

§ 1.913 Persons eligible to file, and time for filing, a request for inter partes reexamination.

(a) Except as provided for in § 1.907 and in paragraph (b) of this section, any person other than the patent owner or its privies may, at any time during the period of enforceability of a patent which issued from an original application filed in the United States on or after November 29, 1999, file a request for *inter partes* reexamination by the Office of any claim of the patent on the basis of prior art patents or printed publications cited under § 1.501.

(b) Any request for an *inter partes* reexamination submitted on or after September 16, 2012, will not be accorded a filing date, and any such request will not be granted.

■ 3. Section 1.915 is amended by revising paragraphs (b)(2) and (b)(3), to read as follows:

§ 1.915 Content of request for inter partes reexamination.

* * * * *

(b) * * *

(2) A citation of the patents and printed publications which are presented to provide a showing that there is a reasonable likelihood that the requester will prevail with respect to at least one of the claims challenged in the request.

(3) A statement pointing out, based on the cited patents and printed publications, each showing of a reasonable likelihood that the requester will prevail with respect to at least one of the claims challenged in the request, and a detailed explanation of the pertinency and manner of applying the patents and printed publications to every claim for which reexamination is requested.

* * * * *

■ 4. Section 1.923 is revised to read as follows:

§ 1.923 Examiner's determination on the request for inter partes reexamination.

Within three months following the filing date of a request for *inter partes* reexamination under § 1.915, the examiner will consider the request and determine whether or not the request and the prior art establish a reasonable likelihood that the requester will prevail with respect to at least one of the claims challenged in the request. The examiner's determination will be based on the claims in effect at the time of the determination, will become a part of the official file of the patent, and will be mailed to the patent owner at the address as provided for in § 1.33(c) and to the third party requester. If the

examiner determines that the request has not established a reasonable likelihood that the requester will prevail with respect to at least one of the challenged claims, the examiner shall refuse the request and shall not order *inter partes* reexamination.

■ 5. Section 1.927 is revised to read as follows:

§ 1.927 Petition to review refusal to order inter partes reexamination.

The third party requester may seek review by a petition to the Director under § 1.181 within one month of the mailing date of the examiner's determination refusing to order *inter partes* reexamination. Any such petition must comply with § 1.181(b). If no petition is timely filed or if the decision on petition affirms that a reasonable likelihood that the requester will prevail with respect to at least one of the claims challenged in the request has not been established, the determination shall be final and nonappealable.

■ 6. Section 1.931 is amended by revising paragraph (a) to read as follows:

§ 1.931 Order for inter partes reexamination.

(a) If it is found that there is a reasonable likelihood that the requester will prevail with respect to at least one of the claims challenged in the request, the determination will include an order for *inter partes* reexamination of the patent for resolution of the question of whether the requester will prevail.

* * * * *

Dated: September 16, 2011.

David J. Kappos,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2011-24464 Filed 9-22-11; 8:45 am]

BILLING CODE 3510-16-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3000

[L13100000 PP0000 LLWO310000; L1990000 PO0000 LLWO320000]

RIN 1004-AE22

Minerals Management: Adjustment of Cost Recovery Fees

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule amends the Bureau of Land Management (BLM) mineral resources regulations to update

some fees that cover the BLM's cost of processing certain documents relating to its minerals programs and some filing fees for mineral-related documents. These updated fees include those for actions such as lease renewals and mineral patent adjudications.

DATES: This final rule is effective October 1, 2011.

ADDRESSES: You may send inquiries or suggestions to Director (630), Bureau of Land Management, 2134LM, 1849 C Street, NW., Washington, DC 20240; Attention: RIN 1004-AE22.

FOR FURTHER INFORMATION CONTACT: Steven Wells, Chief, Division of Fluid Minerals, (202) 912-7143, or Faith Bremner, Regulatory Affairs Analyst, (202) 912-7441. Persons who use a telecommunications device for the deaf (TDD) may leave a message for these individuals with the Federal Information Relay Service (FIRS) at 1-800-877-8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

I. Background

The BLM has specific authority to charge fees for processing applications and other documents relating to public lands under Section 304 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. 1734. In 2005, the BLM published a final cost recovery rule (70 FR 58854) establishing or revising certain fees and service charges, and establishing the method it would use to adjust those fees and service charges on an annual basis.

At 43 CFR 3000.12(a), the regulations provide that the BLM will annually adjust fees established in Subchapter C according to changes in the Implicit Price Deflator for Gross Domestic Product (IPD-GDP), which is published quarterly by the U.S. Department of Commerce. See also 43 CFR 3000.10. This final rule will allow the BLM to update these fees and service charges by October 1 of this year, as required by the 2005 regulation. The fee recalculations are based on a mathematical formula. The public had an opportunity to comment on this procedure during the comment period on the original cost recovery rule, and this new rule simply administers the procedure set forth in those regulations. Therefore, the BLM has changed the fees in this final rule without providing opportunity for additional notice and comment. The Department of the Interior, therefore, for good cause finds under 5 U.S.C. 553(b)(B) and (d)(3) that notice and public comment procedures are unnecessary and that the rule may be

effective less than 30 days after publication.

II. Discussion of Final Rule

The BLM publishes a fee update rule each year, which becomes effective on October 1 of that year. The fee updates are based on the change in the IPD–GDP from the 4th Quarter of one calendar year to the 4th Quarter of the following calendar year. This fee update rule is based on the change in the IPD–GDP from the 4th Quarter of 2009 to the 4th

Quarter of 2010, thus reflecting the rate of inflation over four calendar quarters.

The fee is calculated by applying the IPD–GDP to the base value from the previous year’s rule, also known as the “existing value”. This calculation results in an updated base value. The updated base value is then rounded to the closest multiple of \$5, or to the nearest cent for fees under \$1, to establish the new fee.

Under this rule, 27 fees will remain the same and 21 fees will increase.

Nineteen of the fee increases will amount to \$5 each. The largest increase, \$35, will be applied to the fee for adjudicating a mineral patent application containing more than 10 claims, which will increase from \$2,840 to \$2,875. The fee for adjudicating a patent application containing 10 or fewer claims will increase by \$20—from \$1,420 to \$1,440.

The calculations that resulted in the new fees are included in the table below:

FIXED COST RECOVERY FEES FY12

Document/action	Existing fee ¹	Existing value ²	IPD–GDP increase ³	New value ⁴	New fee ⁵
Oil & Gas (parts 3100, 3110, 3120, 3130, 3150)					
Noncompetitive lease application	\$375	\$377.23	\$5.09	\$382.32	\$380
Competitive lease application	145	146.39	1.98	148.37	150
Assignment and transfer of record title or operating rights	85	84.45	1.14	85.59	85
Overriding royalty transfer, payment out of production	10	11.26	0.15	11.41	10
Name change, corporate merger or transfer to heir/devisee	195	197.05	2.66	199.71	200
Lease consolidation	415	416.63	5.62	422.25	420
Lease renewal or exchange	375	377.23	5.09	382.32	380
Lease reinstatement, Class I	75	73.18	0.99	74.17	75
Leasing under right-of-way	375	377.23	5.09	382.32	380
Geophysical exploration permit application—Alaska	25	⁵ 25
Renewal of exploration permit—Alaska	25	⁶ 25
Geothermal (part 3200)					
Noncompetitive lease application	375	377.23	5.09	382.32	380
Competitive lease application	145	146.39	1.98	148.37	150
Assignment and transfer of record title or operating rights	85	84.45	1.14	85.59	85
Name change, corporate merger or transfer to heir/devisee	195	197.05	2.66	199.71	200
Lease consolidation	415	416.63	5.62	422.25	420
Lease reinstatement	75	73.18	0.99	74.17	75
Nomination of lands	105	105.40	1.42	106.82	105
plus per acre nomination fee	0.11	0.10540	0.00142	0.10682	0.11
Site license application	55	56.30	0.76	57.06	55
Assignment or transfer of site license	55	56.30	0.76	57.06	55
Coal (parts 3400, 3470)					
License to mine application	10	11.26	0.15	11.41	10
Exploration license application	310	309.66	4.18	313.84	315
Lease or lease interest transfer	60	61.94	0.84	62.78	65
Leasing of Solid Minerals Other Than Coal and Oil Shale (parts 3500, 3580)					
Applications other than those listed below	35	33.78	0.46	34.24	35
Prospecting permit application amendment	60	61.94	0.84	62.78	65
Extension of prospecting permit	100	101.34	1.37	102.71	105
Lease modification or fringe acreage lease	30	28.16	0.38	28.54	30
Lease renewal	485	484.20	6.54	490.74	490
Assignment, sublease, or transfer of operating rights	30	28.16	0.38	28.54	30
Transfer of overriding royalty	30	28.16	0.38	28.54	30
Use permit	30	28.16	0.38	28.54	30
Shasta and Trinity hardrock mineral lease	30	28.16	0.38	28.54	30
Renewal of existing sand and gravel lease in Nevada	30	28.16	0.38	28.54	30
Multiple Use; Mining (part 3700)					
Notice of protest of placer mining operations	10	11.26	0.15	11.41	10
Mining Law Administration (parts 3800, 3810, 3830, 3850, 3860, 3870)					
Application to open lands to location	10	11.26	0.15	11.41	10
Notice of location	15	16.88	0.23	17.11	15
Amendment of location	10	11.26	0.15	11.41	10
Transfer of mining claim/site	10	11.26	0.15	11.41	10
Recording an annual FLPMA filing	10	11.26	0.15	11.41	10

FIXED COST RECOVERY FEES FY12—Continued

Document/action	Existing fee ¹	Existing value ²	IPD–GDP increase ³	New value ⁴	New fee ⁵
Deferment of assessment work	100	101.34	1.37	102.71	105
Recording a notice of intent to locate mining claims on Stockraising Homestead Act lands	30	28.16	0.38	28.54	30
Mineral patent adjudication. (more than 10 claims)	2,840	2,837.64	38.31	2,875.95	2,875
(10 or fewer claims)	1,420	1,418.81	19.15	1,437.96	1,440
Adverse claim	100	101.34	1.37	102.71	105
Protest	60	61.94	0.84	62.78	65

Oil Shale Management (parts 3900, 3910, 3930)

Exploration license application	295	297.01	4.01	301.02	300
Application for assignment or sublease of record title or overriding royalty	60	60.41	0.82	61.23	60

¹ The Existing Fee was established by the 2010 (Fiscal Year 2011) cost recovery fee update rule published September 14, 2010 (75 FR 55678), effective October 1, 2010.

² The Existing Value is the figure from the New Value column in the previous year's rule.

³ From 4th Quarter 2009 to 4th Quarter 2010, the IPD–GDP increased by 1.35 percent. The value in the IPD–GDP Increase column is 1.35 percent of the Existing Value.

⁴ The sum of the Existing Value and the IPD–GDP Increase is the New Value.

⁵ The New Fee for Fiscal Year 2012 is the New Value rounded to the nearest \$5 for values equal to or greater than \$1, or to the nearest penny for values under \$1.

⁶ Section 365 of the Energy Policy Act of 2005 (Pub. L. 109–58) directed in subsection (i) that “the Secretary shall not implement a rulemaking that would enable an increase in fees to recover additional costs related to processing drilling-related permit applications and use authorizations.” In the 2005 cost recovery rule, the BLM interpreted this prohibition to apply to geophysical exploration permits. 70 FR 58854–58855. While the \$25 fees for geophysical exploration permit applications for Alaska and renewals of exploration permits for Alaska pre-dated the 2005 cost recovery rule and were not affected by the Energy Policy Act prohibition, the BLM interprets the Energy Policy Act provision as prohibiting it from increasing this \$25 fee.

⁶ The BLM interprets the Energy Policy Act prohibition discussed in footnote 6, above, as prohibiting it from increasing this \$25 fee, as well.

III. How Fees Are Adjusted

Each year, the figures in the Existing Value column in the table above (not those in the Existing Fee column) are used as the basis for calculating the adjustment to these fees. The Existing Value is the figure from the New Value column in the previous year's rule. In the case of fees that were not in the table the previous year, or that had no figure in the New Value column the previous year, the Existing Value is the same as the Existing Fee. Because the new fees are derived from the new values—rounded to the nearest \$5 or the nearest penny for fees under \$1—adjustments based on the figures in the Existing Fee column would lead to significantly over-or-under-valued fees over time. Accordingly, fee adjustments are made by multiplying the annual change in the IPD–GDP by the figure in the Existing Value column. This calculation defines the New Value for this year, which is then rounded to the nearest \$5 or the nearest penny for fees under \$1, to establish the New Fee.

IV. Procedural Matters

Regulatory Planning and Review (Executive Order 12866)

This document is not a significant rule and the Office of Management and Budget has not reviewed this rule under Executive Order 12866.

The BLM has determined that the rule will not have an annual effect on the economy of \$100 million or more. It will not 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. The changes in today's rule are much smaller than those in the 2005 final rule, which did not approach the threshold in Executive Order 12866. For instructions on how to view a copy of the analysis prepared in conjunction with the 2005 final rule, please contact one of the persons listed in the **FOR FURTHER INFORMATION CONTACT** section above.

This rule will not create inconsistencies or otherwise interfere with an action taken or planned by another agency. This rule does not change the relationships of the onshore minerals programs with other agencies' actions. These relationships are included in agreements and memoranda of understanding that would not change with this rule.

In addition, this final rule does not materially affect the budgetary impact of entitlements, grants, or loan programs, or the rights and obligations of their recipients. This rule does apply an inflation factor that increases some existing user fees for processing documents associated with the onshore minerals programs. However, most of

these fee increases are less than 3 percent and none of the increases materially affect the budgetary impact of user fees.

Finally, this rule will not raise novel legal issues. As explained above, this rule simply implements an annual process to account for inflation that was adopted by and explained in the 2005 cost recovery rule.

The Regulatory Flexibility Act

This final rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). A Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required. For the purposes of this section, a small entity is defined by the Small Business Administration (SBA) for mining (broadly inclusive of metal mining, coal mining, oil and gas extraction, and the mining and quarrying of nonmetallic minerals) as an individual, limited partnership, or small company considered to be at arm's length from the control of any parent companies, with fewer than 500 employees. The SBA defines a small entity differently, however, for leasing Federal land for coal mining. A coal lessee is a small entity if it employs not more than 250 people, including people working for its affiliates.

The SBA would consider many, if not most, of the operators the BLM works with in the onshore minerals programs to be small entities. The BLM notes that this final rule does not affect service industries, for which the SBA has a different definition of "small entity."

The final rule may affect a large number of small entities since 21 fees for activities on public lands will be increased. However, the BLM has concluded that the effects will not be significant. Most of the fixed fee increases will be less than 3 percent as a result of this final rule. The adjustments result in no increase in the fee for the processing of 27 documents relating to the BLM's minerals programs. The highest adjustment, in dollar terms, is for adjudications of mineral patent applications involving more than 10 mining claims, which will be increased by \$35. For the 2005 final rule, the BLM completed a threshold analysis, which is available for public review in the administrative record for that rule. For instructions on how to view a copy of that analysis, please contact one of the persons listed in the **FOR FURTHER INFORMATION CONTACT** section above. The analysis for the 2005 rule concluded that the fees would not have a significant economic effect on a substantial number of small entities. The fee increases implemented in today's rule are substantially smaller than those provided for in the 2005 rule.

The Small Business Regulatory Enforcement Fairness Act

This final rule is not a "major rule" as defined at 5 U.S.C. 804(2). The final rule will not have an annual effect on the economy greater than \$100 million; it will not result in major cost or price increases for consumers, industries, government agencies, or regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. For the 2005 final rule, which established the fee adjustment procedure that this rule implements, the BLM completed a threshold analysis, which is available for public review in the administrative record for that rule. The fee increases implemented in today's rule are substantially smaller than those provided for in the 2005 rule.

Executive Order 13132, Federalism

This final rule will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various

levels of government. In accordance with Executive Order 13132, therefore, we find that the final rule does not have significant federalism effects. A federalism assessment is not required.

The Paperwork Reduction Act of 1995

These regulations contain information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the BLM submitted a copy of the proposed information collection requirements to the Office of Management and Budget (OMB) for review. The OMB approved the information collection requirements under the following Control Numbers:

Oil and Gas

- (1) 1004-0034 which expires July 31, 2012;
- (2) 1004-0137 which expires September 30, 2011, renewal pending;
- (3) 1004-0162 which expires May 31, 2012;
- (4) 1004-0185 which expires November 30, 2012;

Geothermal

- (5) 1004-0132 which expires December 31, 2013;

Coal

- (6) 1004-0073 which expires June 30, 2013;

Mining Claims

- (7) 1004-0025 which expires March 31, 2013;
- (8) 1004-0114 which expires August 31, 2013; and

Leasing of Solid Minerals Other Than Oil Shale

- (9) 1004-0121 which expires February 28, 2013.

Takings Implication Assessment (Executive Order 12630)

As required by Executive Order 12630, the BLM has determined that this rule will not cause a taking of private property. No private property rights will be affected by a rule that merely updates fees. The BLM therefore certifies that this final rule does not represent a governmental action capable of interference with constitutionally protected property rights.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the BLM finds that this final rule will not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Executive Order.

The National Environmental Policy Act (NEPA)

The BLM has determined that this final rule is administrative and involves only procedural changes addressing fee requirements. In promulgating this rule, the government is conducting routine and continuing government business of an administrative nature having limited context and intensity. Therefore, it is categorically excluded from environmental review under section 102(2)(C) of NEPA, pursuant to 43 CFR 46.205 and 46.210(c) and (i). The final rule does not meet any of the 12 criteria for exceptions to categorical exclusions listed at 43 CFR 46.215.

Pursuant to Council on Environmental Quality (CEQ) regulation and the environmental policies and procedures of the Department of the Interior, the term "categorical exclusions" means categories of actions "which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of [CEQ] regulations (§ 1507.3) and for which, therefore, neither an environmental assessment nor an environmental impact statement is required." 40 CFR 1508.4; *see also* BLM National Environmental Policy Act Handbook H-1790-1, Ch. 4, at 17 (Jan. 2008).

The Unfunded Mandates Reform Act of 1995

The BLM has determined that this final rule is not significant under the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.*, because it will not result in state, local, private sector, or Tribal government expenditures of \$100 million or more in any one year, 2 U.S.C. 1532. This rule will not significantly or uniquely affect small governments. Therefore, the BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act.

Consultation and Coordination With Indian Tribal Governments (Executive Order 13175)

In accordance with Executive Order 13175, the BLM has determined that this final rule does not include policies that have Tribal implications. A key factor is whether the rule would have substantial direct effects on one or more Indian Tribes. The BLM has not found any substantial direct effects. Consequently, the BLM did not utilize the consultation process set forth in Section 5 of the Executive Order.

Information Quality Act

In developing this rule, the BLM did not conduct or use a study, experiment, or survey requiring peer review under the Information Quality Act (Pub. L. 106-554).

Effects on the Nation's Energy Supply (Executive Order 13211)

In accordance with Executive Order 13211, the BLM has determined that this final rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The distribution of or use of energy would not be unduly affected by this final rule. It merely adjusts certain administrative cost recovery fees to account for inflation.

Author

The principal author of this rule is Faith Bremner of the Division of

Regulatory Affairs, Bureau of Land Management.

List of Subjects in 43 CFR Part 3000

Public lands—mineral resources, Reporting and recordkeeping requirements.

Marcilynn A. Burke,
Acting Assistant Secretary, Land and Minerals Management.

For reasons stated in the preamble, the Bureau of Land Management amends 43 CFR chapter II as follows:

PART 3000—MINERALS MANAGEMENT: GENERAL

■ 1. The authority citation for part 3000 continues to read as follows:

Authority: 16 U.S.C. 3101 *et seq.*; 30 U.S.C. 181 *et seq.*, 301-306, 351-359, and 601 *et seq.*; 31 U.S.C. 9701; 40 U.S.C. 471 *et seq.*; 42 U.S.C. 6508; 43 U.S.C. 1701 *et seq.*; and Pub. L. 97-35, 95 Stat. 357.

Subpart 3000—General

■ 2. Amend § 3000.12 by revising paragraph (a) to read as follows:

§ 3000.12 What is the fee schedule for fixed fees?

(a) The table in this section shows the fixed fees that you must pay to the BLM for the services listed for Fiscal Year 2012. These fees are nonrefundable and must be included with documents you file under this chapter. Fees will be adjusted annually according to the change in the Implicit Price Deflator for Gross Domestic Product (IPD-GDP) by way of publication of a final rule in the **Federal Register** and will subsequently be posted on the BLM Web site (<http://www.blm.gov>) before October 1 each year. Revised fees are effective each year on October 1.

FY 2012 PROCESSING AND FILING FEE TABLE

Document/action	FY 2012 Fee
Oil & Gas (parts 3100, 3110, 3120, 3130, 3150)	
Noncompetitive lease application	\$380
Competitive lease application	150
Assignment and transfer of record title or operating rights	85
Overriding royalty transfer, payment out of production	10
Name change, corporate merger or transfer to heir/devisee	200
Lease consolidation	420
Lease renewal or exchange	380
Lease reinstatement, Class I	75
Leasing under right-of-way	380
Geophysical exploration permit application—Alaska	25
Renewal of exploration permit—Alaska	25
Geothermal (part 3200)	
Noncompetitive lease application	380
Competitive lease application	150
Assignment and transfer of record title or operating rights	85
Name change, corporate merger or transfer to heir/devisee	200
Lease consolidation	420
Lease reinstatement	75
Nomination of lands	105
plus per acre nomination fee	0.11
Site license application	55
Assignment or transfer of site license	55
Coal (parts 3400, 3470)	
License to mine application	10
Exploration license application	315
Lease or lease interest transfer	65
Leasing of Solid Minerals Other Than Coal and Oil Shale (parts 3500, 3580)	
Applications other than those listed below	35
Prospecting permit application amendment	65
Extension of prospecting permit	105
Lease modification or fringe acreage lease	30
Lease renewal	490
Assignment, sublease, or transfer of operating rights	30
Transfer of overriding royalty	30
Use permit	30
Shasta and Trinity hardrock mineral lease	30

FY 2012 PROCESSING AND FILING FEE TABLE—Continued

Document/action	FY 2012 Fee
Renewal of existing sand and gravel lease in Nevada	30
Multiple Use; Mining (part 3730)	
Notice of protest of placer mining operations	10
Mining Law Administration (parts 3800, 3810, 3830, 3850, 3860, 3870)	
Application to open lands to location	10
Notice of location*	15
Amendment of location	10
Transfer of mining claim/site	10
Recording an annual FLPMA filing	10
Deferment of assessment work	105
Recording a notice of intent to locate mining claims on Stockraising Homestead Act lands	30
Mineral patent adjudication	2,875 (more than 10 claims) 1,440 (10 or fewer claims)
Adverse claim	105
Protest	65
Oil Shale Management (parts 3900, 3910, 3930)	
Exploration license application	300
Application for assignment or sublease of record title or overriding royalty	60

* To record a mining claim or site location, you must pay this processing fee along with the initial maintenance fee and the one-time location fee required by statute. 43 CFR part 3833.

* * * * *
[FR Doc. 2011-24494 Filed 9-22-11; 8:45 am]
BILLING CODE 4310-84-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 040205043-4043-01]

RIN 0648-XA677

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery of the South Atlantic; Closure

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS closes the commercial sector for vermilion snapper in the exclusive economic zone (EEZ) of the South Atlantic. This closure is necessary to protect the vermilion snapper resource.

DATES: This rule is effective 12:01 a.m., local time, September 30, 2011, until 12:01 a.m., local time, January 1, 2012.

FOR FURTHER INFORMATION CONTACT: Catherine Bruger, telephone: 727-824-5305, fax: 727-824-5308, e-mail: Catherine.Bruger@noaa.gov.

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The FMP was prepared by the South Atlantic Fishery Management Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act by regulations at 50 CFR part 622.

The commercial quota for vermilion snapper in the South Atlantic is 302,523 lb (137,222 kg) for the current fishing period, July 1 through December 31, 2011, as specified in 50 CFR 622.42(e)(4)(ii). On June 15, 2011, NMFS published a final rule implementing a commercial trip limit for vermilion snapper of 1,500 lb (680 kg) per day, which was effective on July 15, 2011 (76 FR 34892). This trip limit, specified in 50 CFR 622.44(c)(6), remains in effect until the commercial quota for vermilion snapper is reached.

Under 50 CFR 622.43(a), NMFS is required to close the commercial sector for vermilion snapper when its quota has been reached, or is projected to be reached, by filing a notification to that effect with the Office of the Federal Register. NMFS has determined that the commercial quota for South Atlantic vermilion snapper will have been reached by September 30, 2011. Accordingly, the commercial sector for South Atlantic vermilion snapper is closed effective 12:01 a.m., local time,

September 30, 2011, until 12:01 a.m., local time, January 1, 2012.

The operator of a vessel with a valid commercial vessel permit for South Atlantic snapper-grouper having vermilion snapper onboard must have landed and bartered, traded, or sold such vermilion snapper prior to 12:01 a.m., local time, September 30, 2011. During the closure, the bag limit and possession limits specified in 50 CFR 622.39(d)(1)(v) and (d)(2), respectively, apply to all harvest or possession of vermilion snapper in or from the South Atlantic EEZ, and the sale or purchase of vermilion snapper taken from the EEZ is prohibited. The prohibition on sale or purchase does not apply to the sale or purchase of vermilion snapper that were harvested, landed ashore, and sold prior to 12:01 a.m., local time, September 30, 2011, and were held in cold storage by a dealer or processor. For a person on board a vessel for which a Federal commercial permit for the South Atlantic snapper-grouper fishery has been issued, the sale and purchase provisions of the commercial closure for vermilion snapper would apply regardless of whether the fish are harvested in state or Federal waters, as specified in 50 CFR 622.43(a)(5)(ii).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds that the need to immediately