In § 501.11(b)(2) remove the phrase "for treatment as a State" both times it appears and revise the text "§ 501.24(e)" to read "§ 501.24(b)".

§ 501.12 [Amended]

4. In § 501.12(g) remove the phrase "for treatment as a State" and revise the text "§ 501.24(e)" to read "§ 501.24(b)".

§ 501.22 [Amended]

5. The heading of § 501.22 is amended by revising the phrase "for treatment of Indian Tribes as States" to read "for eligibility of Indian Tribes."

6. In § 501.22 paragraph (a) introductory text is amended by removing the phrase "a State for purposes of making the Tribe."

7. In § 501.22 paragraph (a)(4) is amended by removing the last two sentences.

§ 501.23 [Amended]

8. The heading of § 501.23 is amended by removing the phrase "for treatment as a State".

9. In § 501.23 the introductory text is amended by removing the phrase "for treatment as a State."

10. In § 501.23 paragraph (b) introductory text is amended by revising the word "shall" to read "should."

11. In § 501.23 paragraph (c) is amended by revising the phrase "a copy of all documents" to read "copies of those documents" and by revising the phrase "support the Tribe's assertion" to read "the Tribe believes are relevant to its assertion."

12. In § 501.23 paragraph (d) introductory text is amended by revising the word "shall" to read "should."

13. In § 501.23 paragraph (d)(1) is amended by revising the words "including, but not limited to" to read "which may include."

14. In § 501.23 paragraph (e) is amended by revising the phrase "a Tribal request for treatment as a State" to read "a Tribe's eligibility."

15. In § 501.23 paragraph (f) is revised to read as follows:

§ 501.23 Request by an Indian Tribe for a determination of eligibility.

* * * * *

(f) If the Administrator or her delegatee has previously determined that a Tribe has met the prerequisites that make it eligible to assume a role similar to that of a state as provided by statute under the Safe Drinking Water Act, the Clean Water Act, or the Clean Air Act, then that Tribe need provide only that information unique to the sludge management program which is requested by the Regional Administrator.

§ 501.24 [Amended]

16. The heading of § 501.24 is amended by removing the phrase "for treatment as a State."

17. In § 501.24 paragraph (a) is amended by removing the words "for treatment as a State."

18. In § 501.24 paragraphs (b), (c), (d), and (e) are removed and paragraph (f) is redesignated as paragraph (b).

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611, 675, and 676

[Docket No. 941241-4341; I.D. 112394B]

Foreign Fishing; Groundfish Fishery of the Bering Sea and Aleutian Islands; Limited Access Management of Federal Fisheries In and Off of Alaska

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

ACTION: Interim 1995 specifications of groundfish, associated management measures, and closures.

SUMMARY: NMFS issues interim 1995 initial total allowable catches (ITACs) for each category of groundfish and specifications for prohibited species bycatch allowances for the groundfish fishery of the Bering Sea and Aleutian Islands management area (BSAI). NMFS

is also closing specified fisheries consistent with the interim 1995 groundfish specifications. The intended effect is to conserve and manage the groundfish resources in the BSAI.

EFFECTIVE DATE: January 1, 1995, until the effective date of the final 1995 initial specifications.

ADDRESSES: The preliminary 1995 Stock Assessment and Fishery Evaluation (SAFE) Report may be requested from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510, 907-271-2809

FOR FURTHER INFORMATION CONTACT: Ellen R. Varosi, NMFS, 907-586-7228

SUPPLEMENTARY INFORMATION:

Groundfish fisheries in the BSAI are governed by Federal regulations (50 CFR 611.93 and parts 675 and 676) that implement the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). The FMP was prepared by the North Pacific Fishery Management Council (Council) and approved by NMFS under the Magnuson Fishery Conservation and Management Act.

The FMP and implementing regulations require NMFS, after consultation with the Council, to specify for each calendar year the total allowable catch (TAC) for each target species and the "other species" category (§ 675.20(a)(2)). Regulations under § 675.20(a)(7)(i) further require NMFS to publish and solicit public comment on amounts of proposed annual TACs and ITACs for each target species, apportionments of each TAC, prohibited species catch (PSC) allowances under § 675.21(b), and seasonal allowances of pollock TAC. The Council, at its September 1994 meeting, based on the recommendations of its Scientific and Statistical Committee (SSC) and other information, approved preliminary initial specifications for 1995, as detailed below. NMFS is publishing these specifications in today's proposed rule section of the Federal Register.

Preliminary TAC Specifications

The Council developed its TAC recommendations (Table 1) based on the preliminary acceptable biological catches (ABCs) as adjusted for other biological and socioeconomic considerations, including maintaining the total TAC in the required optimum yield range of 1.4-2.0 million metric tons (mt). Each of the Council's recommended TACs for 1995 is equal to or less than the final 1995 ABC for each species category. Therefore, NMFS finds that the recommended TACs are consistent with the biological condition of groundfish stocks. The preliminary

ABCs, TACs, ITACs, overfishing levels, and initial apportionments of groundfish in the BSAI area for 1995 are given in Table 1 of this action. The apportionment of TACs among fisheries and seasons is discussed below.

Apportionment of TAC

As required by § 675.20(a)(3) and (a)(7)(i), each species' TAC initially is reduced by 15 percent, except the hook-and-line and pot gear allocation for sablefish. The sum of these 15 percent amounts is the reserve. The reserve is not designated by species or species group, and any amount of the reserve

may be reapportioned to a target species or the "other species" category during the year, providing that such reapportionments do not result in overfishing.

Interim ITAC Specifications

Regulations at § 675.20(a)(7)(i) require that one-fourth of each proposed ITAC and apportionment thereof, one-fourth of each PSC allowance established under § 675.21(b), and the first seasonal allowance of pollock be in effect on January 1, on an interim basis, and remain in effect until superseded by publication of the final initial

specifications in the Federal Register. Therefore, effective January 1, 1995, the interim 1995 specifications of groundfish are as follows: (1) Twenty-five percent of the proposed ITAC and apportionments thereof, as contained in Table 1 of this action; (2) the first seasonal allowance of pollock as contained in Table 2 of this action; and (3) twenty-five percent of the annual PSC bycatch allowances as contained in Table 3 of this action. These interim specifications will remain in effect until superseded by publication of the final 1995 initial specifications in the Federal Register or until harvested.

TABLE 1.—PROPOSED 1995 ACCEPTABLE BIOLOGICAL CATCH (ABC), TOTAL ALLOWABLE CATCH (TAC), INITIAL TAC (ITAC), AND OVERFISHING LEVELS OF GROUNDFISH IN THE BERING SEA AND ALEUTIAN ISLANDS AREA.^{1,2}

Species	ABC	TAC	ITAC ³	Overfishing level
Pollock:				
BS	1,330,000	1,330,000	1,130,500	1,590,000
AI	56,600	56,600	48,110	60,400
Bogoslof District	20,000	1,000	850	147,000
Pacific cod	191,000	191,000	162,350	228,000
Sablefish:				
BS	540	540	446	
AI	2,800	2,800	2,275	
Total	3,340	3,340	2,721	4,160
Atka mackerel:				
Western AI	71,810	10,000	8,500	
Central AI	73,440	44,525	37,846	
Eastern AI, BS	17,950	13,475	11,454	
Total	163,200	68,000	57,800	484,000
Yellowfin sole	230,000	150,325	127,776	269,000
Rock sole	313,000	75,000	63,750	363,000
Greenland turbot:				
BS		4,690	3,986	
AI		2,310	1,964	
Total	7,000	7,000	5,950	24,800
Arrowtooth flounder	93,400	10,000	8,500	130,000
Flathead sole	119,000	29,618	25,175	145,000
Other flatfish ⁴	106,000	26,382	22,425	125,000
Pacific ocean perch:				
BS	1,910	1,910	1,623	2,920
AI	10,900	10,900	9,265	16,600
Western AI	6,104	6,104	5,188	
Central AI	3,052	3,052	2,594	
Eastern AI	1,744	1,744	1,483	
Other red rockfish: ⁵				
BS	1,400	1,400	1,190	1,400
Sharpchin/Northern:				
AI	5,670	5,670	4,820	5,670
Shortraker/Rougheye:				
AI	1,220	1,220	1,037	1,220
Other rockfish: ⁶				
BS	365	365	310	365
AI	770	770	655	770
Squid ⁷	3,110	3,110	2,643	
Other Species ⁸	27,500	26,390	22,432	141,000
Totals	2,685,385	2,000,000	1,699,882	

¹ Amounts are in metric tons. These amounts apply to the entire Bering Sea (BS) and Aleutian Islands (AI) area unless otherwise specified. With the exception of pollock, and for the purpose of these specifications, the BS includes the Bogoslof District.

² Zero amounts of groundfish are specified for Joint Venture Processing and Total Allowable Level of Foreign Fishing.

³ Except for the portion of the sablefish TAC allocated to hook-and-line and pot gear, 0.15 of each TAC is put into a reserve. For the portion of the sablefish TAC allocated to vessels using hook-and-line or pot gear, 0.20 of the allocated TAC is reserved for use by CDQ participants. The ITAC for each species is the remainder of the TAC after the subtraction of these reserves.

⁴ "Other flatfish" includes all flatfish species except for Pacific halibut (a prohibited species), flathead sole, Greenland turbot, rock sole, and yellowfin sole.

⁵ "Other red rockfish" includes shortraker, rougheye, sharpchin, and northern.

⁶ "Other rockfish" includes all *Sebastes* and *Sebastolobus* species except for Pacific ocean perch, sharpchin, northern, shortraker, and rougheye.

⁷ Squid may be combined with "other species" category in the final initial specifications of TAC. The Council will consider combining squid with the "other species" category at its December 1994 meeting.

⁸ "Other species" includes sculpins, sharks, skates, eulachon, smelts, capelin, and octopus. (The "other species" category may include squid in the final 1995 initial specifications of TAC.)

Seasonal Allowances of Pollock TAC

Under § 675.20(a)(2)(ii), the TAC of pollock for each subarea or district of the BSAI area is divided, after subtraction of reserves (§ 675.20(a)(3)), into two allowances. The first allowance will be available for directed fishing from January 1 to April 15 (roe season). The second allowance will be available from August 15 through the end of the fishing year (non-roo season). On September 26, 1994, a proposed rule was published in the *Federal Register* (59 FR 49051) that would delay the opening of the pollock roe season for the offshore component fishery to January 26th. If approved by NMFS, this season delay would be effective for the 1995 fishing year.

In 1994, the seasonal allowance for the roe season was 45 percent and the

non-roo season 55 percent for the BS pollock fisheries. The pollock TACs specified for the AI subarea and the Bogoslof District were not seasonally apportioned. For 1995, the Council is considering an alternative to the 1994 seasonal allowance that reduces the allowance for pollock fisheries in the BS during the roe season to 40 percent and increases the pollock non-roo allowance to 60 percent (Table 2). The Council declined to choose an alternative until its December 1994 meeting. Regulations at § 675.20(a)(7)(i) require that the first seasonal allowance of pollock be in effect on January 1 on an interim basis, and remain in effect until superseded by publication of the final initial specifications in the *Federal Register* or until harvested. Therefore, NMFS establishes a seasonal allowance of 45

percent of the pollock ITAC specified for each management subarea or district during the roe season and 55 percent during the non-roo season (Table 2), noting that these allowances are subject to change as a result of public comment and consultation with the Council at its December 1994 meeting.

Apportionment of the Pollock TAC to the Inshore and Offshore Components

Regulations at § 675.20(a)(2)(iii) require that the 1995 pollock ITAC specified for the BSAI be allocated 35 percent to vessels catching pollock for processing by the inshore component and 65 percent to vessels catching pollock for processing by the offshore component (Table 2). Definitions of these components are found at § 675.2.

TABLE 2.—PROPOSED SEASONAL ALLOWANCES OF THE INSHORE AND OFFSHORE COMPONENT ALLOCATIONS OF POLLOCK TACS.^{1,2}

Subarea	TAC	ITAC ³	Roe season ⁴		Non-roo season ⁵	
			45%	40%	55%	60%
Bering Sea:						
Inshore		395,675	178,054	158,270	217,621	237,405
Offshore		734,825	330,671	293,930	404,154	440,895
Total	1,330,000	1,130,500	508,725	452,200	621,775	678,300
Aleutian Islands:						
Inshore		16,838		16,838		remainder.
Offshore		31,272		31,272		remainder.
Total	56,600	48,110		48,110		remainder.
Bogoslof:						
Inshore		298		298		remainder.
Offshore		552		552		remainder.
Total	1,000	850		850		remainder.

¹ TAC = total allowable catch.

² Based on an offshore component allocation of 0.65 (TAC) and an inshore component allocation of 0.35 (TAC).

³ ITAC = initial TAC = 0.85 of TAC.

⁴ January 1 through April 15—based on a 45/55 or 40/60 split (roe = 45 percent or 40 percent).

⁵ August 15 through December 31—based on a 45/55 or 40/60 split (non-roo = 55 percent or 60 percent).

Allocation of PSC Limits for Crab, Halibut, and Herring

PSC limits of red king crab and *C. bairdi* Tanner crab in Bycatch Limitation Zones (50 CFR 675.2) of the BS subarea, and for Pacific halibut throughout the BSAI area are specified under § 675.21(a). The current PSC limits are:

1. Zone 1 trawl fisheries, 200,000 red king crabs;
2. Zone 1 trawl fisheries, 1 million *C. bairdi* Tanner crabs;
3. Zone 2 trawl fisheries, 3 million *C. bairdi* Tanner crabs;
4. BSAI trawl fisheries, 3,775 mt mortality of Pacific halibut;

5. BSAI nontrawl fisheries, 900 mt mortality of Pacific halibut, pending the implementation of the IFQ program; and

6. BSAI trawl fisheries, 1,962 mt Pacific herring.

The PSC limit of Pacific herring caught while conducting any trawl operation for groundfish in the BSAI is 1 percent of the annual eastern BS herring biomass. At this time, the best estimate of 1995 herring biomass is 196,200 mt. This amount was derived using 1993 survey data and an age-structured biomass projection model developed by the Alaska Department of Fish and Game (ADF&G). Therefore, the interim herring PSC limit is 1,962 mt.

This value is subject to change, pending an updated forecast analysis of 1994 herring survey data that will be presented to the Council by the ADF&G during the Council's December 1994 meeting.

Regulations under § 675.21(b) authorize the apportionment of each PSC limit into PSC allowances for specified fishery categories. Regulations at § 675.21(b)(1)(iii) specify seven fishery categories (midwater pollock, Greenland turbot/arrowtooth flounder/sablefish, rock sole/other flatfish, yellowfin sole, rockfish, Pacific cod, and bottom pollock/Atka mackerel/"other species"). Regulations at § 675.21(b)(2)

authorize the apportionment of the nontrawl halibut PSC limit among three fishery categories (Pacific cod hook-and-line fishery, groundfish pot gear fishery, and other nontrawl fisheries). The preliminary PSC allowances are listed in Table 3. In general, the fishery bycatch allowances listed in Table 3 reflect the recommendations made to the Council by its Advisory Panel. These recommendations are unchanged

from 1994 and were based on 1993 and 1994 bycatch amounts, anticipated 1995 harvest of groundfish by trawl gear and fixed gear, and assumed halibut mortality rates in the different groundfish fisheries based on analyses of 1991-93 observer data. As in 1994, the Council proposed to exempt the 1995 pot gear fisheries from halibut bycatch restrictions.

Regulations at § 675.20(a)(7)(i) require that one-fourth of each proposed PSC allowance be made available on an interim basis for harvest at the beginning of the fishing year, until superseded by the final initial specifications or until harvested. These interim PSC bycatch allowances are 25 percent of the annual allowances listed in Table 3.

TABLE 3. PRELIMINARY 1995 PROHIBITED SPECIES BYCATCH ALLOWANCES FOR THE BSAI TRAWL AND NONTRAWL FISHERIES

	Zone 1 ¹	Zone 2 ¹ wide	BSAI-wide
TRAWL FISHERIES			
Red king crab, number of animals:			
yellowfin sole	40,000		
rcksol/otherflat ²	110,000		
rockfish	0		
turb/arrow/sabl ³ /rockfish	0		
Pacific cod	10,000		
plck/Atka/othr ⁴	40,000		
Total	200,000		
<i>C. bairdi</i> Tanner crab, number of animals:			
yellowfin sole	175,000	1,275,000	
rcksol/oth.flat	475,000	260,000	
turb/arrow/sabl	0	5,000	
rockfish	0	10,000	
Pacific cod	175,000	200,000	
plck/Atka/othr	175,000	1,250,000	
Total	1,000,000	3,000,000	
Pacific halibut, mortality (mt):			
yellowfin sole			592
rcksol/oth.flat			688
turb/arrow/sabl			137
rockfish			201
Pacific cod			1,200
plck/Atka/othr			957
Total			3,775
Pacific herring, mt:			
midwater pollock			1,419
yellowfin sole			332
rcksol/oth.flat			0
turb/arrow/sabl			0
rockfish			8
Pacific cod			25
plck/Atka/othr ⁵			178
Total			1,962
Nontrawl Fisheries BSAI-Wide			
Pacific halibut, mortality (mt):			
Pacific cod Hook-and-line			725
Other nontrawl			175
Groundfish pot gear			(⁶)
Total			900

¹ Refer to § 675.2 for definitions of areas.

² Rock sole and other flatfish fishery category. A technical amendment to add flathead sole to this fishery category will be prepared by NMFS if the Council makes a final recommendation at its December 1994 meeting to break out flathead sole from the "other flatfish" species group (see Table 1).

³ Greenland turbot, arrowtooth flounder, and sablefish fishery category.

⁴ Pollock, Atka mackerel, and "other species" fishery category.

⁵ Pollock other than midwater pollock, Atka mackerel, and "other species" fishery category.

⁶ Exempt.

Closures to Directed Fishing

If the Director, Alaska Region, NMFS (Regional Director), establishes a directed fishing allowance, and that allowance is or will be reached before the end of the fishing year, or, with respect to pollock, before the end of the fishing season, NMFS will prohibit directed fishing for that species or species group in the specified subarea or district under § 675.20(a)(8). The Regional Director has determined that the interim TAC amounts of groundfish for species or species groups identified below will be necessary as incidental catch to support other anticipated groundfish fisheries prior to the time that final specifications of groundfish are in effect for the 1995 fishing year. Therefore, NMFS is prohibiting directed fishing for those target species, gears, and components, to prevent exceeding the interim amounts of groundfish TACs specified. These closures will be implemented for the period that the interim specifications of groundfish TACs are effective (from January 1 until the effective date of the final 1995 initial groundfish specifications or until harvested). After consideration of public

comments on the proposed 1995 initial specifications and additional scientific information presented at its December 1994 meeting, the Council may recommend other actions at the time the final 1995 initial specifications of groundfish TACs are implemented or during the 1995 fishing year, as necessary for effective management.

TABLE 4.—CLOSURES TO DIRECTED FISHING UNDER 1995 INTERIM TACS.¹

<i>Fishery (all gear)</i>	<i>Closed area²</i>
Pollock in Bogoslof District	Statistical Area 518.
Pacific ocean perch	Bering Sea. Eastern Al. ³ Central Al. Western Al. Al.
Shortraker/rougheye rockfish.	
Other rockfish ⁴	BSAI.
Other red rockfish ⁵	Bering Sea.
Rockfish, Greenland turbot/arrowtooth/sablefish.	Zone 1.

TABLE 4.—CLOSURES TO DIRECTED FISHING UNDER 1995 INTERIM TACS.¹—Continued

<i>Fishery (all gear)</i>	<i>Closed area²</i>
Arrowtooth	BSAI.

¹ These closures to directed fishing are in addition to closures and prohibitions found in regulations at 50 CFR part 675.

² Refer to § 675.2 for definitions of areas.

³ "Al" means Aleutian Islands area.

⁴ In the BSAI, "Other rockfish" includes *Sebastes* and *Sebastolobus* species except for Pacific ocean perch and the "other red rockfish" species.

⁵ "Other red rockfish" includes shortraker, rougheye, sharpchin, and northern.

Classification

This action is authorized under 50 CFR 611.93(b), 675.20, and part 676; and is exempt from review under E.O. 12866.

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

Dated: December 9, 1994.

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