

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 301-3 and 301-10

[FTR Amendment 74—1998 Edition]

RIN 3090-AG73

Federal Travel Regulation; Use of Commercial Transportation, Fly America Act

AGENCY: Office of Governmentwide Policy (OGP), GSA.

ACTION: Final rule.

SUMMARY: This final rule amends the Federal Travel Regulation (FTR) provisions pertaining to use of U.S. flag air carriers under the provisions of 49 U.S.C. 40118, commonly referred to as the Fly America Act. This final rule reduces the connecting time for use of U.S. flag air carrier service at an overseas interchange point; requires that airline tickets issued under a code share agreement identify the U.S. flag air carrier's designator code and flight number; removes references to "gateway airports;" and implements a new method for calculation of the employee's liability for unauthorized transportation on a foreign air carrier.

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Technical information: Umeki G. Thorne, telephone (202) 501-1538. FTR "plain language" format: Internet GSA, fttravel.chat@gsa.gov.

SUPPLEMENTARY INFORMATION:

Subsection 127 (d) of the General Accounting Office Act of 1996 (Pub. L. 104-316) amended 49 U.S.C. 40118 to require that the Administrator of General Services Administration (GSA) issue regulations under which agencies may permit payment for transportation on a foreign air carrier when such transportation is determined necessary. This final rule implements the Administrator's authority under the statute, identifying when U.S. flag air carrier service is deemed available (for transportation between a point in the United States and a point outside the United States) or reasonably available (for transportation between two points outside the United States). This final rule is written in the "plain language" style of regulation writing as a continuation of GSA's effort to make the FTR easier to understand and use. This final rule removes Part 301-3 of 41 CFR Chapter 301 and adds the provisions implementing the Fly America Act to Part 301-10. This final rule also modifies the proposed rule with request for comments published in the **Federal Register** on April 7, 1998 (63 FR 16936).

During the 30-day comment period provided by the proposed rule, GSA received comments from four Federal agencies, three U.S. flag air carriers, an air carrier association, and three non-Government entities. GSA carefully reviewed each comment. Changes based on comments received have been grouped by section of the proposed rule and subject area and are discussed in the following general analysis.

Section 301-10.134 What Is U.S. Flag Air Carrier Service?

U.S. Air Carrier Certificate

Section 301-10.134 of the proposed rule generally defines "U.S. flag air carrier service" as service on an air carrier holding a certificate under 49 U.S.C. 41102. One Federal agency requested that GSA clarify that although U.S. flag air carriers must hold a certificate, the transportation does not have to be authorized by such certificate, if it is authorized by rule or exemption. GSA has revised § 301-10.134 accordingly.

Code Share Agreements

Ticket Stock

A comment from a non-Government entity supported the language in § 301-10.134 of the proposed rule stating that service under a code share arrangement, when the entire ticket is issued by a U.S. flag air carrier, is deemed U.S. flag air carrier service. In contrast, three Federal agencies, two U.S. flag air carriers and the air carrier association objected to this requirement as too restrictive. Two of the Federal agencies and the air carrier association stated that many developing countries have neither U.S. flag air carrier facilities nor personnel. Accordingly, in such cases, obtaining a ticket on U.S. flag air carrier ticket stock is not practicable and could preclude travelers from benefiting from U.S. flag air carrier service through code share arrangements. The air carrier association also pointed out that the essential feature on an airline ticket is the air carrier designator code and flight number rather than the ticket stock. One U.S. flag air carrier stated that imposing a U.S. air carrier ticket stock requirement could, in some cases, divert traffic to foreign air carriers in those locations where no U.S. flag air carrier facilities or personnel are located. In addition, GSA notes that as airlines and travelers more frequently utilize electronic ticketing, a U.S. air carrier ticket stock requirement appears outdated. As a result of these comments, the language of the proposed rule has been revised. The final rule states that the ticket (or documentation for an

electronic ticket) must identify the U.S. flag air carrier's designator code and flight number. The requirement that the ticket be issued on U.S. flag air carrier ticket stock has been removed.

Foreign Air Carrier Code Share Service as U.S. Flag Air Carrier Service

One U.S. flag air carrier objected, except under limited circumstances, to the determination that service by a foreign air carrier under a code share arrangement is service by a U.S. flag air carrier. Specifically, the U.S. flag air carrier stated that code share service by a foreign air carrier is merely a form of interline service and therefore should not be considered service by a U.S. flag air carrier unless the U.S. flag air carrier bears the financial risk of empty seats on the aircraft. In contrast, the air carrier association commented that code share arrangements between U.S. flag air carriers and foreign air carriers are consistent with the Fly America Act because they promote the intent of the Fly America Act by improving the economic and competitive position of U.S. flag air carriers.

The final rule provides that U.S. flag air carrier service includes service provided by a foreign air carrier under a code share agreement when the ticket, or documentation in the case of an electronic ticket, identifies the U.S. flag air carrier's designator code and flight number. It is GSA's position that codesharing between U.S. flag air carriers and foreign air carriers increases opportunities for U.S. flag air carriers to expand into new international markets, which in turn promotes revenues to U.S. flag air carriers, thereby furthering the goals of the Fly America Act. Additionally, the U.S. flag air carrier whose designator code and flight number appears on the ticket, or documentation in the case of an electronic ticket, takes responsibility for the passenger(s) traveling under the U.S. flag air carrier's designator code and flight number, supporting the determination that the code share service is properly deemed service by the U.S. flag air carrier.

Section 301-10.135 When Must I Travel Using U.S. Flag Air Carrier Service?

Exception for Transportation Under Bilateral and Multilateral Agreements

Section 301-10.135 of the proposed rule states that U.S. flag air carrier service must be used for all travel funded by the U.S. Government, unless one of the various exceptions applies. One Federal agency commented that § 301-10.135(b), which addresses

bilateral or multilateral agreements, could be misleading because the criteria from the Fly America Act for exchanging fly-national privileges under such agreements are to be applied by the negotiators at the time the agreement is made, not by the traveler. That agency also stated that as of the date of the proposed rule there were no bilateral or multilateral agreements in effect that met the requirements of the Fly America Act. Based on this comment, GSA has clarified § 301-10.135(b). Under the final rule, a traveler is not required to use U.S. flag air carrier service if transportation by a foreign air carrier is provided under a bilateral or multilateral air transportation agreement which the Department of Transportation has determined meets the conditions specified in the Fly America Act. To verify existence of any qualifying bilateral or multilateral agreements, agencies should contact the U.S. Department of Transportation, Office of the Secretary, Office of International Aviation, Room X-40, Washington, DC 20590.

Direct Service by Foreign Air Carrier

A Federal agency commented on § 301-10.135(d) of the proposed rule, which states that when no U.S. flag air carrier provides service on a particular leg of the route, foreign air carrier service may be used, but only to or from the nearest interchange point on a usually traveled route to connect with U.S. flag air carrier service. The agency requested that GSA eliminate the words, "but only to or from the nearest interchange point on a usually traveled route" in order to save travel time by enabling travelers to use direct service on a foreign air carrier. GSA is not persuaded that this change is warranted. While the use of a foreign air carrier may be more convenient when the foreign air carrier has nonstop or direct service, GSA does not consider a shorter travel time in these circumstances to be sufficient to consider U.S. flag air carrier service unavailable or use of a foreign air carrier necessary. Therefore, GSA did not adopt the revision proposed in the comment. Of course, if the traveler meets an exception provided in the regulation, such as those provided in § 301-10.136, then the traveler may use a foreign air carrier.

Section 301-10.136 What Exceptions to the Fly America Act Requirements Apply When I Travel Between the United States and Another Country?

Removal of the terms "gateway airport in the United States" and "gateway airport abroad"

The air carrier association requested clarification for the removal of terms "gateway airport in the United States" and "gateway airport abroad." The association stated that it does not oppose the deletion of the terms but requested that GSA clarify any policy change intended by the elimination of these terms. GSA does not intend to make a significant substantive policy change through the removal of the terms "gateway airport abroad" and "gateway airport in the United States." However, as there are a myriad of potential travel situations, there may be instances where the removal of the terms result in a different outcome than that which would have resulted under the former rule.

Connecting Time

Section § 301-10.136 (b)(3) of the proposed rule reduced the connecting time from 6 hours or more to 4 hours or more at an overseas interchange point for purposes of determining whether U.S. flag air carrier service is unavailable. One Federal agency and one non-Government entity commented in support of this policy change. In contrast, two U.S. flag air carriers and the air carrier association opposed this policy change. The U.S. flag air carriers and the air carrier association stated that this change would unnecessarily risk the loss of business by U.S. airlines as it is likely to result in U.S. flag air carrier service being deemed unavailable in more instances, thereby diverting more travel to foreign air carriers.

GSA has considered these comments, but the change included in the proposed rule reducing the connecting time from 6 hours or more to 4 hours or more remains in this final rule. GSA included a number of considerations in its review of the issue. When the Fly America Act was first implemented in the 1970's, the 6 hour or more connecting time rule was established as a reasonable standard for connecting service through an overseas interchange point. Since that time, U.S. flag air carriers have significantly expanded their service in international markets and increased their service at international interchange points so that passengers can connect in a shorter time frame. Expanded use of code share arrangements has also helped reduce connecting times at overseas interchange points.

In reviewing this issue, GSA's analysis of airline schedule data showed that the airlines' average layover or connecting time is 2½ hours. GSA's analysis also showed that there would not be a large number of flights impacted by this change. Therefore,

reducing the connecting time from 6 hours to 4 hours should not result in a significant loss of revenue to U.S. flag air carriers. Under the final rule, U.S. flag air carrier service is deemed unavailable when connecting service at an overseas interchange point would require a connecting time of 4 hours or more. This exception applies only when no U.S. flag air carrier service is available within the 4 hour time period, including U.S. flag air carrier service under a code share agreement.

Section 301-10.138 In What Circumstances Is Foreign Air Carrier Service Deemed a Matter of Necessity?

Excess Foreign Currency

Section (b)(3) of this section of the proposed rule stated that "(b) Necessity includes, but is not limited to, the following circumstances when: (3) Your program or activity may only be financed, under statute, using excess foreign currency and all U.S. flag air carriers refuse to accept foreign currencies." As no excess foreign currency situations exist at the present time (and have not existed since 1992), GSA has determined that the provision included at § 301-10.138(b)(3) of the proposed rule is unnecessary. Therefore § 301-10.138(b)(3) of the proposed rule is not included in this final rule. Should excess foreign currency issues arise in the future, GSA will determine at that time whether a provision on the subject should be included in the regulation.

Safety Exceptions

The air carrier association commented on § 301-10.138(b)(1)(2), stating that although the association did not object to the safety exceptions included in the proposed rule, GSA should inform travelers that security exceptions (due to a terrorist threat on a U.S. flag air carrier) should only be invoked after consultation with the Office of Civil Aviation Security of the Federal Aviation Administration (FAA). In the event of a threat to a U.S. flag air carrier, the FAA and the Department of State will issue a travel advisory notice to the general public. Agencies should take any such travel advisory notices into account when determining whether foreign air carrier service is deemed a necessity as provided in § 301-10.138. Written approval is required for a determination that foreign air carrier service is a necessity based on a security threat to a U.S. flag air carrier and must be supported by a travel advisory notice. The language of this final rule includes this requirement. With respect to threats against Government employees or other

travelers, which formulate the basis for a determination that foreign air carrier service is necessary (as contrasted with threats to a U.S. flag air carrier), evidence of such threats must accompany the agency's approval of the use of foreign air carrier service.

Section 301-10.144 What Is My Liability if I Improperly Use a Foreign Air Carrier?

Splitting the Cost of Air Travel Between Federal and Non-Federal Funds

One non-Government entity commented that the provision included in this section of the proposed rule for computing liability may encourage splitting the cost of a trip between non-Federal and Federal funds to permit the use of a foreign air carrier for convenience or lower rates. The comment stated that the entity's practice has been to deny payment of the total cost of the air travel (both foreign and U.S.) if a foreign air carrier was improperly used for any part of the trip.

Under § 301-3.6(c)(4) of the current FTR, employee liability is computed based on a formula used to determine the amount of lost revenue to the U.S. flag air carrier(s) rather than denial of the entire cost of air travel. The new policy for employee liability, which denies reimbursement for use of any foreign air carrier for any part of the trip for which it was not authorized, is intended to simplify the process for computing employee liability. 49 U.S.C. 40118 applies only to transportation that is financed with U.S. Government funds and will not result in improperly splitting the costs of a trip between Federal and non-Federal funds. GSA's intent is to ensure that agencies establish internal procedures for disallowance of reimbursement to travelers who use foreign air carrier service that was not authorized or otherwise permitted under this regulation. Therefore this section has been modified to include a provision requiring agencies to establish such internal procedures.

Ticket Purchases Made Through a Government Contractor Travel Agency

One Federal agency stated that agencies which are not using charge cards for purchase of airline tickets should be allowed to make payment directly to the Travel Management Center, and then seek reimbursement from the employee when an employee has improperly used a foreign air carrier. The issue of whether a Federal agency must pay a travel management center/travel agency contractor when there is improper use of a foreign air

carrier is a matter of contract administration. GSA notes that many Government contracts for travel management center/travel agency services include a provision requiring that the contractor abide by the terms of the Fly America Act in issuing tickets for Federal travelers and bear the financial burden for failure to do so. Accordingly, GSA determined it unnecessary to revise § 301-10.144 on this issue.

GSA has determined that this final rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993. This final rule is not required to be published in the **Federal Register** for notice and comment; therefore, the Regulatory Flexibility Act does not apply. The Paperwork Reduction Act does not apply because the proposed revisions do not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 501 et seq. This final rule is also exempt from Congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Parts 301-3 and 301-10

Government employees, Travel and transportation expenses.

For the reasons set out in the preamble, 41 CFR Chapter 301 is amended as follows.

PART 301-3—USE OF COMMERCIAL TRANSPORTATION

1. Under the authority of 5 U.S.C. 5707, part 301-3 is removed.

PART 301-10—TRANSPORTATION EXPENSES

2. The authority citation for 41 CFR part 301-10 continues to read as follows:

Authority: 5 U.S.C. 5707; 40 U.S.C. 486(c); 49 U.S.C. 40118.

3. An undesignated center heading and sections 301-10.131 through 301-10.144 are added to read as follows:

Use of United States Flag Air Carriers

Sec.

301-10.131 What does United States mean?

301-10.132 Who is required to use a U.S. flag air carrier?

301-10.133 What is a U.S. flag air carrier?

301-10.134 What is U.S. flag air carrier service?

301-10.135 When must I travel using U.S. flag air carrier service?

301-10.136 What exceptions to the Fly America Act requirements apply when I travel between the United States and another country?

301-10.137 What exceptions to the Fly America Act requirements apply when I travel solely outside the United States, and a U.S. flag air carrier provides service between my origin and destination?

301-10.138 In what circumstances is foreign air carrier service deemed a matter of necessity?

301-10.139 May I travel by a foreign air carrier if the cost of my ticket is less than traveling by a U.S. flag air carrier?

301-10.140 May I use a foreign air carrier if the service is preferred by or more convenient for my agency or me?

301-10.141 Must I provide any special certification or documents if I use a foreign air carrier?

301-10.142 What must the certification include?

301-10.143 What is my liability if I improperly use a foreign air carrier?

Use of United States Flag Air Carriers

§ 301-10.131 What does United States mean?

For purposes of the use of United States flag air carriers, *United States* means the 50 states, the District of Columbia, and the territories and possessions of the United States (49 U.S.C. 40102).

§ 301-10.132 Who is required to use a U.S. flag air carrier?

Anyone whose air travel is financed by U.S. Government funds, except as provided in § 301-10.135, § 301-10.136, and § 301-10.137.

§ 301-10.133 What is a U.S. flag air carrier?

An air carrier which holds a certificate under 49 U.S.C. 41102 but does not include a foreign air carrier operating under a permit.

§ 301-10.134 What is U.S. flag air carrier service?

U.S. flag air carrier service is service provided on an air carrier which holds a certificate under 49 U.S.C. 41102 and which service is authorized either by the carrier's certificate or by exemption or regulation. U.S. flag air carrier service also includes service provided under a code share agreement with a foreign air carrier in accordance with Title 14, Code of Federal Regulations when the ticket, or documentation for an electronic ticket, identifies the U.S. flag air carrier's designator code and flight number.

§ 301-10.135 When must I travel using U.S. flag air carrier service?

You are required by 49 U.S.C. 40118, commonly referred to as the "Fly

America Act," to use U.S. flag air carrier service for all air travel funded by the U.S. Government, except as provided in § 301-10.136 and § 301-10.137 or when one of the following exceptions applies:

(a) Use of a foreign air carrier is determined to be a matter of necessity in accordance with § 301-10.138; or

(b) The transportation is provided under a bilateral or multilateral air transportation agreement to which the United States Government and the government of a foreign country are parties, and which the Department of Transportation has determined meets the requirements of the Fly America Act; or

(c) You are an officer or employee of the Department of State, United States Information Agency, United States International Development Cooperation Agency, or the Arms Control Disarmament Agency, and your travel is paid with funds appropriated to one of these agencies, and your travel is between two places outside the United States; or

(d) No U.S. flag air carrier provides service on a particular leg of the route, in which case foreign air carrier service may be used, but only to or from the nearest interchange point on a usually traveled route to connect with U.S. flag air carrier service; or

(e) A U.S. flag air carrier involuntarily reroutes your travel on a foreign air carrier; or

(f) Service on a foreign air carrier would be three hours or less, and use of the U.S. flag air carrier would at least double your en route travel time; or

(g) When the costs of transportation are reimbursed in full by a third party, such as a foreign government, international agency, or other organization.

§ 301-10.136 What exceptions to the Fly America Act requirements apply when I travel between the United States and another country?

The exceptions are:

(a) If a U.S. flag air carrier offers nonstop or direct service (no aircraft change) from your origin to your destination, you must use the U.S. flag air carrier service unless such use would extend your travel time, including delay at origin, by 24 hours or more.

(b) If a U.S. flag air carrier does not offer nonstop or direct service (no aircraft change) between your origin and your destination, you must use a U.S. flag air carrier on every portion of the route where it provides service unless, when compared to using a foreign air carrier, such use would:

(1) Increase the number of aircraft changes you must make outside of the U.S. by 2 or more; or

(2) Extend your travel time by at least 6 hours or more; or

(3) Require a connecting time of 4 hours or more at an overseas interchange point.

§ 301-10.137 What exceptions to the Fly America Act requirements apply when I travel solely outside the United States, and a U.S. flag air carrier provides service between my origin and my destination?

You must always use a U.S. flag carrier for such travel, unless, when compared to using a foreign air carrier, such use would:

(a) Increase the number of aircraft changes you must make en route by 2 or more; or

(b) Extend your travel time by 6 hours or more; or

(c) Require a connecting time of 4 hours or more at an overseas interchange point.

§ 301-10.138 In what circumstances is foreign air carrier service deemed a matter of necessity?

(a) Foreign air carrier service is deemed a necessity when service by a U.S. flag air carrier is available, but

(1) Cannot provide the air transportation needed; or

(2) Will not accomplish the agency's mission.

(b) Necessity includes, but is not limited to, the following circumstances:

(1) When the agency determines that use of a foreign air carrier is necessary for medical reasons, including use of foreign air carrier service to reduce the number of connections and possible delays in the transportation of persons in need of medical treatment; or

(2) When use of a foreign air carrier is required to avoid an unreasonable risk to your safety and is approved by your agency (e.g., terrorist threats).

Written approval of the use of foreign air carrier service based on an unreasonable risk to your safety must be approved by your agency on a case by case basis. An agency determination and approval of use of a foreign air carrier based on a threat against a U.S. flag air carrier must be supported by a travel advisory notice issued by the Federal Aviation Administration and the Department of State. An agency determination and approval of use of a foreign air carrier based on a threat against Government employees or other travelers must be supported by evidence of the threat(s) that form the basis of the determination and approval; or

(3) When you can not purchase a ticket in your authorized class of service on a U.S. flag air carrier, and a seat is

available in your authorized class of service on a foreign air carrier.

§ 301-10.139 May I travel by a foreign air carrier if the cost of my ticket is less than traveling by a U.S. flag air carrier?

No. Foreign air carrier service may not be used solely based on the cost of your ticket.

§ 301-10.140 May I use a foreign air carrier if the service is preferred by or more convenient for my agency or me?

No. You must use U.S. flag air carrier service, unless you meet one of the exceptions in § 301-10.135, § 301-10.136, or § 301-10.137 or unless foreign air carrier service is deemed a matter of necessity under § 301-10.138.

§ 301-10.141 Must I provide any special certification or documents if I use a foreign air carrier?

Yes, you must provide a certification, as required in § 301-10.143 and any other documents required by your agency. Your agency cannot pay your foreign air carrier fare if you do not provide the required certification.

§ 301-10.142 What must the certification include?

The certification must include:

(a) Your name;

(b) The dates that you traveled;

(c) The origin and the destination of your travel;

(d) A detailed itinerary of your travel, name of the air carrier and flight number for each leg of the trip; and

(e) A statement explaining why you met one of the exceptions in § 301-10.135, § 301-10.136, or § 301-10.137 or a copy of your agency's written approval that foreign air carrier service was deemed a matter of necessity in accordance with § 301-10.138.

§ 301-10.143 What is my liability if I improperly use a foreign air carrier?

You will not be reimbursed for any transportation cost for which you improperly use foreign air carrier service. If you are authorized by your agency to use U.S. flag air carrier service for your entire trip, and you improperly use a foreign air carrier for any part of or the entire trip (i.e., when not permitted under this regulation), your transportation cost on the foreign air carrier will not be payable by your agency. If your agency authorizes you to use U.S. flag air carrier service for part of your trip and foreign air carrier service for another part of your trip, and you improperly use a foreign air carrier (i.e., when neither authorized to do so nor otherwise permitted under this regulation), your agency will pay the transportation cost on the foreign air

carrier for only the portion(s) of the trip for which you were authorized to use foreign air carrier service. The agency must establish internal procedures for denying reimbursement to travelers when use of a foreign air carrier was neither authorized nor otherwise permitted under this regulation.

Dated: November 5, 1998.

David J. Barram,

Administrator of General Services.

[FR Doc. 98-30344 Filed 11-12-98; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants

CFR Correction

In Title 50 of the Code of Federal Regulations, parts 1 to 199, revised as of Oct. 1, 1997, § 17.44 is corrected by adding paragraph (v) as follows:

§ 17.44 Special rules—fishes.

* * * * *

(v) Gulf sturgeon (*Acipenser oxyrinchus desotoi*). (1) No person shall take this species, except in accordance with applicable State fish and wildlife conservation laws and regulations for educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, or other conservation purposes consistent with the Act.

(2) Any violation of applicable State fish and wildlife conservation laws or regulations with respect to taking of this species is also a violation of the Endangered Species Act.

(3) No person shall possess, sell, deliver, carry, transport, ship, import, or export, by any means whatever, any of this species taken in violation of applicable State fish and wildlife conservation laws or regulations.

(4) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in paragraphs (v)(1) through (3) of this section.

(5) Taking of this species for purposes other than those described in paragraph (v)(1) of this section, including taking incidental to otherwise lawful activities, is prohibited except when permitted under 50 CFR 17.32.

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 644

[Docket No. 981109279-8279-01; I.D. 020398B]

RIN 0648-AM02

Atlantic Marlin Adjustable Bag Limit Provision

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

ACTION: Interim rule; technical amendment.

SUMMARY: By the interim rule, published in the *Federal Register* on March 24, 1998, NMFS increased the minimum size limits for Atlantic blue marlin (BUM) and Atlantic white marlin (WHM), respectively, and required operators of Atlantic billfish sport fishing tournaments to notify NMFS at least 4 weeks prior to tournament commencement. On September 29, 1998, NMFS extended the period of the interim rule for an additional 180 days and amended it to increase the minimum size limit for Atlantic BUM to 99 inches lower jaw-fork length (LJFL) (251 cm), to establish a recreational bag limit of one Atlantic BUM or WHM per vessel per trip and to grant the Assistant Administrator for Fisheries, NOAA (AA), authority to adjust the bag limit, including adjusting it to zero. The current action amends the interim rule to remove the provision allowing the AA to adjust the bag limit.

DATES: Effective November 9, 1998.

FOR FURTHER INFORMATION CONTACT: Buck Sutter, 813-570-5447; fax: 813-570-5364.

SUPPLEMENTARY INFORMATION: The International Convention for the Conservation of Atlantic Tunas (ICCAT) adopted a recommendation in 1997 with several measures to address the condition of billfish resources throughout the Atlantic Ocean, including reducing Atlantic BUM and Atlantic WHM landings by at least 25 percent from 1996 limits, starting in 1998, to be accomplished by the end of 1999. In September 1997, NMFS designated BUM and WHM as being overfished. In response to the ICCAT recommendation, as required by Atlantic Tunas Convention Act (ATCA), and in an effort to reduce overfishing, NMFS promulgated a 180-day interim rule (63 FR 14030, March 24, 1998) under section 305(c) of the Magnuson

Fishery Conservation and Management Act (Magnuson-Stevens Act). The interim rule increased the minimum size of Atlantic BUM and WHM that could be retained by U.S. recreational anglers and required operators of Atlantic billfish sport fishing tournaments to notify NMFS at least 4 weeks prior to tournament commencement. The interim rule was extended for an additional 180 days, beginning September 24, 1998, and amended to increase the minimum size limit for Atlantic BUM to 99 inches (251 cm), to establish a recreational bag limit of one Atlantic BUM or WHM per vessel per trip, and to grant the AA authority to adjust the bag limit up or down, including to zero if the landing limits for BUM and WHM are reached (26.2 mt and 2.48 mt, respectively), as determined by the most recent tournament and other landings data (63 FR 51859, September 29, 1998).

It is highly unlikely that the interim authority granted the AA to adjust the bag limit would have to be used by March 19, 1999, the date the interim rule expires. The BUM and WHM recreational angling seasons in the United States generally occur between May and September. The best currently available scientific information indicates that the ICCAT-recommended landing limits for BUM and WHM have not been exceeded thus far during 1998. In addition, the NMFS Recreational Billfish Survey indicates that no landings of BUM or WHM have been observed from October through February over the last 3 years of the survey (1995 to 1997). Under 50 CFR 644.20, the fishing year and associated landing limits run from January 1 to December 31. At the initiation of the new fishing year on January 1, 1999, the landing limits start again at 26.2 mt BUM and 2.48 mt WHM. Based on the landings data for 1995 through 1997, 0 percent of the landings for both BUM and WHM are taken during January and February, and only 3.6 percent of BUM and 1.6 percent of WHM are taken during March. It is, therefore, highly unlikely that there would be any need to adjust the bag limit of one fish per vessel per trip downward for the remainder of 1998, or from January 1, 1999, through March 19, 1999, in order to ensure compliance with ICCAT-recommended landing limits.

NMFS has received public comment on the interim rule, and on October 9, 1998 (63 FR 54433) NMFS published a notice of availability of draft Amendment 1 to the Atlantic Billfish Fishery Management Plan (Billfish FMP), with a request for comments by January 7, 1999. Draft Amendment 1 to