

§ 73.19 Reports by using agency.

(a) Each using agency shall prepare a report on the use of each restricted area assigned thereto during any part of the preceding 12-month period ended September 30, and transmit it by the following January 31 of each year to the Manager, Air Traffic Division in the regional office of the Federal Aviation Administration having jurisdiction over the area in which the restricted area is located, with a copy to the Program Director for Air Traffic Operations, Federal Aviation Administration, Washington, DC 20591.

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(c) If it is determined that the information submitted under paragraph (b) of this section is not sufficient to evaluate the nature and extent of the use of a restricted area, the FAA may request the using agency to submit supplementary reports. Within 60 days after receiving a request for additional information, the using agency shall submit such information as the Program Director for Air Traffic Operations considers appropriate. Supplementary reports must be sent to the FAA officials designated in paragraph (a) of this section.

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Issued in Washington, DC, on May 17, 1996.

Harold W. Becker,

*Acting Program Director for Air Traffic
Airspace Management.*

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DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric
Administration****15 CFR Part 902****50 CFR Parts 611 and 620**

[Docket No. 960222043-6131-02; I.D.
111595B]

RIN 0648-AC61

**Foreign and Domestic Fishing;
Scientific Research Activity and
Exempted Fishing**

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

ACTION: Final rule.

SUMMARY: NMFS issues new and revised definitions for certain regulatory terms to distinguish clearly among scientific research activities, exempted fishing, and exempted educational activities; to

clarify and standardize issuance procedures for letters of acknowledgement of notification of scientific research activity and exempted fishing permits (EFPs); and to facilitate scientific research activities.

EFFECTIVE DATE: June 27, 1996.

ADDRESSES: Comments regarding burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule should be sent to Richard H. Schaefer, Director, Office of Fisheries Conservation and Management, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, and to the Office of Management and Budget, Paperwork Reduction Project (0648-0214), Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: William D. Chappell at 301-713-2341

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) (Magnuson Act) authorizes the Secretary of Commerce (Secretary) to conserve and manage fishery resources in the exclusive economic zone (EEZ) by regulating "fishing." Excluded expressly from the definition of "fishing," and therefore from the Magnuson Act's purview, is "scientific research activity which is conducted by a scientific research vessel." However, the Magnuson Act does not define "scientific research activity" or "scientific research vessel." The legislative history provides little guidance on Congress' intent in exempting scientific research conducted from a scientific research vessel from the Magnuson Act's requirements. In this rule, NMFS defines "scientific research activity," "scientific research vessel," and related terms.

"Exempted fishing," an activity that has been regulated under fishery management plans (FMPs) prepared by Regional Fishery Management Councils (Councils) or the Secretary, is defined in this rule for domestic vessels only. NMFS anticipates that individual FMPs that currently authorize "experimental fishing" will be amended, as necessary, to replace existing references to "experimental fishing" with references to "exempted fishing," and to standardize terminology and procedures for issuance of EFPs by replacing existing regulatory text with references to these rules. In the absence of specific regulations for each fishery, these procedures will be followed. Authority to allow exempted fishing in any regulated fishery would be established through the governing FMP and/or its implementing regulations.

In addition, NMFS proposes to define "exempted educational activity" for the domestic fishing regulations to distinguish between commercially oriented exempted fishing and those activities of very limited scope and duration, conducted by educational institutions, that may involve activities that are not in accordance with regulations implemented under authority of an FMP. In the absence of specific regulations for each fishery, these procedures will be followed.

NMFS published a proposed rule at 61 FR 10712, March 15, 1996, requesting comments by April 15, 1996. No comments from the general public or other agencies were received. The following addresses internal comments generated during review.

Throughout the rule, the term "Center Director" is replaced by the term "Science and Research Director" to reflect accurately the title of the Directors of NMFS's Fishery Science Centers.

Under the definition of the term "scientific research plan" for both the foreign and domestic regulations, paragraph (5) has been revised to include expected quantities of fish to be taken instead of an absolute amount, retaining some flexibility for researchers.

In § 620.10(b)(1), the authority of the Regional Director to issue EFPs is expanded to include reasons of health and safety, environmental cleanup, and hazard removal. This provision allows an exemption for fishing gear to be used in oil rig removal cleanup, oil spill cleanup, or other contingencies not directly related to fishing.

In § 620.10(b)(3)(i), the requirement for a comment period on EFPs is modified to allow comment to be taken at a Council meeting instead of, or in conjunction with, a more formal comment period. This allows some Councils to continue their current practice, which has proven sufficient for public comment and is more efficient in providing timely response to the applicants.

In § 620.10(d)(3)(ii)(F), the paragraph is corrected to reference exempted educational activity instead of EFP.

Under NOAA Administrative Order 205-11, 7.01, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere has delegated, to the Assistant Administrator for Fisheries, NOAA, the authority to sign material for publication in the Federal Register.

Classification

This final rule has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. The reasons were published at 61 FR 10712, March 15, 1996. As a result, a regulatory flexibility analysis was not prepared.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number.

This rule contains a collection-of-information requirement subject to the PRA. The collection of this information has been approved by the OMB, OMB Control Number 0648-0309. The public reporting burden for this collection of information is estimated: (1) To average 1 hour per response to send NMFS a copy of a scientific research plan and provide a copy of the cruise report or research publication; (2) to average 1 hour per response to complete an application for an EFP or authorization for an exempted educational activity; and (3) to average 1 hour per response to collect information and provide a report at the conclusion of exempted fishing. Send comments regarding this burden estimate, or any other aspect of the data requirements, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 611

Fisheries, Foreign relations, Reporting and recordkeeping requirements.

50 CFR Part 620

Fisheries, Fishing.

Dated: May 20, 1996.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 15 CFR chapter IX and 50 CFR chapter VI are amended as follows:

15 CFR CHAPTER IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. In § 902.1, paragraph (b) the table is amended by adding, in numerical order, the following entries to read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648-)
50 CFR.	
611.14	—0309
620.10	—0309

50 CFR CHAPTER VI

PART 611—FOREIGN FISHING

3. The authority citation for part 611 is revised to read as follows:

Authority: 16 U.S.C. 971 *et seq.*, 1361 *et seq.*, 1801 *et seq.*, and 22 U.S.C. 1971 *et seq.*

4. In § 611.2, the definition for "Center Director" is removed and definitions for "Director", "Science and Research Director", "Scientific cruise", "Scientific research activity", "Scientific research plan", and "Scientific research vessel", are added, in alphabetical order, to read as follows:

§ 611.2 Definitions.

Director means the Director of the Office of Fisheries Conservation and Management, 1315 East-West Highway, Silver Spring, MD 20910.

Science and Research Director means the Director of one of the five NMFS Fisheries Science Centers described in Table 1 of Appendix A to this subpart, or a designee.

Scientific cruise means the period of time during which a scientific research vessel is operated in furtherance of a scientific research project, beginning when the vessel leaves port to undertake

the project and ending when the vessel completes the project as provided for in the applicable scientific research plan.

Scientific research activity is, for the purposes of this part, an activity in furtherance of a scientific fishery investigation or study that would meet the definition of fishing under the Magnuson Act, but for the exemption applicable to scientific research activity conducted from a scientific research vessel. Scientific research activity includes, but is not limited to, sampling, collecting, observing, or surveying the fish or fishery resources within the EEZ, at sea, on board scientific research vessels, to increase scientific knowledge of the fishery resources or their environment, or to test a hypothesis as part of a planned, directed investigation or study conducted according to methodologies generally accepted as appropriate for scientific research. At-sea scientific fishery investigations address one or more issues involving taxonomy, biology, physiology, behavior, disease, aging, growth, mortality, migration, recruitment, distribution, abundance, ecology, stock structure, bycatch, and catch estimation of finfish and shellfish (invertebrate) species considered to be a component of the fishery resources within the EEZ. Scientific research activity does not include the collection and retention of fish outside the scope of the applicable research plan, or the testing of fishing gear. Data collection designed to capture and land quantities of fish for product development, market research, and/or public display are not scientific research activities and must be permitted under exempted fishing procedures. For foreign vessels, such data collection activities are considered scientific research if they are carried out in full cooperation with the United States.

Scientific research plan means a detailed, written formulation, prepared in advance of the research, for the accomplishment of a scientific research project. At a minimum, a sound scientific research plan should include:

- (1) A description of the nature and objectives of the project, including the hypothesis or hypotheses to be tested.
- (2) The experimental design of the project, including a description of the methods to be used, the type and class of any vessel(s) to be used, and a description of sampling equipment.
- (3) The geographical area(s) in which the project is to be conducted.
- (4) The expected date of first appearance and final departure of the research vessel(s) to be employed, and deployment and removal of equipment, as appropriate.

(5) The expected quantity and species of fish to be taken and their intended disposition, and, if significant amounts of a managed species or species otherwise restricted by size or sex are needed, an explanation of such need.

(6) The name, address, and telephone/telex/fax number of the sponsoring organization and its director.

(7) The name, address, and telephone/telex/fax number, and curriculum vitae of the person in charge of the project and, where different, the person in charge of the research project on board the vessel.

(8) The identity of any vessel(s) to be used including, but not limited to, the vessel's name, official documentation number and IRCS, home port, and name, address, and telephone number of the owner and master.

Scientific research vessel means a vessel owned or chartered by, and controlled by, a foreign government agency, U.S. Government agency (including NOAA or institutions designated as federally funded research and development centers), U.S. state or territorial agency, university (or other educational institution accredited by a recognized national or international accreditation body), international treaty organization, or scientific institution. In order for a vessel that is owned or chartered and controlled by a foreign government to meet this definition, the vessel must have scientific research as its exclusive mission during the scientific cruise in question and the vessel operations must be conducted in

accordance with a scientific research plan.

* * * * *

5. In § 611.7, paragraphs (a)(27) and (a)(28) are redesignated as paragraphs (a)(29) and (a)(30), respectively, and new paragraphs (a)(27) and (a)(28) are added to read as follows:

§ 611.7 Prohibitions.

(a) * * *

(27) Fish in violation of the terms or conditions of any permit or authorization issued under the Magnuson Act;

(28) On a scientific research vessel, engage in fishing other than recreational fishing authorized by applicable state, territorial, or Federal regulations;

* * * * *

6. Section 611.14 is revised to read as follows:

§ 611.14 Scientific research activity.

(a) *Scientific research activity.*

Persons planning to conduct scientific research activities in the EEZ that may be confused with fishing are encouraged to submit to the appropriate Regional Director, Director, or designee, 60 days or as soon as practicable prior to its start, a scientific research plan for each scientific cruise. The Regional Director, Director, or designee will acknowledge notification of scientific research activity by issuing to the operator or master of that vessel, or to the sponsoring institution, a letter of acknowledgment. This letter of acknowledgment is separate and

distinct from any permit required under any other applicable law. If the Regional Director, Director, or designee, after review of a research plan, determines that it does not constitute scientific research activity but rather fishing, the Regional Director, Director, or designee will inform the applicant as soon as practicable and in writing. The Regional Director, Director, or designee may also make recommendations to revise the research plan to make the cruise acceptable as scientific research activity. In order to facilitate identification of activity as scientific research, persons conducting scientific research activities are advised to carry a copy of the scientific research plan and the letter of acknowledgment on board the scientific research vessel. Activities conducted in accordance with a scientific research plan acknowledged by such a letter are presumed to be scientific research activities. The presumption may be overcome by showing that an activity does not fit the definition of scientific research activity or is outside the scope of the scientific research plan.

(b) *Reports.* Persons conducting scientific research are requested to submit a copy of any cruise report or other publication created as a result of the cruise, including the amount, composition, and disposition of their catch, to the appropriate Science and Research Director.

7. Table 1 to Appendix A to subpart A of part 611 is revised to read as follows:

Appendix A to Subpart A—Addresses, Areas of Responsibility and Communications

TABLE 1.—ADDRESSES

NMFS regional directors	NMFS Fisheries Science Center directors	U.S. Coast Guard commanders
Director, Northeast Region, National Marine Fisheries Service, NOAA, One Blackburn Drive, Gloucester, MA 01930-2298; Telex: 940007; Telephone: 508-281-9300; FAX: 508-281-9333.	Director, Northeast Fisheries Science Center, National Marine Fisheries Service, NOAA, 166 Water Street, Woods Hole, MA 02543-1097, Attn: Observer Program; Telex: 322200; Telephone: 508-548-5123; FAX: 508-548-5124.	Commander, Atlantic Area, U.S. Coast Guard, Governor's Island, New York, NY 10004; Telex: 126831; Telephone: 212-668-7877.
Director, Southeast Region, National Marine Fisheries Service, NOAA, 9721 Exec. Center Drive N., St. Petersburg, FL 33702; Telephone: 813-570-5301; FAX: 813-570-5300.	Director, Southeast Fisheries Science Center, National Marine Fisheries Service, NOAA, 75 Virginia Beach Drive, Miami, FL 33149-1003; Telephone: 305-361-5761; FAX: 305-361-4219.	Commander, Atlantic Area, U.S. Coast Guard, New York, NY 10004; Telex: 126831; Telephone: 212-668-7877.
Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE, BIN C15700, Bldg. 1, Seattle, WA 98115; Telex: 9104442786; Telephone: 206-526-6150; FAX: 206-526-6426.	Director, Northwest Fisheries Science Center, National Marine Fisheries Service, NOAA, 2725 Montlake Boulevard East, Seattle, WA 98112-2097; Telephone: 206-442-1872; FAX: 206-442-4304.	Commander, Pacific Area, U.S. Coast Guard, Government Island, Alameda, CA 94501; Telex: 172343; Telephone: 510-437-3700; FAX: 510-437-3017.
Director, Alaska Region, National Marine Fisheries Service, NOAA, P.O. Box 1668, Juneau, AK 99802-1668; Telex: 09945377; Telephone: 907-586-7221; FAX: 907-586-7249.	Director, Alaska Fisheries Science Center, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE, BIN C15700, Bldg. 4, Seattle, WA 98115-0070; Telex: 329422; Telephone: 206-526-4000; FAX: 206-526-4004.	Commander, Seventeenth Coast Guard District, P.O. Box 3-5000, Juneau, AK 99801; Telex: 45305; Telephone: 907-586-7200 after hours: 907-586-7350.

TABLE 1.—ADDRESSES—Continued

NMFS regional directors	NMFS Fisheries Science Center directors	U.S. Coast Guard commanders
Director, Southwest Region National Marine Fisheries Service, NOAA, 501 West Ocean Blvd, Suite 4200, Long Beach, CA 90802-4213; Telephone: 310-980-4001; FAX: 310-980-4018.	Director, Southwest Fisheries Science Center, National Marine Fisheries Service, NOAA, P.O. Box 271, La Jolla, CA 92038-0271; Telephone: 619-546-7000; FAX: 619-546-7003.	Commander, Fourteenth Coast Guard District, 300 Ala Moana Blvd., Honolulu, HI 96813; Telex: 392401; Telephone: 808-546-7597.

PART 620—GENERAL PROVISIONS FOR DOMESTIC FISHERIES

8. The authority citation for part 620 continues to read as follows:

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

9. In § 620.2, definitions for “Director”, “Exempted educational activity”, “Exempted or experimental fishing”, “Regional Director”, “Science and Research Director”, “Scientific cruise”, “Scientific research activity”, “Scientific research plan”, and “Scientific research vessel”, are added, in alphabetical order, to read as follows:

§ 620.2 Definitions.

* * * * *

Director means the Director of the Office of Fisheries Conservation and Management, 1315 East-West Highway, Silver Spring, MD 20910.

* * * * *

Exempted educational activity means an activity, conducted by an educational institution accredited by a recognized national or international accreditation body, of limited scope and duration, that is otherwise prohibited by part 285 or chapter VI of this title, but that is authorized by the appropriate Director or Regional Director for educational purposes.

Exempted or experimental fishing means fishing from a vessel of the United States that involves activities otherwise prohibited by part 285 or chapter VI of this title, but that are authorized under an exempted fishing permit (EFP). These regulations refer exclusively to exempted fishing. References in 50 CFR part 285 and elsewhere in this chapter to experimental fishing mean exempted fishing under this part.

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Regional Director means the Director of one of the five NMFS Regions.

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Science and Research Director means the Director of one of the five NMFS Fisheries Science Centers.

Scientific cruise means the period of time during which a scientific research vessel is operated in furtherance of a scientific research project, beginning when the vessel leaves port to undertake

the project and ending when the vessel completes the project as provided for in the applicable scientific research plan.

Scientific research activity is, for the purposes of this part, an activity in furtherance of a scientific fishery investigation or study that would meet the definition of fishing under the Magnuson Act, but for the exemption applicable to scientific research activity conducted from a scientific research vessel. Scientific research activity includes, but is not limited to, sampling, collecting, observing, or surveying the fish or fishery resources within the EEZ, at sea, on board scientific research vessels, to increase scientific knowledge of the fishery resources or their environment, or to test a hypothesis as part of a planned, directed investigation or study conducted according to methodologies generally accepted as appropriate for scientific research. At-sea scientific fishery investigations address one or more issues involving taxonomy, biology, physiology, behavior, disease, aging, growth, mortality, migration, recruitment, distribution, abundance, ecology, stock structure, bycatch, and catch estimation of finfish and shellfish (invertebrate) species considered to be a component of the fishery resources within the EEZ. Scientific research activity does not include the collection and retention of fish that is outside the scope of the applicable research plan, or the testing of fishing gear. Data collection designed to capture and land quantities of fish for product development, market research, and/or public display are not scientific research activities and must be permitted under exempted fishing procedures.

Scientific research plan means a detailed, written formulation, prepared in advance of the research, for the accomplishment of a scientific research project. At a minimum, a sound scientific research plan should include:

- (1) A description of the nature and objectives of the project, including the hypothesis or hypotheses to be tested.
- (2) The experimental design of the project, including a description of the methods to be used, the type and class of any vessel(s) to be used (including the name and tonnage of vessel as soon

as identified), and a description of sampling equipment.

(3) The geographical area(s) in which the project is to be conducted.

(4) The expected date of first appearance and final departure of any research vessel(s) to be employed, and deployment and removal of equipment, as appropriate.

(5) The expected quantity and species of fish to be taken and their intended disposition, and, if significant amounts of a managed species or species otherwise restricted by size or sex are needed, an explanation of such need.

(6) The name, address, and telephone/telex/fax number of the sponsoring organization and its director.

(7) The name, address, telephone/telex/fax number, and curriculum vitae of the person in charge of the project and, where different, the person in charge of the research project on board the vessel.

(8) The identity of any vessel(s) to be used, including, but not limited to, the vessel's name, official documentation number or state registration number, home port, and name, address, and telephone number of the owner and master.

Scientific research vessel means a vessel owned or chartered by, and controlled by, a foreign government agency, U.S. Government agency (including NOAA or institutions designated as federally funded research and development centers), U.S. state or territorial agency, university (or other educational institution accredited by a recognized national or international accreditation body), international treaty organization, or scientific institution. To meet this definition, the vessel must have scientific research as its exclusive mission during the scientific cruise in question and the vessel operations must be conducted in accordance with a scientific research plan.

* * * * *

10. In § 620.7, paragraphs (i) through (l) are added to read as follows:

§ 620.7 General prohibitions.

* * * * *

(i) Fish in violation of the terms or conditions of any permit or

authorization issued under the Magnuson Act.

(j) Fail to report catches as required while fishing pursuant to an exempted fishing permit.

(k) On a scientific research vessel, engage in fishing other than recreational fishing authorized by applicable state or Federal regulations.

(l) Trade, barter, or sell; or attempt to trade, barter, or sell fish possessed or retained while fishing pursuant to an authorization for an exempted educational activity.

11. Section 620.10 is added to read as follows:

§ 620.10 Scientific research activity, exempted fishing, and exempted educational activity.

(a) *Scientific research activity.* Nothing in this part is intended to inhibit or prevent any scientific research activity conducted by a scientific research vessel. Persons planning to conduct scientific research activities in the EEZ are encouraged to submit to the appropriate Regional Director, Director, or designee, 60 days or as soon as practicable prior to its start, a scientific research plan for each scientific cruise. The Regional Director, Director, or designee will acknowledge notification of scientific research activity by issuing to the operator or master of that vessel, or to the sponsoring institution, a letter of acknowledgment. This letter of acknowledgment is separate and distinct from any permit required by any other applicable law. If the Regional Director, Director, or designee, after review of a research plan, determines that it does not constitute scientific research but rather fishing, the Regional Director, Director, or designee will inform the applicant as soon as practicable and in writing. The Regional Director, Director, or designee may also make recommendations to revise the research plan to make the cruise acceptable as scientific research activity or recommend the applicant request an EFP. In order to facilitate identification of activity as scientific research, persons conducting scientific research activities are advised to carry a copy of the scientific research plan and the letter of acknowledgment on board the scientific research vessel. Activities conducted in accordance with a scientific research plan acknowledged by such a letter are presumed to be scientific research activity. The presumption may be overcome by showing that an activity does not fit the definition of scientific research activity or is outside the scope of the scientific research plan.

(b) *Exempted fishing*—(1) *General.* A NMFS Regional Director or Director may

authorize, for limited testing, public display, data collection, exploratory, health and safety, environmental cleanup, and/or hazard removal purposes, the target or incidental harvest of species managed under an FMP or fishery regulations that would otherwise be prohibited. Exempted fishing may not be conducted unless authorized by an EFP issued by a Regional Director or Director in accordance with the criteria and procedures specified in this section. The Regional Director or Director may charge a fee to recover the administrative expenses of issuing an EFP. The amount of the fee will be calculated, at least annually, in accordance with procedures of the NOAA Handbook for determining administrative costs of each special product or service; the fee may not exceed such costs. Persons may contact the appropriate Regional Director or Director to find out the applicable fee.

(2) *Application.* An applicant for an EFP shall submit a completed application package to the appropriate Regional Director or Director, as soon as practicable and at least 60 days before the desired effective date of the EFP. Submission of an EFP application less than 60 days before the desired effective date of the EFP may result in a delayed effective date because of review requirements. The application package must include payment of any required fee as specified by paragraph (b)(1) of this section, and a written application that includes, but is not limited to, the following information:

- (i) The date of the application.
- (ii) The applicant's name, mailing address, and telephone number.
- (iii) A statement of the purposes and goals of the exempted fishery for which an EFP is needed, including justification for issuance of the EFP.
- (iv) For each vessel to be covered by the EFP as soon as the information is available and before operations begin under the EFP:

(A) A copy of the U.S. Coast Guard documentation, state license, or registration of each vessel, or the information contained on the appropriate document.

(B) The current name, address, and telephone number of the owner and master, if not included on the document provided for the vessel.

(v) The species (target and incidental) expected to be harvested under the EFP, the amount(s) of such harvest necessary to conduct the exempted fishing, the arrangements for disposition of all regulated species harvested under the EFP, and any anticipated impacts on marine mammals or endangered species.

(vi) For each vessel covered by the EFP, the approximate time(s) and place(s) fishing will take place, and the type, size, and amount of gear to be used.

(vii) The signature of the applicant.

(viii) The Regional Director or Director, as appropriate, may request from an applicant additional information necessary to make the determinations required under this section. An incomplete application or an application for which the appropriate fee has not been paid will not be considered until corrected in writing and the fee paid. An applicant for an EFP need not be the owner or operator of the vessel(s) for which the EFP is requested.

(3) *Issuance.* (i) The Regional Director or Director, as appropriate, will review each application and will make a preliminary determination whether the application contains all of the required information and constitutes an activity appropriate for further consideration. If the Regional Director or Director finds that any application does not warrant further consideration, both the applicant and the affected Council(s) will be notified in writing of the reasons for the decision. If the Regional Director or Director determines that any application warrants further consideration, notification of receipt of the application will be published in the Federal Register with a brief description of the proposal, and the intent of NMFS to issue an EFP. Interested persons will be given a 15- to 45-day opportunity to comment and/or comments will be requested during public testimony at a Council meeting. The notification may establish a cut-off date for receipt of additional applications to participate in the same, or a similar, exempted fishing activity. The Regional Director or Director also will forward copies of the application to the Council(s), the U.S. Coast Guard, and the appropriate fishery management agencies of affected states, accompanied by the following information:

(A) The effect of the proposed EFP on the target and incidental species, including the effect on any total allowable catch.

(B) A citation of the regulation or regulations that, without the EFP, would prohibit the proposed activity.

(C) Biological information relevant to the proposal, including appropriate statements of environmental impacts, including impacts on marine mammals and threatened or endangered species.

(ii) If the application is complete and warrants additional consultation, the Regional Director or Director may consult with the appropriate Council(s)

concerning the permit application during the period in which comments have been requested. The Council(s) or the Director or Regional Director shall notify the applicant in advance of any meeting at which the application will be considered, and offer the applicant the opportunity to appear in support of the application.

(iii) As soon as practicable after receiving responses from the agencies identified in paragraph (b)(3)(i) of this section, and/or after the consultation, if any, described in paragraph (b)(3)(ii) of this section, the Regional Director or Director shall notify the applicant in writing of the decision to grant or deny the EFP, and, if denied, the reasons for the denial. Grounds for denial of an EFP include, but are not limited to, the following:

(A) The applicant has failed to disclose material information required, or has made false statements as to any material fact, in connection with his or her application; or

(B) According to the best scientific information available, the harvest to be conducted under the permit would detrimentally affect the well-being of the stock of any regulated species of fish, marine mammal, or threatened or endangered species in a significant way; or

(C) Issuance of the EFP would have economic allocation as its sole purpose; or

(D) Activities to be conducted under the EFP would be inconsistent with the intent of this section, the management objectives of the FMP, or other applicable law; or

(E) The applicant has failed to demonstrate a valid justification for the permit; or

(F) The activity proposed under the EFP could create a significant enforcement problem.

(iv) The decision of a Regional Director or Director to grant or deny an EFP is the final action of NMFS. If the permit, as granted, is significantly different from the original application, or is denied, NMFS may publish notification in the Federal Register describing the exempted fishing to be conducted under the EFP or the reasons for denial.

(v) The Regional Director or Director may attach terms and conditions to the EFP consistent with the purpose of the exempted fishing, including, but not limited to:

(A) The maximum amount of each regulated species that can be harvested and landed during the term of the EFP, including trip limitations, where appropriate.

(B) The number, size(s), name(s), and identification number(s) of the vessel(s) authorized to conduct fishing activities under the EFP.

(C) The time(s) and place(s) where exempted fishing may be conducted.

(D) The type, size, and amount of gear that may be used by each vessel operated under the EFP.

(E) The condition that observers, a vessel monitoring system, or other electronic equipment be carried on board vessels operated under an EFP, and any necessary conditions, such as predeployment notification requirements.

(F) Reasonable data reporting requirements.

(G) Other conditions as may be necessary to assure compliance with the purposes of the EFP, consistent with the objectives of the FMP and other applicable law.

(H) Provisions for public release of data obtained under the EFP that are consistent with NOAA confidentiality of statistics procedures as set out at part 603 of this chapter. An applicant may be required to waive the right to confidentiality of information gathered while conducting exempted fishing as a condition of an EFP.

(4) *Duration.* Unless otherwise specified in the EFP or a superseding notice or regulation, an EFP is effective for no longer than 1 year, unless revoked, suspended, or modified. EFPs may be renewed following the application procedures in this section.

(5) *Alteration.* Any permit that has been altered, erased, or mutilated is invalid.

(6) *Transfer.* EFPs issued under this section are not transferable or assignable. An EFP is valid only for the vessel(s) for which it is issued.

(7) *Inspection.* Any EFP issued under this section must be carried on board the vessel(s) for which it was issued. The EFP must be presented for inspection upon request of any authorized officer.

(8) *Sanctions.* Failure of a permittee to comply with the terms and conditions of an EFP may be grounds for revocation, suspension, or modification of the EFP with respect to all persons and vessels conducting activities under the EFP. Any action taken to revoke, suspend, or modify an EFP for enforcement purposes will be governed by 15 CFR part 904, subpart D.

(c) *Reports.* (1) Persons conducting scientific research activity are requested to submit a copy of any cruise report or other publication created as a result of the cruise, including the amount, composition, and disposition of their

catch, to the appropriate Science and Research Director.

(2) Persons fishing under an EFP are required to report their catches to the appropriate Regional Director or Director, as specified in the EFP.

(d) *Exempted educational activities—*

(1) *General.* A NMFS Regional Director or Director may authorize, for educational purposes, the target or incidental harvest of species managed under an FMP or fishery regulations that would otherwise be prohibited. The decision of a Regional Director or Director to grant or deny an exempted educational activity authorization is the final action of NMFS. Exempted educational activities may not be conducted unless authorized in writing by a Regional Director or Director in accordance with the criteria and procedures specified in this section. Such authorization will be issued without charge.

(2) *Application.* An applicant for an exempted educational activity authorization shall submit to the appropriate Regional Director or Director, at least 15 days before the desired effective date of the authorization, a written application that includes, but is not limited to, the following information:

(i) The date of the application.

(ii) The applicant's name, mailing address, and telephone number.

(iii) A brief statement of the purposes and goals of the exempted educational activity for which authorization is requested, including a general description of the arrangements for disposition of all species collected.

(iv) Evidence that the sponsoring institution is a valid educational institution, such as accreditation by a recognized national or international accreditation body.

(v) The scope and duration of the activity.

(vi) For each vessel to be covered by the authorization:

(A) A copy of the U.S. Coast Guard documentation, state license, or registration of the vessel, or the information contained on the appropriate document.

(B) The current name, address, and telephone number of the owner and master, if not included on the document provided for the vessel.

(vii) The species and amounts expected to be caught during the exempted educational activity.

(viii) For each vessel covered by the authorization, the approximate time(s) and place(s) fishing will take place, and the type, size, and amount of gear to be used.

(ix) The signature of the applicant.

(x) The Regional Director or Director may request from an applicant additional information necessary to make the determinations required under this section. An incomplete application will not be considered until corrected in writing.

(3) *Issuance.* (i) The Regional Director or Director, as appropriate, will review each application and will make a determination whether the application contains all of the required information, is consistent with the goals, objectives, and requirements of the FMP or regulations and other applicable law, and constitutes a valid exempted educational activity. The applicant will be notified in writing of the decision within 5 working days of receipt of the application.

(ii) The Regional Director or Director may attach terms and conditions to the authorization, consistent with the purpose of the exempted educational activity, including, but not limited to:

(A) The maximum amount of each regulated species that may be harvested.

(B) The time(s) and place(s) where the exempted educational activity may be conducted.

(C) The type, size, and amount of gear that may be used by each vessel operated under the authorization.

(D) Reasonable data reporting requirements.

(E) Such other conditions as may be necessary to assure compliance with the purposes of the authorization, consistent with the objectives of the FMP or regulations.

(F) Provisions for public release of data obtained under the authorization, consistent with NOAA confidentiality of statistics procedures at part 603 of this chapter. An applicant may be required to waive the right to confidentiality of information gathered while conducting exempted educational activity as a condition of the authorization.

(iii) The authorization will specify the scope of the authorized activity and will include, at a minimum, the duration, vessel(s), species and gear involved in the activity, as well as any additional terms and conditions specified under paragraph (d)(3)(ii) of this section.

(4) *Duration.* Unless otherwise specified, authorization for an exempted educational activity is effective for no longer than 1 year, unless revoked, suspended, or modified. Authorizations may be renewed following the application procedures in this section.

(5) *Alteration.* Any authorization that has been altered, erased, or mutilated is invalid.

(6) *Transfer.* Authorizations issued under this paragraph (d) are not transferable or assignable.

(7) *Inspection.* Any authorization issued under this paragraph (d) must be carried on board the vessel(s) for which it was issued or be in possession of the applicant to which it was issued while the exempted educational activity is being conducted. The authorization must be presented for inspection upon request of any authorized officer. Activities that meet the definition of "fishing," despite an educational purpose, are fishing. An authorization may allow covered fishing activities; however, fishing activities conducted outside the scope of an authorization for exempted educational activities are illegal.

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DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

RIN 1219-AA11

Safety Standards for Underground Coal Mine Ventilation

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Final rule; corrections.

SUMMARY: This document corrects errors in the final rule for safety standards for underground coal mine ventilation which appeared in the Federal Register on March 11, 1996 (61 FR 9764).

EFFECTIVE DATE: June 10, 1996.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, (703) 235-1910.

SUPPLEMENTARY INFORMATION:

Background

On March 11, 1996, MSHA published a final rule to revise its safety standards for underground coal mine ventilation. This document corrects several errors that appeared in the preamble discussion and in the final rule.

In the preamble discussion to § 75.313 Main mine fan stoppage with persons underground, on page 9774, the second column, 25 lines from the bottom, the phrase "in nonventilated areas" inadvertently appears. This correction notice deletes the phrase from the preamble.

The final rule language of § 75.322, Harmful quantities of noxious gases, is incorrect. No changes were proposed to § 75.322 and the current version of § 75.322 that appears in the 1995 compilation of the Code of Federal

Regulations is correct. Therefore, § 75.322 is corrected to be the version that appears in the 1995 compilation of the Code of Federal Regulations.

The final rule language of § 75.325 Air quantity, inadvertently omits the last sentence of existing § 75.325(b). No changes were proposed to § 75.325(b) and the current version of § 75.325(b) that appears in the 1995 compilation of the Code of Federal Regulations is correct. Therefore, § 75.325(b) is corrected to be the version that appears in the 1995 compilation of the Code of Federal Regulations.

Paragraph (h) of § 75.333(h) Ventilation controls, deals with the maintenance of ventilation controls. In the preamble and the rule, the word "permanent" inadvertently appears. This correction notice deletes the word "permanent" from § 75.333(h) and from the preamble of the rule in the last sentence of the second column of page 9782. The preamble discussion in columns 1 and 2 of page 9784 makes it clear that § 75.333(h) is to apply to temporary controls as well as permanent controls, and that the word "permanent" therefore appeared in error. As correctly stated on page 9784, "Given the importance of temporary control devices in providing for adequate ventilation, the final rule requires all ventilation controls, both permanent and temporary, including all doors and seals, to be maintained to serve the purpose for which they were built."

The preamble for paragraph (g)(2) of § 75.362 On-shift examination, is inconsistent with the language appearing in the final rule. This correction notice clarifies the intent of the Agency that a certified person must certify that the examination has been completed. At page 9799 of the preamble discussion, the preamble correctly states that: "The final rule deletes the word 'certified,' permitting on-shift examinations of dust controls to be conducted by one or more persons who are not certified individuals. However, the examination must still be conducted under the direction of a person designated by the operator and as set out in paragraph (g)(2), a certified person must certify that the examination has been completed * * *." The last sentence at page 9801 in the preamble discussion of the rule is inconsistent with this explanation and this correction document corrects the sentence. Also, the word "certified" is added to the rule.

In the last sentence of the final rule language of paragraph (a)(2) of § 75.362 On-shift examination, on page 9839, the second column, the word —additional—