

rulemaking, the Commission does intend to consider this issue in the near future.

In light of the comments received, the Commission is adopting the amendments to Rule 4.5(a)(4) as proposed.

III. Related Matters

A. Paperwork Reduction Act

When publishing proposed rules, the Paperwork Reduction Act of 1995 ("PRA")¹⁰ imposes certain requirements on Federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA, the Commission previously has submitted Rule 4.5 in proposed form and its associated information collection requirements to the Office of Management and Budget. The Office of Management and Budget has approved the collection of information of which this proposed rule is a part through September 30, 2001, OMB Control Number 3038-0005: Rules Relating to the Operations and Activities of Commodity Pool Operators and Commodity Trading Advisors and to Monthly Reporting by Futures Commission Merchants. While this proposed rule has no burden, the group of rules (3038-0005) of which it is a part has the following burden:

Average Burden Hours Per Response: 7.49.

Number of Respondents: 6,949.

Frequency of Response: Monthly, Quarterly, Annually, On Occasion.

Copies of the OMB approved information collection package associated with this rule are available from the Desk Officer, CFTC, Office of Management and Budget, Room 10202, NEOB, Washington, DC, 20503, (202) 395-7340.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA")¹¹ requires each federal agency to consider in the course of proposing substantive rules the effect of those rules on small entities. The definitions of small entities that the Commission has established for this purpose do not address the persons and qualifying entities set forth in Rule 4.5 because, by the very nature of the rule, the operations and activities of such persons and entities generally are regulated by Federal and State authorities other than the Commission. Assuming, arguendo, that Church Plans

would be small entities for purposes of the RFA, the Commission believes that the amendment to Rule 4.5(a)(4) would not have a significant economic impact on them because it would not require the filing of a notice containing specified operating criteria with the Commission to claim the relief available under the rule. Moreover, the Commission notes that the amendment potentially would relieve a greater number of persons (*i.e.*, the operators of Church Plans) from the requirement to register as a CPO and from the disclosure, reporting and recordkeeping requirements applicable to registered CPOs.

Accordingly, the Chairman, on behalf of the Commission, certifies pursuant to Section 3(a) of the RFA¹² that amended Rule 4.5(a)(4) will not have a significant economic impact on a substantial number of small entities.

C. Administrative Procedure Act.

The Administrative Procedure Act provides that the required publication of a substantive rule shall be made not less than 30 days before its effective date, but provides an exception for "a substantive rule which grants or recognizes an exemption or relieves a restriction."¹³ Because Rule 4.5(a)(4)(v) provides that Church Plans shall not be construed to be pools, the operators of Church Plans are not CPOs and they are not subject to regulation as CPOs under the Act. Accordingly, the Commission has determined to make the proposed amendments to Rule 4.5 effective immediately.

List of Subjects in 17 CFR Part 4

Commodity pool operators, Commodity futures.

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 1a(4), 4k, 4l, 4m, 4n, 4o and 8a, 7 U.S.C. 1a(4), 6k, 6l, 6m, 6n, 6o and 12a, the Commodity Futures Trading Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

1. The authority citation for Part 4 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 4, 6b, 6c, 6l, 6m, 6n, 6o, 12a and 23.

2. In § 4.5, in paragraph (a)(4) introductory text, the proviso text is republished and paragraph (a)(4) is

amended by removing the word "and" at the end of paragraph (a)(4)(ii), by removing the period and adding a semi-colon at the end of paragraph (a)(4)(iii), by removing the period at the end of paragraph (a)(4)(iv) and adding "; and" in its place, and by adding paragraph (a)(4)(v) to read as follows:

§ 4.5 Exclusion for certain otherwise regulated persons from the definition of the term "commodity pool operator."

(a) * * *

(4) * * * *Provided, however,* That for purposes of this § 4.5 the following employee benefit plans shall be construed to be pools:

* * * * *

(v) A plan defined as a church plan in Section 3(33) of title I of the Employee Retirement Income Security Act of 1974 with respect to which no election has been made under 26 U.S.C. 410(d).

* * * * *

Issued in Washington, D.C. on April 18, 2000, by the Commission.

Catherine D. Dixon,

Assistant Secretary of the Commission.

[FR Doc. 00-10087 Filed 4-25-00; 8:45 am]

BILLING CODE 6351-01-M

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2201

Regulations Implementing the Electronic Freedom of Information Act

AGENCY: Occupational Safety and Health Review Commission.

ACTION: Interim final rule.

SUMMARY: The Occupational Safety and Health Review Commission is revising its Freedom of Information Act (FOIA) regulations to conform with the Electronic Freedom of Information Act Amendments of 1996 (EFOIA). The EFOIA specifies how the FOIA applies to records maintained in hard copy or electronic format. The rule implements statutory provisions that broaden public access to government information by making more records available in electronic format. The rule implements provisions that recognize the difficulty in responding to requests in the 10 working days formerly required and extends that time to 20 working days. It also provides procedures for discussing with FOIA requesters ways of tailoring requests to improve responsiveness. This interim rule amends the Review Commission's FOIA regulations to comply with the requirements of the new statute. Certain other changes have

¹⁰ 44 U.S.C. 3501 *et seq.* (Supp. II 1996).

¹¹ 5 U.S.C. 601 *et seq.* (1994 and Supp. II 1996).

¹² 5 U.S.C. 605(b) (1994).

¹³ 5 U.S.C. 553(d) (1994).

been made to correct administrative errors and to update or remove obsolete information.

DATES: This interim final rule is effective on May 22, 2000. Comments must be submitted on or before June 26, 2000.

ADDRESSES: Written comments should be submitted to Linda A. Whitsett, Freedom of Information Act Officer, Occupational Safety and Health Review Commission, 1120 20th St., NW, Ninth Floor, Washington, DC 20036-3419.

FOR FURTHER INFORMATION CONTACT: Linda A. Whitsett, Freedom of Information Act Officer, (202) 606-5398.

SUPPLEMENTARY INFORMATION:

Background Information

EFOIA requires agencies to promulgate regulations implementing certain of its requirements, including the tracking of FOIA requests, the aggregation of FOIA requests and the expedited processing of FOIA requests. EFOIA also changes the time limit for responding to FOIA requests from 10 to 20 working days, the requirements for reporting to Congress, and the instances in which an agency may extend the time within which it will respond to a FOIA request. In addition, EFOIA includes provisions regarding the availability of documents in electronic form, the treatment of electronic records and the establishment of "electronic reading rooms."

The Review Commission has determined that compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This rule is necessary for immediate implementation of EFOIA. Comments received in response to the publication of this interim final rule will be considered prior to the promulgation of a final rule.

New Provisions

A. Electronic Records

At 5 U.S.C. 552(f)(2), EFOIA defines "record," for purposes of FOIA, as "any information that would be an agency record subject to the requirements of [5 U.S.C. 552] when maintained by an agency in any format, including an electronic format." Section 552(f) clarifies that the term "agency record" includes information stored in any computer readable format as well as traditional paper documents. This interim final rule amends 29 CFR 2201.4(a) to specifically include information in an electronic format within the definition of the agency's "General Policy, Non-exempt records available to the public."

B. Electronic Reading Room

5 U.S.C. 552(a)(2) broadens the requirement for agencies to make available for public inspection and copying certain information, such as agency opinions, policy statements and interpretations not published in the **Federal Register**, administrative staff manuals and staff instructions that affect a member of the public. EFOIA expands section 552(a)(2) to include agency records that have been made publicly available and are likely to be the subject of repetitive public requests, as well as a general index of these frequently sought documents. The amendments also provide that section 552(a)(2) records created on or after November 1, 1996 must be made available by computer telecommunications within one year after such date, or if computer telecommunications have not been established, by other electronic means. The general index of these records is to be available by computer telecommunications by December 31, 1999. These new requirements, as well as the on-line address for the Review Commission's homepage on the Internet, are incorporated in 29 CFR 2201.4(d).

EFOIA also requires that where materials have been withheld in records made available to the public, the extent of those deletions must be indicated on the portion of the record made available and, where technically possible, must be indicated at the place in the record where the deletion occurred. This new requirement is included at 29 CFR 2201.7(f).

C. Honoring Form or Format Requests

At 5 U.S.C. 552(a)(3), EFOIA requires that agencies make records available to the public "in any form or format requested by the person if the record is readily reproducible by the agency" in the requested form or format. This new requirement is included in 29 CFR 2201.6(b). EFOIA makes it clear, at 5 U.S.C. 552(a)(3)(C), that agencies should search for records in their electronic form, and in hard copy form, in response to FOIA requests, except when such searching would significantly interfere with the operation of the agency's automated information system. Also under the EFOIA amendments, "search" means to look for agency records manually "or by automated means" to locate records responsive to a request. This requirement is included in 29 CFR 2201.4(a).

D. Time Limits for Responding to Requests

5 U.S.C. 552(a)(6)(A)(I) extends the time to respond to a request to 20 working days from 10 working days, effective October 2, 1997. 29 CFR 2201.7(a) is amended to reflect this change.

E. Multitrack Processing of Requests

Congress recognized that even with lengthening the time to respond to requests, many agencies may fail to meet the 20 working day deadline for some requests. Therefore, 5 U.S.C. 552(a)(6)(D) authorizes agencies to establish "multitrack processing." Under this system, requests are categorized based on the amount of agency effort involved in processing the request. This new multitrack system of course still requires the exercise of due diligence by agencies. It also requires that requesters have the opportunity to limit the scope of their requests to qualify for the processing of their request under a faster track. These new provisions are incorporated in Commission's two-track system described at 29 CFR 2201.7(d).

F. Unusual Circumstances

Congress recognized that even with multitrack processing, in some circumstances the statutory response time will be exceeded. The EFOIA retains the provisions for agencies to extend the initial 20 working day response time for an initial request, or the 20 working day response time for an appeal, by an additional 10 working days in "unusual circumstances." Agencies must provide the requester with written justification for the extension and include the date of the expected response. The amendments at 29 U.S.C. 552(a)(6)(B)(iii) define "unusual circumstances" as time needed to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request; the need to search for, collect, and appropriately examine a voluminous amount of material sought in a single request; or the need for consultation with another agency having a substantial interest in the determination of the request or among two or more parts of the agency having substantial interest in the request. These new provisions are incorporated at 29 CFR 2201.7(b).

In addition, 5 U.S.C. 552(a)(6)(B)(ii), authorizes agencies to negotiate a response time with a requester that may exceed the statutory maximum (20 working days plus a 10 working day

extension) for those FOIA requests that the agency determines cannot be processed within the statutory time limits. The agency must offer the requester an opportunity to limit the scope of the request so that it may be processed within the prescribed 20 working days or arrange an alternative time frame for processing the request or a modified request. These new provisions are also incorporated at 29 CFR 2201.7(c).

G. Requests for Expedited Processing

At 5 U.S.C. 552(a)(6)(E)(I)(I), EFOIA requires agencies to promulgate regulations to provide for expedited processing in instances where the requester demonstrates a "compelling need" and in other cases where the agency determines expedited processing is warranted. A "compelling need" exists (1) where a failure to obtain requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual or (2) with respect to a request made by a person primarily engaged in disseminating information, there is an urgency to inform the public concerning actual or alleged Federal Government activity. The House Committee report explaining the legislation (H.R. Rep. No. 795, 104th Cong., 2d Sess. (1996)) states that a person "primarily engaged" in the business of information dissemination "should not include individuals who are engaged only incidentally in the dissemination of information," but requires that "information dissemination be the main activity of the requester, although it need not be their sole occupation." A requester who is "only incidentally" involved in information dissemination, in addition to other activities, would not satisfy this requirement.

The House Committee report further explains that the term "urgency to inform," one of the qualifying elements for expedited processing, must involve a matter of "current exigency to the American public" such that any reasonable person could conclude that delaying a response to a FOIA request would compromise a "significant recognized interest." The public's right to know, while "significant and important," would not stand alone as sufficient to satisfy this standard. Agencies must make both "factual and subjective judgments" about situations cited by requesters as reasons for expedited processing and must demonstrate "fairness and diligence" in exercising their discretion.

Section 552(a)(6)(E)(ii)(I) requires that requesters must receive written notice

within 10 calendar days after the date of the request regarding the determination of expedited processing. Once expedited processing is granted, agencies must process the request "as soon as practicable" under 5 U.S.C. 552(a)(6)(E)(iii) and administrative appeals of a denial of an expedited processing request must be handled with "expeditious consideration" under 5 U.S.C. 552(a)(6)(E)(ii)(II). If an agency denies the request for expedited processing or fails to act upon the request within the prescribed 10 calendar days, a petitioner may seek judicial review. The Commission has implemented these EFOIA requirements regarding expedited processing at 29 CFR 2201.7(e).

H. Estimates of the Volume of Materials Denied

At 5 U.S.C. 552(a)(6)(F), EFOIA requires agencies to make a reasonable effort to estimate the volume of any requested matter the provision of which is denied in whole or in part, and to inform the requester unless providing such information would harm an interest protected by a FOIA exemption on which the denial is based. This new requirement is implemented at 29 CFR 2201.7(f).

I. Annual Report to Congress

At 5 U.S.C. 552(e), EFOIA amends the annual requirements for reporting agency FOIA activities to Congress by expanding the amount of information for inclusion in the report and requiring agencies to make these reports available to the public by computer access or other electronic means. The Commission annual report is on its website at: <http://www.oshrc.gov>. The report is also available in the Commission Information Office. The Commission has implemented these amended EFOIA reporting requirements at 29 CFR 2201.10.

List of Subjects in 29 CFR Part 2201

Freedom of information.

For the reasons set forth in the preamble, 29 CFR part 2201 is amended as follows:

PART 2201—REGULATIONS IMPLEMENTING THE FREEDOM OF INFORMATION ACT

1. The authority citation for part 2201 continues to read as follows:

Authority: 29 U.S.C. 661(g); 5 U.S.C. 552.

2. Section 2201.4 is amended by revising paragraphs (a) and (c) and adding paragraph (d) to read as follows:

§ 2201.4 General policy.

* * * * *

(a) *Non-exempt records available to public.* Except for records and information exempted from disclosure by 5 U.S.C. 553(b) or published in the **Federal Register** under 5 U.S.C. 552(a)(1), all records of the Commission or in its custody are available to any person who requests them in accordance with § 2201.6. Records include any information that would be a record subject to the requirements of 5 U.S.C. 552 when maintained by the Review Commission in any format, including electronic format. In searching for records, the Review Commission will look for records manually or by automated means. The Review Commission will search for records in their electronic form and in hard copy form, in response to FOIA requests, except when such searching would significantly interfere with the operation of the Commission's automated information system.

* * * * *

(c) *Record availability.* The records of Review Commission activities are publicly available for inspection and copying at the OSHRC Information Office, 1120 20th St., NW, 9th Floor, Washington, DC. These records include:

(1) Final opinions including concurring and dissenting opinions as well as orders issued as a result of adjudication of cases.

(2) OSHRC Rules of Procedure and Guides to those procedures.

(3) Copies of records that have been released to a person under the Freedom of Information Act (FOIA) that, because of the subject matter, the Review Commission determines that the records have become or are likely to become the subject of subsequent requests for substantially the same records.

(4) A general index of records released under the FOIA.

(d) Materials created on or after November 1, 1996 under paragraphs (c) (1), (2), (3) and (4) of this section may also be accessed through the Internet at the Review Commission's World Wide Web site at <http://www.oshrc.gov>

3. In § 2201.6, paragraph (b) is revised to read as follows:

§ 2201.6 Procedure for requesting records.

* * * * *

(b) *Other information.* Persons wishing to obtain copies of documents (including the hearing transcript filed in a case before the Review Commission or a Judge, and information that is freely available under paragraph (a) of this section), shall submit a request in writing to the Freedom of Information

Act Officer at the address in § 2201.5(a). The request shall be clearly identified as a request for information under the Freedom of Information Act. The envelope or cover enclosing or covering the request shall have the phrase "INFORMATION REQUEST" in capital letters on it. The agency will make information available in any form or format requested by the person if the record is readily reproducible by the agency in that form or format.

* * * * *

4. § 2201.7 is amended by revising paragraph (a), redesignating paragraph (b) as paragraph (f) and revising it, redesignating paragraph (c) as paragraph (g); and adding paragraphs (b), (c), (d), (e) and (h). The revised and added text reads as follows:

§ 2201.7 Responses to requests.

(a) *Responses within 20 working days.* The Review Commission Freedom of Information Act Officer will either grant or deny a request for records within 20 working days after receiving the request.

(b) *Extensions of response time in unusual circumstances.* In unusual circumstances, the Review Commission may extend the time limit prescribed in paragraph (a) of this section by not more than 10 working days. The extension may be made by written or telephonic notice to the requester and will include an explanation of the reasons for the extension and will indicate the date on which a determination is expected to be made. "Unusual circumstances" exists, but only to the extent reasonably necessary to the proper processing of the particular request, when there is a need to:

(1) Search for and collect the requested records from field facilities or other establishments separate from the office processing the request;

(2) Search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) Consult, with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components within the Review Commission having substantial subject-matter interest therein.

(c) *Additional extension.* A requester shall be notified when it appears that a request cannot be completed within the allowable time (20 working days plus a 10 working day extension). In such instances, the requester will be provided an opportunity to limit the scope of the request so that it may be processed in the time limit, or to agree to a

reasonable alternative time frame for processing.

(d) *Multitrack processing.* To ensure the most equitable treatment possible for all requesters, the Commission will process requests on a first-in, first-out basis using a two track processing system based upon the estimated time it will take to process the request.

(1) The first track is for requests of simple to moderate complexity that are expected to be completed within 20 working days.

(2) The second track is for requests involving "unusual circumstances" that are expected to take between 21 to 30 working days to complete and those that, because of their unusual volume or other complexity, are expected to take more than 30 working days to complete.

(3) Requesters should assume, unless notified by the Review Commission, that their request is in the first track. The Review Commission will notify requesters when their request is placed in the second track for processing and that notification will include the estimated time for completion. Should subsequent information substantially change the estimated time to process a request, the requester will be notified telephonically or in writing. In the case of a request expected to take more than 30 working day for action, a requester may modify the request to allow it to be processed faster or to reduce the cost of processing. Partial responses may be sent to requesters as documents are obtained by the FOIA office from the supplying offices.

(e) *Expedited processing.* (1) The Commission may place a person's request at the front of the queue for the appropriate track for that request upon receipt of a written request that clearly demonstrates a compelling need for expedited processing. Requesters must provide detailed explanations to support their expedited requests. For purposes of determining expedited processing, the term compelling need means:

(i) That a failure to obtain requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of any individual; or

(ii) That a request is made by a person primarily engaged in disseminating information, and that person establishes that there is an urgency to inform the public concerning actual or alleged Federal Government activity.

(2) A person requesting expedited processing must include a statement certifying the compelling need given to be true and correct to the best of his or her knowledge and belief. The certification requirement may be waived

by the Review Commission as a matter of agency discretion.

(3) The FOIA Officer will make the initial determination whether to grant or deny a request for expedited processing and will notify a requester within 10 calendar days after receiving the request whether its processing will be expedited.

(4) Administrative appeals of a denial of an expedited processing request will be handled with expeditious consideration.

(f) *Content of denial.* When the Freedom of Information Act Officer denies a request, the notice of the denial shall state the reason for it and that the denial may be appealed as specified in paragraph (g) of this section. A refusal by the Freedom of Information Act Officer to process the request because the requester has not made advance payment or given a satisfactory assurance of full payment required under § 2201.8(f) may be treated as a denial of the request and appealed under paragraph (g) of this section. When release of entire records is denied in whole or in part, a reasonable effort will be made to estimate the volume of any requested matter that is denied, unless providing such an estimate would harm an interest protected by the exemption(s) under which the matter has been denied.

* * * * *

(h) *Deletions.* The amount of information deleted from records shall be indicated on the released portion of the record, unless including that indication would harm an interest protected by the exemption under which the deletion is made. If technically feasible, the amount of the information deleted shall be indicated at the place in the record where the deletion is made.

§ 2201.10 is revised to read as follows:

§ 2201.10 Maintenance of statistics.

(a) The Freedom of Information Act Officer shall maintain records of:

(1) The number of determinations made by the agency not to comply with the requests for records made to the agency and the reasons for those determinations;

(2) The number of appeals made by persons, the results of those appeals, and the reason for the action upon each appeal that results in a denial of information;

(3) A complete list of all statutes that the agency used to authorize the withholding of information under 5 U.S.C. 552(b)(3), which exempts information that is specifically exempted from disclosure by other statutes;

(4) A description of whether a court has upheld the decision of the agency to withhold information under each of those statutes cited, and a concise description of the scope of any information upheld;

(5) The number of requests for records pending before the agency as of September 30 of the preceding year and the median number of days that these requests had been pending before the agency as of that date;

(6) The number of requests for records received by the agency and the number of requests the agency processed;

(7) The median number of days taken by the agency to process different types of requests;

(8) The total amount of fees collected by the agency for processing requests;

(9) The average amount of time that the agency estimates as necessary, based on the past experience of the agency, to comply with different types of requests;

(10) The number of full-time staff of the agency devoted to the processing of requests for records under this section; and

(11) The total amount expended by the agency for processing these requests.

(b) The Freedom of Information Act Officer shall annually, on or before February 1 of each year, prepare and submit to the Attorney General an annual report covering each of the categories of records to be maintained in accordance with paragraph (a) of this section, for the previous fiscal year. A copy of the report will be available for public inspection and copying at the Commission Information Office and a copy will be accessible through the Internet at OSHRC's World Wide Web site at <http://www.oshrc.gov>.

Dated: April 18, 2000.

Patricia A. Randle,
Executive Director.

[FR Doc. 00-10275 Filed 4-24-00; 8:45 am]

BILLING CODE 7600-01-P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1234

RIN 3095-AA94

Elimination of Requirement to Rewind Computer Tapes

AGENCY: National Archives and Records Administration (NARA).

ACTION: Final rule.

SUMMARY: NARA is revising its regulations to eliminate the requirement that Federal agencies rewind under controlled tension all computer tapes

containing unscheduled or permanent records every 3½ years. This change will affect Federal agencies that store unscheduled or permanent records on computer open-reel tapes or tape cartridges.

DATES: Effective May 25, 2000.

FOR FURTHER INFORMATION CONTACT: Nancy Allard or Shawn Morton at (301) 713-7360.

SUPPLEMENTARY INFORMATION: This rule was published as a proposed rule for comment in the **Federal Register** on February 3, 2000 (65 FR 5295). NARA received 6 comments on the proposed rule, all supporting the change. Four comments were from Federal agencies and two comments were from private individuals.

This rule is not a significant regulatory action for the purposes of Executive Order 12866. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on a substantial number of small entities because it applies to Federal agencies. This rule does not have any federalism implications.

List of Subjects in 36 CFR Part 1234

Archives and records, Computer technology.

For the reasons stated in the preamble, the National Archives and Records Administration is amending 36 CFR Part 1234 to read as follows:

PART 1234—ELECTRONIC RECORDS MANAGEMENT

Subpart C—Standards for the Creation, Use, Preservation, and Disposition of Electronic Records

1. The authority citation for part 1234 continues to read as follows:

Authority: 44 U.S.C. 2904, 3101, 3102, and 3105.

§ 1234.30 [Amended]

2. In § 1234.30, remove paragraph (g)(3) and redesignate paragraphs (g)(4) through (g)(7) as paragraphs (g)(3) through (g)(6) respectively.

Dated: April 19, 2000.

John W. Carlin,

Archivist of the United States.

[FR Doc. 00-10249 Filed 4-25-00; 8:45 am]

BILLING CODE 7515-01-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222 and 223

[Docket No. 991207322-0107-03; I.D. 041300A]

RIN 0648-AN30

Sea Turtle Conservation; Shrimp Trawling Requirements

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

ACTION: Temporary rule; request for comments.

SUMMARY: NMFS is imposing, for a 30-day period, an additional restriction on shrimp trawlers required to have a turtle excluder device (TED) installed in each net that is rigged for fishing, operating in Gulf of Mexico offshore waters bounded by the line originating at the tip of the south jetty at Port Mansfield Channel and terminating at the tip of the north jetty at Aransas Pass, Texas. Shrimp vessels operating in this area must use a TED with an escape opening large enough to exclude leatherback turtles, as specified in the regulations. This action is necessary to reduce mortality of endangered leatherback sea turtles incidentally captured in shrimp trawls.

DATES: This action is effective from April 19, 2000 through May 19, 2000. Comments on this action are requested, and must be received at the appropriate address or fax number (see **ADDRESSES**) by May 19, 2000.

ADDRESSES: Comments on this action should be addressed to the Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments may also be sent via fax to 301-713-0376. Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Charles A. Oravetz (ph. 727-570-5312, fax 727-570-5517, e-mail Chuck.Oravetz@noaa.gov), or Barbara A. Schroeder (ph. 301-713-1401, fax 301-713-0376, e-mail Barbara.Schroeder@noaa.gov).

For assistance in modifying TED escape openings to exclude leatherback sea turtles, fishermen may contact gear specialists at the NMFS, Pascagoula, MS laboratory by phone (228)-762 4591 or by fax (228) 769-8699.

SUPPLEMENTARY INFORMATION: